

POLITICAL CYCLES AND TRANSITIONAL JUSTICE: EVIDENCE FROM
URUGUAY AND CHILE

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ABSTRACT

This study concentrates on how countries deal with the mass human rights violations, large-scale massacres, and social abuses experienced during authoritarian rule. A comparative research is conducted, focusing on the differences and similarities between societies governed by bureaucratic authoritarian systems. Uruguay and Chile are studied as similar cases that have ended up with different outcomes in transitional justice processes. The main question of the study is whether and how political cycles affect transitional justice policies. It is assumed that successive leftist governments in power can better serve transitional justice. However, despite the successive electoral victories of the left in Uruguay and its relatively longer control over the executive, it is concluded that the country could not perform better than Chile, where left and right-wing actors alternated in the executive.

Keywords: Transitional Justice, Latin America, Chile, Uruguay, comparative politics, bureaucratic authoritarianism, democratization

ÖZET

Bu çalışma, ülkelerin otoriter yönetim sırasında yaşanan kitlesel insan hakları ihlalleri, geniş çaplı katliamlar ve sosyal istismarlarla ne şekilde hesaplaştıklarına odaklanır. Bürokratik otoriter sistemle yönetilen toplumlar arasındaki farklılık ve benzerliklere odaklanılarak, karşılaştırmalı bir araştırma yapılır. Uruguay ve Şili, geçiş dönemi adalet süreçlerinde farklı sonuçlara ulaşan benzer vakalar olarak incelenir. Ana soru, siyasi döngülerin geçiş dönemi adalet politikalarını etkileyip etkilemediği ve nasıl etkilediğidir. Ardışık sol hükümetlerin geçiş dönemi adaletine daha iyi hizmet edebileceği varsayılır. Buna rağmen, solun ardı ardına kazandığı seçim zaferleri ve yürütme üzerindeki görece uzun soluklu kontrolüne karşın, Uruguay'ın yürütmede sol ve sağ aktörlerin yer değiştirdiği Şili'den daha yüksek bir performans sergilemediği sonucuna ulaşılır.

Anahtar kelimeler: Geçiş Dönemi Adaleti, Latin Amerika, Şili, Uruguay, Karşılaştırmalı Siyaset, Bürokratik Otoriterlik, Demokratikleşme

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INTRODUCTION

Transitional justice (TJ) is, in one way, a legal process that tries to prevent future human rights violations by punishing the perpetrators of the previous regime's human rights violations. This process also prepares and supports the infrastructure for the formation of a transition to a democratic process. Siegel mentions that during the transitional justice process "Basically, a new leader comes to government and the leader being responsible for all the criminal acts after the authoritarian system period" (Siegel,1998). Another assumption is that, with the end of oppression and human rights abuses, transitional justice and the transition to the rule of law and democracy begin (Genç, 2020). The bureaucratic-military authoritarian form of government is a form of government that is governed by a coalition of military officers and technocrats. The democratic transition after an authoritarian regime is called the period that describes changing the form of government to democracy.

The restoration of legitimacy and the fact that the principle of separation of powers can continue from the point where it left off are the requirements for democracy to move forward (Genç, 2020). Some approaches predict the authoritarian system to repeat itself in the future if trials and sanctions are not sufficiently established. Prosecutions and retrospective trials should be carried out in full so that the authoritarian system is not reencountered in the future. However, the states may not want to do this and reveal the facts, especially in international trials. The economy is also critical in this process, and many scholars such as Cesarini, Sanderson, and O'Regan supported this idea. Many authoritarian systems have engaged in socio-economic reform as the best way of providing welfare to stay in the government. Hence, transitional justice involves a complex set of processes, measures, and fields of activity.

The factors facilitating transitional justice may be varied. This study intends to understand what kind of an impact political or electoral cycles and alternation in the presidency have on transitional justice. Based on the assumption that left-wing political actors are more likely to seek justice as victims and because of their ideological stance, the initial proposition of the study will be formulated with a reference to how uninterrupted left-wing governments facilitate transitional justice.

This study compares the transitional justice processes in two countries to identify facilitating factors. Through a similar system design, it is discussed to what extent Uruguay and Chile are similarly advancing transitional justice processes. A similar system design is used to see the progress in two countries in the same region that have experienced similar political traumas. This study tries to see whether Uruguay, where the left has been uninterruptedly in power, has progressed and fared well in introducing and implementing transitional justice measures. On the contrary, given that the political balance has alternated in Chile between the right and the left, whether Chile has run into greater problems in introducing and implementing transitional justice measures is explored.

In the first part of my thesis, a literature review on transitional justice is undertaken. The instruments of transitional justice are explained and exemplified. A methodological discussion is undertaken in the following part, focusing on case selection. In the next two parts, the authoritarian past of the two countries is summarized, and human rights violations are presented. Transitional justice mechanisms resorted to after democratic transition are also studied. In the last part of the study, a comparative discussion of the two cases- with a view to similarities and differences in dealing with the past - is attempted.

2.LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

Transitional justice processes often occur in countries where social order breaks down and mass repression is experienced. The bonds that form the basis of the society are destroyed in the name of a political or ethnic cause, and crimes are often directed at the dehumanization of the perceived enemy (Genç, 2020). After such significant violence, victims struggle to coexist with perpetrators or place their confidence with the state, whereas perpetrators often find it difficult to reintegrate into a society partially torn apart by their violent actions.

Truth commissions and non-governmental organizations that strive to ensure a reliable environment for society and the realization of Justice come into play as integral elements of transitional justice. After World War II, consideration of the views of victims, both in terms of their experience of victimization and their place in the criminal justice system, has been a continuing aspect of policy that has evolved in this regard. In this context, some classifications have been made for most offenders. Truth commissions have become a mechanism for dealing with significant human rights abuses. Their mission is to uncover the truth. One of the most common methods is to create measures and compensation programs for victims. Truth commissions conduct extensive historical research, the victims' statements and compile their oral history. Forensic anthropologists support efforts or national initiatives to determine the truth about the past as by uncovering the graves of the dead.

Victims, witnesses, and perpetrators will be given a chance to tell their stories in a public forum – and retreat to 'an easy post-modern relativism' (Campbell & Turner, 2008) will be mitigated by a social science approach that rigorously studies patterns of abuse and activity. Victims should be allowed to tell their stories, and explanations should be sought from perpetrators of the violence. Conflicts will not end, and justice will not be achieved unless the voice of those who seek justice is heard. For this reason, the transition process model argues for the necessity of mechanisms such as forensic investigations by exposing unsolved incidents, disappearances, and murders.

Politics and the intertwined legal system are replaced by a new order, "democracy," which allows it to achieve stability. For the process to begin, all elected officials, soldiers, and police remaining from the authoritarian government must be removed from their posts, and those who have crimes from the dictatorship period must be tried; prosecutions must begin, and the essential elements in the transition to democracy must be provided. Administrative justice and criminal justice measures thus need to accompany the truth commissions.

On the other hand, some academic researchers have dubious explanations for the existence of truth commissions. McGrattan believes that misconceptions about truth commissions can occur and are not reflected in perceived reality. As for this, he comments that "terrorist" narratives will turn into a war of propagandist self-justification. It is considered anti-political and will create legitimacy problems and conflicts in societies. (Bell, 2008, Campbell, Ní Aoláin and Harvey, 2003). Indeed, the challenge may not be to keep them at bay but to channel memory wars into agonistic processes (Brown, 2009; Campbell & Turner, 2008), into discussion and assertion.

According to McGrattan, TJ theorists apply a wrong ground lens to the study of historical and political remains, rejecting the necessary pragmatism and internal conflict in making peace. This is the opposite of what TJ researchers have said. They are dealing with constituencies that need it most to deal with issues of political violence. This is not the ambition of moral relativism when it comes to it. However, in over-identifying with victims, there is a risk of neglect to examine the motivations of those who conspire to kill and neglect to recognize the processes behind it in the future.

In the last half of the twentieth century, Latin American political leaders were ardent and outspoken defenders of democracy. They later succumbed to authoritarian societies. The non-governmental organizations in Uruguay declared "Dia del nunca mas" (Day of Never Again) and the Chilean Truth and Reconciliation Commission was among initiatives that result in the truth of "absolute, inalienable value" based on the idea of justice, which is considered to expand the possibilities of comprehensive realization (Zalaquett, 1993).

In addition to the victims' rights movement, internal criminal law reform began. In parallel with the attention given to victims at the local level, there have also been several significant developments at the international level, calling on states to strengthen victim-oriented measures in judicial proceedings. In addition, international criminal institutions have begun to focus more on victims' rights in criminal cases and develop rights related to protection, participation, and compensation.

As a result, the framework for structuring the analysis will focus on two key concepts: human rights standards and specific characteristics of international criminal trials. A narrower approach to human rights and criminal justice in the field of international criminal law provides a valuable method for examining the participatory rights of international victims. Due to the breadth of human rights and international criminal procedure resources, various data sources were used in the research for this study. First, since this work focuses on the procedures of international criminal courts, the procedures, principles, and evidence of

various courts have been studied in detail. Sources such as NGO and civil society organizations' reports and findings, alongside judicial human rights monitoring body reports such as UN Security Council resolutions, General Assembly resolutions have been surveyed. Therefore, sources considered both 'hard law' and 'soft law' have been used, with emphasis on the influence of the source in a particular area.

Reconciliation in the transitional justice process is seen as a process that contributes to building and repairing relations after mass human rights violations. Reconciliation is often considered one of the main goals of transitional justice. However, it can continue to be a controversial and ambiguous concept leading to different understandings and approaches. Transitional justice processes can contribute significantly to reconciliation. However, the two are different depending on context, says Paul Seils, vice president of the International Center for Transitional Justice.

Transitions from democracy to authoritarianism have almost always been produced by those in power or close to power in the democratic system, except those produced by foreign actors. With only one or two possible exceptions, democratic systems did not end in the popular vote or popular revolt. The vast majority of transitions from democracy took the form of military coups that overthrew democratically elected leaders or executive coups in which democratically elected chief executives effectively ended democracy by concentrating power in their own hands, often by declaring a state of emergency or martial law. In the first reverse wave, military coups ended democratic systems in the new countries of Eastern Europe and Greece, Portugal, Argentina, and Japan. In the second reverse wave, military coups occurred in Indonesia, Pakistan, Greece, Nigeria, Turkey, and many Latin American countries. In Uruguay, the civil and military leadership cooperated to end democracy through a mixed executive-military coup.

In both the first and second reverse waves, democratic systems were often replaced by historically new forms of authoritarian rule. Fascism was distinguished from earlier forms of authoritarianism by its mass base, ideology, party organization, and efforts to penetrate and control much of society. Bureaucratic authoritarianism differed from earlier forms of military rule in Latin America regarding its institutional character, a presumption of indefinite duration, and economic policies. Italy and Germany in the 1920s and 1930s and Brazil and Argentina in the 1960s and 1970s were the leading countries in the world. Both new forms of authoritarianism were responses to social and economic development: the expansion of social mobilization and political participation in Europe and the depletion of the import-substitution phase of economic development in Latin America.

To the extent that transitional justice processes manage to recognize victims, restore trust (in the state and its citizens), and prevent future violations, they can contribute positively to reconciliation in different contexts. In this way, Paul Seils argues that public participation in temporary justice mechanisms can determine the extent to which they lead to reconciliation. Similarly, there are pathways beyond transitional justice to reconciliation in the wake of significant abuses. Activities such as conflict mediation and community dialogue to heal traumas can contribute to repairing social bonds without being covered by transitional justice processes.

After trauma caused by human rights abuses, victims may have to reconcile with their past experiences. Working with victims underscores the need for psychosocial care, which helps assimilate experienced experiences into new concepts about themselves and their relationship to society. Interpersonal reconciliation can be based on recognizing the past, reforms, and forgiveness between individuals to rebuild the relationship between victims and perpetrators. Socio-political reconciliation focuses on relationships between groups in divided societies- a type of reconciliation involving social, political, ethnic, religious, or other elements. It may involve creating a political community based on openness, inclusiveness, justice, and diversity to involve previously marginalized population segments.

After the end of trust in the state, institutional reconciliation can repair the relationship between citizens and government bodies by guaranteeing individual and group rights. Institutional reconciliation often relies on reforms to justice and security institutions, but it can also affect the media and education.

Despite all transitional justice measures, processes that can be reconciled in the short term can have the opposite effect in the long term. Deep compromises, on the other hand, create more positive consequences for society for long-term healing processes.

Truth commissions ensure that past human rights violations are officially confirmed and documented (Zupan & Servaes, 2007, p.4). Truth commissions have been established as an alternative to criminal courts in cases in Latin America (Zupan & Servaes, 2007, p.4). Over the past half-century, the state of focus on defendants is said to have begun to change drastically. The idea is that victims have more rights in the criminal justice system. Researchers, victims, and politicians working with victims express concern about the apparent abuse of victims, and the social movement begins to focus on victims of crime, and these rights become known as victim's and victims' rights. The victims' rights movement was established to better meet the needs and concerns of criminal justice systems, as the reason for this movement is that victims are directly affected by criminal processes.

In parallel with the attention given to victims at the local level, there have also been many significant developments at the international level, calling on states to strengthen victim-oriented measures in judicial proceedings. In addition, International Criminal institutions have begun to focus more on victims' rights in criminal cases and develop rights related to protection, participation, and compensation.

A new reference, a new constitution, a strong democracy, and the goals of creating a development in which the rule of law will be guaranteed, the retroactive trials will be secured, and the rule of law will be protected. Strengthening of institutions is ensured. If proceedings do not start inside the country or if there are effects on the nations involved in the process, trials can be held in the nations. Transitional justice mechanisms are based on National Criminal Courts and International Criminal Courts. International law obliges this situation if states do not prosecute war crimes, human rights violations, and crimes against humanity. Prosecutions can take place both at the National and International levels. Prosecutions in Latin America are among the most important examples of the participation of the Inter-American Court. The ICC was established in 2002 to overcome this problem (Zupan & Servaes, 2007). It is considered that the national courts should resolve it, but if the local authorities do not process the process, ICC participation becomes mandatory (Hayner, 2011).

The transition to democracy involves the rule of law. The law works between the past and the future. Judgment is about these processes. These extraordinary circumstances must adapt to the policy and transition of the state. Every instance of transitional justice has "sui generis" paradigms. Indeed, on some levels, legal responses create transition: in transition, the rule of law is historically and politically contingent, often elaborated in response to past political pressure that has been ignored. While the rule of law is usually implied to be forward-looking, the transitional rule of law looks both backward and forward because it rejects non-liberal past values and rolls back liberal norms. The point of contention for punishment is whether the previous regime or adherents, relatives, etc., must be punished or not. After that, sanctions will be incorporated into the new law, and legitimacy will rise again.

The transition to democracy begins with the end of oppression and human rights violations, the rule of law. The concept is often understood as a framework for confronting the past as part of major political transformations. It encompasses many complementary judicial or informal judicial strategies. A few of these strategies include different methods for questioning the past. For example, the establishment of truth commissions, fragmented societies' consensus-building efforts affected by violence or abuse (victims) for the compensation package, to remember and commemorate the victims, to prevent violations that

may occur in the future, the development of the system (e.g., security forces, police or army) caused to be made to supply government agencies.

The transition to democracy includes the rule of law and the process of returning to democratic ways, while the process of reckoning with the past continues. Since most countries that have left the authoritarian system are unwilling to use their criminal justice system, the transition period has allowed them to face alternative legal means (Siegel, 1998). Transitional justice can be considered a response to past human rights violations, large-scale massacres, and other societal abuses. It entails a more democratic, peaceful, and equitable future by creating activities that describe this process. It also focuses on areas of justice and expression. It incorporates a justice system and the right to compensation to victims of abuse while also providing the underlying political causes of the formation, conflicts, and other conditions contributing to a more democratic and fair transformation, in addition to an approach that allows for the systematic improvement of human rights violations (United Nations, 2004, T.J. and H.R.) According to Teitel, "transitional justice is defined as an understanding of justice within political changes, characterized by legal responses to confront previous regimes" (Teitel, 2003, p. 69). Arthur Mcevoy adds that "the basis of transitional justice is the system of thought, and there is no single theory and no fixed meaning" (Arthur, 2009). Despite this observation, Arthur Mcevoy says it takes responsibility as a norm to the forefront and may have been used to limit fairness and what can be done during the transition period (Arthur, 2009).

Teitel argues that transitional justice is an exceptional form of justice in nature. This explains the transition period as jurisprudence. As a rule of law, criminal justice, and constitutional justice, Teitel (1997) reflects the transformative power of the law through three transitional justice mechanisms. She emphasizes that the transition period forms the basis of the transition between jurisprudence and decency, with retrospective reckonings (Teitel et al., 1997, p. 66). Teitel implies that the law in transitional justice is uneasy and that the rule of law is a normative value that has to be developed against the old legal System (Teitel, 1997). The crime committed against humanity is said to be mediated by individual and collective responsibilities in transitional justice (Teitel, 1997).

Positive legal norms, or the rule of law, are the ultimate goal of the transitional justice process. According to Teitel (1997), the principle of morality and validity is mandatory. International law provides the basis for law in transition periods, and the rule of law can be resolved with international humanitarian law (Teitel, 1997). Transitional case law, the rule of law in transitional periods, is defined in a constructive relationship with the politics of the

previous period (Teitel, 1997). When talking about the definition of transitional justice, Jeremy Weber explains that it is "a society that eliminates injustice in the process of transition" (2020, p. 98).

Transitional justice faces past normative arguments based on two sources: the Human Rights Movement and the International Human Rights Movement. International Human Rights carry the crimes committed and the experiences of the victims to the international arena and want them to be punished in this way. The International Human Rights Movement brings the trial to the international arena if interventions and trials in the country are delayed or have not reached a solution. The other movement is a regional one. Transitional justice practitioners follow strategies directly proportional to the concerns and rights of victims and their families. States in the transition process come to terms with acts of international law, as well as legal obligations, past crimes, and ongoing human rights violations. The state may also pay compensation for violations committed against individuals.

As the common legal mechanism of transitional justice shows, legality prevails in transitional justice literature. There are two dominant tendencies within the dominant jurist approach in transitional justice. On the one hand, scholars such as Eric Posner and Adrian Vermeule argue that transitional justice does not make such a big difference from legal crises in consolidated democracies (Posner & Vermeule, 2004). On the other hand, academics like Teitel approach transitional justice as a form of exceptional justice. For Teitel, the legal responses of transitional justice play an extraordinary role during transition periods (Teitel, 1997).

One of the essential concepts in the transition period is the transition from a bureaucratic authoritarian regime to another regime or from conflict to stability to democratic rule and political transformation. According to Siegel (2013), countries that wanted to move from the authoritarian System to democracy in the twentieth century were unwilling to use their penal systems. The existing criminal systems may have been insufficient for retrospective trials. They found alternative legal ways to confront them.

Transitional justice protects against systematic human rights violations that develop in countries governed by oppression. It aims to recognize, reconcile, and contribute to the peaceful democratic process of victims, which is one of its individual goals. This is not a particular type of justice, it is a situation of justice in which countries prepare themselves for democracy after the authoritarian regime in the country. In some countries, these transitions occur quickly; in others, the process can take longer and continue. One of the main problems of these slow transitions is the attitude of those with legislative authority or the disconnect

between the international community and the local population. It is said that this disconnect or attitude can lead to a question of legitimacy. Other scholars have exposed the lack of a legalist approach to the absence of victims in the transition period, the lack of politically active institutions of both old oppressors and victims in the new transition regime, and, in a different way, pointing to legitimacy. This definition was first used in the Nuremberg trials.

Transitional justice was formed in the late 1980s and early 90s due to political changes and demands for justice in the regions in Latin America after the bureaucratic authoritarian regime, in Eastern Europe after the fall of the Soviets, and in the Middle East and Africa after coups. In those years, human rights activists and victims seeking justice sought reconciliation regarding human rights violations by former regimes without dangerously affecting political transitions. For the first time, the judiciary forms the basis of the concept of state responsibility for crimes against humanity, the universal recognition of human rights, and the transition of individual responsibility (Genç 2020). This idea can provide international accountability for human rights violations, which forms the basis of the transitional justice process.

In Chile, in the face of human rights investigations, the army was linking up with right-wing policies that were still influential in military affairs. The existence of the Constitution was protected thanks to right-wing policies (Craig 2001, p. 278). In Uruguay, on the other hand, the military avoided civil rights investigations and maintained civilian control at less-than-ideal levels, and they blocked the activist politics of leftist parties (Craig 2001, p. 260). Uruguay's ruling leftist coalition voted 50-40 to abolish the amnesty for military crimes until 1986. The opposition has argued that this bill harms national sovereignty, claiming it is caused by international pressure. With this result, cases related to human rights violations will be able to come to court without the intervention of the executive. It brought it into compliance with the international laws and agreements signed and implemented by Uruguay and avoided the statute of limitations on some crimes, which will expire shortly (Elmer, 2010, p. 2).

Linz divided authoritarian regimes into "traditional authoritarian regimes and bureaucratic-military authority regimes." Traditional authoritarian regimes are "classic one-man regimes that seek to remain in power through oppression and violence, following economically liberal policies." Bureaucratic-military authoritarian regimes are "a coalition of military officers and technocrats." According to Barbara Geddes, there are seven typologies: "dominant party regimes, military regimes, personal regimes, monarchies, oligarchic regimes, indirect military regimes, regimes with a mixture of the first three.

Linz classifies sub-authoritarian systems as "corporatist or organic-static regimes, racial and ethnic "democracies" and post-totalitarian regimes." The corporatist regimes actively seen in Latin America use corporative institutions to alleviate the state's powerful groups. Radical and ethnic democracies used in South Africa during the apartheid era are regimes in which a particular race is deprived of democratic rights. Post-totalitarian regimes are regimes in which totalitarian institutions are actively used, and the state's leader is the dominant person (Linz 2000, pp. 183-187).

Critical leaders sometimes lead authoritarian regimes, and accordingly, leaders are classified as personal authoritarian and populist regimes. Personal authoritarian regimes are said to be formed by official rules. Post-colonial Africa is the clearest example. Populist authoritarian regimes are dominant and manipulative, and they are mobilizing regimes such as those of Juan Peron in Argentina or Pinochet in Chile.

Four rules are needed to ensure the conditions for democracy. The head of the headquarters must be elected by the people or by an institution of the people's choice. The people must elect a parliament. In the elections, a multi-party system must compete. According to the electoral rules, the change must continue in the same way as the old rules. Articles 3 and 4 mark the line between democracy and dictatorship for complicated governments. Even if these conditions are met, with these lines, F.H. offers two indicators of "freedom": political rights and civil liberties, which refer to "democracy." If people in a country cannot exercise their political and civil rights, then the question of democracy in that country should be debated. The sovereignty and appointment systems of executive, legislative, and judicial powers must be independent and impartial (Cheibub, 2007).

It has been argued that democratic transition gains momentum when the authoritarian government has a weak record and is unable to bargain its way out of the authoritarian regime (Diamond, Hartlyn, Linz, and Lipset, 1999). The authoritarian elites are unable to bargain and negotiate the terms of their retreat from the political scene due to a poor record on economic performance, social peace or foreign policy. Under such circumstances, the civilian elite is expected to take complete control over politics. This enables the political elite to engineer the democratic transition and bring the perpetrators of past crimes before justice. When, to the contrary, the authoritarian elite leaves behind a solid record and few violations of fundamental rights, it is also able to negotiate and bargain with the civilian elite to whom power is to be transferred. When the exiting authoritarian leaders are bargaining on the details of their withdrawal and return to civilian politics from a point of strength, they are also able to dictate the terms of their exit. Concepts such as reserved domains, prerogatives, authoritarian

enclaves are used to point at how the authoritarian regime can secure amnesties, exemptions or privileges for itself when bargaining from a point of strength. Tutelary powers of the military and other bureaucratic institutions are more likely to be seen in such cases.

Argentina experienced the democratic transition period faster and earlier than the other two countries and carried out trials and arrests of the bureaucratic authoritarian regime authorities quickly. The bureaucratic authoritarian regime could not address a major economic crisis at the time. It also confronted popular protests and demands with a disproportionately harsh reaction that led to thousands of deaths and disappearances. Additionally, Argentina lost the war of Malvinas in a humiliating defeat which led to the downfall of the bureaucratic authoritarian regime. With this abrupt rupture from the past, Argentina is considered in this study as having followed a different trajectory of democratic transition. For this reason, Argentina is excluded from the sample of this study. The two cases examined in this study share many similar characteristics.

While experiencing a bureaucratic authoritarian episode in their past, unlike in Argentina, the end of bureaucratic authoritarianism was not abrupt or through rupture in Chile and Uruguay. Both countries were classified as consolidated until they broke down in 1973 (Valenzuela 1990). The democratic transitions in the second half of the 1980s, on the other hand, were slower and more protracted than Argentina. Valenzuela (1990, 25) notes that “the new democratic situation appears to be a continuity of something that existed in the past rather than a new and unknown departure”, in Chile and Uruguay most particularly. The explanation offered by Valenzuela is that “Successful redemocratizations therefore require a deliberate effort on the part of the democratizing elites to avoid resurrecting symbols, images, conducts, and political programs associated with the conflicts leading to prior breakdown,” with the political elite in both Chile and Uruguay “quite consciously” taking this road (Valenzuela 1990, 25).

In his discussion of the modalities of the transition, “collapse, defeat, or withdrawal” to characterize Argentina in 1983, “extrication” to explain Uruguay in 1985, and “reform” to describe Chile in 1990 (Valenzuela 1990, 22). Even the Chilean transition was considered as “incomplete” due to the fact that “the outgoing nondemocratic regime was able to give tenure to many key members of the state bureaucracy in politically sensitive areas such as justice and education” (Linz and Stepan 1996, 5 and 11). It has been underlined that “Transitional justice in Uruguay is fraught with delays and omissions” (Brito, 2001b; Groppo, 2001; Roniger and Sznajder, 1999). By 1984, when the army was negotiating with political parties on the transition to a democratic government, the armed forces were recognized as a *de facto*

political force and even with the transition to democracy, in 1985, the armed forces still had the authority to exercise guardianship in national affairs (Loveman, 1994, 107).

Democratic consolidation has an impact on transitional control in military regimes. Factors such as the effect of this condensation, transition dynamics, the effects of authoritarian attitudes on democracy, and lawsuits are all part of the “transition package.” All these factors will have to point in the same direction (Craig, 2011, 280).

Bureaucratic authoritarianism is a kind of military form of rule, which, concerning the previous history of Latin America, is interpreted as new. Contrary to the individuality of the officers, it was usually managed by the army as an institution. In this system, there is a rotation between military leaders. It has been interpreted as a form of bureaucratic management because “national leadership has been dominated by individuals who have come to prominence through bureaucratic careers in large public and private organizations, including international agencies and international institutions, rather than political careers” (Collier, 2001, 93). Decision-making is technocratic.

Uruguay was ruled by authoritarian bureaucrats for 12 years and one of the rare countries to have more than one president during a dictatorship. Collective decadence was tried in Uruguay from 1952 to 1967. The National Government Council had nine members, six from the majority party and three from the opposition. This period provided poor management in the deteriorating economy. After returning to the presidential system, economic conditions also failed to improve, and 6 months later, President Oscar Diego Gestide died. His constitutional successor, President Jorge Pacheco Areco (1967-1972), banned the Socialist Party of Uruguay, other leftist organizations and newspapers, purged liberal professors from universities, and suppressed labor unions. During this period, increasing pressures, as well as the economic crisis and high inflation fueled social conflicts and far-left guerrilla movements. Chile claimed about 3,500 people died and disappeared when Augusto Pinochet resigned in 1990 (Chilean Commission on Human Rights 1992).

In late 1976, 13 communist leaders disappeared in Santiago, and the government claimed that they had gone to Argentina freely. The Supreme Court appointed a special investigating judge from the Court of Appeal in 1977 but suspended the investigation after three days. He repeated the official version of events. In 1978, the Amnesty Law was also signed into law. In 1979, the interim minister had the case left open. In 1983, however, Court of Appeal Judge Carlos Cerda Fernandez admitted that a former Air Force intelligence agent had information about missing cases and had specific information about 2 out of 13 victims. The team, consisting of Air Force Intelligence Agents, was called Comando Conjunto. In 1986, the

collaborators of this institution were before the Civil Judge Cerda, then Air Force Commander Gustavo Leigh, a member of the old military, and two civilian administrations, 38 retired and active-duty military officers, including 40 people charged as an accomplice. Despite all these allegations, after the Court of Appeal accepted the defendants' complaint, it demanded the release of the suspects due to the amnesty law. In 1986, the Supreme Court ordered a definitive closure of the case.

3.METHODOLOGY

In comparative politics, comparing countries has a number of main objectives. Contextual explanation allows researchers to discover how other countries are doing. Classification, on the other hand, makes politics less complicated, providing data for research and simplifying the reality for all observers. Hypothesis testing enables competing explanations for complex phenomena. In order to predict future results, countries are compared, generalizations are made to the results arising from there, and the prerequisites for possible results are taken into account. Patterns, resemblances, contrasts, differences, deviations are all valuable to understanding political phenomena.

Defining the political events of a particular country or a country in a particular group is the first goal of comparative politics. This is different from the way the process traditionally proceeds. By comparing countries that are in the same geography or have experienced similar political events, it is possible to isolate the difference that explains political outcomes. These comparisons and definitions effectively study political events in the long run. For example, geographical conditions or characteristics of the political system along with culture in Latin America enables control over various variables that cannot be treated as the causal factor. In this way, we can understand by inference.

In comparative politics, thanks to classification, we more easily compare countries by creating categories and grouping them. By making a simple grouping, such as classification or categorization, we can separate countries. Classification is also a component of systematic comparison and contextual description. Comparing the qualities of countries, we reduce the complexity. Aristotle established the classification with six types of rules. It has produced six variants of these rules according to their form of government and based on the combination of the number of rulers, monarchy, aristocracy, politics, tyranny, oligarchy, and democracy. Finer, conversely, constitutes the classification into four main types: palace policy, church policy, nobility policy, and forum policy. Aristotle's classification is paired with city-states,

while Finer's limitation is based on experience observation. Thanks to these two scientists, the complexity of that period was reduced to a simpler one and studied.

The most similar system design (MSSD) is the design that is used in this study. The main purpose of this method is to compare political systems by highlighting important common characteristics or events and neutralizing other differences. MSSD deciphers its main features by conducting observations among similar countries, considering their differences and similarities. Countries with the same geography may naturally have similarities. The common language, religion, politics, culture, and history are used for MSSD. For example, in this study, we will examine the similarities between the two countries in the transition to democracy using the MSSD. As far as Chile and Uruguay are concerned, both countries are Latin American, their native language is Spanish, and their history, cultures, and policies are mostly similar. The strength of the MSSD is that it enables causal explanations for outcomes due to the high number of variables that may be controlled for. The weakness, on the other hand, stems from the fact that the cases studied are so similar that the findings do not necessarily apply to other cases with different experiences.

There are two main types of theories - normative and empirical. The normative theory considers several conclusions and philosophical positions to indicate how societal events should be. John Rawls (1971) treats them with theoretical discussions of the main problems of society. On the other hand, empirical theory aims to establish a relationship between two or more concepts to explain the deficiencies of observed political events. Evidence is an integral part of scientific research. Inductive theory is also the method if a theory has been produced, tested, proved, hypothesized, and material results have been reached.

Comparisons in Latin America point at the similarities in terms of processes of transition to democracy and authoritarian rule in general. When examining democratic performances, various independent variables are also examined by checking similarities such as the level of economic development, culture, and history. To show the similarities and differences, predictions of future political changes are also added along with structural differences. Uncertainties arising from the results are also accepted. Factors that influence variations in comparison include political systems, economic structures, transportation, communication, sociological structures, cultural patterns, political decisions, and the causes that affect decision-making including formal and informal processes (Macridis).

Regarding case selection, this study concentrates on cases that share similar experiences in as many variables as possible. Both countries are Southern Cone countries, which enables controlling for more variables. Southern Cone countries have more in common among

themselves than with the rest of Latin America such as Central America. With their stronger economies and better democracy scores, these countries are considered to be relatively more stable than the rest of the region. The table below focuses on how Chile and Uruguay experienced the same variant of authoritarianism during almost the same periods of time.

Table 1 The authoritarian episodes in the two countries

	Authoritarian Era	Type of Authoritarian System
Chile	1973-1990	Bureaucratic Authoritarian
Uruguay	1973-1985	Bureaucratic Authoritarian

These two countries experienced a military coup during the same year. Bureaucratic authoritarian regimes were introduced in both countries. Those regimes marginalized the political, depoliticized the entire country, banned political party and union activism, transferred power to civilian and military bureaucrats, tried to establish their legitimacy by ensuring economic liberalization, allied themselves with national and international monopolies as well as oligopolies (O'Donnell, 1988). Bureaucratic regimes culminated in various violations of human rights in both countries, including purges and discrimination as well as deaths, torture, and disappearances. The authoritarian system lasted for 17 years in Chile and 12 years in Uruguay. The transitions to democracy in both countries were pacted, with the leaders of the bureaucratic authoritarian regime bargaining for their exit and transferring power to civilian authorities. In both countries, consensual forms of government could be assembled. The Concertación governments in Chile mainly functioned as centrist coalitions, whereas the collegial executive in Uruguay reduced the prospects for executive dominance in the country. In both countries, power was shared by various executive actors and there was no risk of executive power abuse. In return for multi-party competitive elections, the bureaucratic authoritarian elites secured certain guarantees, exemptions, protection for themselves. It is the objective of this study to understand how, two countries that are so similar ended up with different results in dealing with the bureaucratic authoritarian legacy.

Uruguay and Chile have been slow to move forward with retrospective judgments, while Argentina has started this issue quickly. For this reason, while the most similar theory system can be applied in Uruguay and Chile, we cannot add Argentina to this review. Although all three countries experienced a period of bureaucratic authoritarianism during the same periods, they did not progress in the same way concerning retrospective trials and the transition to democracy. Argentina is considered to have democratized through rupture, with the delegitimization and defeat forcing bureaucratic authoritarian regime leaders to a quick departure from power. That was in contrast to the pacted or negotiated transitions experienced by Chile and Uruguay. That factor also explains why Argentina is not included in the sample of this study as it weakens controls in the research design.

In this research effort, the main question may be whether left-wing governments facilitate transitional justice processes once a country exits authoritarian rule and transitions to democracy. The periods when the left was in power witnessed more trials than when the coalition and the right-wing governments were in power. While the left controlled the presidency in both countries, the proportion of trials and prosecutions was higher than when the right-wing governments were in power. It is thus assumed that, for two reasons, sustained left-wing government is desirable from the point of transitional justice. The agent-based explanation is that many of the left-wing political leaders were either personally victimized during bureaucratic authoritarianism or suffered under the bans and prohibitions faced by their left-wing political parties. Personal and direct victimization or indirect victimization due to the experience of one's political party may be expected to make left-wing political leaders more inclined to seek justice. On the contrary, Latin American right has been accused of siding with the bureaucratic authoritarian regime, calling for military intervention or condoning the shift to authoritarianism.

A second underlying factor in the construction of the hypothesis is rather ideology-based. The emphasis on rights awareness and orientation has usually been associated with the left. It has been confirmed by recent research that “data from several cultural contexts have shown that left and liberal voters receive significantly higher scores with respect to equality, accepting immigrants, and civil liberties,” which “is in accordance with the traditional profiles of left and right” (Caprara and Vecchione, 2018: 63).

The hypothesis that this study will test can then be formulated as:

When left-wing political parties score consecutive electoral victories and rule without interruptions for at least two terms during democratic transition, transitional justice processes gain momentum.

3.1 TRANSITIONAL JUSTICE IN CHILE

There was a military coup carried out by General Pinochet in Chile in 1973. The country was a democratic country under the previously elected Salvador Allende and had the status of an economically developed country. Pinochet remained in power from 1973 to 1990, and the country was ruled by bureaucratic authoritarianism.

In late 1976, 13 communist leaders disappeared in Santiago, and the government claimed that they had gone to Argentina freely. The Supreme Court appointed a special investigating judge from the Court of Appeal in 1977 but suspended the investigation after three days. He repeated the official version of events. In 1978, the Amnesty Law was also signed into law. In 1979, the interim minister had the case left open. In 1983, however, Court of Appeal Judge Carlos Cerda Fernandez admitted that a former Air Force intelligence agent had information about missing cases and had specific information about 2 out of 13 victims.

The team, consisting of Air Force Intelligence Agents, was called Comando Conjunto. In 1986, the collaborators of this institution were before the Civil Judge Cerda, then Air Force Commander Gustavo Leigh, a member of the old military, and two civilian administrations, 38 retired and active-duty military officers, including 40 people charged as an accomplice. Despite all these allegations, after the Court of Appeal accepted the defendants' complaint, it demanded the release of the suspects due to the amnesty law. In 1986, the Supreme Court ordered a definitive closure of the case.

Judge Cerda, Article 413 of the Criminal Court Code. According to his article, he prepared a secret document. Nonetheless, a judge was not allowed to close a case until the ending of the investigation. The Supreme Court suspended Judge Cerda for two months and charged him with disobedience to duty.

A substitute judge ordered the case closed, and when the closure was challenged, the Court of Appeal upheld this order. Lawyers for the Vicaría de la Solidaridad filed an appeal in 1987, arguing that the Geneva Convention was superior to the Amnesty Law. The Supreme Court rejected the argument in 1989. Judge Cerda has been instructed to mark the case record as closed. Considering that the force of International Law and the Constitution exceeds the

Amnesty Law, Judge Cerda closed the case without marking it as closed. In 1990, the Supreme Court discovered by chance that the case remained open and threatened to dismiss Judge Cerda from his profession. As stated in the Constitution, the judge prepared a report defending the applicability of International Law. However, he was ordered to re-mark the case's closure, which was closed.

Many Latin American countries have prosecuted former dictators, middle- and lower-ranking civil servants, and even civilian accomplices (Capdepón and Figari Layús 2020). In Chile, after 1995, 476 final decisions were made in criminal (400) and civil (76) cases related to human rights violations committed during the Pinochet dictatorship (Collins et al. 2020).

Starting as a trial drip in the second half of the 1990s, hundreds of cases have been going through the courts of Argentina and Chile. Significantly, however, the conviction rate varies widely between the two countries. By the end of 2000, Chilean Courts had convicted 28 people for serious human rights violations committed during authoritarian rule (Hilbink 2007). Between July 2000 and July 2010, 296 former security agents were convicted of human rights violations in Chile (Universidad Diego Portales 2010). Already by the end of 2009, the convictions of 59% of "the number of people sentenced for these crimes in the former oppressive highest anywhere in Latin America represents a "verified that he was serving a prison sentence (Universidad Diego Portales 2009) Chile until September 2010, nearly 800 victim or survivor contains more than 400 and more than 1000 agents of the old regime had a human rights investigation (Universidad Diego Portales 2010). Chile claimed about 3,500 people died and disappeared when Augusto Pinochet resigned in 1990 (Chilean Commission on Human Rights 1992).

Since the landmark detention of General Augusto Pinochet in London in 1998, there has been an unprecedented shift away from impunity and towards accountability for serious human rights violations. Scientists have labeled this trend as the "cascade of justice" (Sikkink, 2011) and the "age of human rights accountability" (Lessa and Payne, 2012). Even though it is seen in the global arena, with this trend, the number of criminal cases turned out to be significant, even though past human rights violations were investigated. (Payne, Lessa and Pereira 2015).

During the dictatorship process, the Catholic institutions, other religious bodies, and human rights organizations opposed the administration. Lawyers, social workers, and medical personnel assisted people who were subjected to violations. Human rights organizations have

filed, systematized, and preserved documents on how torture and repression are systematically carried out. This is what makes the Chilean case unique globally. The main reason for the systematic information collection was the way to report state crimes. Organizations wanted to document every file and wanted to raise awareness of future generations. They have created an archival methodology for this (Ferrera, 2021).

Colonia Dignidad tried to make itself a State within the State by imposing on its members a system of life that completely contradicts our Western Christian concept of the family and avoiding observing the laws that apply to all residents of the Republic." The following statements have been used (La Epoca, 1991).

In 1991, the Executive ordered the cancellation of the legal status of the Colonia Dignidad. The State has heard that this sect uses torture and violence against people. Amnesty International and the West German Government have filed criminal charges against the sect. Still, the local authorities, with whom the sect's administrator, Paul Schaeffer, has close ties, have not intervened. In the official statement, the Decree of the Ministry of Justice revoking its legal status states that it was "based on the discovery of various violations in the fields of education, labor, taxes, recruitment, health, and other fields." By proving the crimes with the sworn statements of the escaped members, Amnesty International has filed DINA 2 with these charges in Germany. A lawsuit has been filed once. Doubt about the inner workings of the closed community arose as early as 1968 when the Senate Commission of Inquiry prepared a critical report written by then-Senator Patricio Aylwin.

In 1991, Enrique Peebles, a Chilean doctor who testified at an Amnesty International trial in Bonn, testified that he had been tortured in Colonia Dignidad and related to Samuel Fuenzalida Devia, a former DINA agent. 17 right-wing senators elected and appointed by the government objected to the decision. This incident was found unconstitutional, and a petition was filed. The pioneers of this event, Senator Sergio Jarpa (Renovacion Nacional) and Senator Beltran Urenda (Union Democrita Independiente), have said that they do not defend Colonia Dignidad and have submitted their petitions.

While the case is pending in a town where the temple is located near the campus, Parral organized armed attacks on the homes of two local leaders, and one of the goals previously a lawyer in the case, Amnesty International, and friends of the priory of attacks are described as the principals themselves.

The Chilean transitions are considered to be one of the most limited in democratic literature in the literature, compared to Latin American countries where authoritarian inheritance remains more robust in political, legal, institutional, and cultural areas (Mainwaring, 2002). Dictatorship era, repression, organized response, legal strategies, HRO and HRV Introduction of Amnesty Law is debated, early establishment prevention of human rights by the negative judicial judiciary.

Salvador Allende, the former president of Chile, ruled the country with Marxist rules, but when Pinochet came to power, everything changed, and he started to rule with an anti-Marxist approach. With a radical neoliberal economic approach, they managed the economy and the country. A military hierarchy and disciplinary system were established. The economy of the Chilean dictatorship has also been called the period of extreme liberalism. According to Eric Hobsbawm, Chile was one of the instructive examples of the free market that needed dictatorship and authoritarian political models during the Pinochet period. (Genç, 2020) The government recognized a new constitution in 1980 to "protect" democracy. The political and socio-cultural transformation occurred in 1980.

The military Junta approved by law an Amnesty law for 1973-1978 to cover the crimes committed. Amnesty laws protected criminals responsible as author, accomplice, or liability of all persons who commit an implicit crime from the day of the coup, 11 September 1973 - 10 March 1978 siege status removed. During the 17-year military dictatorship period, the judiciary did not consider the "habeas corpus" provided by the relatives of the persons detained or lost; the court refused to investigate these cases. "Vicaría de la Solidaridad" was the place where the victims could bring their relatives' demands and testimony. In the Peace Committee, lawyers receive and classify all available information about human rights abuses.

In 1980, the military-drafted a constitution, and a popular vote approved this constitution. Another popular vote was held in 1988 for the continuity of the army in power and several constitutional reforms. There were two options: yes or no. No won by a large majority.

The 1978 law was a comprehensive amnesty law that covered all criminal acts committed by uniformed agents in this decree between the date of the coup and March 10, 1978. The Chilean amnesty law is expressed precisely as follows, "all individuals who have committed illegal acts... March September 11, 1973 to March 10, 1978, during the state of siege in force, provided that they are not currently subject to legal proceedings or have already been convicted" (Decree Law No.2.191, art.1 (18.04.1978) (Genç, 2020). A special exception has

been made for the assassination of Orlando Letelier, and everyone involved in this crime has been covered.

It is a law covering human rights violations and crimes committed during the dictatorship period. In this way, associated politicians, law enforcement agencies, and secret police organizations are prevented from being prosecuted for crimes related to the period. This law was enacted in 1978, five years after the beginning of the regime. One of the main reasons that prevented prosecutions for a long time was the amnesty law.

Almonacid Arellano, an elementary school teacher, activist, and trade union leader, was executed and killed by extrajudicial killings. Local Courts have stated the priority of the American Convention on Human Rights the Almonacid Arellano case, a case heard in the American Court of Human Rights, was first investigated by the First Criminal Court of Rancagua, and the case was dismissed in 1974. The victim's family wanted to reopen the case in 1992, and in 1978, due to Decree No. 2.191, the crime was rejected by the court because it was covered by the amnesty law. Because it was contrary to the Convention on Human Rights, he was moved to the Inter-American Court and his case was heard there (Almonacid Arellano et al. v. Chile).

Parliamentary elections were held in 1989, and the Concert won the polls. The president was Patricio Aylwin. Chile's transition to democracy is a transition process negotiated by the military. The National Truth and Reconciliation Commission was established in 1990 and has documented and named victims of disappearances and deadly political violence. Information was transferred to the courts about illegal burials or lawsuits. The purpose of the commission was established in order to improve the process. It was an institution quite close to the old dictatorship period. They also did not succeed in the task of communicating.

The Truth Commission was an official account to be created of human rights violations and was the way to overcome the absence of a criminal investigation. The judiciary closed the cases and started the pardons without investigation. The Rettig Commission, on the other hand, collected information about criminals and sent files and confidential reports related to violations to the judiciary.

The National Compensation and Reconciliation Company was established in 1992 to help the relatives of those who were killed and executed, people who were dismissed from public office for political reasons. This institution has also made recommendations to the Rettig Commission on the repercussions for the victims (Genç, 2020).

For reintegration and healing for the victims, Law No. 19.123 decided to pay compensation to the relatives of the victims of human rights violations committed by the dictatorship. It provided medical and educational benefits to the victims. (Genç, 2020).

The Rettig commission was an official institution established for the investigation of human rights violations. The trial was in the courts, and they closed the cases. Pardons were issued without an investigation being initiated. The Rettig Commission collected information about the criminals, and confidential reports about the violations were sent to the judiciary.

The Truth and Reconciliation Commission recommended that President Patricio Aylwin apologized to the victims in the stadium for government wrongdoing in the same time he read disappearance addresses. The National Compensation and Reconciliation Company has recommended the Rettig Commission to help victims and victims with compensation. The purpose of this process is to provide compensation to the victims of human rights violations. They have provided compensation to the victims. According to law No. 19.123, compensation pensions were provided to victims against human rights violations committed by the dictatorship, and medical and educational benefits were provided.

The "Program of Continuity of Law 19,123 former National Corporation of Reparations and Reconciliation" (1996-2000) led to the Corporation taken to generic name of Human Rights Office in the Ministry of the Interior. "Involvement in legal investigations was a duty of the Corporation. The law said that "It is declared that the location of the disappeared detainees, as well as that of the bodies of the executed persons and the circumstances of said disappearance or death, constitute an inalienable right of the victim's families and of the Chilean society."

Therefore, those institutions were supporting investigations to be carried out by the judiciary. 18 lawyers gathered information from witnesses, responded to requests from judges and extra-judicial investigations, with evidence and reports to courts. Those evidence and reports were discussed for further forensic investigations. According to Article 6 of Law 19-123, they had right to know about the dead and how they died. Excavation for found bodies started, Human Rights of The Minister of Interior created budget US\$ 772,000 (\$540 million pesos) for judiciary process support to excavations (Genç, 2020).

The main problem is that the perpetrators were still working in the government or living in Chile in a powerful position. The fate of Pinochet was left to outside actors, and he was arrested in London. The government refused to hold the trial, and this was because he was a former head of state. This trial was alleged to have harmed Chile's national sovereignty. The

Spanish courts did not allow Pinochet with extraterritorial jurisdiction. On the other hand, Chile was engaged in negotiations for diplomatic retaliation against Spain and Great Britain. The Chilean government initiated provocative and political quarrels with Spain. The Socialist Party publicly supported Pinochet. The defenders appealed to the district court. The district court released Pinochet on bail. He is also exempt from punishment and extradition and has impunity for these crimes.

After Pinochet's arrest, Spanish Judge Baltasar Garzon initiated a process for Chilean political and local judicial institutions and society. This process included three phenomena: reaching the truth, justice, and reconciliation, which had significant consequences. After that, the Chilean transition was changed and resumed dealing with the past. The people's forgetfulness was destroyed after the conditions set by the government against each other.

New solutions and new strategies have been created from past problems. Prosecutions against former perpetrators' large-scale initiatives have resumed. Recent reforms have been made. After this incident, the institutions decided to follow a different path.

Secretary of Defense Edmundo Perez, Yoma has established a new "Mesa De Dialogo" Dialogue table. The military, church representatives, and lawyers met with government officials to Decipher information about the remaining casualties. The table reached an agreement on non-compliance from the army. But some relatives of the victims and the communist party refused. Close-to-death cases were evaluated, there were 200 cases available, but the result was surprising—those who emphasized human rights provided political protection.

The Dialogue Table recommends special judges for human rights violations and discrediting. Nine special human rights judges and the Court of Cassation decree criminal judges who process cases related to breaches of human rights have been appointed. Therefore, the nine special judges focused on preventing these judges from succeeding in this process, but the victims' bodies were found (Genç, 2020).

The National Commission of Truth and Reconciliation and the Reparation and Reconciliation Corporation reported 3,196 victims of political violence. Of these, 1,185 were disappeared and 1,720 dead by the dictatorship” (Fasic). The military was responsible 304 people and 139 deaths reported to political violence (Genç, 2020).

The most important factor in transitional justice is “justice.” Chile’s justice has many barriers. The judiciary still loyalty to military. Military courts have superpower even individual cases and “Amnesty Law” in 1978 (Genç, 2020). Judges denied proof to relatives, prisoners, and disappeared. Chile did not purge the judiciary or public service. Former Minister of Justice Francisco Cumplido added new laws, “Cumplido Laws”. It was about “transferred to civil court cases where the accused and the affected part were civilians.” There were pieces of evidence against the military (Genç, 2020).

A new law granted monthly reparations to victims and relatives. The Chilean government decided to provide 28.459 registered victims or relatives with life-long compensation (about USD 200 per month) and free education, housing and health care in 2005. The law acknowledged that victims had several rights to getting dignity and other things, truth, reparations, or education.

The table below displays the presidents who served during and after the democratic transition and their political affiliations.

Table 2 Chilean presidents from democratic transition on

Years	Wing	Actors in the Government
1973-1985	Authoritarian	Pinochet
1990-2003 Aylwin Frei Lagos	Center	CPD and Alianza Congress
2005 Lagos	Right Wing	CPD and Alianza Congress
2006-2010 Bachelet	Left wing	CPD and Alianza Congress
2010-2014 Pinera	Right Wing	Christian Democrat Party
2014-2018 Bachelet	Left Wing	CPD and Alianza Congress
2018-2022 Pinera	Right Wing	Christian Democrat Party
2022 Gabriel Boric	Left Wing	Social Convergence

It is evident from the table that, after the dictatorship, a coalition of centrist and left-wing parties formed the Chilean governments. This fact reveals that a controlled and managed transition was engineered. Furthermore, from 2006 and the pink tide or turn to the left on, the left and right alternated in controlling the presidency. Hence, the left controlled executive power intermittently and with intervals.

To boost the legitimacy of his regime, President Pinochet held national referendums. The table below shows the results of the referendums organized during and after the democratic transition.

Table 3. Chile's referendums related to democratic transition

Referendums	Yes	No
1978	%78.60	%21.40
1980	%67.04	%30.29
1988	%44.1	%55.99
1989	%91.25	%8.74
2020	%78.31	%21.69

In 1988, while Chile was still under a dictatorship, Pinochet held a referendum to extend his administration for another eight years. Saying "no" to the popular vote, Chileans ended Pinochet's 15-year dictatorship. The referendum held in 1989, on the other hand, is a referendum that included the restriction of the tendencies of the state of emergency, the affirmation of political pluralism, and the strengthening of constitutional rights.

The Chilean national popular vote in 2020 is one of the most essential referendums. The Chilean government asked in a referendum whether the country needs a new constitution and whether directly elected members should make this constitution or it should be prepared by members of parliament. 78% agreed to draft a new constitution, and 79% wanted it to be prepared by directly elected members. The Chileans thus expressed their support for annulling the constitution inherited from the dictatorship.

In Chile, lawyers and activists have worked together to maintain momentum and ensure that cases against the military are resolved through the courts. It was emphasized that the provisions of the Geneva Convention should be applied to prisoners in state custody. This Convention helped international law to limit impunity, but the courts did not fully recognize the regime's illegality. For this reason, domestic legal interpretations have been expanded in Chile.

The most fundamental problem with Chilean trials is that the amnesty law covers crimes, and Chile has protected the amnesty law. Preserving the amnesty law led to a split in society, and the community's confidence in the judiciary declined. For the victims and their families, the fact that the criminals were not prosecuted posed a significant problem.

This incident has continued with non-governmental organizations, which have been investigating the legal loopholes in the Amnesty Law of 1978 and trying to initiate prosecutions for crimes that the law does not cover. In cases of disappearance and kidnapping, however, because kidnapping is already a crime, it is contrary to the Geneva Convention. Even if there is a state of war, and prisoners have not been released, they have provided the legal basis for prosecutions by not including it in the amnesty law, and not illegally. As for international law, a ban on "blanket amnesty" has been imposed on this issue after considering it appropriate to investigate and clarify all crimes before using the amnesty law and then prosecuting them. Blanket amnesty is a special amnesty the government applies to a particular segment. In Chile, prosecutions against human rights violations were initiated within authoritarian legality by creating legal exceptional cases. According to Article 103 of the Code of Criminal Procedure, the "Gradual Document" allows a judge to reduce the

punishment by showing the time between the time when the crime was committed and the time when it was decriminalized, or even the gradual prescription is shown as a basis for the statute of limitations, not the nature of the crime. According to most of the Supreme Court, the statute of limitations cannot be applied to international crimes (Roht-Arriaza, 2015).

Three prerequisites are required for armies to be judged. The first is that at that time, it did not threaten the democratic order, there was a sufficient prohibition on submitting cases related to human rights violations to court and prosecuting them. Chile met the first condition in the mid-1990s. The military presence in politics has decreased over time. Judges in domestic trials have a significant influence on the issue. Judges can create their cases, and their contribution is high, even if the chances of enlarging the proceedings are only partial. If we proceed by considering the crimes covered by the amnesty law, it covers most crimes and is a type that complicates the work of the trial. We see the clearest examples of this after the end of the dictatorship and after the transition process. The most fundamental problem is not to fall within the scope of the amnesty law except for creating a case, accessing evidence, and accessing real numbers.

The judges are very few and difficult to judge since they date from the former dictatorship, and some still support Pinochet. From the point of view of the proceedings, it is more prolonged and more tiring for them to appeal to the High Court of Justice and for the victims to go through the process. Until the Dialogue Table in 1999, the military did not admit to any crimes committed under the dictatorship, and they considered the files for the "disappeared people" to be a problem that should be stopped by judicial follow-up of cases.

According to Heiss, interviews have become more of a political protection than learning about human rights violations. On the other hand, the amnesty law was used if there were developments related to the victims. Thus, the judicial consequences would be avoided, and the victims would be those whose circumstances of death were hidden (Heiss 2003). The locations of the disappeared victims could be disclosed anonymously since the amnesty law covered the existing crime. The criminal authorities had incentives to reveal the location of the victims.

The courts were duly closing cases. The role of judges here was vital. Although they had the authority to take, continue, or even enlarge the circumstances, some judges rejected the situation from a political point of view (Genç, 2020).

By the end of 2000, Chilean courts had convicted 28 human rights violations committed during the dictatorship. Between July 2000 and December 2010, 296 former security agents

were found guilty of human rights violations (Skaar, 2010). Already by the end of 2009, 59 of those found guilty were serving approved sentences, representing the "highest single oppressor total punished for these crimes anywhere in Latin America" (Genç, 2020).

The Chilean transition period for post-trial justice has begun thanks to the pioneering judicial efforts of some judges, which have resulted in criminal trials and convictions. Thanks to Cerda, Guzman, and Correria Buló in Chile, innovative decisions were made, and they introduced new ways of applying international law.

They first started with the Santiago Court of Appeal and the lower courts, which the higher courts later confirmed. With the reform of the Supreme Court, which was carried out in 1998, more liberal-minded judges were brought to the courts, and a special chamber was created for criminal cases. It is noted that "Ideas about the law are dramatically changing in Latin America" (Huneus, Couso, and Sieder 2010). Trials were held even though the Frei and Lagos governments did not support executive prosecutions.

In 1998, Judicial Reform was carried out. At the same time, Pinochet was forced to resign from the post of senator for life. Later that year, Pinochet traveled to the United Kingdom, where he was arrested on an international arrest warrant for the murder of 16 Spaniards in Chile by Judge Balthasar Garzon in Spain, as well as a case against Pinochet with a file containing human rights violations committed during the dictatorship. The progress and continuation of international cases have also created complications in the country. Lawsuits have been filed in Spain, France, Belgium, and Sweden. Pinochet, who came to England for treatment, was arrested there. Spain asked Britain to prosecute Pinochet. On the other hand, Chile has requested that the UK extradite Pinochet to his country. The British courts, on the other hand, have accepted the extradition request to Spain by revoking the right to be touched of Pinochet, the former Chilean President who had immunity. Pinochet was not extradited to Spain. British Interior Minister Jack Straw sent Pinochet back to his country. However, the importance of this event for international law and the judiciary is very significant. A precedent case was created for human rights violations and the principle of universal jurisdiction was revived. The immunities of the heads of state have been revoked due to the issue of human rights violations.

Thanks to the Geneva Conventions of 1949, judges were granted universal jurisdiction for war crimes and crimes against humanity. Spanish Judge Balthasar Garzon filed a lawsuit using this authority in this case. As a result of this case, the concept of sovereignty was redefined. There was no right to intervene due to the internal policies of governments, so all

states were subject to human rights norms. International activists and lawyers have worked together on this case.

Investigations into extrajudicial killings and suspicious disappearances have been conducted, and insufficient resources have been provided for the litigation process so that cases will not be resolved quickly. One of the main reasons why the amnesty law and the annulment process or the prosecutions could not begin is the large number of votes and veto power of the right-wing deputies. One of the explanations for this issue is that it has led to a hardening in the courts (Collins 2010). The 21 judges on the Supreme Court were already judges appointed by Pinochet. For judges over the age of 75, there was an obligation to retire, which meant the retirement of 17 judges. In addition, the army retired all generals associated with the dictatorship (Gillis 2015).

The National Compensation and Settlement Company was established in 1992. Heiss notes that Chile is famous for its "compensation amount." The compensations include lifelong pensions, educational benefits, psychological services, and an exemption from military service. (Heiss 2003, Kritz 1995). The Truth and Reconciliation Commission was limited in scope. There were no judicial acts, and they were aimed only at creating a typical account of the past. According to Heiss (2003), the cases were duly closed without an investigation, and justice was left to the courts.

During the Aylwin era, there was only one trial, and it was a case under pressure from the Chilean and US governments. This case was the Letelier-Moffitt case. Bachelet's government's judiciary was relatively independent, and trials were likely to be held with liberal, activist judges who favored the trials. The Aylwin government was filled with high-ranking officials appointed by Pinochet. Judges, on the other hand, were against prosecutions during this period.

Towards the end of the 1990s and the beginning of the 2000s, the judicial and prosecution power of judges increased with the reform of the Supreme Court. In addition, during this period, international trials and intra-state trials were active. At the same time, most Chileans did not want Pinochet to be tried internationally, and the Chilean government actively objected to this. Activist judges start prosecutions and investigations from the lowest courts. They continue their work with the amnesty law in mind as their biggest obstacle. The International Criminal Court, together with the local criminal courts, is one of the central mechanisms of transitional justice. Because international law makes it mandatory. The International Criminal Court does not consider it sufficient for states to prosecute war crimes and human rights violations and determines that they cannot prosecute them. This decision

was reached in 2002 (Zupan & Servaes, 2007,) States generally prefer internal trials, but International Criminal Court participation is necessary if local courts do not want to prosecute (Hayner, 2011).

At the same time, these prosecutions represent the public's confidence in the courts. Thanks to these prosecutions, the need for revenge is reduced, and efforts are made to ensure that it will not be repeated.

In order to prevent the recurrence of human rights violations and dictatorship, the rules that would create problems left over from the 1980 Constitution were abolished in 2005. These rules were abolished by the constitutional reform, which abolished the presence of appointed senators who did not come to parliament with elections for democratization, and the constitutional rules prevented the resignation of the head of state. With this reform, along with prosecutions, not only military but also political prosecutions were carried out.

The most important precursor of this reform is that the non-implementation application (recurso de inaplicabilidad) was taken from the Supreme Court and transferred to the Constitutional Court, allowing real cases and disputes to be examined through a concrete audit. It is an extraordinary event in terms of the functioning of the courts.

With this authority, abstract supervised cases have increased tenfold, and a full-time job has now been created for court members. This new delegated authority has also encouraged members to take a more activist stance. This reform also allowed the exercise of previously granted rights to the state elite. This decision has deconstructed the bond between the people and the court (Javier, 2003). The Constitutional Court, using its jurisdiction, can be influential in policy-making without constantly confronting the government (Heiss and Navia, 2007).

Victor Jara was tortured and killed in the stadium by the officers during the dictatorship of Chile. Kathy Roberts, legal director of the Center for Justice and Accountability, a California-based human rights group that takes civil action on behalf of Barrientos, a retired army officer who is a US citizen, Victor Jara's wife and daughters, has requested that the US extradite Barrientos for their case in Chile. The jury found Barrientos liable for both torture and extrajudicial killings. The Tejas Verde brigade decided to pay \$ 6 million in compensatory damages and another \$22 million in punitive damages.

3.2 TRANSITIONAL JUSTICE IN URUGUAY

After returning to the presidential system, economic conditions in Uruguay failed to improve, and six months later, President Oscar Diego Gestide died. His constitutional successor, President Jorge Pacheco Areco (1967-1972), banned the Socialist Party of Uruguay

and other leftist organizations and newspapers, purged liberal professors from universities, and suppressed labor unions. During this period, increasing pressures, economic crises, and high inflation fueled social conflicts and far-left guerrilla movements.

In another significant development, the Tupamaros (far-left guerrilla) organization appeared. On June 13, 1968, Pacheco declared a state of emergency. Juventud was born in Uruguayan de Pie (far-right organization). In 1970 and 1971 respectively, Tupamaros killed US security expert Dan Mitrione and then kidnapped British Ambassador Geoffrey Jackson. After the declaration of a state of emergency, the conditions became even stricter. When more than 100 Tupamaros members escaped from prison on September 9, 1971, Pacheco ordered the Army to suppress guerrilla activities. In order to suppress the guerrillas, the armed forces created the Junta de Comandantes en Jefe, the first military coordinating body independent of the supervision of the Ministry of Defense. He later turned into ESMACO.

General elections were held in November 1971, along with Pacheco's efforts to amend the constitution and seek re-election. The left-wing parties formed a broad front. Thanks to the multi-candidate system of Ley de Lemas, Juan Bordaberry became president. The revolutionary Tupamaros (communist urban guerrilla) advocated political change with ideas and actions. When the government could not cope with the weak police force, the armed forces stepped in. In this way, the army's path to political participation was opened (Elmer, 2010, 5).

Political violence has been very different in Uruguay. After the Cold War and the Cuban Revolution, the doctrine of national security was adopted throughout the region, and the ideology and behavior of military forces were shaped according to this doctrine (Arteaga, 2000). Their main goal in the early years was to suppress dissent in the region to form the basis of orders of the Armed Forces. The Uruguayan Army, on the other hand, has made a deal with moderate policies, guaranteeing their return (Acuna and Smulovitz, 1996; Caetano, 2008).

Several magazines and newspapers were shut down, some editors and reporters were arrested and imprisoned, and some disappeared. Reporters from foreign radio and press organizations were fired. Books and magazines were burned, the content of the remaining newspapers was controlled, and the press publishing sector was controlled. Political songs were banned. In Uruguay, between 1967 and 1984, eighty-six newspapers, radio, and television stations were subject to varying degrees of restrictions. Journalists were constantly tortured and arrested.

The military began to pay particular attention to education and saw universities as the center of subversive ideologies. In Uruguay, intellectuals were persecuted, and education was

controlled. The universities were overturned in October 1973, and staff members were dismissed or imprisoned. The training was placed under military surveillance. Thousands of secondary and primary school teachers have been removed from their posts. The censorship of textbooks controlled educational content, and a strict curriculum was implemented. A compulsory Moral and Civic Education course was introduced to promote patriotism and traditional values.

Economic recessions, high inflation, and growing social unrest were at the heart of the Uruguayan coup. Such events lasted for ten years when the armed forces came to power in 1973. The army eliminated urban guerrilla threats in the middle and controlled social unrest with mass repression. Economic policies were required for the legitimacy of the regime's harsh policies. With these policies, they expected Uruguay to correct its economy. However, these policies led to the absence of investment, and capital flight. The general assembly was dissolved, trade union organizations were banned, and the possibilities of action of the opposition were eliminated. The conditions for a new economic model were made possible.

In order to be the justification for the legitimate and harsh rule of economic performance, a surrogate was appointed for the authority that was not in the regime. The Harvard-educated economics minister Vegh-Villegas wanted to integrate Uruguay into the world economy by removing the economy's protectionist system, reducing the budget and employment (Caetano and Rilla, 1987; Gillespie, 1991). He aimed to sell most of the state enterprises by freeing the economy from its protectionist structure, lifting restrictions on banking and financial communities, reducing social spending and state employment.

Between 1981 and 1983, national income decelerated by 20 percent, while unemployment rose by 17 percent (Caetano and Rilla, 1987; Gillespie, 1991). The external debt burden increased exponentially, exacerbated in 1974 by the quadrupling of oil prices, and stood at 3 billion dollars in 1984. After Uruguay's new peso emerged, thousands of businesses and individuals went bankrupt. Because of the failure of the economy and the suppression of political opposition, thousands of the best professionals went into exile.

In late 1983, Vegh returned to become minister of economy and finance again, but they were unsuccessful in transferring it to a democratic government. The military's economic policies and legitimacy compromises have failed. Efforts to form a civilian government under military rule were unsuccessful (Caetano and Rilla, 1987; Gillespie, 1991)

Human rights violations had common elements: the state acting together with an invisible and secret Terrorist Structure tasked with repression and a government based on norms and laws.

In this dual system, they acted invisibly, characterized by compliance with military security, invalidating the laws (Romero, 2007: 233).

They conceived Operation Condor as a continent-wide covert operation to eliminate hundreds of people in South America (Argentina, Bolivia, Brazil, Chile, Paraguay, and Uruguay) in the 1970s (Dinges 2004; McSherry 2005). Operation Condor was explicitly created to target political opponents in exile. It created an unlimited terror zone. During this period, people of international interest disappeared (Grandin, 2005). More than 150 Uruguayans were killed as part of Operation Condor, while 30 people disappeared in Uruguay. At least 763 people were victims of illegal detention, torture, murder, and cross-border crimes, including disappearance. Operation Condor was based on an extensive collection of documents from archives in South America and beyond. The Tupamaro guerrillas, including Jose Mujica, received lengthy prison sentences, and were tortured during that period.

The military administration in Uruguay wanted to demobilize and depoliticize the political environment. The military officers have taken a military approach, applying a military hierarchy, authority, and discipline. The generals remained a faceless junta administration (Sondrol, 1997). They infiltrated the public and private life of the country, taking control of every part of it. The armed forces played an active role in economic and political issues in the administration.

Uruguay was marginalized in political life as it had been under civilian rule by then. Military officers experienced chronic uncertainties and disagreements in the early years, as they did not have sufficient intellectual preparation for the government (Gillespie, 1991). Yet, before the coup d'état in 1973, the military systemically influenced the administration.

Even with the transition to democracy in 1985, the armed forces still had the authority to exercise guardianship in national affairs. It was Medina (the only military minister of defense who served in the 1980s, a retired lieutenant general who refused to issue subpoenas to military officers) as commander of the Army. The Army and Air Force rebelled against the civilian election of Bordaberry as minister of National Defense. On February 9 and 10 in 1973, the Army issued two statements proposing political, social, and economic measures. The National Security Council was established as an advisory body to the executive. Its members include commanders of the Army, Navy, and Air Force, as well as many senior military officers. There were Ministers of Internal Affairs and Foreign Affairs. Initially, he continued his loyalty by helping the head of the Navy, but later they joined other military

services. Bordaberry signed an agreement with the military, guaranteeing their advisory duties and participation in political decision-making. This deal was seen as a half-coup.

After a while, the military demanded the implementation of the "State Security Law." However, the dispute process with the Assembly, which investigated the crimes of torture committed by the Army and considered that they exceeded the existing powers of the Army, lasted until June 27, 1973. With the support of the Army, Bordaberry dissolved the General Assembly, replaced it with the Council of State, and gave full powers to the armed forces and the police. It was de facto declared a dictatorship. He was supported by the Colorados (Pachequist faction) and some Blancos (Herrerists of Aguerrondo). When the civil-military dictatorship came together, all Marxist-Leninist organizations were banned, and universities were also intervened in to suppress student opposition protests. The Army's "National Security Doctrine" was seen as the explanation for the dictatorship, arguing for the requirements of the continuity and survival of the state instead of sovereignty. According to this doctrine, it was necessary to sacrifice some secular freedoms in order to preserve and protect the state.

Thousands of people who went to prison because they were accused of political crimes died and were added to the losses. The tortures have increased. Employees of the government were fired from their jobs for political reasons. During this period, freedom of the press and association and political party activities were also restricted. Amnesty said that in 1976, there were more political prisoners per capita in Uruguay than in any other nation (Amnesty International).

In June 1976, Bordaberry was forced to resign after submitting an offer to the military calling for eliminating political parties and establishing a permanent dictatorship with himself as president. National elections were suspended that year after the assassinations of Uruguayan political leaders Héctor Gutiérrez Ruiz (National Party) and Zelmar Michelini (Broad Front) in Argentina. Bordaberry was replaced by the president of the Council of State, Alberto Demichelli Lizaso. Three months later, Demichelli passed, political banned persons were identified by Aparicio Méndez (1976-81).

In 1977, the Military Government publicly shared its political plans. According to the plans, the National Party and the Colorado Party would be liquidated, a new constitution would be put to a popular vote, and national elections would be held with the candidate agreed on by both sides. A charter was drafted, giving the military virtual veto power. The charter gave the military the right to veto all government policies. In 1980, the Armed Forces decided to legitimize their system by submitting a constitution to a popular vote.

This agreement, signed by representatives of the armed forces and the Colorado Party, UC, and the Broad Front, called for a national election. While the Army was formerly a sovereign power, it now passed to an advisory board controlled by the president and cabinet while all veto power was vested in it. Sanguinetti became President. After being sworn in, he led the transition to democracy.

The military has agreed to review the cases of all political prisoners. Even though the communist party was officially banned (1985), the communists could nominate candidates according to their lists within the left coalition. Nothing was said about the human rights violations of the dictatorship.

In 1982, the Law on Political Parties was adopted to ensure the election of political leaders, the functioning of political conventions, and the preparation of platforms. The goal was to control the political system and slowly democratize it, but not return it to the leftist rule before 1973. In 1982, officials of the National Party, the Colorado Party, and the Civic Union (Unión Cívica), a small conservative Catholic party, were elected. This union was founded in 1971. With the election results, the army has thoroughly lost its strength. The divided left also participated in the election, although it was banned. Dialogue between politicians and the military has increased, and civilian resistance has been added. Uruguay has again entered an economic crisis.

First, transitional justice has often "not sufficiently explored" the role of archives in transitional societies (Baumgartner et al., 2016). Most of the mechanisms of this period, including truth commissions, prosecutions, and compensations, as well as archives and records with a small number of scientists, have been studied. Even when archival documents were available and included as evidence in court, their information was not immediately useful. The records did not always identify specific perpetrators or victims and did not directly establish criminal liability for specific crimes. On the contrary, with some exceptions, documents often provided contextual evidence to understand the background of human rights violations better. In some cases, records may contain potentially misleading data, such as when military officers' "pseudonyms" were used instead of their real names or when they reproduce information obtained from prisoners through torture.

Gelman's family was kidnapped and killed as part of Operation Condor. A half-million-dollar compensation was paid by the Uruguayan government to Macarena Gelman. That payment was the decision of the American Court of Human Rights against Uruguay, which is accused of delaying justice. In 2011, the Inter-American Court of Human Rights ruled in favor of the

Gelman family. The Inter-American Court of Human Rights also ordered the Uruguayan State to guarantee that it will not obstruct investigations for all other similar cases.

When the military dictatorship in Uruguay ended in 1985, the victims and victims of this process filed lawsuits. Yet, Uruguay put the Amnesty Law into effect after the end of the regime. It is the Ley de Caducidad de la Pretensión Punitiva del Estado, No. 15.848. It is a law enacted in 1986 and is known as the "expiration act." The purpose of this is to equalize and assimilate the commanders and police officers who executed those orders during the dictatorship for political reasons or to fulfil the orders of the functions. It was proposed by Sanguinetti's first government, by the two main political parties of the period (Colorado and National), and advocated by Wilson Ferreira Aldunate (member of the Senate). In 1989, a referendum was held on the abolition of this law. The result of the referendum was that the law remains in force. In 2007, a referendum campaign was launched to amend the constitution to repeal the law partially. In 2009, the Electoral Court confirmed that sufficient signatures had been reached. A referendum was held along with national elections.

In 2005, during the first term of President Tabaré Vázquez, he tried to launch an investigation, but the judicial powers refused to do so. As a result, the victims' families appealed to the Inter-American Commission on Human Rights. It was declared in 2009 that the Termination Act was unconstitutional. In Uruguay, this is explained as follows: it makes the law unenforceable for the relevant case. In 2010, the Frente Amplio adopted articles 1, 3 and 4 of the law. A draft law on the annulment of articles was introduced. The House of Deputies approved the bill with 50 positive pro-government votes. In 2011, amendments were made by the Senate and returned to the Chamber of Deputies for final approval. In 2011, the Parliament adopted law No. 18.831, "On the extradition of crimes committed in the practice of State terrorism until March 1, 1985," and was committed as a crime against humanity (Presidencia de la República Oriental del Uruguay. Consultado el 28 de octubre 2011). Although a legal attempt was made to annul it for two and a half years, it was annulled by the leftist coalition in 2011. It is noted that "For example, in 2010, the former president-dictator Bordaberry was tried for constitutional violations and other crimes, and foreign minister Juan Carlos Blanco was found guilty of political murders. In these cases, Bordaberry and Blanco were civilian members of the dictatorship, not military" (Sharnak and Amilivia, 2023).

The Inter-American Court of Human Right delivered its verdict on November 15, 2021, and the Uruguayan government was found guilty of various crimes, including forced disappearance and failure to conduct adequate investigations to determine what happened and,

if necessary, punish those responsible. The court stated that although the amnesty law had been abolished, it hindered investigations.

Uruguay paid symbolic reparations to the victims. Both Uruguay and Chile have also paid compensation due to the Inter-American Court decisions. In Uruguay, the state issued an official apology in 2012. There are memorial museums in both Chile and Uruguay. It has been stated that “Now, in a struggle that has been ongoing since the country's return to democratic sovereignty, a growing multi-generational and multi-ethnic coalition of Uruguayans and international allies continues to fight for truth, justice, recognition and responsibility. The struggle of memory with oblivion has not yet ended (Sharnak and Amivilia, 2023).

The table below reveals the presidents that served since the return to democracy and their political party affiliation.

Years	Parties	Presidents	
1985-1990 1995-2000	Colorado Party	Julio Maria Sanguinetti	Right wing
1990-1995	National Party	Luis Alberto Lacalle	Right wing
2002-2005	Colorado Party	Jorge Battle	Right wing
2005-2010	Left-Wing Political Coalition	Tabara Vazquez	Left wing
2010-2015	Left-Wing Political Coalition	Jose Mujica	Left wing
2015-2020	Left-Wing Political Coalition	Tabara Vazquez	Left wing
2020	National Party	Luis Lacalle Pou	Right wing

Table
4Uruguay's
presidents from
democratic
transition on

It is evident from the information in the table that an uninterrupted period of left-wing presidencies was experienced from 2005 to 2020. This factor seems to distinguish Uruguay

from Chile. A longer and more continual rule by left-wing presidents can be observed and whether this record facilitates the taking of transitional justice measures in Uruguay is the key question.

The table below reveals the results of some of the critical referendums organized in Uruguay.

Table 5. Referendums for constitution and amnesty in Uruguay

Year	Subject	Yes Vote	Turnout
1980 November	Approve constitution	%42	%78.6
1989 April	Amnesty for Army	%55.4	%70
1989 November	Index Pensions	%81.7	%90
1992 December	Repeal Privatization	%72	%77
1996 December	Constitutional Amendment	%50.2	%93

How the amnesty was preserved and how a new constitution did not find the required popular support can be seen. The referendums thus fell short of facilitating the taking of transitional justice measures in Uruguay.

4.COMPARISON AND ANALYSIS

Human rights violations in Chile have been considered a civil war or social conflict, denoting more a “state of war” instead of dictatorship or state terrorism. In this way, it was thought that it could continue without prosecuting most human rights violations. The Pinochet regime, unlike other dictatorships, was supported widely by the Chilean society. These factors seem to have prolonged the process of transitional justice.

The table below summarizes the similarities and differences experienced by Chile and Uruguay. It is a comparative table containing the differences and similarities of the two countries during the dictatorship period. It covers the bureaucratic authoritarian period.

Table 6. Comparison of the authoritarian experiences

	Chile	Uruguay
Military Rule	1973-1990	1973-1985
Amnesties	1978	1986, Ley de Caducidad
New Constitution	No	No

Amnesty Derogation	No	2011
Truth Commission Reports	1992,2004,2011	2000,2002
Criminal Conviction	Yes- many cases that are not high-profile	Yes- few high-profile cases
International Human Rights Norms	Ordinary	Ordinary
Reaction to International Law	Engagement	Engagement
Judicial Definition of the Dictatorship	State of War	Civic-Military Dictatorship
Main Repressive Practices	Clandestine and Authoritarian Legality	Military
Amnesty Judicial Review	No	No
Inter-American Human Rights Court Conviction	2006	2011

Chile was also a divided country before Pinochet's dictatorship, as right-wing groups disapproved of the Allende administration. Those who were dissatisfied with the Allende administration considered it a segment of the bourgeoisie. Since the Allende administration was governed by Marxist rules, privatizations had decreased, and workers' rights were more at the forefront. That situation had already initiated polarization in the country, and when there was a coup later, that polarization continued.

In Uruguay, on the other hand, the situation was different, as economic factors were at the forefront, rather than ideology. The coup was preceded by a severe economic crisis and soaring unemployment. The coup was trying to fix the system by establishing a civilian government of its own. Thanks to neoliberal economic policies, it had somewhat corrected the system in the country.

To test the hypothesis, using the most similar system, the processes of democratic transition in both countries have been studied and some tables have been created. With the change of the regime experienced by two countries with the same culture and geographical conditions at the same time, they shifted to an authoritarian system. With this long regime change they experienced, and human rights violations, they created a highly violent environment. With the

violence rising from year to year, the secret service exiles conducted joint operations with the CIA. Former prisoners of war who were in exile and fled the country, or people who experienced violence disappeared or were killed. It is known that the two countries also have secret police or secret military organizations, secret places of torture headquarters. They may have differences in terms of the functioning of bureaucratic authoritarian governments. The civilian names of the administration in Uruguay were constantly changing, while in Chile the same figures presided over the country throughout the dictatorship.

Almost the same methods have been used to solve human rights violations. They were addressed more by the pressure of the civilian population than by the pressure of the political system. Activists and the public (including victims) worked together to open cases with the help of commissions and prosecute criminals.

The two countries have avoided solving this problem in the international arena. They have evaded international trials, arguing that it was an internal matter. In fact, many tried to escape criminal responsibility because Chile declared the period a “state of war”. A part of the public also supported that attitude of politicians. Amnesty laws in both countries remained in effect for a long time after the dictatorship. There had been no prosecutions for a long time in the two countries. Some of the judges avoided the trials because they were appointed during the dictatorship, because they were also supporters of the government at that time. There were exceptional cases in the constitutional court. Elected senators, military officers, and those in parliament implicated in the crimes of the era were removed from office.

The table below reveals the comparison of transitional justice practices in the two countries.

Table 7. Transitional justice in the two countries

	Uruguay	Chile
Date of the initiation of the bureaucratic authoritarian regime	June 27, 1973	September 11, 1973
Duration of the bureaucratic authoritarian regime	12 years	17 years
Year of the ending of the bureaucratic authoritarian regime	1985	1990
Left-wing presidents since the ending of the bureaucratic authoritarian regime	Consecutive and uninterrupted until 2020	Nonconsecutive and alternating with right-wing
Abrogation of the amnesty law	2011	-
Judicial reform	November 1, 2017	1995-2005
Trial of bureaucratic authoritarian regime leaders	High echelons but few trials and convictions	Figures lower in hierarchical terms but many trials and convictions
Truth and/or reconciliation commission	Not official	National Truth and Reconciliation Commission (The Rettig Report)
New constitution after bureaucratic authoritarian era	-	Deliberated upon

Social and economic reparations for victims of bureaucratic authoritarianism	Symbolic Reparations	The National Corporation of Reparations and Reconciliation
Purges	Not Successful	Not successful
Memorialization	Museo of Memory	Museum of Memory and Human Rights

Both countries had an amnesty law. This amnesty law covered human rights violations committed because it covered the entire period of the dictatorship. For this reason, the duration of trials and prosecutions was extended. Most of the judges were judges appointed during the dictatorship and continue their duties. The existence of amnesty laws in both countries influenced the formation of cases. Even though both countries were constantly going to referendums on this issue, they were receiving a high degree of amnesty law support. Exceptions were introduced to the amnesty law in 2004, whereas amnesty was also reinterpreted in Chile. These steps enabled ways through which the amnesty law could be transcended, and its provisions could be emptied of protection granted to bureaucratic authoritarian figures. While amnesty was reinterpreted and declared unconstitutional in 2010, it was repealed the following year. Yet, in 2013, parts of the law that repealed the amnesty law was ruled by the Supreme Court to be unconstitutional. It has been noted that the total number of trials in Chile was 1048 as opposed to six in Uruguay, while the total number of convictions was set at 365 for Chile and just 18 for Uruguay (Munck and Luna, 2022). Chile was also regarded as the leader in forming truth commissions in Latin America (Munck and Luna, 2022). Even if the case of missing people was unsuccessful, compensation was paid for the victims and psychological and social support was provided. Chile has dealt with victims more broadly in terms of compensation than Uruguay. It is a compensation that includes psychological assistance, trainings, financial support. The Committee of Solidarity and Peace has been established in Chile. In this institution, information about human rights violations was collected, classified, and filed.

In the case of Chile, even the left-wing governments were proceeding very slowly and cautiously. Judges were regarded to be more independent during the Bachelet Government and upheld a more pro-active attitude. In the Aylwin era, however, judges were mostly against prosecution. Chile began prosecutions at least as early as the mid-1990s. Special punishment rooms have been created for liberal judges. The Pinochet-era judges were retired due to age. Prosecutions have been carried out in Uruguay too late and to a very small extent. Another factor in the inability to file a lawsuit is that insufficient resources have been provided for investigations. Since the majority of the Chilean Parliament was in the right-wing party, the repeal of the amnesty law was repeatedly vetoed. Compared to Uruguay, there have been more prosecutions in Chile, more fines have been imposed, and more cases have been filed. Most criminal trials in Chile have resulted in convictions, starting with the lower courts, and have progressed faster thanks to the reform of the Supreme Court and activist judges. Equally, thanks to the Geneva Conventions, judges had the powers to open universal cases against war crimes and crimes against humanity. There have been international trials in the case of both countries. The first cases against Chile were filed from Europe. To Uruguay, it was opened from America.

In Chile, there has been a right-left alternation in government. This rotation resulted in the interrupted nature of the left's ascendancy to executive power since the democratic transition. The intermittent nature of left-wing presidencies is assumed to weaken the drive for transitional justice in contrast to continual and uninterrupted left-wing rule. While from 2005 to 2020 the left-wing controlled the presidency in Uruguay, this longer period without interruptions did not seem to particularly serve the cause of transitional justice. Hence, it is possible to argue that the hypothesis proposed by this study cannot be confirmed, as uninterrupted left-wing rule did not provide Uruguay a head start in dealing with its past.

5.CONCLUSION

This study has tried to explore how the alternation between left and right-wing governments impacted transitional justice processes. Whether left-wing governments facilitate the design and implementation of transitional justice policies has been examined. To test this hypothesis, two countries from the Southern Cone have been selected as cases. Two countries that experienced bureaucratic authoritarian regimes and then transitioned to democracy during almost the same years are scrutinized, to maximize the control exerted over as many variables as possible. This design has helped to examine the attitudes of Chile and Uruguay towards the processes of transitional justice, while monitoring the process management by left-wing

political actors. The study has shed light on the effects of the ideological attitude of the governments that came after the authoritarian system towards the past and the people's reckoning with the past.

We have seen that democratic transitions may walk along prosecutions left over from former governments, whereby the process of reckoning gains momentum. We found that one of the most important factors affecting the transitional justice and democratization processes is the government's attitude towards retrospective trials. The left-wing governments in both took various steps in reckoning with the past dictatorship period. Some degree of acceleration of the processes could have been achieved by the leftist governments.

Uruguay switched to leftist rule after the transition to democracy. On the other hand, the transfer of power to the left was incremental in Chile, as the ideologically pluralistic coalitions initially succeeded the dictatorship. The two countries experienced similar processes at the same time, including regime change. There have been serious human rights violations in both countries. There have been heavy losses. The violations experienced, the inability to deal with the past immediately, and the attitude of the first incoming governments are similar characteristics.

Transitions to trials show differences even if the processes of preparing for trial have similar qualities. Chile has progressed faster and more comprehensively than Uruguay. We know that more efforts were made to start the processes in Chile. While high profile trials did not unfold, more actors affiliated with the bureaucratic authoritarian regime could be brought before justice in Chile. Hence, in the realm of criminal justice, Chile progressed more effectively in ensuring that regime authorities were held accountable. Rather than few symbolic and high-profile cases, remarkably more trials and convictions could be achieved in Chile. Equally, Chile is considered as the bastion of reparations in dealing with the past in its region.

Contrary to the proposition of this study, intermittent left-wing governments in Chile presented no barrier to the taking of transitional justice measures. Although the left has been in power in Uruguay for 15 uninterrupted years, Chile has taken more steps than Uruguay in various variants of transitional justice. The faster and more comprehensive steps taken by Chile in comparison to Uruguay thus cannot be explained with a reference to left-wing governments. Where the left has controlled the government without intervals and interruptions, transitional justice processes progressed more slowly and less comprehensively. Uruguay thus has not witnessed any major boost to transitional justice just because the left has controlled the presidency for longer and without interruption.

A major shortcoming of this study is that it does not discuss the causes for why rule by the uninterrupted left-wing governments does not particularly facilitate transitional justice. A future research agenda may involve offering causal explanations as to why uninterrupted left-wing governments do not provide guarantees for swift transitional justice. Secondly, due to the selection of the MSSD, the generalizability of the findings of this study is weak. In future research efforts, through the diversification and possibly enlargement of the sample, higher levels of external validity of findings may be achieved.



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