

## **Remembering the Past and Struggling for Justice: The Contested Legacy of Authoritarian Rule in Chile**

By Rebecca Evans

**Battling for Hearts and Minds: Memory Struggles in Pinochet's Chile, 1973-1988.** Vol. 2 of **The Memory Box of Pinochet's Chile.** By Steven J. Stern. Durham, NC: Duke University Press, 2006. 247pp.

**Remembering Pinochet's Chile: On the Eve of London 1998.** Vol. 1 of **The Memory Box of Pinochet's Chile.** By Steven J. Stern. Durham, NC: Duke University Press, 2004. 538pp.

**The Pinochet Effect: Transnational Justice in the Age of Human Rights.** By Naomi Roht-Arriaza. Philadelphia: University of Pennsylvania Press, 2005. 256pp.

### Keywords

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Chile holds special significance for scholars. Not only was it the first country to democratically elect a Marxist president who sought to lead a peaceful transition to socialism, it was also a prominent example of democratic breakdown and brutal military rule. The Chilean dictatorship not only practiced the terrible techniques that became part of Latin American “dirty war” campaigns, it also took a lead role in planning assassinations and coordinating intelligence operations with security agencies from other military dictatorships in the Southern Cone. In the early 1990s, Chile exemplified a more general trend to accept immunity as the price of social peace. By the end of the decade, however, Chile signaled another trend: a new willingness to push for legal accountability by holding regime officials criminally liable for human rights abuses committed under their rule. With Pinochet’s arrest in London in October 1998, Chile offered another first: the first legal ruling against a former head of state for violating international human rights law. Chile therefore serves as an important case of democratic breakdown, redemocratization, and transitional justice.

Steven J. Stern, a Latin American historian, focuses on conflicting interpretations of Allende’s government and the military regime that followed. For some, the military coup on September 11, 1973 saved the country from chaos and radicalism. Although they came to admit that some human rights abuses occurred, these Chileans justified the deaths and disappearances as a modest social cost that “had to be paid to repair the ruin and turn back the catastrophe of imminent civil war caused by the Left and politicians” (Stern 2004: 31). For others, Allende’s leftist government had brought tangible social advances and raised hope in a better future; the military coup was a brutal rupture with Chile’s tradition of democracy. Other Chileans initially supported the coup but became horrified by the detentions, torture, exile, execution, and secret disappearances that followed. Their dismay over the regime’s human rights violations led to a moral awakening and a

heightened appreciation for democracy. Differences continued following Chile's transition to democracy in 1990. Some believed that the consolidation of democracy required a deliberate policy of ignoring past human rights violations, and that "the past and its unredressed grievances are best buried by deliberately forgetting them, by sweeping them under the carpet, by drawing a thick line between past and present, turning around, and walking resolutely off into the future" (Biggar 2003: 4). Proponents of a policy of forgetting argued that Pinochet, the military, and their social base of supporters and sympathizers remained too strong to risk antagonizing. In contrast, other Chileans insisted that the horrors committed under the military regime created an urgent moral need for justice.

Stern uses these individual stories to illustrate the broader, collective memory frameworks that competed with one another to define the "true" reality of the dictatorship and analyzes how certain historical memories became emblematic. In doing so, he examines the processes by which people came to agree upon certain memories as true representations of the past—not just for themselves, but for broader sectors of society. While the regime was able to use its control over the instruments of hard power to propagate its preferred memory of the past, opponents pushed their own memory truths, eventually convincing a majority of Chileans to identify with them. Even though the regime retained the support of an influential base, it lost the struggle for moral, social, and political legitimacy.

Stern's work therefore offers insights into Chilean politics before, during, and after military rule by examining the emergence, evolution, and conflict among different memory frameworks. In analyzing the struggle over memory, Stern simultaneously analyzes the ways in which the human rights community was able to challenge the prevailing narrative that the regime sought to promote, sensitizing more and more Chileans to the value of human rights and democracy. Although Stern leaves off his analysis in 1996-1997, when the continued power of Pinochet and his supporters encouraged the widespread belief that pursuing criminal justice was too risky, he sets the stage for subsequent events, including the indictment of Pinochet himself.

It is at this point that Naomi Roht-Arriaza takes up the analysis, exploring the factors leading up to General Pinochet's arrest in London in 1998 and the subsequent ruling by the House of Lords that he could be extradited to Spain to stand trial for crimes against humanity. Roht-Arriaza's book, *The Pinochet Effect: Transnational Justice in the Age of Human Rights*, uses the Pinochet case to illustrate what she describes as a new era of support for transitional justice, marked by a growing recognition that "peace without a reckoning with the past was merely an interlude between conflicts" (x). For Roht-Arriaza, the Pinochet precedent had profound implications in Chile and beyond, helping promote the idea of universal jurisdiction, "which gives the courts of any country authority to investigate and judge international crimes no matter where committed or by whom" (xii). For Roht-Arriaza, the arrest of the man who symbolized the military dictatorships of the 1970s and 1980s signaled a new era, kindling "new hopes in human rights advocates around the world" and giving new impetus to national and transnational prosecutions (170). Roht-Arriaza is herself one of those advocates, as a board member of several human rights organizations and a professor of international human rights law at the University of California, Hastings College of Law.

The authors, both of whom have personal connections to Chile, share an interest in the human side of their analysis. Stern focuses on ordinary individuals in order to illustrate the different ways in which Chileans think about their history. Roht-Arriaza focuses on key individuals whose actions helped make history. In doing so, both authors emphasize the potential that individuals, in

addition to collective actors such as human rights organizations, political parties, and the Catholic Church, have to change reality. As such, they reflect a constructivist approach—Roht-Arriaza explicitly and Stern implicitly. Constructivism posits that identities and interests arise through social interaction, forming collective knowledge and understandings. Identities, institutions, and interests arise out of this collective, inter-subjective process, giving rise to particular understandings and expectations about political and social reality. Although it may appear to the actors involved that their own understandings, expectations, and collective knowledge reflect objective reality, from the constructivist perspective, reality is shaped by the shared meanings that actors attach to objects and other actors (Wendt 1992: 396-399). Since different groups may construct different meanings, their interpretations of reality will vary and can change over time. At the same time, constructivists acknowledge that power and interest play an important role in determining which norms and understandings will prevail; prevailing norms generally reflect the institutional interests of powerful actors and reinforce prevailing institutional arrangements by legitimizing them (Thomas 2000: 121). Nonetheless, despite their self-perpetuating quality, constructivists insist that transformations in prevailing norms and institutions are possible.

Constructivist arguments are particularly useful in explaining the emergence of human rights policies and the impact that these policies can have, insofar as they emphasize the political power of norms and ideas and focus on explaining how those ideas are carried and diffused. According to one leading constructivist scholar, this process begins with “moral proselytizing” by individuals who seek to convince others to embrace certain principled ideas about how states should treat their citizens and how individuals should treat each other (Sikkink 1998: 518). These “norm entrepreneurs” work through non-governmental organizations and transnational coalitions to win broad acceptance for human rights norms. A critical part of this process involves persuading powerful actors to rethink their interests, viz. convincing them that the national interest is not furthered by supporting repressive regimes that violate the human rights of their own citizens (Sikkink 1998: 519).

These kinds of theoretical arguments are echoed in Stern’s historical analysis and Roht-Arriaza’s case study. Both scholars analyze the ways in which interpretations of reality have varied over time, both within and outside of Chile. They also examine how changes in underlying perceptions have shaped outcomes, looking at the ways that ideas are translated into political and economic pressures, considering not only the ideas espoused by hegemonic actors, but the opening space for alternative ideas. For Stern, this means focusing on the struggle by opponents of military rule to challenge official interpretations of reality and win support for human rights norms. For Roht-Arriaza, it means analyzing the cooperative efforts by national and transnational actors to pressure domestic courts in Europe and Latin America to investigate charges of human rights crimes and initiate legal proceedings, including extradition requests and indictments, thereby ushering in a “justice cascade” of new and expanded human rights cases (Lutz and Sikkink 2001; Roht-Arriaza: 210).

If reality is what we make of it, to cite a famous constructivist maxim, then change is possible (Wendt 1992). While powerful rulers may promulgate a hegemonic version of reality to suit their own ends, power alone does not dictate outcomes; legitimacy rests on winning over hearts and minds. For norms to be effective over the long run, they need to fit with the prevailing power structure as well as accepted moral principles. Although repressive regimes possess material sources of power, their systematic violation of human rights makes it difficult for them to convincingly claim that their rule adheres to moral principles. This means that the norms inculcated by authoritarian regimes will find only partial support. As Chile’s experience demonstrates, domestic opponents were

able to challenge regime norms, gradually winning stronger consensus and commitment for an alternative interpretation of reality. Similarly, pragmatic decisions to adopt a blanket amnesty for the human rights violations of authoritarian regimes appeared to be a logical policy for the transitional leaders of many democratizing states, but in the long run, growing internal and external pressure on behalf of human rights norms led to new norms and practices providing more accountability for human rights violations (Sikkink and Walling 2007: 444).

### **Battling for Hearts and Minds**

In *Battling for Hearts and Minds: Memory Struggles in Pinochet's Chile, 1973-1988*, Stern analyzes the evolution and contestation of different memory frameworks under military rule. Ultimately, he argues that Chile's democratization was made possible by a shift in collective attitudes that gave the political opposition the momentum it needed to negotiate a successful transition to democracy. This shift, in turn, depended on overcoming the fear that prevented Chileans from challenging authoritarian rule. From this perspective, Chile's transition to democracy was a contingent process that depended less on objective conditions than on subjective assessments of power and legitimacy. While such an approach offers valuable insight into the role of societal actors in democratic transitions, it tends to underplay the conditioning influence of socioeconomic structures and political institutions as well as the contingent choices made by political elites (Karl 1990: 6).

Stern begins his analysis by examining the 1973-1976 period, when state power was used to advance a particular justification of military rule that Stern labels "memory as salvation" (Stern 2004: 30). According to this memory framework, military intervention had been necessary to rescue Chile from ruin and violence; the junta's salvation mission was defended as stern yet fair, winning it the gratitude and support of respectable, patriotic Chileans. This cultivation of memory as salvation was in fact quite successful during these years, due not only to the regime's willingness to use repression and intimidation but also to the use of propaganda that emphasized the dangers of a violent Left. The regime justified its own use of repression through manipulated reports of attacks by armed leftist groups, which "encouraged moral indifference to persecution and cultural numbness as the secret police went about its ugly but necessary work" (Stern 2006: 53).

Opposition attempts to advance alternative memory frameworks initially met with little success, at least inside Chile. While exiles provided compelling personal testimonies and solidarity groups spread to various countries, human rights activists within Chile were "voices in the wilderness" (Stern 2006: 3). In order to transform their personal memories into emblematic memories that would resonate with broader groups in the population, grassroots activists and dissidents worked to create a documentary record that could be used to counter the regime's misinformation. A breakthrough came in 1975, when the story that the regime used to try to explain away the disappearance of 119 leftists was exposed as a lie (Stern 2006: 108-111). This demonstrated that disappearances were not isolated, individual events but part of a systematic campaign. This created what Stern refers to as a "memory knot," an event that demanded attention and heightened consciousness, forcing people out of their complacency and "unsettling reflexive everyday habits and euphemisms that foster numbing" (Stern 2004: 120). The unraveling of the regime's cover-up story thus became a new symbolic referent, giving strength to counter-official narratives that depicted the coup and subsequent military regime as a cruel rupture with the past, marked by violent persecution and moral awakening.

Memory therefore became an object of struggle, associated with appeals for truth, justice, and democracy. Even though the regime tried to silence activists, relatives of the disappeared launched street actions, engaged in hunger strikes, and called for international support. In doing so, they made explicit appeals to memory, linking legitimacy to the memory of those who were persecuted by the regime. Nonetheless, Stern argues that they came up “against a wall, an unmovable limit in the following they could attract,” as most people preferred to ignore the dirty war aspects of the regime (Stern 2006: 138). In the battle for Chilean hearts and minds, it took more than the determined action by activists and sympathetic institutions to pressure the regime. Labor protests spread as the government’s economic policies brought higher rates of unemployment. Cracks in the ruling elite emerged over the direction taken by Pinochet and his supporters. Chile was on the verge of war with Argentina and at odds with the Carter administration in the United States over its human rights record. The accumulation of these pressures pushed the regime to adopt a new approach, seeking to move from emergency measures to a set of permanent rules and institutions that would build a modern, prosperous, stable society. The new order was to be a “protected democracy,” which would grant a guardian role to Pinochet and the military, place policymaking authority in the hands of technical experts, and limit political participation to those who were deemed qualified. In addition, controversial aspects of the first years of military rule were to be relegated to the past. As the new civilian minister of the interior, Sergio Fernández, explained, “the humanitarian essence” of the government did “not harbor grudges and [knew] that pardon and forgetting must open new paths to the reunified fatherland” (quoted in Stern 2006: 148). Legally, this was to be accomplished through the 1978 amnesty decree that excused combatants in the dirty war. Culturally, this meant selectively erasing parts of the past and “closing the box that contained the dirtiness of the past” (Stern 2006: 148).

Given the regime’s use of extraordinary powers to dissolve “unqualified” social organizations and labor federations, together with a renewed cycle of violent repression aimed at political dissidents and labor organizers, the growth of a powerful, mass-based opposition after 1983 is striking. In contrast to the “suffocating culture of fear” that characterized the earlier period, anti-government protests came to encompass growing numbers and different types of protesters (Stern 2006: 285). This led to a new sense of confidence among those who opposed the regime and rejected its efforts to wipe the slate clean on past human rights violations. Stern points to a critical event of May 1983, when a planned national strike was deemed too risky and replaced by low-risk actions; the surprisingly widespread support for this campaign, which Chileans could support relatively anonymously by honking horns and banging pots at the designated hour, caught the government off balance and began to raise questions about the government’s strength. This was followed by massive street protests that took protest a step further, defying the regime with their “carnavalesque” atmosphere and invocation of forbidden slogans (Stern 2006: 257). Despite its use of force, the government was unable to prevent widespread publicity critical of the regime, including dramatic symbolic acts denouncing the regime’s use of torture. In addition, the government lost its monopoly over the interpretation of key events and symbols. Commemorations of September 11<sup>th</sup> were no longer tailor-made opportunities for the regime to reinforce support for the military; they “became a time for angry public clashes over meaning, remembrance and politics” (Stern 2006: 289).

As fear became less of a factor and Pinochet’s hold on power became more clearly contestable, memory conflicts became more of a mass experience. New groups experienced a moral awakening and broke their symbolic association with the regime. Middle and upper-class women, whom the regime had sought to win over by emphasizing a shared loyalty to family and nation, increasingly joined human rights activists and working-class women in their calls for democracy

(Stern 2006: 62-66, 273-276). Angry and alienated urban youth engaged in more aggressive protests, raising concerns among some regime supporters that the concentration of power in Pinochet's hands and his continued refusal to negotiate with the opposition were making matters worse (Stern 2006: 263-269).

Stern describes the “bursting apart of official Chile” that began in 1983 as a “memory war” and argues that it called the legitimacy of the regime into question, rendering an apparently stable regime suddenly vulnerable (Stern 2006: 250). Stern uses this to show that political and cultural legitimacy is not simply imposed from above, but influenced by bottom-up social dynamics as well. In addition, Stern argues that mediating institutions, including the media, political parties, and the Catholic Church, worked to challenge the regime's control. The media's role in disseminating information and validating certain points of view made journalists key players in the country's memory wars. The regime certainly used its control over the media to put its desired spin on the news. When events became too sensitive, it either avoided coverage or stigmatized the victims. Stern describes how this approach began to break down after 1983. Once again, the strength of the regime proved more apparent than real. Tight government control over official media and broadcast news limited the credibility of those sources. As “even conservative journalists lost confidence in the regime's version of contentious events,” alternative media found a growing audience (Stern 2006: 353). Investigative reports, such as exposés on corruption and confessions by security agents, gained a large readership and strengthened dissident memory frameworks.

Criticisms of the regime spilled over into the political sphere, as political parties from the Center and the Left sought to use popular protests to bring down the regime. The *Alianza Democrática* (Democratic Alliance), comprised of Christian Democrats, Socialists, Radicals, and a number of smaller political factions, hoped that popular protests would create sufficient pressure to force regime supporters to negotiate an end to the dictatorship. Leftist parties within the Alliance had reevaluated the legacy of Allende's government, acknowledging failures in its economic policies and in its inability to forge an alliance with Christian Democrats. This “renovated Left” accepted the continuation of free market policies and joined Christian Democrats in pushing for the restoration of democratic rule (Silva 2009: 185-186). A rival coalition on the Left, the *Movimiento Democrático Popular* (Popular Democratic Movement), believed that nonviolent civil disobedience was not enough to topple the dictatorship and refused to rule out armed rebellion. Violence by elements from this part of the Left, including an attempt to assassinate Pinochet in August 1986, played into the hands of regime hardliners who were not interested in dialogue and sought to exacerbate differences between opposition moderates and radicals. Yet even though hardliners sought to use fear of armed confrontation to justify iron rule and dismiss human rights concerns, Stern notes that this argument was much less credible in 1986 than it had been in 1973. Having had thirteen years to “save” Chile from disorder and violence, the regime increasingly appeared to be the cause of problems rather than a solution to them (Stern 2006: 326-328).

Although the regime retained the instruments of hard power and the support of an influential base, it lost its cultural hegemony. The regime continued to have considerable advantages: it could use force to suppress dissidents and censor their speech; it could use official media to project a positive self-image; it enjoyed strong rates of economic growth (although this was marred by a high rate of poverty and stark inequalities); and it was able to use patronage spending to attract support. Nonetheless, the opposition was able to successfully counter these advantages, mobilizing Chileans to vote “no” in a 1988 plebiscite on Pinochet's continued rule. For Stern, the key to the opposition's success lay in its ability to draw attention to the “terrible truths” of the dictatorship

without reinforcing a sense of fear and helplessness (Stern 2006: 366). This was accomplished most notably, according to Stern, in the opposition's television spots that used humor to overcome fear and projected a moderate, mature, professional image that reassured skeptical Chileans that change did not need to mean disorder or instability.

Stern's analysis ends with the description of an "unforgettable memory moment" when opposition leader Ricardo Lagos pointed an accusatory finger and directly criticized Pinochet on television (Stern 2006: 378-381). The significance of this taboo-breaking behavior lay in its fearlessness—a critical step since "one has to unlearn the mystery of omnipotence—and unlearn adaptations to life under a concentrated power that draws boundaries on public dissent" (378). Ultimately, the battle for hearts and minds was not only a struggle over memory and legitimacy; it was also a struggle to liberate Chileans from the fear that gripped and divided them.

As constructivists point out, collective understandings can become reified over time, making change seem unimaginable. Because people hold clear expectations about what can and cannot be done, their behavior tends to reinforce established practices. Nonetheless, social practices and institutions are a product of collective understandings and, as such, can be changed. Challenging the seemingly omnipotent regime, like defying the seemingly untouchable Pinochet, became "thinkable" once enough people changed their attitudes about what was possible. For Stern, this shift arose out of the struggle between rival representations of the past and polarized attitudes about the direction the country should take in the future. While Stern acknowledges that changes in collective attitudes only became possible with changes in the underlying social, economic, and political context, he focuses much more heavily on collective attitudes than on the social structures that shape and constrain them. Stern does note that the demonstrated staying power of the military regime, which proved capable of stimulating high rates of growth and winning significant levels of public support, forced the transformation of the center-left. He also recognizes that the transformation of the center-left enabled it to offer a moderate alternative that came to be accepted even among former regime supporters. Yet Stern does not analyze the elitist nature of the transition, in which opposition political leaders preferred elite negotiation over more direct interaction with the citizenry (Wilde 1999: 476-477). In failing to do so, he may be compensating for the dominant focus on the role of elites in earlier scholarship on transitions to democracy (see, for example, Schmitter and O'Donnell 1986; Lopez-Pintor 1987; Malloy 1987; Higley and Gunther 1992). While an analysis of the influence of societal actors and cultural changes is critical for understanding how and when a democratic transition became possible, it is also critical to assess the role of elites in shaping the specific terms of the transition.

Indeed, without analyzing the elitist nature of Chile's democratic transition, it is hard to understand why the democratic system that emerged in 1990 was so highly constrained. Leaders of the opposition *Concertación de Partidos por la Democracia* (Concert of Parties for Democracy), the coalition of parties that grew out of the "no" campaign, agreed that only minimal changes to the 1980 Constitution would be adopted. In doing so, the Concertación changed from an opposition movement to a "constitutionalist force" that accepted the institutional order created by the military regime (Brunner 1990: 7). Even though Concertación leaders reserved the right to introduce changes in the future, they agreed to do so according to the terms of the Constitution itself. Given the provisions built into the Constitution that made amendment difficult, officials from the military regime and conservative party leaders were confident that they would be able to block changes that they opposed. The effect of the transition agreement, which allowed the armed forces to retain significant power and political influence, was to ensure that the transition would not signify a

profound break with the previous order, or in other words, that it would be a “pacted” transition (*transición pactada*) (Godoy Arcaya 1999: 93-105).

### **Reckoning with the Past: The Pinochet Effect**

Although Pinochet was forced to step down as president, the terms of the transition stipulated that he would remain commander-in-chief for the next eight years and become a senator for life thereafter. Together with the system of appointed seats in the Senate and the binomial electoral system, this allowed conservative elements to block legislation that they opposed. Meanwhile, continuity in judicial appointments ensured that the courts would not initiate legal action against regime officials. Although “documenting and coming to terms with human rights violations under military rule played an important role in the political legitimacy of the ruling Center-Left coalition that steered Chile’s democratic transition,” post-transition Chile remained deeply divided over truth and justice issues (Stern 2004: 128). The rival memory camps that characterized Chile under military rule remained, as Stern illustrates through interviews conducted in the mid to late-1990s with Chileans from different social strata and ideological perspectives. Chile’s “moral schizophrenia” resulted in an impasse, in which efforts to take “the logical 'next steps' along the road of truth and justice” were “exceedingly slow and arduous,” with frequent setbacks along the way (Stern 2004: xxix).

Although Stern “made no pretense of building a scientifically valid cross-section of society,” his interview data correspond to survey research conducted by social scientists (Stern 2004: 228). Carlos Huneeus, executive director of the Center for Studies of Contemporary Reality and professor at the University of Chile, found in his public opinion polling that some twenty-four percent of Chileans believed that Pinochet was one of the best Chilean presidents of the twentieth century, with higher levels of support among older and wealthier Chileans; among supporters of conservative parties, approximately two-thirds agreed with this view (Huneeus 1997).

More generally, Chilean scholars Jorge Manzi and Roberto González found that attitudes toward forgiveness and reparation varied according to the political orientation of those surveyed (Manzi and González 2007). Whereas respondents who self-identified with the left or center-left looked at the reconciliation process from the perspective of the victims, calling for reparations but not necessarily urging forgiveness, respondents who self-identified with the right or center-right were more likely to focus on “the need for all parties to work for reduction of tension by expressing some responsibility for the conflict” (Manzi and González 2007: 86). Similarly, demands for truth about past violence coincided with calls for reparations among left-wing respondents but were not accompanied by calls for forgiveness. Among right-wing respondents, on the other hand, demands for truth about past violence coincided with calls for reparations as well as forgiveness. The authors explain that left-wing respondents saw themselves as victims and wanted to see representatives of the right admit to and express remorse for their actions. Right-wing respondents, in contrast, did not see themselves as the only culpable group and wanted the left to express remorse as well. Although a number of respondents on both sides favored truth-telling, they had very different assumptions about what kind of truth such a process would yield (Manzi and González 2007: 87).

While Stern provides evidence that Chile remained deeply divided about the past, he does not place blame for this in the way that other scholars have. Alexander Wilde, for example, argues that Concertación governments gave up trying to foster social reconciliation and became essentially reactive to “irruptions” that broke upon them (Wilde 1999: 477). Manuel Antonio Garretón argues

that the administrations of President Patricio Aylwin (1990-1994) and Eduardo Frei Ruiz-Tagle (1994-2000) missed opportunities to reform institutions and dislodge authoritarian enclaves, thus allowing a “low quality democracy” to continue (Garretón 2003: 146). These authors hold open the possibility of human agency, implying that the decision not to pursue transitional justice was a contingent choice rather than a practical necessity. While Stern does not engage this debate, Naomi Roht-Arriaza does, analyzing the actions taken by foreign judges who worked with lawyers, exiles, human rights activists, and diaspora communities to break through the stalemate.

Roht-Arriaza provides a narrative of the individuals and institutions involved in initiating legal action in Spain against Argentine and Chilean military leaders on charges of genocide, terrorism, illegal detention, disappearances, and child kidnappings. Although she describes some changes in international law, including limited support for the concept of universal jurisdiction, she notes that these changes came up against the “age-old rule” that sovereignty restricted the power of national courts to act outside their own territory except when their own citizens were affected (Roht-Arriaza: 7). Nonetheless, Spain proved to be an unusually conducive venue for bringing forward cases and pushing for trials. Complaints could be brought forward by “popular accusers” without a direct personal connection to the crimes and investigations could proceed so long as the judge assigned to the case was willing to proceed. Fortuitously, the judges in these cases proved to be willing to invoke international law and to continue with their investigations, even when this proved to be politically inexpedient. Moreover, even though the Spanish government ultimately came to see the cases as a diplomatic embarrassment, the general expectation that the legal proceedings were doomed to fail limited political pressures against the investigations in the critical early stages. The fact that these cases arose when Spain was in transition from a Socialist to a conservative government also meant that no one in the executive branch bothered to get involved. Indeed, much of Roht-Arriaza’s account emphasizes the good fortune that the right individuals were in the right place at the right time (Roht-Arriaza: 15-16).

Fortune also dictated that Pinochet happened to travel to London despite the nagging threat of the Spanish investigation, although Roht-Arriaza suggests that Pinochet’s disdain for democratic institutions and inflated sense of his own power led him to tempt fate (Roht-Arriaza: 2). Yet Pinochet had traveled to the United Kingdom in the past without incident. What was different this time was the quick action by British human rights activists, who successfully petitioned Spanish judge Baltasar Garzón to issue an order for Pinochet’s arrest. As in Spain, British judges were amenable to considering arguments based on international law, issuing the precedent-setting ruling in March 1999 that Pinochet had committed extraditable crimes and his immunity as a former head of state did not extend to such crimes. Once again, Roht-Arriaza emphasizes that legal processes took on their own momentum after the British government, mistakenly expecting that the courts would deny the extradition request, initially left the matter to the courts (Roht-Arriaza: 35-37).

The legal precedent established in the Pinochet case signaled the acceptance, at least under some circumstances, of transnational prosecutions based on universal jurisdiction. It acknowledged limits to immunity and insisted that accountability was not simply a matter for domestic actors to decide. As such, the Pinochet case both drew upon and advanced international law (Roht-Arriaza: 197-198). It was made possible by the determined action of human rights activists and lawyers as well as by the benign complacency of foreign governments, which saw political benefits in demonstrating their commitment to international law and justice and expected few costs, since they did not expect legal action to get very far. As Martha Finnemore and Kathryn Sikkink describe in their theoretical analysis of international norm dynamics and political change, the emergence of new

norms starts with the efforts of dedicated “norm entrepreneurs” who push for a change in existing norms and practices (Finnemore and Sikkink 1998: 898). At first, support for new norms is based on calculations of self-interest, but over time, states and other actors may come to internalize the norms, adhering to them out of a sense of appropriateness.

Roht-Arriaza’s analysis therefore shows how transnational actors have been able to advance new norms. Even when court cases did not result in successful prosecutions, the idea that the powerful actors who planned or committed systematic human rights crimes should be held accountable suggests that there has been a “globalization of justice” (169). At the same time, she admits that there are important limits to transnational justice. The two countries whose courts offered the broadest scope for invoking universal jurisdiction, Spain and Belgium, subsequently backtracked when high-profile cases against government officials in powerful states like Israel and the United States triggered heavy pressures against the Spanish and Belgian governments. After the United States threatened to move NATO headquarters from Belgium because of charges brought by Iraqi exiles against members of the US administration and military command, Belgium modified its universal competence law. Whereas the Belgian government previously did not require the defendant to be present in order to open an investigation, under a new “presence of the defendant rule,” it has become much more difficult for courts to investigate, issue warrants, and request extraditions (Roht-Arriaza: 192). In both Spain and Belgium, an additional requirement that judicial action must have a national connection “in effect negates the whole point of universal jurisdiction” by restricting legal action to cases where the victim was a Spanish or Belgian citizen (Roht-Arriaza: 191). This point was reinforced as recently as June 2009 when the Spanish Parliament passed legislation aimed at “ending the practice of letting its magistrates seek war-crime indictments against officials from any foreign country, including the United States,” on the basis that no Spanish court should be able to judge officials of foreign countries except when the victims are Spanish or the crimes were committed in Spain (Worthington 2009).<sup>1</sup>

Despite these setbacks, Roht-Arriaza emphasizes the value of transnational prosecutions, pointing out that they can act as a catalyst for changes within the countries where the crimes occurred. In order to show this, she dedicates several chapters to judicial investigations in Chile, Argentina, and elsewhere. According to Roht-Arriaza, prior to the Spanish investigation that began in 1996, the idea that Pinochet could be taken on was considered unthinkable; it took foreign action to stimulate a courageous first complaint against Pinochet in Chile. Pinochet’s arrest in London shattered his aura of immunity for good, leading to hundreds of complaints filed with the Chilean judiciary (Roht-Arriaza: 68). Roht-Arriaza acknowledges that it took changes in the courts themselves to launch judicial investigations and trials, but she argues that Chile needed external pressure to open up the courts (72, 210).

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<sup>1</sup> Interestingly, this has not stopped Spanish Judge Baltasar Garzón from pressing ahead with a case against six senior Bush administration lawyers for implementing torture at Guantánamo, arguing that US Attorney General Eric Holder’s decision to launch an investigation into the matter was only a first step that “does not really address the actions of those who were truly responsible for its violation.” (Quoted in Worthington).

Although Roht-Arriaza points to judicial reform and international pressures as the factors that made it possible to investigate crimes involving Pinochet and other regime officials in Chile, she also notes the pivotal role played by individuals like Judge Juan Guzmán Tapia, who found a way to circumvent the 1978 amnesty law by ruling that disappearances constituted a continuing crime and were therefore not covered. Working together with families of the victims, Guzmán moved to revoke Pinochet's parliamentary immunity in the notorious "Caravan of Death" case, opening the door to the latter's indictment in 2001. This began "a seven-year game of cat-and-mouse between the humiliated general and the Chilean judiciary...Time and again the courts repealed the general's senatorial immunity and time and again Pinochet's lawyers argued that he was medically unfit to stand trial" (Vogler 2006). Although Pinochet was able to avoid prosecution up until his death in 2006, many of the officials that served under him have been found guilty and sentenced. For Roht-Arriaza, Chile has achieved "a rough kind of justice" (96).

Inspired by the Spanish investigation and Pinochet's arrest, other Latin American countries began to revisit the issue of human rights as well. In Argentina, amnesty laws and a compliant judiciary had put an end to early legal action against military officials accused of war crimes and human rights violations, but in the late 1990s, this began to change. In 1999, after the Inter-American Commission on Human Rights ruled that Argentina's amnesty law violated complainants' rights, the government acknowledged a "right to the truth" and assigned special prosecutors to help with this process. "Truth trials" were held in various cities to uncover additional information about human rights crimes, accumulating evidence for possible future criminal prosecutions (Roht-Arriaza: 103-108). Courts overruled military plans to modify sites where prisoners had been detained, arguing that was impermissible because evidence of crimes might be found there and because such places were "an expression of the nation's memory" (Roht-Arriaza: 108). Investigations into cases that were exceptions to the amnesty laws—stolen children, extortive kidnappings, crimes committed by individuals not in the security forces—began to undermine these laws and opened the door to their repudiation by the courts and legislature (Roht-Arriaza: 113).

Roht-Arriaza ends her examination of the Argentine experience by noting the decision made by the Supreme Court in June 2005 to overturn the country's amnesty laws, following the legislature's annulment of this legislation in August 2003. To explain this change, she points to growing internal and external pressure, especially from foreign judges and governments, as well as changes within the Argentine judiciary. The process she describes follows a "boomerang" dynamic linking Argentine actors with investigating judges and courts in European countries to put pressure on the Argentine government and judicial system (Roht-Arriaza: 210). Argentine human rights groups and lawyers for family members of victims realized that they were unlikely to find justice in domestic courts, so they sought out foreign courts to bring their cases. The threat of foreign trials increased incentives to reopen domestic judicial proceedings, since many of the accused preferred trials at home to foreign trials.

According to Roht-Arriaza, this innovative strategy succeeded thanks to the determination of human rights activists in Argentina and abroad, including a significant number of lawyers with knowledge of and access to foreign tribunals. Indeed, lawyers and judges come in for special praise in Roht-Arriaza's account. She sees lawyers as particularly valuable participants in transnational advocacy networks insofar as they form an "epistemic community, whose power derives from specialized knowledge common to the community's members" (Roht-Arriaza: 213). In addition, they can tap into the "prestigious and accepted" language of law, appealing to judges' professional

inclination to consider appeals based on this familiar language, including laws of war and international human rights law (Roht-Arriaza: 214).

Roht-Arriaza depicts politicians, on the other hand, as most helpful when they stay out of the way. The judicial innovations that led to new transitional justice mechanisms were possible in many cases thanks to government neutrality or inattentiveness during critical early stages. Later, when the investigations became embarrassing and inconvenient from a diplomatic perspective, political interference was more difficult (Roht-Arriaza: 205). In addition, Roht-Arriaza argues that transnational investigations are easier to initiate in legal systems where victims can bring cases forward and magistrates are less subject to political control (205). In Roht-Arriaza's account, elected politicians are not the main impetus behind renewed calls for justice. To the extent that they play an active role, they are notable for their efforts to quash cases—as the Senegalese president did when an investigating judge sought to bring charges against former Chadian dictator Hissène Habré, who was living in exile in Senegal (Roht-Arriaza: 181-183). Former Argentine President Carlos Menem provides another example of political interference through his manipulation of the Supreme Court leading up to the court's majority ruling to uphold amnesty legislation. Even Ricardo Lagos, the same Socialist leader whose dramatic challenge to Pinochet helped galvanize Chileans to vote “no” in the 1988 plebiscite, is criticized for pressuring center-leftist politicians in Chile, Spain, and the UK to block judicial action against Pinochet in order to prevent unwelcome disruptions during his 1999 campaign for the presidency.

Yet this overlooks the ways in which partisan politics worked to create an incentive for a more vigorous human rights policy. Although the Concertación government was criticized by human rights activists for its efforts to secure Pinochet's release, it is also important to recognize that the coalition government felt obliged to extend a promise to pursue justice nationally. Roht-Arriaza suggests that if Pinochet had returned to Chile quietly and “generally act[ed] like someone deserving of medical and humanitarian leave,” the government would likely have blocked judicial action against him (67). However, this ignores the challenges and incentives facing the government, which saw Pinochet's arrest not only as a diplomatic inconvenience but also as a strategic opportunity. Keeping Pinochet in the spotlight and reminding voters of the human rights violations of the military regime had long been an effective means of rallying supporters (Evans 2006: 213). By agreeing with conservative critics that Pinochet should be returned to Chile, but also calling for his prosecution by Chileans, the government reopened the human rights issue, challenging the tacit bargain that had been made in the transition to democracy to forego punishment for human rights violations. Government spokesmen did not defend Pinochet, calling the acts he was accused of “deplorable,” but insisted on Chile's right and responsibility to “judge crimes committed in Chile by Chileans” (Evans 2006: 230-231).

Changes on the political right reinforced this government strategy. Shifting fortunes of Chile's two leading conservative parties meant that party officials from the pro-Pinochet Independent Democratic Union (UDI) came to see an opportunity to break out of the party's minority status. To do so, however, meant reaching out to the center, breaking ties with its authoritarian past. This was clearly demonstrated by the UDI's candidate in the 1999 presidential elections: Joaquín Lavín, a civilian adviser to Pinochet during military rule, treated Pinochet as a *persona non grata* and made time to visit relatives of disappeared detainees (Evans 2006: 233-234).

These cases show that international norms and actors have come to play an increasingly active role in promoting human rights. Transnational investigations have helped to encourage

“domestic judges [to grapple] with international criminal law and procedure, internalizing and domesticating this law and the human rights and humanitarian law that comes with it” (Roht-Arriaza: 207). At the same time, however, it is also important to analyze underlying shifts in the domestic political context. The government did not merely react to external events, but put its own stamp on subsequent developments, willing to reopen the issue of human rights for both principled and instrumental reasons. Previous changes within domestic political institutions— including retirements and replacements in the judiciary and military—paved the way for new court rulings and military responses. Strategic considerations on the part of conservative political parties created a context in which once “untouchable” figures no longer enjoyed the same level of support they had previously enjoyed. All these factors meant that “the public view of the need for, or inevitability of, the trade-off of amnesty for peace has been forever changed (Roht-Arriaza: 117).

### **Breaking Through the Impasse? Prospects for Reconciliation**

In his study of the construction and evolution of contrasting memory frameworks in Chile from 1973-1988, Stern explores the impasse that eventually emerged between memory and forgetting, accountability and immunity. For Roht-Arriaza, Pinochet’s arrest in 1998 and the transnational judicial investigations that preceded and followed it broke through the impasse. They did this by prompting investigations and prosecutions at the national level, jump-starting the stalled process of accountability, and triggering public debate. This, in turn, offers the “best starting point for real reconciliation” (Roht-Arriaza: 224).

Though the competing memory camps that divided Chile from 1973-1988 have faded, they still exist. Angry differences erupted following Pinochet’s death in December 2006, as rival crowds gathered to mourn and to celebrate, with “a joyous throng chanting and singing for a loathed dictator at last dead, against inconsolable tears and fury that the hospital’s flag hadn’t been lowered to half-mast” (Vogler 2006). The government’s decision not to grant the general a state funeral met with protests from die-hard Pinochet supporters, while its decision to allow him to be buried with military honors triggered criticisms from Pinochet’s opponents. In December 2008, following a ceremony initiating the construction of a new Museum of Memory and Human Rights in Santiago, critics on the right voiced concern that the museum will present a biased view of history and will fail to acknowledge errors on the left that led to the 1973 coup. Meanwhile, critics on the left denounced any move to establish shared responsibilities for the coup and expressed their concern that the museum would downplay the suffering and resistance of victims of the dictatorship in the name of reconciliation and national unity (Estrada 2008).

Despite the persistence of angry differences, however, most Chileans have moved on. Many of Pinochet’s loyal supporters abandoned him after persistent rumors of his expropriation of public funds and solicitation of private commissions on arms sales were confirmed in international press reports in 2004. The undeniable fact that Pinochet had amassed millions of dollars in secret offshore bank accounts discredited a man who had claimed that he would leave office with less money than he arrived with, and opened up new trials on charges of tax fraud and money laundering. Of course, a few Pinochet supporters and aides remain who want to burnish his image, hoping that a new museum in his honor will allow “justice to be done” (Gallardo 2008). For most of the right, however, Pinochet became an embarrassing remnant, a nagging reminder of an unpleasant past that most conservatives would like to leave behind. The conservative parties that supported the candidacy of Sebastián Piñera in the most recent presidential elections actively sought to distance their candidate from the ghost of Pinochet, portraying him as a “new conservative” and denying

accusations that he collaborated with the military regime (Rose 2009). Even though Piñera's decisive victory in the January 2010 run-off election prompted some pro-Pinochet demonstrations, the fact that the leading candidates from both the right and the left disavowed the military regime, whether out of principle or strategic considerations, shows that Chile has come a long way in transcending the divisive memory camps that Stern describes. Although some continue to express gratitude for the military coup and others prefer to close the door on the past, most have come to agree on the importance of revealing the truth about the crimes of the dictatorship and achieving some kind of justice. This shift in public opinion has produced a general consensus about the importance of human rights. As President Bachelet expressed at the ground-breaking ceremony for the new human rights museum:

There may be different interpretations of the causes for the breakdown of democracy, there may be different interpretations of the legacy of the authoritarian regime, but there cannot be differences as to the human cost that Chile paid.<sup>2</sup>

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<sup>2</sup> Estrada 2008.

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