

BOOK REVIEW ESSAY

Transitional Justice: Comparative and Historical Perspectives from Latin America

Omar G. Encarnación

Bard College, Annandale-on-Hudson, New York, USA
Email: encarna@bard.edu

This essay reviews the following works:

Memory's Turn: Reckoning with Dictatorship in Brazil. By Rebecca J. Atencio. Madison: University of Wisconsin Press, 2014. Pp. xviii + 144. \$26.95 paperback. ISBN: 9780299297244.

Human Rights Policies in Chile: The Unfinished Struggle for Truth and Justice. By Silvia Borzutzky. Cham, Switzerland: Palgrave Macmillan, 2017. Pp. 242. \$119.99 paperback. ISBN: 9783319536965.

Intermittences: Memory, Justice, and the Poetics of the Visible in Uruguay. By Ana Forcinito. Pittsburgh: University of Pittsburgh Press, 2018. Pp. xii + 257. \$29.95 paperback. ISBN: 9780822965664.

Democratization and Memories of Violence: Ethnic Minority Rights Movements in Mexico, Turkey, and El Salvador. By Mneesha Gellman. London: Routledge, 2016. Pp. xv + 242. \$52.95 paperback. ISBN: 9781138597686.

Reagan's Gun-Toting Nuns: The Catholic Conflict over Cold War Human Rights Policy in Central America. By Theresa Keeley. Ithaca, NY: Cornell University Press, 2020. Pp. xiv + 352. \$49.95 hardcover. ISBN: 9781501750755.

Sovereign Emergencies: Latin America and the Making of Global Human Rights Politics. By Patrick William Kelly. New York: Cambridge University Press, 2018. Pp. xx + 318. \$29.99 paperback. ISBN: 9781316615119.

The Brazilian Truth Commission: Local, National and Global Perspectives. Edited by Nina Schneider. New York: Berghahn, 2019. Pp. 382. \$135.00 hardcover. ISBN: 9781789200034.

Phenomenal Justice: Violence and Morality in Argentina. By Eva van Roekel. New Brunswick, NJ: Rutgers University Press, 2020. Pp. 208. \$32.95 paperback. ISBN: 9781978800267.

Los pelotones de la muerte: La construcción de los perpetradores del genocidio guatemalteco. By Manolo E. Vela Castañeda. México, DF: Colegio de México, 2015. Pp. 454. \$32.03 paperback. ISBN: 9786074623680.

© The Author(s), 2022. Published by Cambridge University Press on behalf of the Latin American Studies Association. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution, and reproduction in any medium, provided the original work is properly cited.

Acts of Repair: Justice, Truth, and the Politics of Memory in Argentina. By Natasha Zaretsky. New Brunswick, NJ: Rutgers University Press, 2020. Pp. 252. \$34.95 paperback. ISBN: 9781978807426.

Holding the old regime accountable for its crimes is one of the most vexing decisions for any newly constituted democracy. Scholars, political observers, and human rights activists have termed this political process “transitional justice” and traced its origins to 1793, when the French Parliament spent three agonizing days deliberating the fate of King Louis XVI, ultimately deciding to send him to the guillotine.¹ Another pivotal moment for transitional justice came in 1946 in Nuremberg, Germany, at the end of World War II, when an international tribunal convicted twelve high-ranking Nazi leaders of “crimes against humanity” and sentenced them to death by hanging. To be sure, the Nuremberg Trials left a lot to be desired. They were, as Jeremy Rabkin has written, “more flawed than we like to remember.”² Most notably, the trials failed to investigate the atrocities committed by the Allied powers, such as the targeting of German civilians. For this reason, some Germans recall the trials as an instance of “victors’ justice.” Having Soviet judges sentencing Nazi officials also compromised the credibility of the trials, since at the time these judges were themselves implicated in the human rights transgressions of the Stalin regime. Finally, the trials fell short of the expectation that they would evolve into a permanent institution to police future violations of crimes against humanity, especially genocide. Such an institution did not emerge until after the end of the Cold War, when the International Criminal Court began operations, in 2002.

Nonetheless, the Nuremberg Trials set an important international legal precedent that many nations have sought to emulate. Prominent among them was Argentina, which in 1985, for the first time since 1946, employed the charge of crimes against humanity to successfully prosecute the military leaders responsible for the infamous Dirty War (1976–1983). The so-called Trial of the Juntas was preceded by *Nunca Más* (Never Again), the final report of the National Commission on the Disappeared, or CONADEP, which was created in 1983 to investigate the fates of the thousands of Argentines who disappeared under the period of military rule.³ This was the first truth commission to gain international renown. Argentina also pioneered the field of forensic anthropology, which locates and recovers the remains of those who disappear during times of political turmoil for the purpose of improving the prospect of prosecuting the old regime.⁴ Initially applied to locating the remains of the victims of the Dirty War, forensic anthropology is today being used in other countries that have also experienced large scale disappearances, such as Rwanda and the nations of the former Yugoslavia. In some cases, it is an Argentine forensic team, usually the Buenos Aires-based Equipo Argentino de Antropología Forense, conducting the work.

Deservedly so, the significant developments in transitional justice that have taken place in Argentina and elsewhere in Latin America since the 1980s have generated a robust scholarship.⁵ But many questions about transitional justice in Latin America remain unanswered or unexplored. It is far from clear why, despite enduring similar military regimes, Argentina emerged as a transitional justice pioneer while Brazil became a transitional

¹ Jamal Benomar, “Confronting the Past: Justice after Transitions,” *Journal of Democracy* 4, no. 1 (1993): 3–14.

² Jeremy Rabkin, “Nuremberg Misremembered,” *SAIS Review* 19, no. 2 (1999): 82.

³ *Nunca Más: The Report of the Argentine National Commission on the Disappeared* (New York: Farrar, Straus and Giroux, 1986).

⁴ See, especially, Adam Rosenblatt, *Digging for the Disappeared: Forensic Science after Atrocity* (Stanford, CA: Stanford University Press, 2015).

⁵ For a review of older works on transitional justice in Latin America published in these pages, see Ana Forcinito, “Reframing Transitional Justice: Memory, Interdisciplinarity, and Transformative Ways of Seeing,” *Latin American Research Review* 56, no. 3 (2021): 729–738, DOI: <https://doi.org/10.25222/larr.1651>.

justice laggard; or what lessons Latin America as a whole contributes to theoretical debates about the politics of confronting dark and painful pasts. It also remains under-determined how transitional justice has affected the quality of Latin American democracy. With an eye toward shedding light on these questions and concerns, my aim with this essay on recent works on transitional justice in Latin America is threefold.

I first sketch the transitional justice landscape in Latin America as it has evolved over the last four decades to reveal that there is no common or shared Latin American experience in how countries across the region have sought to bring accountability to the old regime. Instead, each country has charted its own transitional justice trajectory with respect to the timing, scope, and sequencing of transitional justice mechanisms—from political trials, to truth commissions, and beyond. Although no single factor can account for these divergent national experiences with transitional justice, one stands out above the rest: the nature of the democratic transition, and in particular the extent to which the transition allowed room for transitional justice activists to press their case for justice and accountability. For the most part, the less control the state had over the transition, the more space there was for civil society, opposition leaders, and the human rights community to press their demands for transitional justice.

I then situate Latin America within theoretical debates about transitional justice to suggest how the region pointedly challenges the widespread view of transitional justice as entailing something of a cruel choice or trade-off between truth and justice. According to this view, countries coping with a painful and difficult past can choose to pursue one or the other, but not both. Many Latin American countries, however, have pursued both truth and justice, and some, especially Argentina, have done so simultaneously. More important, perhaps, the Latin American experience suggests that transitional justice can move beyond the binary of truth and justice by venturing into “memorialization,” or the institutionalization of the memory of political conflict and violence through the creation of museums, education policy, and public monuments. Memorialization honors the victims of political violence, but it also aims to transform society by fostering awareness about historical injustices.

Finally, I assess the legacy of nearly four decades of transitional justice in Latin America. Quite rightly, transitional justice is credited with putting a spotlight on human rights. This spotlight has revealed the brutality of political life in Latin America, especially during the Cold War, and at the same time exposed the dramatic progress that the region has made in nurturing a human rights culture and in leading the international community in expanding the notion of human rights. Beyond this positive picture, however, rests a more problematic legacy. Transitional justice has fallen short of its ambitious and idealistic aspiration of relegating violence and human rights abuses to the dustbin of history. Less apparent is the so-called dark side of transitional justice, especially the potential for political prosecutions and truth commissions to exacerbate social conflict and unintentionally impair the capacity of nations to overcome the traumas of the past and move on with the future.

Divergent historical trajectories

Argentina’s standing as Latin America’s preeminent example of transitional justice is vividly captured in Natasha Zaretsky’s *Acts of Repair* and Eva van Roekel’s *Phenomenal Justice*. These books map out the arc of the country’s extraordinary attempt to cope with a vast experience with political violence in the twentieth-century—from its complicity with the perpetrators of the Holocaust, to the political repression of the 1975–1983 dictatorship, to the 1994 bombing of Buenos Aires’ Jewish Center—with the aid of a variety of political and legal mechanisms like trials, a truth commission, and

reparations. But these books also offer a pointed reminder that transitional justice is more than a political and legal process; it is also a deeply personal experience. The personal impact of transitional justice on ordinary people is brought to light through the expert use of ethnographic research. It demonstrates the cascade of emotions that is triggered when victims of political violence are accorded measures to repair the damage that has been visited upon them.

Acts of Repair offers a broader canvas by situating the narrative within the larger history of European immigration to Argentina. That history, as illustrated in the book, created a national setting unlike any other in the world, as twentieth-century Argentina became a refuge for Jews fleeing the rise of Nazism and the aftermath of the Holocaust, as well as for Nazi officials, such as Adolf Eichmann, fleeing prosecution in Europe. *Phenomenal Justice* examines what its author calls “the anthropology of emotion” and focuses on the reactions provoked by the 2005 ruling from Argentina’s Supreme Court that declared unconstitutional the amnesty laws blocking prosecution for crimes committed under the military dictatorship. President Raul Alfonsín of the Radical Party halted human rights prosecutions in the late 1980s to pacify the military and allow democratic institutions time to coalesce, with the December 1986 Full Stop Law and the June 1987 Due Obedience Law. Subsequently, in October 1989 and December 1990, President Carlos Menem issued two sets of pardons for individuals already prosecuted or facing prosecution. Although welcomed by the victims of human rights abuses, the return of human rights prosecutions unleashed a mix of anger and hope in Argentina that demonstrates the vexed relationships between political, legal, and personal processes encapsulated in coming to terms with the trauma of political violence.

If Argentina is the pinnacle of transitional justice in Latin America, neighboring Brazil is its nadir. For decades, Brazil stood virtually alone among major Latin American nations in its complete disregard for transitional justice—no political trials, no truth commissions, no reparations, and no memorials for the victims of the human rights abuses committed by the state security apparatus between 1964 and 1985, which included torture, murder, and disappearances. Impunity began to erode in 2011, when the administration of Dilma Rousseff enacted a law creating the National Truth Commission. The social and political processes that led to the enacting this landmark law, as well as the many dimensions of the work of the commission, are the subject of Nina Schneider’s *Brazilian Truth Commission*. This edited volume demonstrates that the commission produced a report that is not only extraordinarily effective in ending the silence surrounding human rights abuses in South America’s largest democracy, but maybe even pathbreaking in terms of the scope of its work.

For starters, the report should destroy once and for all the view of authoritarian Brazil as a dictablanda, or a soft dictatorship, a myth born by the fact that the Brazilian military was not as indiscriminating in its use of violence as the Argentine military. The report identified over four hundred individuals murdered by the military, many of them “disappeared” in an attempt by the military government to cover its actions. Many more were tortured, including Rousseff, who was tortured while in prison as a university student. The work of the commission also made clear what many had suspected for years: that the military did not act alone in installing itself in power and in keeping itself in power for twenty-one years. It also had the active assistance of actors within Brazilian civil society, especially conservative sectors such as the business community. Leigh Payne’s contribution to the volume on what she calls “corporate complicity” states: “Recognizing that the military did not act alone but that civil society forces participated in supporting the coup and the dictatorship has thus extended the truth-gathering beyond the state sector and into what is now referred to as the ‘civil-military dictatorship or more pointedly the ‘business-military’ dictatorship” (158).

Brazil's truth commission is also the first body of its type to include the human rights abuses committed against LGBTQ people. To cite the final report: "Although there was no formalized and coherent state policy to exterminate homosexuals, the state's ideology of national security clearly contained a homophobic perspective that represented homosexuality as harmful, dangerous, and contrary to the family. This view legitimized direct violence against LGBTQ people, violations of their rights and of their way of living and socializing." Oddly, this rare aspect of the work of the commission was overlooked by Schneider and her collaborators. Yet, as noted by the historian James Green, who served as academic advisor to the commission, the final report has occasioned a "rethinking of how we understand discrimination and repression of LGBT people during the dictatorship and other authoritarian moments in Brazil and elsewhere."⁶

Between the experiences with transitional justice of Argentina and Brazil are the cases of Chile and Uruguay. In the latter two cases, political amnesties severely limited the capacity of civil society to undertake transitional justice with the same vigor and comprehensiveness as Argentina. In *Human Rights Policies in Chile*, Silvia Borzutzky writes about the incomplete truth and justice policies of the Chilean transition, a development conditioned by the amnesty put into place by the Pinochet regime with the explicit intention of hindering any search for justice and accountability. The most important of these amnesties was the 1978 Amnesty Decree, a law with far-ranging ramifications. As noted, "The stated goal was to foment national unification, but the practical effect was to absolve officials from responsibility in the deaths and torture of thousands of people" (24). It would take decades of patient work by human rights activists to begin to chip away at Pinochet's amnesty legacy. In 2005, the Lago administration created the Valech Commission to unveil illegal imprisonment and torture under the Pinochet regime, which opened the way for apologies, reparations, and limited prosecution of the military.

A different type of amnesty got in the way of transitional justice in Uruguay, where amnesty was a core component of the transition to democracy rather than a vestige of the authoritarian regime, as was the case in Chile. "Amnesty" in Uruguay, writes Ana Forcinito in *Intermittences*, is "intertwined in public and official discourses with the silence about the past, the active forgetting about past crimes, and the respect for human rights in relation to the future, as an important component in the consolidation of the rule of law" (13). The Law of Expiration of the Punitive Claims on the State of 1986, also known as the Expiry Law, guaranteed the absence of prosecutions in Uruguay's democratic transition. It followed the Naval Club Pact of August 23, 1982, an agreement negotiated by Uruguay's leading political parties and the armed forces to allow for the country's return to democracy. At the heart of this pact was a speedy transition in exchange for a promise not to prosecute the military. Unhappy with this turn of events, human rights activists were successful in persuading the government to put the Expiry Law to a popular referendum. In 1989, the Uruguayan people ratified the law; they did so again in 2009. In 2011, after Uruguay's Supreme Court ruled the law unconstitutional, the Mujica administration enacted a law to scrap the Expiry Law, thereby allowing for the prosecution of the military on human rights charges. Human rights activists estimate that some seven thousand political prisoners were held and tortured in Uruguay by the military.

Despite lacking much in the way of systemic, cross-national perspectives to account for the diversity of historical experiences with transitional justice found across Latin America, the works under review here provide a wealth of empirical evidence to draw out some explanatory variables, like the scope of the atrocities committed by the old regime, the determination of democratic politicians to prosecute former leaders, and the strength of civil society. That said, it is hard to avoid the conclusion that divergences in transitional

⁶ Author's electronic correspondence with Professor Green (December 29, 2020).

justice across Latin America for the most part reflect differences in the political dynamics of the democratic transition.⁷ In Argentina, the transition to democracy was marked by the collapse of the military regime in 1983, and a deep crisis of the state caused by a humiliating defeat at the hands of the British in the Malvinas War. These events allowed civil society to pursue a transitional justice wish list—from political trials to a truth commission and reparations to the victims of the Dirty War. In Brazil, by contrast, a state-choreographed process of democratization that began in 1974, when the military staged an election feeling confident that it could win, until very recently precluded even the organization of a truth commission. This fate for transitional justice was sealed in 1979, when the military government enacted a sweeping amnesty law that allowed exiled activists to return to Brazil and protected the military from human rights prosecutions. In Chile and Uruguay, where protracted negotiations between the authoritarian regime and the forces pushing for democracy lead to so-called pacted transitions, transitional justice was significantly compromised in order to facilitate the political accords of the democratic transition. For the departing regime, this entailed a quid pro quo of sorts: relinquishing power in exchange for amnesty, either comprehensive or limited.

Retribution versus reconciliation

At the heart of the sprawling transitional justice literature are two theoretical pillars of how nations come to terms with a difficult and painful past: “retribution” and “reconciliation.”⁸ Inspired by the prosecution of the Nazi regime by the Nuremberg International Tribunal, retribution stresses the importance of prosecuting human rights abuses to the full extent of the law. Failure to prosecute an old regime is believed to leave nations vulnerable to repeating history, a point underscored by the philosopher George Santayana’s popular aphorism that “Those who cannot remember the past are condemned to repeat it.” It can also undermine the legitimacy of the new democracy. The historian Timothy Garton Ash wrote that “the fact that the torturers or the commanders go unpunished, even remain in office, compromises the new regime in the eyes of those who should be its strongest supporters.”⁹ Last, but not least, making former despots pay for past political misdeeds is thought to strengthen democracy by boosting the rule of law. According to this view, political prosecutions not only enforce moral norms, they also drive home the point about the legal consequences of wrongdoing. This was a key rationale behind the staging of the Nuremberg trials in the first place. The trials were meant to be a teaching moment for the world about the punishment reserved for human rights violators.

Reconciliation, by contrast, privileges gathering, digesting, and disseminating the truth no matter how ugly or difficult. At the heart of the case for reconciliation is the potential for truth-telling to ease the pain of the trauma inflicted by political violence, as reflected in the slogan “The truth will set you free.” In particular, advocates of reconciliation stress the importance of knowing the truth for restoring “dignity,” or the sense that every human life has intrinsic value, to the victims of human rights abuses. Addressing how restoring dignity enables individuals to overcome the trauma inflicted by dehumanizing policies, Archbishop Desmond Tutu, the chairman of South Africa’s Truth and Reconciliation

⁷ For a broader discussion of the connections between types of democratic transitions and modes of transitional justice, see Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, DC: United States Institute of Peace Press, 1995); A. James McAdams, ed., *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press, 1997); and Alexandra Barahona de Brito, Carmen González-Enríquez, and Paloma Aguilar, eds., *The Politics of Memory: Transitional Justice in Democratizing Societies* (Oxford: Oxford University Press, 2001).

⁸ See, especially, Benomar, “Justice after Transitions.”

⁹ Timothy Garton Ash, “The Truth about Dictatorship,” *New York Review of Books*, February 19, 1998.

Commission (TRC), wrote: “Dignity not only sustains but also energizes and enables. It accomplishes great things. It lifts the fallen and restores the broken. When the recognition of the good in the other is shared, it is the sense of personal dignity given that can bring peace to situations of potential conflict.”¹⁰ Establishing the truth is also thought to be preventive, by allowing nations to learn from their mistakes. According to the transitional justice theorist Robert Rotberg, “if societies are to prevent recurrences of past atrocities and to cleanse themselves of the corrosive enduring effects of massive injuries to individuals and whole groups, societies must understand—at the deepest possible levels—what occurred and why. They must uncover, in precise detail, who did what to whom, and why, and under whose orders. They must seek, at least, thus to uncover the truth—insofar as this aim is humanly and situationally possible after the fact.”¹¹

Because the pursuit of the full truth about the political sins of the old regime often requires granting amnesty to those accused of human rights violations—otherwise, the accused have no incentive to collaborate with the body tasked with establishing the truth—reconciliation and retribution are generally seen as mutually exclusive processes. South Africa’s experience broadly validates this point. Those responsible for organizing the TRC, especially Archbishop Tutu, were of the view that the only way that the TRC could obtain the full truth about the horrors of the Apartheid era from the old regime was by trading amnesty for information. Often offered in a public forum, the testimony by former Apartheid officials served as a formal apology to the nation. Not surprisingly, the TRC is often seen as entailing a morally challenged exchange of truth for justice.¹² This exchange also reveals the cruel choices or trade-offs that new democracies are often forced to make when confronting the sins of a departing authoritarian regime.

But, as seen in many of the works reviewed here, transitional justice does not always entail a choice between truth and justice. A case in point is Argentina, where retribution and reconciliation were pursued almost simultaneously. The truth commission organized to document the human rights abuses of the Dirty War served as the foundation for prosecuting the military. In Chile and Uruguay, transitional justice got its start with a truth commission, but years later it was expanded to incorporate military prosecutions. Most important, perhaps, the Latin American experience suggests that transitional justice can evolve well past the binary of retribution and reconciliation, as can be seen in the proliferation of efforts to memorialize instances of political violence, conflict, and their victims. Argentina is on the forefront of this effort, having created a myriad of institutions to chronicle, experience, memorialize, and even teach the violent past.

The Parque de la Memoria, or Memory Park, a sculpture garden that occupies a fourteen-hectare stretch of land on the banks of the River Plate, is the most prominent cultural institution of transitional justice in Argentina. It features the names of thousands of victims engraved on a zigzagging wall of grey stone reminiscent of Maya Lin’s Vietnam Memorial on the National Mall in Washington, DC.¹³ There’s also El Espacio Memoria y Derechos Humanos (The Memory and Human Rights Space) in Buenos Aires, located in the former Navy Mechanics School (ESMA), where many of the disappeared were tortured before being killed, and El Museo de la Memoria (the Museum of Memory) in Rosario. *Nunca Más*, the final report of the national commission on the disappeared, has been

¹⁰ Donna Hicks, *Dignity: Its Essential Role in Resolving Conflict* (New Haven, CT: Yale University Press, 2011), foreword.

¹¹ Robert I. Rotberg, “Truth Commissions and the Provision of Truth, Justice, and Reconciliation,” in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton, NJ: Princeton University Press, 2000), 3.

¹² Paul van Zyl, “Dilemmas of Transitional Justice: The Case of South Africa’s Truth and Reconciliation Commission,” *Journal of International Affairs* 52, no. 2 (1999): 647–667.

¹³ For a broader view of this “memory boom,” see Katherine Hite, *Politics and the Art of Commemoration: Memorials to Struggle in Latin America and Spain* (New York: Routledge, 2012).

incorporated in school curricula. March 24, the anniversary of the military coup of 1976 that brought the military to power, is a public holiday, following its designation as the National Day of Remembrance for Truth and Justice.

Memorializing the past in Latin America is not limited to building institutions and spaces to honor the memory of the victims of political conflict and violence, however. It also includes politicizing memory in order to affect public policy. Two distinctly different treatments of how memory and politics have intersected in Latin America in the age of transitional justice underscore this point. The first one is Rebecca J. Atencio's *Memory's Turn: Reckoning with Dictatorship in Brazil*, which examines the synergies between artistic-cultural production and institutional mechanisms in the process of reckoning with the past, as seen in the Brazilian experience since the country's transition to democracy in 1985. In very moving and elegant prose, Atencio demonstrates how oral testimonies, telenovelas, and theatrical plays allowed the memory of the dictatorship to remain present in the country's politics and the everyday life of ordinary Brazilians, even in the midst of an official silence about the past. Moreover, Atencio shows how this cultural production interacted with a wide range of institutional mechanisms intimately linked to the country's attempt to come to terms with the legacy of the military dictatorship, including the Amnesty Law, the impeachment of President Fernando Collor de Mello, the Law of the Disappeared, and the National Truth Commission.

As Atencio argues (8): "through the leveraging process a subtle but significant dynamic can emerge between institutional mechanisms and exceptional cultural works, resulting in reciprocal interplays that magnify and prolong the impact of both and thereby lay the foundations for further institutional steps that build on what came before." The book shows this by exploring "cycles of cultural memory" over the last forty years in Brazil, starting in 1979, when former guerillas began publishing their testimonies of the armed struggle in the wake of the Amnesty Law, -and ending with the play *To Remember is to Resist*, which came at the turn of the millennium. That play is credited with "facilitating the decision by the state of São Paulo to open to the public a former torture center, and, after much struggle, its eventual transformations into a permanent site of memory" (125).

A second perspective is offered by Mneesha Gellman's *Democratization and Memories of Violence*, a richly layered study of ethnic minority mobilization in Mexico, El Salvador, and Turkey that expertly examines how historically marginalized communities have used memories of violence against them to elicit responses from the state by employing a variety of shaming and claiming strategies. Among the very telling stories examined in the book is that of the Acteal (Chiapas) massacre, one of the most horrific acts of violence in recent Mexican history. In 1997, a right-wing military group affiliated with the Mexican state (Máscaras Rojas) killed forty-five people, including fifteen children and five pregnant women whose fetuses were brutally hacked from their wombs. The victims were members of Las Abejas (the Bees), a Catholic-pacifist group; they were mercilessly killed while attending a prayer meeting just prior to Christmas.

In subsequent years, Las Abejas promoted the memory of the massacre into what Gellman calls "high shaming and claiming mobilization," including monthly commemorative vigils, static visual testaments to the memory of violence, banners demanding justice and accountability, and open discussions within the community about the massacre, to advance their autonomy especially in the area of cultural-linguistic rights. More recently, this campaign appears to have paid off, at least as far as recognition and compensation for the suffering of the victims is concerned. In September 2020, in a rare act of contrition, the Mexican government and some of the survivors of the massacre entered into an "amicable agreement" that included an apology and reparations. But this process of ethnic mobilization motivated by the memory of violence is not a static process. As Gellman notes: "The most mobilized cases employ narratives of violence while the least mobilized communities are prone to forgetting or silencing their own narratives of violence and often assimilate

into the dominant culture.” Moreover, the book demonstrates the significant degree to which memory-based narrative production is intimately linked to patterns of political, economic, and cultural state accommodation for minorities. The book cautions, however, that “memory and narrative also deserve recognition as causal factors of political behavior in their own right” (3).

Transitional justice’s dark side

In assessing the legacy of transitional justice in Latin America one thing is patently clear: the enormous boost that it gave to the global struggle for human rights. In some cases, this boosting was done by simply highlighting the sheer brutality of human rights abuses in Latin America, as depicted in books such as Manolo E. Vela Castañeda’s *Los pelotones de la muerte*. The book provides a gripping account of Guatemala’s civil war, which included an American-aided “genocidal” assault on the country’s indigenous communities, thought to be responsible for as many as two hundred thousand killings.¹⁴ Aside from calling attention to the complex sociological factors behind the making of a genocidal perpetrator, the book offers a telling reminder of the extraordinarily complex process of bringing the perpetrators and their superiors to justice, even in the face of a mountain of evidence. The former Guatemalan president Efraín Ríos Montt, who ruled Guatemala in 1982–1983, for years successfully avoided prosecution by staying in public office. But when his last term ran out, in 2012, he was sentenced in 2013 to eighty years in prison for crimes against humanity, including genocide. But that sentence was overturned by the Constitutional Court.

In other instances, the transitional justice movement has drawn attention to stories of terror and violence that will likely never see any resemblance of justice and accountability, as seen in Theresa Keeley’s *Reagan’s Gun-Toting Nuns*. That book revisits the story of the murder of four American Catholic missionaries in El Salvador in December 1980. The book challenges the preponderance of the evidence that emphasizes the influence of evangelical Protestants on US foreign policy toward Latin America by showing instead how a bitter debate between US and Central American Catholics shaped Reagan’s foreign policy. Whereas liberal Catholics in the United States saw the nuns as human rights warriors in combating structural inequality according to the Gospel’s spirit, conservative Catholics saw them as agents of class conflict who furthered the so-called Gospel according to Marx. This debate is an old one, to be sure; but as Keeley argues, it intensified as conservative, anti-communist Catholics played key roles in crafting US policy to fund the paramilitary, anti-communist forces across Central America.

More importantly, the transitional justice movement has propelled Latin America’s global leadership in advancing human rights and in expanding notions of human rights. As argued compellingly by Patrick William Kelly in *Sovereign Emergencies*, Latin America is ground zero for the making of global human rights politics. The book tells the very moving history of how a human rights revolution with global implications emerged from the horrors of bloodthirsty regimes in South America during the 1970s and 1980s. In lucid and rich detail, the book describes the work of Latin American activists, jurists, and legislators in advancing the universality of human rights by breaking with conceptions of human rights as limited by local cultures and histories. Among other developments, Kelly reminds us that human rights activism in South America was critical for drawing the world’s attention to the issue of torture and political disappearances, to which a good portion of the book is devoted; these activists often acted alone or in partnership with international organizations, such as Amnesty International, to create powerful

¹⁴ Mireya Navarro, “Guatemalan Army Waged ‘Genocide,’ New Report Finds,” *New York Times*, February 26, 1999.

transnational human rights networks. A less apparent contribution to the sphere of human rights that Kelly highlights is the role of LGBT activists in Latin America, especially in Argentina and Brazil, in expertly folding the struggle for LGBT equality into the human rights movement. Starting in the mid-1980s, Latin American gay rights activists showed the world how they were overcoming “Latin American machismo, the enduring strength of Catholicism, and widespread homophobia” to attain victories that few ever thought possible (300).

Inspired by the success of the transitional justice movement, groups such as Comunidad Homosexual Argentina, or CHA, whose inaugural slogan in 1984 was “The free exercise of sexuality is a human right,” fashioned their gay rights struggles into a human rights crusade by cleverly using human rights rhetoric and strategies. Indeed, Latin American gay rights activists were among the first in the world to dispense with gay liberation ideology and Marxism in favor of a human rights discourse that emphasized the humanity of homosexuals; incorporated gay rights demands as part of the broader struggle for freedom, equality, and democratic citizenship; and declared gay rights a nonpartisan issue. In so doing, several Latin American nations, in particular Argentina, Brazil, and Uruguay, were able to attain national legislation and court orders legalizing same-sex marriage before this was possible in the United States, Britain, France, or Germany.

But the legacy of transitional justice in Latin America is more complicated than what can be discerned from the books under review here. To begin with, it is clearly the case that the optimistic scenario that transitional justice would serve to eradicate or significantly reduce violence and human rights abuses in Latin America, to say nothing of ushering in a new age of democratic deepening, has not materialized. Although the excesses of the military dictatorships of the Cold War era are in the rearview mirror, a new wave of conflicts generated by gangs, drug cartels, and human traffickers has come along to ensure that violence continues to take a very high toll on Latin American societies. By one recent account, despite being home to less than 10 percent of the global population, Latin America accounts for nearly one-third of the world’s annual killings.¹⁵ Indeed, in some cases, the level of violence in the post-transition period surpasses that of the period before the transition. None of this is to say, however, that transitional justice has not had a meaningful or discernable impact across Latin America on the issue of violence, especially criminal violence. For instance, recent research has shown that cross-national variation in criminal violence in Latin America “is highly dependent on whether elites adopt transitional justice processes to address a repressive past,” after accounting for other variables such as poverty and inequality.¹⁶ This would explain why “a few decades after democratization, Brazil, Honduras, and Mexico experience the harsh realities of large-scale criminal violence and homicide while Chile and Bolivia remain relatively peaceful.”¹⁷

Less apparent is the dark side of transitional justice, or the unintended consequences that can ensue from confronting a painful past, a subject that is mostly absent from the books reviewed in this essay. For the most part, these books regard transitional justice in Latin America as an unalloyed blessing; but this is hardly the case. It is worth recalling the troubled history of Latin America’s truth commissions. Some (maybe most) of them have left in their wake a trail of frustration and disappointment about what transitional justice can do for a society traumatized by political violence. Guatemala’s truth commission,

¹⁵ Deborah Yashar, *Homicidal Ecologies: Illicit Economies and Complicit States in Latin America* (New York: Cambridge University Press, 2018).

¹⁶ Guillermo Trejo, Juan Albarracín, and Lucía Tiscornia, “Breaking State Impunity in Post-authoritarian Regimes: Why Transitional Justice Processes Deter Criminal Violence in New Democracies,” *Journal of Peace Research* 55, no. 6 (2018): 787.

¹⁷ Trejo, Albarracín, and Tiscornia, “Breaking State Impunity,” 787.

which examined the gruesome violence of that country's civil war, Latin America's longest and deadliest, is especially instructive. Created with much fanfare in 1997 with a budget of \$11 million, the Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico, or CEH) visited 2,000 communities and recorded 7,338 testimonies, including 500 collective testimonies. Its final report, released in 1999, concluded "that government agents had committed acts of genocide between 1981 and 1983 against groups of Mayan people."¹⁸ Yet a 2003 assessment commissioned by the International Center for Transitional Justice concluded that "since the issuance of the report, there has been very little progress on the main recommendations of the CEH, let alone in the harsh realities of life for most of the citizens of the country."¹⁹

Even when transitional justice delivered on its commitment to hold the old regime accountable, it is questionable that this inevitably contributed to the building of a democratic culture, as so often we are led to believe. Some studies have found that the robust civic engagement that the human rights movement has occasioned in Argentina has injected undemocratic elements into the political culture.²⁰ Other studies have questioned the contributions of the military trials to the consolidation of Argentine democracy. Jaime Malamud-Goti, a senior aide to the Alfonsín administration and one of the architects of the trials, has argued that the trials perpetuated the us-versus-them mentality that enabled the military junta to establish authoritarian rule in the first place.²¹ He contends that the back and forth between justice and amnesty begun by the trials suggests that Argentina is persisting in turning logic on its head: multitudes of Argentinians respond to authoritarianism by playing political and judicial hardball, inciting a response in kind.

It is also fair to speculate if all the effort that Latin America has put into memorializing the past has unintentionally inhibited the region's capacity to overcome the traumas of the past and move on with the future. There's almost no space in the region's culture and politics where the past does not intrude; there's even a thriving genre of Latin American comics that examines the experience with dictatorial rule.²² The ongoing COVID-19 pandemic, which has wrecked the region's economies, has not provided a respite from remembering the past. As NACLA's Report on the Americas noted:

In several Latin American countries, social movements have remained active during the pandemic, coming up with ways to maintain their demands for memory and justice. . . . The decision not to mobilize was not an impediment for collectives to demonstrate as they have every year. Social networks, and balconies, were filled with *pañuelos* (handkerchiefs) on March 24, the National Day of Memory for Truth and Justice in Argentina. Images went viral on social media with hashtags like #PañuelosConMemoria (Bandanas with Memory), #24M, #44AñosDelGolpe (44 years since the coup), #Son30000, and #MemoriaVerdadYJusticia (Memory, Truth and Justice).²³

Not surprisingly, some critics of transitional justice in Latin America have argued that memorizing the past across the region, but especially in Argentina, has become a political

¹⁸ Joanna R. Quinn and Mark Freeman, "Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa," *Human Rights Quarterly* 25, no. 4 (2003): 1123.

¹⁹ Quinn and Freeman, "Lessons Learned," 1123.

²⁰ See, for instance, Ariel C. Armony, *The Dubious Link: Civic Engagement and Democratization* (Stanford, CA: Stanford University Press, 2004).

²¹ Jaime Malamud-Goti, *Game without End: State Terror and the Politics of Justice* (Norman: University of Oklahoma Press, 1995).

²² See Jorge Catalá-Carrasco, Paulo Drinot, and James Scorer, eds., *Comics and Memory in Latin America* (Pittsburgh: University of Pittsburgh Press, 2017).

²³ Diana Ramos Gutiérrez, "Movements Sustain Historical Memory in Latin America," *NACLA*, August 18, 2020.

fetish that stands in the way of allowing peace and reconciliation to take place by confusing memory with history. These issues were conveniently distilled by the *Economist* in 2014 in an essay titled “Memory Is Not History,” which argued that “there are dangers [in South America’s] intellectual fashion for historical memory.”²⁴ The essay goes on to accuse “the left” of “rewriting history.” It argues that “the Cold War in Latin America was fought by two equally authoritarian sides,” citing as evidence that “Argentina’s 1976 coup was triggered in part by the violence of the Montoneros, a left-nationalist guerrilla group.”²⁵ The essay also delves into the never-ending accounting battle over the number of casualties of the Dirty War, arguing that human rights organizations inflate the number of victims by citing a figure of 30,000 disappearances while the official report cited only 8,960.

Lastly, it is disappointing that the books reviewed in this essay do not engage with the historical experience outside of Latin America of coping with past atrocities, and with a long tradition in Western political thought that posits forgetting and moving on as an alternative or complement to transitional justice. A large body of comparative historical work suggests that democracy in postwar Western Europe, especially in France, Italy, and Germany, was reconstructed on an implicit project of forgetting the past.²⁶ The same can be said of Spain, whose transition to democracy, following the demise in 1975 of the four-decade-long dictatorial regime of Generalissimo Francisco Franco, proved inspirational to the nations of Latin America as they embarked upon democratic transitions of their own. Yet Spain underwent democratization without any retribution against the Franco regime; no member of the Franco regime has ever faced a court of justice. During its democratic transition Spain even did without a truth commission to investigate the so-called “Spanish Holocaust,” the orgy of human rights atrocities committed by the Franco regime following the end of the Spanish Civil War in 1939.²⁷ These atrocities included the execution of thousands of political dissidents and many more sent to prison and concentration camps, infants stolen from left-wing mothers and given to right-wing families to raise, and the repression of Catalan and Basque nationalists and LGBTQ people.

My own research challenging the common view of transitional justice as either a prerequisite or a requirement for successful democratization has argued that Spain’s democratic transition was morally challenged but politically beneficial to the consolidation of democracy.²⁸ The absence of acrimony over revisiting some of the darkest and most painful periods in Spanish history during the transition allowed political actors from across the ideological spectrum to enter into a broad range of political and economic compromises that account for the stability of the current democratic regime and its success in adhering to the rule of law and delivering political freedoms and human rights. Accountability for the old regime finally arrived with the 2007 Law of Historical Memory, a law often held as an example of “post-transitional justice,” which condemned the institutions of the Franco regime as illegitimate, removed from public view monuments honoring Franco’s memory, granted Spanish citizenship to the descendants of those forced

²⁴ Bello, “Memory Is Not History,” *Economist*, September 13, 2014, <https://www.economist.com/the-americas/2014/09/13/memory-is-not-history>.

²⁵ This is a very highly questionable assumption that equates the resources of a small revolutionary movement with the resources of the Argentine state; the movement was for the most part extinguished by the state before the Dirty War commenced, in 1976.

²⁶ See Jan-Werner Müller, ed., *Memory and Power in Post-War Europe: Studies in the Presence of the Past* (Cambridge: Cambridge University Press, 2002); and Omar G. Encarnación, “Peculiar but Not Unique: Spain’s Politics of Forgetting,” *Aportes*, no. 94 (2017): 149–179.

²⁷ Paul Preston, *The Spanish Holocaust: Inquisition and Extermination in Twentieth-Century Spain* (New York: W. W. Norton, 2013).

²⁸ Omar G. Encarnación, *Democracy without Justice in Spain: The Politics of Forgetting* (Philadelphia: University of Pennsylvania Press, 2014).

into exile by Franco, offered reparations to the victims of the dictatorship, and created a center for the study of the Civil War. The law, however, disappointed many transitional justice activists by not calling for prosecution of the living members of the Franco regime and for a truth commission to chronicle the human rights abuses of the Civil War and the ensuing dictatorship, in no small measure because of the public's ambivalence toward any reckoning with the past.

Spain's treatment of its painful past echoes Nietzsche's well-known theorizing about "active forgetting," the kind of forgetting that enables humans to live unburdened by history while taking full responsibility for the past.²⁹ It also recalls the work of the American political commentator David Rieff, who pointedly questions the value of remembrance. Reflecting on the current fashion for fetishizing the past around the globe—including the Irish Troubles and the Eastern Uprising of 1916, the white settlement in Australia, the American Civil War, the Holocaust, and the Balkan wars—Rieff argued that collective remembrance can be toxic; sometimes, he argues, it may be more ethical to forget. He writes: "Remembrance may be the ally of justice, but despite the conventional wisdom of the human rights movement, it is not a reliable friend to peace, whereas forgetting can and at times has played such a role."³⁰

Further examination into the causes and consequences of the dark side of transitional justice clearly ought to be in the future agenda of Latin American transitional justice scholars. My own sense is that the negative side effects of transitional justice have less to do with transitional justice itself than with the unrealistic and outsized expectations of scholars, activists, and policy makers about what transitional justice can do for both democracy and the individuals traumatized by political violence. Whether implicitly or explicitly, the transitional justice movement in Latin America has placed the fate of the process of democratization—from consolidating the rule of law to advancing democratic norms—on whether or not nations confront their difficult and painful past with universal, one-size-fits-all prescriptions. This is not fair to transitional justice and, in fact, it has set up Latin America for discontent and disappointment.

Omar G. Encarnación is Professor of Politics at Bard College. He is the author of *Democracy without Justice in Spain: The Politics of Forgetting* (2014), *Out in the Periphery: Latin America's Gay Rights Revolution* (2016), and *The Case for Gay Reparations* (2021). His essays on contemporary Latin American and Iberian politics have appeared in *Comparative Politics*, *Political Science Quarterly*, *Journal of Democracy*, *Foreign Affairs*, *Foreign Policy*, *New York Times*, and *New York Review of Books*, among other publications.

²⁹ Friedrich Nietzsche, *Untimely Meditations*, ed. Daniel Breazeale, trans. R. J. Hollingdale (New York: Cambridge University Press, 2003).

³⁰ David Rieff, *In Praise of Forgetting: Historical Memory and Its Ironies* (New Haven, CT: Yale University Press, 2016), 122.