Juicios. Sobre La Elaboración Del Genocidio II. By Daniel Feierstein. Buenos Aires: Fondo De Cultura Económica, 2015.

Shifting Legal Visions. Judicial Change and Human Rights Trials in Latin America. By Ezequiel A. González-Ocantos. Cambridge: Cambridge University Press, 2016.

Reviewed by Farid Samir Benavides Vanegas, Universitat Ramón Llull —Blanquerna, Barcelona

Daniel Feierstein is one of the few scholars who have studied systematic crimes of the state from a Latin American perspective. Feierstein introduced genocide studies to sociology in the region. In one of his first books he coined the term "genocidal social practices" and outlined the process whereby the military dictatorship destroyed Argentinean social relations and established new ones, based on a lack of solidarity, lack of recognition of the other, and delation. Feierstein ended the first book of his series of three books on genocide calling attention to the need to address guilt understood in Karl Jasper's sense, that is, criminal guilt, political guilt, moral guilt, and metaphysical guilt (Feierstein 2007, 398). To Feierstein, the fact that Argentina was holding new trials against perpetrators (possible since the annulment of the impunity laws in 2005) showed that society was expecting impunity to end in order to rebuild the community.

In his second book, *Juicios. Sobre la Elaboración del Genocidio II*, Feierstein addresses the trials against members of the Argentinean dictatorship (1976–1983). In an interesting analysis, Feierstein discusses the use of the category of crimes against humanity by judges in charge of investigating the crimes committed during the dictatorship. He observes that judges use the category of crimes against humanity over that of genocide, and he deems this to be a mistake. Feierstein, like others, criticizes the exclusion of political groups from the definition of genocide in the 1948 Genocide Convention. However, he goes deeper and finds that the reason for the rejection of the category of political genocide and the reluctance judges have to apply the crime of genocide, is the fact that the legal profession is still trapped by positivism and its separation between morality and legality and between substantial truth and procedural truth. Feierstein held in the first book of this trilogy that the representation of the past determines the kind of justice people can have. And in *Juicios* he adds that positivism, which he thinks is still dominant in legal theory, has confiscated the faculty of judging and therefore has made judges unable to go beyond the literal text of the law, and

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recognize that in fact the only way to deal with victims' claims is to use the category of genocide.

In his analysis of the more than 100 judgments produced in Argentina since 1983 by the judiciary, Feierstein mentions very interesting findings. First of all, it is the fact that we do not need special tribunals to bring about justice. In Argentina, the whole criminal justice system has had jurisdiction over these crimes, with each judge hearing about 10 cases, allowing for a more efficient justice for victims. Second of all, the use of the category of genocide has become more mainstream in as much as the trials are more common (this has been particularly since the repeal of the amnesty laws). And, third of all, a conviction has been more likely in those cases where the category of genocide was used.

To Feierstein, convictions are not as important as the setting of the trial. The fact that the culprits have to face justice, have to justify what they did, is more important than seeing them go to prison. Feierstein argues that "the reading of the verdict in which the judges, those subjects admitted as representatives of the collective moral judgment, whether they accept it or not, carries out a narration of the facts under analysis (which can never be neutral) and assigns to the actors responsibilities for the events in which they have participated" (255). It is this that generates the effect of justice that the victims seek. This performance of the trial can "summon simultaneously the victims and their perpetrators (even using the public force to bring the latter to appear), to put into words the traumatic event in front of all the participating actors, to establish a moral judgment legitimized on him and to assign responsibilities, both at the level of reparation and sanction. And enforce compliance effectively." (257).

Drawing the geographical analysis out further, in a recent book Ezequiel González-Ocantos analyzes the history of human rights trials in three Latin American countries, namely Argentina, Perú, and México. In the first two countries trials were possible after some changes occurred in the judiciary, whereas in México these changes were absent and therefore there were no human rights trials to account for the human rights violations that had occurred in the past. To González-Ocantos, the reason for these changes is what he labels legal perceptions, that is the legal mentality of lawyers and judges. That is, at the base of the responses of the judiciary we find a legal education based on the idea of a positivist understanding of the law. Gonzáles-Ocantos's theory goes along the lines set up by Roberto Bergalli and Latin American critical criminology about 35 years ago. In a seminal text Bergalli, who was a judge during the dictatorship who was forcedly disappeared and had to go in exile for granting *habeas corpus* to victims of disappearance, writes that positivism prevented judges and lawyers from seeing the immoral

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character of Argentinean law during the *Proceso de Reorganizaciòn Nacional* and denounced that criminal law became abstract in the moment the horror was more present. That is, lawyers and judges appealed to positivism and claimed a separation between morality and politics through legality to avoid dealing with a present of massive human rights violations (Bergalli 1984, Novoa Monreal 1980).

Gonzalez-Ocantos argues that one explanation for the lack of trials lies in a positivist education that did not see the relationship between international human rights law and domestic law. He shows how it was necessary to change the judges' legal preferences in order to be able to succeed in the trials. Human Rights NGOs used a strategy that appealed to a new legal education, with seminars and courses, and when that was not enough, pressured for a change to recalcitrant judges and to staff the judiciary with more human rights oriented judges. NGOs were important during the process "that led judges and prosecutors in some countries to leave behind a formalistic legal orthodoxy strongly influenced by positivism, and embrace a new legal world view grounded in the values of international human rights law" (5). But he finds that it is not enough to have a legal education that teaches judges to use human rights as the basis for the analysis of criminal law. In some cases, context is important to understand the use of human rights law, but in other cases this is not enough. To Gonzalez-Ocantos, legal preferences are important to convince indifferent judges and to give committed judges the tools to punish perpetrators of human rights violations. But for those who were recalcitrant, shaming and impeachment were required to have a judiciary more open to dealing with transitional justice cases.

Transitional justice has become more pragmatic and is paying more attention to truth mechanisms and reparations, rather than criminal justice and the elimination of the structures of impunity (see Benavides 2017). Both authors, Feierstein and González-Ocantos, defend an idea of transitional justice as a set of mechanisms to end impunity. In Feierstein we find a normative argument about the importance of not letting legal positivist ideas confiscate the faculty of judgment; whereas in González-Ocantos we see an empirical description of how human rights NGOs put that mechanism into action.

Both authors analyze legal education and legal theory. In Feierstein this leads to the use of the category of genocide, whereas in Gonzalez-Ocantos's account it was precisely the use of that category which led to the failure of trials in Mexico. But most importantly, both authors show us that justice and truth are the most important elements of any transitional justice process, and that positivism within law can obstruct this.

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These texts are important contributions to the fields of criminology, sociolegal studies, and transitional justice, not only to understand what human rights organizations can do to end the structures of impunity that are left after transitions but also to understand legal mentalities and how these make possible or impossible the prosecution of state crime.

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