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Luciano D. Laise

Staff researcher. Argentine Council of Scientific and Technical Research (Consejo Nacional de Investigaciones Científicas y Técnicas, CONICET)

Argentina

lucianolaise@conicet.gov.ar
ORCID No. 0000-0003-4249-5948

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Turning the Page in the Face of Radical Evil: A Critical Reappraisal of the Mignone-Nino Debate on Forgiving Crimes Against Humanity*

Pasar la página ante el mal absoluto: una revisión crítica del debate Mignone-Nino sobre el perdón de los delitos de lesa humanidad

Abstract: This article aims at reconstructing and discussing the Mignone-Nino debate. Mignone, on the one hand, argued for the necessity of a robust punishment of all the military involved in the illegal repression of the last civilian-military dictatorship. Nino, on the other hand, maintained the possibility of a thin punishment that included only the highest military ranks. And, by the same token, Nino held that middle and lower ranks should be forgiven as they were justified because they acted under due obedience. He rejected the possibility of a robust punishment as that would result in a serious risk to the novel constitutional democracy. History turned out to be on Nino's side. However, the minute the military lost its power, the forgiveness policies ended up reverted. This article outlines the grounds for a forgiveness policy based on four steps which would allow to overcome evolving circumstances.

Keywords: amnesty; transitional justice; authoritarian government; theory of punishment.

Resumen: Este trabajo pretende brindar una reconstrucción y discusión crítica del debate entre Mignone y Nino. Por una parte, Mignone defendía la necesidad de un castigo amplio a los militares que estuvieron involucrados en la represión ilegal de la última dictadura cívico-militar argentina. Y, en la vereda opuesta estaba Carlos Nino, quien abogaba por un castigo limitado a los máximos responsables de la represión ilegal y, además, defendía la necesidad de una amnistía para quienes cometieron tales crímenes bajo una cadena de mando militar. Nino sostenía que la imposición de un castigo amplio por crímenes de lesa humanidad pondría en peligro a la subsistencia misma de la democracia constitucional. La historia le terminó dando la razón. Sin embargo, tan pronto los militares perdieron fuerza o poder, se revirtieron esas políticas del perdón. Con el fin de articular una estrategia de perdón más estable ante cambios de circunstancias que aquella elaborada por Nino, este artículo se dirige a esbozar las bases para una política del perdón de cuatro pasos.

Palabras clave: amnistía; justicia transicional; gobierno autoritario; teoría de la pena.

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1. Are Circumstantial Reasons Enough to Warrant the Forgiving of Crimes Against Humanity?

The legacy received by a democratic transitional government usually includes, among other things, a huge number of complaints for serious violations of the most basic human rights (Edelenbos, 1994, pp. 5-6). To the disadvantage of many inhabitants of the world, this issue is sadly very relevant these days in some countries of the region, such as Venezuela, Nicaragua, or Cuba. Once authoritarian regimes are extinguished, the subsequent administrations which wish to take over and build the foundations of a sound democratic regime will inescapably face a tough decision: What is the possible level of repression of crimes against humanity? Is any kind of forgiveness of those crimes essential for the nation to finally thrive?

The Argentine case was no exception. The Alfonsín administration (1983-1989) faced the challenge of facing multiple complaints for serious and systematic violations of human rights committed during the military administration that preceded it (1976-1983) with the purpose of fully recovering the principles of the rule of law (Malamud-Goti, 1990, p. 2). Forced disappearance of persons, torture, illegal detention and harassment, summary executions, and other crimes were committed in the so-called "dirty war" or "fight against subversion" (Nino, 1991, p. 2633).

Such crimes resulted in the challenge of facing radical evil, in the terminology used by Nino following Kant. This would refer to attacks against human dignity so extended, persistent, and organized that ordinary moral appraisal would be inappropriate (1996, p. vii). Therefore, following the path designed by Arendt, Nino characterized radical evil as a moral problem for which the set of concepts of current times is insufficient.

In this context, the debate between Carlos S. Nino and Mignone, Estlund, and Issacharoff is an interesting counterpoint to historically revise the problem of repression of crimes against humanity in contexts of transition to a constitutional democracy. On the one hand, Mignone *et al.* advocated a prosecution of crimes against humanity that was based on a firm and absolute application of the Criminal Code (1984, p. 125). Nino, on the other hand, was one of the designers of a limited policy to punish the ultimate responsible officers for such crimes, which released from liability any person who had participated in those crimes while complying with orders from superior officers with authority (1991, p. 2629).

The first claim I will make in this article is that the legal arguments used by Nino were insufficient and sometimes inadequate. His political argument, however, was successful in highlighting the classical submission of the law to architectural politics.[1] This implies that, as to serious violations of human rights, forgiveness is a demand of social peace which prevails over justice (Rivas, 2013, p. 81). Even more so, the forgiveness of those crimes reveals their relevance and need when strict justice is more destabilizing than indulgence (Standaert, 1998, p. 534).

I will claim that Nino was bright in noticing that what is forgiven does not have to do with a justice debt, but with the fact that it is essential. We forgive to be able to uphold a constitutional democracy which aims to leave behind a regime that has seriously and massively violated the most basic fundamental rights. However, the factual contingency faced by Nino's proposal is notably fragile to ensure the purpose of underpinning democratic regimes in the long run. This is the reason why I will defend a second normative thesis: I will claim that it is desirable

[1] The use of the distinction between governmental or architectural politics and agonistic politics refers to the one elaborated by García-Pelayo. This way, governmental politics has to do with the conduct of public affairs, and agonistic politics means the fight for power under certain rules which entail the recognition of the existence of the adversary; that is, the agonistic fight for power does not aim to annul the opponent, but to submit political power to certain pre-established rules (García-Pelayo, 1983).

to forgive, not because it is a victim's gift, far less a debt with the aggressor. Forgiveness does not equal acquittal of the offense, but it is required by the interruption of the cycle of violence in borderline cases or scenarios such as crimes against humanity. In other words, forgiving crimes against humanity is necessary when it is the only path for the wounds of the victims to heal and, in turn, for us all to be able to turn the page.

With the purpose of defending such argument, I will use a methodology combining constitutional theory and political theory, and with these tools I will go through this "roadmap." First, (i) I will reconstruct the legal and political arguments in Mignone *et al.* Then, (ii) I will critically appraise such arguments. Next, (iii) I will analyze Nino's answer to the challenges in Mignone *et al.* and then (iv) I will critically appraise Nino's considerations. Afterwards, (v) I will develop a proposal to deploy a policy of forgiveness which is capable of better resisting the change of political circumstances. Then (vi) I will examine the obstacles raised by the international law of human rights to the policies of forgiveness of crimes against humanity. Finally, (vii) I will make a conclusion including the main results in this article.

2. Mignone, Estlund, and Issacharoff's Arguments: Complete Intransigence in the Face of Radical Evil

2.1. The Legal Argument: Distrust of the Military Jurisdiction

Mignone *et al.* were strong opponents of any kind of amnesty or pardon regarding the crimes against humanity that were committed by the *de facto* administration. Their argument was based, first, on a criminal-procedure consideration: it was not appropriate for these crimes to be prosecuted in the military courts. The reason is that the military jurisdiction had proven to be biased and ineffective to handle the complaints for serious violations of human rights that were filed with them (Mignone *et al.*, 1984, p. 130). In fact, the military courts had rejected too much evidence to accuse the military because that evidence had been obtained by persons labeled "subversive" or associated with subversion (Mignone *et al.*, 1984, p. 130).

Also, the military courts had no competent subject-matter jurisdiction. This is so because the events had not taken place within the performance of service orders or duties inherent in military functions. Moreover, these were not events that had taken place at military facilities. Because the illegal-repression operatives took place in locations or sites which were not related to military activities and were several public facilities where the armed forces were not officially present (Mignone *et al.*, 1984, p. 130).

Mignone *et al.* also rejected the application of the military jurisdiction to these cases because that would have reintroduced "personal privileges." These privileges are forbidden in light of the right to equality enshrined in the Argentine Constitution. The authors actually conceded that the Argentine Supreme Court admitted the military jurisdiction, but this jurisdiction could not be subject to the defendants' personal conditions, such as being subject to a set of rights and duties established under the laws and regulations for the ranking officers of the armed forces (Mignone *et al.*, 1984, p. 130).

Moreover, the military jurisdiction was admitted, in the Argentine Supreme Court's jurisprudence, based on the nature of the actions committed, which had to be related to the performance of the behavior or duties inherent in military status (Mignone et al., 1984, p. 135). However, the illegal repression that took place during the dictatorship could not be included under those categories. Because even assuming the theory of the so-called "dirty war," there is the *ius in bello*. This means that there are certain legal provisions governing the manner in which armed conflicts take place, excluding the possibility of torturing adversaries, summary executions, and the forced disappearance of combatants.[2]

[2] The *ius in bello* is the right establishing the legal framework to conduct a war. An interesting discussion of these topics may be found in the

2.2. The Political Argument: The Punishment of Crimes Against Humanity Cannot Be Waived

The political argument on which Mignone et al.'s position rests is the impairment of the rule of law. Pretending that the case of crimes against humanity be limited to the top responsible officers and that these be tried by military courts entailed curtailing the rule of law to uphold social harmony.

But the rule of law could not be upheld with such sacrifices. Because the return of democracy was not seen as auspicious if military personnel was to be tried for ordinary crimes in military courts. This would have led to the imposition of personal privileges, which is forbidden under Article 16 of the Argentine Constitution. So the moderate, and even mild, repression of serious offenses against humanity did not have to do with legal or constitutional reasons, but with a calculation of political and partisan interests (Mignone *et al*., 1984, p. 126).

Mignone *et al.* recognized that unlike other transitions to democracy which were backed by occupation forces (Japan and Germany, for example), that was not true of Argentina. We were not, then, facing an adversary in the political arena who had been militarily defeated in the battleground. In fact, authors recognize that there have been six *coups d'état* since 1930 (Mignone *et al*., 1984, pp. 126-127). Moreover, the armed forces were still a political actor of significant weight in the political procedure of the Argentine democratic transition (Edelenbos, 1994, p. 13).

The protection of the rule of law did not allow to resort to any means which were contrary to the law in force. There could be no flexibilization of the intention to apply criminal law against those who committed crimes against humanity. *Dura lex, sed lex.* Law is applied to all on an equal basis, regardless of their civilian or military status (Mignone *et al*., 1984, p. 142). Because the unbiased application of the law is something that cannot be waived to set the foundations of the rule of law. The consequences of such operation should not be taken into account because they are matters which do not belong in law, but in politics.

In summary, the theory of punishment on which Mignone *et al*.'s argument is based relies on mandatory retribution. That is, in light of punishment or reproach for an offense which is seriously unjust, and no consideration should be made as to its effects or consequences on the community (Nino, 1991, p. 2621).[3] The consolidation of the rule of law depends on that the egalitarian application of the law *necessarily* prevails over utilitarian considerations. This means that, in the authors' view, the rule of law works as what Raz (1999) labeled the "absolute reason"; i.e., a reason which shall govern at all times, places, and circumstances because there is no reason which may overcome it (p. 27).

3. Critical Appraisal of Mignone's Legal Argument: It Is Not Appropriate to Do Justice, Even If the World Will Fall Apart

3.1. An Implausible Defense of Due Obedience as a Ground for Justification

The scope of application of due obedience entails legal actions and those actions which the subordinates did not know or could not have known that they were illegal (Mac Lean, 1998, p. 212). However, the crimes against humanity committed in Argentina—e.g., forced disappearance of persons, torture, illegal detention, summary executions—are a paradigmatic example of outright illegality. This made it difficult to build a defense based on due obedience, as this entails establishing that the person was not aware that the order received was against the law.

work of Hobbes and Schmitt, two major authors of political theory and legal theory who have discussed this issue (Tripolone, 2015, pp. 22-23). In a wider sense, beyond the authors cited, see also Tripolone (2022, p. 20).

[3] Nino uses the terminology *mandatory retribution* himself. With this, Nino tries to challenge the unconditioned duty to sanction any crime that has been committed.

In fact, it must be remembered that all concepts have a twilight zone; i.e., cases in which it is not clear whether or not we are dealing with a correct application of the concept in question (Hart, 1994, p. 214). But also any legal provision refers to easy cases, as Dworkin would answer; i.e., factual scenarios which are undoubtedly included in the semantic content of the concept under analysis. In our case, this is true of the expression "manifestly illegal orders" (Dworkin, 1967, p. 15). In this vein, it is surprising that somebody is not able to note that it is not possible to torture or kill somebody who has been clandestinely captured and who has not been sentenced by a criminal court of competent jurisdiction.

In summary, the order to torture or kill a person whose hands are tied with the purpose of extracting information from them is a paradigmatic or easy case of "manifestly illegal" orders. Therefore, a criminal defense based on "due obedience" as a cause for justification is faced with the implausible scenario that the military personnel were obeying a service order. Other causes for justification may apply, such as the necessity defense. We will elaborate on this below.

3.2. A Legal Argument Unrelated to Political Practice: Doing Justice, Even If the World Will Fall Apart

Nino (1991) claimed that radical retribution, i.e., the idea of criminally punishing all crimes against humanity by means of an ordinary trial would be highly inadvisable (p. 2622). While the defendants could use a cause for justification such as the necessity defense, as claimed by Mignone *et al.* (1984, p. 149), it would be very difficult to prove that in the universe of cases in question. In other words, many low-ranking officers would have been subject to a criminal procedure in which they would have had to articulate a defense in which it would have been impossible to furnish evidence backing their versions or narratives of the events.

Now, the low-ranking military personnel who tried to defend themselves against having committed a crime against humanity would have assumed a heavy burden of proof. This means that the defendant had to make an active or affirmative defense. More specifically, the defendant needed to provide an alternative case theory. That alternative theory had to offer a different account of the events at issue, furnishing evidence supporting the narrative with the purpose of accepting the crime prosecuted by the prosecutor, but with the purpose of rejecting that it was against the law as the defendant alleged that they were covered by a cause for justification (Chaia, 2020, p. 65).

In particular, this means that the defendant's defense against the charge of having committed a crime against humanity must establish that an act identified in the statutory definition of the crime was committed, but that act is not against the law not because the defendant acted within the framework of due obedience, but because the defendant had to choose the lesser of two evils. That strategy will be remarkably effective because it is a cause for justification that, by definition, excludes any action included in the statutory definition of crime which is against the law.

But establishing the necessity justification requires determining the existence of a danger which must be determined *ex post.* This means that such cause requires establishing that there was actually a danger to the legal interest of the person alleging the necessity justification (García, 2019, p. 635). In other words, alleging the necessity justification as a defense for low-ranking military personnel required proving that one's own life was actually in danger if extremely unjust orders were not obeyed.

Therefore, alleging this defense entailed an operative challenge: establishing a fact which was extremely difficult to prove. There seemed to be a focus on a retribution-oriented approach disregarding any social and political consequences. This was connected with what Nino called a maximalist or, actually, radical retribution approach; i.e., punishment imposed based on the pure violation of a duty (Nino, 1991, p. 2621). The imposition of punishment, in the

view of the Argentine scholar, has an additional function.[4] Punishment has to provide a benefit for the community, but without considering individuals as mere instruments for that purpose (Nino, 1986, p. 183).

It must not be forgotten that the armed forces were strongly against the possibility that all the military were tried for their actions during the last Argentine dictatorship (Malamud-Goti, 2019, p. 202). As a matter of fact, a majority of Raúl Alfonsín's cabinet of ministers had increased the tensions with the armed forces (Malamud-Goti, 1991, p. 6). In turn, this spike would have undermined the possibilities of strengthening a democratic political regime. In a nutshell, the rule of law could not be attained at the expense of significantly debilitating the constitutional democracy. Because significant breaks with the rule of law usually start with a fracture of the democratic order and the imposition of an authoritarian administration.

4. Nino's Reply: The Possible Good in the Face of Radical Evil

4.1. Two Legal Arguments: From the Unforeseeable Result of Judicial Interpretation to the Impracticability of the Defensive Strategies of Low-Ranking Military Personnel

Nino offered an answer to the problem of the serious and systematic violations of human rights that took place during the Argentine Reorganization Process (*Proceso de Reorganización Nacional*). His answers ranged between two levels of argumentation. First, Nino gave a series of legal reasons which could be reduced to two argumentative lines: (i) An attempt to avoid dispersion of interpretive criteria by means of an effort to focusing the repression of crimes against humanity on high commands of the military junta. (ii) An effort to avoid that those who committed crimes in a chain of command be incriminated as perpetrators of those crimes.

(i) The judicial interpretation of the scope of due obedience was one of Nino's highest concerns (1985, p. 228). This was based on Article 514 of the Military Justice Code, then in force, which provided as follows: "When a crime has been committed in the execution of a service order, the higher officer shall be have sole liability, and the lower officer shall only be considered an accomplice when there has been excess in the performance of such order." The above exception was too undetermined and, therefore, it was not unreasonable to imagine both a very restrictive interpretation as well as a very wide interpretation. A very restrictive reading would have entailed a high degree of impunity for some high military commands. And, conversely, an overly wide interpretation could have entailed liability for low-ranking personnel (Nino, 1985, p. 228; 1991, p. 2626).

(ii) The other legal issue identified by Nino was how impracticable the cause of due obedience was. Because there was a context of widespread fear among military and law enforcement personnel. In such circumstances, Nino claimed that the Alfonsín administration believed that establishing a necessity defense which would have allowed (or not) to disregard abhorrent orders would have been a too serious, superfluous, and unjust burden for many officers and non-commissioned officers (Nino, 1985, p. 228).

Both arguments will be criticized in later sections of this article. First, the argument of disparity of criteria presupposes a concept of "service order" which is not univocal as Nino's work would suggest. The argument about the practical challenges of the operation of the due obedience cause is more convincing, but can only be understandable in light of the political argument.

[4] For a systematic view of the philosophy of punishment advocated by Nino, see, by the same author, 1983.

In other words, Nino's best legal argument can only be justified by subordinating law to politics.

4.2. Political Arguments: The Possible Good or the Contingency of the Modest Possibilities to Punish Crimes Against Humanity

Nino's legal arguments are best understood in light of his political arguments. As a matter of fact, his desire not to prosecute every single perpetrator of crimes against humanity was based on the fact that such a course of action would have been destabilizing for the emerging and fragile democratic order that President Alfonsín wanted to consolidate or at least protect from the attacks stemming from certain military groups. At the end of the day, unlike Germany or Japan, Argentina did not have any occupation army which could provide support for the democratic transition. There was also no substantial part of the armed forces that was in favor of punishment for crimes against humanity (Nino, 1991, p. 2623).

The defense made by that author of the democratic transition process in Argentina was not based on normative reasons regarding what would be correct. Instead, he was trying to conciliate justice with maintaining a democratic political order (Nino, 1991, p. 2620). In fact, Nino opposed a radical approach to the repression of crimes against humanity. In his view, it was necessary to consider or appraise the consequences at play if going for pure retribution (pp. 2620-2621; likewise, Malamud-Goti, 1991, p. 8).[5]

Nino conceded that there were valuable consequences in the application of punishments in terms of general deterrence, but he did not reduce his conception of punishment to that (Nino, 1983, p. 290). Because imposing sanctions for serious crimes is an essential element to dissuade persons and groups in a society. The application of legal and criminal provisions communicates a highly important institutional message: nobody is above the law. It is about, as is generally the case with criminal punishment, reproaching a conduct to reassert that a victim's dignity is not lower than the perpetrator's dignity (Murphy and Hampton, 1988, pp. 125-126).

The reproach of crimes against humanity is not retributive except to the extent that it defends that the value of the rule of law is not an aim available by governmental activity. Prosecuting those crimes is actually as necessary as it is to consolidate the rule of law and, in turn, the democratic system (Nino, 1991, p. 2620). In other words, punishing for crimes is not an end in itself, but an instrument to uphold the constitutional democracy.

In this vein, it could be said that Nino was a pioneer before the landmark Argentine Supreme Court case *Bustos*: "doing justice, even if the world will fall apart, is not actually doing justice, but destroying the very foundations of the relations through which the so-called justice is sought" (CSJN, 2004, paragraph 14, majority opinion). Because Nino believed that the preservation of a democratic system operates as a necessary precondition to investigate and punish for serious crimes against humanity. Moreover, interrupting the democratic order is what happens just before massive and systematic violations of human rights (Nino, 1991, p. 2620).

The extent or measure of the forgiveness of crimes against humanity that Nino advocated had to do more with factual circumstances than with normative reasons. Because Nino accepted that a democratic-transition government had to undertake the duty to investigate and prosecute crimes against humanity, but only to the extent that such prosecution would not interrupt the transition. And, for the future, at the discourse level, the purpose was to underpin the democratic system and the substantial validity of human rights with the purpose of ensuring that massive violations of such rights were a thing of the past (Nino, 1985, p. 219).

[5] Murphy posits that retributivism by definition pays no attention to consequences. And that is so because it looks to the past with the purpose of imposing on the criminal the degree of punishment they deserve (2003, p. 42).

It was not that Nino claimed that forgiving crimes against humanity was something intrinsically just, but that such forgiveness was necessary as required by the circumstances of a democratic transition such as the one that the Argentine Republic had been experiencing. At the end of the day, the investigation, prosecution, and punishment of crimes against humanity was a means to consolidate the democratic regime, not an end itself. But this was so to the extent that the specific circumstances rendered a more intensely retributive approach impossible.

Therefore, Nino's perspective was contingent, as he himself was careful to highlight. This means that Nino's argument depended on a chain of specific conditions. Such circumstances, as we know, experienced a significant evolution by the beginning of the 21st century. As a matter of fact, once the military threat against the democratic order disappeared, there was a change in the human rights policy as to the repression of crimes against humanity.[6] In other words, criminal prosecution substantially increased when the Argentine armed forces stopped being an important political actor.

In fact, as from the beginning of the 21st century, Argentina deployed a wide policy of investigation and criminal punishment of multiple crimes against humanity. This is because the statutes pardoning and amnestying the military involved in the last military dictatorship's illegal repression were held to be unconstitutional (CSJN, *Simón*, 2005). This led to the criminal prosecution of the crimes committed within the dictatorship's illegal repression and, by the end of 2017, 864 persons had been sentenced for crimes against humanity (CELS, 2017).

5. Critical Appraisal of Nino's Legal and Political Arguments

Is it the case that in Nino one can find underlying elements which would justify the Copernican turn in terms of repression of crimes against humanity in the last twenty years? In the next section of this article I will present a negative answer to that question. Nino's theoretical proposal allows to *explain* such paradigm change from reconciliation to an approximation of radical retribution in terms of crimes against humanity (Beade, 2017, p. 294). Anyway, such proposal ended up being discarded, not only due to the change in human rights policies, but also because of how weak the legal arguments were.[7]

Interestingly, this would be due to a twofold movement. On the one hand, there is weak consistency at the purely legal level, and, on the other hand, there is a change in the environmental circumstances of agonistic politics. All of this paved the way for more retributive approaches which ended up crashing the reconciliation efforts in Nino's proposal. Let us see.

5.1. A Fragile Characterization of the Notion of "Service Order" Within the Military Chain of Command

Nino defended the justification of "obedience" as to the crimes committed by the military, to the extent that any such crimes had been committed by virtue of a service order issued by an authority with competent jurisdiction (Nino, 1985, p. 227). But this author works with a notion of "service order" which is purely formal or, actually, based on the analysis of the origin of formal characteristics. This way, whatever is ordered by a military officer is internalized by their junior staff as a "service order" due to the mere fact that it has been given by their higher-ranking officer. Moreover, what the higher-ranking officer provides is taken

[6] Romanin and Tavano (2019, pp. 424-428) offer an informative summary of the human rights policy in force starting in 2003.
[7] Fernández Fiks, for example, defends the idea that punishment for crimes against humanity, at the national and international levels, rests on a retributive view of criminal punishment (2017, pp. 248-249).

as a reason for action by the junior personnel, regardless of the substantial content.

The problem lies at a practical and operational level; i.e., the possibility of due obedience as a cause for justification rests with a characterization of the element "service order" which hardly fits what criminal theory understands by "due obedience." In particular, for the application of such cause for justification, first, it was necessary that the order was not manifestly illegitimate. This would be very unrealistic in the case of a person who has to obey an order to kill, with no prior trial, a person detained who is in a complete state of defenselessness (Sancinetti, 1987, p. 270).

Now, Nino's legal argument becomes more realistic when examining the second requirement of due obedience: the seriousness of the act committed. This happens when the order, not being manifestly against the law, entails committing a more serious act than the crime of disobedience. Actually, if an officer or non-commissioned officer would have refused to torture a person, that refusal may have amounted to the disobedient being tortured, imprisoned, or executed with no trial.

However, establishing this fact may have been very difficult in the context of crimes which were committed many years ago. Unlike what Mignone *et al.* alleged, criminal law theory may have sided with the military who committed the crimes against humanity, but the specific proof of obedience as a cause for justification would have faced significant obstacles in terms of evidence. In other words, the military may have raised a necessity defense, but it would have had to overcome the heavy burden of proving those facts.

Something that would have significantly complicated the proof of that necessity defense is that the military high command in the *de facto* administration would have made sure that all the military took part in brutal acts of repression, as was the case with French repression in Algeria (Malamud-Goti, 1991, p. 8). The purpose was that any and all military personnel would have had their hands stained with blood. That way, nobody would have had sufficient moral authority to accuse their comrades. In other words, if all were getting dirty in the same mud, all were going to be dirty alike. Nobody was in a condition to object to the impurity of the rest without, at the same time, revealing their own dirt.

5.2. Critical Appraisal: The Inevitable Subordination of Law to Architectural Politics

Nino's intervention in the democratic transition revealed the most problematic issue at the intersection of politics and law. My point is that democratic transitions reveal the sense and limit of the law to order a society. More specifically, Nino warns that the lessened application of criminal law to those who committed crimes against humanity is not a moral debt or, even less, a debt demanded by justice.

As a matter of fact, the victim or their family do not owe any forgiveness to their aggressor. And, for the same reason, the perpetrator cannot demand to be forgiven. This way, forgiveness appears as a mere gift or giveaway (Rivas, 2013, p. 45). What would seem to justify forgiveness is the increase of self-respect that may result in the victim or their family. However, the above is also strictly personal and individual and, therefore, depends on each person (Rivas, 2011, p. 360).

Now, it would not seem that victims of crimes against humanity would be willing to feel satisfied by forgiving the injustice suffered. Actually, the groups representing the victims of crimes against humanity were among the strongest opponents of the forgiveness processes pushed by the administration Nino defended with strength. His demands for justice admitted no claudication or clemency as to those accused of crimes against humanity. The Mothers of Plaza de Mayo believed that all should be imprisoned; from the high-ranking officers of the military dictatorship to the last soldier (Nino, 1985, p. 2635). This way, Nino's great success, consistent with his liberal ideas (Malem,

1995, p. 60),[8] was the impossibility of providing universal justification for the forgiveness of crimes against humanity. Moreover, he displaced the center of the debate from justice to the consolidation and maintenance of the emerging democracy. Actually, Nino succeeded in highlighting that repression of crimes against humanity was a means, and not an end in itself, for the consolidation of a democratic political regime.

This way, Nino ended up reintroducing the submission of law to politics in a dynamic or operational perspective. This would mean that the interpretation of the specific scope of certain guarantees and basic rights depends on the realization of a certain view of what is best for the *polis* (Goldford, 1990, p. 276). In fact, a determination of the content or extension of the rights of a victim of crimes against humanity which would underpin the very democratic system was not an acceptable possibility for Nino. Because it was not about reducing rights to utilitarian calculations or to expect each person to waive what they deserved with the purpose of favoring the general welfare (Nino, 1986, p. 183).

The point is that individual rights cannot be exercised as a collective sacrifice means reaching everybody; i.e., even the victims of crimes against humanity themselves. The prosecution of crimes against humanity focused on applying the Criminal Code to the letter could have resulted in court decisions which conformed to the law and at the same time were dangerous to maintain the new democratic regime. This course of action could have resulted in the extreme of unifying the military with the purpose of organizing a *coup* against the administration elected democratically and reinstating a dictatorship.

Nino's fears proved to be sadly real. A military uprising took place in December 1988, and in January 23 and 24, 1989 there was an attempt to seize La Tablada Infantry Regiment No. 3 by extreme leftist guerrillas. All in all, the uprising of certain military sectors was not enough to garner support to toll the administration. That, according to Nino, was due to the fact that the amnesty laws enacted by the Alfonsín administration dispelled the fears of most military personnel (1989, p. 137).

In any case, such uprisings were some of the main political triggers of President Raúl Alfonsín's resignation (Fair, 2010, p. 1). An additional trigger was an erratic macroeconomic policy which resulted in hyperinflation. In the end, the die was cast and the coin did not fall on the winning side. Alfonsín resigned five months before the end of his presidential term (June 1989).

6. "Turning the Page" as a Way of Healing for the Victim of Crimes Against Humanity

6.1. Beyond Giveaway or Debt: Forgiveness as a Healing Instrument

We have seen that, generally, forgiveness does not depend on justice, unless the victim has already been forgiven in similar situations or events. But a basic question remains. Why should those who committed crimes against humanity be forgiven? The positive answer requires conceptual clarification.

First, forgiveness does not entail approval of the offense committed (Spy, 2004, p. 39). What justifies forgiveness is the need to turn the page to move forward (Carroll, 2004, p. 93). In a political context, the purpose is to conciliate moral truth, self-control, empathy, and the commitment to fix the human bond that has been broken.

This entails a collective turn from the past, which does not ignore what happened, but also does not excuse it;

[8] For a discussion of the scope of the political liberalism on the basis of which Nino structured his work, see Oliveira, 2015, pp. 66-75.

a type of justice that is not limited to revenge, but which also does not detract humanity from the perpetrators of serious injustices. It is, then, a moderation of justice with the aims of rebuilding and strengthening the bonds among the members of the political community, instead of applying a justice as strict as blind which would end up destroying such community bonds (Shriver, 1995, p. 9).

In summary, maybe the biggest challenge amnesties of crimes against humanity face is not so much the justification of a policy of forgiveness, but their methodological articulation. In other words, it is essential to know why, when, and how to forgive. This point will be the focus of the next section.

6.2. A Roadmap: Four Steps Toward Forgiveness

Now, when a political community finally decides to forgive massive human rights violations, the following questions emerge: How to forgive crimes against humanity? Where to start with those healing processes? The answers I will provide in the following pages are aimed at sketching some guidelines for the entire transitional justice process or generally to establish amnesties.

The first thing to be borne in mind is that, before the offense, a deep distancing took place. This distancing led repressors to see each of the victims as something different; i.e., as individuals who were not equals and, then, did not deserve a minimally human treatment. As an example, I will briefly comment on one of the last interviews with General Videla, one of the three members of the military junta that ruled the country.

Videla explained why they called "final disposal" the method used in the dictatorship. It looks like the expression was meticulously selected: "These are two very military words and they mean removing something from service because it is useless. When, for example, one talks about clothes that are no longer used because they are worn out, those clothes go to final disposal. They no longer have a useful life" (Reato, 2012). The military junta, therefore, had fully depersonalized their adversaries.

The beginning was eradicating the personal condition of the adversary. This meant that the adversary was no longer seen as "somebody," and became a mere "something"—a "thing," in Videla's words. This approach made it psychologically easier to attack the adversary. Because the adversary no longer was another human being, but was seen as an obstacle to be eradicated as soon as possible for the unity of the Argentine nation to survive. In other words, it was impossible to engage in acts such as torture without previously dehumanizing the adversary. This paved the way for disposal without appreciating any feature of humanity.

That is why (i) the first requirement of a forgiveness process is to dismantle that distancing between aggressors and victims (Carroll, 2004, p. 96). The purpose is for the parties to recognize not only what happened, but how they felt about it. This includes all actors, victims and perpetrators, each of the persons actively involved in the aggressions and those who engaged in those aggressions based on a necessity justification. Both victims and perpetrators have to hear the reasons why each of them did what they did and how each of them felt about it. The purpose is to comprehensively understand what happened so that that does not happen again.

The intention to understand in depth what happened is highly complex when we are facing massive violations of human rights. Because, as noted by Arendt, understanding these instances of radical evil is insufficient with the array of categories and concepts used to assess ordinary social and political phenomena (Bernstein, 2002, p. 220). The key that Arendt (1973) found to interpret the meaning of radical evil, especially as to the totalitarian experiences in the 20th century, could be summarized in the superfluity of the human being; i.e., in the categorization of the human being as something disposable as if they were another thing in the world (p. 459).[9]

[9] For a systematic interpretation of radical evil in Arendt's work, see Bernstein, 2002, pp. 209-220

Repairing this distancing requires assuming the task of attaining a clear and precise narrative of what happened, from the first social frictions until the propagation of the human being's superfluity. This means that it was necessary to clarify how it was possible for a group responsible for the monopoly of State power to consider their rivals or adversaries as if they were things that should be subject to "final disposal." It is not an easy task, neither for historians nor for the victims. As the emotions involved become more intense, the events that caused them become more diffuse (Carroll, 2004, p. 98).

It must be borne in mind that the accumulation of pain may reach a very high point. This is especially true in cases of torture and subsequent forced disappearance deployed in a clandestine context. Such circumstances put victims' family members in a more intense emotional position than in other serious violations of human rights, such as a summary execution (Fouce, 2006, p. 75). Because the deprivation of the act of recognizing the family member or friend at the morgue or the impossibility of a funeral have made a farewell impossible and, therefore, the possibility of closing the story between the victims and their significant acquaintances is truncated.

In any case, forgiveness is more challenging when the perpetrator is not close. It is way easier to forgive a close person or a loved one, such as a friend or a relative, than a stranger (McCullough, 2008, p. 15). Maybe this is due to the fact that there is no previous story to repair with a stranger who has caused deep harm to the victim. In other words, it is more difficult to forgive a person who has not been a part of our lives until the moment of the aggression.

In the Argentine historical experience, the above resulted in an appetite for retribution that led certain groups such as the Mothers of Plaza de Mayo to demand that their children appeared alive. That demand was even asserted after the criminal procedures had revealed that the military had tortured, killed, and disposed of the corpses of the so-called "disappeared" (Nino, 1991, p. 2635). The insistence on an exemplary punishment was very intense, because the Mothers of Plaza de Mayo were outraged at the moral contempt revealed by the military against the victims of the so-called "State terrorism."[10]

(ii) The second element is the act of forgiveness *per se*. This entails three requirements: (a) recognizing the aggressor's humanity; (b) waiving the possibility of "being even"; (c) changing the emotions toward the perpetrator (Carroll, 2004, p. 99). Let us delve into each of these elements separately.

(a) Recognizing the aggressor's humanity entails revisiting a point on which the theory of liberal criminal law insisted by resorting to "offense-based criminal law" and leaving behind "offender-based criminal law." In particular, the point is distinguishing between criminal acts and the moral appraisal of the aggressor (Roxin, 1997, p. 177). In the case of complex organizations, such as the government of the State, it is worth remembering that legal entities are not just, good, or bad; instead, they are made up by individuals who can engage in the most virtuous as well as the evilest acts (Carroll, 2004, p. 99). The point is, then, suspending the appraisal of individuals to focus on their acts.

Arendt insisted a lot on this point (1973; 1964), in her effort to understand the meaning of the human experience entailed by the cases of totalitarianism in the 20th century How is it that ordinary people end up being capable of executing abhorrent orders? What happened that hate was instilled against the adversaries to the point of treating them as non-humans? How was it possible for some individuals to treat others as if they were just a disposable thing in the world? These questions must have some kind of answer for the victim to be able to recognize their aggressor's humanity.

[10] Murphy and Hampton (1988) posit that the idea of retribution in any punishment rests in the claim that the value of the person attacked is not lower than that of the perpetrator's. In a way, the aggressor had the value of their victim's life in their hands. The civilized and institutionalized way of reverting this situation is by means of a criminal procedure. The purpose of a criminal procedure is ultimately to communicate to the perpetrator that they are in the hands of the victim, but now within the limits of criminal law (p. 125).

(b) The thirst for justice, that intention to get due retribution by virtue of the aggression suffered is very hard to be satisfied in light of the crimes of complex organizations. The wound that inflicted a serious injustice entailed by any crime against humanity is not something easy to fix (Carroll, 2004, p. 100). Something that could help could be reminding the victim of how decisive it is not to put themselves at the same level as the aggressor, but not due to clemency as to the perpetrator. Instead, it has to be reminded that the relentless pursuit of due retribution for the crime suffered may lead to the consumption of the victim's or their relatives' lives (Murphy, 2003, p. 105). When that thirst for justice becomes the central focus of existence, it ends up being self-destructive (Hope, 1987, p. 242).

An example from the literature in Spanish is the character of Urania, in Mario Vargas Llosa's novel *The Feast of the Goat* (2000). The reference to this book is appropriate because it is not a purely mental experiment or a laboratory case. The novel tells the story of a victim who suffers for the pain of the wounds inflicted by a tyrant who despotically ruled the Dominican Republic.

The resentment for the injustice suffered by Urania was something that left a profound scar in her sentimental or love life. The main character, beyond her work life, could never turn the page after the sexual attack by Trujillo, the Dominican dictator, who committed his crime with the necessary participation of the victim's own father.

Urania's thirst for justice explodes at his father's deathbed. She goes there with the purpose of venting all her emotional scars and to communicate one single thing to her father and her aunt who was taking care of him. In a few words, Urania went back to her home to say that she did not forgive, does not forgive, and will never forgive her father for what he did to her. The portrait of Urania's emotional wounds, i.e., the explanation of how she was incapable of turning the page reveals that her incapacity to forgive was something that underpinned an important part of her best efforts. As a matter of fact, resentment consumed Urania's youth years and made her permanently incapable of maintaining an emotional bond with somebody.

(c) The change in emotions regarding the aggressor from a position full of hate, annoyance, or resentment to more gentle and kind approach is not simple either. However, some points need to be clarified. Forgiveness is, in essence, an individual act. This means that the timing to forgive depends a lot on each individual. And it must also be clarified that forgiveness is not always a deep reconciliation. A criminal sentence is usually not enough to heal a victim's wounds (Carroll, 2004, p. 100). As is usually heard from a mother after a sentence pronounced for an abhorrent crime, "nothing can bring back my daughter."

In fact, the act of forgiving does not entail acquittal for the offense received, but it is one step toward letting go of the past and move on. The paradoxical nature of forgiveness is that it is increasingly important as other strategies to move on are increasingly insufficient. Even if the aggressor's sincere repentance can be helpful, the truth is that forgiveness as an instrument of healing does not depend on that. What is relevant is the victim's willingness to leave behind the entire set of emotions that were holding them down. The healing resulting from forgiveness is beyond any action by the aggressor (Carroll, 2004, p. 100).

(iii) Third, reconciliation does not necessarily follow from forgiveness, but it is advisable that it be so. All in all, reconciliation admits degrees: tolerance, peaceful coexistence, and full reunification. But, unlike forgiveness, reconciliation necessarily requires the aggressor's repentance. This point was extremely difficult in the trial against those accused of crimes against humanity during the last Argentine dictatorship.

Actually, many of the military accused of those crimes did not repent, and instead claimed that their actions had been legitimate. In the view of some members of the armed forces, it was about assuming the heavy duty of extirpating that segment of the society which was not considered duly Argentine. More specifically, subversive leftist groups, i.e., Montoneros and the People's Revolutionary Army (*Ejército*

Revolucionario del Pueblo, ERP), were but political factions promoting dissolving ideologies. A substantial number of armed forces members claimed that they were fighting against subversive elements who were attacking the Nation's unity (Zoglin, 1988, pp. 269-270).

On the side of victims and family members, there was a wide array of positions.

(a) Relatives of victims defending the violent means used by their disappeared relatives or friends, whom I will call "defenders of the rebels." This notion of "rebel" does not necessarily mean any kind of outlaw, criminal, and especially not a terrorist, but somebody who risked their life to fight for a more just society by means of arms (Garzón, 2020, p. 17).[11] In other words, there were people who vindicated the violent means used by their relatives or acquaintances to attain a strong sense of social justice in their homeland.

All in all, we should not forget that the dictatorship not only left many deaths caused by the military. As a matter of fact, Reato offers a detailed summary of the deaths caused by many rebellious fellows: 29 children, 12 businessmen, 653 police and military, all dead. There were also 50 deaths in Tucuman, where in March 1974 the ERP set up a rural front. At that front, 31 military and police and 19 civilians were killed. It is worth mentioning that the above figure does not include those who died in confrontations (Reato, 2020, Annex III). I clarify that I did not delve into other non-lethal crimes, such as terrorist attacks with bombs, extortive kidnapping, physical harm, just to name some examples.

(b) Others adopted a more *romantic* position: they did not openly side with armed fight, but made ambiguous statements on it (Garzón, 2020, p. 19). This way, the romantics were those who supported the ideas underlying guerrilla groups or movements, even if they did not openly challenge that it was unacceptable to use violent means to attain social justice. I am thinking of those who were outraged at the violence exerted by State agents, but who never repudiated, just to mention one example among many other possible examples, that the ERP killed philosopher Carlos Sacheri in front of his wife, seven children, and three little friends of the family.[12]

(c) And, last, there were also other relatives or victims who openly rejected political fight by violent means, but they claimed that nobody deserved to be sentenced, and especially not to the death penalty, without a scrupulous observance of due process. Loosely following Garzón's typology, I will call these *prophets.*[13] These people were lucid enough to realize that choosing violent means was something that ended up strengthening the claim for legitimacy of the civilian-military dictatorship.

At the end of the day, for a sector of the public opinion, the authoritarian regime would have reacted in a brutal, disproportionate manner and in violation of the most basic human rights, but their action was an answer to the destabilizing maneuvers of political groups who chose the path of political violence and terrorism. Each terrorist attack against civilian targets was giving arguments to that segment of the society which was supporting an authoritarian government with the capacity to ensure citizen safety, even at the price of sacrificing the basic respect for human rights.

Ultimately, where the conflict which gave rise to the aggression persists, it will be difficult, if not impossible, to implement any effort of deep reconciliation. All in all, tolerance is a modest objective which could work as a substitute for deep reconciliation. This means that it could be enough with a basic indulgence that allows to overcome

[11] At this point I refer the reader to Garzón Vallejo's terminology on rebels, romantics, and prophets, which was created to analyze the Colombian armed conflict. It is of course true that the political actors to whom I apply these concepts are different in the Argentine case, but I believe the terminology is useful in this article, with the relevant caveats (Garzón, 2020, pp. 17-20).
[12] For a critical reconstruction of the narratives created around the death of Sacheri, see Cersosimo, 2016, p. 8.
[13] Here I am drawing loose inspiration from the characterization of *prophets* made by Garzón to systematize one of the three big religious players that became actively involved in the Colombian armed conflict (2020, p. 19).

the injustice suffered with the mere purpose of avoiding a greater evil. In other words, the injustice tolerated does not entail acquitting others from their fault, but waiving a claim that is just with the purpose of keeping social peace.

(iv) *The Emergence of Hope*. At this point, the purpose is not to forget the past or to do as if nothing happened, but to restart a new path. This entails having learned from past experiences to have reasonable expectations as to how to avoid the return of crimes against humanity. All of that should be done with the purpose of ensuring the safety of citizens. The purpose is, then, to open up a new horizon closing the past, but with a view to reaching a new destination. This move requires a robust commitment to the design and implementation of policies to effectively ensure that those crimes against humanity do not repeat (Carroll, 2004, pp. 102-103).

This way, the purpose of hope is highlighting that memory should not jail us in traumatic memories of the past,[14] but it must be useful to establish guidelines or standards so that nothing of the like happens again. Just to mention one example, if a significant factor to intimidate military personnel to file complaints for practices which violate human rights was to involve the largest number of people in illegal repression, then anonymous mechanisms for complaint should be created within the Public Prosecutor's Office. Setting up anonymous complaint channels could offer valuable hints to promote criminal investigations at the courts' or prosecutors' own initiatives. This approach would be very useful to tackle violations of human rights before they become massive.

7. The Legal Obstacles to Forgiving Crimes Against Humanity: The Rome Statute and Inter-American Caselaw

Choosing the path of forgiving crimes against humanity stumbles upon an obstacle conditioning such political processes. And that obstacle is international human rights law. In this context, a question is appropriate: in which cases can a State incur international liability for forgiving crimes against humanity? The answer to this question is one of the main legal challenges of the so-called "transitional justice."

Now, the possibility of amnesties for crimes against humanity is seriously limited in the Inter-American system of human rights. The Inter-American Court of Human Rights (IACHR) has repeatedly held in its decisions that amnesties are inconsistent with the protection of human rights (Agudelo et al., 2021, p. 31). The reason would be that States use amnesty laws as an excuse not to investigate and punish the individuals responsible for serious violations of human rights (IACHR, 2018). The only exception tolerated by the IACHR is the pardon of political crimes (2018).

The international human rights system, in particular, the jurisdiction created under the Rome Statute, the International Criminal Court (ICC), adopts a similar position. However, the recent transitional justice process in Colombia reveals that the intervention of the ICC is strictly supplementary in nature. Some statements by the ICC Office of the Prosecutor would seem to indicate that they would refrain from adopting an activist position as to the transitional process in Colombia (Agudelo *et al.*, 2021, p. 36).

To the extent that the states promote effective investigations aimed at clarifying the events that resulted in serious violations of human rights, the Office of the Prosecutor suggests that they will stand aside on this issue. Anyway, the international criminal system has highlighted that they are following the matter closely (Agudelo et al., 2021, p. 36). In other words, the Office of the Prosecutor will not trigger the international criminal jurisdiction if the

[14] Rieff (2011) suggests that, once the perpetrators of crimes against humanity are sentenced, it is healthy that little by little the offenses committed end up being forgotten (pp. 68-69).

amnesties are not used as pretexts not to investigate the events reported and if some reassurance is offered that the perpetrators of war crimes or crimes against humanity will be held liable.

In any case, the multiple systems for the protection of human rights applicable in our Iberoamerican region—both the international and the inter-American ones, as appropriate—are reluctant to tolerate amnesties of crimes against humanity. In fact, any government willing to walk the path of forgiving such crimes will have to face the consequences to be followed at the legal and international level. Therefore, the adoption of a process for forgiving crimes against humanity requires a "damage control plan." This means that a strategy is necessary to reduce the impact of the consequences resulting from violating a human rights standard.

First, one has to highlight that processes for forgiving serious crimes against humanity are essential. This means that the government which decides to go for an amnesty has to get prepared to convince the international community that it has adopted that path as the last resort to maintain social peace. This entails an empirical analysis of the available alternatives. For example, it is not enough to say that it was necessary to forgive abhorrent crimes against human rights, but it becomes necessary to offer specific reasons why the criminal-law provisions should not be applied to the letter.[15]

Then, second, it must be highlighted that forgiveness did not entail a closing of the events that took place. This reveals how crucially important it is to determine the moment when crimes against humanity will be forgiven. If the pardon is given when the investigation starts, and that leads to an immediate closing of the investigation, then international liability will increase. On the contrary, if the pardon is given once the victims have been reassured that they will receive the truth, then liability before the international community will dilute (Agudelo *et al.*, 2021, p. 36). In other words, it is necessary to clearly state that the amnesty shall not be an excuse to violate the state duty to prevent, investigate, and punish the perpetrators of serious violations of human rights.

What has been said so far does not ignore the fact that the law must be a limit to political action. In fact, the solution for ordinary times is precisely that the law is an effective framework for political action. This means that the law draws the contours of action of each of the branches of power of a State (D'Auria y Balerdi, 1996, p. 47). However, extraordinary times demand extraordinary solutions. And here is where transitional justice reveals when the law becomes insufficient as a limit for the government of a political community. When justice seriously impairs social peace, it is necessary to put forward a process for pardoning crimes against humanity.

8. Conclusive Balance: From Convenience Reasons to the Articulation of Sustainable Forgiveness of Crimes Against Humanity

The answer given by Nino was openly contingent or dependent upon a series of specific conditions. In fact, the intensity of forgiveness of crimes against humanity propounded by Alfonsín seemed to be proportional to the threat that the armed forces represented for constitutional democracy. Nonetheless, Nino's success was conciliating inasmuch as possible two extremes which were in tension. On the one hand, punishing serious crimes against humanity and, on the other hand, maintaining the constitutional democracy.

[15] The argumentation at this point is similar to the requirements of the sub-analysis of necessity, which is made in the proportionality analysis. See, for example, Clérico (2015).

But forgiving crimes against humanity reverted when the political circumstances changed. Once the military stopped being a threat to the democratic order, then an intense repression began against any and all the military who participated in the illegal repression. This also included those who had been benefited with amnesties and pardons, depending on the case. Moreover, public forgiveness policies were reverted. And, finally, the Argentine Supreme Court ruled that the amnesty laws were unconstitutional (2005).

This article attempted an answer to articulate a policy of forgiving crimes against humanity which is more sustainable than the one proposed by Nino. Such proposal was based on a four-step strategy. The justification for such effort is not that forgiveness results from a debt to the aggressor. It is not also a victim's gift. Instead, forgiveness has to be a strategy which allows the victims of such crimes to move forward. Therefore, there is no forgiveness which can last if it cannot heal the affective wounds of the victims of crimes against humanity.

It is also important to emphasize that processes of forgiving crimes against humanity are significant. Because they entail some kind of liability to the international community. This is due to the fact that both international regulations and tribunals are reluctant to tolerate amnesties of crimes against humanity. This is why a significant argumentative effort must be accomplished to try to convince how essential such forgiveness policies are. In addition, it is appropriate to clarify how forgiving serious violations of human rights will not violate the victims' right to the truth.

It is relevant to highlight that we cannot see the systematic and massive violations of human rights as a thing of the past. Policies repressing organized crime in States such as El Salvador are but an example of the persistent dilemma which had seemed to stay in the past. Are we going to passively tolerate that the human rights of a few be violated with the purpose of protecting the quietness of most of the country? Or are we going to oppose the selection of inhuman means to reach good aims?

In a nutshell, this article tried to emphasize that it is not only appropriate to know when or why to forgive or not to forgive, but it is also necessary to determine *how.* Along those lines, without any intention of being absolutely thorough due to space constraints, here I have tried to sketch the basics for that challenge. My only hope is that this effort is the initial step so that the victims of serious crimes be able to forgive those who have offended us.

While the possibility of massive violations of human rights is not a mere laboratory scenario, it will still be relevant for us to ask up to what extent, when, and how to forgive crimes against humanity. Above all, it is imperative that we continue thinking what to do to ensure forgiveness in light of changing social and political circumstances and fragmented agonistic politics. At the end of the day, as Tolkien said, always after a defeat and a truce, the Shadow takes a new form and grows again.

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