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Evolution of a Nation after a Dictatorship: How Law, Politics and Society of the 1973 Dictatorship in Uruguay and of the Subsequent Return of Democracy in 1985, Potentially Helped Evolve the Nation of Today.

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UNIVERSITY OF
SAN FRANCISCO

EVOLUTION
OF A NATION
AFTER A
DICTATORSHIP

How law, politics and society of the 1973 dictatorship in Uruguay and of the subsequent return of democracy in 1985, potentially helped evolved the nation of today.

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Master of Arts in International Studies

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Signature Page

Evolution of a Nation after a Dictatorship

In Partial Fulfillment of the Requirements for the Degree

MASTER OF ARTS

In

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By

JONATHAN A. FEIN PROAÑO

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Under the guidance and approval of the committee, and approval by all the members, this thesis project has been accepted in partial fulfillment of the requirements for the degree.

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ABSTRACT

Jonathan A. Fein Proaño: Evolution of a Nation after a Dictatorship

(Under the direction of Olivier Bercault)

In 1973, Uruguay's president authored a coup d'état with the military and changed the history and fabric of Uruguay. Once democracy returned to Uruguay in 1985, it was a chance to see if an evolution of the law, politics and society would occur. This thesis aims to analyze and understand the patterns of change and de-evolution or evolution that happened during the dictatorship and then over the last 30 years. I break down the process of changes that happened legally and politically, how the dictatorship and its leaders used law to destroy rule of law, and how society changed.

This thesis assesses the multiple historical aspects and points of view of what happened during the dictatorship, and what happened from 1985 until today. Finally, I presents an alternate approach to the potential evolution that Uruguay underwent by looking at the correlation of dictatorship and memory.

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I dedicate this thesis to my dad, Julio Cesar Fein Garcia, who inspired me to research and understand what happened to the country he so much loved. His love for Uruguay gave me the desire and will to pursue this. I dedicate this to his memory.

CHAPTER 1- INTRODUCTION

Asking if a country has evolved or not, may pose a question to you as the reader. A country can develop and a country can grow, but evolve? Indeed, it is something that we can ask when looking at a democracy. Democracies are more than just a constitution and the capacity to it. It is a process involves government, law, economy and society. It as a process of governing and order, of coexistence and respect, of rule of law and rights that must be actively respected by the population “it serves” and those who, having been elected, protect it. A democracy, by this approach is then also a catalyst for change and growth, of potential evolution.

However, there are instances, in which a democracy, however, is tested in its process. A dictatorship becomes the means by which the country is tested in its framework. It tests the political system, the legal system, the economic system and the society. The evolution process can then be seen as stagnant or of de-evolution. Dictatorships then are shaped during the period of change-dictatorship- and when order returns. We must then look at what events lead to democracies to be shaped the way they are (before and after the dictatorship) and what levels of a democracy, can push for this evolution. The three elements or variables that can show this are political/legal institution, economic institutions and social institutions. To answer these questions and comprehend whether or not politics, law and society have provided for democratic evolution, we focus on the case of Uruguay, the dictatorship and the 30 years that followed when democracy returned.

In the 1960's, Latin America underwent a process of change under authoritarian/dictatorial regimes. The Southern Cone particularly, suffered the most. Military dictatorships took hold of Argentina, Brazil, Chile and Uruguay. Their governments claimed to be protecting democracy and the country's best interests, from

communism, from groups that threatened the stability of the region and to promote a new approach to neoliberal economic policies (Yafee, 2010) and governance. Of the four Southern Cone countries, Uruguay, although small, suffered greatly and to a larger scale than the rest (in comparison to population size). The tactics used by the dictatorship to control its population, and the economic and social policies that the government used, changed Uruguay's democratic landscape.

It challenged the population's sense of traditionalism (Bertoni, 2015) and imposed authoritarianism as the only solution to Uruguay's "plight" (General Bolentini in *EL DIARIO*, March 15, 1973). After 1985, Uruguayans were faced with a country that was re-entering (back) into democracy. It was a country that had to "re-build" its system and assess what changes were made to its institutions and what changes needed to happen.. It is this stage that we want to understand whether an evolution process happened. The goal with this research and this thesis is to then understand whether the history and the past of the dictatorship, shaped and allowed for a process of evolution to happen in Uruguay. Politics, law and society are analyzed to understand what happened in its past and how it shaped its future (what is its present today). In short the research question and hypothesis is: Has Uruguay evolved in its politics, laws and society over the last 30 years?

This question and approach to this rationale is taken by looking at a series of, what we believe to be, interconnected variables. We look to focus particularly on the politics and laws of Uruguay, the economic reality and policies, and the societal aspect of Uruguay. These variables will be then looked at under two timeframes: the dictatorship period (1967-1985) and the period of restoration/reconciliation (1985-2015), and will all be tied together under the concept of "state institutional evolution". State institutional evolution is then

defined in this thesis as the evolution of the state, its institutions and society and the subsequent changes that occur. It is an approach can point in what direction this evolution is heading. There are two variables we approach to see state institutional evolution: political/legal institutions and society.

Analyzing as a first variable is the history and the legal/economic framework under which the changes that Uruguay underwent happened, and what followed 1985. This variable is composed of two aspects: first, the constitution itself and second, the laws enacted (either as emergency measures or as executive/parliamentary measures). The constitution which Uruguay was under in 1973 was the same document that was still valid in 1985¹. This document then becomes crucial in providing evidence to the question and hypothesis, as it allows us to use reference point to what legal language the authoritarian government and then the democratic government were holding themselves to. We briefly analyze the laws that where enacted before 1973, those during the dictatorship and then those following the return to democracy (from 1985 until today). The laws we potentially look at are:

| Law Number | Title |
|----------------------------|---|
| <i>Constitution (1996)</i> | <i>Constitución de la República Oriental del Uruguay</i> |
| <i>Ley N° 14.068</i> | <i>Ley de Seguridad del Estado y del Orden Interno</i> ² |
| <i>Ley N° 15.737</i> | <i>Ley De Amnistía</i> ³ |
| <i>Ley N° 15.738</i> | <i>Ley de Actos legislativos dictados por el consejo de estado</i> ⁴ |

¹ It is the same constitution today. Uruguay's current constitution is the "1967 constitution with the plebiscitary changes made in November 26th, 1989, November 26th, 1994, December 8th, 1996 and October 31st, 2004" (Constitucion de la Republica, 2014).

² Law on the Security of the State and Internal Order (Law 14.068, 1972)

³ Amnesty Law (Law 15.737, 1985)

⁴ Law regarding the legislative acts enacted by the *Consejo de Estado*

| | |
|----------------------|---|
| <i>Ley N° 15.739</i> | <i>Ley de Emergencia para la Enseñanza⁵</i> |
| <i>Ley N° 15.848</i> | <i>Funcionarios Militares y Policiales- Se Reconoce Que Ha Caducado El Ejercicio De La Pretensión Punitiva Del Estado Respecto De Los Delitos Cometidos Hasta El 1ro De Marzo De 1985⁶(Ley de Caducidad)</i> |
| <i>Ley N° 18.596</i> | <i>Actuación ilegítima del estado entre el 13 de junio de 1968 y el 28 de febrero de 1985; reconocimiento y reparación a las víctimas⁷</i> |
| <i>Ley N° 18.831</i> | <i>Pretensión Punitiva Del Estado- Restablecimiento Para Los Delitos Cometidos En Aplicación Del Terrorismo Del Estado Hasta El 1ro De Marzo De 1985⁸</i> |

Table 1: Laws and Constitution of Uruguay regarding the 1973 Dictatorship

These laws will allow understanding how, why and to what effect the actions of the state, were effective (or ineffective) in helping the state evolve. It also allows us to see the contradictions within the Uruguayan legal system (constitution vs. enacted emergency laws and decrees) and to contrast it to the reality that was faced on the ground by the military operatives and the population.

A particular aspect that will also be the focus on, and that will be a thread through the thesis is the actual effect of the laws and the violations they had on the population. The massive arrests, disappearances, torture and exile that took place were a result of laws and policies of the dictatorship, that sought to take control over the state. This analysis coincides with the social aspect of the research because a country depends on its population to thrive and develop. In so, looking at the “social impact” of the laws permits us to understand the mechanism by which the population helped or hindered the state in its evolution (during and after the dictatorship). In looking at the political and economic evolution that potentially occurred, we will analyze Francis’ Fukuyama’s approach to state

⁵ Emergency Law for Education (Law 15.739, 1985)

⁶ Law on the expiry of the punitive capabilities of the state towards military and police personnel for acts committed until March 1st, 1985 (Law 15.848, 1986)- Expiry Law

⁷ Law in recognition of the illegitimate acts perpetrated by the state from [1968] until [1985]; recognition for reparations to victims (Law 18.896, 2009)

⁸ Law reestablishing the punitive capabilities of the state for crimes committed during the sanctioned period of state terror until March 1st, 1985 (Law 18.831, 2011)

building and how democracies should be structured (including the legal and political implications that come with that. It will provide a framework to understand how the functions of a state are distributed. It will also provide the Segway into the social evolution of Uruguay.

This research will also look the social institutions in Uruguay, specifically at education and culture as crucial and essential pieces of society and seeing how the changes that have occurred in Uruguay have been either positive or negative for its society. Using this social approach will bring some “validity” to the argument that political and economic change happened hand in hand with society’s evolution. Looking mainly at the question of what role memory and past plays in this evolution process will be crucial to understanding how it affects the fabric of population (migrated, young, elderly, and victims of the dictatorship), education and the reconciliation of the events of the dictatorship with what the population needs from the government.

The review and analysis of the variables mentioned here, focus on two key and crucial aspects of the evolution of a country. The analysis I will be conducting with these variables and approaches is to understand whether “positive evolution” (rather than devolution or stagnation) occurs even when you have such negative events happen to a democracy. In so, I deconstruct Uruguay’s democracy with the variables to establish the model of analysis and eventually, to bring to light the changes and processes that a small country underwent and has succeeded in the region. It is plausible that this analysis will yield patterns and different evolution processes that Uruguay faced with the return of democracy.

CHAPTER 2- METHODOLOGY

The methodology used in this thesis combines multiple approaches to the literature gathered, the first accounts obtained and to assure the most of the available data on the different variables are included. A majority of the initial research was conducted in the United States, using available, online resources, as well as library resources. The rest of the research that was used for this thesis was acquired *in situ* in Uruguay, via interviews, library and archival research and ethnographic observations.

In Uruguay, I was able to gain access to the National Library and National Archives, as well as to academic contacts and members of civil society who are actively engaged in the research, divulgence and conversations about the dictatorship and what happened afterwards. My research at the National Library and Archives granted me access to copious amounts of newspapers and legislature logs or *diarios de sesiones* of the time (from 1973 to 1985). Because of the volume of information available, I focused on key dates⁹ and periods that pertained to my current research and would complement my previously done work, as well as the interviews that I had on the ground. An important aspect of this research was making sure that the selected dates had enough information to assure the veracity of the information.

In regards to additional literature, I was able to procure additional books that included first-hand books from two survivors that wrote about their time in jail, the story of the exiles and their children. A few political satire magazines from the time of the dictatorship that shed light on the counter-dictatorship ideology, a manual for the

⁹ From 1968-1973, 1978, 1980 and 1984/1985. These dates were chosen as such because of the importance given to them in previously done research, as well as from interviews and conversation had previous to my conducting research in the library and archives.

*Tupamaros*¹⁰ and their tactics and lastly, a compendium by the joint chiefs of staff, of how they perceived their fight against the seditious was going¹¹. Moreover, literature gathered in Uruguay included two books published by ex-president Julio Maria Sanguinetti, which provides an “inside” look into how government functioned during and after the dictatorship.¹²

Finally, my research in Uruguay was completed by the interviews/conversations I had with actors in various parts of Uruguayan society, as well as ethnographic observations I made at gatherings when the topic came up. Although I had hoped to interview high-level politicians that were involved in the dictatorship, scheduling a meeting proved to be more complicated and given the limitations of time, I had to desist. However, I was able to secure interviews with three academics from the *UdelaR- Universidad de la Republica* (public university ran by the state). These three academics, Maria Camou, Reto Bertoni and Maria de los Angeles Fein, were able to each give me a different perspective on the variables I have mentioned and provided me with more questions to ask and opened to possibilities of what this project could become.

I was also able to conduct an interview with two members of civil society and a student of the *UdelaR* who has a personal connection with what happened during the dictatorship and is active in fighting for those who disappeared and have a conversation with a civil society organization- CRY SOL. I was fortunate enough to be put in contact with CRY SOL¹³, meet its executive board, and observe their interactions and conversations

¹⁰ See chapter 3

¹¹ This book, published by the government in 1976, will be used in chapters 4 and 5, where a look into how military perceived their actions legal, led to changes after 1985.

¹² Julio Maria Sanguinetti was part of the government, but not in favor of it, during the dictatorship. He later became a crucial player in the restoration of democracy.

¹³ CRY SOL- Asociacion de Expresos Poltiicos de Uruguay

on the subject of what the dictatorship was and what it has done today, for Uruguay and its people. Within the organization, I was able to meet and interview a former prisoner of the dictatorship, Juan Miguel Garcia Lamas. He gave me a more in-depth overview of what was the mentality during the dictatorship towards what was happening, and to what was his perspective as to what the country is going through today.

Lastly, I had the opportunity to visit the new *Museo de la Memoria-MuMe* inaugurated in 2014. This museum, sponsored by the City of Montevideo, is a place where the memory of what happened, via displays, exhibits and events, is kept alive and as remembrance of what should never happen again. I was able to meet and interview the director of museum, Elbio Ferrario, who having been a prisoner himself, gave me yet another interesting perspective of what it was like then, and how Uruguay had changed since 1985, what had happened to culture and what the museum was doing to keep the memory alive. My ethnographic observations were limited to family gatherings and few gatherings with acquaintances. In all instances, it all started as a conversation as to why I was visiting and why I wanted to work on this topic. On its own, the subject took hold of the group, and participants of all ages, gave their perspective. This was an interesting change, as I had not planned for this to happen, nor for it to provide me with yet another crucial aspect that tied with the political/legal and society variable.

This thesis is not by any means, an all-encompassing work. What happened in Uruguay and the region had multiple facets that shaped it. My desire to focus on this and to try and answer the question as to whether or not Uruguay has evolved over the last 30 years stems from a personal affection I have to the subject. My family was a “victim” of what happened in the years leading to 1973 and during the dictatorship. While it is a

“distant” effect, to me it has become crucial and necessary to understand certain nuances of what happened. The evolution of a country, particularly in Latin America, is important because it can provide a looking glass into what the country might become in the future.

The chapters attempt to provide some background and understanding, in broad strokes, of what happened then, how it happened and what ramifications did it have today. It is an attempt to chip away at a question that, according to some of the people I interviewed, has not been really asked. Particularly, having an “outsider” take interest in this matter, made it even more interesting to them and to the people at the places I visited, to be more open about it and share their personal perspectives. It is my hope, that by the end of this thesis, not only that you have learned some history of a country that is part of me, but that I have been to prove that Uruguay has seen evolution in its political and legal institutions, as well as its society. That in a way, through my research, I am able to reconcile past and present and see a shred of light, in what was, one the darkest chapters of Uruguay’s history.

CHAPTER 3

LITERATURE and THEORY REVIEW

In order to understand then the nuances of these aspects of Uruguayan politics, economics and society, I present the theories of Francis Fukuyama, Claus Offe, Göran Therborn and Joel Migdal. These three theorists and their works look at the three elements of a government (politics/laws, economics and society) and dissect the various aspects that approach the process of democracy via these elements. Fukuyama begins his book, *State-Building: Governance and World Order in the 21st Century* by elaborating on how 21st century states lack certain “stateness” and therefore must use a set of tools and parameters to make their state, a state and meet the 21st century challenge of globalization. “[...] Politics in the twentieth century were heavily shaped by controversies over the appropriate size and strength of the state.” (Fukuyama, 2004). This strength was measured by how efficient and how powerful the state institutions and goals were. Some states proved to be big and bureaucratic but never truly executed their functions. Fukuyama uses the notion of “Scope of State Functions” as a guide to what the state must accomplish and have to be efficient. Graph 1 adequately demonstrates this by showing how functions of the state can be seen in a linear progression and how the state should progressively approach them in order to avoid this “heavy influence” in terms of size and strength of the state.

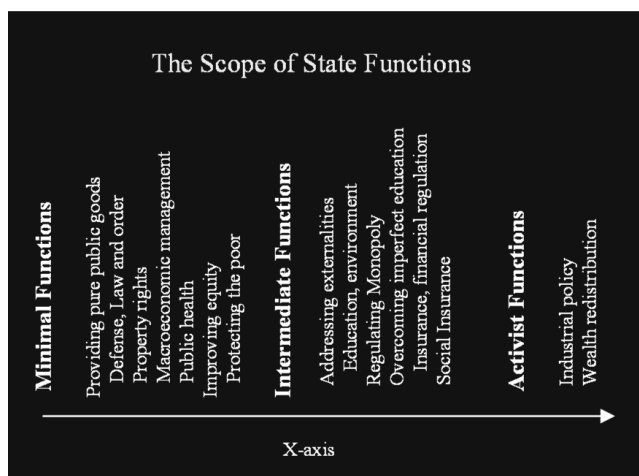


Figure 1- The Scope of State Functions (Fukuyama, 2004)

Minimal, intermediate and activist functions encompass what Fukuyama seeks to be the road map of a state. I believe that this road map of a state then becomes a standard of development. In order for a state to be “successful and developed” it must first cultivate its minimal functions, as those functions are the once that focus on the “social/society” aspect of the state. Once that has been achieved, the application of intermediate functions addresses the economic focus of the state. Lastly, the application of its activist functions mentions the duties of politics that are duly complemented by the two previous functions. It is important to point out that Francis Fukuyama mentions that there is no one-way to categorize the strength and scope of a state and its institutions, and therefore its capacity may vary (in terms of what the state can actually accomplish). This graph assumes that states should move from left to right and progress in achieving their functions. This is however, under the supposition that no outside factors interfere in development and that

the state manages this within its borders. This is to say, to avoid the involvement of international civil society¹⁴, “rich states” and external financial factors.

While state functions are of course the foundation of what a state should achieve (in economic, political and social areas) in terms of development, Claus Offe’s “Modernity and the State” elaborates on how the now “modern state” must adapt to what the needs of globalization are, as well as those needs that government and society need. He positions his argument on the debate that exists between regulation and deregulation of and by the state. Offe speaks of an “[...]increased economic efficiency, and in the interest of an expanded, freedom of economic action, the political-theoretical demand for, and practice of deregulation is directed at alleged excess of state norms, rules and prescriptions”(Offe, pg.72). Offe offers this as an example of how regulation can be perceived as an “excess” of the state, and that deregulation may be seen more of a need that is born from regulation and its excess. In the case of Uruguay, it is noticeable in the “public privatization”¹⁵ of public goods (electricity, petroleum resources, and telecommunications) which allowed the state to deregulate the bureaucratic process of “purchasing” of these goods and “regulating” the intervention of foreign companies in the state.

Claus Offe does not leave regulation and deregulation as the only system for economic control and political stability. Offe talks about the creation of a system of “regulation of regulation”. By this he means,

¹⁴ I mention an “international civil society” in reference to non-governmental organizations and international organizations that are not local based in Uruguay. This international civil society is therefore seen as an outsourced intervention into Uruguay, which could potentially affect the development of the state (See: Frank, Andre Gunder. “The Development of Underdevelopment”. 1969. 1-16).

¹⁵ By public privatization, I refer to the privatization by the state of public goods that should otherwise be “free” to the population.

The main difficulty is how to downplay the alternative between regulation and deregulation, nationalization and privatization, and to make institutional arrangements which strengthen the capacity of individual and collective actors in civil society to coordinate with one another by means of other than that of market-strategic action, namely in a “reasonable”, “solidaristic”, or indeed “principled” manner. This can only be achieved by means of institutional innovations [...]”(Offe, pg86).

He believes then that proper systems of regulation and deregulation is based on the rearrangement of institutions of the state in order to permit the person to be self-sufficient and to not be controlled in every aspect. The “will of the people” then becomes an important guiding principle in terms of achieving a balanced system of regulation and deregulation. This will is driven by needs, desires and wants of both groups inside and outside the borders of the state. Institutional innovations then must be designed under his own concept of regulation/deregulation. Uruguay’s “institutional innovation” can be observed in its design of the BPS, as well as the PLAN CEIBAL. These two entities, while each answering to their respective ministries (BPS- Ministry of Finance, of Public Health, of Social Development, and of Labor. PLAN CEIBAL- Ministry of Education), are independent in their functions and mandates. They “avoid” to a certain extent, the intricacies of Uruguayan bureaucracy and have budgets that permit them to execute their projects in a much faster rate than other state institutions (Presidencia, 2014).

Sociologist Göran Therborn in “What Does the Ruling Class do When it Rules?”, describes society, specifically, the ruling class¹⁶, “help” the state’s process of socio-economic transformation and the outputs that come from it. Based on Marxist analysis, Therborn establishes a Marxist framework between the struggle of the social classes and government. Göran Therborn makes a case for the technological output a state has. He says,

*The output of the state technology may be defined as the effect it produces upon those who are organized by it, or in other words, as the allegiances it manages to construct. For instance, feudal structures typically inspire a relation of **deference**, which is based on recognition of the personal*

¹⁶ Ruling class, based on Therborn’s definition, is the stratification of society (Ruling class, middle/working class, lower class). (Orum, 1979)

*eminence and distinctiveness of the hereditary ruler. [...]. By contrast, capitalist bureaucratic and managerial authority rests on the cultivation of **discipline**. If the organizational technology is functioning correctly, then the legitimate orders will receive prompt and unquestioning execution.[...]. Successful working class organization, then, relies heavily on commitment and solidarity- individual devotion to a common cause- rather than on formal orders and hierarchies. [...]. (Therborn, pg. 117)*

Whereas there is an assumption that technology can be only for the development of goods in society, Therborn argues that technology is what the state gives to its people to better themselves (or for the betterment of the state itself) and therefore it is how the state becomes the provider of improvement and development for its people. This then defeats the struggle of society between the elites and the masses (one of the Marxist problems) that Therborn alludes to in his analysis and permits all citizens to become useful human capital to the state. Uruguay does so in its design of its education system. Similar to that of Germany's, Uruguay trains its citizens either in university careers at the UdelaR or private universities (lawyers, doctors, accountants, to name a few) as well as those trained in the *Universidad del Trabajo del Uruguay*- UTU, where students are trained in trades and technologies aligned with the strategic development needs of the state (UTU 2014).

In so, the state is then developed hand in hand with the support of the citizens their leaders. Therborn makes this argument by comparing the support a fan gives to his/her favorite rock star (just like the support a citizen gives to his/her government): when government and its players have lost all their concrete political content, in other words their power, it is the job of the bourgeoisie (and the proletariat in the case of Uruguay) to become the inspiring fan, demonstrating commitment, solidarity and collective mobilization to move the state forward (Therborn 1978, pg.120). With this in mind, the elements of government (Fukuyama), economic growth (Offe) and social involvement (Therborn) help explain, in part, how Uruguay has evolved in its political/legal and social aspects. One last

theorist can help frame a better understanding of what politics power and society have to do with a country's evolution in a post-dictatorship period.

Joel S. Migdal, in his book "Strong Societies and Weak States: State-society relations and State capabilities in the third world" presents a theory in which there is a strong relationship between a state and its society, the politics behind them and the reaction and action of such a society. It focuses on Third World countries (as Migdal calls them). This relationship, based on the mutual strength of both the state (as a government and legal apparatus) and society, the "ruled" or governed.

Migdal expresses in chapter 2 that there is a time in a country's history when changes happen too fast (by actions taken by the state), and therefore give little to no time for society to adequately respond. He says,

Sudden disruptions in life pattern give people precious little time to their life strategies. This period [is] a turning point in their lives, marked by difficulty, insecurity, and movement from one set of survival strategies while searching for new ones. It also [includes] a sudden, radical change in the institutions with which they interacted; those institutions are simply established systems of rules and role within which people deal with one another. (Migdal 1988, pg.90).

While this is partially opposite to what occurred in Uruguay at the beginning of the dictatorship, as I will show, the importance of this passage is Migdal's acknowledgement that institutions do undergo changes that happen faster than the institutions themselves can react. Moreover, the importance of this is to highlight how institutions are not entirely apart from society. Rather, state institutions function as guidelines and rules for society and "dictate" how the interactions happen. The failure of then the state and society to fully comprehend this relationship, according to Migdal, can lead to imbalances in governance, effectiveness of institutions and the "happiness" or success of society.

“A convergence of powerful forces can precipitate rapid institutional disintegration” (Migdal 1988, pg. 90). This shows then that when society, law, and economics converge, institutions incapable or unwilling to cope with the necessary changes for survival will lead to instability of the democracy. As in the case of Uruguay, where parliamentary changes to the law, and radical changes to the ruling structure of the executive, led to the taking of government power. This was followed by further impositions of legal changes to curtail freedoms and dictate how society must live (against their wishes). In the end, it can be concluded based on Migdal’s assertions, that dictatorships are easily established when the status quo is easily broken and no period of adaptation or survival is allowed between the two mutual parties of the state: society and government.

Migdal concludes his arguments on strong societies and weak states, by presenting the big picture of how Third World countries are truly portrayed to the rest of the world and what is the outcome for their governments and society. “[The] Third World [has been portrayed as having] states that represent, speak for, their societies.” (Migdal 1988, pg.260). This portrayal of these countries, according to Migdal, is crucial in understanding the development of their governments. He alludes to the fact that leaders take it upon themselves to portray a relationship between state and society that is strong and that indeed, the state speaks for its people. Migdal also points out that while that may be the outward notion, on the ground it works slightly differently. He says,

In many cases, the operative rules for people’s behavior in these societies have not been established in state legislation or bureaucratic decrees. True, state agencies have insinuated themselves into the towns and villages of society, and, in the case of state somewhat higher on the scale of capabilities, this penetration had resulted in monumental effects on social life. However, the distribution of revenues and services, as well as other consequences, has frequently run counter to those anticipated in official policy. (Migdal 1988, pg.260)

The official policy versus what actually happens on the ground is what then can bring about drastic change in governance and society (as we will see, be the case in Uruguay). The practice of government imposing or implying the application of certain rules, laws and regulations to change the attitude and behavior of its people, must be done tactfully, or it will be met with resistance (pg. 261).

Migdal suggests that “social control for the state entails more than insinuation, or penetration, of its agencies into society, more even than just successful extraction of resources. It includes the ability to appropriate resources for particular purposes and to regulate people’s daily behavior”(Migdal 1988, pg. 261). Here Migdal poses two important notions that we must consider for this thesis: control and resources. Migdal suggests that control is beyond what the laws or the image of the state is. Control entails the actual presence of the state in altering the behaviors’ of society. That is where resource control comes in. We believe that it extends beyond the common concept of resources (goods for purchase and production) and can be interpreted as political resources, human capital, and freedom (as a resource of the state).

In so, we use an adaptation of Migdal’s self-reinforcing model of fragmented social and state control to depict what happens when the status quo changes. In this case, this model applies to Uruguay in its road to the dictatorship and what happened to the country.

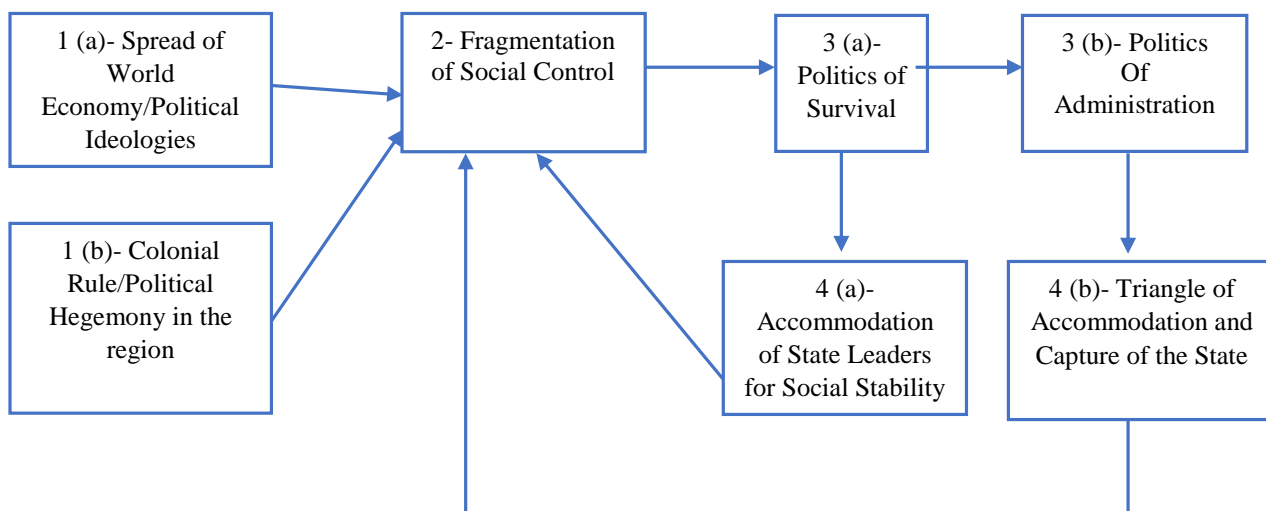


Figure 2: Adaptation of Joel Migdal's Model of Relation between State and Society (Migdal, pg. 268).

As Migdal portrays in this chart, when changes occur, there are reverberations in the inner functions of the state a series of events and actions occur so as to attempt this balance or power to be achieved. Applying this to the case of Uruguay, we can understand it as follows: The new political ideologies that spread in the 1950/1960's (communism/socialism) and the presence of the US as the region's political hegemony begin to shift the balance of what society wants/needs and what the state sees as necessary. This leads in turn to shifts in how society perceive government control and begin to create fragmentation between state and society (protests, civil disobedience, calls for political change). Therefore, two situations create themselves that attempt to regulate the situation. The government enters into a mode of survival in order to protect its power and society into a mode of survival to protect its rights and freedoms. Simultaneously, a politics of administration happen. This is to ensure that the institutions (political and social) do not collapse while society remains fractured.

Ultimately, the figure shows that two potential outcomes may occur (all leading back to the fragmentation of society). These two outcomes foreshadow two alternatives to the social and political reality of the country: return to stability by having political and social compromise, or a dictatorship by which the power and respect for laws is disregarded in order to maintain control. Migdal's figure provides this understanding by dissecting the multiple facets that make up a society and its government. The importance of understanding Migdal's approach to weak states and strong societies is important in order to understand what we will present about Uruguay.

The changes that serve as a catalyst for the dictatorship in 1973 can be understood in part, with Migdal's approach to the role of government and society. At the same time, the social implications on the State, that Migdal alludes to, explains how society suffers the changes and can be the change of a State, particularly one like Uruguay. This is not an extensive or lengthy analysis of the theories. However, we have chosen the key aspects that relate to the potential evolution that Uruguay underwent during and after the dictatorship. Utilizing a political science approach and a sociological approach should allow us to better comprehend this process we believe occurred.

CHAPTER 4 HISTORY

From the mid 1960's until the mid 1980's, Latin America was faced with a period of lack of rule of law, violations of rights and dictatorial governments that sought to control every aspect of life, through any means necessary. These dictatorships were “founded” on the principle of “National Security”¹⁷ against forces that sought to destabilize the state (Junta de Comandantes 1976). These “forces” as deemed by the dictatorships, were in fact an embodiment of the voices of discontent and change. It was a group in society was not content with the political, social and economic situation of the country and wanted to see that change happen. As the introduction stated, we focus not on the history of the region (although it did have some repercussions in Uruguay) but rather on the particularities of Uruguay, how “it was led” to this moment of instability, how law and politics played a crucial role in it and how it unfolded before the culmination of the dictatorship in 1985¹⁸.

In its history, Uruguay was not facing a dictatorial government for the first time. In fact, Uruguay had had a series of dictatorships in its past (albeit not as brutal as the one in 1973) that should have taught lessons to country to not have that event repeat itself. A key aspect of Uruguay's history is the function and role that political parties had and have for the country. Adolfo Garcé, in his essay “*Notas sobre partidos políticos e identidad nacional en Uruguay*” mentions that “political [parties] built political institutions which, with time, ended up configuring distinct aspects of the national identity” (Garcé 2011).

¹⁷ At the time, “national security” in Latin America was focused on the fight against communism and any force that sought to destabilize the state. This was at the aftermath of World War 2, when the USSR started to gain more power and political presence.

¹⁸ You will notice that in some instances, I will refer to the end of the dictatorship happening in 1984 or in 1985. It is a distinction I will use, given that various authors and material see the return of democracy based on when the agreement, *Pacto Naval* (see Chapter 14) happened to when the agreement was actually executed. This purports a hint of how politics and society saw the return of democracy.

What this signifies is that governing Uruguay was driven and based on the political parties¹⁹ that country had had since its foundation as a nation. Moreover, according to Garcé,

The affirmation of the centrality of the [political] parties going against the grain of prevailing interpretations of national history during the sixties and seventies, in line with the height of the influence of Marxism in our culture tend to recall the historical vicissitudes of conflict between social classes. While recognizing the influence of the role of social groups in Uruguayan politics, it helped the party-centric hypothesis abandon the exaggerated economic reductionism and socio-centric approach and return the focus [to the] political parties and institutions. (Garcé 2011)

The importance and role of political parties is then crucial to understanding the history that Uruguay carries with itself. As Garcé points out in the last quote, the shifts back and forth from politics to society and economy always returned to politics. This, we believe, is because of the crucial role that politics plays in the identity and democratic framework of Uruguay. The political panorama of Uruguay's political parties was initially one of bi-partisan representation, which later turned into a multiparty system.

Before looking at the history of the dictatorships in Uruguay, we must first briefly look at the political party history given its impotence as noted by Garcé. It is "divided" into two groups: traditional or historical parties and then the "newer" parties. Uruguay's two traditional parties are the *Partido Colorado (PC)* and the *Partido Nacional (Blancos- PN)*. The *PC*, founded in 1836, has a focus on liberalism, republicanism, social democracy, conservatism and political pragmatism. Its political agenda leans to favor the center-right ideology (conservative) with some instances of leftist ideology in more progressive modern ideas (Partido Colorado 2011). The *PN* was founded in 1872; around the same time as the *PC*, hence the reference to "traditional" parties. Its ideology, similar to the *PC*, focuses on

¹⁹ First, the traditional political parties up until the early 20th century and then the new parties that were born after 1903 (further explanation of parties in this chapter).

more liberal, nationalist, humanist and panamericanist philosophies. It also has a political agenda that leans to favor the center-right ideology (conservative). It is considered the catch-all political party because it tends to favor multiple facets of Uruguayan society (more so than the PC) (Partido Nacional 2011). These two parties, which are still very much present in Uruguay's politics, are not alone in today's Uruguay.

The "newer" parties that have joined the political arena encompass more aspects of Uruguay's society. Besides the two traditional parties, Uruguay has six other parties that have had a hand in changes and history of Uruguay (closer to the 20th and 21st century).

The parties include:

| Party Name | Ideology |
|---|---|
| <i>Frente Amplio</i> | Leftist democracy; social democracy, progressive, moderate left |
| <i>Partido Independiente</i> | Social democracy, socialist Christianity, center left |
| <i>Unidad Popular</i> | Extreme left |
| <i>Partido de los Trabajadores</i> | Formerly known as the "revolutionary socialism) party, revolutionary Trotsky ideology |
| <i>Asamblea Popular</i> | Leftist alternate to the <i>Frente Amplio</i> |
| <i>Partido Ecologista Radical Intransigente</i> | Environmentalist, resource protection |

Table 2- Alternative political parties to the traditional parties (Corte Electoral 2014)

For the purpose of this research, however, we must look at mainly at the *Frente Amplio* (FA). This party was founded as a coalition in 1971, as a response to the deteriorating political situation in Uruguay and to provide an alternative to the right-wing ideology of the current government. This now party has a leftist ideology. Its main tenets are socialism, Marxism, communism, and very little liberal ideology. The FA is a progressive party that counters the traditional paradigm of the historical parties, meaning that it goes against the conservative approach to governance and policy. It is a party that embodies the ideology of the welfare state (Frente Amplio 2015).

The crucial role that these parties play in the history of Uruguay will become evident further down. The ideology that each one carries and the influence it has on the population is going to be clear when we approach the ebbs and flows of democracy. In so, we then re-assess the dictatorships that came before 1973 and what eventually led to 1973.

The first dictatorship to take place in Uruguay was from 1865-1868 by Venancio Flores (Partido Colorado). Having been “placed” in the presidency by the governments and military forces of Argentina and Brazil, Venancio Flores was thought of as “[the] greatest dictator of our history.”(Rocha, et al., 1985, pg. 27). During this time, Flores and the presidents of Brazil and Argentina signed the *Tratado de la Triple Alianza*²⁰, which established the support of the three countries to attack and divide Paraguay into pieces for each country, respectively. In the end, Uruguay benefited only from the commerce and business that the war brought to it, but received no “reward” in terms of land. This dictatorship was characterized not because of the atrocities perpetrated to the Uruguayan people (which none have been claimed) but rather to the arbitrary and at times, erroneous actions taken by President Flores (Rocha et al., 1985 and UruguayEduca 2008). In the end, Flores was assassinated in 1868, bringing to an end this brief period of instability and ushering back democracy. This is short lived, however.

In 1875, Uruguay was going through a financial and rule of law crisis. It was a time in which then-President Ellauri (Partido Colorado) was dealing with issues of individual rights (not yet fully contemplated in the constitution of the time), human rights, religious freedom and an economy that was quickly failing (Rocha et.al. 1985, pg.29). In 1976, after

²⁰ The *Tratado de la Triple Alianza* was a treaty signed in Buenos Aires in 1865 that established an Alliance between Argentina, Brazil and Uruguay that allied them against Paraguay in attempt to annex the territory and split it amongst the three countries (Neher 2015)

social uprising, Cornel Latorre saw the power void and took over the government, on behalf of the *Partido Colorado*. He did so by applying terror techniques to assure himself control of the state. The tactics employed included assassinations in broad day light by platoons patrolling the street, mysterious disappearances, forced labor and imprisonment, as well as by firing squad (Acevedo 1932). Latorre claimed that his techniques were used in order to make “an honorable government and not one of thieves, by punishing those civil servants that did not fulfill their duties with honor” (Rocha, et al. 1985, pg.31). Eventually, he resigned his post as president/dictator, claiming that Uruguay was an ungovernable country.

In 1880, democracy was tentatively restored to Uruguay. President Francisco Vidal was nominated to finish the presidency of Latorre. However, given that Latorre’s presidency was militaristic in nature (authoritarian and dictatorial in nature), Vidal’s post was merely a façade given that in key posts of government, there were still military personnel running the government. The period that followed from 1882 (when Vidal resigns his post) until 1903, saw a drastic change from authoritarianism, to pseudo democracy. Attempts to gain control or re-stabilize the country were being challenged both by the population and by governments in power (Acevedo 1932 and Rocha et.al. 1985). There was, however a change in the pattern of governance and in society at the turn of the 20th century.

The start to the 20th century was carrying already all the social and political baggage that had been accumulated with the dictatorships that happened in the 1800’s. What this meant for the new government in 1903 was a push for change and attempt to stabilize the country. In 1904, a *Colorado* José Batlle y Ordoñez, was elected to his first term as

president. His government was important because of the initiatives it sought to bring forward to reform the state apparatus. The government sought to increase state intervention in the economic and social life of Uruguay, as well as the political and constitutional life of the country (UruguayEduca 2008). Economic changes included the nationalization of the central banks (*Banco de la Republica* and *Banco de Seguros del Estado*), as well as a of state services (Power- *Usina Electrica del Estado*, telegraph- *Telegrafo Oriental* and train lines- *Administracion de Ferrocarriles del Estado*). Socially, Batlle improved the labor situation of many workers by limiting the workday to 8 hours and introducing worker's compensation (insurance). Nevertheless, we believe that the most important reforms came in the political aspect.

President Batlle y Ordoñez, in his second presidential term²¹ sought to reform the 1830 Constitution and introduce the “*Sistema Colegiado*” or National Governing Council. This system was designed to replace the executive power with a National Governing Council²². “The ‘*Sistema Colegiado*’ provided safeguards against dictatorial pretensions and ensured stability of the reformist policy; however, for the election of the board members²³, the rules favored the ruling party” (Sacchi 2010). This major move to shift the power of the executive power could be perceived as an attempt to protect the institutional framework of the democracy. Uruguay had been enjoying a democracy for some time, and Batlle's reforms was made to prevent the state from having another dictatorship happen. The reform never occurred, as it received more votes against it by Batlle's opposition and the president that followed him, Feliciano Viera, in 1916 (Sacchi 2010, UruguayEduca

²¹ 1911-1915

²² National Governing Council was composed of 9 members

²³ The executive referee would be the main leader for the

2008, Acevedo 1932). Following this period of reforms and change came a period of political and social trial and error and constitutional changes for Uruguay, from 1916 until 1973.

In 1918, the constitution was reformed. Its main changes focused on making the constitutional amendment process more agile (less bureaucracy) as well as defining better the structure of the executive power²⁴. Following this new constitution, three more constitutions were enacted before the 1967 Constitution (the one used by the dictatorship to gain power). Among the notable changes that happened during this period of constitutional change was the enactment and recognition of individual rights (1942 constitution), it also created the official post of Vice President of the Republic (1934 constitution) and eliminated the *Consejo Nacional de Administracion* (1934 constitution). It is also during this period that two minor coups occur (1933-1934 and 1942-1943). In 1952, along with the new constitution that created the *Consejo Nacional de Estado* (similar to the proposed *Sistema Colegiado* by Batlle in 1915), this council from 1952 until 1967 governed Uruguay. During this period, the *PN* governed with this new council-like format. In 1967, the executive power with president and vice-president was reinstated and the *Consejo* was abolished. (UruguayEduca 2008 and Larrobla 2011).

However, the gradual crisis that the political system suffered from 1962 is what clearly characterized the deterioration of the state. Alvaro Rico, a Uruguayan author and survivor of the dictatorship, termed this period as “the democratic road of the dictatorship”. This is because, until the start of coup and de-facto governments of 1973, Uruguay had allowed its government and its people to allow the state to change and adapt to what was

²⁴ 1918 Format of the executive power: The office of the President and the creation of the *Consejo Nacional de Administracion*

happening (guerrilla tactics, civil unrest and protests for reforms). This was pushed by a transformation that was being pushed by political organizations, such as the *MLN-Tupamaros*²⁵ and social mobilizations that were pushed by syndicates and the political left (Larrobla 2011). Carla Larrobla, historian, writes that “[the end of 1967 was] characterized by the deterioration of democracy and of the rule of law, where [the people] assisted in the auto-transformation from rule of law to a police state.”²⁶ (Larrobla 2011). As a counter to the changing attitude of the population and the crisis that was escalating, the government deepened and extended its repressive tactics. In 1968, president-elect Jorge Pacheco Areco (*Partido Colorado*) used the *Medidas Prontas de Seguridad*- Emergency Security Measures²⁷, under the 1967 Constitution, to systematically combat “the subversion” and any of those who represented Marxism and its ideology (Larrobla 2011). This action further demonstrated the crisis in which Uruguay found itself towards the end of the 1960’s. It also began to push the weakening of rule of law and the abuse of the Constitution and its provisions.

After Pacheco Areco’s term ended in 1972, President Juan Maria Bordaberry (*Partido Colorado*) was elected. Given that the crisis had not been solved, he was tested on April of 1972. The MLN launched its plan of attack against their counterparts, the right wing “*Escuadron de la Muerte*”(Death Squads). Because of the outcome of this bloody attack, the parliament declared an internal state of war and decreed law No 14.068²⁸. This

²⁵ MLN-Tupamaros- Leftist group that adopted guerilla tactics and was deemed an enemy of the state by 1967. They sought to emphasize a leftist, Marxist ideology and wanted the government to change its approach to economics and politics (away from neoliberal economics). It also wanted the improvement of social services for the population. Given that the government marked the MLN as “seditious”, they became the main target of the attacks and implementation of certain laws previous to 1973.

²⁶ “[...]1967. Caracterizado por el deterioro de la democracia y del Estado de Derecho, donde se asistió a una auto-transformación del Estado de Derecho en Estado policial.” (Larrobla 2011)

²⁷ See Chapter 4- The Changes that Occurred: The Dictatorship (1973-1984)

²⁸ Idem- Chapter 4

law effectively eliminated any protection and acknowledgment of individual rights (Larrobla 2011). The political crisis continued to worsen, until finally on June 27th 1973, Juan Maria Bordaberry signed the national decree that effectively dissolved parliament and that would mark the coup of 1973. In the decree, the new de facto government dissolved parliament and granted full powers to the executive power, as well a more power to the military. This decree was signed along with the minister of defense and the minister of the interior, who were both of the military branches. Bordaberry then became “the constitutionally elected president that ‘in such an act (self-coup) becomes a de facto dictator. There was no usurpation of power, nor a vacuum, but rather continuity and unity of state power’ ”. (Larrobla 2011). This gave the state a degree of “legitimacy” and was not stopped right away. This decree had also the power to create the “*Consejo del Estado*”²⁹. This council was granted the powers to execute the duties if the General Assembly and to control the executive power when it came to matters of individual rights and constitutional and legal norms. This limitation of the executive power itself gave full power to the Council to reword, restructure and supervise the changing of laws in regards to individual rights (right to freedom, right of movement, right to a fair trial and the right to life, to name a few).

Additionally, the Armed forces’ participation in the dictatorship had been secured and institutionalized under the new de facto government. Two institutions were created, the Council for National Security (*Consejo de Seguridad Nacional- COSENA*) and the Council of Joint Chiefs (*Junta de Comandantes en Jefe- JCJ*) and these two institutions

²⁹ State Council

were crucial in planning, designing, coordinating and executing all repressive policies of the dictatorship.

The history that Uruguay “lived” before 1973 is one of a “propensity” to fall into a condition of lack of rule of law and lack therefore of any guarantee to protect rights. The occurrences that led to the demise of democracy and the deterioration of law and respect for human rights had a causal factor in how the policies and laws were enacted. The end goal: complete control of the state and all aspects of life. We have shown that arbitrary action together with conditions of instability led to the “pre-dictatorship” that should have foreshadowed what was to come. The events that led to 1973 are therefore crucial to understanding what happened. The next chapter breaks down the legal and political, as well as societal changes that occurred during the dictatorship, as well as to the years leading to it (1967-1973).

CHAPTER 5

THE CHANGES THAT OCCURRED: The Dictatorship (1973-1984)

“Violence is the only way left for Uruguay to win over power”- Fidel Castro, 1971

Uruguay’s history, as seen in Chapter 2, was marked by periods of dictatorial governments and democratic restoration. It is then important that we look at what where the legal, political and societal changes that occurred from 1973 until 1985 allowed for the dictatorship to happen. This chapter furthers the explanation of how the legal and political changes that were being already executed in the years leading to 1973, opened the gates for the “destruction” of rule of law and alteration of the constitution. This then led to the deterioration of human rights (torture, detention and disappearance). In essence, this period could be seen as a time of de-evolution, of legal and political “backwardness”, as well as social backwardness.

Historians mention that Uruguay faced a trilogy of crisis: economic, social and political, and that this led to the corollary deterioration of the state (Caetano and Rilla 1998, Bertoni 2015, Fein 2015). Form this trilogy, we focus and dissect the laws, politics and society of Uruguay. The legal and political changes that happened during the dictatorship are crucial to understanding what happened in the 30 years after the end of the dictatorship. This period of de-evolution could potentially demonstrate the evolution that happened after 1985. The legal and “democratic framework” used to achieve control (and the subsequent violation of human rights) in Uruguay, is what enabled for the dictatorship and changes to occur. We refer to “democratic framework” to the use of the means of legislative and executive provision under the constitution, to achieve legal and political change. For Bordaberry to assure its control by 1973, the dictatorship had to grow in power, and ultimately, alter the fabric of the state using the constitution and rule of law. First as its

“ticket” into power and control, and then use it to the whim of the dictatorship for total control.

Politics

Although it started in 1968 under Pacehco Areco, as a response to a deterioration of social structures, 1973 is the official start of the political and legal oppression. Bordaberry and the Uruguayan state formed a dictatorship that would run from 1973 until 1985. It was by all intents and purposes, “legal”. The use of the constitution and the creation of laws “that protected the state” from internal meltdown, seemed on the surface legitimate and legal. A crucial piece that explains the changes and the dictatorship is Gerardo Caetano and Jose Rilla’s “Breve Historia de la Dictadura (1973-1985)”, where the authors present an “abridged” review and analysis of what happened. “Towards the beginnings of the 1970’s, it was evident that the evolution of the government’s politics, as well as the sustaining of a situation that presented serious imbalances, could have not been a bigger foreshadow for the progressive implant of authoritarianism.” (Caetano and Rilla 1998, pg.19).

The political baggage that Uruguay was carrying in the 1970’s, according to historians Gerardo Caetano and Jose Rilla, was enough to intensify the political, economic and social situation that allowed 1973 to happen. They go on to say that “[even] when the socio-economic crisis that anteceded [the crisis in 1973] by almost two decades, that led to the final break of institutions in 1973, already in 1968 you could clearly distinguish the dictatorial perspective of the Uruguayan political system. (Caetano and Rilla 1998, pg.19). The fact that the “hints” and situation were distinguishable, allude that the system allowed itself to do this.

The government began to have an escalating behavior in how they used their political power before 1973. As seen in chapter 3, the political and legal changes that began with Jorge Pacheco Areco's presidency, continued as a reaction to the continuing deterioration of democratic values. Many historians mention that this deterioration began with the use of the "*Medidas Prontas de Seguridad*"- emergency security measures in the 1967 Constitution. Under the Constitution, Chapter 3, Article 168 granted powers to the president, along with the ministers or council of ministers to ensure the conservation of law and order in the state, and the protection of the state. It also grants the president with supreme command of the armed forces and the power to object to laws and prospective law projects in Parliament, as well as the potential to suspend such laws³⁰ (Poder Legislativo 2004). The emergency security measures under numeral 17 of article 168 is what contains the emergency security measures. This measure reads as follows,

17) Take prompt security measures in grave and unforeseen cases of foreign attack or internal unrest [...]/ As for individuals, prompt measures of security authorize only their arrest or transferred from one point to another within the region provided they do not elect to leave it. Also, this measure, like the others, must be submitted within twenty-four hours adopted, to the General Assembly in joint session or, if appropriate, the Commission Permanente, which will make the decision. The detention shall not be at a place intended for the incarceration of criminals. (Poder Legislativo 2004)

This small but impactful measure, as interpreted by Pacheco Areco, was used in order to control the situation that the state was facing with the Tupamaros and other groups that were protesting the political, economic, and social institutions. This measure allowed the government to incarcerate and detain those it deemed dangerous for the state, those who belonged to any of the seditious leftist groups (Junta de Comandantes 1976). As Gaetano and Rilla mentioned, the years leading to 1973 were a precursor period filled with instances

³⁰ Under Section VII of the Constitution- Of the proposition, discussion, sanction and promulgation of Laws-

that pointed to a radical change happening soon. In so, the country began to enter a period of emergency measures.

Felipe Michelini, Uruguayan lawyer and professor at the *Universidad de la Republica*, wrote “El largo camino de la verdad” (Michelini 1996). In this piece, he points out that the actions taken by the state completely eliminated any remnants of a structure and justice, alluding to a disregard of the constitution and previous treaties to which Uruguay was a signatory. Juan Maria Bordaberry was elected in 1972, following Pacheco Areco’s presidency. By this point in time, the security measures had been in place for four years, and the new government did not necessarily make any efforts to end them. On April 15th, 1972, the government proclaimed an “internal state of war”, and quickly passed a series of law afterwards, under the power of the Executive, to temporarily limit constitutional guarantees (OEA 1978). Albeit having taken these actions, constitutional guarantees had already been faulted when the measures had been used to suppress freedom of expression and to exercise democratic change of the country (Alfaro 1984, Mercader and de Vaca 1969).

Following this declaration, on July 5 1972, Uruguay’s parliament, along with the newly elect president, enacted and issued law N°14.068- Law for the Security of the Sate and Internal Order. This served to replace the previous declaration of state of war. “This law, [...], suspended certain rights of persons accused of subversive activities and transferred the authority to prosecute civilians accused of crimes against the security of the state from civilian to military courts.” (OEA 1978). The law, which limited constitutional rights, not only opened the gates to the arbitrary actions that state would take later on in the dictatorship, but it also altered the Penal Code and the military penal code. Divided into

four chapters and 49 articles, the design of the law was to ensure, according to the state and the document itself, the internal and external security of the state, by deeming any actions against the sanctity of the state, as acts of terrorism and instability (Ley 14-068 1972).

The notion of freedom of expression was severely curtailed to the point that any type of protest, printed materials, meetings or acts recognized as seditious and dangerous to the state, were met with acts of repression. Anyone in possession of weapons, aided the subversive with money or other assets, or even possessed anything deemed secrets of the state that could be used against the state, were deemed enemies. Article 11 presents a change in how the jurisdiction of the courts and the law was going to pan out. It reads,

Article 11. When a defendant has committed one or more offenses subject to the ordinary jurisdiction, and one or more subject to military jurisdiction, continue the trials according to the provisions of the respective Codes. When appropriate unification of penalties shall be established by the Supreme Court, built in accordance with the provisions of subsection 1 of Article 72 of the Code Organization of Military Tribunals and the provisions of the laws in force matter (Article 54 of the Criminal Code and related). When the more serious crime outside the corresponding military jurisdiction, the sentence shall be served in military establishments. (Ley 14.068)

This article considers that the crimes committed, under this article, will be initially subject to civilian courts. But should the crimes amount to something bigger (it doesn't specify what), then it would fall to the military courts and judges to decide the fate of the alleged criminals. This poses an interesting matter.

The use of military powers and courts to convict civilians on what used to be civil matters pushes the balance of politics and law in favor of a very authoritarian government. Article 16 is the one that amends the Penal code to permit the military to have jurisdiction. The extensiveness of the law, which we would have expand to another thesis just to dissect its nuances, is important to keep in mind because it demonstrates to what extent the government and lawmakers were willing to go to assure that the country was "kept safe" and that they had control. The law of course contemplated the periods of jail to be handed down, as well as punishments (but not torture).

The decline of rule of law and political democracy only continued to deteriorate in 1973. From this point on, many of the actions taken by Bordaberry and those in power, was marked by the use of decrees. What this meant was that the government was effectively sidestepping and avoiding following the Constitution. The constitution had provisions that limited and therefore controlled the abuse of enacting laws and curtailing rights. However, because of the use of the emergency security measures provided under the Constitution, and the declaration of a state of internal war, Bordaberry and the military were surely building a legal and political wall. This wall would serve as a stepping-stone and a form of protecting their power and position. The changes were, in essence, subtle. Slightly modifying laws and enacting emergency measures, meant that the population and weaker segments of political parties, could not react fast enough. It would eventually, make for the “disappearance” of rule of law.

The interpretation behind this is that in order to act faster and to ensure power and control, the government would have to make fast and radical changes to the laws and regulations. On February 23, 1973, Decree N° 163/973 was enacted. It was used to create a new agency, under the Constitution, called the *COSENA*- National Security Council (*Consejo de Seguridad Nacional*). The role of this decree and this new agency was to cover any problems Uruguay might face in matters of security³¹. This decree also granted further powers to the Joint High Command of the Armed Forces that extended into the political realm (OEA 1978, Biasco 2015, Espiell and Esteva Gallicchio 2008). Creating an agency such as the COSENA, provides more “supervisory” powers for the government, as well as

³¹ The COSENA was “composed of the President of the Republic, the Minister of the Interior, the Minister of Foreign Affairs, the Minister of National Defense, the Minister of Economy and Finance, the Director of the Office of Planning and Budget, and the Commanders-in-Chief of the Armed Forces.” (OEA 1978).

it grants more political clout to the military and police forces in order for them to enforce law 14.068 and the subsequent laws and decrees that followed.

Continuing the decline in rule of law, 26 days before the coup, the executive power issued another decree, this time with the support of the armed forces and not the General Assembly³². Decree N° 393/973 provided “the indefinite suspension of a number of constitutional guarantees, by broadening the exercise of [the president’s] emergency powers, invoking Article 168, paragraph 17 of the 1967 Constitution for that purpose. This decree authorized the continued detention of persons regarded as a threat to the security of the state and public order, and the “preventive detention” of persons allegedly involved in subversive activities.”(OEA 1978). We can see the continued decline of rule of law and respect for the constitution, which can only lead to a snowball effect in the changes to come on June 27, 1973.

Juan Maria Bordaberry, on June 27, 1973, acts against the General Assembly of parliament, with the help of the military joint chiefs, and issues a decree and establishes the coup. It came accompanied by a decree, No.464/973. This decree, according to Biasco, is what fully “breaks” any sort of constitutional order and brings about the elimination of any respect for rights of the population (Biasco 2015). Decree No.464/973 dissolved the General Assembly-Parliament (Chamber of Deputies and Senators) and created the *Consejo de Estado*³³. This new council was attributed the duties of,

- A) *Exercise in an independent manner, the functions of the General Assembly*
- B) *Relative management control of the Executive Branch with respect for the rights of individuals, and the submission of such powers to the legal and constitutional norms*

³² Uruguay’s parliament, before 1973, was a bi cameral parliament. It is composed today (result of the restoration of democracy) of the Chamber of Deputies and the Senate. Joined together, it forms the General Assembly, which as whole, exercises the legislative power in Uruguay. (Add to txt above, before 1973)

³³ Council of the State

- C) *Elaborate a project for Constitutional Reform, which would reaffirm the fundamental principles of democracy and duly present them for public inquiry to the Electoral body.* (Biasco 2015, pg.4).

Hector Espiell also analyses the decree. The deterioration of democracy and rule of law is further justified, according to him, when we look at the judicial power. This also proves that the political wall that was being built to protect the power was trampling on rule of law and protection of human rights. This aggravates the situation when it came to the tactics of torture, repression and forced disappearance that the dictatorship used on the population (OEA 1978, *SERPAJ 1992*, IAHCHR 2009)

This council then had full legislative overview of what the state could do and had the support of the military. In conducting archival research, the research showed that upon review of the session logs of the council and the COSENA, those in power and leading the sessions, were mostly military officers (general-grade). The first session log of the *Consejo de Estado*, from the National Library archives, is the one where the General Assembly is dissolved. The preamble to this session and decree states that the State is in a stage of grave decay in its constitutional and legal norms, which enshrine the rights and competencies to the authorities of the State. Additionally, Uruguay finds itself in an accentuated process of “deconstitutionalization” and constitutional falsehood. Therefore, this process must be urgently stopped (Consejo de Estado, 1973). The preamble was then followed by the operative clause of the session, which read as follows: The *Consejo de Estado* declares the Deputy Chamber and the Senate Chambers dissolved, granting full powers to the *Consejo de Estado*. Article 3 stated that it curtailed opinion and the publication of any material that would indicate that [this action] is a dictatorship and moreover, would incite or perturb public order (Consejo de Estado, 1973).

This assured them their presence and control in a strictly civilian-military government. “The judiciary was under the effects of the breakdown of constitutional order, formalized by the decree. On the date of the start of the de facto period, unlike what happened in Uruguay in previous de facto governments of the twentieth century, [the decree] substantially affected the institutional position, organization, jurisdiction and functioning of the judiciary” (Espíell and Esteva Gallicchio 2008). This means that also a possible system of “check and balances” that the constitution had, had been readily eliminated by the actions of Bordaberry and the coup. This was already seen in the previous legal changes that the decrees and laws had done before this date. We can assume then that the decree gave the final blow to finally destabilize the judicial system in Uruguay (Caetano and Rilla 1998, Rico 2010, Espíell and Esteva Gallicchio 2008). By 1976, both military and civilian authorities had consolidated power by use of their repressive tactics.

However, after a string of discords and failed negotiations between Bordaberry and the military leadership, President Alberto Demichelli replaced Bordaberry. This was due to a discord between Bordaberry, who sought to eliminate all political parties from the political system and concentrate all power in the executive, and the military who had a more inclusive political agenda. Dr. Alberto Demichelli (*Partido Colorado*) was then temporarily appointed the new president in 1976, effectively removing Bordaberry from power. This reality of the ever-changing political and legal environment in Uruguay kept worsening as the “new” government led by Demichelli began enacting a series of acts or *Actos Institucionales*³⁴. During 1976, two key events happened: The appointment powers

of the *Consejo de Estado* had been used to appoint a new president and a new form of legal power was being exercised. The powers that had been granted to the *Consejo de Estado*, this entity was able to designate the new president (temporarily) and hold its own “internal elections” to choose who, from the inner circle, would govern. This meant that any remnants of democratic elections had been efficiently eliminated. The importance of the second event, the acts, deepened the political and legal crisis.

Espiell and Esteva Gallicchio explain that the beginning of this “authoritarian abuse” of constitutional and legal power began when the *Actas* were being “legislated”. Through a total of 20 *Actas Institucionales*, the dictatorial government was able to secure itself the changes it needed to assure itself legitimacy and control in the planned plebiscite of 1980. Espiell and Esteva Gallicchio say, “all [the acts] were unconstitutional, and they implied the *de facto* exercise [that lay] on the Constituent Power³⁵” (Caetano and Rilla 1998, Rico 2010, Espiell and Esteva Gallicchio 2008). What this means then is that by using the *actas* as a tool of legal change, the government was exercising what in practice was a democratic tool for governing: the people should be the ones voting and deciding on these changes (not the powers at be).

Caetano and Rilla note what Bordaberry stated in a speech about hardening the political positions, upon his being ousted by the military in 1976³⁶, “We shall build the new National Political Doctrine [...], based on two main major principles: National Unity and

³⁵ Constituent power: Constituent power is the faculty or power of a community to take its original key political law (its founder pact) in a Constitution and to reform all or part when necessary (Rocca et al. 2014)

³⁶ Bordaberry was ousted from power after the military leaders and the president disagreed on the approach of the policies of the state, particularly on how to approach the issues of political parties. Eventually, the excessive approach that Bordaberry wanted to take was enough for the military to depose him from his post (Caetano and Rilla 1998, pg.64).

the Defense of the “Orientalidad”. [...]I do not hesitate to assert that we are protagonist of a revolution [...], which occurred almost as a natural event. It is because the moment had arrived and the process was inevitable”(Caetano and Rilla 1998, pg.28) This speech by Bordaberry was a last hurrah for him to impose his prospective political agenda that did not align with the military. His proposition to eliminate the traditional parties and bring about a more fascist and new approach to politics in Uruguay was not well taken by those who had power majority.³⁷

Acta No. 1, the first one signed by Demichelli in 1976, declared an incompatibility in the transition that should exist between the political parties and society. What this meant was that elections in Uruguay would be officially suspended. The division between the population and the political parties had grown too big and irreconcilable.³⁸ (Caetano and Rilla 1998, pg. 63). This major move to inhibit the apparent legislative process was yet another trample by the dictatorship on what little remained of rule of and the constitution. It was also a double standard: the dictatorship and its policies had driven a wedge between the political parties and the population who they represented. *Acta No.2* created a new government office named *Consejo de la Nacion*³⁹. This entity was created to house some of the members of the *Consejo de Estado* as well as some of the members of the Joint Chiefs of the Armed Forces. This managed to centralize even further the civilian-military power.

³⁷ This will become extremely important in the transition years and later years of Uruguay’s democratic development. We will approach the notion of political traditionalism as one of the key that saves democracy and is what has pushed for renewed approaches to the memory of the dictatorship and how to use it as a positive tool for governance.

³⁸ In their extended plan for governing Uruguay, Bordaberry and the military had sought to have a plebiscite in 1976 to legitimize their actions, give them constituent legitimacy and provide major changes to the constitution.

³⁹ National Council

Once Demichelli's temporary presidency concluded in 1976, a new president was appointed by military. Aparicio Méndez (*Partido Nacional*) continued the pattern that Demichelli followed by continuing to sign into law more acts. *Acta* no.3 of September 1st, 1976 established that the executive power would be able to act with the CONSENA in the decision making process.. This was a de facto, constitutionally provided power (based on article 168 of the constitution). This act provided more power to the executive, which in turn should have allowed the dictatorship to stabilize (Caetano and Rilla 1998, pg. 37-38). Méndez's passing of multiple more acts, of a constitutional nature, ended up completely substituting the Constitution. This was, in some way, a forced constitutional reform (without a referendum) (Larrobla 2011).

Between 1978 and 1980, the government felt compelled to make its rule and governance, legitimate. They wanted to do this via a constitutional plebiscite to be held in 1980. In 1978, in an attempt to bring back validity to the political parties that had been years back deemed as counter to the public order, the Electoral Court created a draft of a statute law that would recognize the political parties as "the only intermediaries between the citizen and the state" (Caetano and Rilla 1998, pg. 70). The Joint Chiefs of the Armed Forces met to discuss what the new constitutional text would be, and had hoped that the population would vote them. However, because of the discontent that the population harbored, according to Maria de los Angeles Fein, most civil society groups and the population as a whole, began using subliminal tactics to make sure the population voted "no" against the changes. As a form of revolt against the censorship the dictatorship imposed, and as a show of disagreement with the government, Fein mentions that those

with vehicles, would drive up and down the streets and turn on their windshield wipers as a form of saying “no” (even if it wasn’t raining) (Fein, 2015). In the end,

On November 30th, [...] the Uruguayan population came together in a massive, peaceful and silent manner to vote in the midst of suspicions of failure and [electoral] fraud. More than 85% of the “authorized” [voters] voted and in doing so against the reform project by 885,824 citizens (57.9%) and in favor 643,858 (42%). The 3 to 2 ratio against the authoritarian project, while not numerically representative of a crushing disequilibrium [against the project], gained great political transcendence which surprised, the government and the opposition. (Caetano and Rilla 1998, pg.75)

This move proved to be destructive to any momentum that the military might have had.

After the failed plebiscite, the dictatorial government lost some political legitimacy and found themselves scrambling to regroup and attempt to use the electoral arena a legitimizing tool (Fein 2015).

Acta No. 11 is issued two years following the failed plebiscite. But instead of seeing more authoritarian rules or laws, it was an act that was planning out the transition back to democracy. The plebiscite’s failure became the downfall for the dictatorship. In what can be interpreted as an attempt to soften the decline of the dictatorship, the military leaders had opted to meet with the previously disbanded parties. These meetings, which began in 1981, were designed to negotiate and to see what could be done for the benefit of the country. In so, this was seen as positive political initiative. This act confirmed that the three-year transition process was confirmed, it defined the election of a new president and it broadened the competencies of the *Consejo de Estado* (Caetano and Rilla 1998, pg. 96). This move was seen as finally the push for change. This process lit the fire in the Uruguayan population for 1982. “The foundational effort of the dictatorship to set up a new society had failed [...]” (Caetano and Rilla 1998, pg. 98).

Between 1981 and 1985, two more presidents were nominated to govern (although their governing power at this point was merely to hold stability). In 1982, an election is held (with only those allowed and authorized to vote) to elect which political parties would

be allowed to participate in the elections of 1984. The parties chosen to run were those in clear opposition of the dictatorship. This included the traditional parties and the *Frente Amplio*. Espiell and Esteva Gallicchio mention that the framework used for these acts was to ensure that the changes were happening to fulfill the wants of those in power. We can see how with *acta* no. 15 (1984) for example, the executive was able to proclaim itself the sole adjudicator of the constituent power, and therefore annulled article 331 of the Constitution, which regulated all procedures for any constitutional reforms (Idem). This action can be interpreted as the absolute attempt to take power, although in the same year, the dictatorship would end. More importantly, according to both authors, is the fact that all these decrees and acts were unconstitutional. They did not align with the parameters of what the law said and seemed, at times, to be completely arbitrary (Espiell et.al. 2008 and Caetano et.al. 1998). The period following then is what is considered that final years of the dictatorship and what led to the meeting in 1984, the *Pacto del Club Naval*, were the final transition was finalized and democracy returned to Uruguay. While the political and legal changes carried the weight of what the dictatorship was, changes also occurred in the aspect of social “institutions”.

Society

The legal and political changes were not restrained to the politics of dictatorship [. These changes had a clear effect on society and the institutions on which it depends. Uruguay faced changes in its social fabric, society itself, which greatly affected the composition of the population and the education system. Exile and demographic make-up of the population, as well as the educational institutions as well as some of the social services are part of this aspect of analysis. Conversely, they would not function if there

were no population to serve or change. In so, when looking at the changes that occurred at a social level, we look what happened to the labor force, the notion of forced migration, the instigation of fear and the limitation of one could know and should know in the eyes of the military.

To provide an understanding of what changed, we look first at what happened to Uruguay's society because of the dictatorship. Going back to 1968, when the emergency Measures were first put into practice, this is the time when Uruguay's population began to "feel" that their rights were being limited and that freedom was soon to become a "luxury". Uruguay's society was then faced with the harsh transformations of its fabric. Firstly, the impact the economic laws had on the population were great. Because wages were beginning to be worth less than their actual value⁴⁰, families were faced with having to increase hours worked, more women joined the work force and more young men and women were becoming active human capital (Greising et.al. 2012, pg.85).

With this effect on human capital, came the pauperization of the population itself. The real value of wages kept declining, due to the negative redistribution of income (Greising et.al. 2012, pg.87), the population was faced with a decline in quality of life. Maria Camou in "*El Nuevo Modelo Económico y su Costo Social*", states that, [the] actual fall of the quality of life of the majority of the [working population], was even greater than that of the average real wage. At the same time, it created an increase in inequality between the wages and lower wages of the population (Camou 2004). This asserts that the process of pauperization of the population created bigger socio-economic gaps and further inequality in a country that already had to cope with the repercussions of the repression.

⁴⁰ See: Millot, Julio, and Magdalena Bertino. *Historia Económica Del Uruguay*. 1a. ed. Montevideo, Uruguay: Fundación De Cultura Universitaria, 1991.

Society was faced with a change in how it would continue its social relations in daily life. The use of scare tactics by the dictatorial government meant that the population, society, had to be “covering their backs”. This effectively created a paranoid society and one that was subject to the arbitrary mentality of the government. . The tactics of control by the dictatorship were used to regulate public opinion, control social gatherings and any potential descent towards the government. The state had to create an apparatus that would control all aspects of censorship, persecution in the areas of freedom of speech and opinion. On February 27 1975, the dictatorship formally created an entity to manage the media and opinion apparatus. Under decree 166/975, the DINARP (*Dirección Nacional de Relaciones Públicas*⁴¹) was created. This new entity, according to Aldo Marchesi (2010), was able to continue to perpetrate “a cycle of censure, destitution, persecution and imprisonment” that the dictatorship had since 1973. Its purpose was to

Advice the State in matters of communication related to [the regime's] national and international image, delineate guidelines for state and private mass media channels and censure all private media. At the same time, numeral b) of said decree proposed “the motivation of the population's will”, which in turn granted the DINARP the promotion of an infinity of cultural and sports events, which were not necessarily tied to mass media (Marchesi 2010, pg. 132)

This new state apparatus was then granted powers beyond what it was originally intended for, and therefore, began to have more influence in the more personal and familial aspects of Uruguay's population. Any news media, radio stations and print were subject to the censorship laws and regulations at the DINARP and the government enacted. It would allow only for state-approved media to be circulated. While it was indeed a political/legal change, its ramification indeed extended to the social fabric. Controlling what people see, hear and read had the potential to change the mentality and “brainwash” the population to agreeing with what was happening.

⁴¹ National Directorate for Public Relations

One of the biggest setbacks that Uruguay's society was faced with was emigration and most importantly, exile of its population. In the book "Los Niños del Reencuentro," the authors explain how to understand exile,

To define exile refers to the concept of banishment. [Its] brutal definition: he who suffers banishment, the banished, the one without a land, no place to call his own, thusly, without any roots. It is by no means a new form of punishment, it is as old as mankind; and it hasn't lost any validity because it serves a double meaning for those who dominate it. First: imposing it by force-be it from the State or from the triumphant side- over those who fight against it and denounce its abuse. Second: literally alienate, the potentially dangerous dissidence, [in order] to achieve the objectives of domination or rapacity (Collazo et.al. 2014, pg.33)

As the authors of the book mention, the process of exile that Uruguay's society faced was a form of banishment. It was not voluntary and sometimes not by choice. It was a necessity in order to survive.

For those exiled for economic reason (because of the economic policies of the dictatorship) exile to a more economically prosperous country was the only choice. For those exiled for political and ideological reasons (this only happened in the early years of the dictatorship) exile became the only way to avoid repression, torture and maybe disappearance (SERPAJ 1992, Collazo 2014). According to Greising et.al., "between 1963 and 1975 , 200,000 Uruguayans emigrated, which represented 7% of the population. 62% of them migrated between 1973 and 1975." (Greising et.al. 2012, pg88). Initially, the migration patterns were tied mainly to the economic reality of the country. As we saw previously, wages were below their actual values and the rate of inflation and lack of domestic investment, meant that laborers were not able to sustain their families. In so, migration became the only way out of the economic situation. However, as of 1968, migration began to escalate because of the deterioration of democracy.

The dismissal of public workers, the persecution of those that had been militants⁴² before 1973 and those that still were, the oppressive reality that was being lived, determined that [whole] families had to exile themselves (Greising et.al. 2012, pg. 89). The protection of the family unit and its future became more important than staying in the country. Then again, the ability to migrate an entire family to another country that would not have similar repressive policies (Argentina, Chile, Brazil at the time were having a similar trend to Uruguay) was not easy. The country lost about 14.4% of its university graduates, 18.5% of the Technical school graduates –UTU, and 27.9% of its trade/industry skilled workers (Greising et.al. 2012, pg.89). This represented a brain drain and drain in skilled labor. The numbers presented are relatively small; however, we must consider and keep in mind that Uruguay was and is today, a relatively small country with a small population. Any exodus of its population was a blow to its social fabric and to its work force. An important aspect of this migration is also, what happened to a specific group of Uruguayans that had to flee the country at a young age and the effect it had.

This migration or exile of families and children was, for Uruguay, negative. The impact not only affected the fabric of population statistics and demographics, but it also created a group that was banished from the homeland and effectively stripped of their roots (at least for the duration of the state of terror). “The exiled knew that they were victims; but in a way a secondary victim, ‘privileged’, not as much a victim as those in prison” (Collazo et.al. 2014, pg.34). This notion, once abroad, was translated to the children, who ranging from the ages of 3 to 17, had different ways of comprehending what was happening. “The children of the exiled, who had to live their childhoods in those substitute

⁴² Supporters, protestors and those that opposed the government and consequently, the dictatorship.

homelands, remember the attitudes of their parents towards the place that had taken them in, the need to distance themselves from what surrounded them, not creating any ties” (Collazo et.al. 2014, pg.34). These attitudes and these instances when the love for country were tested, is what in turn kept pushing Uruguayans away from the homeland. The fear of repression, torture or backlash for having left was great among the population. We can see this as being a result of the fear tactics that the dictatorship had applied- to scare, control and manipulate the country to keep in control or afar those against it, and those subdued under repression.

Society however, after the failed plebiscite of 1980, began to see an opening, a shift in the structure of society and how it felt about changing their dismal political and social situation. A series of changes and shift began to occur, particularly with those in exile. One change was a desire to first bring back those in exile, particularly the children. This would be used by society and civil society to impose more pressure on the government to end the dictatorship. “*Desexilio*” as Mario Benedetti called it, referred to an ideology that was already in the minds of many of those in exile as of November 1983. Benedetti’s essay referred to the imminent failure of the dictatorship in Argentina. In doing so, there was a potential for the return of its population and how society would react to it. The essay alludes to a process in which, “while exile was a consequence of the repression and not [a willful] decision, un-exile or ‘*desexilio*’ would be [a decision]”(Collazo et.al 2014, pg45, Benedetti 1983). This idea spread quickly amongst those in exile and an organized return to Uruguay began to be organized. The results of this are more visible in the return to democracy, which is discussed in the subsequent chapters. The importance for now lies in the fact that despite the tactics, the population was able to organize itself and attempt to rebuild that notion of

being part of Uruguay, not banished or without roots. All this comes together to look at one last crucial social institutional change: education.

The form, results and expectations of what was taught to the population became a matter of changing the current structure, for one that procured more control. Having a history of liberal and open education, with democratic participation of all, the government decided to enact a law that would regulate the education system and restructure it. On January 3, 1973 under the presidency of Juan Maria Bordaberry, law No. 14.101- Law on Primary, Normal, Secondary and Industrial Public Education to be titled CONAE- *Consejo Nacional de Educacion*⁴³ was enacted. Its purpose was first to centralize all the different offices of the education system. Instead of having all the various departments⁴⁴ working autonomously, the law substituted it into the CONAE and the University systems. This shift in autonomy, according to Varela et.al, meant that the decision making that each council had, had been decentralized. The historical analysis by Varela et.al. prepared by the *Consejo de Educacion Primaria* in 2007 note that,

“Many of the conservative [aspects of society] with the support of the Catholic Church, strengthened the idea of ideological control with education institutions. It invoked again the need to defend the secularism of education in order to protect society from the international communist influence and leftist ideologies. [...]. It was a reform covering all aspects [of society]: ends, means of the government, structure, plans and programs of the entire education system. (Varela et.al 2007).

The law was designed to make sure that communism and any leftist ideals did not spread into the minds of students. It was another control tactic. Controlling what is learned in the classroom, the history, the ideology and the indoctrination to the new nationalist ideas (Varela et.al. 2007, Rocca 2010, Malchesi 2010). This education model also further consolidated a model of exclusion. Unlike in the period before 1973, when education was inclusive and equitable, the new law and government forced education to switch to the

⁴³ National Council for Education

⁴⁴ Elementary Education, High School Education, Technical Education and University Education

notion of educating the population to have a mentality of protecting national sovereignty, order and security of the state (Varela et.al. 2007).

Between 1982 and 1985, a series of negotiations, public protests and international pressure led the military government to reconsider the order of the state and allow for the reintroduction of democracy into Uruguay. In fear of losing complete control, there were instances in which the state would deprive people of electrical power and repressive measures were still being applied on the population. The end of the dictatorship began in August 23, 1984 when the Naval Club⁴⁵ reached a pact in which an agreement between the military and the civilian leaders was reached. Elections were held two months after the agreement of the Naval Club and by 1985, political prisoners were being freed and those in exile began returning from other parts of Latin America and Europe (both groups were allowed to “return” based on new legislation that was being passed). The social and political road for change had been paved once again for Uruguay. It was not to be an easy road.

The changes that occurred between 1973 and 1984 were not small. The majority of them were done under the guise of law and order to protect the state. The use of the constitution, decrees and acts to assure control meant that the greater good was seen as second place and assuring power was first place. The next chapters look at specific instances of evolution of these institutions and society. It will look at how politics and law were brought back to order and rule of law, and the reinstatement of the constitution. Finally, the effects it had on society will be looked at to see if Uruguay indeed was able to move forward.

⁴⁵ The Pact of the Naval Club was an accord reached between members of the joint chiefs and representatives of the “authorized” political groups, in which it was accorded to usher back in democracy.

CHAPTER 6

THE EVOLUTION OF LAW AND POLITICS SINCE 1985

This chapter looks at how Uruguay changed or evolved, politically and legally after the return of democracy in 1985. The dictatorship was more than just taking power and centralizing it in one entity, ensuring that no one challenged it and that it seemed as “legitimate” as possible. However, towards the end, a country that is traditionalist in its approach to how they are governed, and to how their freedoms are maintained, managed to push for change for democracy to be “brought back”. Carlos Demasi says that,

The presence of the [traditional] parties⁴⁶ in Uruguay’s public space made it seem natural that their permanent centrality in narrating the past, and that in some way with unjustifiable instances, such as the foundational violence of the [political] coexistence in the XIX century, resulted in them being legitimized so long as they were enclosed in a past previous to the establishment of democracy in the XX century. In this way, those two parties are [attributed] as the creators and guarantors of liberties, along with being the builders of the nation itself and political democracy. As a consequence, conserving the status of the country’s independence and of its supposed prosperity would always be an ever growing exclusive merit of [the two parties]. (Demasi 2011, pg. 40).

This extensive quote provides a glimpse into the “political” mentality of the people of Uruguay. As history showed, Uruguay has been subject to a series of political unrests and dictatorships. However, it always seems to collapse and democracy returns. Demasi points out that this “traditional” structure is based on the people’s trust of its political parties. The *Colorados* and the *Partido Nacional or Blancos* are the ones that provide the sense of democracy and protection of rule of law. They legitimize their existence to the people they “serve” by using the past and history as a foundation for their actions. Demasi does go on to say that because of this “power” that the masses give the parties, the two parties feel that it’s their merit to assume the role of protectors of past and present.

However, the ever-changing reality of the dictatorship, and the fact that history had yet repeated itself (in a more grotesque way than before), is what gave the push for a third

⁴⁶ The two traditional parties in Uruguay are the *Partido Colorado* and the *Partido Nacional (blancos)*. ADD TO MAIN TEXT (EXPLAIN IN BOTH CHAPTER 4 AND CHAPTER 5 in a few sentences)

party, a coalition of left-leaning parties, to come into existence in the pre-dictatorship years. The *Frente Amplio*, which came into existence in 1971, became the counter balance to the right-leaning, traditional parties. This, coupled with the already discussed failed plebiscite in 1980 that was sponsored by the military, is what pushed for democracy's return. In so, one of the first instances of democratic return was the participation of the "traditional parties" as well as the new coalition, the *Frente Amplio*. This first step to participative democracy opened the gates to the officializing of democracy via the *Pacto del Club Naval*.

Uruguay's process to dictatorship was "legal" in that the president, having been elected, used the democratic framework of the country to change. The initial laws and changes that occurred in politics were done using the very same legal institutions that would later bring about repression. Carlos Demasi again approaches this matter by explaining how the legal process of repression occurred and how, if we take his approach it could adjudicated to the two ruling parties at the time. He says that,

[In] Uruguay, the coup d'état in 1973 did not happen by surprise: it was preceded by the progressive deterioration of its institutions, already perceivable in 1968, and by the president elect in 1971 as a candidate from the Partido Colorado, who was the author of the coup d'état. (Demasi 2011, pg.40)

This argument by Demasi, to which we can say it is accurate, denotes that the process was guided by politics. It could be said that is a planned action given that an elected member, most importantly the president, took action to author the coup d'état (with the support of military and the two ruling political parties (Rocha Imaz 1985, Caetano 2012, Caetano 1998). Demasi then further states, "during this process, none of the traditional parties made use of their parliamentary majorities to make use of the parliamentary constitutional controls" (Demasi 2011, pg.40). This can allude then to the permissibility of taking political power to govern. The argument or excuse (as some of the interviewed and material

have shown me) was that it was because the country was in a state of disarray (Greising et.al 2012, Junta de Comandantes 1976, Ferrario 2015, Lamas 2015). Finally, Demasi mentions, in simple terms, that the all the political and legal actions taken by the state before the dictatorship, were clearly marked by clear deterioration of the rule of law. Most of the actions of the state had a majority vote/support, specially starting in 1968 when the *Medidas Prontas de Seguridad* came to effect. (Demasi 2011, pg.40). The importance of this to the current evolution process of Uruguay's politics is connected to understand the changes that the condition and democracy itself has had since 1985.

The catalyst and the start of democracy was the *Pacto del Club Naval* which was finalized on August 3rd. 1984. This joint meeting between political parties⁴⁷ and the military, on behalf of the still authoritarian government, was instituted to reach an agreement between the various representatives of Uruguayan political society⁴⁸, in order to end the state of terror and repression. It established the end of certain laws, regulations that had been set forth during the dictatorship and a new election period for a new president, since 1973 this was to take place on November 25th, 1984.

The first democratic government, presided by Jose Maria Sanguinetti⁴⁹ (*Partido Colorado*), had a very crucial job when it came into power in 1985 (because of the pact): to reestablish rule of law and economic stability. It would do so by reinstating the 1967 Constitution, analyze all laws enacted during the de facto government and reestablish a

⁴⁷ Parties that participated were: *Partido Colorado*, *Union Civica* and the *Frente Amplio* coalition.

⁴⁸ Representatives of the *Partido Nacional* refused to participate for two reasons: their leader, Wilson Ferreira, was a prisoner and was not, at the, pardoned of his alleged crimes of sedition against the state or free from military prison. The second reason involved the belief, later to be proven, that the other parties involved, particularly, the *Partido Colorado*, was involved in secret talks (later released in 2009 by journalistic investigation- see "*La salida pactada el acuerdo del Club Naval*" (Casal Beck, 2014)) with General Medina. This was enough to keep this political party out of the talks.

⁴⁹ President from 1985 to 1990

functioning parliament and judiciary. Moreover, it had to ensure that the country itself would not enter into a period of disorder and chaos. It would do so in enacting laws as well. During the regime, there were attempts (the 1980 plebiscite) to officially amend the constitution, but that change did not happen. The overwhelming rejection (see chapter 4) of the legitimization of the military as the governing body meant that the 1967 Constitution was still very much “valid”. The first important change in 1985 was “reinstating” the 1967 constitution. It was to be regarded as again, the law of the land (Biasco N.D, Espiell and Esteva Gallucchio 2008). This action indicated, in all practical matters, that the country had reentered into a status where rule of law and protection of rights, was in theory, functioning. This gave Uruguay continuity of its democracy, breaking away from the de facto period (in practice). Following this action, during the first month of democracy, three laws were passed to deal with three specific aspects of the state: Amnesty (from crimes committed), Legality of decrees and acts and Educational Reform.

The first law passed to assure the stability of the state and smooth transition, was law No.15.737- Amnesty Law. This law, which was put into effect only 7 days after the return of democracy, sought to establish amnesty for all political, common and military crimes that had been committed in Uruguay. The law lists the articles of both the civil and military penal codes that delineate the crimes. This meant that crimes committed under those articles, would be held under amnesty, not punishable. It was also a law that provided amnesty to all those who had been politically jailed (all those considered seditious) and would eventually be let free. It also recognized the Pact of San Jose de Costa Rica⁵⁰ as part the law of the land. This meant that Uruguay’s legal system recognized the competency

⁵⁰ American Convention on Human Rights

of the Inter-American Commission for Human Rights and that all cases of such nature or under the purview of the law would be heard (Ley No. 15.737 1985).

Following Law No.15.737 was law No. 15.738- Of the Legislative Acts by the *Consejo de Estado*. The purpose of this law was to legalize and deem “constitutional” the acts and decrees that the dictatorship had enacted during its tenure (1973-1985). It permitted for these acts and decrees to be permanently added to the 1967 Constitution and legal code. This law also provided the three branches of government (legislative, executive and judicial) the capacity to declare any administrative acts that contravened with the duties of the government, to be made obsolete and null. The creation of this law was to assure that even with the restoration of the constitution and rule of law, legal voids could not be left. In a way, this allowed for some of the absurdity and action of the state in the dictatorship, to be kept legal during democracy.

The last law enacted in this “set” was law No.15.739- Emergency Education Law. In response to the failed and restrictive nature of the education laws enacted during the dictatorship, the new democratic government drafted this law to rectify some of the fallacies and violations that the de facto governed had imposed during their tenure. The first chapter of the law, for example, listed the fundamental principles that chartered it. It stated “teaching and learning would happen without any restrictions or impositions that violate against any freedom of access to culture” (Ley 15.739 1985). It also stated that no teacher would be punished based on their ideals, and that there will be guarantees that there will moral and civic independence in education (Ley 15.739 1985). What this meant was that unlike in the previous education law, education was not going to be treated as a punishable activity if it did not align with the government’s ideology (referring to the

restrictive nature of education during the dictatorship). Moreover, it allowed for freedom of expression in schools and decriminalized the actions students and faculty (within reason) that before would have been deemed as unpatriotic or anti-government. Juan Maria Sanguinetti ratified the aforementioned laws immediately when he assumed the presidency in 1985.

There were other laws that were amended and enacted in 1985. Yet the importance of these three laws lies in the fact that these laws were made viable to ensure the stability of the return of democracy. It was a series of laws that were accorded in 1984 and assured the military some protection from prosecution. This was the fact in 1986, in attempt to further stabilize the return of democracy. Albeit, the idea behind it proved to not sit well with the victims of the dictatorship.

The government enacted a law in 1986 that granted further impunity for crimes committed during the dictatorship. Law No. 15.848- *Ley de Caducidad de la Pretencion Punitiva del Estado* (Expiry Law) was passed on December 22, 1986. It limited the government's prosecutorial and punitive capability by "expiring" its legal authority in the prosecution of crimes committed from 1968 to 1985.⁵¹ It meant that the equivalent to the "statute of limitations" had expired for those crimes and that the military and police forces were further protected from prosecution. The law also operated under the assumption of complete obedience for orders and does not absolutely dismiss disregard for orders given from high-ranking officials. The connection of this law and the amnesty will prove to be, later on in the political history, to be a crucial social change for Uruguay.

⁵¹ Political members were not necessarily protected by this as they could use Law 15.737 as their amnesty recourse. The only exception to not be granted amnesty was when either party committed homicide.

In 1996, under Jose Maria Sanguinetti's second presidential term⁵², a constitutional reform was pushed in order to change how elections and voting was going to work. Espiell and Esteva Gallicchio summarize this reform as an "innovation". The reform changed how vote counting would work, how party primaries would work (reemphasizing the traditionalism behind the traditional political parties and now the "new ones") and reestablishing certain powers to the Administrative Litigation Tribunal (in order to assure proper administrative procedures within the government). This reform would change the political arena yet again in the elections for president in 1999.

Having elected Jorge Batlle (*Partido Colorado*)⁵³ to the presidency in 1999, he signaled a promising future for Uruguay and its evolving democracy. President Batlle had plenty of popular support and was able to garner electoral absolute majority in the second round (Greising et.al. 2012, pg.48)⁵⁴. His approach to governing Uruguay was with charisma and experience. This was felt when, in an address to the General Assembly of parliament, he talked about the "state of mind" of the country and the claims for the violations of human rights that were perpetrated during the military dictatorship, and how he would utilize article 4⁵⁵ of the expiry law to take some action (Greising et.al. 2012, pg.48). On August 9th, 2000, President Batlle Ibañez created via presidential resolution N° 858/2000, the *Comision para la Paz*⁵⁶. This body was tasked with the investigation and determination of the situation of those that had been detained/disappeared during the

⁵² President from 1995 to 2000

⁵³ President from 2000 to 2005

⁵⁴ In the previous constitutional reform in 1996, under Sanguinetti, voting rules were amended to use absolute majority and it also changed the internal party voting rules.

⁵⁵ "Article 4- Notwithstanding the foregoing Articles, the Judge for these causes shall forward to the Executive, all testimonies of complaints to the date of enactment of this law, relating to proceedings concerning persons reportedly detained in military or police operations and missing and presumed kidnapped child under similar conditions." (Ley 15.848 1986)

⁵⁶ Commission for Peace

dictatorship, as well as for those children that had disappeared during the time in question (Comision para la Paz 2003).

This commission was a crucial step in the political development of the state. Eventhough it had failed to get the military to admit or provide information of the crimes, it was the Uruguayan state that had assumed the responsibility. For the first time in 15 years, the government recognized its blame for the atrocities occurred. The report acknowledges that, “[the] creation of the commission attempts to comply with ‘an ethical obligation of the State’, confronting ‘the indispensable task of preserving [the] historic memory’ of the Nation, so as to ‘consolidate national peace and seal forever the peace amongst Uruguayans’ (Comision para la Paz 2003). This was probably one the most iconic aspects of Batlle’s presidency in legal and political affairs (it will have ramifications in the social aspect that will be further discussed in the next chapters). Having the state assume the responsibility for the actions taken, 15 years later, meant that the memory of what happened was not going to be forgotten.

The political evolution of Uruguay only grew further in the years after Batlle Ibanez, with the presidencies of the *Frente Amplio*. President Tabaré Vazquez (*Frente Amplio*)⁵⁷ and President Jose “Pepe” Mujica (*Frente Amplio*)⁵⁸, brought about further changes in the realm of politics and law to Uruguay, something that demonstrates, hopefully, political growth. President Vazquez’s first presidency was marked by three instances: 1). a campaign to conduct archeological research for the remains of those detained or disappeared, as well as archival research in state archives for proof of the

⁵⁷ First presidential term: 2005-2010. Second presidential term: 2015-Present

⁵⁸ President from 2010-2015

repression; 2). Change in education policy and curriculum to ensure that the “recent past” is taught adequately in all levels of education and; 3). the enactment of law No.18.596- Recognition and reparation for victims. These three instances had particular political effect on the country and its population and it demonstrated how Uruguay had grown from the initial days of the return of democracy, a very conservative country politically, to now a more progressive, open country. It also portrayed a government that was still willing to assume the responsibility for what happened during the dictatorship and finding legal means to rectify the wrongs.

Of the three, the application of law No.18.596 opened the door to even further recognition of the harshness and reality of what happened between 1973 and 1985. This law, in articles one and two, recognized the actions of the state, by acknowledging the breaking of rule of law, violation of human rights and assuming the responsibility for the systematic abuse, torture, forced disappearance and prison without trial (Ley No. 18.596 2009). It further admitted that the victims and their families were due reparations for what had occurred. More importantly, it allowed for the changes in the law that would happen under the presidency of Jose Mujica.

President Mujica’s presidency was more eventful than any of the other presidencies of the democracy (since 1985). Firstly, President Mujica was a former MLN-Tupamaro, one of the seditious groups (according to the then-government) who had been imprisoned and tortured during the dictatorship. Having him become president was a sign of the changing mentality of politics in today’s Uruguay. Mujica’s presidency was marked by further changes in the legal arena, a sign of forward and progressive ideology. During his term, four laws were passed: law No.18.831- Elimination of the expiry law and

reestablishing the punitive capability of the state for crimes committed during the dictatorship; law No. 19.075- Right to same-sex marriage; law No. 18.987- Right to abortion and law No. 19.172- Marihuana and its uses. These laws promoted a different approach to governing a country that was traditional and had always voted conservatively in matters like these. It would be then considered a result of the new party in power. Importantly for this paper, is the role of law No.18.831. Having already recognized the crimes and assuming the responsibility for the failure in rule of law during the de facto government, this law finally reestablished the punitive capacity of the state to prosecute for the crimes committed in the dictatorship. It effectively eliminated the Amnesty law of 1986. It opened the gates for more investigations and trials. Arguments have been presented that this law does contradict with the constitutionality of the Amnesty Law and it has brought to question as to how legal it was to enact a law that effectively eliminated a law that had not been invalidated.

This is by no means and extensive and all-encompassing look at how Uruguay's politics and law evolved since 1985. It does however give a perspective of the key events and laws that did shape the return of democracy. The repercussions of these laws and political changes, from traditional parties to new, leftist ideology parties, means that the country was willing to see change and to move forward. Economic and social factors, particularly important for a democracy, were very crucial to address at the initial years of the return to democracy. Yet it was also two areas that the government had to continue to keep an eye on. It had to address them because as the patterns of governance and laws were changing, the changes were allowing for more participation of society in government again.

CHAPTER 7

THE EVOLUTION OF SOCIETY SINCE 1985

The importance of the evolution of the political/legal and economic institutions of Uruguay is, by lack of better words, very high. Democracies and governments rely on these institutions to function properly, and most likely, to be able to guarantee due rights and freedoms. However, we see that the evolution of society in Uruguay goes hand-in-hand with the other two, and is a clear indicator that changes are or are not happening. Society, population movement, human capital, education and culture are the “institutions” we look at, to understand these changes. Most importantly, the trend we will see here is that of the role of “memory” and coping with the past, for the future to come

Memory, which is part of the identity of the state, took a very different meaning in Uruguay after 1985. Many authors that were researched and even some of the observations done while in Uruguay, pointed to a society that in the last 30 years, has processed and adapted to what happened. Interactions and mentalities posed by many people encountered and interviewed, demonstrated that the changes that occurred for 11 years during the dictatorship were key to what Uruguay looks like today. Alvaro Rico explains this relationship between past and present and memory as follows: “[...]Memory and history of the recent past⁵⁹ result in “violently disputed zones” because of politics, in an attempt to give them meaning and explanation that condition which also affects, ways of thinking and, above all, in democratic behaviors recovered” (Rico 2010, pg.183). The belief that memory is still fairly recent and fresh in the transition to democracy, means that the political arena is faced with the struggle to reconcile what happened politically and legally,

⁵⁹ In Uruguay, after 1985, historians, politicians and the population referred to the period of dictatorship as the “recent past”.

with what happened to the population. After 1985, state terrorism and that the government could revert to a state of terror, was still an idea in the population's head. The changes that faced the country always turned back to what memory the people had of this time.

The first years after the dictatorship ended, during the presidency of Sanguinetti, the country was feeling that in some way, while in paper, there was democracy, the dictatorship was still all too real. The passing of law 15.848- Amnesty Law in 1985, for example, was a sign that democracy was not 100% reinstated because the law, again, was granting benefits and freedoms to those who should have been punished. Nonetheless, at the same time, this law served as fuel for civil society and society as whole to not permit the government from banishing the events from memory. Before the law was passed, according to Elbio Ferrario, the discussion of memory and what happened was very limited. The discussions revolved around truth, justice, trial, and punishment for the guilty, while the government made no true efforts to keep the memory "alive". Nevertheless, society reaches a point when there is a discussion on memory. Social movements begin to revive this conversation on memory, take consciousness and deem it an essential facet of social change. It was an attempt, by the state, at an ideological genocide- to forget and say it never happened (Ferrario 2015).

The process that started in 1985 was fueled by the politics of that time (as discussed in chapter 4). Consequently, the changes that society and its institutions underwent were connected to the concept of memory and to the direct effects, the policy changes had on the population. Education had always been a crucial factor of the state, as it had been a social policy and institution of the state since the 1800's (Bertoni 2015). The emergency education law had a particular impact on society. Beyond the ramifications already covered

in the politics chapter, this law began to grant back jobs. During the dictatorship, those faculty and administrators that had different ideologies, were ousted from their jobs and in some instances, incarcerated (*SERPAAJ 1992*). The law sought to reinstate them to their previous position. This was a huge step forward. While the government still wanted to keep the notion of memory of what happened censored, the law became a historic moment for the educational institutions of the country. Varela et.al. points out that, “it was visible that the education practices that were being used in the classroom, [were being] encouraged and stimulated by the authorities, who manifested their trust for their teachers”(Varela et.al. 2007, pg.26). Trusting the system again meant that the population and government had confidence in one of their oldest and proudest of institutions, “the population supported public education and participated in its refunding”(Varela et.al. 2007, pg.26).

Another crucial change in education, with impact on society, was a relatively controversial reform (due to the criticism by student unions and teacher unions) titled “*Reforma Rama*”. It was a public, state-sponsored reform that “had four objectives: improve the quality of education, strengthen equity, modernize management and “dignify” the teaching profession”(Lanzaro 2004). This reform sought to further “modernize” the education system and keep bringing it away from the vestiges of what the dictatorship had done. However, according to Reto Bertoni, this reform had little appeal to the population. “The reform was [not open to inquiry], it was very ‘vertical’ [in its approach] and very authoritarian. This generated incredible unhappiness [in the population] and eventually failed” (Bertoni 2015). The result of this was, by 2006, the complete elimination of the majority of the reforms, from the education system. The importance of this, to finish the argument, was that the reform did not necessarily address the faults of the public education

system and fixing it, but rather had a “privatizing” perspective which became an off-putting aspect to the people (Lanzaro 2004, Bertoni 2015). Following this, came the changes to the education system by the leftist governments in 2005. The changes they brought echoed beyond the education system and into society- the role of memory and the dictatorship in shaping today’s society.

Under the presidency of Tabaré Vazquez, as previously discussed, came a series of changes to the topic of memory and victims of the “recent past”. This shift in political doctrine of addressing this subject had already been started by the previous president, Jorge Batlle. Acknowledging and assuming the responsibility for what happened had a ripple effect in Uruguayan society, because it affected not only those who were victims, but also the future of the country: the students of the education system. The announcement by the government of Tabaré Vazquez that it would begin to conduct research and excavations for those that had disappeared, radically changed the political (and social) reality of Uruguay. This created a terminal crisis in the reconstruction of reality as well as it challenged the version of the past (Demasi 2011, pg.50). With this, a reform, by the *Consejo Directivo Central-CODICEN*⁶⁰, was ushered into the education system. The essence of it was to re-adequate and introduce into the syllabus of elementary and high school education, the history of the “recent past”. It was, by all intents a purposes, a method by which the public and the population would learn about what happen, through the lens of an “officialized” version of the history, without the censure of events, details or the opposition of the military. Rico notes that, “the implementation [of this material] [...], led

⁶⁰ Central Directives Council- Under the National Administration for Public Education-ANEP, the CODICEN is the central body that manages and directs the ANEP. It was created under law No.15.737 in 1985 as part of the legal reforms upon the return to democracy.

to the spread and public controversy on the subject matter, [which put] in extreme the positions between authorities, politicians and teachers” (Rico 2010, pg.186). This meant that publicizing and dissemination of the truth, as the government had wanted it, led to the resurfacing of the polar opposites. Polar opposites in the opinions and ideas as to how to cope with the past and how to adapt it to the present.

Many more changes occurred in Uruguay, beyond the effects of memory. While having suffered a decrease in intellectuals⁶¹ during the dictatorship, the collective memory of this society and its desire to better itself for the sake of the state, has pushed Uruguay to make sure that it does not continue to suffer a lack of educational human resources. The investment by Uruguay into education, according to UNESCO, amounts to 7.2% to 8.3% of the GDP, where Uruguay’s current GDP is 56.27 billion- according to the CIA World Fact book (Huebler and Lu 2013). There is need for educators because the student population keeps growing. In addition, this growth then demonstrates that educational policies are being directed at leaving no one in analphabetism or without tools to succeed (Fein, 2015).

These numbers and statistics are small in comparison to all the changes that have happened on the ground and with the population. Memory and the “recent past” is still, among all the varied matters discussed, the most pressing subject at a social level. The effects it is having and will have on the population is felt as being a main subject of any presidency. Addressing the population effects and how it is portrayed in education and public service, denotes a desire form the Uruguayan people to see this change. It is a way, we believe, of ensuring that the country never forgets and learns, many generations down,

⁶¹ School teachers, professors, investigators, lawyers, writers, artists

of how Uruguay was shaped in the 20th century. This next chapter and the conclusion will show this. We will look at all this data presented and all these laws, and attempt to condense what echoes are still felt today in Uruguay, and whether or not we were able to ascertain any kind of evolution (institutionally) since 1985.

CHAPTER 8

A PATTERN WORTH NOTING: THE EVOLUTION OF MEMORY

The importance of all this history and evolution is because until recently, Uruguay had allowed for amnesty and impunity to be prevalent in Uruguayan society because of two laws that were legalized right at the return of democracy. The recent rescind of the Amnesty law (Law 15.737- 1985) and the “Ley de Caducidad” (Law 15.848- 1986) was a leap forward in the recognition of violations that occurred in Uruguay. A closer look though into what happened in terms of violations, is necessary to understand the application of legislation and how the state had to recover. It became the test for the state and society to prove that memory of what happened was not dead.

While this is not a conclusion, this chapter is designed to explain a pattern that was found during the research process which seems to connect the variables and the evolution process together. These changes have either been well-received, criticized, succeeded or failed. However, behind it all is the gnawing feeling, that there is something lingering in the lives of all (or most) Uruguayans: the memory of the recent past. This trend became a common pattern in the research conducted, before the field work and interviews. The notion of “memory” and the “recent past” became more than just words mentioned in essays and books. It became a focal point to explain the changes that happened. Therefore, it is clear at this point that the effects of the dictatorship today, which ties with the political and social institutions, is memory of the dictatorship. I found this pattern after having compiled, read and analyzed all the available data.

We briefly discussed how the notion of memory, which was a clear ideology alive in the population and the government’s policy, has been pushed forward in the political and social agenda of Uruguay. This is not another variable to look at, but rather, a joining

of the two institutions we have looked at and finding a common pattern. It is, as Demasi, Fein, Bertoni, Rico pointed out, a pattern of desire to see change, based on what happened. This pattern points to segments of the population being vocal about the victims and the justice they deserve, the prosecution for crimes committed, and the desire to have the truth come out without it being “doctored”. The desire is very evident in today’s Uruguay. It has affected how the young population, perceives the institutions of democracy (and therefore the institutions we look at here in this paper).

A national survey conducted in 2013 and published on March 2015 by MIDES⁶²-Ministry for Social Development, sought to get the perspectives and opinions of a segment of the population- from ages 12-29. One of the categories surveyed was on how much trust they had towards a series of institutions and groups. The survey’s results showed that 74.2% of those surveyed, trusted the education system (at their respective level). But while the education system seemed to have more support, the democratic or political/judicial institutions did not enjoy such support. Support for the military, lies at 33.6%, while support for institutions for justice is at 31.6%. Finally, trust for the national government 28.4%, parliament at 20.8% and political parties at 18.4% can paint an interesting picture (MIDES 2015, pg.73). Young populations, particularly those 20 and up, we believe, had exposure to the stories, educational changes on curriculum and biases of what happened during the dictatorship. They lived most of the changes that shaped Uruguay today and have been inflicted by the adults and elderly that while conservative and still traditional in their political and social views of Uruguay (Bertoni 2015, Fein 2015), acknowledge that the past is crucial to shaping the future. This echo, we believe, has been a combination of

⁶² Ministerio de Desarrollo Social

the political and social changes. Beyond changes that have happened on paper and law, society may be reacting to 30 years of change.

Another remnant of the effects of the dictatorship we believe prevails in Uruguay is what has happened to the population structure. This is based on the restrictive policies of the dictatorship and the subsequent policies and changes when democracy returned. Reto Bertoni, Maria de los Angeles Fein and Elbio Ferrario, during the course of their respective interviews, alluded to the existence of two populations, inverted pyramids that demonstrate how memory, politics and society are today. Figure 1 is a constructed pyramid, composed of both approaches that explain, visually, how this population is constructed.

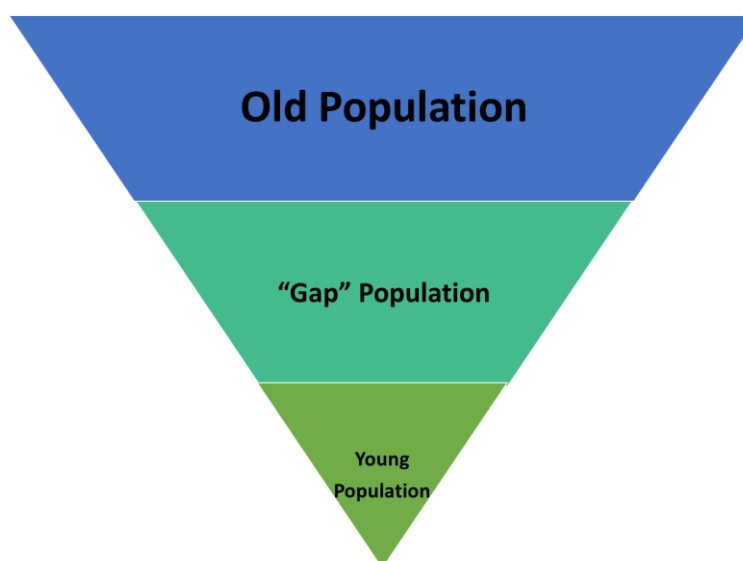


Figure 3- Inverted population pyramid (Bertoni 2015, Ferrario 2015, Fein 2015)

This pyramid, constructed from the approach to the structure of population, allows us to see that the demographic and political situation of Uruguay is unique to its past. The "Old Population" category encompasses more than 20% of Uruguay's population (Census 2013) is over 64 years of age. Their contribution to the state apparatus has been deemed to be on keeping the memory of the past alive and not allowing the country to forget what happened

(Lamas 2015, Ferrario 2015, Fein 2015). The “Young Population” category is slightly more complex than the old population. This segment of the population is the smallest (in numbers). For every 100 adults, there are 57 young members (ages 14-29 and 30-64), and for every 100 senior citizens, 17 young members exist. (MIDES 2015). This segment of the populations, although small, is the a driving force behind many of the changes that Uruguay has undergone in the past decade (Bertoni 2015, Mazzarovich 2015, MIDES 2015). Lastly, the “‘Gap’ Population” category, while not an official statistic in the census, this population is mix of those who disappeared, were tortured, incarcerated or exiled. In addition, it includes the children who were born outside of the territory, but still belong, in identity, to Uruguay (Collazo et.al. 2014, MIDES 2015, Demasi 2011).

This last category is a result of this pattern. What this demonstrates is that the political changes and the legal implications that the notion of memory has on the population, is echoing into how the population looks at its distribution. Labeling the middle group “Gap” population is because that group, to some extent, feels either not fully part again of society, has a different perspective on the reality of the country or simply, has buried the past and does not let him or her affect its day-to-day (Lamas 2015, Mazzarovich 2015). Having this then be the “reality” of this middle group, has a further effect on the other two categories. On the one hand, the old population being conservative (Fein 2015, Ferrario 2015), may find itself lacking support from a group that might either apathetic, indifferent or of a more progressive view as to how political and social changes should occur in the frame of memory and restoration, as the policies on education have shown. On the other hand, the young population finds itself outnumbered in political influence realm. While the young population might have the more progressive and realist approach to

change, it must face itself with the middle group that might or might not support it. “Uruguay is a country of old people. This makes the young population always more dynamic, risk takers in everything... politics included” (Ferrario 2015). This “gap” group could very well see this new “leftist” or “progressive” approach to reconciling memory with politics and society, as a move to minimize the importance or boost the importance of the “recent past”. There is one instance though where all three groups combine in ideology and desire for truth. The politics of memory and the instances of remembrance in Uruguay.

Elbio Ferrario makes a case here for the politics of memory and the “*Marcha del Silencio*”. The “*Marcha del Silencio*”, which first took place 20 years ago, is a civil society and population led march to publicly and peacefully denounce the past, specifically for the disappeared and detained. Happening every May 20th, for the past 20 years, it is conducted in silence, as a form of peaceful protest. The march calls for the end of impunity for the dictatorship criminals and for justice to be served for those who were victims of the repressive tactics of the dictatorship (specifically the disappeared). Ferrario points out that this march, along with the other two public monuments⁶³ to the memory of the “recent past”, “joined together by family groups, mothers, began to generate an important social group which is now one of the strongest in Uruguay. The march and the monuments serve as a way to keep the memory of what happened alive and updated. It is therefore a demonstration of this strength that Uruguayan society has amassed over time...a response

⁶³ The two sites are the *Memorial* located in the Cerro neighborhood, overlooking the River Plate. This site commemorates, with names, those who have been “disappeared” and have not been found. The second site is the *Museo de la Memoria* located in the Prado neighborhood. This museum, which opened on December 10th, 2007, was created to visually depict and maintain the artifacts, stories and the symbology behind the events that shaped 20th century Uruguay (MUME 2013).

to the events of the past and a desire for the truth to be available.. It breaks away from the mentality of “forgetfulness” [that the state was running from the return of democracy]” (Ferrario 2015). Elbio’s perspective is then what brings full circle the connection between the three generations and the memory aspect of political and social evolution.

The fight for memory becomes a fighting beacon for society, civil society, syndicates and all political parties (despite the objection of some right wing conservatives). Ferrario concludes by saying that “memory becomes part of the bigger battle for deeper democratic [values]. It begins to bring to conciseness the topic of impunity. It is a thorn on the side of society, because impunity causes impunity” (Ferrario 2015). In the end, it provides more momentum for civil society (SERPAJ⁶⁴, FAMIDESA⁶⁵ and CRY SOL⁶⁶ for example), and for memory to become a more permanent item in the public policy agenda. This confirms the pattern that was found in this research process, because it emphasizes again the role that the military had with the social and legal changes that occurred, and the ramifications it had in how memory evolved. . Finally, to emphasize this, we cite the son of one of the victims of the dictatorship. Felipe Michelini, a Uruguayan lawyer and professor at the *Universidad de la Republica*, wrote “El largo camino de la verdad” (Michelini 1996), where he makes the case, 10 years after the end of the dictatorship and the return of democracy, that Uruguay is still healing and coming to terms with what happened. Michelini explains,

The military government of the time violated not only all sorts of institutional, constitutional and traditional order of the country, but it also subjected thousands of citizens to a harsh authoritarian

⁶⁴ Servicio de Paz y Justicia-Uruguay

⁶⁵ Madres y Familiares de Uruguayos Detenidos Desaparecidos

⁶⁶ Asociacion de Ex-Presos/Ex-Presas Politicos/Politicas de Uruguay

regime that employed methods such as civil and political proscription⁶⁷, arbitrary detention, institutionalized torture, exile, assassination and the forced disappearance of civilians. (Michelini 1996, p.157)⁶⁸

Michelini's comment surmises what happened politically and socially. He manages to place his perspective on the events that transpired as the causation for the aftershocks being faced by Uruguay. It has been 30 years since democracy returned to Uruguay. It has been 30 years of changes in laws, policies, politics and education. So again, we ask the question: has there been evolution of the institutions of the state? Have politics and laws changed enough to show evolution occurring? Or has society and its institutions changed and evolved enough to move past the down turns it faced during and after the dictatorship?

⁶⁷ During the early stages of the dictatorship, those who belonged to the Tupamaros or demonstrated against the state were given the option to self-exile to another country. In other instances, the state forced the exile.

⁶⁸ "El gobierno militar de la época violó no sólo el orden institucional, constitucional y tradicional del país, sino que sometió a miles de ciudadanos a un duro régimen autoritario empleando métodos como la proscripción política y civil, la detención arbitraria, la tortura institucionalizada, el exilio, el asesinato, y la desaparición forzada de personas."(Michelini 1996, pg.157)

CHAPTER 9

CONCLUSION/FINDINGS

In 1973, rule of law was dismissed and the constitution was challenged on its grounds of being the supreme law of the land. The actions taken by the civilian-military dictatorship placed the country in a 12-year limbo as to what would happen to its institutions and of its future. It was 12 years where a series of changes in the political, legal and social policies and laws challenged the future of democracy. It changed what would have been the direction of evolution of the country. 30 years on from the return of democracy, I decided to see if there had been any evolution that occurred in the dictatorship, had any repercussion in the changes that came about in 1985. Looking at how the law and politics changed, as well as how Uruguayan society change became the guiding idea by which I took on this project.

I set forth then my hypothesis to be: does a country's politics, laws and society evolve after a dictatorship? Do the political and legal institutions, as well as society evolve from authoritarianism back into democracy? Or is the damage too great that the country never moves away from it? The data and theories I was able to gather yielded interesting results, as well as some disappointing ones, for the purposes of this thesis. Both variables had their different outcomes and each one required a different mindset to understand it: politics and law needed a more historical and political approach, while social intuitions required a more "human" and sociological approach.

First, the history and chain of events of the dictatorships were not exclusive to the coup in 1973. Rather, a process had been brewing in the years leading up to it. A process that was exacerbated by more than just political and social problems, but also economic problems. The dictatorship in turn used this downturn as an excuse to assume power and

bring back the country to successful state. In order to do, however, it had to use force, violate human rights, break rule of law and reword the legal and political system to allow being legitimate and controlling the population. Consequently, the effects it had on the population were felt immediately.

The research showed that the changes that occurred at a legal/political level, affected all aspects of Uruguayan society. Curtailing freedom of speech, freedom to congregate and imposing laws that imprisoned citizens without due process, meant that society was faced with a repressive reality. The *Nunca Mas* Report denotes the extent of these atrocities and the “legality” with which they occurred during the dictatorship (SERPAJ 1992). The arrest, prolonged detention, torture and forced disappearance of citizens forced the population to also migrate to other countries, seeking freedom. Education policies were changed to ensure that the only truth that was taught was that which the government saw appropriate and aligned with the doctrines of the dictatorship. What this created was then population that had a narrow perspective on history and was being “brainwashed”. The changes then that must have ensued in 1985 should have been directed at restoring democracy, reestablishing rule of law and constitutional order, ensuring that social intuitions and society were transitioning properly.

In 30 years then, the political and legal institutions in Uruguay shifted, adapted and changed when needed, in order to assure the functioning of democracy. Based on the evidence found, the series of laws passed, as well as the changing climate of the political parties governing proved that authoritarianism was in the past and democracy had returned to Uruguay. Analysts and academics however have alluded to the fact that despite the changes in laws and in ruling political parties, laws and “behaviors” remnant of the

dictatorship were still “floating” in Uruguay’s political arena. The implication of this has of course, an effect on the population and its social intuitions.

The variable that looked at society, proved to be harder to approach because of it required for me to look at more than a law and political change to understand what happened. This variable first required that I define social institutions. Once I had done that, I understood that I would look at education, as a piece of society, and then society’s reaction to what was happening politically and legally. Effectively, I ended up looking at a chain of cause and effects. This analysis showed that Uruguay’s society and social institutions were the casualties of the repressive laws of the state and its social policies. But at the same time, after 1985, it was society that pushed for further betterment of the state polies and laws, towards freedoms, and changes in the social institutions, particularly, education.

What I have been able to conclude with this research and what has been presented, however, is not affirmative to my hypothesis, nor is it negating it. I stand in the middle in regards to answering the question of evolution of institutions and society after a dictatorship. The reasons for this are based on the data I was able to compile and analyze as well as the finding of a pattern that ran parallel to this thesis. The reasons for this middle ground decision is based on a few facts. Approaching evolution of the state through an institutional level requires having a quantitative and substantive approach. The data I was able to gather, while valuable, did not give me enough evidence to prove that there has been evolution. Additionally, trying to gauge a variable such as society and social intuitions was hard. I researched demographic patterns and social structures in Uruguay, however none necessarily demonstrated that society has had necessarily “institutional” evolution..

Despite this, another reason to reaching a middle ground decision on why my hypothesis was partially fulfilled was in the finding I had of the pattern between both variables. The politics of memory, while at first not obvious, became very clear as I continued my analysis into more recent political and social changes. When I looked at the change in political stance of the governments in admitting responsibility for the atrocities of the past, I was able to discern a pattern of evolution in how memory is constructed. The “recent past” and how reconciliation happened differently in Uruguay, along with the change in social support for finding the truth, denote an evolving pattern of change.

Memory, as I showed in chapter 7, has become a very crucial and impotent evolution of Uruguayan society. The changes that were seen during the dictatorship, had ramifications on the population. It fragmented society and politics. The changes in the law challenged a traditional system of governance and coexistence. To Uruguayan society, I believe, this meant that the status quo being challenged. In so, when 1985 came, memory was not only a memory of what had just happened, but also of the Uruguay that existed before 1973. Memory, I believe, became an anchor to hold democracy fast and steady.

Given that the hypothesis was not entirely proven and a new pattern or variable was found, I have suggestions of further research and how to approach this topic. Firstly, it must be made clear that this topic is only fully understandable when using quantifiable data. In so, to prove that there has been any evolution, I discovered that I should have approached this research with an approach to political economy. Understanding the economic link between politics, might have provided clearer evidence of whether or not evolution of the state happened. Moreover, the analysis of the laws was restrained to the length of the thesis, as well as to the relatively big volume of laws that were passed both in

the time of the dictatorship and over the past 30 (during the democracy). The magnitude and importance of the laws to Uruguay could possibly warrant a separate research task. I realized that the effect of even the shortest laws on the framework of a democracy, like Uruguay's, was very crucial. Expanding on the multiple constitutional amendments as well as the legality of the rescinding of laws, might have proved an even clearer understanding of the evolution of political and legal realm in Uruguay.

I did find that it was incredibly important for part, if not most of the research, to be conducted in Uruguay. I was able to get a fair amount of basic literature before my work in Uruguay. However, the recourse available in Montevideo and the public intuitions there proved that it had gaps in my previous research. It also proved to be important to be on the ground to get access to those survivors of the dictatorship and the academics that write about it. My research question and the variables was looking seemed to interest many of the people I interacted with. This means that there is room for research and further inquiry as to how or if Uruguay has evolved. I believe that the variables could be independently analyzed, each in its own work.

So what is the importance of this work, of this research, the history, the changes, and the newfound pattern? I believe the importance of this work lies in the fact that we can better comprehend the process of transition from a dictatorship to a democracy in Latin America. By analyzing a small country like Uruguay, I believe that I could show how the dictatorship came to be, how it was carried out (in the political/legal and social areas) and ultimately how the transition happened. Moreover, I believe the importance of this thesis sheds light on how a transition process of a country is not as clear cut and simple, as we might see it on paper. Uruguay's transition is one that has taken well over 30 years. It has

been slow and has challenged, in more than one occasion, the status quo of a country attempting to avoid a political and social crisis.

This thesis provides for an understanding that it is more than mere political power and will that brings about transition and change to a country that is reeling from a dictatorship. It brings about a perspective as to how to look at law, politics and people, in the before, during and after of such a formative event of a democracy. It brings into paper how a democracy and a dictatorship can co-exists until one wins out the fight and forces for some sort of drastic change to happen. Last but not least, I believe that the newfound importance of this thesis is the role that memory played, is playing and will play in shaping the transition of Uruguay. Unlike its regional counterparts, Argentina and Chile, who managed transition in less time, Uruguay has had to balance the role of memory and of politics and stability (similar to what Fukuyama and Migdal discussed) in order to achieve democratic stability.

In conclusion, I believe that I was able to get a better understand of the legal, political and social complexities that Uruguay underwent during its dictatorship in 1973 and the democracy that followed. I presented the history of country that had a history of having sporadic periods of dictatorial ruling. The undertaking of law, politics and society meant that I had to first understand the legal culture of Uruguay, the changes the constitution underwent, the history of its political parties and of its people. I am also partly content that my hypothesis was not entirely proven. This indicates that there is still more research, interviews and work to be done in order to comprehend the changes.

A country's evolution is not understandable in 80 pages. The intricacies of Uruguay's society, as I learned while working there, extend beyond the history books. The

concept of memory is what is driving this country forward. The traumatic events of the 20th century formed a sense of deepening identity and nationalism for the people of Uruguay. The degradation of rule of law in 1973 only hardened the belief of Uruguay's society that they want a democracy that respects their freedoms and identity. The importance of traditional political parties, the constitution, the fabric of the family and population and education, became important for Uruguayan society.

My final thought for this thesis is that this pattern of legal, political and societal change is particular to Uruguay. It has taken the country 30 years to see a change in the political attitude of the parties to begin to repair some of the damage that was caused between 1973 and 1985. This is an event affected all members of the population. IN my case, the dictatorship had an effect in my family. Most of us were born outside of the country. Some returned and others like me, did not. Those that did became advocates for justice and to end the impunity of the crimes committed. In my case, I have taken upon myself to dissect the different facets of this dark time in Uruguay's history and try to reconcile it with what I have learned. In the end, we all fight for one thing: the memory of what happened to Uruguay.

For the memory of those, like my aunt, who suffered and still have questions. For the proper application of law, justice and to end the impunity. The evolution of Uruguay, I still believe, is going strong. Its politics and law can only go up and never recede back to lawlessness. Uruguay's society can only continue to strive to keep the memory alive and assure itself that 1973 will never happen again.

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