

Debts of Democracy: Framing issues and Reimagining democracy in Twenty-first Century Argentine Social Movements

Kelsey M. Jost-Creegan*

In the last fifteen years, Argentina has seen the development of a wide range of human rights legislation. Social movements, which have a long history in the country, have been central to these legal advances. The country's history of political and economic instability has deeply impacted social movements, leading to both their repression at certain historical moments and, apparently paradoxically, also to their strengthening and increased centrality in the political scene. Movements have responded to this instability by being highly innovative. The innovation of Argentine social movements in developing new repertoires—the weekly march of the famous Madres and Abuelas de Plaza de Mayo, the escrache, piqueteros, the ‘empresas recuperadas’—has been well explored in the literature. One innovation in modern Argentine social movements that has been less well explored is the framing of human rights issues as “debts of democracy.” This paper will explore that frame, which simultaneously looks forward—by envisioning an idealized version of inclusive democracy and substantive citizenship—and backward—by constructing that ideal in contrast to both the authoritarian rule of the Dirty War and the neoliberal government of the 1990s. This frame has become a “master frame” in Argentine social movements, as it has been implemented in reference to a diverse range of human rights issues. This paper will focus in particular on how this frame was implemented in three particular social movements in Argentina during the Kirchnerista governments: (1) the migrants’ rights movement; (2) the LGBT movement; and (3) the women’s rights movement.

* J.D., Harvard Law School, 2017; B.A., Global Studies and Romance Languages, University of North Carolina at Chapel Hill, 2013. The author interned at several organizations in Argentina: the Fundación Comisión Argentina de Migraciones, the Asociación Argentina de Mujeres de Carreras Jurídicas, and the Instituto Argentino de Igualdad, Diversidad, e Integración. The views expressed in this Note are solely those of the author. Many thanks to Susan Farbstein for her support and guidance in writing this Article. The author presented a shorter article in Spanish on this topic at the IX Seminario Internacional Políticas de la Memoria hosted by the Centro Cultural de la Memoria Haroldo Conti in Buenos Aires in November 2016. Thanks to conference organizers and fellow participants for their thoughtful feedback. All content cited from interviews is available in the author’s undergraduate thesis: Kelsey Jost-Creegan, *Constructing Migrants’ Rights: Shifting Paradigm and Human Rights Innovation in Argentine Migration and Refugee Legislation* (May 2013) (unpublished B.A. thesis, University of North Carolina at Chapel Hill) (on file at the Wilson Library).

I. INTRODUCTION

Argentina is a country known both for the horrific human rights violations of the 1976–1983 Dirty War,¹ and for the strong and innovative human rights movement that grew out of that history of atrocity.² The country is characterized both by a long history of instability and authoritarian rule, and a rich tradition of social mobilization.³ This tradition of collective action arose out of the workers' rights movements,⁴ but over time, social movements have greatly diversified. This history of collective action, however, is coupled with a tragic history of State violence and repression, in both dictatorship and democracy.⁵ Over the course of the twentieth century, each of the military dictatorships repressed social movements—particularly leftist groups and unions—often through violence; notorious events of repression against activists preceding the 1976–1983 dictatorship include the 1919 “Tragic Week” in Buenos Aires, the massacre of rural workers in Paragonia in 1921 and 1922, and the 1966 “Night of Long Batons.”⁶ Nevertheless, this repression has not eliminated popular resistance, but rather, in many cases, driven its expansion.

Modern Argentine social movements are extremely creative: from the *Abuelas* and *Madres de Plaza de Mayo* marching in the central plaza of Buenos Aires with white kerchiefs on their heads,⁷ to ‘recovered’ factories and

1. For more information on the human rights violations committed during this period, the responses of social movements to those violations, and transitional justice processes, see *infra* notes 38–65, 364–374 and accompanying text. See also, KATHRYN SIKKINK, *THE JUSTICE CASCADE* 60–86 (2011).

2. Kathryn Sikkink captures this duality in her article, ‘From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights.’ Kathryn Sikkink, *From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights*, 50 *LATIN AM. POL. & SOC'Y* 1 (2008). She also expands on this point in her more recently published book, *THE JUSTICE CASCADE* (2011). Edward Cleary also examines how atrocious human rights violations in Latin America led to the proliferation of human rights movements in the region. EDWARD CLEARY, *THE STRUGGLE FOR HUMAN RIGHTS IN LATIN AMERICA* 64–65 (1997).

3. JORDI Díez, *THE POLITICS OF GAY MARRIAGE IN LATIN AMERICA: ARGENTINA, CHILE, AND MEXICO* 49 (2015) (“Intense political contestation and mass mobilization have been a defining feature of Argentina’s political tradition.”)

4. Gabriela Fernández, *Historia Social y Política de la Argentina contemporánea*, in *MOVIMIENTOS SOCIALES Y DERECHOS HUMANOS EN LA ARGENTINA* 17, 23 (Brenda Pereyra & Pablo Vommaro eds., 2010).

5. Fernández, *supra* note 4, at 23, 25–26, 37. See also, Enrique Oteiza & Susana Novick, *Política Migratoria y Derechos Humanos en un Contexto de Ajustes y Reformas Neoliberales. Argentina: 1989–1999 (Gobierno de Menem)* 5, <https://perma.cc/2RZJ-WCH2>.

6. *Id.*

7. The *Madres* represent the mothers of the disappeared, while the *Abuelas* represent the “mothers of disappeared people who were either kidnapped with their children or who gave birth in captivity.” Both groups mobilized in 1977. Sikkink, *supra* note 1, at 64. Their most iconic repertoire is a march around the central obelisk in the Plaza de Mayo (in front of the Casa Rosada), every Thursday from 3:30p.m. to 4:30p.m. What makes the repertoire distinct is that they wear white handkerchiefs—representing both the diapers of their lost children and grandchildren and banners of peace—and carry pictures of their missing loved ones. See LESTER R. KURTZ, *INT’L CT’R ON NONVIOLENT CONFLICT, THE MOTHERS OF THE DISAPPEARED: CHALLENGING THE JUNTA IN ARGENTINA (1977–1983)* (2010); Marysa Navarro, *The Personal is Political: The Madres de Plaza de Mayo*, in *POWER AND POPULAR PROTESTS: LATIN AMERICAN SOCIAL MOVEMENTS* 241 (Susan Eckstein, ed., 2001); Rachel Koepsel, *Mothers*

businesses,⁸ to the *piquete* protests,⁹ to *escrache* protests,¹⁰ activists have adopted, adapted, and innovated repertoires,¹¹ many of which were later exported.¹² Many articles have examined these new repertoires that have emerged during the 40 years following the military coup.¹³ This article will

of the Plaza de Mayo: First Responders for Human Rights (Case Briefing Paper, UNIVERSITY OF DENVER, 2011), <https://perma.cc/2W6D-5LUH>.

8. The term “recovered factories and businesses” (*fábricas recuperadas* or *empresas recuperadas*) refers to a repertoire of action that arose after the 2001 economic crisis, whereby groups of workers occupied businesses that were at the point of shutting down or had just shut down, to collectively restart production. The ‘recovery’ typically involved direct physical action—a takeover and occupation of the physical space—followed by the workers taking over all operations, including administrative and leadership roles. Patricia Davolos & Laura Perelman, *Respuestas al neoliberalismo en Argentina*, 24 *POLÍT. CULT.* 208, 208–11 (2005); Daniel Ozarow & Richard Croucher, *Workers’ Self-management, Recovered Companies and the Sociology of Work*, 48 *Soc.* 8 (2014).

9. *Piquete* is a hispanization of the English word ‘picket.’ The *piquete* repertoire, largely used by unemployed workers during the 2001 economic crisis, is a collective action of blocking roads, thereby causing disruption by limiting circulation. See Maristella Svampa, *Movimientos Sociales y Nuevas Prácticas Políticas en Argentina*, 20 *NÓMADAS* 112; see also Matías Artese, *Violencia política y protesta social en la Argentina de fin de siglo. Un estudio aplicado a los cortes de ruta*, XIX ESTUDIOS SOBRE ESTADO Y SOCIEDAD 171 (2011).

10. The *escrache* is a repertoire of action that has its origins in the fight against impunity for dictatorship-era crimes, although its use has diversified greatly since its creation. The organization that popularized the repertoire was H.I.J.O.S., a collective of the children of those murdered, disappeared, and exiled during the dictatorship. The idea of the repertoire was to denounce members of the dictatorship for their crimes publicly, in front of their homes. See generally Sebastián Cominiello, *Otra vez: “qué es un escrache?”*, *RAZÓN Y REVOLUCIÓN*, 149 (2004), <https://perma.cc/KY25-EQE5>; Santiago Cueto Rúa, *Demandas de justicia y escrache en HIJOS La Plata*, 36 *MEMORIA ACADÉMICA* 165 (2010); Paula Mónaco Felipe, *Hijos por la identidad y la justicia contra el olvido y el silencio (H.I.J.O.S.)*, in JUSTICIA PENAL INTERNACIONAL (Santiago Corcuera Cabezu & José Antonio Guevara Bermúdez eds., 2001); *Lo imposible solo tarda un poco más*, H.I.J.O.S. (May 14, 2010), <https://perma.cc/PV3S-G9PH>. With the emergence of the economic crisis, the repertoire became used for other issues, including its implementation by neighborhood assemblies, political parties, and unions in denouncing politicians, IMF employees, and businesses in the context of the economic crisis. Sebastián Cominiello, *El escrache: una expresión de relaciones de fuerza*, *RAZÓN Y REVOLUCIÓN* (Oct. 30, 2015), <https://perma.cc/9Y5U-BNSN>.

11. Charles Tilly coined the term “repertoires of contention” to refer to the “ways that people act together in pursuit of shared interests.” CHARLES TILLY, *POPULAR CONTENTION IN GREAT BRITAIN, 1758–1834*, 41 (1995). Repertoires depend both on the skills of the members of the movement and of the “cultural forms of the population,” such that they may “depend upon major fluctuations in interests, opportunities, and organizations.” SIDNEY TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS* 39 (2011).

12. For example, in Uruguay, the *Unión de Trabajadores Desocupados* (“Union of Unemployed Workers”) adopted the *piquete* repertoire after being inspired by Argentine activists. See Luis Oviedo, *Una historia del movimiento piquetero*, 9 *RAZÓN Y REVOLUCIÓN* 1, 5 (2002). The *escrache* is an example of a repertoire that has had substantial diffusion. Its use spread quickly among the region, known by other names such as ‘funas’ (Chile), ‘escrachos’ (Brazil) and ‘roches’ (Peru). Martín Cúneo, “Si no hay justicia, hay escrache”, *DIAGONAL* (Feb. 13, 2013), <https://perma.cc/H9X3-4HN7>; Carmen de Carlos, *El triste invento político argentino*, ABC INT’L, <https://perma.cc/RZ3V-FN54>. For discussion of its use in other Latin American countries, see ANA ROS, *THE POST-DICTATORSHIP GENERATION IN ARGENTINA, CHILE, AND URUGUAY* 29, 120 (2012); *Uruguay: Si no hay justicia, hay escrache*, RED LATINA SIN FRONTERAS (Feb. 1, 2016), <https://perma.cc/MX77-JN6A>; *Funa para todos los torturadores y asesinos: ni olvido, ni perdón; Si no hay justicia. Hay funa*, CENTRO DE ESTUDIOS MIGUEL ENRIQUEZ (2005), <https://perma.cc/ZR4Z-A9PW>; see generally COMISIÓN FUNA, <https://perma.cc/FE84-P9K5>.

13. In addition to the sources cited in *supra* notes 7–10 and 12, see, for example: (1) On the *Abuelas* and the *Madres*: MARGUERITE GUZMAN BOUVARD, *REVOLUTIONIZING MOTHERHOOD: THE MOTHERS OF THE PLAZA DE MAYO* (2002); JOSEPHINE FISHER, *MOTHERS OF THE DISAPPEARED* (1989). (2) On the recovered factories and businesses: Carlos E. Martínez & Andrés Ruggeri, *Empresa Recuperadas: Elementos*

focus on another innovation of Argentine social movements: the framing of human rights issues as “debts of democracy.”¹⁴

This article will examine the use of the “debts of democracy” frame in three specific social movements:¹⁵ (1) the migrants’ rights movement; (2) the LGBT movement;¹⁶ and (3) the women’s rights movement.¹⁷ The analysis will focus on their activity in a particular historical moment: under the presidencies of Néstor Kirchner (2003–2007) and Cristina Fernández de Kirchner (2007–2015).¹⁸ In particular, the article will focus on mobilization regarding specific laws: for the migrants’ rights movement, Migration Law 25.871¹⁹; for the LGBT movement, Law 26.618²⁰ (modifying the Civil Code to allow for equal marriage); and for the women’s movement, activism around the decriminalization of abortion.

Tácticos para su análisis in MOVIMIENTOS SOCIALES Y DERECHOS HUMANOS EN LA ARGENTINA 245 (Brenda Pereyra & Pablo Vommaro eds., 2010); ESTEBAN MAGNANI, EL CAMBIO SILENCIOSO: EMPRESAS Y FÁBRICAS RECUPERADAS POR LOS TRABAJADORES EN ARGENTINA (2003); Raquel Arévalo & Tomás Calello, *Las empresas recuperadas en Argentina: algunas dimensiones para su análisis*, Natalia Vanesa Hirtz & Marta Susana Giaccone, *The Recovered Companies Workers’ Struggle in Argentina: Between Autonomy and New Forms of Control*, 40 LATIN AM. PERS. 88 (2013); Daniel Ozarow & Richard Croucher, *Workers’ Self-Management: Recovered Companies and the Sociology of Work*, 48(5) SOC. 989 (2014), <https://perma.cc/5L5R-ZHKJ>. (3) On the piqueteros: MOVILIZACIONES, PROTESTAS E IDENTIDADES POLÍTICAS EN LA ARGENTINA DEL BICENTENARIO (Astor Massetti, Ernesto Villanueva, & Marcelo Gómez eds., 2010); MARISTELLA SVAMPA & SEBASTIÁN PEREYRA, ENTRE LA RUTA Y EL BARRIO. LA EXPERIENCIA DE LAS ORGANIZACIONES PIQUETERAS (2003); LA PROTESTA SOCIAL EN LA ARGENTINA, (1990–2004): FÁBRICAS RECUPERADAS, PIQUETES, CACEROLAZOS, ASAMBLEAS POPULARES (Guillermo Almeyra, ed., 2004). (4) On the escrache: Charlotte Turner, “If there’s no justice, there’s escrache!” ARG. INDEP. (July 28, 2007), <https://perma.cc/3RNK-ZYH3>.

14. In Spanish, “deudas de la democracia.”

15. Ruud Koopmans explains the importance of “moving beyond single movements” in research. Ruud Koopmans, *Protest in Time and Space: The Evolution of Waves of Contention*, in THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS 19, 21 (David A. Snow, Sarah A. Soule & Hanspeter Kriesi eds., 2004).

16. In this paper I will use the term LGBT (as opposed to alternatives such as LGBTQ or LGBTQI) because LGBT was the term most prominently used by activists during the period being studied, and continues to be a predominant term in Argentina today. See, e.g., *Guía para los Medios – De la Alianza Gay y Lésbica Contra la Difamación, ALIANZA GAY Y LÉSBICA CONTRA LA DIFAMACIÓN* (2010), <https://perma.cc/9SWM-M7V2>; FEDERACIÓN ARGENTINA DE LESBIANAS, GAYS BISEXUALES Y TRANS, *Objetivos y propuestas*, <https://perma.cc/6CWB-3B2W>. However, some groups have adopted more inclusive terms, such as GLTTBI (Gays, Lesbianas, Travestis, Transexuales, y Bisexuales). See, e.g., *Cronología GLTTBI, COMUNIDAD HOMOSEXUAL ARGENTINA*, <https://perma.cc/BR46-5EVX>. Note that in Argentina, the term “travesti” is used to refer to a “pre-op” transsexual, while the term “transsexual” is used to refer to individuals who have already undergone a genital reassignment surgery. Stephen Brown, “*Con discriminación y represión no hay democracia*”: *The Lesbian and Gay Movement in Argentina*, 29 LATIN AM. PERS., 119, 135 (2002).

17. The broader swathe of organizations that work for women’s rights in Argentina tends to use the term, women’s movement or women’s organizations (“movimiento de mujeres” or “organizaciones de mujeres”) rather than feminist movement or feminist organizations (“movimiento feminista” or “organizaciones feministas”). Mabel Bianco, *Las políticas hacia las Mujeres en 30 años de Democracia*, in LAS CONQUISTAS DE LAS MUJERES EN LOS 30 AÑOS DE DEMOCRACIA 107, 107 (Susana Pérez Gallart ed., ASAMBLEA PERMANENTE DE DERECHOS HUMANOS, 2015).

18. By convention Néstor Kirchner is referred to as “President Kirchner” or “Kirchner,” whereas his wife and successor Cristina Fernández de Kirchner is referred to as “President Fernández” or “Fernández.”

19. Law No. 25871, Jan. 20, 2004, 30322 B.O. 2 (Arg.).

20. Law No. 26618, Jul. 21, 2010, 31949 B.O. 2 (Arg.).

In the light of these three case studies, this article will compare *how* activists in each movement implemented the “debts of democracy” frame, define *what* constitutes the frame, and determine *why* such a frame may have been strategic in the particular context of 2003–2015. Ultimately, I argue that the “debts of democracy” frame has become a master frame in Argentina because it proved strategic to diverse social movements for several reasons: it connects with broader social and cultural values, relates to frames of human rights that solidified during the transitional justice process, taps into public emotion regarding the atrocities of the dictatorship and the disaster of the neoliberal reform, and allows movements to capitalize on political opportunities presented by the rise of *kirchnerismo*.²¹ It is a dynamic frame, one that at once looks forward in imagining ideal democracy and reconceptualizing citizenship, and looks backwards in using previous human rights violations as a foil for what democracy should look like.

These case studies were selected because they provide an interesting basis to study the “debts of democracy” frame. All social movements were impacted by the *junta*'s prohibition on collective action.²² These three movements and the populations they advocate for—migrants, LGBT persons, and women—have not traditionally been focused on as targets of the regime's “Process of National Reorganization”²³ on the basis of these identity factors per se, although scholarship is increasingly exploring the ways that intersectional identities impacted the ways that individuals experienced repression. All three groups suffered particular discriminations and violence during the Dirty War. The *junta*'s promotion of ethnic nationalism—portraying Argentina as European as opposed to indigenous and Latin American²⁴—led to the dictatorship's targeting of migrants from neighboring Latin American countries, both *de jure*—by means of a new migration law—and *de facto*—by discriminatory policing practices.²⁵ The regime also emphasized “occidental and Christian values,” including traditional gender

21. In this article, I will use the term *kirchnerismo* broadly to refer to the left-wing populist movement that developed over the course of the presidencies of Néstor Kirchner and Cristina Fernández de Kirchner.

22. Collective action was strictly prohibited by the military *junta*, forcing many movements to go underground or disband. Díez observes that the LGBT movement “completely disappeared” as “[a]ctivists could not organize for fear of losing their lives.” Díez, *supra* note 3, at 79. Similarly, Mabel Bellucci recounted, “[w]hile feminism was expanding worldwide during these years, feminists in Argentina became silent, constrained by military violence, or went into exile.” Mabel Bellucci, *Women's Struggle to Decide about Their Own Bodies: Abortion and Sexual Rights in Argentina*, 10 REPRODUCTIVE HEALTH MATTERS 99, 101 (1997).

23. In Spanish, “Proceso de Reorganización Social.” Commonly referred to as simply “El proceso.” Fernández, *supra* note 4, at 40.

24. Oteiza & Novick, *supra* note 5, at 8; Pablo Ceriani Cernadas & Diego Morales, *Argentina: Avances y asignaturas pendientes en la consolidación de una política migratoria basada en los derechos humanos* 8 FEDERACIÓN INTERNACIONAL DE DERECHOS HUMANOS Y CENTRO DE ESTUDIOS LEGALES Y SOCIALES, <https://perma.cc/LG4R-9PJQ>.

25. Oteiza & Novick, *supra* note 5, at 8; Ceriani Cernadas & Morales, *supra* note 24, at 9.

roles,²⁶ with significant implications for both the LGBT population and women in general. Women's reproductive health and role as mothers was attacked by the crime of kidnapping.²⁷

Nor were these movements the focal point of collective action during the 2001 crisis. However, migrants were targeted via a campaign of xenophobia and mass detention leading up to the economic crisis.²⁸ Additionally, in general, already vulnerable sectors of society were thrust into further precariousness by the economic meltdown.

This article will proceed in five parts. Part II will review important contextual information about Argentina, focusing on the dueling histories of crisis and social movements. This section will particularly emphasize the two recent crises—the 1976–1983 military junta and the 2001 economic crisis—key to understanding the “debts of democracy” frame. Part III will offer a short overview to relevant social movement theory. Part IV will examine the three case studies: (1) the migrants' rights movement, (2) the LGBT movement, and (3) the women's movement. Part V will analyze how the theory presented in Part III can be applied to these case studies. Finally, Part VI will present some additional thoughts, conclusions, and questions for further research.

II. THE ARGENTINE CONTEXT: CYCLES OF CRISES AND COLLECTIVE ACTION

Because successful repertoires and frames depend on social and cultural context,²⁹ it is important to understand the environment in which they operate. For the last century, the Argentine context has been marked by “crisis, instability, and uncertainty,” with “economic crises devolv[ing] into political crises and vice versa.”³⁰

From 1930 to 1983, the political context oscillated between democracy and dictatorship, with no transition from one democratically elected leader to another.³¹ Military dictatorships—and at times, democratic regimes—restricted social movements, repressing activists and restricting free speech and mobilization. Historically, the economic and landholding elite sup-

26. Mercedes María Barros, *Silencio Bajo la Última Dictadura Militar en la Argentina*, 5 PENSAMIENTO PLURAL 79, 81 (2009); María Herminia Beatriz Di Liscia, *Mujeres en los movimientos sociales en Argentina. Un balance del último siglo*, 6 CADERNOS DE ESTUDOS LATINO-AMERICANOS 141, 160.

27. Daniel Berisso & María Marta Quintana, *Derechos humanos: Fundamentos filosóficos y perspectivas políticas*, in MOVIMIENTOS SOCIALES Y DERECHOS HUMANOS EN LA ARGENTINA 97 (Brenda Pereyra & Pablo Vommaro eds., 2010).

28. Alejandro Grimson, *Nuevas xenofobias, nuevas políticas étnicas en Argentina*, in MIGRACIONES REGIONALES HACIA ARGENTINA: DIFERENCIA, DESIGUALDAD Y DERECHOS 9 (Alejandro Grimson & Elizabeth Jelin eds., 2005). For more information, see 203–212 and accompanying text.

29. Tarrow, *supra* note 11, at 29.

30. Brenda Pereyra & Pablo Vommaro, *Introducción* to MOVIMIENTOS SOCIALES Y DERECHOS HUMANOS EN LA ARGENTINA 17, 9 (Brenda Pereyra & Pablo Vommaro eds., 2010).

31. Díez, *supra* note 3, at 49.

ported the imposition of military rule, and took their own actions to further the “political exclusion of the popular sectors.”³² This political exclusion contributed to a “propensity . . . to resolve conflict outside political institutions.”³³ Social demands, therefore, have “been mostly expressed through mass social mobilization,”³⁴ and regime changes “occurred when élites have been unable to contain mobilized social discontent.”³⁵ While Argentina’s early economic history was marked by prosperity,³⁶ the later twentieth century was defined by a cycle of economic crises.³⁷

There are two recent crises that are central to understanding the “debts to democracy” frame: the 1976–1983 *junta*, and the 1999–2002 economic crisis. Social movements were repressed under both crises, but nevertheless spread widely and developed innovative repertoires. The 1976–1983 *junta*, which was co-directed by the heads of the army, navy, and airforce,³⁸ was the most brutal in a string of dictatorships over the course of the twenty-first century.³⁹ Over time, the country’s military regimes had grown more authoritarian. The 1966–1973 dictatorship, known as the ‘Argentine revolution,’ was the first to propose a “new type of state” where the means of dealing with social and economic crisis was focused around “depolari[ing] the society and eradicat[ing] the ‘danger’ of peronism and communism” by eliminating political parties and persecuting leftist activists.⁴⁰ The Argentine Revolution did not eliminate social unrest, however, and under the subsequent presidencies of Juan Perón and acting president Isabel Perón (his widow who took over upon his death),⁴¹ leftist guerilla move-

32. Fernández, *supra* note 4, at 26.

33. Díez, *supra* note 3, at 49.

34. *Id.*

35. *Id.*

36. In the late nineteenth and early twentieth century, the Argentine economy boomed. In 1913, Argentina was the tenth wealthiest country in the world. Nonetheless, because much of this growth was export-driven, the country remained extremely vulnerable to external shocks. Fernández, *supra* note 4, at 17–21.

37. These crises include that of 1930 (resulting from the Great Depression), 1949, 1974, 1989, and 1999–2002. See generally Fernández, *supra* note 4; Paul Cooney, *Argentina’s Quarter Century Experiment with Neoliberalism: From Dictatorship to Depression*, 11 R. ECON. CONTEMP. 7 (2007). From 1930 to 1976, governments first attempted to respond to these crises by implementing Import Substitution Industrialization, a popular economic policy in the Latin American region at the time. In 1976, the government’s response shifted, marking the beginning of a neoliberal period that lasted through the 2001 economic crisis. Fernández, *supra* note 4, at 26. For more information on the 2001 economic crisis, see *infra* notes 66–90 and accompanying text.

38. HARRY E. VANDEN & GARY PREVOST, *POLITICS OF LATIN AMERICA: THE POWER GAME* 402–6 (2006). In this text, I will use the terms ‘the 1976–1983 military junta’, ‘the junta’, ‘the regime’ ‘the 1976–1983 dictatorship/military dictatorship’, ‘the dictatorship’, and ‘the military dictatorship’.

39. Fernández, *supra* note 4, at 37; Berisso & Quintana, *supra* note 27, at 95.

40. *Id.*

41. Juan Domingo Perón is a central but divisive figure in Argentine political history. He was president three times, from 1946 to 1952, 1952 to 1955, and 1973 to 1976. After the end of his second term in 1955, he was forced into exile that would last 17 years. For his supporters, Perón represented a “democratic leader who listened to the demands of workers and granted social and economic benefits to a large part of the population.” To his critics, he was an “authoritarian dictator and a demagogue.” Fernández, *supra* note 4, at 30–34, 39–40; MARISTELLA SVAMPA, *Revisiting Argentina 2001–13: From*

ments in the country grew.⁴² Isabel Perón's government responded with intense repression, ramping up the persecution of the political left.⁴³ Internal conflict continued to escalate, and the country was in the midst of economic crisis.⁴⁴ In the face of looming social, political, and economic crises, the military seized power in a coup in 1976.⁴⁵

The *junta* adopted and deepened the concept of the state created under the Argentine Revolution, embarking upon what they called a "Process of National Reorganization."⁴⁶ Marked by the Cold War context,⁴⁷ the regime said that it needed to root out the "cancer"⁴⁸ of communism by applying a "major surgery," with the military as "surgeons."⁴⁹ El Proceso consisted of a brutal campaign of "mass-kidnappings, imprisonment without charges, torture, and murder,"⁵⁰ undertaken by official security forces and paramilitary forces.⁵¹

The regime is particularly notorious for crimes of disappearances and kidnapping. Indeed, while the crime of 'disappearances' had long been practiced, it was the crimes of the Latin American dictatorships of the 1970s and 1980s—significant among them the Argentine *junta*—that led to its codification as an international crime.⁵² The 'disappeared'⁵³ were

"*Que se vayan todos!*" to the Peronist Decade, in ARGENTINA SINCE THE 2001 CRISIS (Cara Levey et. al. eds., 2014).

42. The first guerilla groups developed in the early 1960s in Northern Argentina. By the time of the 1966–1973 dictatorship, the largest movements were the *Montoneros* ("Catholic Peronist Nationalism"), and the *Trotskyist Revolutionary Army of the People* (the "Ejército Revolucionario del Pueblo" ERP). Fernández, *supra* note 4, at 23, 38; Berisso & Quintana, *supra* note 27, at 79, 95.

43. Under Isabel, the newly formed Alianza Anticomunista Argentina (Triple A) "assassinat[ed] and expel[led] from the country figures associated with the ideas of the left, anticipat[ing] the repression that the military government would carry out from 1976 forward." Fernández, *supra* note 4, at 38–40. See also HARRY E. VANDEN & GARY PREVOST, POLITICS OF LATIN AMERICA: THE POWER GAME 402–406 (2006).

44. Fernández, *supra* note 4, at 39.

45. *Id.* at 39–40; Díez *supra* note 3, at 78–79.

46. Fernández, *supra* note 4, at 40; SIKKINK, *supra* note 1, at 62.

47. Ellen L. Lutz & Kathryn Sikkink, *The International Dimension of Democratization and Human Rights in Latin America*, in DEMOCRACY IN LATIN AMERICA: RECONSTRUCTING POLITICAL SOCIETY 280–81 (Manuel Garretón & Edward Newman eds., 2001).

48. RITA ARDITTI & HORACIO PONS, DE POR VIDA: HISTORIA DE UNA BÚSQUEDA: LAS ABUELAS DE PLAZA DE MAYO Y LOS NIÑOS DESAPARECIDOS 36–37 (2000).

49. Berisso & Quintana, *supra* note 27, at 97. The military justified its actions in terms of national security and labeled the guerrilla movements—as well as anyone they deemed "subversive"—as "terrorists." Navarro, *supra* note 7, at 241.

50. SIKKINK, *supra* note 1, at 62. "The State Terrorism resorted to clandestine oppression that was organized in four phases: kidnapping, torture, detention, and execution of the opposition or suspects. The victims were housed in clandestine detention centers that functioned in police stations, prisons, warehouses, and military offices. In these detention centers [victims] were tortured and many were secretly executed. The bodies, without identification, were buried in common graves, burned, or thrown into the Río de la Plata. Many children that were born in captivity were given to the families of the oppressors or to people connected with members of the military." Fernández, *supra* note 4, at 41. See also, Berisso & Quintana, *supra* note 27, at 97.

51. Berisso & Quintana, *supra* note 27, at 97.

52. On February 29, 1980, the United Nations Office of the High Commissioner for Human Rights established a *Working Group on Enforced or Involuntary Disappearances*, which remains operational through today. In the early 1990s, the U.N. General Assembly also released the *Declaration on the*

those individuals killed by the dictatorship whose remains were disposed of in secret to deprive their loved ones the closure of knowing their fate.⁵⁴ The regime executed forced disappearances in many different ways, but perhaps the most notorious were the “death flights” (“vuelos de muerte”) whereby prisoners were drugged, loaded into an airplane, and dropped—usually stripped naked—from the airplane into the Atlantic Ocean or the Río de la Plata.⁵⁵ Human rights organizations estimate that about 30,000 people disappeared in the Dirty War.⁵⁶ The *junta* adopted new forms of State violence by kidnapping the children of the disappeared, often to be given to families loyal to the regime.⁵⁷

This multifaceted program of State Terrorism sought to eliminate all forms of social protest and dissent.⁵⁸ While the military claimed to be fighting a war with dangerous communist rebels, in reality the dictatorship considered “all those who opposed the government” to be subversives. Groups such as workers, students, intellectuals, political activists, religious groups, and artists were particularly affected.⁵⁹ Despite the military’s consistent efforts to suppress social movements, the ‘Dirty War’ was ultimately the genesis of Argentina’s modern human rights movement. The country’s history of social movements fused with developing concepts of international human rights. According to Daniel Berisso and María Marta Quintana,

Protection of All Persons from Enforced Disappearance, and the Inter-American System developed the *Inter-American Convention on the Forced Disappearance of Persons*. In the twenty-first century, this crime has been further codified at the international level both through the *International Convention for the Protection of All Persons from Enforced Disappearance*, which entered into force on December 23, 2010, and Article 7(1)(i) of the Rome Statute, which entered into force in 2002. *Working Group on Enforced or Involuntary Disappearance: Mandate*, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://perma.cc/L9NL-DJFQ>; *Declaration on the Protection of All Persons from Enforced Disappearance*. G.A. Res. 47/163 (Dec. 18, 1992); Organization of American States, *Inter-American Convention on the Forced Disappearance of Persons*, March 28, 1996, 33 I.L.M.1429; *International Convention for the Protection of All Persons from Enforced Disappearance*, Feb. 6, 2007, 2716 U.N.T.S. 3; Rome Statute of the International Criminal Court, art. 7(1)(i), U.N. Doc. A/CONF.183/9 (1998).

53. In Spanish, it is the *desaparecidos*.

54. JONATHAN BROWN, *A BRIEF HISTORY OF ARGENTINA* 245 (2010).

55. Ed Stocker, *Victims of ‘death flights’: Drugged, dumped by aircraft – but not forgotten*, INDEPENDENT (Nov. 27, 2012), <https://perma.cc/5QNE-42WV>; Teresa Bo, *Argentina holds ‘death flights’ trial*, AL JAZEERA (Dec. 5, 2012), <https://perma.cc/C3Q9-VDGJ>; Calvin Sims, *Argentine Tells of Dumping ‘Dirty War Captives Into Sea*, NY TIMES (March 13, 1995), <https://perma.cc/V6AH-X7AC>.

56. Estimates on the number of people disappeared do vary, but most human rights organizations support this figure. The National Commission on the Disappeared (CONADEP) estimated that there were 9,000 deaths and disappearances, but the general consensus among human rights groups is that the CONADEP lacked sufficient resources and time to accurately document all disappearances and that the true total is significantly higher. SIKKINK, *supra* note 1, at 63; FERNÁNDEZ, *supra* note 4, at 41.

57. Some young children were captured with their parents and then kidnapped, while some pregnant detainees were forced to give birth in captivity and then their babies were kidnapped. Berisso & Quintana, *supra* note 27, at 97.

58. Fernández, *supra* note 4, at 40–41.

59. *Id.* at 41. (“The majority of the detained-disappeared were workers (which demonstrated that the objective was to halt the popular opposition to the economic measures), but many sectors that opposed the government ideologically [were also detained and disappeared]: professionals, teachers, students, intellectuals, political activists, writers, artists, religious groups that were committed to popular sectors, etc.”).

“while there were demands and denunciations of violence and violations before the 1976–1983 dictatorship . . . they were not framed in the language and conceptualization of human rights. It was only in this historical moment [of the Dirty War] that the issue of ‘human rights’ erupted on the Argentine political scene.”⁶⁰

Some of the country’s most prominent human rights organizations were also formed during this period.⁶¹ Particularly famous are those organizations that represent the families of the disappeared—the *Abuelas de Plaza de Mayo*, the *Asociación Madres de Plaza de Mayo*, the *Madres de Plaza de Mayo Línea Fundadora*, and *H.I.J.O.S.* Additionally, a number of generalized human rights organizations formed in opposition to the dictatorship, including: the *Centro de Estudios Legales y Sociales* (CELS), the *Asamblea Permanente para los Derechos Humanos* (APDH), the *Servicio de Paz y Justicia* (SERPAJ) and the *Movimiento Ecueménico por los Derechos Humanos* (MEDH).⁶²

The groups all faced repression under the *junta*, including the detention and forced disappearance of its members.⁶³ Ultimately, however, it was pressure from the human rights movement that led Argentina to become the first country in Latin America to conduct domestic trials for the human rights violations of a former regime.⁶⁴ All these organizations still exist, and a number have diversified their work beyond their initial focus on the dictatorship. Several played important roles in the case studies.⁶⁵

The second crisis important to understand in decoding the “debts of democracy” frame is the 1999–2002 economic crisis, which emerged from a series of 1990s neoliberal policies pursued by the administration of Carlos Menem⁶⁶ in an effort to respond to the economic crisis of 1989.⁶⁷ Under the neoliberal reform, the government employed measures prescribed by the so-called, ‘Washington Consensus,’ including the ‘Convertibility Plan,’ the privatization of public companies, deregulation, stand-by agreements with

60. Berisso & Quintana, *supra* note 27, at 94. It bears noting, however, that there were manifestations of the use of human rights discourses before this moment, including the 1969 ‘Cordobazo protest’ under the ‘Argentine Revolution’ and the creation of the Liga Argentina por los Derechos Humanos as early as 1937. Fernández, *supra* note 4, at 23, 38; Berisso & Quintana, *supra* note 27, at 94.

61. Ellen Lutz and Kathryn Sikkink observe that there were very few human rights NGOs in Latin America before the 1960s and 1970s, when authoritarian regimes spread throughout the region and organizations began to emerge in response to gross human rights violations. Lutz & Sikkink, *supra* note 47, at 280. See also, CLEARY, *supra* note 60, at 62, 66.

62. SIKKINK, *supra* note 1, at 64. Several of these organizations supported the work of the *Madres* and the *Abuelas* by contributing legal expertise and activism experience. Kurtz, *supra* note 7, at 4.

63. SIKKINK, *supra* note 1, at 64.

64. Berisso & Quintana, *supra* note 27, at 99; SIKKINK, *supra* note 1, at 3, 12. See also, Sikkink, *supra* note 2, at 50.

65. Of particular note is the role of CELS, a central actor in all three case studies.

66. President Carlos Menem served two consecutive terms, from 1989 to 1995 and 1995 to 1999. Fernández, *supra* note 4, at 43.

67. Martín Armelino, *Una Década de Reformas Estructurales: el Caso de Argentina entre 1989 y 2001*, in *MOVIMIENTOS SOCIALES Y DERECHOS HUMANOS EN LA ARGENTINA* 53, 58 (Brenda Pereyra & Pablo Vommaro eds., 2010). See also, Miguel Teubal, *Rise and Fall of Neoliberalism in Argentina: The Role of Economic Groups*, 20 JOURNAL OF DEVELOPING SOCIETIES 173 (2004).

the International Monetary Fund, and a reform of the social security system.⁶⁸ While the reforms restored economic stability for some time,⁶⁹ in the second half of the decade the economic situation declined.⁷⁰ President Fernando De la Rúa, elected in 1999, continued those economic policies.⁷¹ The country descended into a dire economic crisis⁷² that peaked in 2001.⁷³ That year, 51.7% of the population of Greater Buenos Aires⁷⁴ was living below the poverty line, and 19.2% was living in a ‘state of indigence.’⁷⁵ In 2002, Argentina underwent the largest debt default by a single country in history.⁷⁶ The national unemployment rate hit 18.3%, and of those receiving a salary, 41.1% were working informally.⁷⁷

Protests against neoliberal policies developed throughout the 1990s, but increased exponentially in Menem’s second term. Both traditional unions⁷⁸ and new groups representing unemployed workers were central players.⁷⁹ Repertoires grew increasingly disruptive.⁸⁰ Social mobilization broadened as the crisis worsened, with increasing numbers taking to the streets with empty pots and pans in the famous *caceralazo* protests.⁸¹

The Menem government attempted to “neutralize” unions that opposed its reforms,⁸² and government repression—primarily via criminalization and policing—increased as the crisis deepened and collective actions escalated.⁸³ The De la Rúa government largely replicated the tactics of the pre-

68. Armelino, *supra* note 67, at 58.

69. Fernández, *supra* note 4, at 43–44; Armelino, *supra* note 67, at 59.

70. The second half of the decade saw increased unemployment and external debt as well as pressure from foreign financial institutions to apply further neoliberal policies, including austerity measures. There were also a series of corruption scandals. Fernández, *supra* note 4, at 43–44.

71. *Id.* at 44–45; Armelino, *supra* note 67, at 73.

72. Fernández, *supra* note 4, at 44–45; Armelino, *supra* note 67, at 73.

73. In response, the government took extreme measures such as reducing salaries and pensions by 13%, and restricting the amount of money that could be withdrawn from banks. However, these measures were insufficient to combat the extent of the economic crisis. Fernández, *supra* note 4, at 45.

74. The term Greater Buenos Aires (*Gran Buenos Aires* in Spanish) refers to the autonomous capital city of Buenos Aires, as well as to the close suburbs of the city (known as the *courbano bonaerense*). See generally, INSTITUTO NACIONAL DE ESTADÍSTICA Y CENSOS, *¿Qué es el Gran Buenos Aires?* MINISTERIO DE ECONOMÍA Y PRODUCCIÓN (2005), <https://perma.cc/1B2V-BKR8>.

75. *La Protesta Social en la Argentina durante diciembre de 2001* 1, CENTRO DE ESTUDIOS LEGALES Y SOCIALES (2002) (hereinafter, CELS 2002), <https://perma.cc/4Z2K-QVWK>. The statistics were even more extreme in other regions, such as the north of the country. *Id.* at 2–3.

76. Cooney, *supra* note 37, at 9.

77. CELS 2002, *supra* note 75, at 2.

78. In particular, the *Congreso de Trabajadores Argentinos*, most commonly referred to by its initials, CTA. Fernández, *supra* note 4, at 44.

79. *Id.*

80. Use of roadblocks and *piquetes* increased. As the crisis worsened, the number of roadblocks that occurred increased accordingly. In 1997, there were 104 roadblocks in the whole country; in 1998, there was one roadblock per week; in 1999, there was one every day and a half; in 2000, there was at least one per day, and finally, in 2001, there was an average of 4 to 5 roadblocks daily. Fernández, *supra* note 4, at 6–7.

81. *Id.* at 45.

82. Armelino, *supra* note 67, at 60.

83. *Id.*; Fernández, *supra* note 4, at 44–45; CELS 2002, *supra* note 75, at 7.

vious administration.⁸⁴ Interactions between protestors and state agents at times escalated to physical violence,⁸⁵ and civil society organizations have denounced abuses of power by security forces that resulted in deaths and injuries to protestors.⁸⁶ As the crisis intensified, De la Rúa imposed a State of Emergency previously adopted under military dictatorships.⁸⁷ On December 20, 2001, confrontations between protestors and security forces resulted in the death of 27 people,⁸⁸ prompting De la Rúa's resignation.⁸⁹

Despite persistent repression, the economic crisis ultimately inspired strong and innovative collective social responses. Brenda Pereyra and Pablo Vommaro observe, "subjected to an unprecedented economic crisis, the social collectives resisted and/or survived by implementing the repertoires at their reach and by creating other forms of expression of protest."⁹⁰

These two crises have both political and economic dimensions.⁹¹ The implementation of neoliberal policies began under the dictatorship,⁹² and one of the factors that led to the *junta's* demise was economic crisis.⁹³ The 1999–2002 economic crisis, in turn, generated a major political crisis: President De la Rúa's notoriously leaving the Casa Rosada in a helicopter, prompting a series of events whereby the country passed through five presidents in two weeks.⁹⁴ Understanding Argentina's political and economic instability is essential to understanding its social movements. Brenda Pereyra and Pablo Vommaro explain, "[t]he political, social, economic, and cultural crises have transformed collective action in the country into the motor that has permitted the phoenix to arise from the ashes."⁹⁵ Understanding the *junta* and the 1999–2002 economic crisis in particular is also

84. Fernández, *supra* note 4, at 45.

85. CELS 2002, *supra* note 75 at 6–7; Fernández, *supra* note 4, at 44–45.

86. For example, on December 20, 2011, there were major confrontations between protestors and the federal police in the Plaza de Mayo, resulting in the death of at least 5 civilians. *Id.* at 21–22.

87. CELS 2002, *supra* note 75, at 7.

88. Fernández, *supra* note 4, at 45.

89. *Id.* at 45–46; CELS 2002, *supra* note 75.

90. Pereyra & Vommaro, *supra* note 30, at 9.

91. *Id.* at 17.

92. SUSANA TORRADO, EL COSTO SOCIAL DEL AJUSTE (2010), summarized in María Elena Naddeo, *Los Derechos de las Mujeres y el impacto de los procesos de ajuste estructural*, in LAS CONQUISTAS DE LAS MUJERES EN LOS 30 AÑOS DE DEMOCRACIA 83, 84–85 (Susana Pérez Gallart ed., ASAMBLEA PERMANENTE DE DERECHOS HUMANOS, 2015). Indeed, some scholars lump the period from 1976 to 1999 together, despite the 1983 democratic transition. *Id.*

93. Cooney, *supra* note 37, at 10–11.

94. Following De la Rúa's resignation on December 20, 2001, Ramón Puerta assumed power as Senate Provisional President until the Legislative Assembly was able to name Adolfo Rodríguez Saá, the Governor of the San Luis province, as a temporary president. However, in the face of a new wave of protests, Rodríguez Saá resigned, and the Head of the Chamber of Deputies, Eduardo Camaño, was named temporary president until the Legislative Assembly could meet again. Finally, on January 1, 2002, the Legislative Assembly named Eduardo Duhalde as interim president. Fernández, *supra* note 4, at 45–46; CELS 2002, *supra* note 75. Repression of social movements continued under his mandate. Fernández, *supra* note 4, at 45–46.

95. Brenda Pereyra & Pablo Vommaro, *Prologo*, in MOVIMIENTOS SOCIALES Y DERECHOS HUMANOS EN LA ARGENTINA 17, 41 (Brenda Pereyra & Pablo Vommaro eds., 2010).

essential to studying the “debts of democracy” frame, as these two crises constitute the primary foils used in constructing concepts of idealized democracy.

III. SOCIAL MOVEMENTS, FRAMING, AND DEMOCRATIC CITIZENSHIP

A. *Characterizing Social Movements*

Sidney Tarrow explains that a social movement exists when people with limited resources can build on political opportunities, “us[ing] known repertoires of action,” and “legitimate, action-oriented cultural frames” in order to “act together contentiously” on the basis of “dense social networks and effective connective structures.”⁹⁶ In Tarrow’s definition, movements are sustained actions that “revolve around broad cleavages in society,” “bring people together around inherited cultural symbols,” and “build on—or construct—dense social networks and connective structures.”⁹⁷ Tarrow constructs the social movement as an autonomous entity separate from and in opposition to the State.⁹⁸ David A. Snow, Sarah A. Soule, and Hanspeter Kriesi introduce a similar dividing line, distinguishing “collective actions that are institutionalized and normatively sanctioned”—‘interest groups’—from “those that are not”—‘social movements.’⁹⁹

Jordi Díez, in contrast, observes that when social democratic parties have control in Latin America, “they have recruited civil society individuals to government positions,” blurring “the line between state and nonstate actors.”¹⁰⁰ Social movement scholars have identified three overlapping key resources that movements depend on: (1) “Cultural Artifacts and Frames”; (2) “Political Opportunities and Constraints,” and (3) “Networks and Organizations.”¹⁰¹

Cultural Artifacts and Frames: Movements do not just advance towards tangible goals; they also “make and manipulate meaning.”¹⁰² According to Tarrow, there are three ways movements make meaning: (a) framing contentious politics; (b) defining, crystallizing, and constructing collective identity; and (c) reflecting, capturing, and shaping emotions.¹⁰³

96. TARROW, *supra* note 11, at 16, 33.

97. *Id.*

98. *Id.* at 32.

99. David A. Snow, Sarah A. Soule & Hanspeter Kriesi, *Mapping the Terrain*, in *THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS* 1, 6–7 (David A. Snow, Sarah A. Soule & Hanspeter Kriesi eds., 2004). However, they acknowledge the two will sometimes overlap. *Id.*

100. Díez, *supra* note 3, at 8–9. Such as the *kirchnerista* wing of the Judicialist Party, the political movement linked to the Kirchner presidencies.

101. TARROW, *supra* note 11, at 121. *See also* *COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS: POLITICAL OPPORTUNITIES, MOBILIZING STRUCTURES, AND CULTURAL FRAMINGS* (Doug McAdam, John D. McCarthy and Mayer N. Zald eds., 1996).

102. *Id.* at 142.

103. *Id.* at 142–43.

This section will focus in particular on the literature about framing contentious politics.

The work of David Snow and his colleagues is the cornerstone of the theory of collective action frames.¹⁰⁴ Snow and Robert Bedford define a frame as:

an interpretive schemata that simplifies and condenses the 'world out there' by selectively punctuating and encoding objects, situations, events, experiences, and sequences of action within one's present or past environment.¹⁰⁵

Frames "justify, dignify, and animate collective action."¹⁰⁶ They help "underscore and embellish the seriousness and injustice of a social conviction or redefine as unjust and immoral what was previously seen as unfortunate but perhaps tolerable."¹⁰⁷

Frames often make use of culture and collective identity. Successful frames incorporate "traditional cultural symbols" but also "orient . . . towards action," creating a frame "at the intersection between a target population's inherited culture and [the movement's] values and goals."¹⁰⁸ Culture, therefore, is at once an "arena of action," a "consequence of movement efforts," and "a causal factor in mobilization."¹⁰⁹ In this way, frames both "[draw] on inherited collective identities and shap[e] new ones."¹¹⁰ Tarrow proposes that two common means of addressing this delicate balance: "injustice framing" and "bricolage."¹¹¹

"Injustice framing" identifies a situation as unjust, assigns responsibility to 'others,' and proposes innovative solutions.¹¹² "Bricolage" occurs when:

[f]amiliar themes are arrayed to entice citizens to become supporters; and new themes are soldered onto them to activate them

104. *Id.* at 144. See, e.g., David A. Snow & Robert D. Benford, *Master Frames and Cycles of Protest*, in *FRONTIERS IN SOCIAL MOVEMENT THEORY* 133, 137 (A. Morris & C. McClurg Mueller eds., 1992); David A. Snow, E. Burke Rochford, Jr., Steven K. Worden & Robert D. Benford, *Frame Alignment Processes Micromobilization and Movement Participation*, 51 *AMERICAN SOCIOLOGICAL REVIEW* 464 (1986); David A. Snow & Robert Benford, *Clarifying the Relationship Between Framing and Ideology*, 5 *MOBILIZATION* 55 (2000); *THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS* (David A. Snow, Sarah A. Soule & Hanspeter Kriesi eds., 2004).

105. Snow & Benford, *supra* note 17, at 137.

106. Tarrow, *supra* note 11, at 31. Some other terms that have been used in recent scholarship on social movements include: "cognitive frames, ideological packages, and cultural discourses." Tarrow, *supra* note 11, at 31.

107. Snow & Benford, *supra* note 17, at 136.

108. Tarrow, *supra* note 11, at 144; David A. Snow, et. al., *supra* note 104, at 464.

109. *Emphasis original.* Rhys H. Williams, *The Cultural Contexts of Collective Action: Constraints, Opportunities, and the Symbolic Life of Social Movements*, in *THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS* 91, 92 (David A. Snow, Sarah A. Soule & Hanspeter Kriesi eds., 2004).

110. Tarrow, *supra* note 11, at 31.

111. *Id.* at 145-46.

112. *Id.* at 145. Doug McAdam argues the injustice frame is essential to motivating collective action. Doug McAdam, *The Biological Impact of Activism*, in *HOW SOCIAL MOVEMENTS MATTER* 51 (M. Guigni, D. McAdam & C. Tilly eds., 1999).

in new and creative directions. Bricolage pulls together accepted and new frames to legitimate contention and mobilize accepted frames for new purposes.¹¹³

Bricolage, therefore, is related to frame alignment, which can occur four different ways: (1) “frame bridging,” (2) “frame amplification; (3) “frame extension” and (4) “frame transformation.”¹¹⁴

A successful frame may be adopted by other movements until it becomes a “master frame.”¹¹⁵ Snow and Redford define master frames as “generic frames” and “quite broad in terms of scope.”¹¹⁶ Master frames “[function] as a kind of master algorithm that colors and constrains the orientations and activities of other movements,” while allowing movements to learn from each other and “adopt successful solutions to collective action problems.”¹¹⁷ Master frames are rare, however, because they have to be “sufficiently broad in interpretive scope, inclusivity, flexibility, and cultural resonance.”¹¹⁸ In addition to social movement, framing is also carried out by opponents, the media, and state actors.¹¹⁹ These simultaneous processes result in “framing contests” as different groups try to gain a monopoly on meaning.¹²⁰

Political Opportunities and Threats: Movements face both political opportunities and threats. Political opportunities are “consistent – but not necessarily formal, permanent, or national – sets of clues that encourage people to engage in contentious politics.”¹²¹ They can also be understood as the “[perceived] probability that social protest actions will lead to success.”¹²² Tarrow identifies four types of opportunities: (1) opening of access to participation; (2) evidence of political realignment within the polity; (3) availability of influential allies; and (4) emerging splits within the elite.¹²³ Threats, in contrast, are “those factors – repression, but also the capacity of authorities to present a solid front to insurgents – that discourage contention.”¹²⁴ Threats can also have the potential to increase action, because they

113. Tarrow, *supra* note 11, at 146.

114. David A. Snow, et. al., *supra* note 104, at 467–74 (1986).

115. Robert D. Redford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANNU. REV. SOC. 611, 619 (2000).

116. *Id.*

117. Koopmans, *supra* note 15, at 31.

118. *Id.*

119. Tarrow, *supra* note 11, at 32, 144; Redford & Snow, *supra* note 115, at 611, 613.

120. DOUG McADAM, SIDNEY TARROW, & CHARLES TILLY, *DYNAMICS OF CONTENTION* 45, 48 (2001); Tarrow, *supra* note 11, at 144.

121. *See generally Id.* at 32.

122. Jack A. Goldstone and Charles Tilly, *Threat (and Opportunity): Popular Action and State Response to the Dynamics of Contentious Action*, in *SILENCE AND VOICE IN THE STUDY OF CONTENTIOUS POLITICS* 182 (R. R. Aminzade et. al. eds., 2001). Quoted in Tarrow, *supra* note 11, at 160.

123. Tarrow, *supra* note 11, at 164–65. For a more detailed description of these four opportunities, *see id.* at 165–66.

124. *See generally* Tarrow, *supra* note 11, at 32.

may “outrage” the “interests . . . values . . . or . . . sense of justice” of a particular group.¹²⁵

The combination of political opportunities and threats at a given time composes the “political opportunity structure” which affects both strategy and impact.¹²⁶ This opportunity structure constitutes a “set of clues for when contentious politics will emerge and . . . set in motion a chain of causation that may ultimately lead . . . to social movements.”¹²⁷ Some opportunities may be longer-term and structural, such as ‘state structure’ and ‘political cleavages.’¹²⁸ Others may be short term moments that are particularly rife with political opportunities, such as ‘regime change,’¹²⁹ ‘reform,’ and ‘new splits among the elite.’¹³⁰

Networks and Organizations: Tarrow explains, “[a]lthough it is individuals who decide whether to take up collective action, it is in their face-to-face groups, their social networks, and the connective structures between them that collective action is most often activated and sustained.”¹³¹ The construction of organizations depends on networks “whose friendships, interpersonal trust, and shared perceptions are transformed into movement actions and programs.”¹³² Social movements use such networks in mobilizing support and in increasing the pressure on their opponents.¹³³ The process of collective action can also create new networks, as activists often “move through overlapping organizational networks, bringing with them identities, projects, and styles of work.”¹³⁴

B. *Social Movements, Citizenship, and Democracy*

Social movements are deeply involved in constructing the meaning of citizenship and redefining ‘rights holders.’¹³⁵ Paola Cymant explains that human rights movements can be understood to expand concepts of citizen-

125. *Id.* at 160.

126. Herbert Kitschelt, *Political Opportunity Structures and Political Protest: Anti-Nuclear Movements in Four Democracies*, 16 *BRITISH JOURNAL OF POLITICAL SCIENCE*, 57, 58 (1986). Quoted in Hanspeter Kriesi, *Political Context and Opportunity*, in *THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS* 67, 69 (David A. Snow, Sarah A. Soule & Hanspeter Kriesi eds., 2004).

127. Tarrow, *supra* note 11, at 33.

128. *Id.*

129. *Id.* at 159, 161. A ‘regime’ is a system of “regular relations among government, established political actors, challengers, and outside political actors.” Regime change, therefore, is a “change that inserts new actors into these relations, reduces the power of regime members, or imposes new relations among them.” *Id.* at 161.

130. Koopmans, *supra* note 15, at 24. (“Factions among [the elite] may choose to mobilize popular support in order to strengthen their position *vis-à-vis* rival elites, either by directly sponsoring or even initiating protest campaigns, or by encouraging dissent in more subtle ways.”) *Id.*

131. Tarrow, *supra* note 11, at 33.

132. *Id.* at 132.

133. *Id.*

134. *Id.*

135. Paola Cymant, *Derechos Humanos, pobreza y desarrollo*, in *MOVIMIENTOS SOCIALES Y DERECHOS HUMANOS EN LA ARGENTINA* 107, 124 (Brenda Pereyra & Pablo Vommaro eds., 2010).

ship, because “to be recognized as a rights holder means exercising a citizenship status that. . . includes the participation in the social, economic, and cultural processes that contribute to full human development.”¹³⁶ Other scholars note the centrality of the “rights dimension” to citizenship,¹³⁷ and vice versa.¹³⁸ Of course, there is also an inherent tension between the universality of rights and the exclusivity of the legal status of citizenship.¹³⁹

These arguments reflect a substantive notion of citizenship, whereby membership in a political community guarantees access to certain rights.¹⁴⁰ A substantive notion of citizenship goes hand-in-hand with a substantive notion of democracy, which goes beyond a formalistic understanding focused on practices such as voting and direct representation, towards an understanding of democracy as a system that “guarantees that citizens can exercise their right to participate in the different instances where decisions are made and all can benefit from economic development.”¹⁴¹ Under a substantive understanding of democracy, laws can be understood as “an instrument of enforceability and guarantee,”¹⁴² and/or “a crystallization of state expectations and a vehicle for transforming state understandings and practices.”¹⁴³ These ideas of legislation may explain why the movements studied chose to invest significant resources on legislative change, even in a social context where there is a significant gap between what the law says and what happens in reality.

136. Cymant, *supra* note 135, at 124.

137. Brenda Pereyra, *Ciudadanía y Movimientos Sociales. Pensando en su Interrelación y Constante Transformación*, in *MOVIMIENTOS SOCIALES Y DERECHOS HUMANOS EN LA ARGENTINA* 157, 157 (Brenda Pereyra & Pablo Vommaro eds., 2010) (“the rights dimension is central to the definition of citizenship”); Díez, *supra* note 3, at 38 (“citizenship, at its most basic level, refers to an individual’s polity membership and, specifically, to the rights and responsibilities such membership confers and demands.”).

138. Pereyra, *supra* note 137, at 157 (describing citizenship as an “intermediary step between the definition of universal rights and the realization of the welfare, liberty, or equality that [such rights] propose.”).

139. Elizabeth Jelin, *The construction of citizenship: between solidarity and responsibility*, in *CONSTRUIR LA DEMOCRACIA: DERECHOS HUMANOS, CIUDADANÍA Y SOCIEDAD EN AMÉRICA LATINA* (E. Jelin & E. Hershberg eds., 1996); Margaret Keck & Kathryn Sikkink, *Las redes transnacionales en las políticas internacionales regionales* 159 *REVISTA INTERNACIONAL DE CIENCIAS SOCIALES* (1999); Pereyra, *supra* note 137, at 159.

140. Those rights may be established by national or international law. Cymant, *supra* note 135, at 124; Pereyra, *supra* note 137, at 158. While the liberal democratic tradition emphasizes the civil and political rights that citizenship ensures, the social democratic traditional emphasizes that citizenship should guarantee not only civil and political rights but also social rights. Díez, *supra* note 3, at 39.

141. Cymant, *supra* note 135, at 125.

142. *Id.* at 124–125.

143. Kathryn Sikkink, *Nongovernmental Organizations, Democracy and Human Rights in Latin America*, in *BEYOND SOVEREIGNTY: COLLECTIVELY DEFENDING DEMOCRACY IN THE AMERICAS* 150 (Tom Farer ed., 1996).

Social movements play a key role in broadening the notion of both citizenship and rights.¹⁴⁴ The themes explored in these case studies are intimately tied to questions of citizenship. The citizenship dimension of immigration is the most obvious, since defining citizenship is a fundamental question of immigration law. In the area of LGBT rights, access to the state sanctioned institution of marriage is “essential to the achievement of full citizenship,” and activism on the issue “push[es] the boundaries of democracy and citizenship,” under the understanding that “democratic citizenship” requires “the legal and social recognition of the ethical status of gay and lesbian relationships.”¹⁴⁵ Advocacy for women’s rights—particularly reproductive rights—touches upon “broader historical and societal conceptions of the relationship among intimacy, gender, equality, and democracy.”¹⁴⁶ All three movements challenge two traditional Argentine discourses regarding citizenship: (1) the State emphasis on increasing population size; and (2) the focus on the heteronormative family as the base unit for social construction.

IV. CASE STUDIES: SOCIAL MOVEMENTS IN ARGENTINA

A. *The Migrants’ Rights Movement and the Migration Law 25.871*

i. *History of Migration Law and the Migrants’ Rights Movement*

For much of its history, Argentina was a major migrant-receiving country,¹⁴⁷ receiving vast waves of European migrants and, later on, significant migration from other Latin American countries.¹⁴⁸ Following World War I, the immigrant population declined, and since the 1970s, the country has become a major migrant sending country.¹⁴⁹ Migration policy has long been central to the State project of constructing national identity.¹⁵⁰ Historically, an “epic reading of . . . European migration” has dominated, coupled

144. Cyment, *supra* note 135, at 125; Pereyra, *supra* note 137 at 157; Elizabeth Jelin, *The construction of citizenship: between solidarity and responsibility*, in *CONSTRUIR LA DEMOCRACIA: DERECHOS HUMANOS, CIUDADANÍA Y SOCIEDAD EN AMÉRICA LATINA* (E. Jelin & E. Hershberg eds., 1996).

145. Díez, *supra* note 3, at 5, 44.

146. *Id.* at 28, 35–37.

147. María Inés Pacea & Corina Courtis, *Inmigración contemporánea en Argentina: dinámicas y políticas*, CENTRO LATINOAMERICANO Y CARIBEÑO DE DEMOGRAFÍA (CELADE) (Aug. 2008), <https://perma.cc/9UE2-YPYR>; Oteiza & Novick, *supra* note 5, at 3.

148. Immigration peaked in 1914, when nearly a third of the national population and nearly half of the population of Buenos Aires were immigrants. However, in 1914, migrants from neighboring countries represented a mere 8.6% of the immigrant population in Argentina, whereas in 2010, they represented 68.9 of the immigrant population. Pacea & Courtis, *supra* note 147, at 7; INSTITUTO NACIONAL DE ESTADÍSTICAS Y CENSOS (INDEC), *Censo Nacional de Población, Hogares y Viviendas 2010* (Oct. 2012), <https://perma.cc/3H5H-Q3D9>.

149. *Id.*

150. Barbara Hines, *The Right to Migrate as a Human Right: The Current Argentine Immigration Law*, 43 CORNELL INT’L L.J. 471, 474 (2010); Grimson, *supra* note 28; Pacea & Courtis, *supra* note 147, at 7.

with a “stigmatizing look at Latin American migration.”¹⁵¹ Traditionally, politicians saw European migration as a tool to help populate and develop a vast and “savage” territory.¹⁵² The 1853 Argentine Constitution and 1876 ‘Avellaneda Law’ were very open to immigration, requiring the government to encourage European migration, and many rights are granted not exclusively to “citizens” but rather to “all the men of the world who wish to dwell on Argentine soil.”¹⁵³ The first restrictive immigration laws came in the early twentieth century, and were targeted at limiting workers’ movements influenced by theories of unionization and socialism imported from Europe.¹⁵⁴ For example, the Residence Law (*Ley de Residencia*) of 1902 allowed the government to expel activists and union leaders of foreign origin without judicial intervention.¹⁵⁵

In 1981, the military dictatorship repealed the Avellaneda Law by passing a new comprehensive immigration law, the General Law of Migration and the Promotion of Immigration.¹⁵⁶ The restrictive law reflected the *junta’s* focus on national security and nationalism. It conceptualized undocumented migrants as dangerous, and constructed particular migrants as ‘outsiders’ to support a narrower understanding of Argentine identity as European.¹⁵⁷ The law provided almost no path to documentation for unskilled workers, who came largely from neighboring countries.¹⁵⁸ For undocumented migrants, the law prescribed detention and deportation, often without judicial review.¹⁵⁹

While many laws changed after the transition, Law 22.439 remained in force for over twenty years.¹⁶⁰ The Congress debated repealing it but chose not to, despite repealing a dictatorship-era nationalization law in 1984.¹⁶¹ Large populations of undocumented immigrants developed¹⁶² in democracy, and in response, the government granted several amnesties.¹⁶³ At the end of

151. Pacea & Courtis, *supra* note 147, at 7.

152. Hines, *supra* note 150, at 474.

153. Constitución Nacional (Arg.) 1853; Oteiza & Novick, *supra* note 5, at 4; Hines, *supra* note 150 at 476–477.

154. Oteiza & Novick, *supra* note 5, at 5; Fernández, *supra* note 4, at 23.

155. Fernández, *supra* note 4 at 23, 25–26, 37; Oteiza & Novick, *supra* note 5, at 5.

156. Law No. 22.439, Mar. 23, 1981, A.D.L.A. 273 (Arg.); Oteiza & Novick, *supra* note 5, at 6–7; Susana Novick, *Evolución Reciente de la política migratoria argentina*, UNIVERSIDAD DE BUENOS AIRES, <https://perma.cc/F3VX-HYDH>; Pablo Ceriani Cernadas & Diego Morales, *Argentina: Avances y asignaturas pendientes en la consolidación de una política migratoria basada en los derechos humanos*, FEDERACIÓN INTERNACIONAL DE DERECHOS HUMANOS Y CENTRO DE ESTUDIOS LEGALES Y SOCIALES (2011), <https://perma.cc/2UE9-PQBK>.

157. Oteiza & Novick, *supra* note 5, at 8.

158. Hines, *supra* note 150, at 475.

159. Oteiza & Novick, *supra* note 5, at 7.

160. Hines, *supra* note 150, at 472.

161. Interview with IOM Representative (anonymous), in Buenos Aires, Arg. (2012) (on file with the author). The law referred to was Law 21.795 of 1978, which was repealed in 1984. Argentine Republic, Law No. 21795, *Ley de Nacionalidad y Ciudadanía* (1978).

162. Pacea & Courtis, *supra* note 147, at 42.

163. Alfonsín’s administration granted an amnesty in 1984; Meném’s administration granted one in 1992. Alfonsín’s government also passed Law 23564 in 1988, which modified the executive regula-

the 1990s, as the country spiraled towards economic crisis, the government cracked down on immigration.¹⁶⁴ Law 22.439 was applied at times more harshly than it had been under the dictatorship,¹⁶⁵ culminating in a “systematic campaign of migrant detention” towards the end of the decade.¹⁶⁶ Several prominent government officials made xenophobic statements in public blaming migrants for a wide range of social ills, in what some now consider to have been a purposeful campaign of scapegoating to avoid responsibility for the economic crisis.¹⁶⁷

Given this climate, it seems shocking only two years after the crisis ended Migration Law 25.871—considered a trailblazing law on the international stage—¹⁶⁸was passed. The new law not only repealed Law 22.439, but also declared the right to migrate as a human right¹⁶⁹ and granted migrants an extensive list of rights.¹⁷⁰ The law marked a shift:

from the model of police management . . . founded in the doctrine of national security . . . [to] a model of management that recognizes migration as a human right and, what’s more, obliges the State to establish mechanisms to regularize migration. . . guarantees access to the judiciary in all detention or deportation proceedings and eliminates differentiation between nationals and foreigners with regards to access to rights.¹⁷¹

tion of the Videla Law (without making any significant changes to migrants’ situations). Oteiza & Novick, *supra* note 5, at 4, 8.

164. Interview with Lucila Nejamkis, in Buenos Aires, Arg. (2012) (on file with the author); Interview with Juan Pablo Terminiello, in Buenos Aires, Arg. (2012) (on file with the author).

165. Nejamkis, *supra* note 164; Terminiello, *supra* note 164.

166. Grimson, *supra* note 9. During this time, almost 50% of persons that were detained were foreigners, but migrants represented only 20% of those who were charged and 4% of those who were found guilty. Interview with Leilo Mármora, in Buenos Aires, Arg. (2012) (on file with the author).

167. Interview with Pablo Ceriani Cernadas, in Buenos Aires, Arg. (2012) (on file with the author); Interview with Violeta Correa, in Buenos Aires, Arg. (2012) (on file with the author); Interview with Alejandro Grimson, in Buenos Aires, Arg. (2012) (on file with the author); Terminiello, *supra* note 164. Leilo Mármora, director of the Institute of International Migration and Asylum Policies and former Director of the International Organization for Migration’s Southern Cone Office, suggested a different interpretation as to why these officials engaged in xenophobic discourse. He suggested the discourse was an attempt to gain public support for a high level deal between Siemens and the Argentine government to reprint the national identification cards and upgrade technology at border crossings. He suggested that the campaign of xenophobia was intended to justify the vast government expense, which was actually tied up in corruption: Interview with Leilo Mármora, in Buenos Aires, Arg. (2012) (on file with the author). The deal was notoriously corrupt, with reports that more than \$100 million were paid to members of the Argentine government. Grant McCool, *Siemens executives charged with bribery*, REUTERS (Dec. 13, 2011), <https://perma.cc/G9B6-R9RW>.

168. See generally, Hines, *supra* note 150, at 474.

169. Law No. 25871, 2004, *Política Migratoria* (Arg.); See generally Hines, *supra* note 150, at 472.

170. For example, the law guarantees access to rights to education, health, and social assistance to all migrants, regardless of migration status. See generally Law No. 25871, 2004, *Política Migratoria* (Arg.); see also Hines, *supra* note 150, at 481; Pacea & Courtis, *supra* note 147, at 44–47.

171. CENTRO DE ESTUDIOS LEGALES Y SOCIALES, DERECHOS HUMANOS EN ARGENTINA INFORME 326 (2012).

ii. *Activism Surrounding Migration Law 25.872*

The migrants' rights movement—and certain key civil society organizations that formed part of it—played a central role in bringing about this drastic change.¹⁷² Civil society organizations, including human rights NGOs, religious groups, and a major union banded together to form a *Mesa de Organizaciones de la Sociedad Civil en la Defensa de los Derechos de los Migrantes*, which participated actively in the public forums that the State organized in the process of drafting the bill.¹⁷³ The movement worked closely with Senator Rubén Giustinianni,¹⁷⁴ who chaired the *Commission on Population and Human Resources*.

The movement engaged in extensive lobbying, and the diversity of the groups involved allowed it to unite political factions that often disagreed.¹⁷⁵ Pablo Ceriani Cernadas explains:

There was . . . a work of strategic dialogue on the part of the organizations, in which they reached out to different parties present in the Congress . . . So the Catholic Church reached out to members of Congress more sympathetic to the Church, the human rights organizations to those members of Congress more sympathetic to human rights, the CTA to the movement of workers in union, the academics . . . to the Congress members more connected to the University of Buenos Aires . . . And so there was a work of strategic 'advocacy' in Congress, that later complemented the dialogue with the executive branch.¹⁷⁶

The Migration Law 25.871 passed ultimately as a closed legislation without debate in both chambers of Congress.¹⁷⁷ The new law was not particularly controversial in the media.¹⁷⁸

172. Interview with Ceriani Cernadas, *supra* note 167; Interview with Nora Perez Vinchich in Buenos Aires, Arg. (2012) (on file with author); Interview with Waldo Villalpado in Buenos Aires, Arg. (2012) (on file with author); Interview with Terminiello, *supra* note 164; Interview with Mámara, *supra* note 167.

173. Rubén Giustinianni, *Introducción*, to *MIGRACIÓN: UN DERECHO HUMANO* 13, 15 (Rubén Giustinianni ed., 2004); Interview with María Inés Pacecca in Buenos Aires, Argentina (2012) (on file with author); Interview with Perez Vinchich, *supra* note 172. The specific organizations that made up the *Mesa* were: the Fundación Comisión Argentina de Migraciones, the Centro por Estudios Legales y Sociales; the Asamblea Permanente de Derechos Humanos; the Departamento de Migraciones del Arzobispado de Buenos Aires; the Central de Trabajadores Argentinos; and the Centro de Estudios Migratorios Latinoamericanos.

174. Senator Giustinianni represents the city of Rosario and is a member of the Socialist Party.

175. Interview with Ceriani Cernadas, *supra* note 167.

176. Interview with Ceriani Cernadas, *supra* note 167.

177. *Id.*; Interview with Terminiello, *supra* note 164; Interview with Nejamkis, *supra* note 164. It likely helped that Senator Giustinianni, the author of the law, advocated for it personally in the Chamber of Deputies in 2003 when he was still a deputy, and then was elected to the Senate just as the bill passed to the Senate's consideration, so he was able to advocate for it personally there as well. Interview with Luis Bogado-Poisson, in Buenos Aires, Arg. (2012) (on file with author).

178. Interview with Ceriani Cernadas, *supra* note 167; Interview with Terminiello, *supra* note 164.

iii. *Framing progressive migration reform as a “debt of democracy”*

Many activists referred to the need to change the migration law as a “debt of democracy.”¹⁷⁹ They actively used both positive and negative historical references in constructing their democratic ideal. First, activists romanticized Argentina’s past as a migrant receiving country, appealing to the country’s understanding of itself as a “country of immigrants.”¹⁸⁰ Proponents framed the Migration Law as a return to the values of the Argentine Constitution, from which Law 22.439 had departed. They argued that the restoration of an Argentine democracy called for a return to this identity and to the constitutional principle that rights were due to all residents, not merely citizens.¹⁸¹

Second, activists used the past of the military dictatorship as a negative foil when envisioning a democracy’s ideal immigration policy. They emphasized the law’s formation under an authoritarian regime, and consciously labeled it the ‘Videla Law’, to emphasize the connection to the notorious for General Jorge Rafael Videla.¹⁸² Pablo Ceriani Cernadas explained:

[U]ntil 2001–2002, the law wasn’t . . . known as the ‘Videla Law’ . . . There is also a strategic use of the fact that the law was signed by Videla, in light of what Videla represents in terms of human rights violations and the denial of the process of democratic strengthening, to insert the issue into the human rights agenda . . . of the government. As if to say, ‘well, within the agenda of human rights and debts of the Argentine State, in addition to these processes of truth, of justice, of memory—there are some laws that were passed by the dictatorship and that reflect the doctrine of national security, like the Migration Law, the Media Law, and other laws passed in the authoritarian era.’¹⁸³

In constructing the notion of the Videla Law as an “authoritarian legacy”¹⁸⁴ of the dictatorship, activists focused on three distinct aspects: (1) the lack of democratic legitimacy of the process by which the law was passed; (2) the content of the law, and (3) the institutional embodiment of the law in the National Migration Bureau.

179. Interview with Terminiello, *supra* note 164; Interview with Corina Courtis, in Buenos Aires, Argentina (2012) (on file with author).

180. Interview with IOM representative, *supra* note 161; *see also* interview with Fabiana Hermoso, in Buenos Aires, Arg. (2012) (on file with author).

181. Interview with Terminiello, *supra* note 164; Giustinianni, *supra* note 173, at 13.

182. General Jorge Rafael Videla was the first leader of the military dictatorship. Interview with Ceriani Cernadas, *supra* note 167; Hines, *supra* note 150, at 472. In this paper, I refer to the law as the Migration Law 22.439, since the term ‘Videla Law’, while more common, is a component of the frame being analyzed.

183. Interview with Ceriani Cernadas, *supra* note 167.

184. For an examination of the concept of ‘authoritarian legacies’, *see infra* text accompanying notes 420–421.

First, activists questioned the democratic legitimacy of the law, because instead of passing through processes of bicameral and executive review, the law was approved via the unconstitutional practices of the *junta*, whereby it was written by military officers and given to the *junta* leaders to sign.¹⁸⁵ After taking power, the *junta* had replaced justices, dissolved the Congress, and intervened in the Provinces.¹⁸⁶ While these measures were similar to those taken by previous military governments, the 1976-1983 dictatorship went further than previous regimes, in that instead of trying to justify their power within the emergency powers provision of the Constitution, simply suspended the Constitution all together and sought to modify it directly through “institutional acts.”¹⁸⁷ Accordingly, some argue that the migration law represented a *de facto* law instead of a *de jure* law.¹⁸⁸ This argument fits into a much broader debate about whether laws passed under irregular, non-constitutional procedures during a military regime that is itself subsequently deemed illegal should be considered a binding legal norm in democracy.¹⁸⁹ However, this argument faced a challenge in that in 1984 the legislature decided not to repeal the migration law, despite repealing other dictatorial laws.¹⁹⁰

Second, activists argued changing the law was a “debt of democracy” because the law embodied the *junta*’s Cold War-inspired national security doctrine.¹⁹¹ Immigration was one of many issues labeled a potential threat to national security.¹⁹² Law 22.439 granted the Ministry of the Interior the powers to determine admissions criteria, establish requirements, and deport any migrant accused of engaging in activities that “affected social peace, national security, or public order,” regardless of status and without judicial review.¹⁹³ Some emphasized that the execution of the law by the National Migration Bureau also represented an authoritarian legacy, because it was “an inherited bureaucracy, a bureaucracy that came from the dictatorship, and came from a culture of bureaucracy that was not in the interest of human rights.”¹⁹⁴

The practices of the Menem administration were also used as a foil to what the democratic ideal should be.¹⁹⁵ Activists emphasized that the Menem administration had used migrants as scapegoats, laying the blame

185. Interview with Perez Vinchinch, *supra* note 172; Interview with Nicolás Figari Costa, in Buenos Aires, Arg. (2012) (on file with author); Interview with IOM representative, *supra* note 161.

186. Enrique I. Groisman, *Los Gobiernos De Facto en el Derecho Argentino*, 4 REVISTA DEL CENTRO DE ESTUDIOS CONSTITUCIONALES 35, 37 (1989).

187. *Id.*

188. Interview with Figari Costa, *supra* note 185.

189. Groisman, *supra* note 186, at 44.

190. Interview with IOM representative, *supra* note 161; Groisman, *supra* note 186, at 35, 43.

191. Interview with Diego Morales, in Buenos Aires, Arg. (2012) (on file with author).

192. Oteiza & Novick, *supra* note 5, at 8; Ceriani Cernadas & Morales, *supra* note 24, at 9.

193. Oteiza & Novick, *supra* note 5, at 7.

194. Interview with Eugenio Raúl Zaffaroni, in Buenos Aires, Arg. (2012) (on file with author).

195. Interview with Nejamkis, *supra* note 164; Interview with Terminiello, *supra* note 164; Interview with Grimson, *supra* note 167.

for “two consequences of the neoliberal model . . . unemployment and inequality and violence” at their feet.¹⁹⁶ Once they had achieved this drastic change in the country’s migration law, the Round Table organizations remained involved through the complex ‘reglamentation’ process¹⁹⁷ and the implementation of the law.¹⁹⁸ The movement also turned its attention towards getting a new and progressive refugee law,¹⁹⁹ implementing the “debts to democracy” frame again in the process.²⁰⁰ With refugees, there was the added component of alluding to the exile that many Argentines—including some government officials—had experienced during the dictatorship.²⁰¹

B. *The LGBT Movement and Law 26.618*²⁰²

i. *History of the Regulation of Sexuality and the LGBT Movement in Argentina*

Since independence, Argentina has been marked by a tension between heteronormativity as “the primary mechanism of sexual regulation”—driven largely by the significant influence of the Catholic Church—and liberal privacy values.²⁰³ Legally, the influence of liberal philosophies and the French civil code led to the decriminalization of sodomy in the first Argentine penal code and the protection of the private sphere in the 1853 constitution.²⁰⁴ However, legal repression of homosexuality did arise in forms like the “police edits” and “offence codes,” which imposed penalties for “same-sex relations” and “actions that would offend proper public behavior and good morality,” and laws passed in 1943 and 1951 forbidding homosexuals from voting, working in the public sector, running for office, or serving in the military.²⁰⁵ The State did not “[recognize] ‘sexual minorities’ as legitimate collective actors and members of civil society,” and the

196. Interview with Grimson, *supra* note 167.

197. Reglamentation (*reglamentación*) is a figure of the Argentine legal process by which laws have to be passed through the executive branch before being passed by Congress. The executive branch develops a decree to accompany and regulate the law and detail its execution. The reglamentation must be released for the law to enter in to force. In the case of the Migration Law 25.871, the reglamentation took six years to be released via Decree 616/2010 in May 2010. Interview with Lila García in Buenos Aires, Arg. (2012) (on file with author).

198. In particular, groups that formed part of the migrants’ rights movement helped execute the Plan Patria Grande, which was aimed at helping migrants from the MERCOSUR countries to regularize their status. Interview with Perez Vinchinch, *supra* note 172; Interview with Roberto Benencia, in Buenos Aires, Arg. (2012) (on file with author); Interview with Elba Labrador, in Buenos Aires, Arg. (2012) (on file with author).

199. Law No. 26165, Nov. 8, 2006, 31045 B.O. 1 (Arg.).

200. Interview with Marcos Filardi in Buenos Aires, Arg. (2012) (on file with author).

201. *Id.*; Interview with Violeta Correra, in Buenos Aires, Arg. (2012) (on file with author).

202. This section draws heavily from the research of Jordi Díez in his recently published book, *THE POLITICS OF GAY MARRIAGE IN LATIN AMERICA: ARGENTINA, CHILE, AND MEXICO*, *supra* note 3.

203. Díez, *supra* note 3, at 22, 75–76.

204. *Id.* at 22, 75.

205. *Id.* at 22, 75–76.

courts justified this position on the basis of “the Catholic Church’s position, the protection of the family, and medical opinion.”²⁰⁶

The first formal gay political organization in Argentina, known as *Nuestro Mundo*, was founded by ten individuals—including workers and union members—in 1967, two years before the New York Stonewall riots and in the midst of the 1966–1973 dictatorship commonly known as the ‘Argentine Revolution.’²⁰⁷ It was the first mobilization of its kind in Latin America.²⁰⁸ It differed from earlier LGBT organizations in that it evolved from “a mobilized revolutionary left.”²⁰⁹ Its initial work focused largely on combatting the frequent detention of members of the homosexual community by police.²¹⁰ In 1971, *Nuestro Mundo* joined with academics and students to establish the *Frente de Liberación homosexual* (FLH), a network that advocated more broadly for the “liberat[ion] of homosexuals from repressive structures that included the authoritarian regime as well as imperialism.”²¹¹

Due to State repression under Isabel Peron and the 1976–1983 *junta*, the LGBT movement “completely disappeared.”²¹² The LGBT community was at particular risk for two reasons: (1) their cause stood in opposition to the heteronormative discourse of the two regimes; and (2) because of the overlap between members of the LGBT movement and leftist organizations. There is debate amongst scholars and activists regarding the degree to which the two regimes purposefully targeted LGBT individuals because of their sexuality. It has been estimated that among the ‘disappeared’ victims documented by the CONADEP,²¹³ 400 or more were members of the LGBT community.²¹⁴

Scholars and activists have varying theories as to why this was the case; some argue that members of the LGBT communities were not targeted because of their sexuality per se, but that they suffered repression because of their leftist ties and/or once they were taken into custody, they were more

206. Brown, *supra* note 16, at 124.

207. *Cronología GLTTBI, COMUNIDAD HOMOSEXUAL ARGENTINA*, <https://perma.cc/PS4A-78Q7>. See also Díez, *supra* note 3, at 22, 79; Brown, *supra* note 16, at 120. For more information on the ‘Argentine Revolution’ see *supra* note 39. The exact founding date of *Nuestro Mundo* appears to be contested, as Jordi Díez and the Comunidad Homosexual Argentino place it in 1967, Bárbara Soledad Bilbao places it in 1968, and Stephen Brown places it in 1969. Díez, *supra* note 3, at 22, 76; Bárbara Soledad Bilbao, *Frente de Liberación Homosexual (1971–1976): Prácticas Comunicacionales de Resistencia y resignificaciones de la historia reciente*, at 1, 23; Brown, *supra* note 16, at 120.

208. Díez, *supra* note 3, at 22, 79.

209. *Id.* at 22, 77.

210. Díez, *supra* note 3, at 22, 76–77.

211. Díez, *supra* note 3, at 22, 76–77. See also Brown, *supra* note 16, at 120.

212. Díez, *supra* note 3, at 22, 79.

213. The National Commission on the Disappeared (CONADEP). ΣΙΚΚΙΝΚ, *supra* note 1, at 64; Fernández, *supra* note 4, at 41.

214. Brown, *supra* note 16 at 121; Díez, *supra* note 3, at 79. The *Nunca Más* report, however, does not report sexuality, nor does it mention that lists of detainees were found where next to the names of some detainees was written “puto” (a derogatory term for homosexual). Juan Moralejo & Facundo Martínez Cantarriño, *El terrorismo de Estado al servicio de la moral católica*, LA IZQUIERDA DIARIO (March 26, 2015), <https://perma.cc/X3CY-SZMQ>.

likely to be detailed and/or subjected to particularly brutal torture or abuse.²¹⁵ Others argue, however, that the targeting of the LGBT community in general (of the transsexual community in particular) was purposeful. They suggest that the *junta* understood the term “subversive” to include homosexuals.²¹⁶ There is evidence that members of the LGBT community were express targets of the “moral brigades” particularly leading up to the 1978 World Cup.²¹⁷ The head of the ‘Morality Division’ of the Federal Police under the *junta* stated that one of his goals was “to scare the homosexuals from the streets so that they don’t bother the decent people.”²¹⁸ José López Rega, the private secretary and close confidante of Isabel Perón notorious for his role in founding and directing the Alianza Anticomunista Argentina also owned a magazine that printed an article calling on its readers to “put an end to homosexuals,” advocating for the creation of concentration camps and forced labor, and demanding brigades that would wander the streets, “hunting men dressed as women, speaking like women.”²¹⁹ The article said such brigades should, “cut their hair in the street or shave them and leave them tied to a tree with an explicit and didactic sign.”²²⁰ Right-wing paramilitary attacks on homosexuals increased during Isabel Perón’s presidency.²²¹ From a more abstract point of view, Bárbara Bilbao argues that the dictatorship “censured and repressed any type of political activity that was connected to a discussion about the control of bodies by the State.”²²²

When the dictatorship began to show weakness, the LGBT movement began to mobilize, marked by the founding of several groups, including the *Coordinadora de Grupos Gays*.²²³ Nevertheless, this mobilization turned out to be dangerous; even in the last year of the dictatorship, an estimated 17

215. Díez, *supra* note 3, at 78–79.

216. Moralejo & Martínez Cantariño, *supra* note 214. See also Bilbao, *supra* note 207.

217. The “moral brigades” were a police force disbanded in preparation for the 1978 World Cup, which was held in Argentina. They were mandated with “cleansing” the society, principally through the “harassment, imprisonment, torture, and murder of ‘subversives.’” Díez, *supra* note 3, at 79; Moralejo & Cantariño, *supra* note 214; *Homosexualidad en el tiempo de ‘dinosaurios’*, BIBLIOSIGLA, <https://perma.cc/N6FE-JWB8>.

218. The quote was taken from a presentation at the University of Buenos Aires. Flavio Rapisardi, *De lo público a lo secreto*, RADAR, <https://perma.cc/9YYJ-RE6A>; Moralejo & Cantariño, *supra* note 214.

219. Moralejo & Cantariño, *supra* note 214. For more information on López Rega and his role in the later Peronist presidencies, please see: Fernández, *supra* note 4, at 39; PAUL H. LEWIS, GUERRILLAS AND GENERALS: THE “DIRTY WAR” IN ARGENTINA 74–75, 84, 97 (2002); Peter B. Flint, *Jose d, 72, a Backstage Power in the Peron Regime*, THE NEW YORK TIMES (JUNE 12, 1989), <https://perma.cc/7A4V-6BKD>; José Comas, *Muere el ministro peronista López Rega, creador de la ultraderechista Triple A*, EL PAÍS (JUNE 11, 1989), <https://perma.cc/N66Y-QU3R>; *This History of Peronsim: Part II*, THE ARGENTINA INDEPENDENT (Oct. 17, 2011), <https://perma.cc/5563-QFA6>.

220. Moralejo & Cantariño, *supra* note 214.

221. Brown, *supra* note 16, at 121. It is worth noting that some of the leftist organizations were also guilty of homophobia. One of the founders of the FLH, Héctor Anabitarte, was kicked out of the Communist Party because he was homosexual. Bilbao, *supra* note 207, at 24, 26.

222. Bilbao, *supra* note 207, at 27.

223. Díez, *supra* note 3, at 79.

gay men were killed.²²⁴ As late as 1982, a rightwing paramilitary group called Comando Cóndor stated their intention to “‘wipe out’ homosexuals.”²²⁵ Following the 1983 transition, there was hope that liberalization would bring more rights for the LGBT communities.²²⁶ However, while some new spaces opened, the transition “did not bring about palpable change in social attitudes towards homosexuality, nor did it mean an end to state repression.”²²⁷ Figures like the police edicts as well as the ‘Morality Division’ remained in place. In the four months following Alfonsín’s taking power, 343 individuals were detained.²²⁸ Alfonsín’s Interior Minister was quoted saying:

Homosexuality is a disease and we plan to deal with it as such. If police have acted it is because there were exhibitions or actions that compromise what can be called the rules of the game of a society that wants to be spared that type of behavior.²²⁹

In response to this continued repression, members of the LGBT community formed the *Comunidad Homosexual Argentina* (CHA). Throughout the 1990s, about thirty groups formed with distinctive focuses and varying degrees of politicization.²³⁰ Many were grassroots in style, but varied in approach and strategy.²³¹ In 1992, the first Gay Pride parade in the country’s history took place.²³² While initially the movement was fractured along different identity lines, in March 1996, the groups organized a national-level meeting of gay, lesbian, and transgender organizations, and changed the title of the Pride Parade to include transgenderism and bisexuality.²³³

On the legal front, the CHA had to fight for a long time to gain government recognition.²³⁴ Once they achieved that, one of the first projects they worked on was to pressure the federal government to support the fight

224. Brown, *supra* note 16, at 120.

225. *Id.* at 121.

226. Díez, *supra* note 3, at 79; Brown, *supra* note 16 at 121.

227. Díez, *supra* note 3, at 79–80.

228. Moralejo & Cantariño, *supra* note 214

229. *Id.*

230. These groups included: Las Lunas y las otras; the Sociedad de Integración Gay-Lésbica Argentina the Grupo de Investigación e Interacción Social; Gays y Lesbianas por los Derechos Civiles; Convocatoria Lesbiana; Grupo de Jóvenes Gays y Lesbianas “Construyendo Nuestra Sexualidad”; Deportistas Argentinos Gay; Madres Lesbianas; Biblioteca Gay-Lésbica; Escrita en el Cuerpo; and Colectivo Arco-Iris. Additionally, a number of transsexual groups formed overtime: Transexuales por el Derecho a la Vida y la Identidad; Asociación de Travestis Argentinas; Travestis Unidas; Organización de Travestis y Transexuales Argentinas; Asociación por la Lucha de la Identidad de las Travestis. Brown, *supra* note 16, at 119, 12, 127–31, 136.

231. *Id.* at 133. Stephen Brown identifies three types of organizations: (1) assimilationist organizations, (2) civil-rights-based associations, and (3) radical groups. *Id.* at 128.

232. *Id.* at 122.

233. *Id.* at 123, 132.

234. *Id.* at 122. The organization, while open to both men and women, had a larger male base. Some females left the group and accused it of sexism. *Id.* at 122–23.

against HIV/AIDS.²³⁵ Building on their success on these two fronts, the movement now looked to push for civil rights protections.²³⁶ The newly formed *Gays y Lesbianas por los Derechos Civiles* pushed a three-pronged agenda: (1) push anti-discrimination measures; (2) fight the decades old ‘police edicts’ and repression at the hands of security forces; and (3) fight for access to socioeconomic benefits by couples of the same sex.²³⁷

The 1995 Constitutional Reform, which established Buenos Aires as an autonomous federal district, proved to be an important political opportunity.²³⁸ LGBT activists successfully lobbied for the new Buenos Aires constitution to include a prohibition on discrimination on the basis of sex.²³⁹ The constitutional anti-discrimination provision, in turn, became key to achieving the second goal of overturning the police edicts.²⁴⁰

ii. *Activism for the Reform of the Civil Code and Equal Marriage*

Following the movement’s success in establishing non-discrimination measures in the Buenos Aires constitution and overturning the police edicts, activists turned their attention to obtaining legal recognition of same-sex partners.²⁴¹ The first initiatives included attempts to get same-sex partners access to benefits and/or pensions.²⁴² In 1997, activists successfully convinced the *Obra Social para la Actividad Docente* (OSPLAD) that their medical coverage should cover same-sex couples that had been co-habiting for at least ten years.²⁴³ Activists similarly lobbied the *Administración Nacional de Seguridad Social* (ANSES) to allow individuals in same-sex couples to receive their partner’s pension benefits.²⁴⁴ However, the ANSES denied the petition on the grounds that it had to follow the Civil Code definition of marriage as between a man and a woman.²⁴⁵

This setback “solidified for many activists the need to pursue the legal recognition of same-sex relationships.”²⁴⁶ The movement chose to first fo-

235. *Id.* at 112.

236. Díez, *supra* note 3, at 112.

237. *Id.*

238. *Id.* at 113–14. One of the founders of the CHA, well-known activist Carlos Jáureguí, ran to be a conventionalist for the Unión Socialista (Socialist Union), but was not elected. Nevertheless, his candidacy “attracted important public attention,” which helped increase visibility. Interestingly, his proposed platform included not only the inclusion of anti-discrimination provisions on the basis of sexual identity but also the decriminalization of abortion. *Id.* at 114.

239. *Id.* at 115. This was the “first time sexual orientation was included in the constitution of a Latin American jurisdiction.” *Id.*

240. *Id.*

241. Díez, *supra* note 3, at 117.

242. *Id.* at 118.

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

cus on the city of Buenos Aires, and successfully pushed for the city to adopt same-sex unions in a law passed on December 11, 2001.²⁴⁷

In 2005, the government of Nestór Kirchner adopted a new national antidiscrimination plan that included provisions calling for the raising of awareness about sexual diversity, the adoption of civil unions, and the nationwide elimination of the localized police edicts.²⁴⁸ In the wake of this plan, the LGBT movement worked with a congressional ally, Senator Diana Conti of the *Frente para la Victoria*, to submit a bill for federal recognition of civil unions.²⁴⁹ While this bill was not successful, it stirred up debates within the movement about whether they should be pursuing civil unions or marriage.²⁵⁰ Eventually the movement chose to concentrate its energy on a multidimensional push for equal marriage, targeting all three of the branches at once.²⁵¹ In the Legislature, they continued to work with allied legislators to introduce bills for equal marriage and participated actively in legislative committee hearings.²⁵² In the courts, they pursued strategic litigation, specifically by presenting writs of *amparo*²⁵³ challenging the Civil Code definition of marriage after being denied marriage certificates by the State.²⁵⁴ In November 2009, a Buenos Aires Judge ruled that the denial of a marriage license to same-sex couples was in violation of equal protection and the Buenos Aires constitution, and a number of other courts followed suit thereafter.²⁵⁵ Finally, the movement worked to convince the administration of Cristina Fernández de Kirchner to support equal marriage.²⁵⁶ Having previously expressed public support of civil unions, Fernández waited until June 2010 to take a public position, instead working to convince legislators in her party.²⁵⁷ By some accounts, this reticence was due to concerns that if Fernández showed public support, the opposition would not let the bill pass.²⁵⁸

247. *Id.* at 122.

248. *Id.* at 124–128. The LGBT movement had participated actively in civil society consultations about the law. *Id.*

249. *Id.*

250. *Id.* at 127.

251. *Id.* at 128.

252. *Id.* at 130, 139. These bills included: a bill introduced by Deputy Eduardo di Pollina in 2005 and reintroduced in 2007; a bill introduced by Senator Vilma Ibarra with the support of the *Federación Argentina de Lesbianas, Gays Bisexuales y Trans* (FALGBT) and the CHA in 2007; a bill introduced by the National Institute Against Discrimination, Xenophobia, and Racism (Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo, INADI) in 2007; and a bill introduced by Deputy Silvia Augsburger—a socialist deputy from Rosario—and developed with the FALGBT 2007. *Id.*

253. The *amparo* is figure of the Argentine legal system that allows individual citizens the chance to challenge the constitutionality of a government action.

254. *Id.* at 130–131.

255. *Id.* at 130–131, 135.

256. *Id.* at 130.

257. *Id.* at 130–131.

258. *Id.* at 130–131, 137–38.

The bill passed in the Chamber of Deputies on May 4, 2010, with 126 votes in favor and 110 votes against.²⁵⁹ The bill then proceeded to the Senate, which the movement knew would be a harder win because conservative, rural, and religious forces were overrepresented in the Senate.²⁶⁰ The opposition—primarily led by the Catholic Church—also escalated activism.²⁶¹ Nevertheless, the bill passed in the Senate, and was released in July of the same year. When the movement agreed to pursue marriage first, they determined that the next issue on their agenda would be the rights of transgender Argentines.²⁶² This came to pass, as shortly following the passage of equal marriage, the LGBT movement successfully pushed for what is perhaps the most progressive gender identity law in the world.²⁶³

iii. *Framing LGBT Rights as a “Debt of Democracy”*

Díez explains that since the return to democracy, “demands for gay marriage recognition have been framed as an issue of equality and human rights (a ‘collective action frame’) that has resonated with larger social debates (‘master frames’), which have seen human rights as central elements of democratic citizenship.”²⁶⁴ He observes:

In addition to challenging social perceptions of homosexuality . . . activists decided to frame their demands to end repression within larger national debates on democracy and human rights. For them, an effective way to change social perceptions and gain sympathy was through the establishment of a clear link between human rights and the consolidation of democracy. They thus adopted the motto “Freedom to express one’s sexuality is a human right.”²⁶⁵

The CHA ran advertisements in major newspapers as early as 1985 stating, “with discrimination and repression there is no democracy” and that homosexual citizens were also “worried about the national situation and . . . went through the hard years of the dictatorship.”²⁶⁶ Here, the ‘ideal democracy’ is built in contrast with the Dirty War.

259. *Id.* at 145.

260. *Id.* at 146.

261. *Id.* at 145.

262. Kate Redburn, *Argentina’s Radical Gay Rights Movement*, SALON (June 9, 2013), <https://perma.cc/5D7H-UQDJ>.

263. Díez, *supra* note 3, at 242.

264. *Id.* at 7. See also Brown, *supra* note 16 at 124 (“From the moment it was founded, the CHA adopted a strategy of working with other social movements on matters such as human rights, violence, and AIDS. The CHA wanted to forge links with other people and groups repressed by the dictatorship.”)

265. Díez, *supra* note 3, at 82. In Spanish, the slogan was, “El libre ejercicio de la sexualidad es un derecho humano.” Brown, *supra* note 16, at 125.

266. Díez, *supra* note 3, at 82; see also, Brown, *supra* note 16 at 124.

When advocating for anti-discrimination provisions in the Buenos Aires constitution, LGBT activists adopted the human rights frame and forced legislators to take a public stand because they “believed that it would be very difficult for these individuals to oppose publicly their demand given the saliency of human rights in post transitional Argentina.”²⁶⁷ When they pivoted to call for equal marriage, activists implemented a discourse centered on the “equality of human rights,” which was reportedly “fundamental in convincing legislators who had not originally supported the bill.”²⁶⁸ The most important lobbying point was, “expanding the definition of marriage was an issue of equal rights and a fundamental part of the new Argentine democracy.”²⁶⁹ They also specifically used the phrase “debt of democracy.”²⁷⁰

Finally, Díez observes that this enormous shift—to recognize equal marriage—was “the result of the ability of gay and lesbian activists to weave extensive and effective networks in their push for policy reform and to convince policy makers of the merits of their policy objective in a manner that resonated with larger social debates.”²⁷¹ Importantly, he argues, LGBT activists had learned from previous experiences, worked to build long-term alliances, and acquired the “discursive tools, strategies, and lobbying tactics” necessary to bring about this change.²⁷²

When the Church began to step up its opposition of the bill, one of the bill’s supporters stated that the Church’s behavior,

served to remind some of my peers of Argentina’s authoritarian past, when the Church collaborated with [former dictator Jorge Rafael] Videla . . . that image is still very present in the country’s popular consciousness.²⁷³

Here, the speaker used a reference to the dictatorship to delegitimize opposition to the bill by a non-State actor—the Catholic Church—and again constructs a contrast between the democratic present, and the undesirable, authoritarian past.

Like the “debts of democracy” frame was carried over by activists from advocating for the Migration Law 25.871 to advocating for the Refugee Law 26.165, LGBT activists carried the “debts of democracy” frame from

267. Díez, *supra* note 3, at 115.

268. *Id.* at 121–133.

269. *Id.* at 111, 143.

270. See, e.g., Eduardo Mattio, *Acerca del ‘matrimonio gay’ y de otras deudas pendientes*, ALFALO, <https://perma.cc/S4G5-DBZB>.

271. Díez, *supra* note 3, at 111.

272. *Id.* at 112.

273. *Id.* at 111.

their advocacy on equal marriage to their advocacy for the Gender Identity Law 26.734,²⁷⁴ which passed in 2012.²⁷⁵

C. *The Women's Movement and the Legalization of Abortion*

This third case differs from the two preceding cases in that it is the only one that has not been successful. Despite consistent mobilization on the part of Argentine women's movements, abortion in Argentina remains criminalized under Article 86 of the Argentine Penal Code.²⁷⁶ Non-punishable abortion is permitted in two cases:

1. When an abortion is performed, "with the goal of avoiding a threat to the life or health of the mother" and that threat "could not be avoided by other means."²⁷⁷
2. When an abortion is performed when, "the pregnancy results from a rape or an affront of modesty committed against a woman who is an idiot or is demented."²⁷⁸

Despite the prohibition of the practice, the Argentine Ministry of Health estimates that between 460,000 and 600,000 abortions are performed annually.²⁷⁹ An estimated 100 women die annually from unsafe abortions.²⁸⁰

i. *The History of the Argentine Women's Movement and the Regulation of Reproductive Rights*

Argentine women's movements have a long history.²⁸¹ At the turn of the twentieth century there were active movements fighting for women's suf-

274. Argentine Republic, Law No. 26734, *Establishing the right to gender identity* (2012). See, e.g., Marcela Romero, *La democracia Argentina tenía una deuda con nosotros*, PUNTAL.COM (2006), <https://perma.cc/7RB6-W2EJ>.

275. DÍEZ, *supra* note 3, at 242.

276. Art. 86 CÓD. PEN. (Arg.)

277. Art. 86 §1 CÓD. PEN. (Arg.)

278. Art. 86 §2 CÓD. PEN. (Arg.) Please note that this language is the original text of the bill as it is currently written. The F., A.L. case, decided in 2012, clarified that abortions practiced to end any pregnancy resulting from rape was definitely a "non-punishable" exception. María Elena Barbagelata, *Los Derechos de las Mujeres a 30 años de la recuperación de la Democracia*, in *LAS CONQUISTAS DE LAS MUJERES EN LOS 30 AÑOS DE DEMOCRACIA* 69, 78–79 (Susana Pérez Gallart ed., ASAMBLEA PERMANENTE DE DERECHOS HUMANOS, 2015).

279. Lourdes Bascary, *Aborto legal, seguro y gratuito: las consecuencias de la falta de debate*. CELS INFORME ANUAL 2012 377–400 (2012), <https://perma.cc/X84R-BVD4>, Mariana Carbajal, *Las cifras para abrir el debate* PÁGINA 12 (June 2007), <https://perma.cc/3CR8-564A>. To put these numbers in perspective, in 2011, the population of Argentina was 41, 261, 490. Argentina El Instituto Nacional de Estadística y Censos (INDEC). *Proyecciones provinciales de población por sexo y grupo de edad* (2013), <https://perma.cc/2FSZ-3Z8A>.

280. Bascary, *supra* note 279. When abortion is legal, it is generally safe, and first trimester abortions carry almost no risk to reproductive health or the life of the mother. "Fact Sheet: Induced Abortion in the United States." Guttmacher Institute (15 Feb 2014), <https://perma.cc/H924-RKL2>.

281. Bianco, *supra* note 17, at 107.

frage, although they did not succeed until 1947.²⁸² Prior to 1983, there were some advances with regards to legislation regarding women's rights, but "long interruptions in the democratic process" blocked women from accessing their rights.²⁸³ For much of the twentieth century, the law continued to infantilize women, and women's citizenship was defined in relation to a domestic and maternal role.²⁸⁴

The Peronist women's movement, formed under Eva Perón, was novel for the country.²⁸⁵ The demands that they made, however, focused on "labor, education, social and civil rights" and avoided discussion of sexuality.²⁸⁶ In the 1970s, a variety of women's rights organizations were active, many of them 'second wave' feminist organizations.²⁸⁷ At the beginning of the decade, the *Unión Feminista Argentina* (UFA) was founded. Other groups grew out of the UFA, with a range of focuses from gender issues, to political violence, grassroots community education and development.²⁸⁸ The latter two types of organizations were heavily repressed between 1976 and 1983.²⁸⁹

The 1976-1983 dictatorship promoted the "feminine role" as the "role of the wife and mother, vigilante of family order."²⁹⁰ Two important decrees regarding reproductive health were passed around this time. In 1974, President Perón signed Decree No. 659/74—commonly known as the López Rega decree, for the notorious peronist minister—,²⁹¹ which prohibited the sale of contraceptives and "all activities related to birth control."²⁹² In 1977,²⁹³ the *junta* released Decree 3983, which "prohibited any type of practice of birth control."²⁹⁴

Some sectors of the women's movement were vocally critical of the *junta*, despite the great risks of criticizing the regime.²⁹⁵ Even during the *junta*'s rule, parts of the women's movement conceptualized their activism very much as a question of citizenship. For example, the *Nucleo de Mujeres Políti-*

282. Susana Pérez Gallart, *La evolución de los derechos humanos*, in *LAS CONQUISTAS DE LAS MUJERES EN LOS 30 AÑOS DE DEMOCRACIA* 11, 14–15 (Susana Pérez Gallart ed., 2015).

283. Pérez Gallart, *supra* note 282, at 15. For an overview of this history, see generally Pérez Gallart, *supra* note 282 at 14–21; Barbagelata, *supra* note 278, at 69.

284. Barbagelata, *supra* note 278, at 69; Di Liscia, *supra* note 26, at 149.

285. Bellucci, *supra* note 22, at 99.

286. *Id.*

287. Pérez Gallart, *supra* note 282, at 17. In addition to the UFA, these included: the Organización Femenista Argentina, Nueva Mujer, the Movimiento Feminista Popular, and the Centro de Estudios Sociales de la mujer. Di Liscia, *supra* note 26, at 149, 155.

288. *Id.*

289. *Id.*

290. Di Liscia, *supra* note 26, at 160.

291. Bianco, *supra* note 17, at 110. López Rega is the same minister who was associated with the violently homophobic magazine publications. For more information about him, see *supra* note 219 and accompanying text.

292. Barbagelata, *supra* note 278, at 70.

293. Bianco, *supra* note 17, at 110.

294. Barbagelata, *supra* note 278, at 70.

295. Pérez Gallart, *supra* note 282, at 18.

cas organized a “series of round tables titled: Woman and Democracy” with the goal of informing women “interested in participating in political activity.”²⁹⁶ Most famously, the *Madres and Abuelas de Plaza de Mayo* carved out a space for protest, in part by embracing a traditional feminine role that made it difficult for the dictatorship to attack them.²⁹⁷

Following the return to democracy, women’s and feminist organizations blossomed.²⁹⁸ One of the first actions that the women’s rights movement took was to try to use the Convention for the Elimination of All Forms of Discrimination Against Women²⁹⁹ as a means of convincing political parties to include more women on their ballots for the first elections.³⁰⁰ In 1985, the first *Encuentro de Mujeres* was held, now an annual event.³⁰¹ It was at one of the *Encuentros de Mujeres* that a famous Argentine reproductive rights slogan was developed: “education to be able to decide, contraceptives to not be forced to abort, legal abortion so as not to die.”³⁰² There was also an overlap between women’s rights and transitional justice in these spaces, as they pronounced against the amnesty laws and impunity.³⁰³

ii. Activism for the Legalization of Abortion

Despite a number of advances won by the women’s movement since the return to democracy in 1983,³⁰⁴ progress remains slow with regards to the legalization of abortion. Many reforms furthering women’s rights were made quickly after the return to democracy, but family planning laws took

296. *Id.* at 17.

297. Di Liscia, *supra* note 26, at 160.

298. *Id.* at 162.

299. Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 19 I.L.M. 33, U.N. Doc. A/34/180, at pmb. [hereinafter CEDAW]. The CEDAW was ratified by the *junta* in 1980.

300. Di Liscia, *supra* note 26, at 162.

301. Di Liscia, *supra* note 26, at 163. The meetings are “open, autonomous, [and] self-called,” and as a whole do not identify as a ‘feminist’ space, although traditionally some groups and persons that attend do identify and therefore bring feminist theory into the space. *Id.*

302. In Spanish, *Educación para decidir. Anticonceptivos para no abortar. Aborto Legal para no morir*. Di Liscia, *supra* note 26, at 164.

303. *Id.*

304. Major legislative wins for the women’s movement since 1983 include: the Quota Law (Argentine Republic, Law No. 24012, *Ley de Cupo*, (1991)) (requiring the political parties to include female candidates); the Divorce Law (Argentine Republic, Law No. 23515, *Ley de Divorcio Vincular* (1987)); the Shared Custody Law (Argentine Republic, Law No. 23334, *Ley de Patria Potestad* (1985)); the Law on Prevention of Family Violence (Argentine Republic, Law No. 24417, *Ley de prevención de violencia familiar* (1994)). There were also advances with regards to partners’ access to social security and pensions in the case of death. Bianco, *supra* note 17, at 110. Institutional advances include the creation of the Secretary of Women in 1983, and founding of the National Council on Women in 1991. Barbagelata, *supra* note 278, at 71; Naddeo, *supra* note 92, at 83. The ratification of the CEDAW was another major win for the women’s movement. Bianco, *supra* note 17, at 109.

longer.³⁰⁵ Decrees 659/74 and 3893³⁰⁶ remained in force until 1986, and presented obstacles in implementing new policies in the area.³⁰⁷

Following Alfonsín's presidency, little progress was made. Menem's government was "particularly reactionary and regressive" regarding women's rights.³⁰⁸ On the movement side, between 1994 and 1996, a group of politicians and activists formed the *Mujeres Autoconvocados para decidir in libertad*, which successfully fought to prevent a clause being added to the new Constitution that would have defined life as starting at conception.³⁰⁹

Under President Duhalde,³¹⁰ there was an advance in the form of the *Programa Nacional de Salud Sexual y Procreación responsable*.³¹¹ Subsequently, during the Kirchner and Fernández administrations, there were further achievements in sexual and reproductive rights,³¹² but no legislative advances regarding abortion.

There are a number of organizations that advocate for the decriminalization of abortion in Argentina; perhaps the most central of which is the *Campaña nacional por el Derecho a un aborto legal, seguro y gratuito* (CNALSG), composed of 346 organizations in total.³¹³ Interestingly, these organizations include not only women's rights organizations but also many of the traditional transitional justice organizations (for example, the *Madres de Plaza de Mayo*; the *Madres de Plaza de Mayo - Línea Fundadora*; *Desaparecidos y Detenidos por Razones Políticas*; and several local chapters of H.I.J.O.S.), as well as organizations that focus on diverse issues ranging from LGBT rights to indigenous rights to worker's rights.³¹⁴

There has been some progress over the last fifteen years within the Legislature regarding receptiveness to the decriminalization of abortion, but not yet enough to change the law. Maria Elena Barbagelata reflects that while presenting a bill on the decriminalization of abortion in 2000 was "a soli-

305. Bianco, *supra* note 17, at 109–110. For example, at the International Conference on Population and Development in Mexico in 1984, Argentina "defended the right to decide about whether to have children or not" as a human right of all people. *Id.*

306. See *supra* text accompanying notes 290–294.

307. Bianco, *supra* note 17, at 110; Di Liscia, *supra* note 26, at 164.

308. Barbagelata, *supra* note 278, at 72.

309. Di Liscia, *supra* note 26, at 168.

310. President Duhalde was the fifth president appointed during the economic crisis and the last one to have power before the democratic elections in which Kirchner won. For more information, see *supra* note 94.

311. Law No. 25673, 2003, *Programa Nacional de Salud Sexual y Procreación Responsable*. Barbagelata, *supra* note 278, at 75.

312. Significant advances include the passage of: the PMO law related to pregnancy, birth, and postpartum [Argentine Republic, Law No. 25929, *Ley del PMO relacionada con embarazo, parto y postparto* (2004)]; the Law of Sexual Education [Argentine Republic, Law No. 26150, *Ley de educación sexual* (2006)]; the Law on Tube Tying and Vasectomies [Argentine Republic, Law No. 26130, *Ley de ligadura de trompas y vasectomía* (2006)]; and the Law on Coverage for Fertilization Treatments [Argentine Republic, Law No. 26862, *Ley de cobertura de los tratamientos de fertilización asistida* (2013)]. Barbagelata, *supra* note 278, at 75.

313. *Adhesiones Organizaciones que adhieran (2005–2015)*, CAMPAÑA NACIONAL POR EL DERECHO AL ABORTO LEGAL, SEGURO, Y GRATUITO (Oct. 2015), <https://perma.cc/U9SU-5EG4>.

314. *Id.*

tary task,” over 60 deputies supported a more recent bill pushed by the CNALSG.³¹⁵ She attributes this shift to the effect of social movements.³¹⁶

iii. *Framing Legalized Abortion as a “Debt of Democracy”*

The phrase, “debt of democracy” was adopted by the CNALSG as their slogan,³¹⁷ and it—as well as similar phrases like, “pending task” (“asignatura pendiente”)—is used heavily in advocacy surrounding reproductive rights.³¹⁸

The use of the “debts of democracy” frame among advocates for women’s rights is broad. Often, the phrase is employed without additional explanation, suggesting that it is understood to resonate on its own and to imply substantive factors.³¹⁹ For example, activists refer to reproductive rights in general and the decriminalization of abortion in particular as “among the greatest pending challenges and debts of democracy”³²⁰ and “the great legislative debt of the democracy with women, and particularly with women in popular sectors.”³²¹

Some women’s rights activists use the phrase “debts of democracy” in conjunction with references to broad democratic ideals. For example, Martha I. Rosenberg and Elsa L. Schwartzman, writing on behalf of the CNALSG, frame the fight for legal abortion as “a fight that establishes us as subjects of rights that can demand justice.”³²² They state that the practice of abortion “marks the emergence of a political subject ready to defend this identity of a woman who resorts to abortion, as an identity possible of being legitimized in the field of rights” and argue that access to abortion “calls for a fully effective lay state that does not impose rules according to a moral theology.”³²³ Barbagelata also argues that bolstering the self-deter-

315. Barbagelata, *supra* note 278, at 75.

316. *Id.*

317. Dora Barrancos, *Mujeres: Los Nuevos derechos y los que aguarda*, in *LAS CONQUISTAS DE LAS MUJERES EN LOS 30 AÑOS DE DEMOCRACIA* 135, 135 (Susana Peréz Gallart ed., 2015).

318. See, e.g., Martha I. Rosenberg & Elsa Schwartzman, *La Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito. La Lucha por el derecho al aborto: una deuda de la democracia*, VOCES EN EL FÉNIX, <https://perma.cc/5CMF-4BP>; Deborah Daich & Moónica Tarducci, *Aborto legal, una deuda de la democracia: Aportes para una historia de la lucha por la depenalización y legalización del aborto en Argentina* (2012), <https://perma.cc/R7HS-X4KQ>; *Aborto legal, una deuda de la democracia*, 100% DIVERSIDAD Y DERECHOS, <https://perma.cc/ZCF7-RKVB>; María Luisa Femenías, *Logros y deudas de la democracia*, 9 CUESTIONES DE SOCIOLOGIA (2013), <https://perma.cc/T3HY-W6R4>; Miranda González Martín, *Aborto legal, una deuda de la democracia*, ALTERNATIVA SOCIALISTA, <https://perma.cc/5K5L-SWUN>; *Aborto No Punible: El Frente Grande de Chaco Pide Tratamiento*, <https://perma.cc/VP7M-7QLR>; *Seminario Internacional: “El derecho al aborto, una deuda de la democracia.”* CAMPAÑA NACIONAL POR EL DERECHO AL ABORTO LEGAL, SEGURO, Y GRATUITO (2010), <https://perma.cc/DV4Z-K864>; Tununa Mercado, *Apertura Seminario Internacional “El derecho al aborto, una deuda a la democracia.”* BUENOS AIRES: CAMPAÑA NACIONAL POR EL DERECHO AL ABORTO LEGAL, SEGURO Y GRATUITO (2010), <https://perma.cc/X66F-M25>; Naddeo, *supra* note 9292, at 91; Barbagelata, *supra* note 278278, at 70.

319. *Id.* at 91.

320. Barbagelata, *supra* note 278, at 79, 81.

321. Naddeo, *supra* note 92 at 84.

322. Rosenberg & Schwartzman, *supra* note 318 at 144.

323. *Id.*

mination of women is “an imperative of the very equality of a democratic system that ensures human rights.”³²⁴

With regards to the post-1983 democracy, activists refer to an idealized substantive democracy “in search for the progress of human rights.”³²⁵ They describe a sense of hope in the new democracy; stating that “so many rights had been violated during the black years of the military dictatorship, that we women wanted to make up for the time lost and obtain and broaden our rights.”³²⁶

Many activists connect the use of the phrase “debts of democracy” with specific references to the 1976—1983 dictatorship. Some references to the dictatorship are broad, referring to the period, for example, as a “dark night that steamrolled human rights”³²⁷ and recalling that the dictatorship sought to “exterminate everything that threatened our occidental and Christian lifestyle.”³²⁸

Some activists reference more specifically the policy of the dictatorship that most impacted women’s reproductive health and freedom, i.e. the practice of kidnapping pregnant women, waiting for them to give birth within the clandestine detention center, and stealing the child before murdering the mother. For example, Barbagelata states, “women’s rights arrived at ’83 with many debts, with many women disappeared, with their children born in captivity and stolen.”³²⁹ Similarly, *Lesbianas y Feministas por la Decriminalización del Aborto* alludes to these notorious dictatorial practices and connects them to modern obstetric violence, stating that:

[t]oday, the witnesses in the trials for crimes against humanity, the women and children who call our phone line, and our own history reveal that something still remains of the maternity ward of the ESMA in our public hospitals.³³⁰

The Escuela Mecánica de la Armada (ESMA) is the now notorious naval school located in Buenos Aires where the *junta* held many of the disappeared. The prison was equipped with a maternity ward, where kidnapped pregnant women were forced to give birth only to have their babies stolen by the apparatus of the dictatorship. The organization further states, “[w]e defend the fight against impunity for crimes against humanity to break up the centers of power associated with the dictatorship that continue func-

324. Barbagelata, *supra* note 365, at 81. .

325. *Id.* at 69.

326. *Id.* at 107.

327. Barbagelata, *supra* note 278, at 70.

328. *Id.*

329. *Id.* at 71.

330. TODO LO QUE QUERÉS SABER SOBRE CÓMO HACERSE UN ABORTO CON PASTILLAS 2 (Lesbianas y Feministas por la decriminalización del Aborto, eds., Ediciones Madres de Plaza de Mayo 2d ed. 2012), <https://perma.cc/Y9BC-ZG5T>.

tioning today. The demand for legal abortion is an integral part of this fight.”³³¹

Barbagelata also specifically emphasizes how the dictatorship controlled sexual and reproductive rights, referencing Decrees 659/74 and 3983.³³² There are significant overlaps between this analysis regarding these two decrees³³³ and the analysis of the Videla Law.³³⁴ Interestingly, both the decrees and the Videla Law were based on the same justification: that Argentina needed to increase its population.³³⁵ Additionally, the decree passed during the dictatorship raises similar questions as the Videla Law with regards to the post-transition legitimacy of norms passed under dictatorships. An interesting question also exists as to whether the labeling of the Decree 689/74 as the ‘López Rega’ decree was a purposeful framing by organizations in the same way that the ‘Videla Law’ was, given that López Rega was responsible for the creation of the *Alianza anticomunista argentina* (commonly known as the Triple A) under Isabel Perón’s government, a “parapolicial”³³⁶ organization that carried out violent repression against many sectors of the political left.³³⁷

As we saw with the LGBT movement, the “debt to democracy” frame is not just used to challenge the State, but also to challenge the Catholic Church. For instance, in the 1993 *Women’s Meeting*, activists criticized “[t]he doublespeak of the church that claims to defend life but forgets the ecclesiastic hierarchy’s complicity during the military dictatorship, when it silenced the torture and death of pregnant women in captivity.”³³⁸

Finally, there are also several references to neoliberal policies as a foil for the ideal democracy, although these are fewer than the references to the dictatorship. These references delegitimize neoliberal policies and emphasize the impact of structural adjustment on social rights in particular.³³⁹

331. *Id.*

332. See text accompanying *supra* notes 290–294.

333. Decree No. 659 (the *López Rega* Decree), passed in 1974 under Isabel Perón and Decree No. 3983, which started being written under Isabel Perón’s government but was actually released under the dictatorship. Both decrees severely restricted or prohibited access to birth control. Bianco, *supra* note 17 at 107, 109; Barbagelata, *supra* note 278, at 70. For more information about López Rega, see *supra* note 219 and accompanying text.

334. For more information about the framing of the ‘Videla Law’, see *supra* notes 182–183 and accompanying text.

335. Mabel Bianco notes that this justification was not realistic, given that restricting access to birth control only notably increased the birthrates of poorer families. As poorer families had more children, because of their limited resources, the rates of infant mortality increased significantly. Bianco, *supra* note 17, at 109–110.

336. Similar to a paramilitary organization, but connected to the police instead of the military.

337. Fernández, *supra* note 4, at 39.

338. Barbara Sutton & Elizabeth Borland, *Framing Abortion Rights in Argentina’s Encuentros Nacionales de Mujeres*, 39 FEMINIST LEGAL STUDIES 194, 219 (2013).

339. See, e.g., Naddeo, *supra* note 92; Julia Contreras, *Redistribución igualitaria de las Tareas de Cuidado: una cuestión pendiente de la Democracia*, in *LAS CONQUISTAS DE LAS MUJERES EN LOS 30 AÑOS DE DEMOCRACIA* 129 (Susana Pérez Gallart ed., ASAMBLEA PERMANENTE DE DERECHOS HUMANOS, 2015).

Some of this delegitimization criticizes neoliberal policies by arguing that they are a continuation of dictatorial practice in the democracy.³⁴⁰

V. DEBTS OF DEMOCRACY: FRAMING RIGHTS AND SEIZING POLITICAL OPPORTUNITIES

The “debts of democracy” frame became a master frame crossing Argentine social movements.³⁴¹ The use of this frame is indicative of how these social movements seek to redefine and reconstruct the concepts of citizenship and democracy, often using the authoritarian period of 1976—1983 and the neoliberal period of the 1990s as a foil. This frame has been strategic as it tapped into powerful social and cultural values and took advantage of timely political opportunities under the Kirchner and Fernández administrations. Overlap between Argentine human rights organizations working on various issues also aided its successful diffusion.

Part A of this section will explore what can be learned about the frame from studying these three movements. Part B will analyze why the frame was strategic for social movements. And finally, Part C will explore how this frame relates to transitional justice, culture, and emotion.

A. Defining “Debts of Democracy”

i. *The Meaning of the “Debts of Democracy” Frame*

The “debts of democracy” frame creates a narrative of contentious politics. Framing constitutes a means of “encoding . . . situations, events, experiences, and sequences of action.”³⁴² Importantly, this frame does not just look backwards to decry the atrocities of the past, but also looks forward to construct an ideal of democracy and citizenship. The frame implements “injustice framing,” by presenting certain situations—and, more specifically, legal constructs—as unjust and unsuited for democracy. In the three cases discussed above, it helps movements to “redefine as unjust and immoral what was previously seen as unfortunate but perhaps tolerable”;³⁴³ in the case of migration, the precariousness of life as an undocumented migrant; in the case of LGBT rights, the inability of non-heterosexual couples to marry; and in the case of abortion legalization, the threats posed by criminalization to maternal health and autonomy. In doing so, the frame actively redefines and expands notions of citizenship and democracy.

What makes the frame unique when compared with other ‘rights’ frames or frames that imagine an idealized democracy is the retrospective ele-

340. *Id.* at 84–85.

341. For examples of other movements where the frame has been used in addition to the examples explored here, see *infra* notes 345–348 and accompanying text.

342. Snow & Benford, *supra* note 17, at 13.

343. *Id.* at 136.

ment—the specific way in which activists refer to the past as a foil against which they construct their ideal. Across all three movements, negative references to the 1976–1983 dictatorship were most common, although there were also references to the economic crisis of 1999–2002. There were a variety of ways that activists alluded to the past, as set out below:

- The mere use of the phrase “Debts of Democracy,” without contextualization, suggesting the speaker thought it has enough social resonance to be understood on its own.
- An emphasis on the atrocities of the past, particularly (although not exclusively) as they impacted the movement. For example, in the women’s movement, additional emphasis is placed on the obstetric violence and kidnapping.
- An emphasis on the repression of social movements under the dictatorship.
- The questioning of the continuing legality of certain legal instruments that were passed under the dictatorship, such as the ‘Videla Law’ and Decrees 659/74 and 3983.

It is interesting to note that the frame was not used only to challenge the State. Both the LGBT and women’s movements also used it to delegitimize the Catholic Church, a major political opponent.³⁴⁴

ii. “Debts of Democracy” as a Master Frame

Comparing the use of the “debts of democracy” frame across these three movements demonstrates the emergence of a master frame. The frame’s use has by no means been limited to the three movements examined in this paper. It has also been used in reference to issues as diverse as poverty and inequality,³⁴⁵ the public health system,³⁴⁶ media law,³⁴⁷ and electoral fraud.³⁴⁸ Master frames “[function] as a kind of master algorithm that colors and constrains the orientations and activities of other movements.”³⁴⁹

344. The case of migrants’ rights is different from the other cases in this regard, because the Catholic Church figured as an ally rather than an opponent.

345. See, e.g., Juan Pablo Simón Padros, *La pobreza es una deuda de la democracia*, LA NACIÓN (July 19, 2015), <https://perma.cc/DJR6-RNRP>; María Soledad Carrizo, *Deudas de la democracia*, LA VOZ (Dec. 18, 2014), <https://perma.cc/ZR84-GK3J>; Juan Gasalla, *Pobreza la gran deuda en democracia*, INFOBAE, (Apr. 30, 2014), <https://perma.cc/MY8L-SKJW>.

346. María Soledad Carrizo, *Deudas de la democracia*, LA VOZ (Dec. 18, 2014), <https://perma.cc/AD8N-DVV6>; CENTRAL DE TRABAJADORES DE LA ARGENTINA, *De la quijotesca historia de un gremio salteño. Derecho a la salud: deuda de la democracia* (Jan. 17, 2015), <https://perma.cc/P3MP-2ZJJ>; Daniel Maceira, *Las deudas de la salud en democracia*, LOS ANDES (Jan. 12, 2009), <https://perma.cc/M5YG-F8CC>.

347. *Para Randazzo*, la aprobación de la ley de medios era “una deuda que tenía la democracia”, TELAM (Nov. 4, 2013), <https://perma.cc/3UX5-53D8>; Cecilia Merchán, *Medios, democracia, y educación: Una deuda histórica*, PÁGINA12 (Sept. 9, 2009), <https://perma.cc/3YZX-FQD8>; Martínez: *ley de medios era “una deuda que se tenía con la democracia”*, ESPECTADOR (Dec. 16, 2014), <https://perma.cc/N4Z7-E3TX>.

348. Luis Vidal, *Una inexplicable deudadela democracia – El fraude electoral*, EL CIUDADANO MENDOZA (Jul. 31, 2015), <https://perma.cc/89AH-739V>.

349. Redford & Snow, *supra* note 115, at 619.

In this case, the “debts of democracy” master frame combines human rights and democracy master frames, as well as innovative elements unique to Argentine culture and history that can effectively crosscut across movements. The frame achieves that difficult balance³⁵⁰ between being broad to be employed across movements, and specific enough to have cultural resonance.

Jordi Díez’s description of how advocates for equal marriage implemented framing could easily describe the application of the “debts to democracy” frame in all three cases: the respective issue is “framed as an issue of equality and human rights (a ‘collective action frame’) that has resonated with larger social debates (‘master frames’), which have seen human rights as central elements of democratic citizenship.”³⁵¹ The “debts of democracy” frame is one of these master frames that rests on the concept of “human rights as central elements of democratic citizenship,”³⁵² but contains the unique element of the dynamic past-future discourse.

The frame has also spread beyond the social movements themselves, to other actors such as politicians and the media.³⁵³

B. The Strategy of the “Debts of Democracy” frame: Accessing Political Opportunities and Building Alliances

The conversion of the “debts of democracy” frame into a master frame indicates it was identified as strategic for advocating under the *kirchnerista* presidencies. This section will explore why.

i. Political opportunities: Kirchnerismso and Social Movements

The “debts of democracy” frame was strategic because it allowed activists to take advantage of political opportunities under the *kirchnerista* administrations. All four kinds of political opportunities identified by Tarrow³⁵⁴ were present, and this frame helped activists seize them.

Regime Change: Both the 1976 transition to democracy and the 2001 crisis represent moments of regime change, where the opportunity structure shifted because the regular relations between the government and its citizens, political actors, and challengers were altered.³⁵⁵ The fall of the military dictatorship in 1976 clearly represented a regime change, as the military leadership was ousted and a new democracy established. However, the 2001 crisis—which was not only economic but also political—represented a moment of regime change and also a major break down in the

350. *Id.*

351. Díez, *supra* note 3, at 7, 15.

352. *Id.*

353. This spread is muddled by the crossover between groups; activists may be, have been, or become politicians, academics, or state bureaucrats. See *infra* Part V. B. ii.

354. Regime change, political realignment with the polity, availability of influential allies, and opening of access. See *supra* text accompanying note 123.

355. Tarrow, *supra* note 11, at 161.

political elite. The country experienced “political-institutional collapse.”³⁵⁶ In response, “social collectives resisted and/or survived by appealing to the repertoires that appeared at their reach and by creating other forms of expression of protest.”³⁵⁷ There was a generalized distrust of the political elite; indeed, the rallying cry of the protests was that “They all must go!” (or “*Que se vayan todos!*” in Spanish). Nestór Kirchner entered office in this environment.

Splits within the elite: These crises also led to new splits within the traditional elite³⁵⁸ and, in particular, the delegitimization of certain sectors of the elite. The fall of the military dictatorship in 1976 undoubtedly led to a delegitimization of the military; “[t]he brutality . . . convinced many Argentines that military intervention was no longer an option.”³⁵⁹ Another important breakdown in the traditional elite was the delegitimization of the Catholic Church, due to “its ambiguous position in terms of human rights violations and the perceived closeness its leadership maintained with members of the military junta.”³⁶⁰ Because of this social perception, “the Catholic Church . . . entered the new democratic context from a weaker position” and “[i]ts influence . . . depends upon . . . the sitting president.”³⁶¹ Finally, the 1999–2002 crisis amounted to a breakdown in the political elite because the UCR political party—to which President de la Rúa belonged—bore much of the brunt of popular dissatisfaction. This shifted power among the political parties.

Political realignment: The *kirchnerista* administrations presented major ideological shifts from previous administrations that constituted “political realignment with the polity,”³⁶² or, at least, with the human rights community. Among these shifts were their positions on both the dictatorship and the economic crisis.

With regards to the dictatorship, Kirchner’s presidency represented a major shift with regards to transitional justice. Argentina had experienced a

356. Jean Grugel & Maria Pia Riggirozzi, *The Return of the State in Argentina* (World Economy & Finance Working Paper WEF 0018, 2007), <https://perma.cc/PU8G-LLLA>. See also Steven Levitsky & María Victoria Murillo, *Argentine Democracy: The Politics of Institutional Weakness*, 50 *LATIN AMERICAN POLITICS AND SOCIETY* 189 (2008).

357. Pereyra & Vommaro, *supra* note 30.

358. TARROW, *supra* note 11, at 164–65. For a detailed description of these four opportunities, see *id.* at 165–66.

359. Díez, *supra* note 3, at 53. This breakdown was particularly significant regarding the migrants’ rights movement, as it also delegitimized the national security discourse that had been used to justify restrictive migration laws.

360. *Id.* at 54.

361. With regards to the post-transition presidents, Jordi Díez observes that Carlos Menem presented a “receptive ear” to the Catholic Church, whereas Nestór Kirchner “closed off” the Church’s access and was “confrontational” with the institution. Díez, *supra* note 3, at 55.

362. TARROW, *supra* note 11, at 164–65. For a detailed description of these four opportunities, see *id.* at 165–66.

long and halting road with regards to transitional justice. The first president post-transition, Raúl Alfonsín,³⁶³ annulled the military's self-amnesty and established a truth commission on the crimes of the Dirty War.³⁶⁴ Under his presidency, the Trial of the Military Juntas³⁶⁵ took place, by means of which nine leaders of the *junta* were prosecuted and five were convicted.³⁶⁶ Alfonsín also oversaw measures, overhaul of the judiciary, and the payment of reparations to some of the victims and their families.³⁶⁷ Towards the end of his presidency, however, Alfonsín bowed to opposition from both the military³⁶⁸ and certain social sectors,³⁶⁹ and supported the passage of the notorious "Full Stop" and "Due Obedience" laws.³⁷⁰ These laws effectively blocked further transitional justice trials.³⁷¹ Carlos Menem furthered this shift away from accountability by pardoning the five convicted *junta* leaders.³⁷² However, activists continued to fight for accountability, and achieved significant progress in 1998: the Full Stop and Due Obedience laws were repealed,³⁷³ and Videla and Massera were tried and convicted for the kidnapping of children that disappeared.³⁷⁴

Transitional justice was an important item on Nestor Kirchner's agenda from the beginning, and he continued this shift back towards accountability. Prosecutions started almost immediately when he assumed office; in his first year, more than 100 members of the military were charged with

363. Alfonsín was himself a human rights lawyer who had helped found the Permanent Council on Human Rights.

364. The commission was called 'Comisión Nacional sobre Desaparación de Personas' and produced the well-known 'Nunca Más' ('Never Again') report. For more information, see Berisso & Quintana, *supra* note 27, at 99. See also ANTHONY W. PEREIRA, POLITICAL (IN)JUSTICE: AUTHORITARIANISM AND THE RULE OF LAW IN BRAZIL, CHILE, AND ARGENTINA 166 (2005).

365. While, in this Article, I generally refer to the dictatorship period as 'the junta,' in reality the period was composed of three distinct "juntas" that governed in succession. Berisso & Quintana, *supra* note 27, at 99. These juntas were led by four different generals: Jorge Rafael Videla (1976–1980), Roberto Viola (1980–1981), Leopoldo E. Galtieri (1981–1982), and Reynaldo Bignone (1982–1983). Fernández, *supra* note 4, at 40.

366. SIKKINK, *supra* note 1, at 72–76.

367. PEREIRA, *supra* note 364, at 166.

368. Factions of the military made further coup attempts when trials in lower courts expanded beyond the leaders initially tried. *Id.* at 76.

369. In particular, social sectors that supported the "Theory of the two devils," which sustains that "both the repressive State power, as well as the popular militants of the resistance, had violated, each one equally, human rights." Berisso & Quintana, *supra* note 27, at 99–100.

370. The 1986 Full Stop Law (*Ley de Punto Final*) put a two month limit from the time it was passed in December 1986 to commence legal action against members of the military or the police for actions they had taken during the military junta. The 1987 Law of Due Obedience (*Ley de Obediencia Debida*) protected lower level officials in the military from prosecution for actions that they took during the military junta under orders from a superior. Fernández, *supra* note 4, at 43.

371. Berisso & Quintana, *supra* note 27, at 100; SIKKINK, *supra* note 1, at 76; PEREIRA, *supra* note 364, at 166. For a detailed description of transitional justice under the Alfonsín government, SIKKINK, *supra* note 1, at 70–76; PEREIRA, *supra* note 364, at 166–67.

372. SIKKINK, *supra* note 1, at 77.

373. PEREIRA, *supra* note 364, at 167. The Full Stop and Due Obedience Laws were further declared unconstitutional in 2000 by Judge Gabriel Cavallo. *Id.* at 166.

374. SIKKINK, *supra* note 1, at 77–78. The most notorious and brutal repression took place during the first period of the junta, when Videla was the President and Massera was his second in command. *Id.*

human rights violations.³⁷⁵ Other important aspects of constructing memory also took place under the Kirchners, such as the conversion of the notorious ESMA into a memorial space.³⁷⁶

Kirchnerismo also took a highly critical position against neoliberal reforms like those undertaken in the 1990s and can be classified as ‘post-neoliberal.’ Post-neoliberal governments are stated to:

[E]mbody a different conceptualization of the state from that which reigned in the high period of neoliberalism, based on a view that states have a moral responsibility to respect and deliver the inalienable (that is, not market-dependent) rights of their citizens alongside growth.³⁷⁷

Availability of influential allies: *Kirchnerismo* also offered a political opportunity for social movements by altering the landscape of available political allies. When Kirchner came to power following the 2001 crisis, many activist communities that had been fighting for the two decades found a new ally.

Members of civil society groups and movements which did not focus on transitional justice also found a new “articulation or dialogue with the state.”³⁷⁸ The interaction between the human rights movement and the administration with regards to transitional justice opened up a space of dialogue with the government, which groups then used to insert their own issues into the administration’s human rights agenda.³⁷⁹ Pablo Ceriani Cernadas explained:

There was a strategic use of the theme of human rights by . . . the network of organizations . . . in part because that was the focus with which they had been working . . . but also because when the Kirchner administration took power in 2003, it took the theme of human rights as . . . one of its banners . . . Obviously thinking of human rights in relation to the processes of truth and justice . . . with regards to the crimes of the dictatorship . . . but then that permitted that there was a more fluid dialogue between the human rights organizations . . . and the State.³⁸⁰

375. PEREIRA, *supra* note 364, at 167.

376. *Camino al Museo*, MEMORIA ABIERTA, <https://perma.cc/BS7N-K973>.

377. Jean Grugel & Pía Piggiozzi, *Post-neoliberalism in Latin America: Rebuilding and Reclaiming the State after the Crisis*, 43 DEVELOPMENT & CHANGE 1, 3–4 (2012), <https://perma.cc/N8RS-3H6R>.

378. Ceriani Cernadas, *supra* note 167.

379. *Id.* Writing in 2002, before the Kirchners entered power, Stephen Brown observed, “prejudice and/or fear of losing popular support have prevented much of the left from allying itself with gay politics.” He argued, “[t]here is no equivalent in Argentina to Brazil’s Workers’ party, which has forged a working relationship with a broad range of social movements, including the lesbian and gay one.” Arguably, this describes what *kirchnerismo* meant with regards to contentious politics: the entrance of a government that sought to have a working relationship with social movements. Brown, *supra* note 16, at 124.

380. Ceriani Cernadas, *supra* note 167.

This statement could apply to any of the movements explored in this article. Once *kirchnerismo* opened a door to human rights organizations with regards to transitional justice, it created a new space of dialogue. Activists recognized that the “debts to democracy” frame would help them to seize political opportunities by allowing them to connect their focus issue to the broader *kirchnerist* human rights agenda. The successful cases in this article—the Migration Law and the Equal Marriage Law—were among a number of other laws incorporated under that umbrella.³⁸¹

Outside the Kirchner party, the movements in this article have also been able to make alliances with other political parties. The Socialist Party (PS) and the Socialist Workers Movement (MST) have also “provide[d] critical infrastructure for building national momentum for legislative reform.”³⁸² The legislator who introduced and most advocated for the new migration law, Rubén Giustinniani, is a member of the PS.

Opening of access: Relatedly, the *kirchnerista* presidencies also represented an “opening of access to participation for new actors.”³⁸³ In the two successful case studies—the Migration Law and the Equal Marriage Law—there were formalized spaces for civil society to participate throughout the legislative process.

Different reasons have been cited as to why *kirchnerismo* opened stronger channels for social movements to participate in government. This section will focus on two of the key reasons: (1) roots of *kirchnerismo* in *personismo* and (2) the limited institutional capacity of the Argentine government coming out of the economic crisis.

Both Néstor Kirchner and his wife Cristina Fernández de Kirchner ran as candidates for the Partido Judicialista (PJ), the party that evolved out of the Peronist party, founded by populist leader Juan Domingo Perón.³⁸⁴ Other than its populist tendencies, the modern-day PJ is difficult to define in terms of ideology. However, traditionally, peronism had strong ties to social movements.³⁸⁵ Perón, who came from the military, ultimately built

381. Other examples included a reform of the Penal Code; the Media Law [Argentine Republic, Law No. 26522, *Regúlanse los Servicios de Comunicación Audiovisual en todo el ámbito territorial de la República Argentina* (2009)]; the Refugee Law [Argentine Republic, Law No. 26165, *De reconocimiento y protección al refugiado* (2006)]; and the Gender Identity Law [Argentine Republic, Law No. 26734, *Establishing the right to gender identity* (2012)]. Terminiello, *supra* note 164; Bogado-Poisson, *supra* note 177; Zaffaroni, *supra* note 194.

382. Redburn, *supra* note 262.

383. Tarrow, *supra* note 11, at 164–65. For a detailed description of these four opportunities, see *id.* at 165–66.

384. For more information on Perón and his legacy, see *supra* note 41.

385. Marcelo Gómez, *Acerca del protagonismo político y la participación estatal de los movimientos sociales populares: juicio al paradigma normal de análisis*, in *MOVILIZACIONES, PROTESTAS E IDENTIDADES POLÍTICAS EN LA ARGENTINA DEL BICENTENARIO* 65, 69 (Astor Massetti, Ernesto Villanueva, & Marcelo Gómez eds., 2010).

much of his political career on populism targeted at the working class.³⁸⁶ Under his administrations, previously excluded social sectors were incorporated into the political fabric.³⁸⁷ His style of populism came to be known as Peronism.

The Kirchners made purposeful efforts to construct parallels between themselves and Juan Domingo Perón and his second wife, Eva Duarte Perón.³⁸⁸ These efforts to tie themselves to the first, leftist era of Peronism help explain why they built strong connections with a variety of social movements and opened new spaces for civil society participation.³⁸⁹

A second theory that has been advanced by scholars as to why *kirchnerismo* built strong connections to social movements is that they recognized both their limited electoral mandate and the limited institutional capacity of the government in the wake of the crisis.³⁹⁰ In an attempt to “neutralize points of conflict and potential protests, [the Kirchner government] open[ed] a window of political opportunity, offering channels for political integration and involvement in the management of resources and social programs.”³⁹¹

ii. *Seizing Opportunities*

The *Kirchnerist* presidencies, therefore, offered Argentine social movements political opportunities. Equally important, however, the social movements were poised to seize those opportunities, and the “debts of democracy” frame was one of the tools they used to do so. As Kathryn Sikkink explained, “political opportunities don’t just exist in the abstract, but need to be perceived and constructed by activists.”³⁹² In the area of transitional justice, when compared to activists in countries in the region, “[t]he political actors in Argentina faced a more conducive context for their

386. Perón gained notoriety serving as Secretary of Work and Social Security under the 1943–1946 military dictatorship. Fernández, *supra* note 4 at 28–30. During his first presidencies, he had massive support from workers and unions, which his administration sought to direct by use of media control, state-sponsored rallies, and propaganda. However, union leaders who opposed Perón did face persecution at this time. What is more, during his third term, Perón’s government took a rightist turn and ultimately resulted in the oppression of leftist movements. Fernández, *supra* note 4, at 28–30, 33.

387. Of particular note was the inclusion of workers—as discussed in the previous footnote—and women, who gained the right to vote under peronism. Fernández, *supra* note 4, at 30. This aspect of personismo makes it stand out as unique among the twentieth-century pattern discussed in the introduction of Argentine governments serving the interests of the landed, ruling class and depending on the political exclusion of the masses. See *supra* notes 31–35 and accompanying text.

388. For more information about Perón and his wives, see *supra* note 41. When the Kirchners constructed historical parallels to the Peróns, they were in reference to the first, leftist period of Peronism when Juan Perón was married to Eva.

389. Gómez, *supra* note 385, at 68, 69–71 (exploring the relationship between the Kirchner government and the piquetero movement, but including some more general observations about their relationship with social movements).

390. Gómez, *supra* note 385, at 65, 67.

391. *Id.*

392. SIKKINK, *supra* note 1, at 81–82. Other scholars have made similar observations, arguing that social movements often help create opportunities and that the existence of political opportunities on their own will not lead to any one particular action unless they are used strategically. Gómez, *supra* note 385, at 71; TARROW, *supra* note 11, at 164.

demands after the transition to democracy, yet these groups were also more likely than some of their counterparts in other countries to perceive and create political opportunities.”³⁹³ Taking into account that many of the activist organizations in these case studies had their roots in advocating for transitional justice, by the time the Kirchners came to power, many of them had more than two decades of experience taking advantage of political opportunities and forming political alliances.

iii. *Networks: overlapping organizations*

There is significant overlap in the institutions and relationships among the organizations advocating on these three issues. The overlap of organizations involved—and the common roots of some of them in advocating for transitional justice—helps explain how the “debts of democracy” frame was able to spread.

The LGBT movement and the women’s movement have the strongest historical connections.³⁹⁴ LGBT activists were influenced by second-wave feminists in developing their broader arguments against the heteronormative family as the basic unit of social organization.³⁹⁵ Early in its history, the FLH formed alliances with organizations such as the *Women’s Liberation Movement*, the *Union of Socialist Women*, and the UFA.³⁹⁶ These alliances “would strengthen over time and prove critical in the formation of coalitions in subsequent years”³⁹⁷; following the transition, “close, personal relationships were formed among gay, lesbian, and women activists.”³⁹⁸

The LGBT movement in particular made a purposeful effort to create networks, which they saw as essential to building the human rights frame. Díez observed that after the return to democracy, the movement “adopt[ed] . . . a strategy to collaborate with other social movements on a variety of issues, such as human rights and violence: groups and people that had also been repressed by the dictatorship.”³⁹⁹

There were several organizations involved in these debates which were also “leading actors” in this broader social change.⁴⁰⁰ Of particular importance is the role of the CELS, which has its roots in advocating against the dictatorship but has been active on the issues of migrants’ rights, LGBT rights, and reproductive rights. Diego Morales of CELS explained how the transition from focusing on the dictatorship to working on a broad range of human rights issues happened at the organization. He observed that after the transition, the organization “broadened its work, not only to include

393. SIKKINK, *supra* note 1, at 81–82.

394. Díez, *supra* note 3, at 77–78.

395. *Id.*

396. Díez, *supra* note 3, at 78; *see also*, Brown, *supra* note 16, at 121.

397. Díez, *supra* note 3, at 78.

398. *Id.* at 82.

399. *Id.* at 82.

400. *Id.* at 53.

issues related to the dictatorship but also to include issues related to the violation of human rights in democracy.⁴⁰¹ One of the first issues CELS worked on was police violence, which was seen as a direct legacy of the dictatorship. From there, they spiraled to other issues; for example, much of the police violence took place in *villas de emergencia*,⁴⁰² where up to 70% of the population is also foreign born. So, CELS began to observe how immigration status affected living conditions and police violence, which led to their working on migration issues.⁴⁰³

The way that organizations like CELS have pivoted from advocating for accountability for dictatorial crimes to advocating on a wide variety of human rights issues is reflective of what David Cleary described as the two-stage trajectory of Latin American human rights movements. He described two waves of human rights mobilizations, with the first focused on “dealing with the past” and the second seeing “the energies generated by reactions to human rights violations during the military era . . . flow[ing] into a second stream of mobilizations” and “expand[ing] beyond death and disappearance.”⁴⁰⁴ Cleary argued that in this process the very construct of state-society relationships shifted, with the democracy being “characterized by strong and constant pressure applied to the state by civil society through social mobilization and the placement of human rights atop national debates.”⁴⁰⁵

It is also not surprising that the organizations that arose out of opposing the dictatorship would be particularly attuned to identifying its legacies and likely to view human rights issues through that lens.

The three movements also had overlap with regards to their external networks; all had strong connections to intellectuals and universities, as well as similar connections to political parties and unions. In particular, academics and students from the University of Buenos Aires have been important players in all three movements. With regards to unions, the CTA in particular has been actively involved with promoting progressive change in all three areas.⁴⁰⁶

As noted above, the Migrant’s Rights movement differs drastically from the other two movements with regards to its relationship to the Catholic

401. Morales, *supra* note 191.

402. The “*villas de emergencia*,” are shantytowns in and/or near the city of Buenos Aires and other major Argentine cities, similar to the better known concept of favelas in Brazilian Portuguese.

403. *Id.*

404. CLEARY, *supra* note 60, at xi–xvii.

405. Díez, *supra* note 3, at 53–54.

406. The CTA formed part of the Table of Organizations that advised on the Migration Law. The national CTA—as well as some local affiliates—also forms part of the Campaña Nacional por el Derecho al Aborto Legal, Seguro, y Gratuito. See *Adhesiones: Organizaciones que adhieran (2005–2015)*, CAMPAÑA NACIONAL POR EL DERECHO AL ABORTO LEGAL, SEGURO, Y GRATUITO (OCT. 2015), <https://perma.cc/9XXR-LJTP>; see also *La CTA por el derecho al aborto*, AGENCIA DE NOTICIAS DE LA CTA (OCT. 1, 2014), <https://perma.cc/Y7T9-ZA5A>. Finally, the LGBT movement had a long history of close ties with Argentine unions. *Cronología GLTTBI*, COMUNIDAD HOMOSEXUAL ARGENTINA, <https://perma.cc/B9TL-CW3V>.

tion—that many citizens feel about the violations committed by the previous military dictatorship and the failure of the neoliberal policies.

The “debts of democracy” master frame was strategic for Argentine social movements because it connected with social and cultural values, related to frames of the transitional justice process, tapped into public emotion regarding the atrocities of the dictatorship and the disaster of the neoliberal reform, and allowed movements to capitalize on political opportunities.

The emergence of the “debts to democracy” frame, particularly insofar as it is linked to collective memory about the Dirty War, can be considered an authoritarian legacy in the form of a ‘reaction to the past.’⁴²² In a country where the application of transitional justice measures⁴²³ has been highly controversial, the emergence of this frame may demonstrate significant positive impacts that transitional justice can have: generating social consciousness for human rights; giving human rights movements resources; and triggering ‘political learning’ that may make politicians more open to those movements’ claims.

Paola Cesarini and Katherine Hite defined authoritarian legacies as:

[t]hose rules, procedures, norms, patterns, practices, dispositions, relationships, and memories originating in well-defined authoritarian experiences of the past that, as a result of specific historical configuration and/or political struggles, survive democratic transition and intervene in the quality and practice of post-authoritarian democracies.⁴²⁴

They argued that authoritarian legacies can take the form of “continuations of the past” or as “reactions to the past.”⁴²⁵

The pervasiveness of the human rights discourse in Argentina—essential to the success of the “debts of democracy” frame—was by no means guaranteed following the dictatorship. Many Argentines wanted the military to take power in 1976, and even after the transition many citizens continued to view the military favorably: “[i]n Argentina . . . just after re-democratization, many people in the population believed either that the military had

422. See *infra* note 430 and accompanying text.

423. Transitional justice measures in Argentina have taken varied forms. The country is particularly well known for the trials of members of the junta, as it was one of the first countries in the world to have domestic trials for war crimes. However, the transitional justice process also included the CONADEP truth commission and its ‘Nunca Más’ report, and other measures such as the conversion of dictator-era detention centers into memory museums.

424. Cesarini & Hite, *supra* note 184, at 2–5.

425. Continuations of the past could take the form of laws that stay in play (such as the Videla Law or the Decrees on birth control), institutions that stay in power, or the continued dominance of certain social sectors. *Id.* at 3–5. Reactions to the past may take the form of a human rights counter-culture, such as the human rights movement in Argentina that grew and strengthened following the transition. See *id.*

not committed human rights violations or, if they had, that the violations were necessary in the context of a war against terrorism.”⁴²⁶

What happened between then and now to make this discourse so powerful? With time, the “human rights movement . . . managed to generate widespread popular support for its cause.”⁴²⁷ Arguably, transitional justice processes, particularly those dedicated to building memory and documenting the truth of what happened, seem to have shifted the public consciousness not only about the Dirty War but also about human rights in general. Sikkink argued, “[i]f the trials prevent future human rights violations . . . it will not only be because they punish the perpetrators. It is also because the ritual or symbolism of the trial, the evidence presented, and the apparent neutrality of the process convinces broader parts of society that the perpetrators deserve punishment.”⁴²⁸

These public and shared experiences developed a shared “narration and ordering of the experience” or “collective memory.”⁴²⁹ The truth commission “made present in the public space something more than narrative and ordering of the experience and testimonies about crimes committed during the dictatorship.”⁴³⁰ Part of what made the “debts to democracy” frame so successful is that it taps into that shared memory and related emotions. The frame also actively constructs memory, by recuperating the histories of populations whose suffering under the dictatorship is less well known and has been less central to processes of historical memory. In so doing, it highlights how individuals’ intersectional identities impacted their experiences of oppression and violence.

The power of this frame may suggest long term positive effects of transitional justice, insofar as those processes create new tools—for example, discursive tools and frames as well as a broader societal consciousness of human rights issues—that human rights advocates can use to better defend human rights in the post-transition democracy.

The frame has already spread beyond Argentina, particularly to neighboring countries with similar histories of authoritarianism, such as Chile and Uruguay.⁴³¹ Argentina’s history with regards to transitional justice al-

426. SIKKINK, *supra* note 1, at 61, 75. Sikkink notes that the prosecutors in the first trials in 1985, “knew they had to win the hearts and minds of the public, as well as persuade the judges.” *Id.*

427. Díez, *supra* note 3, at 53.

428. *Id.*

429. Pablo Gudiño Bessone, *La disputa por la legalización del aborto en Argentina: Los usos políticos del Nunca Más*, 4 REV. SOCIEDAD & EQUIDAD 165 (2012).

430. *Id.*

431. In both countries, the frame has been used to refer to a diverse array of issues. *See, e.g.*, Valentina Doniez, *El modelo laboral chileno: la deuda pendiente*, 13 INSTITUTO DE POLÍTICAS PÚBLICAS UNIVERSIDAD DIEGO PORTALES: CLAVES DE POLÍTICAS PÚBLICAS (2012); Claudia Dides, *Aborto terapéutico en Chile*, ORGANIZACIÓN PANAMERICANA DE LA SALUD (March 19, 2012); Marianela Jarroud, *Chile comienza a saldar las deudas de la democracia*, INTER PRESS SERVICE (Feb. 18, 2015); Claudia Dides *La pérdida del Aborto Terapéutico en Chile: la democracia en deuda con las mujeres*, FUNDACIÓN CASA DE LA PAZ; MARIO BRAVO BARRAZA, *¿Es la reposición del aborto terapéutico una deuda con la democracia?*, EN QUINTO PODER; *Presidente de la Corte Suprema: el matrimonio igualitario es una deuda del Estado con las parejas del*

Church. The *Fundación Comisión Católica Argentina de Migraciones* was on among the organizations in the *Mesa de Organizaciones de la Sociedad Civil en la Defensa de los Derechos de los Migrantes*, and other Church actors also advocated for the law. In contrast, for the movements for LGBT rights and reproductive rights, the Catholic Church is a central opponent.

Second, all three movements sought allies in the legislature and there is some overlap in those allies outside of the Judicialist party.⁴⁰⁷ The Socialist Party was an important ally in all three movements. Some politicians eventually adopted the “debts of democracy” discourse regarding all three issues in public commentary and/or in formal contexts such as congressional debates or speeches.⁴⁰⁸ Specific political actors were also involved in multiple movements. For example, Senator Rubén Giustiniani, a Socialist Center from Rosario, was the driving force behind the new migration law,⁴⁰⁹ but was also an ally regarding Equal Marriage.⁴¹⁰ Former Argentine Supreme Court Justice, Eugenio Raúl Zaffaroni, was an important ally for both the migrants’ rights movement⁴¹¹ and the LGBT movement.⁴¹² Inés Pérez Suárez was one of the LGBT movement’s close allies early-on, who pushed anti-discrimination measures in the city of Buenos Aires and was known as “an activist in the women’s movement during the country’s transition to democracy.”⁴¹³

Finally, the movements sought to build alliances with journalists in order to bring their message to the public,⁴¹⁴ and some sympathetic journalists have in turn adopted the frame.

In all three cases, it is sometimes difficult to draw a distinct line determining who does and does not belong to the movement. Many individual actors may have shifted roles but remain involved, and/or may even play multiple roles at once. As Díez explained:

[i]n Latin America, individuals who belong to social movements or nongovernmental organizations . . . have increasingly been recruited into government while maintaining strong relationships with civil society organizations. This is especially the case with

407. *Id.* at 112–13 (“The new rights-claim phrase marked the beginning of what became central to the interaction between the movement and the state in Argentina: the identification of state allies that would be sympathetic to their demands.”).

408. In general, human rights organizations in Argentina have been very active in injecting the discourse of human rights in sympathetic political parties. Katherine Hite & Leonardo Morlino, *Problematising the Links Between Authoritarian Legacies and ‘Good’ Democracy*, in *AUTHORITARIAN LEGACIES AND DEMOCRACY IN LATIN AMERICA AND SOUTHERN EUROPE* 66 (Katherine Hite & Paola Cesarini eds., 2004).

409. Giustiniani, *supra* note 173, at 14.

410. Díez, *supra* note 3, at 151.

411. Zaffaroni, *supra* note 194.

412. Díez, *supra* note 3, at 113, 132. However, Zaffaroni has stated that he is against abortion. Julia de Titto, *Zaffaroni también contra el aborto*, *MARCHA* (Apr. 25, 2013).

413. Díez *supra* note 3, at 113.

414. Díez, *supra* note 3, at 114.

the region's recent shift to the left. Many of the social democratic parties that have been elected into government emerged from grassroots mobilization and have strong links with civil society actors.⁴¹⁵

Because of this crossover, Díez explained that the more traditional concept of social movements that refers exclusively to nonstate actors is “rendered of limited use.”⁴¹⁶ Because of this challenge, some scholars have developed new terms such as “policy networks” and “issue networks.”⁴¹⁷

C. Framing: ‘Bricolage,’ culture, and the influence of transitional justice

The “debts of democracy” frame also makes use of “bricolage” by drawing on “familiar themes” from transitional justice, and then “soldering onto them” new areas of human rights.⁴¹⁸ It builds off of another post-transition master frame, the association of “democratic consolidation with human rights.”⁴¹⁹ For many, revelations of the brutality of the dictatorship cemented a new “democratic consensus.”⁴²⁰ As Enrique Peruzzoti explained:

Argentina has undergone a social and cultural transformation in which wide public concern for civil rights and the rule of law has deepened and a more sophisticated citizenry has internalized the need to demand actively accountability from governments.⁴²¹

The “debts of democracy” frame is powerful precisely because it taps into “cultural symbols” that arose from the transitional justice processes, and because it also activates the emotion—for example, anger and indigna-

415. Díez, *supra* note 3, at 8. Stephen Brown similarly observes in the case of the LGBT movement, “[w]hile much of the literature tends to present social movements as cases of society versus the state, the Argentinean lesbian and gay movement demonstrates a more ambiguous relationship.” Brown, *supra* note 16, at 129.

416. Díez, *supra* note 3, at 8.

417. Díez, *supra* note 3, at 8–9. Díez attributes the use of the term “policy networks” in studies on Latin America to Mary Rose Kubal, and that of “issue networks” to Mala Htun. Specifically, he references the following articles: Mary Rose Kubal, *Transnational Policy Networks and Public Security Policy in Argentina and Chile*, in *COMPARATIVE PUBLIC POLICY IN LATIN AMERICA* (Jordi Díez & Susan Franceschet eds., 2012); MALA HTUN, *SEX AND THE STATE: ABORTION, DIVORCE, AND THE FAMILY UNDER LATIN AMERICAN DICTATORSHIPS AND DEMOCRACIES* (2003).

418. TARROW, *supra* note 11, at 46.

419. Díez, *supra* note 3, at 54. Díez explains, “discussions regarding human rights have been at the core of national debates, and democratization has, at least discursively, largely been equated with greater respect for human rights.” *Id.* at 7, 15.

420. *Id.* at 3, 15.

421. Enrique Peruzzoti, *Demanding Accountable Government: Citizens, Politicians, and the Perils of Representative Democracy in Argentina*, in *THE POLITICS OF INSTITUTIONAL WEAKNESS* (Steven Levitsky & María Victoria Murillo, eds., 2005), as described in Díez, *supra* note 3, at 53. However, the citizenry's embrace of the concepts of human rights and democracy were by no means a given following the transition. For more information, see *supra* Part V.B.ii.

ready made it a key protagonist in terms of human rights innovation in Latin America. Argentine human rights activists have helped spread innovative transitional justice practices beyond its borders,⁴³² thereby developing well-established international networks and becoming recognized as innovators and leaders.

In Argentina, it is still unclear to what degree the use of the “debts of democracy” frame was specially tailored to the Kirchners, and what impact the end of their control of the executive and the resulting shift in the political opportunity structure will have on its use.⁴³³ In the 2015 election, conservative opposition candidate Mauricio Macri—the former mayor of Buenos Aires—won.⁴³⁴ Macri’s discourse and policies mark a significant shift from the *kirchnerist* era, and his election marks the first time a center-right president has been elected since the democratic transition.⁴³⁵ His election was critiqued by many on the left—including many human rights organizations—that predicted a return to neoliberal economic policies, large-scale privatization, and backtracking on human rights issues.⁴³⁶ Since coming into office, Macri has made several public nods to human rights,⁴³⁷ but has also implemented a new discourse of national security and strong

mismo sexo, MOVILH (Nov. 30, 2015), <https://perma.cc/M9WL-ENVW>; RED CANARIAS EN MOVIMIENTO, *La democracia uruguaya sigue en deuda con las mujeres* (March 8, 2010), <https://perma.cc/RNU3-E8XJ>; MUJER Y SALUD URUGUAY, *La democracia aún sigue en Deuda con las mujeres* (March 9, 2011), <https://perma.cc/76E4-K5K7>; Cristina Canoura, *Uruguay: La democracia sigue en deuda con las mujeres*, SERVICIO DE NOTICIAS DE LA MUJER DE LATINOAMERICA Y EL CARIBE (March 16, 2009), <https://perma.cc/Q2JB-2C6R>; *Uruguay: Mujeres sostienen que democracia sigue en deuda con sus derechos*, LND (March 6, 2009); Carlos Bouzas, *Uruguay: una deuda política pendiente*, EL PAÍS (June 1, 1983), <https://perma.cc/5T93-XHK5>.

432. Sikkink, *supra* note 2, at 1.

433. Herbert Kitschelt, *Political Opportunity Structures and Political Protest: Anti-Nuclear Movements in Four Democracies*, 16 BRITISH J. OF POL. SCI. 57, 58 (1986). Cited in Hanspeter Kriesi, *Political Context and Opportunity*, in THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS 67, 69 (David A. Snow, Sarah A. Soule & Hanspeter Kriesi eds., 2004).

434. Jonathan Watts & Uki Goñi, *Argentina shifts to the rights after Mauricio Macri wins presidential runoff*, THE GUARDIAN (Nov. 23, 2015), <https://perma.cc/Y7GY-BPHN>; Ignacio de los Reyes, *Change ahead: Mauricio Macri’s vision for Argentina*, BBC NEWS (Dec. 10, 2015), <https://perma.cc/D7RB-CC23>.

435. Watts & Goñi, *supra* note 434; De los Reyes, *supra* note 433. See also, Robert Mur, *Macri borra la huella de Kirchner*, LA VANGUARDIA (Jan. 10, 2016), <https://perma.cc/C8H4-YKEB>.

436. Some actions taken during his time as mayor suggest that he may be less receptive to the issues central to the social movements described in this paper. For example, while Macri was mayor of Buenos Aires, he vetoed the Law 4.318 on Non-punishable abortion, which interpreted the Penal Code in a very permissive manner. Naddeo, *supra* note 92, at 90. He has stated publicly that he is anti-abortion. De los Reyes, *supra* note 433. With regards to migration law, Macri was one of the only politicians to have made xenophobic comments following the economic crisis. In 2010, a group of residents from some of the ‘villas de emergencia’ took over a public park to demand better housing from the city government in a conflict known as the *Parque Indoamericano* incident. The group was not wholly migrants, but they came to be portrayed as foreigners. Macri repeated some of the xenophobic discourse of the 1990s, saying that migrants came to Argentina to take advantage of public space and public services, and alluding that migrants were responsible for increases in unemployment and for drug trafficking. García, *supra* note 197; Terminiello, *supra* note 164; Courtis, *supra* note 179.

437. For example, he met with indigenous community leaders from more than 30 ethnicities of the indigenous community shortly after his inauguration. *Mauricio Macri: Vamos a trabajar juntos para atender las necesidades de los pueblos originarios* LA NACIÓN (Dec. 17, 2015), <https://perma.cc/E22A-PY6E>. He also met with the President of the Abuelas de Plaza de Mayo, Estela de Carlotto, after taking office. *Estela de*

economic austerity measures that seem to track with the predictions made by many activists.⁴³⁸ Accordingly, many of the movements that were active during the previous administration—particularly those traditionally affiliated with the political left and *kirchnerismo*—remain skeptical of his human rights agenda.

While it remains to be seen what this ideological transition will mean for social movements in Argentina in the long term, what is clear is that the ‘debts of democracy’ frame is representative of new ways of imagining substantive democracy. The notion of democracy as fundamentally defined by its protection of human rights seems to resonate both with the activists who implement the frame, and a significant portion of the public, political elite, and media they seek to target. It is a notion of democracy that actively grapples with the horrors of the past, in a constant process of recuperation of historical memory and analysis of the ways that the oppressions of the pre-democratic authoritarian era can leak into and be reproduced in the present. The frame’s popularity suggests how transitional justice and historical memory can generate a distinct human rights culture and create new discursive and framing tools for activists and social movements. Its success demonstrates how social movements can then use those tools—embodiments of reactions to the authoritarian past—to fight for the protection of human rights in democracy.

Carlotto: *Cuando llegamos Macri tenía una cara y cuando nos fuimos tenía otra*, LA NACIÓN (Feb. 23, 2016), <https://perma.cc/64R2-WEKB>.

438. See, e.g., *Mauricio Macri lanzó el plan “Argentina sin narcotráfico”*, LA NACIÓN (Aug. 30, 2016, 10:29am), [available at https://perma.cc/9DLV-THXN](https://perma.cc/9DLV-THXN); Marcelo Izquierdo, *Los ajustes de Macri propagan la tensión social en Argentina*, EL TELÉGRAFO (March 16, 2017, 00:00), [available at https://perma.cc/2PLN-3MVT](https://perma.cc/2PLN-3MVT); *Gobierno de Macri aumenta tarifas de gas, en Argentina, y de transporte solo en Buenos Aires*, EL UNIVERSO (April 1, 2016, 12:47), [available at https://perma.cc/9C2V-DL8Q](https://perma.cc/9C2V-DL8Q).