

Memory Politics and Transitional Justice

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London, UK

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Columbia University
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The interdisciplinary fields of Memory Studies and Transitional Justice have largely developed in parallel to one another despite both focusing on efforts of societies to confront and (re-)appropriate their past. While scholars working on memory have come mostly from historical, literary, sociological, or anthropological traditions, transitional justice has attracted primarily scholarship from political science and the law. This series bridges this divide: it promotes work that combines a deep understanding of the contexts that have allowed for injustice to occur with an analysis of how legacies of such injustice in political and historical memory influence contemporary projects of redress, acknowledgment, or new cycles of denial. The titles in the series are of interest not only to academics and students but also practitioners in the related fields.

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Hugo Rojas • Miriam Shaftoe

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Hugo Rojas
Alberto Hurtado University
Santiago, Chile

Miriam Shaftoe
University of Ottawa
Ottawa, ON, Canada

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PREFACE

Chile peacefully regained its democracy in 1990, after 17 years of Augusto Pinochet's brutal military dictatorship. Thirty years of stability and seven democratic governments later, many Chileans were convinced that the legacy of the dictatorship had been dealt with and the country had overcome its history of human rights violations.

Presidents since Chile's return to democracy have committed to the declaration *Nunca Más*: Never again will the state commit human rights abuses against its people. Yet, on October 18, 2019, when massive social unrest erupted in Santiago, the government reacted with an almost instinctive return to repressive tendencies. In response to the protests, President Sebastián Piñera declared a state of emergency, imposed a curfew, and deployed the military on the streets within less than 24 hours. In the following weeks and months, Chileans were faced with a level of state violence that had not been seen since the years of the dictatorship. Between October 2019 and March 2020, 8827 citizens filed charges for human rights violations (Matus, 2020), including 388 cases of sexual violence and 413 cases of eye loss. In the first few months of protests, prosecutors investigated 466 state agents, of whom 90% are police. The government has faced criticism for its lack of transparency regarding the alleged abuses and for its slow investigation of claims of human rights violations.

How did we get here? The economic injustices at the core of the protest movement and the widespread state violence in response to the demonstrations are partly rooted in the institutional legacy of the dictatorship. The country's current neoliberal economic model and constitution were

imposed under Pinochet and this has resulted in the privatization of social services like healthcare and education. This has generated significant inequality and economic precarity for many Chileans. Since the return to democracy, the governing elites have failed to respond to citizens' demands to reform the economic model and replace the Constitution. The growing sense of injustice, frustration, and political disillusionment within the population ultimately reached a boiling point when citizens took to the streets on 2019.

However, these recent events have also highlighted some of the progress that has been made over the years to create sustainable systems of human rights protection. Chilean civil society activists and human rights experts reacted swiftly during the crisis to prevent human rights violations from continuing and to demand accountability. The National Institute of Human Rights (INDH), an independent state-funded institution, has become a powerful human rights observer, promoter, and defender. Protesters were able to register and report state violence much more rapidly than in the past, and many of the abuses committed during the recent unrest are currently being investigated by the INDH, prosecutors, and courts. As of July 2020, the INDH had filed 2066 criminal complaints in the context of the social crisis, 77.5% of which correspond to acts of torture and inhuman or degrading treatment. Meanwhile, the government has filed legal actions against 3274 civilians in relation to the protests, for crimes such as public disorder (18.6%), fires (4.9%), and attacks on members of the police and armed forces (3.6%) (Weibel, 2020).

The concept of *Never Again* is taking on renewed force in Chile while new generations of human rights advocates recognize that accounts with the past have not been fully settled. The recent social insurrection and violence revealed to Chileans the fragility of their institutions, and the sustained protest movement has provided an opportunity to finally address some of the dictatorship's lasting institutional legacies and renew the social contract. As an escape valve against social pressure, on October 25, 2020, a plebiscite took place in which Chileans voted in favor of the creation of a new Constitution, to be developed through a constituent assembly whose members were elected in May 2021. This dynamic political context provides an important occasion to reflect on the lessons the Chilean experience of transitional justice offers about the process of transitioning from a violent dictatorship toward a fully realized democracy.

Thirty years after the return to democracy, this book seeks to look back and offer a comprehensive overview of the achievements and challenges of

the Chilean transitional justice process. Chapter 1 provides an introductory overview of the concepts of human rights and transitional justice. Chapter 2 contextualizes the human rights violations in Chile during the dictatorship, by providing the necessary historical background from the 1960s to the present. The following chapters explain the initiatives that have been developed in Chile to uncover the truth about what happened during the dictatorship (Chap. 3), how the state and society have partially repaired the deep wounds of victims of state terrorism (Chap. 4), how Chilean society remembers and commemorates its stormy past (Chap. 5), and what progress has been made in the justice system to allow the punishment of some of those responsible (Chap. 6). Finally, in Chap. 7, we explore the guarantees of non-repetition that have been adopted.

Alberto Hurtado University
Santiago, Chile
University of Ottawa
Ottawa, ON, Canada

Hugo Rojas
Miriam Shaftoe

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During the second semester of 2019, while discussing the previous drafts of the different chapters of this book on how Chilean society had been confronting the gross and systematic human rights violations committed during Pinochet's dictatorship, we were witness to Chile reliving an experience of state violence it had thought had been overcome. Our reflections about how the past is understood in the present were transformed. Our focus moved to what was happening in an extremely violent present and its undeniable links to the issues we had been discussing.

Conversations with our colleagues and friends have been deeply meaningful to the beginning of this book, and its pages reflect that it has been the result of a collaborative, interdisciplinary, and transnational effort. We particularly appreciate the contributions of Alan Angell, Macarena Bonhomme, Silvia Borzutzky, Simón Escoffier, María Angélica Garrido, Elizabeth Lira, Brian Loveman, Tomás Pascual, and Leigh A. Payne. We also thank Christine Cervenak, Denis Galligan, Solimar García, Pumla Gobodo-Madikizela, Valentina Infante, Jeff Kelly Lowenstein, María Belén Lagos, Mariana Lagos, Elena Maffioletti, Soledad Matus, Juan René Maureira, Florencia Olivares, Darío Páez, and Camila Villegas for the suggestions they made to the previous drafts.

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Alberto Hurtado University, the University of Oxford Latin American Centre, Wolfson College, and the University of Ottawa, and discussions with students from different nationalities that attended the course “Human Rights and Transitional Justice” at the Pontifical Catholic University of Chile Institute of Political Science (2019), and the program “Human Rights and Cultural Memory” at the University of California Education Abroad Program and Alberto Hurtado University (2019).

This book offers a panoramic vision of transitional justice in Chile that emanates from experiences directly in the field, from the perspectives of both policy-making and academic research. In the conversations between the authors, many discussions emerged from Hugo Rojas’ academic trajectory and public commitment to the promotion of the rule of law and human rights in Chile. His experiences as an advisor to the first government of Michelle Bachelet and the Commission on Political Imprisonment and Torture contributed directly to the reflections that are shared in this manuscript. Preliminary versions of the different sections were discussed with friends and colleagues at the University of Notre Dame Center for Civil and Human Rights, the Foundation for Law, Justice and Society, University of the Free State, California Western School of Law, Adolfo Ibáñez University School of Government, University of Oxford (Department of Sociology, Latin American Centre, Oxford Transitional Justice Research, and Wolfson College), Loyola University Chicago School of Law, Simón Bolívar University, Columbia College Chicago, Latina and Latino Critical Legal Theory, Inter American University of Puerto Rico, Ibero-American University of Mexico, and Alberto Hurtado University.

A much shorter version of Chap. 1 of this text appears as a chapter with the title “El tránsito de la justicia transicional” in the book *Pasados Contemporáneos. Acercamientos interdisciplinarios a los derechos humanos y las memorias en Perú y América Latina*, edited by Lucero de Vivanco and María Teresa Johansson (Madrid & Frankfurt: Editorial Iberoamericana/Vervuert 2019). We thank the editors and the publisher of that volume for their permission to expand on those ideas. The editors of *California Western International Law Journal* gave their permission to reproduce some of the ideas presented in “Torture in Chile (1973–1990): Analysis of One Hundred Survivors’ Testimonies”. Chapter 2 constitutes an updated version of the historical chapter of Hugo Rojas’ doctoral thesis entitled *Indifference to Past Human Rights Violations in Chile: The Impact on Transitional Justice Success (1990–2017)*, supervised by Leigh A. Payne and defended at the University of Oxford. This monograph was started in

parallel to that doctoral thesis, but it required numerous conversations and prolonged additional research sessions that we held in Chile and online. The Palgrave Macmillan editors and anonymous reviewers not only trusted this project but also made valuable recommendations. We thank Luis Lobos Robles for permitting us to use one of his photos on our book cover. Finally, this book is dedicated to the people who generously collaborated in the different stages, and especially to our families and close friends.

Santiago and Ottawa, 2021

Praise for *Human Rights and Transitional Justice in Chile*

“Hugo Rojas and Miriam Shaftoe’s analysis of the human rights abuses of the Pinochet dictatorship and the transitional justice policies that have been implemented in Chile, in the past thirty years, sheds light on both the successes and failures of these policies and their implications for Chilean politics and society. By connecting the evolution of human rights to the power of Chile’s multiple political actors, the authors are able to provide an in-depth and detailed analysis of both the policies and the forces behind those policies. This book is essential to understand not only the human rights abuses of the Pinochet dictatorship and the policies that followed, but also the difficulties in achieving any substantial policy changes and success in a divided society.”

—Silvia Borzutzky, Professor of Political Science at *Carnegie Mellon University*

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ABOUT THE AUTHORS

Hugo Rojas is Professor of Sociology of Law and Human Rights at Alberto Hurtado University School of Law and Researcher at the Millennium Institute on Violence and Democracy. M.Sc. in Law, Anthropology and Society from the London School of Economics, and D.Phil. in Sociology from the University of Oxford.

Miriam Shaftoe is Research Assistant at Alberto Hurtado University School of Law. She studied Social Sciences in Conflict Studies and Human Rights at the University of Ottawa.

ABBREVIATIONS

ANEF	National Association of Public Employees
AFDD	Group of Families of Disappeared Detainees
CGR	The Office of Comptroller General of the Republic
CIA	Central Intelligence Agency
CNI	National Information Center
CODEPU	Committee for the Defense of People's Rights
DC	Christian Democratic Party
DINA	National Intelligence Directorate
DINACOS	National Division of Social Communication
ECHR	European Court of Human Rights
ECLAC	Economic Commission for Latin America and the Caribbean
FASIC	Social Aid Foundation of Christian Churches
FPMR	Manuel Rodríguez Patriotic Front
FPMR-A	Autonomous Manuel Rodríguez Patriotic Front
FUNDASALVA	Anti-Drug Foundation of El Salvador
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IC	Christian Left Party
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTJ	International Center for Transitional Justice
ILO	International Labour Organization
INDH	National Institute of Human Rights
IPPDH	Institute of Public Policy on Human Rights

MAPU	Unitary Popular Action Movement MAPU-Lautaro Lautaro Unitary Popular Action Movement
MIR	Movement of the Revolutionary Left
MMHR	Museum of Memory and Human Rights
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
PC	Communist Party
PDI	Investigative Police
PRAIS	Programme of Reparations and Comprehensive Healthcare for Victims
PS	Socialist Party
TRC	Truth and Reconciliation Commission (Rettig Commission)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UP	Unidad Popular (Popular Unity)
US	United States of America
USSR	Union of Soviet Socialist Republics

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