TRANSITIONAL JUSTICE AND POLITICS OF REPARATION IN ARGENTINA (1983-ONGOING)

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THE ‘DIRTY WAR’ – WHAT CONSTITUTES REPAIR?
CHRONOLOGY OF TRANSITIONAL JUSTICE

- **24 March 1976 – military coup**
  - 1930-1983 – no democratically elected president served out his/her term in office (exception of Juan Peron 1946-55)
  - Dirty War – 9,000-30,000 ‘disappeared’; arbitrary detention; torture; abduction of children; exile

- **1983 – fall of military junta and return of democratic government**
  - Demoralised military (military defeat on the Malvinas/Falklands), but still in control of coercive apparatus
  - Economic turmoil
  - Popular demands for accountability
HOPES AND DISILLUSION UNDER ALFONSSIN
Raul Alfonsin government (1983-89):
- Overturning of military’s self-amnesty
- Apr 1985 – ‘trial of the century’ of the Juntas at the Federal Court of Appeals of Buenos Aires (applying national criminal law)
  - Dec 1985 – 9 heads of the military juntas convicted
- In the context of numerous military rebellions, govt passes laws to restrict prosecutions – *Full Stop* (Dec 1986) and *Due Obedience* (June 1987) laws
  - 1195 military personnel processed for human rights abuses – 730 benefited from Full Stop; 379 from Due Obedience; another 43 deprocessed by the Supreme Court
- **Is there an appropriate balance between political pragmatism and principled prosecution (redress)? Is there a duty of prosecution for gross hr violations?**
‘IMPUNITY’, COMPENSATION, AND JUDICIAL ACTIVISM UNDER MENEM
Carlos Menem (1989-1999)
- 2 general pardons – by 1991: 10 people convicted, all pardoned and released
- Laws on reparation
  - Decree recognizing the right to compensation for victims of illegal detention
  - Law 24.043 extends compensation rights to all types of political detainees under military rule, the parents and children of the disappeared, including all children born in captivity
  - Feb 1994 – 8,200 reparation claims (vast majority accepted) (Barahona de Brito)
  - Law 24.411 extends compensation to victims of disappearances and the children of people assassinated
  - Law 25.914 – compensation to those born in captivity or children of disappeared who were also detained, and victims of identity substitution
- Estimate of US$ 750 million paid out by 2000
  - **Impunity in exchange of monetary compensation?**
Menem (cont)

- Establishment of National Commission on the Right to Identity (CONADI)
  - Centralized the search for missing children
- Apr 1995 – Commander in Chief of Army (Martin Balza) offers institutional apology
- Relatives of disappeared filing requests demanding their ‘right to truth’
  - ‘Truth trials’: Judicial action limited to investigation and documentation – no criminal prosecution
- Mid-1990s – start of *escraches* (or public demonstrations of public shaming of perpetrators)
- 1998 - Congress decides to derogate Full Stop and Due Obedience laws (no retroactive application)
- Jailing of former junta leaders for abduction of children
ECONOMIC AND DEMOCRATIC CRISIS
‘Interim’ governments (1999-2001)

- Nov 1999 - Spanish Audiencia Nacional (Judge Baltazar Garzon) requests detention of Argentine military officers
- March 2001 – Judge Gabriel Cavallo declares Full Stop and Due Obedience laws unconstitutional
  - Nov 2001 – ruling confirmed by Appeals Court
- Dec 2001 – economic meltdown
- 2002 – informal lustration mechanisms (vetting of civil servants and military officers) formally adopted by Congress (Barahona de Brito)

What should the role of the judiciary and courts be in providing reparations for past human rights abuses?
PROSECUTION AND MEMORY UNDER THE KIRCHNERS
TJ CHRONOLOGY

- Nestor and Cristina Kirchner (2003- )
  - June 2003 – lower-level courts start declaring Full Stop and Due Obedience laws unconstitutional?
  - Aug 2003 – Congress and the Senate vote to annul the Full Stop and Due Obedience laws
  - June 2005 – Supreme Court upholds Cavallo ruling
    - Cases related to past human rights violations re-opened
    - Overturning of pardons
  - Dec 2007 - Cristina K. president
  - To date - more than 1,400 individuals implicated in different trials, and at different stages in the Argentine judicial system (CELS estimate)
    - ~68 individuals sentenced (updates: www.cels.org.ar)
THE PRACTICE OF TRANSITIONAL JUSTICE

- **Time** – TJ and reparations as a moving target
  - Political circumstances change
  - Legal norms shift, sometimes ahead of practice
  - *How do we assess what is morally desirable and practically possible?*

- **Actors** – multitude of different actors
  - Different interests, preferences, and power differentials
  - TJ subject to politics
  - *How should different competing interests and preferences be balanced? E.g. prosecution as revenge vs. forgetting as ‘moving on’?*

- **Mechanisms** – different forms of reparation policies
  - *Truth policies* (commission and investigation); *justice policies* (trials, amnesties, vetting); *compensation policies* (financial, restitution etc)
  - But, also policies aimed at ‘memory’ (commemoration sites etc.)
  - *Is an appropriate sequencing of reparation measures possible? What does ‘reparation’ mean in an Argentine context?*