Universal Jurisdiction and the Dynamics of Empire in the Semi-Periphery

Autoría: Chehtman, Alejandro

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SYMPOSIUM ON EXPLORING EXTRATERRITORIALITY'S EMPIRE

UNIVERSAL JURISDICTION AND THE DYNAMICS OF EMPIRE IN THE SEMI-PERIPHERY

*Alejandro Chehtman**

Introduction

In a recent article, Evan Criddle argues that states' "authority to make extraterritorial law is narrower than the international law of prescriptive jurisdiction alone would suggest."[1] This is because "the right of peoples to self-determination ... limits when states may resort to extraterritoriality."[2] Extraterritoriality, he contends, is intrinsically connected with imperial rule and must be resisted.[3] In my previous work on this topic, I have shared Criddle's concerns about how certain forms of extraterritorial prescriptive jurisdiction are normatively unwarranted, and should be abrogated.[4] More recently, I have even defended a general presumption against extraterritoriality that can be overridden only by sufficiently strong considerations.[5] In this piece, by contrast, I examine the intricate relationship between extraterritoriality and empire in the context of Argentina's experience with universal jurisdiction for serious crimes under international law.

This work complements Criddle's analysis of extraterritoriality's empire in two main ways. First, Criddle's account pays scarcely any attention to the active role of peripheral or semi-peripheral states in the exercise of extraterritorial criminal jurisdiction.[6] Second, his argument does not seem particularly concerned with the potentially imperialist dynamics that may drive universal jurisdiction prosecutions. To illustrate, he claims that "[e]xtraterritoriality ... does not violate the right to self-determination when foreign law incorporates international norms that another people has embraced by treaty or as customary international law".[7] Insofar as universal jurisdiction is based on violations of international—in fact, *jus cogens*—norms, such as the prohibition of genocide, crimes against humanity, official torture, and war crimes, among others, it would not face substantial criticism under his account.[8] I will argue that the tensions between empire and self-determination operate rather

* *Dean and Professor of Law at Universidad Torcuato Di Tella, Buenos Aires, Argentina.*

[1] Evan J. Criddle, *Extraterritoriality's Empire: How Self-Determination Limits Extraterritorial Lawmaking*, 118 AJIL 607, 609 (2024).

[2] *Id.*

[3] *Id.* at 613.

[4] *See, e.g.*, ALEJANDRO CHEHTMAN, THE PHILOSOPHICAL FOUNDATIONS OF EXTRATERRITORIAL PUNISHMENT, Ch. 3 (2010).

[5] Alejandro Chehtman, *The Presumption Against Extraterritorial Criminal Jurisdiction*, *in* TRANSFORMATIONS IN CRIMINAL JURISDICTION: EXTRATERRITORIALITY AND ENFORCEMENT 17 (Micheál Ó Floinn et al. eds., 2023).

[6] *See* Criddle, *supra* note 1, at 619.

[7] *Id.* at 635.

[8] *Id.* at 619.

differently in this particular context. Namely, self-determination operates here not as a shield against imperial lawmaking, but as a source of normative authority for domestic courts to resist geopolitical instrumentalization.

This contribution examines two contrasting situations: European states' prosecution of gross human rights violations perpetrated by the military in Argentina between 1976 and 1983; and Argentine courts' prosecutions on universality grounds beginning in the late 2000s. The analysis demonstrates that the European prosecutions, despite their imperialistic appearance, were largely driven by victim agency. Conversely, Argentina's recent prosecutions reveal that a seemingly anti-imperialistic exercise of jurisdiction may be shaped by Northern instrumentalization. Ultimately, I submit that the legitimacy of these extraterritorial prosecutions rests on the scope and substance (the "density") of the underlying normative considerations.[9]

European Prosecutions of Grave Human Rights Violations in Argentina

Our first scenario concerns European extraterritorial prosecutions of Argentine military personnel for crimes perpetrated during the 1976–1983 military dictatorship. These prosecutions were initiated in the 1990s in courts in Spain, Italy, France, Sweden, and Germany against notorious figures of the Argentine military. They relied generally on universal jurisdiction, although also on the nationality of victims (and sometimes even on the nationality of perpetrators).[10] On its face, this type of judicial intervention can easily be dismissed as an unambiguous form of "civilizing" imperialism.[11] Nevertheless, I suggest that these extraterritorial prosecutions present a more interesting story, one closely related to Argentine victims' resistance and strategic litigation.

Since the earliest cases in the mid-1980s, these extraterritorial prosecutions were largely driven by victims' organizations in exile and within Argentina. Although the early prosecutions started as far back as 1982, when the military was still in power, they were largely put on hold in light of Argentina's local accountability process—the 1985 trial of the *Juntas* and the subsequent investigations into major torture centers.[12] The extraterritorial prosecutions reignited after Argentina halted its local process of accountability by enacting the "Full Stop" and "Due Obedience" amnesty laws, and those who had been convicted (and even those merely indicted) were pardoned by the incoming Menem administration.[13]

Although these universal jurisdiction prosecutions co-existed with—and arguably fed—the turn to "anti-impunity law" in the Global North,[14] they were substantially driven by local victims and civil society organizations reacting to the impunity secured by the military through raw power.[15] To illustrate, Argentine Nobel Peace Prize laureate Adolfo Pérez Esquivel—a leading figure in the NGO *Servicio de Paz y Justicia*—was among the first to testify in Spain, and organized a campaign inviting other Nobel laureates to join him in support of these proceedings. These victims and organizations not only catalyzed these prosecutions, but also helped gather evidence leading to indictments. Julio Strassera, the chief prosecutor in the 1985 *Juntas* trial, personally delivered complete case files of the written proceedings in that trial to Spanish judge Baltasar Garzón, at the time in charge of the Argentine cases.

[9] I owe the notion of density of such prosecutions to Micaela Prandi.

[10] *See* Frédéric Mégret, *The Argentine Transition as Seen Through Third States* (draft on file with author).

[11] *See, e.g.*, Alexandra Fowler, *Comparing Universal Jurisdiction in Europe and in Latin America: A Vehicle for International Justice or for Colonial Reckoning?*, 29 INT'L J. HUM. RTS. 736, 739–40 (2025); KAMARI MAXINE CLARKE, AFFECTIVE JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE PAN-AFRICANIST PUSHBACK (2019).

[12] *See, e.g.*, NAOMI ROHT-ARRIAZA, THE PINOCHET EFFECT: TRANSNATIONAL JUSTICE IN THE AGE OF HUMAN RIGHTS 129 (2005).

[13] *See* Acts 23.492 (1986) (Arg.) and 23.521 (1987) (Arg.), and the more than ten decrees issued in 1989 and 1990.

[14] *See, e.g.*, Karen Engle, *Anti-impunity and the Turn to Criminal Law in Human Rights*, 100 CORNELL L. REV. 1111 (2015).

[15] *See* PHILIPPE SANDS, 38 LONDRES STREET: ON IMPUNITY, PINOCHET IN ENGLAND, AND A NAZI IN PATAGONIA (2025).

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These extraterritorial prosecutions were envisaged by local victims' organizations not merely as alternative paths to secure accountability, but also as part of a strategy to put pressure on Argentine authorities. Accordingly, these prosecutions were instrumental in pushing Argentine courts to move forward after 1998 with "truth trials" as a viable alternative to actual prosecutions.[16] They similarly fueled the first prosecutions in cases of systematic child-snatching and financial crimes.[17]

Perhaps most significantly, these extraterritorial prosecutions also contributed to the reopening of criminal proceedings in Argentine courts. The incoming Kirchner administration lifted the prohibition on extraditing former military accused of international crimes,[18] forcing the military to choose between being prosecuted in Argentina or being extradited. Spain agreed to withdraw its extradition requests for around 40 Argentine military officers, on account of the Argentine authorities petitioning for "more time to unfold its measures against impunity."[19] On August 23, 2003, the Argentine Congress passed Act 25,779 declaring the Amnesty Laws null and void. The impact of this decision was immediate: the following day several Appeals Courts sent case files that had been dormant for years to first instance judges to immediately reignite their investigation and prosecution.[20] Margaret Keck and Kathryn Sikkink have termed this process the "boomerang effect."[21]

Argentina's Resort to Universal Jurisdiction

In the last few decades, Argentina has also become an important player in terms of opening investigations into international crimes on universal jurisdiction grounds. According to recent figures, since 2005 more than one hundred such investigations have been initiated in Argentine courts.[22] This number surpasses the number of investigations opened in all the other Latin American states combined.

This process was unlocked by the Argentine courts themselves. Unlike many legislatures in the region, the Argentine Congress never enacted domestic legislation vesting its courts with universal jurisdiction over international crimes. Rather, local courts endorsed this form of extraterritoriality by interpreting Argentina's obligations to provide access to justice to victims under Article 25 of the American Convention on Human Rights, and by invoking a provision introduced in Argentina's 1853 Constitution creating jurisdiction in domestic courts over crimes against "the law of peoples" (*derecho de gentes*) irrespective of where they were committed.[23] This trend toward extraterritoriality developed in the wake of Argentina's own domestic process of accountability for serious human rights violations.

A seminal case involved the prosecution of high-level officials of the Franco regime in Spain for crimes against humanity and other serious human rights violations perpetrated during the 1970s. The case brought a large number of victims to testify before Argentine courts, under the legal advice of Argentine émigrés and human

[16] Alejandro Chehtman, *Re-constructing Criminal Accountability for Human Rights Abuses: Argentina 1990–2024*, 1 MODERN CRIM. L. REV. 74 (2024).

[17] *Id.* at 77.

[18] *See* Decree 420/03 (28/7/2003) (Arg.).

[19] *See* Carolina Varsky & Leonardo Filippini, *Desarrollos recientes de las instituciones de la justicia de transición en Argentina*, NUEVA DOCTRINA PENAL 2005/A, 127.

[20] For further detail, see Chehtman, *supra* note 16.

[21] MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS (1998).

[22] *See, e.g.*, Leslie Johns et al., *Migration and the Demand for Transnational Justice*, 116 AM. POL. SCI. REV. 1189 (2022).

[23] Argentine Constitution, Sec. 118 (1853, rev. 1994).

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rights activists.[24] It was opened after Spanish courts refused to investigate the allegations of serious crimes, on the basis of the blanket amnesty granted at the beginning of the Spanish transition. Argentine judge Servini de Cubría traveled to Spain to gather information and hear witness testimony. Other testimony was gathered by Spanish courts through judicial cooperation proceedings, providing victims a forum in which to air their grievances and tell their stories. Despite being unable to secure any arrests, this case produced a genuine investigation into the underlying criminal allegations and gave voice to numerous victims.

This development was enabled by a number of internal legal and political elements. In Argentina, as in many civil law jurisdictions, judges can initiate formal investigations even before a suspect is arrested or indicted.[25] Furthermore, under Argentine law, victims and victims' organizations are entitled to act as private prosecutors (*querellantes*), with broad and independent powers to gather evidence and to appeal any adverse decision.[26] In addition, at the time Argentine federal judges had incentives to take on this type of investigation. Many led teams with substantial experience in investigating and prosecuting international crimes, and benefited reputationally from acting as global enforcers of international criminal prohibitions. Amidst broad social discredit for the lack of concrete results in corruption investigations,[27] anti-impunity for grave human rights violations had become a matter of concern in Argentine public discourse since the mid-2000s. Argentine courts constituted an unusually promising venue to initiate this type of extraterritorial prosecution.

These initial investigations were often portrayed—including by myself—as forms of South-North accountability mechanisms that could contribute to the provision of global public goods.[28] Soon afterward, however, the profile of those indicted changed significantly. In November 2018, during the G20 Summit in Buenos Aires, Human Rights Watch filed a criminal complaint against Saudi Crown Prince (and then-Defense Minister) Mohamed bin Salman. Since then, various organizations have filed complaints against high-ranking Chinese authorities, including China's acting president; former Colombian president Alvaro Uribe; former president of Venezuela Nicolás Maduro (at the time of writing); co-president of Nicaragua Daniel Ortega; and a number of Russian operatives charged with acts of torture in Ukraine.[29] Criminal complaints have also been filed against Hamas leaders for the October 7 attacks and against Israeli Prime Minister Benjamin Netanyahu for war crimes and crimes against humanity.[30]

This expansion of universal jurisdiction into high-profile prosecutions, I suggest, was largely the result of Argentine courts being exploited by Global North actors—both non-state and state. These organizations profited from the substantial procedural rights accorded to private prosecutors under Argentine law. They typically hired elite criminal law firms in the country. They chose Argentine courts despite being incorporated in countries of the Global North, having access to courts in the Global North, and representing victims who reside in countries in the Global North. Critically, these criminal cases pursue third-party geopolitical agendas, rather than being substantively connected with the concrete grievances of victims whose interests are being represented,

[24] *See, e.g.*, María Márquez Velázquez, *The Argentinian Exercise of Universal Jurisdiction 12 Years After Its Opening*, Opinio Juris (Apr. 2, 2022).

[25] Máximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 Harv. Int'l L.J. 1 (2004).

[26] *See* CSJN, *Santillán* (*Fallos*: 321:2021 [1998]).

[27] *See, e.g.*, Carlos Pagni, *La gran crisis de la justicia Argentina*, La Nación (Mar. 26, 2018); Hernán Capiello, *Tribunales en la mira: La mala imagen creció en el último año y ocho de cada diez argentinos no confía en la Justicia*, La Nación (Feb. 15, 2021).

[28] *See* Alejandro Chehtman, *Jurisdicción universal sur-norte: Algunos aspectos menos explorados*, Aquiescensia (Dec. 6, 2010); *see also* Fowler, *supra* note 11, at 750.

[29] TRIAL International, *Universal Jurisdiction Annual Review* (2025).

[30] *See* PGN, *Pautas de Actuación del Ministerio Público Fiscal de la Nación sobre jurisdicción universal* (Dec. 16, 2024).

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or who require a forum in which to express those grievances. Finally, these prosecutions have no serious prospects of gathering relevant evidence, let alone detaining indicted perpetrators.

Some first-instance courts and prosecutors have sought to modulate or even hinder the exercise of universal jurisdiction in this type of situation to avoid potential political backlash and the risk of being drawn into futile legal battles. For instance, upon receiving the criminal complaint against bin Salman, an Argentine judge held that Argentina's universal jurisdiction had to be considered subsidiary to that of countries more directly connected to the offenses. Accordingly, before opening an investigation into any of the alleged offenses, he requested information about potential prosecutions in Turkey, Saudi Arabia, and Yemen for the acts attributed to the defendant.[31] Similarly, a federal prosecutor recently requested that a complaint against Chinese authorities be dismissed. She argued that Turkey (and France) were already investigating similar allegations, and that a significant number of the victims had fled from China to those countries. This meant—she concluded—that Turkish courts had a stronger connection to the crimes and victims, and would be able to access evidence unavailable to Argentine courts.[32] Most recently, the Office of the Attorney General (*Procuración General de la Nación*) issued a series of directives seeking to contain the expansion of this type of symbolic prosecution based on similar considerations.[33]

Yet these measures have generally proven ineffective in containing Argentina's extraterritorial prosecutions. Private prosecutors have typically prevailed on appeal. Since there is no reasonable expectation that any of these investigations will reach the trial stage, the higher criminal courts have fewer incentives than investigative judges to quash these investigations. The complaint against the Chinese authorities is a relevant case in point: a British lawyer, representing a U.S.-based NGO, acting for a victim who resided in the United States, brought the case with support from an elite law firm in Argentina. Together, they secured a favorable decision of the country's highest criminal court.[34] The political alignment of the Milei administration with U.S. President Trump, together with the latter's explicit drive to undermine Chinese interests in the hemisphere, might have helped catalyze this outcome by shaping judicial expectations.

In sum, while these complaints formally list victims as complainants, the prosecutions are functionally driven by NGO and state geopolitical agendas rather than victim communities seeking accountability. These organizations exploit, or at least profit from, the dynamics of empire that constrain the ability of Argentine courts to adequately resist this type of prosecution.[35]

Accountability, Empire, and the Density Requirement

The legitimacy of these contrasting exercises of universal jurisdiction turns on what I term the density of prosecutorial claims. Density refers to the constellation of factors determining whether particular prosecutions serve genuine accountability rather than merely symbolic posturing.[36] As articulated in the opinions of some of these courts, density requires, at a minimum, meaningful victim agency—prosecutions must serve the concrete accountability interests of victims, not third-party agendas. This condition must be accompanied by one or more

[31] JNCyCF nº4, CFP 20367/2018 (Nov. 28, 2018).

[32] CCCF, CFP 2774/22/1/CA1, D. I. y otros s/ archivo y ser querellante (Dec. 23, 2023).

[33] Notably, none of the decisions seeking to contain this type of investigation has resorted to the sovereign immunities some of the alleged defendants would arguably enjoy under customary international law.

[34] *See* CFCP, Sala III, Causa No. CFP 2774/2022/1/CFC1, Kanat, Omer y otro s/legajo de apelación (July 11, 2024).

[35] A similar conclusion may be sustained *vis-à-vis* cases that were already being prosecuted before the International Criminal Court (Venezuela, Israel, Ukraine), or even before domestic courts of the territorial state (Colombia).

[36] For a similar insight, see Devika Hovell, *The Authority of Universal Jurisdiction*, 29 EUR. J. INT'L L. 427 (2018).

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forum-appropriateness considerations: accessible evidence, realistic prospects for custody (through extradition or other cooperation), or demonstrated capacity to provide victims with redress or a platform to voice their grievances.

Finally, this analysis clarifies the conceptual and normative relationship that connects the notions of universal jurisdiction, empire, and self-determination. In this context, self-determination does not operate as a shield against the imperial reach of unilateral extraterritorial legislation, à la Criddle. Rather, it provides domestic courts with the conceptual resources to contain the dynamics of empire, and resist exploitation by Global North actors pursuing their own geopolitical agendas to the detriment of the interests of the political community in the forum state. This notion of self-determination—conceptualized as a normative power rather than in terms of non-intervention—anchors the judicial response to victim-driven attempts to secure accountability for international crimes.

Conclusion

I have argued in this short piece that universal jurisdiction's legitimacy in the face of imperial dynamics rests on prosecutorial density, which is largely a product of victim agency and forum appropriateness. Where these conditions are absent, courts should resist instrumentalization by declining jurisdiction, even when formal universal jurisdiction exists. This framework construes self-determination not merely as a shield against intervention, but as a source of normative authority—empowering courts to vindicate victims' rights while resisting geopolitical exploitation. In an era of both accountability gaps and great power manipulation, density provides a principled path between abdication and imperialism.

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