



Recursive cosmopolitization: Argentina and the global Human Rights Regime

Daniel Levy¹

Abstract

This paper illustrates how varieties of cosmopolitanism are shaped through a mutually constitutive set of cultural dispositions and institutional practices that emerge at the interstices of global human right norms and local legal practices. Converging pressures of ‘cosmopolitan imperatives’ and the multiplicity of particularized manifestations are co-evolving in the context of *intercrossings* during which distinctive cosmopolitanisms are established. This complex relationship of global normative expectations and their local appropriations is elucidated through the dynamic of *recursive cosmopolitization*. Suggesting that, local problems are resolved with recourse to global prescriptions while local solutions are inscribed in international institutions consolidating the global Human Rights Regime. The Argentinean case carries conceptual and empirical weight as it underscores the recursivity of cosmopolitization by calibrating the tensions of universalism and particularism at the intersection of global, national and regional scales. Argentina is a paradigmatic instantiation for how cosmopolitanism can emanate in the periphery as local problems are globalized. This, in turn, has resulted in the institutionalization of a global Human Rights Regime which exercises normative and political–legal pressures on how states legitimately deal with human rights abuses. It is this cosmopolitan balance, rather than presuppositions of universalistic exogenous pressures or particularistic national exceptions, which is shaping the cultural and political relevance of human rights norms.

Keywords: Human Rights; cosmopolitanism; collective memory; transitional Justice; Argentina; globalization

Rethinking modernity has been the immanent challenge of sociological theory during the last three decades. A growing body of research analysing cosmopolitan figurations and designing analytical tools is part of this endeavour (Beck 2000; Beck and Sznaider 2006; Vertovec and Cohen 2002; Delanty 2009; Fine 2008). But much of this literature remains focused on Europe. While

Levy (Stony Brook University) (Corresponding author email: dalevy@ms.cc.sunysb.edu)

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the contemporary origins of cosmopolitanism are European, research about non-European settings should not assume a universalized cosmopolitan model, implying a particular developmental path and presupposing political and cultural flows from the centre to the periphery. By unpacking a variety of cosmopolitan iterations, Ulrich Beck and Edgar Grande are providing a corrective for teleological temptations which tend to generalize a western path. 'The idea of cosmopolitan modernity must be developed out of the variety of modernities, out of the inner wealth of variants of modernity' (Beck and Grande 2010: 409–443).

The objective of this paper is to contribute not merely to the comparative array of cosmopolitan modernities but also to their relational traits by highlighting the intersectionality of cosmopolitization processes. I illustrate how varieties of cosmopolitanism are frequently expressed through a mutually constitutive set of cultural dispositions and institutional practices that emerge in the interstices of global norms and local orientations. My central argument is that the link between the synchronicity of 'cosmopolitan imperatives' and the multiplicity of particularized expressions is not merely a function of variety and interconnectedness, but mainly a global phenomenon that is co-evolving in the context of *intercrossings* during which distinctive cosmopolitanisms are constituted. In order to capture the tension of 'synchronicity' and 'path-dependency' I introduce the notion of *recursive cosmopolitization*. The concept refers to an open ended process in which centre and periphery stand in a recursive relationship that is reflected, among other things, in the intercrossings of global normative expectations and their local appropriations. Moreover, *recursive cosmopolitization* reveals how local articulations are inscribed into global norms. Hence this case study also suggests the potential inversion of centre-periphery relations indicating that world cultural norms do not necessarily originate in the otherwise dominant West (Meyer et al. 1997).

Michael Werner and Bénédicte Zimmermann, who introduced the notion of *histoire croisée* to adapt historiography to the global realities of trans-national and trans-cultural processes, define *intercrossings* 'as a structuring cognitive activity that, through various acts of framing, shapes a space of understanding. By such means, a cognitive process articulating object, observer, and environment is carried out. The intercrossing of spatial and temporal scales, which can be both inherent in the object as well as the result of a theoretical and methodological choice, is a particularly revealing example of this interweaving of the empirical and reflexive dimensions' (Werner and Zimmermann 2006: 39). Such a heuristic perspective is indispensable for a cosmopolitan methodology in the sense that 'entities and objects of research are not merely considered in relation to one another but also *through* one another, in terms of relationships, interactions, and circulation. The active and dynamic principle of the intersection is fundamental in contrast to the static framework of a comparative approach that tends to immobilize objects' (Werner and Zimmermann 2006:

38). This relational approach then brings together proliferating cosmopolitanisms among actors and the methodological cosmopolitanisms guiding the perspectives of observers.

To shed light on the intercrossings of global expectations and path-dependent incorporations this paper examines the legal trajectories of transitional justice practices in Argentina in the context of an emerging global Human Rights Regime.² Legal and political engagements with transitional justice provide an insightful analytic prism to study the transformative encounter of local problems and international prescriptions. The socio-legal body of global norm-making associated with human rights directs our attention to different, global, national and regional scales of juridification (Halliday 2009). As such, transitional justice is reflective of and contributes to cosmopolitan imperatives as it revolves around judicial procedures and memory practices addressing legacies of human rights abuses. Facilitating transitions from authoritarian regimes to stable democratic governance has come to involve some degree of recognition of the 'other': in the context of international legitimacy cosmopolitan imperatives command a narrative that acknowledges past injustices (Levy and Sznajder 2010); and in the juridical context cosmopolitan law strengthens the legal protection of non-nationals which is no longer automatically and exclusively derived from political associations (Feldman 2007). The global Human Rights Regime thus reflects a set of cosmopolitan cultural dispositions and institutional practices of legitimate statehood that emerge at the intersection of global human rights imperatives and their local appropriations.

The institutional origins of this Human Rights Regime are found in European postwar reactions culminating in the formation of the UN and reactions to the political upheavals in the Balkans during the 1990s. By shifting attention from a (European) universal (and categorical) notion of cosmopolitanism to a recursive understanding of cosmopolitization, this study suggests that transitional justice developments during the 1980s in Argentina and other parts of Latin America have set legal, cultural and institutional precedents which would subsequently shape the articulation of globally salient human rights practices. Rather than viewing the proliferation of human rights norms in Argentina as a western imposition, the Argentinean case underscores how links between human rights related world-cultural expectations and local path-dependent structures emanate outward from negotiations within the periphery. Conceptual interest in Argentina's human rights politics then is less driven by representing yet another variety of modernity but chiefly because it reveals how local articulations are inscribed into global norms subsequently constraining national repertoires. Furthermore, this analysis shows that the political influence of specific norms (in this case related to post-authoritarian politics), at times need to be conceptualized in regional rather than national or global scales.

To elucidate these developments, I examine changes in Argentinean legal discourse concerning the incorporation of human rights norms since the early 1980s, with a focus on human rights trials. Argentina is a strategic research site because of its long and sustained history of addressing human rights abuses with over two hundred domestic human rights trials during the last two decades (Sikkink and Walling 2006). Its human-rights practices do not merely reflect the global trajectories of International Law but are constitutive to its consolidation. The Argentinean case has set procedural precedents for international norms evolving into cosmopolitan imperatives, which subsequently would circumscribe political and legal dealings with human rights abuses in Argentina (and other parts of Latin America).

Transitional justice practices and related legal memories comprise a central political–institutional mechanism and cultural–normative arena through which recursive cosmopolitization operates. The political will of states to legally engage with memories of rights abuses is a central factor for their legitimate standing in the international community and increasingly also a domestic source of legitimacy. Elsewhere I have referred to this dynamic as ‘cosmopolitan sovereignty’ which finds its expression in an increasingly de-nationalized conception of legitimacy. While states retain most of their sovereign functions, their legitimacy is no longer exclusively conditioned by a contract with the nation, but also by their adherence to a set of nation-transcending human rights ideals (Levy and Sznajder 2006). The analysis of transitional justice mechanisms in Argentina shows how recent human rights trials are a key site for the production of cosmopolitan ideals and their criticism. Especially when considering that the juridification of political spheres is generating alternative forms of identification, limiting traditional republican forms of politics (Jacobson and Ruffer 2003). Here exclusionary aspects of national citizenship are complemented with a cosmopolitan legal injunction that commands the equal treatment of humans as others (Soysal 1994).

To be sure, a top-down institutional approach only provides limited inferences on how much of this cosmopolitan transformation of the judicial sphere actually trickles down to society. How meaningful it is for the lives of individual citizens and whether they espouse the cosmopolitan values promulgated at the state level remains subject to additional studies (Levy, Heinlein, Breuer 2010). Notwithstanding, juridification should not be treated in a narrow legal frame, but as a socially embedded, meaning-producing act. Law has jurisgenerative power.

Law can also structure an extralegal normative universe by developing new vocabularies for public claim making, by encouraging new forms of subjectivity to engage with the public sphere, and by interjecting existing relations of power with anticipations of justice to come. (Benhabib 2009: 696)

On this view, the legal domain is not only about the institutionalization of universal claims on which nation-state sovereignty and the self-understanding of a political community rest but it also figures as a strategic site of their transformation (Held 2002).

Trials, in particular, are the venue for transformative opportunities, where memories of grave injustices are addressed in rituals of restitution and renewal (Osiel 1997). Justice itself becomes a form of remembrance (Levy and Sznajder 2005). And 'the growing importance of pursuing retroactive justice is also a result of the increased valorization of memory as the essential element of collective identity' (Misztal 2001: 63). Beyond the potential of trials to create legal precedents, their public dramaturgy also attracts widespread media attention. Dramatic enactments ensure that war crime trials not only change the law from within, but that they enjoy ritualized attention, thus serving broader educational and moral purposes (Savelsberg and King 2007). Three didactic dimensions characterize the relationship of law and memory as evidenced in war crime trials. One relates to legitimacy in the sense that legality itself is being restored after its suspension through crimes against humanity. The second is the moral pedagogy that underlies these trials. Third, through the category of crimes against humanity, questions of inclusion and exclusion as well as the legal limits of the nation state are being renegotiated (Pendas 2002). Human rights trials thus produce opportunity structures for cosmopolitization. And the juridification of political relations is a central feature in the institutionalization of the Human Rights Regime which is sustained by, among other things, self-conscious references to memories of past abuses (Levy and Sznajder 2006).

Cosmopolitan scales: the case of Argentina

The story of human rights in Argentina unfolds against the background of efforts to commemorate and prosecute the mass atrocities committed by the military Junta during the time of Argentina's so-called 'Dirty War'. Between 1976 and 1983, the Junta's practices of repression ranged from illegal imprisonments to torture and disappearances. The latter is a euphemism for the systematic abduction and murder of regime opponents, whose bodies were buried in unmarked mass graves, incinerated, or simply thrown into the sea (Sikkink and Walling 2006).³ Unlike in Europe where incipient human rights efforts after World War II were, for the most part, a top down institutional response to calamitous historical experiences, initial reactions in Argentina were driven by movement efforts during and in the aftermath of the authoritarian regime. Perhaps the best known case is 'The Mothers of Plaza de Mayo', who in 1977 started congregating weekly in Buenos Aires with a ritualized array of symbols, most notably white head scarves bearing the names of their

missing relatives. In addition to pursuing restitution claims, the ‘mothers’ challenged the official dictatorial narrative by establishing commemorative rituals commanding symbolic recognition for the victims (Jelin 1994). The importance of commemorative practices and their material inscription is also reflected in the 2001 groundbreaking of ‘El Parque de la Memoria’ in Buenos Aires. Debates about the nature of this park and the significance of human rights trials are legal and cultural instantiations of public controversies that feed off each other. As Andreas Huyssen has pointed out:

The Parque de la Memoria gains its symbolic weight in the context of ongoing legal struggles and the attempt to articulate a national memory of state terror. At the same time, its design itself speaks powerfully to the issue of the simultaneously global and local horizon of contemporary memory culture. (Huyssen 2003: 100)

The official proliferation of commemorative practices is of a more recent vintage, becoming a dominant trope only during the 1990s. In many ways, they were preceded and generated by formal and legalistic memory practices – most notably ‘truth commissions’ and ‘human rights trials’ – which is the focus of the remaining analysis.

The following exposition is not intended as a comprehensive account of the Argentinean case, but rather as a conceptual illustration highlighting the socio-legal and political cultural intersections of global and local forces during the last thirty years. The main thrust of the argument is not only that there is a multiplicity of cosmopolitanisms with variable traits in different places (Holton 2002), but that these cosmopolitanisms are constituted and become politically and culturally consequential as a result of recursive relationships involving global, national and regional scales. Moreover, I contend that cosmopolitanism is not necessarily imposed as an exogenous force from the centre, but that much of the current legal international human rights repertoire originated in the periphery before its gradual consolidation into a world cultural norm. The first section will focus on this ‘universalization of local problems’. The second section will address how human rights as a legal idiom have contributed to the ‘globalization of local solutions’ (Carruthers and Halliday 2006). On this view, cosmopolitan orientations are the relational outcome not the premise of recursive cosmopolitization in which the global and the local are mutually reconstituted.

The ‘universalization of local problems’

Most of the domestic legal activities in Argentina evolved only after the transition to democratic rule in 1983. Yet prior to this, important precedents circumscribing the national legal domain were established in a regional

context. Under serious threats and without access to domestic institutions, which were firmly controlled by the authoritarian regime, the Argentine human rights community had to rely on international and regional human rights organizations. Argentine human rights activists had a prominent role in the Inter-American Commission on Human Rights (IACHR), where they helped form the 'Working Group on Disappearances', which wrote a path-breaking report on the situation in Argentina that would subsequently become a standard for UN Human Rights practices (Sikkink and Walling 2006). This report was later smuggled into Argentina, allowing local human rights groups to challenge official denials by the Junta of their involvement in the disappearances (Jelin 1994). After the transition to democracy the report would provide the framework for the state sponsored establishment of a truth commission, the 'National Commission on the Disappearance of Persons'.

Domestic revelations and international pressures brought an almost complete halt to disappearances and led the Junta to allow IACHR representatives to visit Argentina in 1979. While this intervention did not lead to any democratization, it does speak to a general pattern in which groups bypass their own state and find international allies to pressure the state from outside when their claims do not resonate on the domestic front (Keck and Sikkink 1998). Comparable developments can be found in the early human rights activities in Chile and Uruguay, where authoritarianism and repression pushed activists into both regional and international directions, setting procedural and symbolic precedents.

The Chilean case was the first time the UN responded to a human rights situation that was not seen as a threat to international peace and security, through country-specific resolutions, requests for on-site visits and for a country rapporteur. (Sikkink and Walling 2006: 304).

Domestic, regional and global opportunity structures then shape the recursive nature of cosmopolitization. Here 'recursivity proceeds principally through the intersection of three interacting cycles of global normmaking, national lawmaking, and the interaction between the two' (Halliday 2009).

An active Argentine human-rights community, enjoying transnational support, had thus existed since the late 1970s, but it was not until the military Junta's demise that formal human rights prosecutions could be initiated. The election of President Raul Alfonsín in 1983 marked a turning point introducing judicial practices that would eventually become part of a global human rights repertoire. Soon after being elected, Alfonsín's government established a truth commission – the National Commission on the Disappearance of Persons. Based on the aforementioned information gathered by human rights groups and the testimony of citizens, the commission's final report with the title *Nunca Más* (Never Again) detailed the regime's human rights atrocities (Roniger and Sznajder 1999). The report shaped a new legal mnemonic practice, namely one

of the world's first truth commissions, which would spread to other places in Latin America and beyond becoming an important landmark for the globalization of transitional-justice movements (Roht-Arriaza 2006). There had been earlier truth commissions, and though they did not gain comparable international attention (mainly because they were not published, as in the case of Uganda in 1974 and Bolivia in 1983) they shaped subsequent constructions of widely known truth commissions. It is probably the South African 'Truth and Reconciliation' commission (TRC) from 1995 that has achieved most global visibility. As a result it is often omitted that the TRC was modeled on the Chilean case (from 1990), which in turn, like so many others draws on the earlier example from Argentina. So the Southern Cone of Latin America and Argentina in particular would become a standard bearer for the symbolic and political salience of truth commissions. Until 2007 at least 32 truth commissions were established, most of them in the past ten years and more countries are considering them.⁴ Demands for recognition and accountability for past abuses have become an international standard. Truth commissions addressing local problems have emanated from the periphery underwriting human rights claims and the establishment of a global Human Rights Regime.

The legal incorporation of human rights norms and attendant trials were highly contingent upon the domestic power structure and existing memories of past abuses: a major political shift (the collapse of the military regime in 1983 and its weakness in the aftermath of Argentina's defeat in the Falklands War) temporarily eased the implementation of human rights norms in national legal practices. Commitment to human rights on the part of political elites, embodied by President Alfonsín was critical to promoting the trials (Osiel 1986). The government's rejection of the Junta's self-amnesty laws demonstrated the army's anemic bargaining power at the time (Nino 1996); the swift transition into trial mode was thus largely enabled by a situation in which the armed forces were too weak to negotiate the conditions of their own exit from power (Helmke 2005). The implementation of human rights principles was also sustained by the Argentine human rights community and its effective mobilization of public support during 1984 and 1985 leading up to the first war crime trials for members of the Junta (Sikkink and Walling 2006). Alfonsín also developed close working relationships with leading human rights activists. In June 1984 he invited a handful of world renowned moral and legal philosophers to consult on human rights policies (Osiel 1986).

These local circumstances produced a set of pioneering human rights practices which contributed to a 'justice cascade' in Latin America and beyond. Sikkink and Walling's study on the proliferation of domestic trials confirms that

the case of Argentina is particularly interesting because far from being a passive participant in or recipient of this justice cascade, Argentina was very

often an instigator of particular new mechanisms within the cascade. The case illustrates the potential for global human rights protagonism at the periphery of the system. [...] In this sense, just as the Argentine truth commission initiated the cascade of truth commissions, the Argentine trials of the Juntas also initiated the modern cascade of transitional justice trials. [...] The Argentine case was important for the transitional justice movement in multiple ways. It made early use of many important transitional justice mechanisms, including a truth commission, trials, and reparations. (Sikkink and Walling 2006: 301–8)

Once codified as a world cultural norm and thus conferring political legitimacy, commanding official attention, and assuming mimetic functions, these human rights practices contributed to the ‘globalization of local solutions’.

However, one must be careful not to view these cascades and other patterns of diffusion as linear, inevitable or irreversible, as is underscored by a human rights backlash in Argentina. Just how dependent the legal implementation of human rights was on particular domestic power constellations became clear after the first high-profile trials in 1985 provoked massive resistance from the army (Helmke 2005). Concerned with stability and its own political survival, Alfonsín’s government issued two laws limiting the potential for further indictments, de facto serving as amnesty laws. The December 1986 *Ley de Punto Final* (Full-Stop Law) limited the categories of military personnel that could be put on trial; the June 1987 *Ley de Obediencia Debida* (Due Obedience Law) exempted from prosecution those who had ‘acted under orders.’

The ‘globalization of local solutions’

After the presidential election of Carlos Menem in 1989, the amnesty laws remained at the centre of political and legal debates for almost a decade. Nationally and universally oriented justifications clashed: whereas conservative forces sought to extend the amnesty laws for the military and thus limit the influence of human rights legal principles in the name of ‘national priorities’, human rights activists once again forged transnational and domestic alliances to undermine the status of the amnesty laws, invoking the universal validity of human rights. The counter-mobilizations of human rights advocates gained new momentum, supported by international human rights agencies and transnational networks (Risse and Sikkink 1999). Such mobilizations, blurring demarcations between the local and the global, in turn drove the further cosmopolitization of legal norms in the domestic field, bound up with the pursuit of new means for their practical realization.

While Menem’s two terms seem to signal the retreat of human rights principles, human rights organizations continued to push their agendas, largely by

once again by-passing the national level via regional channels, resulting in a formal declaration by the IACHR condemning the *Punto Final* and *Obediencia Debida* laws, and the various pardons as incompatible with the Inter-American Convention (Sikkink and Walling 2006). In the local arena, human rights organizations built alliances with the judiciary, which gradually started to break away from the hold of the army and the government. These efforts culminated in a major reform of the national constitution in 1994 which included a clause stressing the supremacy of Argentina's international human rights obligations above, even if contrary to, domestic law.

The influence of global processes on the policies of the government and courts was accentuated by a series of dramatic events in the international legal domain, most notably the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993. This and other tribunals established the transnational prosecution of human rights violations to be a legitimate alternative, or at least a complement, to national trials. Transnational prosecutions posed a threat to the autonomy of national legal proceedings, as states were pressured to prosecute violators of human rights in order to uphold their international legitimacy. Another emblematic event was the 1998 arrest in London of Augusto Pinochet the former head of Chile's military government. Although Pinochet was eventually judged unfit for trial, his arrest and the rush of other transnational prosecutions that followed had a remarkable impact on perceptions of the legitimacy of transnational human rights prosecutions and, as a result, also of national ones (Nash 2007).

Another important consequence of counter-mobilization against the political stalemate and a key innovation for global human rights practices was the initiation of 'truth trials'. These resulted from a 1995 petition by family members, mostly associated with the Center for Legal and Social Studies, a local human rights NGO, claiming that although the amnesty laws blocked criminal proceedings, family members still had the 'right to truth' through judicial investigation. When this petition was approved by a federal court, a new judicial category was established. Following a hesitant start in Buenos Aires, such truth trials have spread to various Argentine cities making public a wealth of testimonies (by thousands of witnesses) and uncovering new evidence. Soon, these testimonies began to undermine the legitimacy of the amnesty laws; bolstered by an outpouring of public support they produced new pressures on the government and courts to prosecute those responsible (Roht-Arriaza 2006).

The year 1998 marked a significant shift in the institutionalization of legal human rights norms and the trajectory of legal accountability for the 'Dirty War' crimes (Roht-Arriaza 2005). A federal judge issued a preventative detention order for the former president Rafael Videla for human rights crimes. The 'Mothers of Plaza de Mayo,' who had first petitioned for this, argued that Videla's abuses during the 'Dirty War' constituted 'crimes against humanity,'

which were not protected by the amnesty laws (Roht-Arriaza 2005). The events leading up to the trial of Videla reveal the important role international pressures can play in changing domestic legal practice. One month before the Videla ruling, Menem had returned from a diplomatic trip to Scandinavia, where he was confronted with demands from the Finnish and Swedish governments to investigate the disappearances of their citizens during the 'Dirty War.' Scheduled to depart for Paris a week later, Menem realized that he would face demands to extradite those responsible for the disappearance of two French nuns. Menem detained Videla just hours before his meeting with the French President, thus evading international pressure and upholding legitimacy by appearing as a human rights advocate (Sikkink and Walling 2006). While his concessions were opportunistic they nevertheless encouraged the reemergence of trials for human rights violations in subsequent years (Lutz and Sikkink 2000).

These transnational developments were also evidenced in the 1998 indictment of ninety-eight members of the Argentine military for genocide and terrorism by the Spanish Judge Baltazár Garzón. His warrants mounted international and domestic pressure on the Argentine government and courts to extradite the officers to Spain. The Argentine amnesty laws prevented domestic trials. Ultimately, these demands created political space for more autonomy to carry out domestic prosecutions. The preventative detention of other high-profile officers that ensued was largely the result of this autonomy. Thus, unlike in the case of the ICTY and other tribunals which eclipse the authority and legitimacy of national courts, political and legal forces in Argentina sought to establish conditions that would allow them to retain their power of adjudication. The way in which global developments affected local legal change in Argentina was also mediated by changing domestic power relations among the three main agents involved in the establishment of human rights trials: the government, human rights organizations, and the judiciary.

The Argentine judiciary was an important player in the reemergence of trials since the 1990s. The turn in the judiciary's stance and popularity came in the late 1990s when Menem's power began to wane. Justices became well aware that the government's hold on the judiciary was weakening; it was also clear that the capacity of any new government to enact sanctions would likely be far more limited than during previous periods (Helmke 2005). With the judiciary's independence came more daring and path-breaking human rights verdicts. These judges were greatly influenced by the international human rights context and by personal relationships with legal experts in the global arena. Judges who served as norm entrepreneurs

have mostly studied or lived in other countries or have participated in extrajudicial activities that connected them to colleagues elsewhere and allowed a process of mutual enrichment. (Roht-Arriaza (2005: 215)

Their judicial practices were shaped through their interactions with international institutions, weakening rigid distinctions of national and International Law (Koh 1997).

Of particular significance for a cosmopolitan argument is the fact that the growing adherence of the Argentinean judiciary to international legal standards became justified with reference to the interests of the Argentine state and its domestic law. Universalistic justifications were no longer interpreted as opposed but complementary to local ones. This change in legal discourse signalled a shift to cosmopolitan orientations. A ruling by federal judge Gabriel Cavallo in March 2001 is a case in point, as he drew explicit reference to other nations' legal precedents as well as to international treaties and UN documents. Cavallo invoked 'crimes against humanity' in International Law, arguing that these crimes were not only of international concern, but also a matter of domestic responsibility. He further justified the decision with an emphatic condemnation of the amnesty laws, underscoring the legitimacy of human rights not only with regard to Argentina's international obligations, but also to its domestic ones (Roht-Arriaza 2005). The appeals court eventually came to the conclusion that 'in the present context of development of the constitutional law of human rights, the invalidation and declaration of unconstitutionality of the laws is not an alternative. It is an obligation' (Roht-Arriaza 2005: 116). This formal condemnation of the amnesty laws by a domestic court with reference to human rights indicated the higher level of domestic institutionalization which human rights norms, driven by the interaction of global and domestic processes, had assumed by the turn of the millennium. It throws into relief two general tendencies of the period: the increasing penetration of international legal norms into Argentina's legal discourse and the incorporation of universal human rights legal principles into domestic legislation; and the imitation of the human rights legal practices of other states.

The election of Néstor Kirchner in May 2003 gave the human rights agenda another boost, largely because of the new president's strong human rights convictions and his electoral promise to annul the amnesty laws. The institutional changes unleashed by Kirchner culminated in June 2005 as the new Supreme Court reaffirmed the unconstitutionality of amnesty laws and voided them. The members of the Supreme Court argued that the amnesty laws violated a number of internationally established legal regulations, including a) the Inter-American Commission on Human Rights which prohibits member states from passing amnesty laws; b) the International Covenant on Civil and Political Rights, which guarantees the right to an effective remedy and a fair trial; and c) the UN Convention Against Torture, ratified by Argentina in 1986.

Legal justifications for the removal of the amnesty laws revealed the cosmopolitan internalization of human rights principles, reconfiguring the state's identity and its normative interests. For instance, Justice Maqueda claimed that 'the duty to prosecute arose from the prohibition to commit these crimes,

which, at that time, had already become part of an “imperative order” based on norms of customary and treaty law, the codification of which started with The Hague Convention of 1907 and continued with the Statute of Nuremberg Tribunal and subsequent conventions’ (Bakker 2005: 1113). Other justices cited prosecutions of Argentine citizens by foreign courts and insisted that the state take the initiative not only because of international obligations, but also in order to uphold domestic sovereign legitimacy itself. As Justice Zaffaroni put it: ‘the extradition requests presented by third states generate the legal option either to exercise the state’s territorial jurisdiction, or to admit its incapacity to do so, and thus to renounce an attribution of national sovereignty, ceding jurisdiction over facts committed on Argentine territory by Argentine citizens’ (Bakker 2005:1118). Justifications of this kind are indicative for how recursive cosmopolitization is entwining international normative expectations and national orientations, and the corresponding fusion of global norms with local legal discourses. This process is apparent in the emergence of domestic institutional vocabularies in which global legal norms assume the status of taken-for-granted assumptions. Global precepts and local practices become indistinguishable and so do the legal codifications which render International Law into a resource *for* states, rather than, as originally framed, guiding laws *between* states. These judicial developments would have lasting effects. Most recently and with broad (global) publicity Kirchner’s presidential successor, Cristina Fernández Kirchner made it a priority to actually prosecute leaders of the dictatorship who had been charged earlier in 2003. In November of 2009 a long delayed high profile trial against the last dictator of the military Junta General Reynaldo Bignone and seven other members of the Junta, started.

Recursive cosmopolitization and the limits of universalism

The Argentinean case has served as an illustrative, and in many ways, paradigmatic instantiation for the co-evolution of global norms and local path-dependent appropriations. Argentina carries conceptual and empirical weight as it underscores the recursivity of cosmopolitization by calibrating the tensions of universalism and particularism through the intercrossings of global, national and regional scales. In a first step, I have shown how cosmopolitan imperatives can emanate in the periphery as local problems are globalized. This, in turn, has resulted (largely as a product of historical contingencies, such as the end of the Cold War) in the institutionalization of a global Human Rights Regime which exercises normative and political–legal pressures on how states legitimately deal with human rights abuses. This is not only accomplished by universal imperatives but also in a conceptual and empirical space bound by cosmos and polis.

In fact, universalism is encountering political limits. We observe a trend towards cosmopolitan figurations which is based on the rejection of a

universalization of legal practices. Processes of recursive cosmopolitization constrain legal universalism. A good example is the short career of 'universal jurisdiction', which is predicated on the notion that a state can exercise jurisdiction over criminal deeds that were not committed on its territory irrespective of the nationality of the perpetrator or any relation with the country that seeks to prosecute the violations. Universal jurisdiction is usually invoked in reference to crimes against humanity. The concept received widespread attention when Belgium's 'law of universal jurisdiction' was legislated in 1993. It has since been applied in several cases and controversies around its legal relevance and political legitimacy abound. However, in institutional and political terms 'universal jurisdiction' was a short-lived phenomenon. Faced with a multitude of formal requests to prosecute political leaders of dictatorships and democratic countries for war crimes, Belgium amended universal jurisdiction in 2003, significantly restricting the scope of its reach and effectively rendering it meaningless. Ultimately, the concept of universal jurisdiction is of limited use as its underlying legal rationale operates with a universalistic framework which largely ignores national circumstances.

The limits of universalism are evidenced in another global institution, the International Criminal Court (ICC). On a symbolic level the ICC, established in 2002, is a global reminder that the shield of sovereign impunity no longer exists. However, in practice, the ICC does not undermine sovereignty but effectively reinforces domestic jurisdiction. The preamble emphasizes 'that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions'. Contrary to the stipulations of International Criminal Tribunals, the ICC favours domestic proceedings, provided they meet certain criteria. Complementarity is the key concept in this cosmopolitization of legal procedures by merging domestic jurisdiction with international standards. Complementarity stipulates that the ICC can only assume authority when a state is unwilling or unable to prosecute. Complementarity indicates the legitimacy states confer to a global institution such as the ICC while at the same time recognizing that these global norms should be part of their domestic jurisdiction. The principle of complementarity 'has already prompted national authorities to pass implementing legislation and create judicial structures to deal with international crimes domestically' (Turner 2006: 990). Complementarity thus serves as a cosmopolitizing mechanism as it 'represents the express will of States Parties to create an institution that is global in scope while recognizing the primary responsibility of States themselves to exercise criminal jurisdiction' (Turner 2006: 1003). Paradoxically the success of the ICC can be measured in the limited number of cases brought before it.⁵ Most states confronted with the possibility of losing a case before the ICC tend to comply with the requirements for domestic prosecution.⁶ Despite the strong universalistic underpinnings of global human rights norms, it is therefore misleading to treat cosmopolitanism and universalism synonymously.

Cosmopolitization is substantiated in recent trends where humanitarian laws are incorporated into domestic judicial structures (Harland 2000). Domestic courts are frequently called upon to determine whether government actions are in tune with international human rights norms. Scholars have pointed to the socializing effect of International Law on the judicial and political field (Koh 1997; Fourcade and Savelsberg 2006). The power of the Human Rights Regime of the last decade consists of the incorporation of International Law into domestic jurisdiction by way of localization (Dezalay and Garth 2002; Teitel 2003). Cosmopolitization then is less a matter of formal ratification of human rights treaties, but primarily finds its expression in different (local) modes of incorporation.

Another manifestation of this cosmopolitization relates to distinctive types of human rights trials including: *international trials* (e.g. Yugoslavia, Rwanda), *hybrid trials* combining international and national features (e.g. Cambodia), and lastly, a strong trend toward *domestic trials* (e.g. Argentina), characterized by national prosecution of human rights violators, largely based on the incorporation of International Law. This proliferation is not only a function of the normative imperatives issued by the main institutions of the global Human Rights Regime, but also about the localization of cosmopolitan expectations based on pre-existing legal ideals (Acharya 2004). Cosmopolitization rather than undermining states strengthens them, substantiating the claim that synchronic cosmopolitan imperatives simultaneously produce convergence (of legitimating principles) and particularism as the endogenization of these imperatives is subject to path-dependent features (Gordon and Berkovitch 2007). To be sure, cosmopolitanism seeks validation by adhering to universalistic features. However, the Argentinean case confirms that while the universalization of legal principles might be a prerequisite for their spread, the salience of cosmopolitan law is, in the final analysis, a question of how it is constituted in the first place, and subsequently appropriated and localized. It is this recursive dynamic, rather than the conventional view of an exogenous universal imposition of cosmopolitanism that accounts for both the relational quality and the multiplicity of cosmopolitan modernities.

By differentiating between global, national–local and regional scales and their intercrossings *recursive cosmopolitization* contributes not only a relational dimension to the theory of reflexive modernization, but also assumes the status of what Anthony Giddens (1987) refers to as a double hermeneutic. ‘The concepts of the social sciences are not produced about an independently constituted subject-matter, which continues regardless of what these concepts are. The “findings” of the social sciences very often enter constitutively into the world they describe’ (Giddens 1987: 20). Cosmopolitanism is now self-consciously deployed for analysis and in practice. We thus witness a dual process of *intercrossings*. One relates to the stipulation that varieties of modernity are not only interdependent but that cosmopolitanism is constituted

through recursive encounters. The other dynamic addresses the link between a normative cosmopolitanism driven by the outlooks of actors, on the one, and methodological cosmopolitanism reflecting the perspective of the observer, on the other. The latter refers to the analytical toolkit of the social scientist, defusing the implicit national presuppositions of sociological categories.

Recursive cosmopolitization challenges methodological nationalism by 'opening up lines of inquiry that encourage a rethinking in historical time, of the relationships among observation, the object of study, and the analytical instruments used' (Werner and Zimmermann 2006: 45). By calling attention to the fact that intercrossings themselves shape the character of interaction, *recursive cosmopolitization* creates new avenues to explore questions 'concerning scale, categories of analysis, the relationship between diachrony and synchrony, and regimes of historicity and reflexivity' (Werner and Zimmermann 2006: 32). As such, the salience and effectiveness of cosmopolitization is not derived from its universality or even the formal ratifications of global treaties. Rather variations of cosmopolitanism are constituted by how global repertoires are localized in relation to pre-existing meaning systems and how, in turn, they underwrite globality. If methodological nationalism has operated within a historically specific epistemological framework associated with nations and nationalism, the analytic and empirical purchase of methodological cosmopolitanism is emerging in the global context of recursive cosmopolitization.

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Notes

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2. International regimes are defined here 'as principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue-area' (Krasner 1982: 185).

3. There is no agreement on the exact number of murdered victims. Official figures put the numbers at 13,000. Human rights groups speak about 30,000.

4. <http://www.amnesty.org/en/international-justice/issues/truth-commissions> (last accessed December 10, 2009)

5. As of October 2009 the ICC has opened only four cases and issued a total of nine arrest warrants.

6. There are exceptions, most notably the case surrounding the March 2009 arrest warrant for Omar al-Bashir, the President of Sudan. The first time the ICC is issuing the arrest of a sitting head of state has led to an ongoing debate essentially juxtaposing the pursuit of justice and the quest for regional stability.

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