

Truth, Trials, Transition: The Meaning of Justice in Post-Dirty War Argentina



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On July 22, 1985, Jorge Luis Borges attended a session of public testimony in the criminal trial of nine ex-leaders of Argentina. These nine men had governed the nation in three successive military Juntas between 1976 and 1983, leading a “*proceso de reorganización nacional*” (national reorganization process) known by most as “*la guerra sucia*” (the dirty war). The nine Junta leaders were accused of planning a coordinated campaign of purposeful, massive human rights violations, attempting to eliminate political dissidence through seven years of extralegal kidnappings, tortures, and killings. They were further accused of doing this in a clandestine manner, denying knowledge of their thousands of victims and resulting in the creation of a new category of person: not dead, nor even missing, but “disappeared.”

As the most well known writer in Argentina, and one of the most well known Argentines in the world, Borges composed a short essay about his experience at the trial, and the popular newspaper *Clarín* published it the following day. All across the country, Argentines read his statement that “I, personally, do not believe in free will. I do not believe in punishments or prizes. I do not believe in hell or heaven... However, to not judge and not condemn this crime would be to foster impunity and to become, in some sense, an accomplice.”¹

As he had done in the past, Borges used his uniquely succinct style to express a complex problem that Argentina was facing. After years of brutal state terrorism, who deserved to pay for the people’s suffering? Did anyone? And what consequences would such punishment have for a society that was not only in a delicate period of transition, but also historically rather unstable, with no non-military, democratically elected government having completed its term since 1928?²

*The image on the title page of this essay was printed on the front page of the Madres de Plaza de Mayo newsletter in January 1986. The white headscarves, representing the Madres and other human rights defenders, accusatorily surround the hat of a military commander, holding the armed forces accountable for dirty war crimes.

¹ Jorge Luis Borges, “Lunes, 22 de Julio de 1985,” in *Borges: Textos Recobrados 1956 – 1986*, ed. Sara Luisa del Carril and Mercedes Rubio de Zocchi (Buenos Aires: Emecé Editores, 2003), 315. For this and all subsequent Spanish sources, translations are mine unless otherwise noted.

² Carlos Santiago Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996), 66.

On the other hand, what consequences, both moral and political, would arise from *not* pursuing such punishment? And even more fundamentally, what was the real truth about the past seven years? What had happened to the disappeared, and who had done this to them?

Questions like these are not unique to Argentina. Across the world, nations emerging from repression have developed methods of transitioning from dictatorship to democracy, and of dealing with the memory of massive human rights violations. As the Cold War ended and both right-wing and communist dictatorships toppled, a literature of “transitional justice” emerged in an attempt to draw conclusions about these processes. Originally, this literature seemed to come to a consensus that there were two basic options for societies in transition. The first was alternately referred to as the choice of “reconciliation,” “peace,” or “truth.” In this situation the wrongdoers would not be punished, usually out of fear that punishment would reopen old wounds, leading to violence and further instability (hence the name “peace”). Instead, the focus would be on forward-looking policies meant to consolidate a pluralistic democracy (“reconciliation”) and on establishing an accurate collective memory about violations (“truth”). The second option, usually referred to as “justice,” would involve punishing the fallen dictatorship for its violations. This punishment would be meted out by a judicial body after either a domestic or international trial. The most prominent example of the “truth,” “peace,” or “reconciliation” option is that of Nelson Mandela’s South African Truth and Reconciliation Commission, while an example such as the Nuremburg Trials more accurately displays the option of “justice.”³

This bright-line dichotomy, while useful in some ways, is unable to accurately account for the complexity of many nations’ transitional experiences. Argentina, for example, had both

³ For a more in-depth, but still succinct description of the truth-versus-justice concept, see Bronwyn Leebaw, review of *Transitional Justice*, by Ruti Teitel, *The American Journal of Comparative Law* 49 (2001): 363-366.

trials and a truth commission, CONADEP (for *Comisión Nacional sobre la Desaparición de Personas*). Further complicating the situation, there were amnesties following the trials, but those amnesties were eventually nullified, paving the way for new trials that took place twenty years after the dictatorship fell. The amnesties and the truth commission would seem to fit the “truth” or “peace” option, but the early trials and more recent attempts to punish violations would seem to put Argentina in the “justice” category. The literature on transitional justice has attempted to deal with complexities like these in various ways. One suggestion has been that while we may assign mechanisms like trials to the category of “justice” and those like truth commissions to the category of “truth” or “peace,” most nations use a combination of mechanisms from both categories.⁴ Another proposed theory is that instead of two distinct choices, there is a spectrum of options for nations in transition, ranging from those most friendly to those least friendly to fallen dictatorships.⁵ Despite these proposed theories, no consensus has yet been reached on how the field of transitional justice can most effectively account for complexity, and the truth-versus-justice viewpoint is still dominant in many ways.

Most of the literature associated with transitional justice comes not from historians, but from political scientists and legal scholars. Interestingly, the same seems to be true of literature specifically relating to the process of Argentine transition. Political scientist Alison Brysk; the human rights organization Americas Watch; and Carlos Santiago Nino, legal scholar and former advisor to transitional president Raúl Alfonsín, to name just a few, have published works about the transition. Brysk argues that the trials were a success on many fronts, stating that they at once “broke the Proceso’s [dictatorship’s] monopoly on truth,” “inaugurated a new level of

⁴ Kathryn Sikkink and Carrie Booth-Walling, “Argentina’s contribution to global trends in transitional justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 301-324.

⁵ Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000).

institutional legitimacy,” and served as “a deterrent to those who would violate human rights in the future.”⁶ Americas Watch, on the other hand, is more hesitant, agreeing that the trials were able to establish a “principle of legitimacy,” but also claiming that the amnesties that followed were a “clear step backwards” that violated international law and possibly even the Argentine constitution.⁷ Finally, Nino seems to fluctuate, defending transitional president Raúl Alfonsín’s policies regarding the limiting of trials, then declaring that the project failed when Carlos Menem (who succeeded Alfonsín) pardoned even the convicted Junta leaders, and finally arguing that the trials were still a success because of the change in the “moral consciousness” of the Argentine people that they caused.⁸

As these examples demonstrate, it is notable not only that most of the literature on the Argentine transition comes from fields other than history, but also that scholars have highly divergent opinions regarding the transition’s success. While some emphasize that Argentina was the first nation in Latin America (and remains today one of the only nations in the world) to successfully hold domestic trials condemning former leaders for human rights violations, others choose to focus on the fact that, until more than twenty years after the fall of the dictatorship, almost no lower-ranking officers faced punishment and even several Junta leaders were able to walk free. Interviews I conducted with those who experienced the transition revealed that these same differences of opinion exist within the Argentine community. Some claimed that the trials were essentially a failure, and that “the only way to get justice in this country is to buy a pistol.”⁹

⁶ Allison Brysk, *The Politics of Human Rights in Argentina: Protest, Change, and Democratization* (Stanford: Stanford University Press, 1994), 87.

⁷ Juan E. Mendez, *Truth and Partial Justice in Argentina: An Americas Watch Report* (New York: The Americas Watch Committee, 1987), 2, 82, 85.

⁸ Nino, *Radical Evil on Trial*, 104.

⁹ Thomas Scheetz, interview by the author, Buenos Aires, Argentina, November 2011.

Others viewed them as far more successful, stating that “it is a cliché to claim that the trials did not help” and that as “something that had never happened before” they had a “huge impact.”¹⁰

This essay will contribute to this debate by developing a new framework through which to view Argentina’s transition, and then engaging in an analysis of its various stages through that new lens. Specifically, rather than viewing the options available to Argentina as either a dichotomy or a scale, this essay will present Argentina’s transitional process as an attempt to achieve three interrelated goals: justice, truth, and peace. Furthermore, by examining the ways in which different actors in the transitional process interpreted or perceived these goals, it will attempt to explain how and why such widely varying views of the trials’ success arose. Finally, the essay will incorporate an analysis of the recent resurrection of dirty war trials, an issue with which most scholars have not yet had the opportunity to engage.

The sources I have used to examine these questions include both Argentine and international documents, and span twenty years of thought on the subject of post-dirty war justice. I have consulted prominent Argentine newspapers such as *Clarín* and *Página 12*, as well as *Diario del Juicio*, the ephemeral newspaper devoted specifically to covering the junta trial. Beyond this, I have worked with documents produced by several human rights organizations in Argentina. Some of these were collected on microfilm by Princeton University, and others were collected by me personally during a short research trip to Argentina in November 2011. In the international realm, I have researched the attitudes of U.S. newspapers, mainly the *New York Times*, towards the Argentine transition, and consulted reports issued by U.S.-based human rights organizations. Finally, I have conducted four interviews with members of the Argentine human rights community and with individuals who were otherwise connected to the trials. These

¹⁰ Rosa Zlachevsky, interview by the author, Buenos Aires, Argentina, November 2011. Translations from Spanish are my own in this and all subsequent interviews.

interviews supplement my documentary research with personal accounts of the transition. All translations from Spanish are my own unless otherwise noted, and interview extracts come from my recordings of the conversations when possible, and from notes I took during the interview when not.

The essay begins with an overview of the Argentine transition and the conflict that led to it in both political and legal terms. It then goes on to explain the three objectives that the Argentine transition attempted to achieve, and the ways in which different actors understood them. The essay continues with an analysis of the major stages of the transition (the junta trial, its aftermath, and the unraveling of the prosecution project) as viewed through this three-objective lens. Finally, the essay addresses the recently resurrected trials and what they mean for our understanding of Argentina's long transition.

The Dirty War and Argentina's Transition Process

When Juan Domingo Perón, who had dominated Argentine politics for almost three decades, passed away in 1974, he left behind a chaotic and divided nation. Political violence quickly escalated, with left- and right-wing groups (both of which claimed to represent the “true” Peronism) committing terrorist acts. Socialist and communist guerrillas, inspired by Perón’s rhetoric of equality and workers’ rights, engaged in urban warfare on his behalf. At the same time, government-sponsored death squads united under the Argentine Anti-Communist Alliance pursued the military-authoritarian aspect of Perón’s legacy, seeking to crush leftist opposition.¹¹

This chaos, as well as the military’s keen sense of political opportunism, led to a 1976 *golpe de estado*, or coup, in which the armed forces ousted President Isabel Perón and installed in her place a three-member Junta comprised of Army General Jorge Rafael Videla, Navy Admiral Emilio Eduardo Massera, and Air Force Brigadier General Orlando Ramón Agosti. Videla was appointed president of the nation. Given Argentina’s history of military intervention, and the nation’s general belief that the armed forces were a legitimate authority to turn to when democracy was ineffective, most did not view the *golpe* as a cause for alarm. In fact, many welcomed it, believing that military rule would mean less violence and more stability.¹²

This expectation proved to be highly misguided, as the military regime of 1976-1983 engaged in a level of repression beyond that of any previous Argentine government. Inspired by the doctrine of national security, the Junta sought to eliminate “the enemy within” through their *proceso de reorganización nacional*, or national reorganization process, commonly referred to as

¹¹ Martin Edwin Andersen gives a detailed account of this period and how it led to the dirty war. Martin Edwin Andersen, *Dossier Secreto: Argentina's Desaparecidos and the Myth of the "Dirty War"* (Boulder: Westview Press, 1993), 68-172.

¹² Brysk, *The Politics of Human Rights in Argentina*, 26-28.

“*el proceso*.” Although they claimed this was necessary in the face of left-wing guerrilla violence, and this guerrilla violence was real, it was certainly not strong enough to justify a “*guerra sucia*,” or dirty war, where all concepts of restraint were ignored in favor of a by-any-means-necessary approach in which no strategy, no matter how abhorrent, was off limits.

Despite having “reformed” Argentina’s laws until it was legal to engage in almost unlimited repression of political dissidence, those in power chose to work in secret, beginning the use of clandestine state terrorism that would result in the kidnapping, torture, and death of an estimated 30,000 people.¹³ Some of these victims were suspected guerrillas, but the majority were either nonviolent political actors or civilians selected for reasons such as their relationships with suspected guerrillas. Videla himself admitted that the targets of the *proceso* were not always violent: in a newspaper quote popularized by CONADEP’s *Nunca Más* report he stated that: “A terrorist is not just someone with a gun or a bomb, but also someone who spreads ideas that are contrary to Western and Christian civilization.”¹⁴

The form of repression the dictatorship used was called “disappearance.” A typical disappearance involved a squad of security forces appearing at someone’s home at night, blindfolding and kidnapping him or her. The victim would then be taken to a clandestine detention center where he or she would be tortured for anywhere from a few days to a few months in an effort to gain information about other “subversives.” The ultimate fate of the vast majority of *desaparecidos* (disappeared ones) was to be killed by their torturers. If the family or friends of a victim sought information about the whereabouts of a *desaparecido* by contacting

¹³ Marguerite Feitlowtiz, *A Lexicon of Terror: Argentina and the Legacies of Torture* (New York: Oxford University Press, 1998), ix.

¹⁴ *Nunca Más: A Report by Argentina’s National Commission on Disappeared People*, trans. Writers and Scholars International Ltd. (London: Faber and Faber, 1986), xiii.

the authorities, including the police or the courts, in almost every case all they would receive was complete denial of any knowledge or involvement.¹⁵

The height of this “dirty war” took place during the first three years of the dictatorship.¹⁶ Repression continued after this time, but became less severe as the military regime began to destabilize due to internal disagreements, economic crises, and international pressure. The Junta led by Videla was replaced by another and finally another, until 1983, when a disastrous war with Great Britain over the Falkland Islands led the military regime to collapse under the weight of its own failure. Before the military made its exit, though, it claimed that there were no clandestine detention centers or secret prisoners, and decreed a self-amnesty law called the “Law of National Pacification,” which preemptively pardoned all members of the armed forces for dirty war crimes.

It is important to note that although the dirty war was, in theory, clandestine, an active and growing human rights movement had raised society’s awareness of *desaparecidos* as the military regime began to collapse. Most famously, a group called the Madres de Plaza de Mayo (Mothers of Plaza de Mayo), made up of the mothers of *desaparecidos*, held regular marches in the Plaza de Mayo, Argentina’s central political space. The purpose of these demonstrations was to publicly demand information on the whereabouts of their missing relatives. The white headscarves the Madres wore during these marches (which appear in the image on this essay’s title page) quickly became a symbol of peaceful resistance.

In addition to the Madres de Plaza de Mayo, there were several other important human rights groups which helped to shape Argentina’s post-dirty war future. Alison Brysk identifies ten such organizations, dividing them into three subcategories. Her first subcategory is that of

¹⁵ Ibid., 9-209.

¹⁶ Brysk, *The Politics of Human Rights in Argentina*, 38.

“civil libertarian” groups, meaning those which emphasized documentation of evidence and legal activism as strategies for reform. Several of these were founded before the 1976 coup. The second subgroup is that of “family-based” organizations, including the Madres de Plaza de Mayo. These groups were formed during the dirty war by the families of victims of state terrorism. Brysk’s final subcategory is that of religious groups. The Catholic Church was notably not a force for human rights in Argentina as it had been in other Latin American nations. However, several religious leaders broke with this trend, founding organizations which sought to promote human rights at home and throughout Latin America. Brysk’s framework is useful for understanding the different motivations and goals of groups within Argentina’s human rights movement. This essay will focus mainly on family-based and civil libertarian organizations.¹⁷

The first democratically elected president after the *proceso* was Raúl Alfonsín of the *Unión Cívica Radical* (UCR, or Radical Party). Most observers agree that he was elected due to his campaign’s focus on human rights, and specifically his pledge to bring dirty war criminals to justice.¹⁸ Within only a few days of assuming the presidency, Alfonsín announced that a truth commission would be formed to investigate the crimes of the dirty war, and that the nine leaders of the first three Juntas would face trial. These announcements received much attention, but less attention was given to the more moderate aspects of his proposal, such as the idea that only the most prominent leaders of the *proceso* should face punishment, and that military courts should have the first opportunity to try these leaders so that the armed forces could cleanse themselves of the past.

When Alfonsín’s specific plans became clear with the passage of Law 23049, the Law to Amend the Code of Military Justice, human rights groups began to protest. Civil libertarian

¹⁷ Brysk, *The Politics of Human Rights in Argentina*, 45-51.

¹⁸ Nino, *Radical Evil on Trial*, 66; Graciela Fernández Meijide, *La Historia Íntima de los Derechos Humanos en la Argentina* (Buenos Aires: Editorial Sudamericana, 2009), 16.

groups, most notably the Centro de Estudios Legales y Sociales (Center for Legal and Social Studies, or CELS), had long been filing cases in civilian courts against members of the armed forces for their dirty war crimes. Law 23049 stopped all these cases in their tracks and transferred them to military courts, a move which raised much opposition.

But despite human rights groups' displeasure with some of Alfonsín's plans, they came together to support his truth commission, CONADEP, collecting massive amounts of documentation in order to build the largest possible body of evidence about dirty war crimes. The result was the instantly best-selling *Nunca Más* report, released publicly in 1984. This report declared that the *proceso* had been a coordinated and systematic set of human rights violations, documented more than 8,000 cases of disappearance, and confirmed the existence of more than 300 clandestine detention centers throughout Argentina.¹⁹ Today CONADEP is widely considered to be the first effective and well-known truth commission in the world.²⁰

In addition, all the evidence CONADEP gathered was handed over to the state for use in prosecuting those who had committed the documented crimes. The question of what this prosecution would look like, though, was still controversial. Law 23049 had mandated that cases of dirty war crimes be appealed to civilian courts, but military courts stalled long past their deadlines. Human rights organizations began petitioning civilian courts to take these cases out of the military's hands, and after a shocking declaration by the military courts that they found nothing illegal in the actions of the nine Junta leaders, the Court of Appeals of Buenos Aires finally assumed jurisdiction over the Junta leaders' cases. The trial that took place as a result was the famous *juicio a las Juntas*, or Junta trial. This months-long affair in which all nine Junta leaders were tried for crimes of murder, torture, and kidnapping in a public, oral proceeding

¹⁹ *Nunca Más*, 51.

²⁰ Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 16.

captivated the nation and gained international attention. It was the first time in history that a Latin American nation (or, arguably, any nation) had overcome the pressure for impunity and condemned its former leaders for human right violations.

The trial took place between April and December of 1985, and the final sentencing condemned Videla and Massera (the top two leaders of the dirty war) to life in prison. On the other hand, all three members of the third Junta were acquitted, as was the Air Force Brigadier General of the second Junta. The remaining Junta leaders received light sentences of less than twenty years. Although the trial received much praise internationally and from sectors of the Argentine population, the human rights movement was discontented. Two life sentences did not seem like effective compensation for tens of thousands of unnecessary deaths, and with the end of the attention-grabbing Junta trial advocates feared that the pressure for punishment of other accused repressors would fade away.²¹

They were largely right. In 1985, when the Junta trial was taking place, there were more than 2,000 separate dirty war-related complaints, against at least 650 separate individuals, pending before Argentine courts.²² But as the Junta trial came to a close some members of the Radical Party, which had previously been against impunity, began to believe that justice had been served and that it was time to put a stop to trials that would otherwise drag on for years. This led to the December 1986 passage of a law known as *Punto Final* (Full Stop), which dictated that 60 days after the law's enactment Argentine courts would not accept any new dirty war complaints. The law, which aimed to placate the military by limiting the number of officers

²¹ For example, Emilio Mignone, leader of the human rights group Centro de Estudios Legales y Sociales (CELS), stated that there would be “enormous pressure for an amnesty or a law of national reconciliation or something else of this nature” after the Junta trial. “Debe crearse una comisión parlamentaria, ya,” interview with Emilio Mignone, *Madres de Plaza de Mayo*, March 1985, 4.

²² Mendez, *Truth and Partial Justice in Argentina*, 61.

who would be tried, largely backfired, in what Alfonsín later called a “boomerang effect.”²³ Human rights groups and the courts went into overdrive, processing cases so quickly that after the 60 days had passed, several hundred members of the armed and security forces still faced trial, as compared to the few dozen the government had expected.²⁴ The military was highly dissatisfied with this result, and the human rights movement remained displeased that any sort of impunity would be allowed.

Although his plan did not work, Alfonsín’s desire to placate the military through Punto Final was not necessarily foolish, as Argentina’s armed forces remained powerful throughout the transition. The president’s worst fears were realized with the April 1987 “Easter Rebellion,” in which the military responded to the arrest of one of their own with the threat of rebellion. Many young, active military men declared that they would no longer submit to Alfonsín’s constitutional government, and the incident only ended when 50,000 civilians surrounded the military base where the rebellion was headquartered, “defying the soldiers to use their weapons against unarmed civilians.”²⁵ Even then, it was only negotiations between Alfonsín and the rebellion’s leaders that truly ended the conflict.²⁶

Alfonsín denied promising any sort of amnesty to the rebels during these private deliberations, but only a few months later, in June 1987, Congress passed the law of “*Obediencia Debida*,” or “Due Obedience.” Under this law, nearly all lower-ranking officers were pardoned for their involvement in dirty war crimes, with the justification that they were merely following orders. Only those with command power were still eligible to be punished, which meant only a

²³ Raúl Alfonsín, *Memoria Política: Transición a la democracia y derechos humanos* (Buenos Aires: Fondo de Cultura Económica de Argentina, 2004), 50.

²⁴ Mendez, *Truth and Partial Justice in Argentina*, 66-67.

²⁵ *Ibid.*, 68

²⁶ Nino, *Radical Evil on Trial*, 95-99

few dozen members of the armed forces could still stand trial. The law was viewed by the human rights movement and many others as an amnesty.

The human rights movement would soon face more disappointment. Alfonsín fell from power in the face of economic crisis, and was replaced by Carlos Menem. In 1989 and 1990 Menem did huge damage to the cause of post-dirty war justice by pardoning nearly every person who had been convicted of dirty war crimes, including the Junta leaders condemned in the famous *juicio a las Juntas*. Essentially, no one would face any significant punishment for the seven years of state terrorism and 30,000 disappearances that constituted the dirty war. In the eyes of many, justice had failed.

As it turned out, though, this was not the end of the story. CELS continued to bring cases before the courts and developed a unique legal apparatus called a “truth trial.” Here, the courts became like temporary truth commissions, following the legal procedures of a trial to discover the truth about many dirty war crimes despite the fact that the guilty could not be punished. Political tides turned, and in August 2003 the Argentine Congress repealed both *Obediencia Debida* and *Punto Final*. In 2005 the Supreme Court declared those laws and Menem’s pardons unconstitutional, and dirty war trials resumed. Whether or not these new trials, taking place more than twenty years after the dictatorship fell, can be considered part of the same process as the 1985 Junta trial is an interesting and debatable question. What is clear, though, is that Argentina’s transitional process was long and complex, resisting simplification and resulting in diverse interpretations of its failure or success.

Argentine Objectives: Justice, Truth, and Peace

The announcement that the first three Juntas of the Dirty War would stand trial was greeted with enthusiasm from almost every sector of Argentine society.²⁷ Led by Argentina's most prominent human rights organizations, an estimated 70,000 to 100,000 people took to the streets on April 22, 1985, the first day of the trial, in order to show their support.²⁸ Expectations were high as a huge amount of legal, historical, and even emotional significance was bestowed on the event. In contrast to the dichotomized, peace-versus-justice view that has mostly dominated transitional justice scholarship, there were three overlapping objectives that Argentines, and especially the Argentine human rights community, hoped to achieve through the prosecution of dirty war criminals.

The first of these objectives was to legally punish the guilty, and in this sense achieve "justice." The second was to set the historical record straight, transforming and fixing the nation's collective memory of the dirty war, thus achieving the transitional goal of "truth." Finally, human rights advocates saw trials as a way to promote future democratic peace, believing that the foundation of truth and justice they could provide was a base without which a new, democratic Argentina could not be built. This essay will refer to these three goals using the keywords "justice," "truth," and "peace." Although the word "reconciliation" may seem

²⁷ As the *Diario del Juicio* reported, in November of 1985 92.4% of Argentines were in favor of the Junta trial. "Encuesta: Que Opinan Los Argentinos del Juicio," *Diario del Juicio*, November 12, 1985, 1.

²⁸ Graciela Fernández Meijide, APDH member and head of CONADEP's deposition department, is the source for both the 70,000 estimate and the 100,000 estimate of attendance, having given both numbers at different times. Her reference to 70,000 attendees is located in *Los Argentinos no podemos perder el juicio*, pamphlet, Asamblea Permanente por los Derechos Humanos, July 1984, 2, Princeton University Latin American Microfilm Collection, Human Rights in Argentina: A Collection of Pamphlets, Reel 1. The 100,000 estimate can be located in Fernández Meijide, *La Historia Íntima de los Derechos Humanos*, 300.

preferable to “peace” due to its specificity, I have chosen to avoid it because, in the Argentine context, it is often viewed as a “code word for impunity.”²⁹

The significance that human rights groups bestowed on the idea of criminal trials could be observed even before the Junta trial began. In November 1984 (after the fall of the dictatorship but before the start of the Junta trial), for example, the Asamblea Permanente por los Derechos Humanos (APDH, or Permanent Assembly for Human Rights) held a general meeting about the “defense, affirmation, and deepening of democracy.” The agenda for this meeting is quite telling. The “prosecution of state terrorism,” or in other words the prosecution of those who were guilty of dirty war human rights violations, was the very first item to be discussed. It would be considered even before “dismantling the apparatus of repression,” and “national defense policy within the democratic state.” The fact that trials were discussed earlier than the reform of the dirty war security structure shows just how important they seemed to human rights advocates at the time. It is important to note, though, that for them, the trial of the nine ex-commanders was just the beginning of a necessary process which, in order to be effective, would eventually include the prosecution of any and all “participants, instigators, or accomplices.”³⁰

As the prosecution of the Junta leaders in civilian court began in the spring of 1985, the general importance of trials expressed at the 1984 APDH gathering began to clarify itself into specific expectations and meanings, revealing the three objectives that the human rights community, and in some cases other major actors, hoped to achieve. The first of these goals was that of “justice.” This was the goal of any criminal trial: to exercise the force of law to punish those who committed the crime.

²⁹ Naomi Roht-Arriaza, “The new landscape of transitional justice,” in *Transitional Justice in the Twenty-First Century*, 12.

³⁰ *Encuentro para la Defensa, Afirmación, y Profundización de Democracia*, pamphlet, Asamblea Permanente por los Derechos Humanos, December 1984, 2- 3, Princeton University Latin American Microfilm Collection, Human Rights in Argentina: A Collection of Pamphlets, Reel 1.

Human rights groups, major media outlets, and Alfonsín's transitional government all agreed on this goal. One place where this can be seen quite clearly is in the *Diario del Juicio* newspaper that reported only on the trial, and its portrayal of the event as an outcome-focused legal proceeding. For instance, in the first issue there was an article called "the points that prosecutor Strassera has achieved in his favor." This article stated that "the most dramatic testimonies are not always the most valuable from the point of view of the prosecutors. Some less well known testimonies offer overwhelming evidence of what they are trying to prove."³¹ It then went on to summarize some of these strategically significant testimonies, which presumably had not received much media coverage due to their lack of sensational content. This article, placed early in the issue with a large and eye-catching headline, demonstrates that for the publishers of *Diario del Juicio* (who also published a general left-wing newspaper called *Pérfil*), the trial was more than political theater and more than a process of exposing facts. The outcome, which would hopefully be the punishment of the Junta leaders, was extremely important, and the steps that would result in that outcome were significant enough to be reported on, even when they did not contribute to a flashy narrative.

Another *Diario del Juicio* headline stated that the argument most likely to be used by the Juntas' defense lawyers, "the argument of legitimate defense," was legally "unsustainable."³² Without any moral outcry, the article calmly argued that mass kidnapping, torture, and murder are not "rationally appropriate responses" to a guerrilla threat, and since the legal concept of "legitimate defense" only applies to "rationally appropriate responses," the Junta leaders would not be able to turn to this argument successfully. The fact that *Diario del Juicio* was engaging in this type of legal analysis shows again that the publishers viewed the trial as a legal proceeding

³¹ "Los puntos a favor que ya logró el fiscal Strassera," *Diario del Juicio*, May 27, 1985, 2.

³² Alberto Fernández, "La legítima defensa es un argumento insostenible," *Diario del Juicio*, May 27, 1985, 3.

above all else. In articles like these they sought to educate the public about what was happening in legal terms, rather than political or moral ones, thus demonstrating their belief that the trial was about “justice” in the sense of achieving punishment of criminals through the exercise of the rule of law.

One more way in which the publishers of *Diario del Juicio* demonstrated this belief was by attempting to show that the trial was truly fair, with the rights of the defendants being guaranteed even in this extraordinary situation.³³ They even took care to note in a secondary headline that the author explaining this was a qualified lawyer and legal scholar. Here, again, *Diario del Juicio* drove home the notion that this proceeding was about law rather than drama, and serving justice rather than seeking vengeance.

Within the singular goal of using Argentina’s democratic legal system to punish those responsible for dirty war repression, there were multiple motives involved. The first of these can be described as preventive, and the second as retributive. Both the government and human rights groups shared the idea of preventive justice, believing that the trial was meant to act as a disincentive to would-be repressors and thus prevent future violations. The Madres de Plaza de Mayo, for instance, covered the front page of their monthly newsletter with the headline “Without Punishment, They Will Return,” accompanied by an iconic photo of ex-Junta leader Jorge Rafael Videla being sworn in as president of the nation.³⁴ The APDH also emphasized the preventive aspect of justice, responding to the question “What is the purpose of this trial?” with the answer “to ensure that terror will never again fall upon a defenseless people at the hands of their own armed forces.”³⁵ The government’s agreement with this motive can be observed in the

³³ Enrique Paixao, “El juicio público a las Juntas no lesiona las garantías de defensa,” *Diario del Juicio*, May 27, 1985, 4.

³⁴ “Sin Castigo, Volverán,” *Madres de Plaza de Mayo*, March 1985, 1.

³⁵ Mirtan Mantaras, in *Los Argentinos no podemos perder el juicio*, pamphlet, 7.

autobiography of President Raul Alfonsín. Discussing his decision to try the nine Junta leaders, he wrote that “I was convinced that every process of democratic transition should attempt to achieve one primary and exclusive goal: to prevent the commission of future human rights violations.”³⁶

The second possible purpose of legally punishing the Junta leaders was to achieve some level of retribution for the pain that the dirty war had caused Argentine society, especially for victims and their families. This call for retributive justice came mostly from human rights groups rather than the government, and especially from what Brysk calls “family-based” groups, which were composed primarily of *afectados* (affected ones, meaning those who had either survived disappearance or were the family of dirty war victims). In an April 1985 speech, for instance, Madres de Plaza de Mayo leader Hebe de Bonafini quoted a poem by Pablo Neruda: “Por estos hijos nuestros,/ nuestros hijos,/ pido castigo/ para los que de sangre/ salpicaron la patria,/ pido castigo...” (“on behalf of these children,/ our children,/ I ask for punishment/ for those who with blood,/ splashed the nation,/ I ask for punishment..”).³⁷ Asking for trial and punishment “on behalf of our children,” Bonafini demonstrated the call for retributive justice that *afectados* like herself frequently made during this period. Juana Sapire, the wife of disappeared filmmaker Raymundo Gleyzer, also demonstrated it when she told me in an interview that she would “like for [dirty war criminals] to suffer as much as they can for as long as they can.”³⁸ The government, on the other hand, did not wish to seek retribution. Alfonsín found the retributive attitude of the human rights movement to have “radicalized its demands in an extreme

³⁶ Alfonsín, *Memoria Política*, 36.

³⁷ Hebe de Bonafini, “Pido Justicia,” *Madres de Plaza de Mayo*, March 1985, 11.

³⁸ Juana Sapire, interview with the author, New York, NY, October 2011.

way.” He preferred to “combine the desirable and the possible in paying off the debts of the past,” focusing primarily on preventive justice and “always keeping in mind the future.”³⁹

An interesting feature of the concept of preventive justice is that it makes “justice” less of a goal in itself, and more of a means to an end. In this case, that end was another one of Argentina’s transitional goals: “peace,” which this essay will shortly return to. The difference between retributive and preventive justice, then, is basically a difference in prioritization. When it comes to retribution, “justice” is a goal in itself, either on equal footing with or more important than “peace.” With prevention, “peace” is primary, and “justice” is secondary. The consequences of these differing senses of prioritization, and the fact that Alfonsín preferred one while the human rights community preferred another, will be further discussed in later sections of this essay.

The second accomplishment that was hoped for from criminal trials was the establishment of a collective truth about what had happened during the *proceso*. Since dirty war repression was clandestine, society’s ideas of what had taken place were, as one observer described them, “very fragmented.”⁴⁰ This made the creation of an agreed-upon history even more important in this case than in other cases of massive human rights violations. That the trials were expected to create this history was made clear in the first issue of *Diario del Juicio*. In a supplement to the issue entitled “Trial of the Century,” the newspaper sought to justify its existence as a periodical focused exclusively on one event. The front page bore a headline reading “Because history is the prologue to the world our children will inherit.”⁴¹ It went on to explain that the paper’s existence was “less of an editorial idea, and more of a historical

³⁹ Alfonsín, *Memoria Política*, 37.

⁴⁰ Zlachevsky, interview.

⁴¹ *Diario del Juicio*, May 27, 1985, Supplement, 1.

obligation.”⁴² The publishers intended for readers to “archive and collect” the paper so that they could “respond to [their] children when, after some years, they begin to ask, ‘What happened?’”⁴³ The vast majority of each issue of *Diario del Juicio* consisted of printed versions of testimonies given at the trials, and the idea seems to have been that these testimonies, combined with legal commentary and the trial’s final outcome, would be the definitive historical record of the dirty war, and the primary way of explaining what had happened to those who were not there. The trial would create the truth that was transmitted to future generations.

Human rights groups also expressed the notion that the trial of the Junta leaders was intimately linked with the question of historical truth. At its 1984 meeting on democracy, one of the primary reasons the APDH (Permanent Assembly for Human Rights) found for supporting trials was that they would “investigate the facts,” fully exposing them to the public and thus completing the work that CONADEP had begun.⁴⁴ In a July 1985 pamphlet entitled “We Argentines cannot lose this trial,” the APDH again discussed the “truth” objective, claiming that it sought to “extend the [trial’s] scope of reflection” by providing a summary of its proceedings thus far, maintaining that “nothing would be more tragic than that these testimonies remain simple anecdotes.”⁴⁵ The APDH, then, sought to make the testimonies more than stories. By convicting the Junta leaders and thus “winning” the trial, they hoped to turn the testimonies into accepted historical truth. Within the same pamphlet, Graciela Fernández Meijide (APDH member and head of CONADEP’s depositions department) specifically stated that the trial was

⁴² Ibid.

⁴³ Ibid.

⁴⁴ *Encuentro para la Defensa, Afirmación, y Profundización de Democracia*, pamphlet, 15.

⁴⁵ *Los Argentinos no podemos perder el juicio*, pamphlet, cover.

about both “truth and justice,” rather than justice alone, and that with the trials, Argentina had “decided to face the truth.”⁴⁶

Government actors also recognized “truth” as one of the trial’s objectives. Alfonsín himself stated that part of his plan was to “explicitly bring the subject of repression exercised by the state to the attention of society,” or in other words to raise awareness about what had taken place during the dirty war.⁴⁷ He also acknowledged that one major function of the trial was to “establish the existence of [the dictatorship’s] organized criminal plan.”⁴⁸ Here, again, Alfonsín stated that one purpose of the trial was to establish the truth. The president’s advisor, Nino, confirmed this when he wrote that annulling the military’s self-amnesty law (the first step necessary to hold trials) was equivalent to “acknowledging that society demanded knowledge of the truth.”⁴⁹

The third and final objective that trials were expected to promote was that of “peace,” meaning the long-term establishment of a stable democracy and the prevention of future human rights violations. Human rights groups were quick to claim that the trial of the Junta leaders (as well as those of lower-ranking officers) would promote peaceful and stable democracy, offering many different ideas on how it could do so. There was the suggestion, for instance, that allowing civilian courts to try dirty war criminals would help to establish a strong and independent judiciary, something key to the survival of democracy.⁵⁰ The Madres de Plaza de Mayo also expressed the idea that trials were somehow a gateway, or at least a necessary prerequisite, to peaceful democracy when they launched their campaign to “give a hand to the disappeared” in early 1985. This campaign sought to bring about trials in civilian courts as quickly as possible,

⁴⁶ Ibid., 2.

⁴⁷ Alfonsín, *Memoria Política*, 36.

⁴⁸ Alfonsín, *Memoria Política*, 38.

⁴⁹ Nino, *Radical Evil on Trial*, 74.

⁵⁰ *Encuentro para la Defensa, Afirmación, y Profundización de Democracia*, pamphlet, 15.

describing its goal as ‘trial and punishment, in order to *begin* living in democracy’ (my italics).⁵¹ In their eyes, Argentina could not even start building a democracy until it punished dirty war repressors.

There was also the belief that the trial could somehow change what Carlos Santiago Nino, legal scholar and advisor to Raúl Alfonsín, called the “moral consciousness of society.”⁵² After the dirty war many identified the ease with which Argentines had given up on democratic government and the rule of law as important factors that had led to repression. What Nino and others hoped was that by convicting military leaders of horrific crimes, trials would be able to change this attitude and reinforce the belief that if rights were to be protected, democracy would need to be protected as well. As then-secretary of the APDH Juan José Prado put it, “In today’s trial... we are judging... the actions and omissions which show that we used to be an uninformed, indifferent, fearful community, but have now awoken and realized that we must never again allow this to take place.”⁵³ The APDH expressed this again in a pamphlet on the Junta trial, stating that the “awareness of reality” the trial brought was “essential to the development of a people that views democratic control over the armed forces as indispensable.”⁵⁴ The Christian human rights group Servicio de Paz y Justicia (Service of Peace and Justice) summarized this opinion quite succinctly in their slogan, “peace is the fruit of justice.”⁵⁵

Despite the faith of human rights groups in the ability of trials to help create a new, peaceful Argentina, others were skeptical about the ability of punishment to create stability.

⁵¹ “Madres + Manos, Juicio y Castigo,” *Madres de Plaza de Mayo*, February 1985, 3.

⁵² Nino, *Radical Evil on Trial*, 90.

⁵³ Juan Jose Prado, in *Defensa Nacional y Derechos Humanos*, pamphlet, Asamblea Permanente por los Derechos Humanos, September 1985, 20, Princeton University Latin American Microfilm Collection, Human Rights in Argentina: A Collection of Pamphlets, Reel 1.

⁵⁴ Mirta Mantaras, in *Los Argentinos no podemos perder el juicio*, pamphlet, 7.

⁵⁵ “La paz es fruto de la justicia” is still the slogan of Servicio de Paz y Justicia today. See their website at <http://www.serpaj.org>.

Alfonsín in particular embraced the peace-versus-justice view that has dominated so much of the thought on transitional justice, believing that too much punishment would anger the military and put the nation in danger of another coup. Essentially, he feared that “in defending human rights that were violated in the past we were risking the human rights of the future.”⁵⁶ As one might expect given his preference for preventive justice over retribution, he prioritized the goal of peace over the goal of justice in the face of this perceived conflict. Although he certainly wanted to use justice to “reinforce society’s value of the importance of human rights, respect for the rule of law, and ideological tolerance,” (or in other words, achieve the goal of “peace”), he would not hesitate to sacrifice that strategy in the face of an immediate threat to his nation’s “fragile” democracy.⁵⁷ The president, then, had a different set of priorities from those of the human rights community. He saw peace as the primary goal and justice as a secondary one that might help to reinforce it, while the human rights community believed that justice was a primary objective without which peace could never be reached.

As the Junta trial began, though, these disagreements were largely forgotten as the nation was captivated by the historic event. Even the Madres de Plaza de Mayo, a consistently radical and dissatisfied group, seemed to be caught up in the excitement of the trial’s beginning, unable to resist “reflecting on the contrasting realities of the dark night of the dictatorship and the moment in which we are now living” in their monthly newsletter.⁵⁸ Hebe de Bonafini, the leader of the Madres, even attended the first day of the trial to show her support.⁵⁹ Rosa Zlachevsky, an Argentine woman who formerly worked with the United Nations and is now writing a book

⁵⁶ Alfonsín, *Memoria Política*, 36.

⁵⁷ *Ibid.*

⁵⁸ E.L.D., “Proceso a los Comandantes del Terror: Punto Inicial,” *Madres de Plaza de Mayo*, May 1984, 4.

⁵⁹ Fernández Meijide, *La Historia Íntima de Derechos Humanos*, 303.

about the Junta trial, said that there was “a lot of hope” in Argentina as the trial began.⁶⁰ Thomas Scheetz, an American ex-Jesuit and human rights activist who has lived in Argentina since the end of the dirty war, explained that a “vibrant” atmosphere of promise seemed to envelope Argentina as the trial began. As he put it, “people thought that anything was possible.”⁶¹

⁶⁰ Zlachevsky, interview.

⁶¹ Scheetz, interview.

Expectations Confront Reality

Nino identifies the problem of high expectations that cannot be met in reality as one that plagues retroactive justice generally.⁶² It seems to be true that in the case of the Junta trial, observers grew dissatisfied as legal proceedings developed. Thomas Scheetz attended one session of the trial, and said that while it was “tremendously moving,” it was also “one of the most boring things I ever saw.”⁶³ It was not as romantic as *Diario del Juicio* (which he and, as he described it, “we all,” read) made it seem. He was particularly struck by the contradiction between the gruesome actions that witnesses described and the matter of fact tones in which they spoke, which the printed testimonies in *Diario del Juicio* could not communicate. Borges described a similar experience when he said that he “expected to hear complaints, insults, and the outrage of human flesh endlessly subjected to the excruciating miracle that is physical pain.” But instead, and Borges judged this to be “worse,” the witness discussed the horrors she had experienced “with simplicity, almost with indifference... There was no hate in her voice.”⁶⁴ While many had previously lauded the fact that the trial would be based on legality and rationality, there seems to have been a sense in which this reality, as it unfolded, was emotionally unsatisfying.

Such dissatisfaction also appeared in complaints that the legal guarantees afforded to the Junta leaders as defendants were undeserved. Borges called it “a curious observation” that leaders who had ignored the fundamental tenets of justice when they were in power now sought and received the law’s protection.⁶⁵ The Madres de Plaza de Mayo were more blunt about their opinion, preemptively expressing displeasure at the kind of treatment a fair trial would

⁶² Nino, *Radical Evil on Trial*, 39.

⁶³ Scheetz, Interview.

⁶⁴ Borges, “Lunes, 22 de Julio 1985,” 314.

⁶⁵ *Ibid.*, 315.

necessitate. “Who will enjoy these legal prerogatives?” they asked. “Precisely those who violated all of the rights that they are now granted.”⁶⁶ No one seemed willing to openly advocate that these rights (such as the right to a competent attorney and the right to call their own witnesses) should be stripped from the Junta leaders, but again, there seems to have been an emotional dissatisfaction with the necessity of granting them.

When the judges handed down their decision in December 1985, the split between those who felt this dissatisfaction and those who didn't grew. The fact that four Junta leaders received no punishment, and that even Videla and Massera were not ruled guilty of everything of which they were accused, was highly disappointing to the human rights community, especially family-based groups. The cover of the January 1986 *Madres de Plaza de Mayo* newsletter, for instance, stated that “those who committed genocide” had been “absolved of fault and of charge,” clearly indicating the Madres' belief that the “justice” goal of the trial had not been achieved. Even more dramatically, these words were written in red ink, whereas all previous covers had been in black and white only. The image (which also appears on the title page of this essay) was of the Madres' well known white headscarves, accusatorily surrounding the hat of a military commander set on a stool. The picture seemed to indicate that, with the government's failure to effectively punish the Junta leaders, the Madres and their allies were the only ones left to hold the guilty accountable.⁶⁷

Civil libertarian human rights groups were also disappointed, but they took a more optimistic view than their family-based counterparts. The front page of the January 1986 APDH newsletter spoke of the “difficulties of transition” rather than impunity for genocide, already

⁶⁶ “Madres + Manos, Juicio y Castigo,” *Madres de Plaza de Mayo*, February 1985, 3.

⁶⁷ “La Sentencia Abro Paso a la Amnistia,” *Madres de Plaza de Mayo*, January 1986, 1.

demonstrating the Asamblea's less inflammatory attitude.⁶⁸ Articles inside acknowledged that the judgment had problems, claiming that due to its leniency it “did not meet the expectations of the people” or “correspond with the publicly demonstrated evidence.”⁶⁹ However, articles also stated that the judgment would “raise awareness” and “root out” ignorance regarding dirty war human rights violations, thus helping to “arm popular memory,” and ensure that the “errors” which led to the dirty war would not be repeated.⁷⁰ Bella Friszman, the current coordinating secretary of the APDH, confirmed that one of the most important aspects of the trial was its ability to “extend” the concept of human rights to society, and that the “only way” to prevent the dirty war from happening again was to “remember it.”⁷¹ Essentially, even though the trial had not fully reached the goal of “justice,” it had done a great deal for the goal of “truth,” and this would help to move Argentina toward “peace.”

The APDH was not the only civil libertarian group to give the judgment a mixed review. The Liga Argentina por los Derechos del Hombre (Argentine League for the Rights of Man) took a similar view in its newsletter. Just as the APDH had, the Liga took issue with the judgment, claiming that the acquittals had caused “astonishment and general repudiation in all democratic sectors.”⁷² But, again like the APDH, they acknowledged the helpful role the trial had played in establishing and spreading the truth, stating that “as the days [of the trial] went by, public opinion became better informed on the details and depth” of dirty war crimes. Although the Liga did not address the question of “peace” as the APDH had, they believed that this increased

⁶⁸ “Las Dificultades de la Transición,” *Derechos Humanos*, January 1986, 1.

⁶⁹ “Benevolencia y Decepción,” *Derechos Humanos*, January 1986, 2-3.

⁷⁰ Graciela Fernández Meijide, “Un hecho tan inédito como la represión misma,” *Derechos Humanos*, January 1986, 2-3.

⁷¹ Bella Friszman, interview by the author, Buenos Aires, Argentina, November 2011.

⁷² Félix Cantaro, “La Transendencia del Juicio a las Ex Comandantes Genocidas,” *Derechos del Hombre*, January 1986, 2.

awareness would be helpful in pursuing further justice and punishment, as this “approach to the truth” had helped to win people over to the cause.⁷³

The extremely negative tone that family-based groups like the Madres used when discussing the judgment, as compared to the more positive views taken by civil libertarian groups, can thus be explained by their differing conceptions of the trial’s progress towards its three objectives. For the Madres, people who were guilty of genocide had escaped punishment; therefore justice was not served. As justice was a necessary prerequisite for peace, this also meant that true progress towards peaceful democracy had been hindered. Civil libertarian groups, on the other hand, believed that the trial had made important strides towards the goal of “truth,” which would allow Argentina to make further progress towards the goals of “justice” and “peace” in the future.

In contrast to those within the human rights community, who were either completely disdainful of the judgment or partially disappointed by it, other observers lauded the trial and its final outcome as an almost total success. *Diario del Juicio* in particular published many positive opinions on the sentencing. These tended to focus on the idea that concentrating all of one’s attention on the acquittals, as many human rights groups had done, was a mistake. The main point, and the point that the human rights community had passed over, was that this trial was the end of impunity in Argentina, or in other words, the beginning of justice.⁷⁴ One article used the notion of “being unable to see the forest for the trees” as a metaphor to express this concept.⁷⁵ Another writer in the *Diario* called the trial a “brecha de la desmemoria,” literally a “breach in forgetfulness,” meaning that it was an exception to the previous rule of forgetting and repeating

⁷³ Ibid.

⁷⁴ Eugenio Bulygin, “El fallo no se puede discutir en base a la condena de Agosti,” *Diario del Juicio*, January 21, 1986; Marcelo Pichel, “Sólo justicia, por favor,” *Diario del Juicio*, January 28, 1986.

⁷⁵ Bulygin, “El fallo no se puede discutir en base a la condena de Agosti.”

the mistakes of the past.⁷⁶ With this trial, awareness of the truth about human rights violations had been established, and this meant that stability was likely to follow. Despite the acquittal of four Junta leaders, the writers and publishers of the *Diario del Juicio* believed that the trial had significantly contributed to all three transitional goals of justice, truth, and peace, explaining why they were willing to publish headlines declaring the “triumph” of the prosecutors and paint the trial as an almost total success.⁷⁷

It should be noted that the *Diario del Juicio* had a significant commercial interest in portraying the trial as successful and historic. Not only would there be little point in buying a newspaper devoted to a pointless or failed trial, but the publisher was producing a *Libro del Diario del Juicio* which would present its most significant articles and testimonies in book form. Advertisements for this book, with the slogan “the historic trial in a historic book,” appeared frequently in the newspaper’s later issues.⁷⁸ The *Diario*’s interest in portraying the trial as successful is clear, but this does not mean its views were any less influential on its readers. Furthermore, the positive view that the *Diario* took was not unique: even international newspapers like the *New York Times*, which had no obvious interest in promoting the trial to their non-Argentine audiences, referred to the judgment as “the return of justice and self respect in Argentina.”⁷⁹

The Junta trial, then, provoked widely divergent opinions regarding its outcome. Human rights advocates were disappointed, with family-based groups believing that the trial had failed completely, while civil libertarian groups acknowledged it as a partial success. Upon examination, this disagreement seems to be based in differing perceptions of whether the

⁷⁶ Alberto Amato, “Una Brecha de la Desmemoria,” *Diario del Juicio*, January 28, 1986.

⁷⁷ Alberto Amato, “El Verdadero Triunfo del Fiscal Strassera,” *Diario del Juicio*, December 24, 1985, 7.

⁷⁸ See, for example, *Diario del Juicio*, January 21, 1986, 2.

⁷⁹ “Justice Reborn in Argentina,” *New York Times*, December 11, 1985, accessed February 1, 2012, <http://www.nytimes.com/1985/12/11/opinion/justice-reborn-in-argentina.html>.

sentencing had achieved any of the three transitional objectives. As the *Diario del Juicio* demonstrates, though, some Argentines were largely satisfied with the trial, believing that it had made significant progress towards, or perhaps even completely achieved, all three transitional goals of justice, truth, and peace. The government certainly wished Argentines to view the trial as having accomplished what it set out for, and justice as having been served. Alfonsín's push for an end to trials, first through Punto Final and then through Obediencia Debida, would soon make this quite clear.

Punto Final, Obediencia Debida, and the Indultos: The Unraveling of the Prosecution Project

Although the Radical party had previously stood against impunity and many Radical members of Congress initially opposed the notion of limiting trials, President Alfonsín was able to convince most of them to change their minds, or was at least able to wield party discipline effectively. Almost every Radical senator voted for Punto Final and the vast majority of Radical congressional representatives did the same, demonstrating almost total commitment to Alfonsín's plan to dramatically reduce the number of dirty war trials in Argentine courts.⁸⁰ Some observers blamed the Junta trial for this change of heart: with some punishment having been achieved, Radical party members were now willing to act as though justice had been done and abandon their previous commitments.⁸¹

The Argentine human rights community also united in the face of Punto Final, but in their case the goal was to effectively oppose it. Nine out of Brysk's ten major human rights groups joined together to publish a pamphlet explaining their view of the legislation. The publication claimed that there was "no real difference" between Punto Final and "an amnesty," and that it was in fact a "disguised amnesty" with the government seeking to "conceal its true aims."⁸² The pamphlet went on to describe Punto Final as "impunity" which would "encourage the repetition of repressive terrorism."⁸³ The mention of "impunity" made it clear that human rights groups viewed the law as a blow to the transitional goal of "justice." Furthermore, the notion that Punto Final would "encourage" future human rights violations called the "peace" objective into doubt, suggesting that without preventive justice a stable democracy was unlikely to survive. This was implied again when the pamphlet gestured towards unspecified "agonizing and traumatic

⁸⁰ *Ley del Punto Final*, pamphlet, January 1987, 8-9, Princeton University Latin American Microfilm Collection, Human Rights in Argentina: A Collection of Pamphlets, Reel 1.

⁸¹ Mendez, *Truth and Partial Justice in Argentina*, 62.

⁸² *Ley del Punto Final*, pamphlet, 2.

⁸³ *Ibid.*

consequences for Argentine society” that Punto Final would bring.⁸⁴ The publication further maintained that because of Punto Final, “the fate of the immense majority of detenidos-desaparecidos [detained or disappeared]” would “continue to be unknown and uncertain,” thus claiming that the new legislation also eroded the “truth” goal of the transition.⁸⁵

As the united front of human rights groups which published this pamphlet demonstrates, the passage of Punto Final largely eliminated the split between civil libertarian and family-based groups in their opinions regarding the success of the transition process. All the major groups seemed to agree that the law was chipping away at, and perhaps had even completely done away with, all three of the objectives that the trial of the nine ex-commanders had started with. They were not without supporters, as the 50,000 to 80,000 person attendance at a major anti-Punto Final march demonstrated.⁸⁶

When the human rights community’s efforts to circumvent Punto Final were rendered ineffective by Obediencia Debida, the community’s reaction was quite similar to its previous response to Punto Final. As Rosa Zlachevsky explained, Punto Final had been “a huge frustration,” but Obediencia Debida was even worse.⁸⁷ The same nine groups created another pamphlet, again outlining their view of the law as destroying all three objectives of the Argentine transition. The pamphlet claimed that “this law is not, as it pretends, a guarantee of security and stability for the constitutional government.”⁸⁸ Rather, it would create a “privileged class” of military men who would “reclaim the so-called anti-subversive struggle and its criminal methodology” as well as the right to “share in the civil government” and decide its policies.⁸⁹

⁸⁴ Ibid., 11.

⁸⁵ Ibid.

⁸⁶ Mendez, *Truth and Partial Justice in Argentina*, 67.

⁸⁷ Zlachevsky, interview.

⁸⁸ *Ley de obediencia debida*, pamphlet, 3, Princeton University Latin American Microfilm Collection, Human Rights in Argentina: A Collection of Pamphlets, Reel 1.

⁸⁹ Ibid., 9.

Essentially, then, Obediencia Debida would allow or even cause repressors to repeat their earlier dirty war crimes. At the end of the pamphlet the groups declared that their opposition was based on their belief that “only by accepting the truth of the horror that we have lived, and achieving trial and punishment of all those responsible, can we guarantee that it will never occur again, and strengthen democracy and the rule of law.”⁹⁰ For these groups, then, Obediencia Debida was in direct conflict with “accepting the truth” of the dirty war, with “achieving trial and punishment,” and with ensuring that the dirty war would “never occur again.” In their view, Obediencia Debida was an abandonment of all three transitional objectives of truth, justice, and peace.

Alfonsín did not see it this way. He claimed that the purpose of Punto Final was not to stand in the way of justice, but rather to “hurry it up” so that the nation could quickly end a situation which was “precarious for democratic stability.” The “serious climate of restlessness” within the armed forces meant that long trials could provoke a coup and put democracy in danger. Thus, Punto Final promoted peace rather than damaging it.⁹¹ Alfonsín’s advisor, Carlos Santiago Nino, made similar claims, saying that the objective of Punto Final was to promote quicker prosecutions rather than fewer prosecutions, although he criticized Alfonsín for expressing this badly at the time.⁹²

Alfonsín also claimed that Obediencia Debida was “clearly distinguishable from an amnesty or a pardon” because it did not seek to “forget, but rather to distinguish between those who had autonomous decision-making power and those who were subordinates in a system.”⁹³ The law was not passed in opposition to human rights, but in order to bolster them, because “to

⁹⁰ Ibid., 11.

⁹¹ Alfonsín, *Memoria Política*, 49-50.

⁹² Nino, *Radical Evil on Trial*, 94.

⁹³ Alfonsín, *Memoria Política*, 53.

talk about human rights is precisely to act responsibly toward the future.”⁹⁴ Obediencia Debida sought to “protect the lives of citizens and avoid bloodshed” and thus sought to protect human rights.⁹⁵ For Alfonsín, Obediencia Debida did not stop justice in its tracks, but protected both the citizenry and the members of the military who were not truly responsible for their actions, thus promoting both peace and justice.

With Punto Final and Obediencia Debida, then, differing perceptions of the laws’ effects on the goals of justice, truth, and peace were once again at the heart of Argentines’ disagreements. Human rights groups saw these laws as doing severe damage to all three objectives, and thus fiercely opposed them. Alfonsín and his supporters, on the other hand, saw them as supporting those same objectives through different means.

For reasons largely unrelated to transitional justice, Alfonsín was soon democratically replaced by a new president, the Peronist Carlos Menem. In 1989 and 1990 Menem issued *indultos*, or pardons, for all those who had been convicted of dirty war crimes, including the Junta leaders that had been condemned in the celebrated Junta trial. He claimed that it was time for Argentina to “transcend a painful era,” and that the purpose of the pardons was to “foster social reconciliation.”⁹⁶

Unsurprisingly, human rights groups once again cried out in protest, viewing this move as doing even further damage to their three objectives. Family-based organizations certainly did not believe that pardons contributed to any sort of reconciliation or peace. As the Familiares de Desaparecidos y Detenidos por Razones Políticas (Relatives of the Detained and Disappeared for Political Reasons) put it, “the open wound in the hearts of thousands of Argentines... who have

⁹⁴ Ibid., 54.

⁹⁵ Ibid.

⁹⁶ Carlos S. Menem, “For Argentine Healing,” Letter to the Editor, *New York Times*, August 15, 2001, accessed March 10, 2012, <http://www.nytimes.com/2001/08/15/opinion/1-for-argentine-healing-699764.html>.

fought to know the truth about our loved ones... will not be healed by any pardon.”⁹⁷ A pardon would not make them less hostile toward those who had killed and tortured their families, and they would continue to demand “trial and punishment for all the guilty.”⁹⁸ Civil libertarian groups were equally upset, with the Liga calling the pardons a “perverse impunity” with an “amnesic purpose.”⁹⁹ The reference to “impunity” clearly indicated the damage the pardons had done to justice, and the concept of “amnesia” brought up the conflict between pardons and truth. If society began to forget what had happened, the work that trials had done to spread facts and raise awareness would be reversed. Seven of the major human rights groups made their position even clearer in an open letter to Menem. Here, they said that while they shared his desire to “live in peace and construct a more just society,” they believed this could “only be achieved on the basis of truth and justice,” both of which were undermined by his indultos.¹⁰⁰

Many Argentines shared the frustration that human rights groups felt towards Menem’s pardons, as polls published in the leftist Argentine newspaper *Página 12* demonstrated. Different surveys returned different results, but they all agreed that the majority of the population (ranging from 63% to 81%, depending on the poll) “rejected” the pardons.¹⁰¹ The publishers of the newspaper certainly opposed them, dedicating more than twenty pages of one issue to articles that painted Menem’s decision in a highly negative light.

Despite the fact that human rights groups and many others opposed the pardons, society seemed to lack the energy to make much effort on the matter. Rosa Zlachevsky reported that by the time the pardons went through, the people’s interest in dirty war justice had faded, with both

⁹⁷ *No Indulto*, pamphlet, Familiares de Desaparecidos y Detenidos por Razones Políticas, 1, Princeton University Latin American Microfilm Collection, Human Rights in Argentina: A Collection of Pamphlets, Reel 2.

⁹⁸ *No Indulto*, pamphlet, 8.

⁹⁹ Carlos Zamorano, *Indulto: La Perversa Impunidad*, pamphlet, November 1989, Liga Argentina por los Derechos del Hombre, 20, Princeton University Latin American Microfilm Collection, Human Rights in Argentina: A Collection of Pamphlets, Reel 2.

¹⁰⁰ “Carta al presidente de la nación de los organismos de derechos humanos,” *Informedh*, September 1989, 3.

¹⁰¹ “A Contrapelo de la Gente,” *Página 12*, December 30, 1990, 10-11.

the passage of time and the nation's growing economic difficulties diverting their political energy towards other issues.¹⁰² Thomas Scheetz confirmed her statements. He was present at the main protest against the pardons, and estimated that only 10,000 people attended, a small fraction of the turnout human rights groups had been able to draw in 1986 and 1987.¹⁰³ The political will to effectively oppose impunity was simply not there. At least for now, it seemed that the story of dirty war justice was over.

¹⁰² Zlachevsky, interview.

¹⁰³ Scheetz, interview.

Reopened Trials: Peace, Truth, and Delayed Justice

As it turned out, though, Argentina had not yet finished with the question of transition. Although the government had blocked the use of criminal trials as a tool to promote the objectives of justice, truth, and peace, this did not stop human rights groups or other actors from pursuing these goals by different means. This was especially true when it came to the objective of truth, or (considering the seven years which had now passed since the fall of the dictatorship) memory. As Thomas Scheetz put it, “you can’t put an indulto [pardon] on history.”¹⁰⁴

A supplement to *Página 12* published on the day the Junta leaders were pardoned demonstrated this quite well. Titled simply “Memory,” the cover of the supplement was a match burning in total darkness, seeming to indicate that remembering the truth could be a light that overcame the darkness of the pardons. The supplement included a republishing of the introduction to CONADEP’S *Nunca Más*, as well as articles reviewing the systematic plan of human rights violations the dictatorship had launched and the Junta trial that had declared at least some leaders guilty of these crimes.¹⁰⁵

Perhaps efforts like these are the reason why human rights activists were able to continue pushing for their three transitional objectives, and to eventually begin making tangible progress. In 1995, CELS succeeded in establishing a legal “right to truth” for families of the disappeared when the Federal Court of Appeals in Buenos Aires ruled that although Punto Final and Obediencia Debida prevented further prosecution of military officers, victims’ families could still have their cases investigated. Argentina subsequently developed a unique judicial process called a *juicio por la verdad*, or “truth trial.” These trials were a sort of compromise between truth commissions and traditional legal proceedings, using the form of a criminal trial to

¹⁰⁴ Scheetz, interview.

¹⁰⁵ “Memoria,” Supplement to *Página 12*, December 30, 1990, iv, xii-xv, xvi.

investigate dirty war crimes, but foregoing the usual goal of punishing the guilty. Argentine human rights activists, and civil libertarian groups in particular, had found a way to use the legal system to pursue the goal of “truth,” despite amnesty legislation having blocked the path to “justice.”

These same groups had not given up on the goal of achieving punishment and the end of impunity for dirty war violations. As they continued to push for the repeal of *Obediencia Debida* and *Punto Final*, the political winds in Argentina began to change in their favor. With the rise of Néstor Kirchner to power in 2003, retroactive justice again moved toward the top of the policy agenda. Kirchner rated it so high as to include it as a main theme in his inaugural speech. The front page story on the inauguration in *Página 12* was titled “We arrive without rancor, but with memory,” referencing a line which had decidedly signaled Kirchner’s intention to revisit the question of dirty war justice.¹⁰⁶ The new president even declared that part of his “dream” for Argentina was the “construction of truth and justice,” again using language that was heavily associated with the human rights community’s quest for trial and punishment.¹⁰⁷

The fact that Kirchner referred to “truth” and “justice” without any reference to the third objective of “peace” or “democracy” is interesting. There are several possible explanations for this, but the most likely seems to be that by this point, Argentina was a peaceful democracy. Despite the fears of human rights groups that a stable democracy could not be built in a country that had not achieved complete retroactive justice, the years that had passed between Menem’s *indultos* and Kirchner’s ascendency to power had shown that they were at least partially mistaken. Democracy now had a real foothold in Argentina, with the nation having weathered

¹⁰⁶ Martín Granovsky, “Llegamos sin rencores y con memoria,” *Página 12*, May 26, 2003, accessed March 10, 2012, <http://www.pagina12.com.ar/diario/elpais/1-20614-2003-05-26.html>

¹⁰⁷ Ibid.

several economic crises and other serious problems without a return to military rule. The goal of “peace,” or a stable and democratic Argentina, had largely been achieved.

With Kirchner’s encouragement, the following years saw the Argentine Congress nullify Punto Final and Obediencia Debida. The Supreme Court also ruled both laws, as well as Menem’s pardons, unconstitutional. This paved the way for a reopening of trials in 2006, thirty years after the dictatorship had taken power. Since then, the thousands of complaints against dirty war criminals have been organized into several “mega-cases.” For instance, one trial prosecuted almost 20 individuals accused of participating in the operations of the famous concentration camp at ESMA (Escuela Mecánica de la Armada, or Navy Mechanics School). Between 2006 and March 2012, these reopened trials allowed 1,861 people to be newly accused of dirty war crimes. Of those, 237 have been found guilty. Only 20 have been tried and found not guilty, while 112 have been excused before trial due to lack of evidence. The rest of the accused either had their cases stalled in various stages of the judicial process, or were excused for reasons such as illness or insanity.¹⁰⁸

To go from zero condemnations to over 200 in six years seems to be an incredible achievement, and many Argentines agree with this assessment. One of these is Bella Frizman, the current Secretary of APDH and Vice President of dirty war memory organization Memoria Abierta, as well as the mother of a *desaparecida* and a testifying witness at the ESMA trial. She called the new trials “marvelous” and said that for her, publicly testifying was an “important experience.”¹⁰⁹ In response to those who claim that these new trials pale in comparison to the ideal of speedy justice, she said that “everything has its place” and “everything is important.”¹¹⁰

¹⁰⁸ “Estadísticas de los juicios por crímenes de lesa humanidad en Argentina,” Centro de Estudios Legales y Sociales, *CELS Juicios*, blog, <http://www.cels.org.ar/wpblogs/estadisticas/>.

¹⁰⁹ Frizman, interview.

¹¹⁰ *Ibid.*

For her, while the lateness of the reopened trials does make them imperfect, every effort to end impunity and spread truth is an important one, and should be regarded as such. Rosa Zlachevsky agreed that the reopened trials were “very important,” stating that by publicly presenting evidence, they were able to “recover history” that had been lost.¹¹¹ In her mind, even 30 years after the dirty war, the process of discovering and spreading the truth about it was still in progress, and the reopened trials were key to this project.

Several of Argentina’s major newspapers expressed similar optimism about the reopened trials, especially the ESMA case which was closed in October 2011, less than a month before I arrived in Argentina. An editorial in *Clarín* was entitled “The ESMA trials: the ending we dared to dream.” This ending was “the trial and punishment of the ESMA killers,” and it had finally been achieved.¹¹² Another *Clarín* article referred to the sentencing of the ESMA killers as “historic.”¹¹³ Even the right-wing newspaper *La Nación* acknowledged the significance of the trial in the way it chose to cover the story, using twitter to live-blog the reading of the judgment as it happened, especially noting the atmosphere of celebration that surrounded the condemnation of so many dirty war criminals.¹¹⁴

This atmosphere of celebration is indicative of a significant difference between the reopened trials and the 1985 Junta trial. The recent proceedings seem to be more of a political spectacle than those of the past. Juana Sapire even referred to her testimony as a “political

¹¹¹ Zlachevsky, interview.

¹¹² Miguel Bonasso, “Juicios por la ESMA: un final que ya entonces nos atrevimos a sonar,” *Clarín*, October 30, 2011, accessed March 20, 2012, http://www.clarin.com/politica/Juicios-ESMA-entonces-atrevimos-sonar_0_581941873.html.

¹¹³ Lucio Fernández Moores, “Un tribunal condenó a perpetua a doce ex represores de la ESMA,” *Clarín*, October 27, 2011, accessed March 10, 2012, http://www.clarin.com/politica/tribunal-condeno-perpetua-represores-ESMA_0_580142019.html.

¹¹⁴ “Prisión perpetua para Astiz, Acosta, y Cavallo en la causa ESMA,” *La Nación*, October 26, 2011, accessed March 20, 2012, <http://www.lanacion.com.ar/1417991-prision-perpetua-para-astiz-acosta-y-cavallo-en-la-causa-esma>.

act.”¹¹⁵ The same guarantees of law are afforded to the defendants and the trials remain true legal proceedings rather than show trials. However, the attitude of the media and the populace toward the trials seems much less solemn now than it did 25 years ago. The first major reopened trial, the prosecution of former police commissioner Miguel Etchecolatz, was televised, indicating that this time, media access to the trials would be much more open. Shouts of “murderer” and “assassin” were heard from spectators in the courtroom during the trial’s beginning, and when the sentencing was read, someone threw red paint (representing blood) all over the defendant.¹¹⁶ Juana Sapire described the public audience at her trial cheering when she asked the defense lawyer “Are you good for nothing?” and when she called the defendants “the worst garbage.”¹¹⁷ This is a far cry from the “boring” experience that Thomas Scheetz described experiencing in 1985.

The sentencing in the ESMA case saw a huge celebration both inside and outside the courthouse, with the judgment’s reading being broadcast live to watching crowds. Many observers were holding pictures of novelist and ESMA victim Rodolfo Walsh, as well as signs promoting the Argentine Communist Party and other left-wing political groups. Chants of “30,000 disappeared... present!” and “What happened to the Nazis now happens to you, wherever you run we will seek you” echoed among those who awaited the verdict.¹¹⁸ Again, this was quite different from the sentencing at the 1985 trial, where the most dramatic incident was a Madres de Plaza de Mayo leader refusing to remove her headscarf.¹¹⁹ For these crowds, and for human rights activists throughout Argentina, the reopened trials were an emotional culmination

¹¹⁵ Sapire, interview.

¹¹⁶ Larry Rohter, “Argentina’s Dictatorship Stands Trial,” *New York Times*, August 20, 2006, accessed March 10, 2012, <http://www.nytimes.com/2006/08/20/world/americas/20argentina.html>; “Argentine Sentenced to Life for ‘Dirty War’ Role,” *New York Times*, September 20, 2006, accessed March 10, 2012, <http://www.nytimes.com/2006/09/20/world/americas/20ARGENTINA.html>.

¹¹⁷ Juana Sapire, interview.

¹¹⁸ “Prisión perpetua para Astiz, Acosta, y Cavallo en la causa ESMA,” *La Nación*.

¹¹⁹ “Un pañuelo fue el único incidente,” *Diario del Juicio*, December 11, 1985, 4.

to decades of work and a fulfillment of their long-held hopes. This emotional experience, exacerbated by the 24-hour news cycle and constant presence of social media that characterize 21st century journalism, created a more excited, less disciplined atmosphere surrounding the reopened trials. This different atmosphere marks them as a separate phenomenon from the famous trial of 1985, with a different significance for the Argentine people.

Of course, the fact that these trials are necessarily different from those of 1985 due to the passage of time highlights a problem with the justice they provide: it is extremely delayed. As Thomas Scheetz put it, “thirty years is not a speedy trial.”¹²⁰ In his view, it is now “too late” for the type of justice he had hoped for in 1985. Rosa Zlachevsky similarly emphasized the need to “put things in their place,” to understand that these new trials, while “necessary,” simply could not carry with them the same feeling of possibility that the 1985 trials had.¹²¹ Bella Frizman explained that with the new trials, “justice is better,” but still “not the best.”¹²²

Despite the question of whether the punishments now being handed down can really fulfill the transitional goal of “justice” so late, the reopened trials have made one thing very clear. The goals of “truth” and “peace,” in a broad sense, have been effectively achieved in Argentina. Huge majorities of Argentine voters supported the reopening of trials in the early 21st century, indicating that they were well aware of the seriousness of violations that took place.¹²³ Bella Frizman described “a mountain of activities” memorializing the disappeared, such as concerts, performances, and ceremonies, that *afectados* frequently attend.¹²⁴ The white headscarves that symbolize that Madres and the post-dirty war human rights movement are

¹²⁰ Scheetz, interview.

¹²¹ Zlachevsky, interview.

¹²² Frizman, interview.

¹²³ Larry Rohter, “Argentine Congress Likely to Void Dirty War Amnesties,” *New York Times*, August 21, 2003, accessed March 10, 2012, <http://www.nytimes.com/2003/08/21/world/argentine-congress-likely-to-void-dirty-war-amnesties.html?pagewanted=all&src=pm>.

¹²⁴ Frizman, interview.

painted on the ground in the Plaza de Mayo. The new trials received intensive coverage by all of Argentina's major newspapers, whether politically left, right, or center, and some of the trials were televised. Although the passage of time means that disagreements remain about whether or not "justice" for the pain of the dirty war will ever be achieved, the old and new trials, combined with other important factors, have led to the objectives of "truth" and "peace" being largely accomplished.

Conclusions

In this essay, I have used historical analysis of Argentina's post-dirty war trials to suggest a new viewpoint from which the nation's transitional process can be analyzed. In the words and writings of those who experienced and shaped the Argentine transition, I have observed three main goals associated with post-dirty war prosecution: justice, truth, and peace. These three objectives overlapped at times, and contributed or conflicted with one another, but all three were at the heart of the trials. In addition, the differing perceptions that various actors had of these goals can help to explain disagreements that have arisen between both scholars and contemporary Argentines regarding the trials' success. The viewpoint I have taken stands in contrast to those that have previously been applied to Argentina and transitional justice generally. It does not insist upon a contradiction between truth/peace and justice/punishment, as the traditional peace-versus-justice dichotomy does. It also represents an Argentina-specific framework, based on the attitudes of Argentines involved in the transitional process, differentiating it from the frameworks that have been proposed by legal and political scholars considering multiple nations in their analyses.

Using this viewpoint of three separate but related objectives, I have attempted to illuminate the differences of opinion that arose in Argentine society throughout the transitional process. The seeds of disagreement were already present, although largely ignored, before the Junta trial began, with the ruling party and the human rights movement taking different views on the role of trials in achieving the goal of peace. As the trial progressed, the disagreements grew more extreme, and when the judgment was handed down, opinions were fragmented even further. Alfonsín and his ruling Radical party viewed the trial as a huge success, as did some other observers. They believed the trial had served its primary purposes of consolidating

democracy and spreading truth through the use of preventive justice. But for the human rights movement, which had prioritized the goal of retributive justice, the acquittal of four defendants was a huge disappointment. This was especially true for family-based groups, which emphasized punishment. Civil libertarian groups took a less extreme view, valuing all three goals of justice, truth, and peace, and recognizing that the trial had effectively contributed to at least two of these.

As many Argentines were satisfied with the outcome of the Junta trial, they were ready to move on (and away) from the question of transitional justice. Some, like Raúl Alfonsín and his ruling party, were quite eager to do so. This was due to their view, similar to that of the traditional peace-versus-justice dichotomy, that punishment was in conflict with peace. As Punto Final and Obediencia Debida put a stop to trials of lower-ranking officers, the human rights movement was hugely disappointed. They had prioritized justice, and particularly retributive justice for all the guilty. In contrast, the government and other actors were relieved that their primary goal of peace had been maintained, while the basic level of punishment necessary for preventive justice (which is a way of contributing to peace) had also been achieved.

With Menem's pardons, the disappointment of the human rights community only grew. The pardons undid not only the small amount of retribution that the Junta trial had achieved, but also the preventive aspect of its justice, thus abandoning even Alfonsín's more modest transitional goals. But this disappointment would not last forever. Tools other than trials kept the memory of the dirty war alive as time went by, and more than twenty years after the end of the dictatorship, President Néstor Kirchner, the Argentine Congress, and the Supreme Court reopened the question of transitional justice. The resurrected trials of dirty war criminals have

continued the process of revealing the “truth” about what happened to the disappeared, and of achieving the “justice” that Menem’s pardons undid.

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Bibliographical Essay

The seeds of the idea for this essay were planted in my mind when I studied abroad in Buenos Aires, Argentina in the summer of 2009. Almost immediately upon arriving, I noticed the way the city was saturated with dirty war memory. Memorials, murals, and museums seemed to appear almost everywhere I went. I was unaware of the fact that the reopened trials I discuss at the end of this essay were taking place while I was there, but it was obvious that society was still deeply concerned with the question of dirty war human rights violations. The fact that this was still true thirty years after the conflict fascinated me, and I could barely believe that the peaceful democracy I was visiting had been suffering under a brutal dictatorship only decades before.

The connection I felt to Latin America after having been there was deepened by several courses on Latin American history that I took upon returning to Yale. Specifically, Stuart Schwartz's Colonial Latin America, as well as Gilbert Joseph's History of Mexico and seminar on the Latin American Cold War, made me realize that I wanted to focus on Latin America within the history major, and on the modern period in particular. This geographic focus, combined with my long-standing interest in human rights and the law, led me to approach the Junta trial as a possible essay topic. I began with the idea of comparing domestic and international perspectives on the event as a way to get at its meaning. I dove into the secondary literature, looking for general information about the trial and for frameworks through which historians had previously looked at it. I quickly discovered that while many historians had written about the dirty war, very few had written extensively about the transition it led to. I found myself dealing with legal scholarship, the writings of political scientists, and the reports of

international human rights organizations, and realized I had the exciting opportunity to be one of the first people to use historical analysis of primary sources as a way to view the Junta trial.

Shortly after choosing my topic, I was able to conduct an interview with Juana Sapire in New York City. Juana is the wife of filmmaker Raymundo Gleyzer, who was disappeared during the dirty war. She was not present in Argentina at the time of the Junta trial, but she testified at the newly reopened trials in 2010. At the time I did not plan to discuss these trials in my essay, but I thought I would go speak to her anyway, and get her perspective on dirty war justice.

Talking to Juana, I was surprised by how negatively she viewed the trial that took place in 1985. She told me that it brought no justice, that no punishment would ever be enough for the people who had disappeared 30,000 innocent Argentines. At the time I had been focused on the work of Alison Brysk, a political scientist who, in *The Politics of Human Rights in Argentina*, analyzes the success of the human rights movement in creating truth and justice after the dirty war. Given the extremely positive view she takes of the Junta trial, and her general idea of the Argentine human rights movement as being highly successful, I was shocked by the huge contrast between her attitude and that of Juana. I returned to my research with an expanded sense of my topic. I realized that I wanted to explore not only the Junta trial itself, but also the laws (Punto Final and Obediencia Debida) and pardons that had led Juana to claim that justice had failed in Argentina.

The more I read, the more disagreements I found regarding the success (or failure) of post-dirty war justice. Some viewed the outcome of the process quite negatively. The international human rights organization Americas Watch, for instance, called Punto Final and Obediencia Debida unconstitutional, and viewed them as a huge setback for the fight against

impunity. Similarly, Argentine journalist and human rights advocate Horacio Verbitsky, in his 1987 book *Civiles y Militares*, described the unraveling of the prosecution project as an act of fear that had empowered the military. Both of these works (and several others I would come across as I worked) seemed to occupy an interesting space between primary and secondary sources. They were written by scholars with a view to making a certain argument, but they were also written as events were still unfolding, by people who were involved in observing and shaping the historical processes around them.

On the other hand, many other sources that I came across viewed Argentina's transitional process quite positively. Kathryn Sikkink and Carrie Booth-Walling, for example, wrote an essay claiming that Argentina was a path-breaking innovator in the field of transitional justice, having set off a "justice cascade" throughout Latin America with the hugely successful example of the Junta trial. Carlos H Acuña, in his article comparing the Argentine and Chilean transitional processes, also viewed Argentina's case as exceptional in its success, especially in taking power and legitimacy away from the military.

Puzzled by these strong disagreements, I set off for a short research trip to Argentina, hoping that my experiences there would help me to understand where these diverging opinions were coming from. Instead, the interviews I conducted revealed even more fragmentation. Every person I spoke to was in some sense connected to the human rights community, and they all agreed that dirty war criminals should be punished. It seemed like they should have similar views regarding the trials. And yet, while Thomas Scheetz told me that the trials were a failure and did not achieve their goals, Rosa Zlachevsky and Bella Frizman viewed the transition as a success and said the trials had achieved a great deal. I realized that the tension between these opinions was by far the most interesting aspect of the research I had done so far, and decided that

the main focus of my essay would be an attempt to explain or perhaps even resolve these disagreements.

I then began to look at my primary sources with this goal in mind. I started by reading testimonies from the Junta trial of 1985, as recorded in the *Diario del Juicio*. I had anticipated writing almost solely about the Junta trial, and thus had expected these testimonies to be key to my work. But as I read through the *Diario* I found myself becoming more intrigued by the commentary and analysis than by the testimonies. I noticed that the people writing and publishing *Diario del Juicio* were interested in achieving both truth and justice, and did not necessarily view these two objectives as being in conflict with one another. This stood in stark contrast to the truth-versus-justice theory of transition that seemed to permeate so much of the transitional justice literature I read. I began to realize that perhaps the key to interpreting the trials and their aftermath effectively would be to set aside the framework of transitional justice theory that had been formulated by legal scholars and political scientists, and to instead create a new framework based on the Argentine voices I found in my primary sources.

With this goal in mind, I moved on to Princeton University's large microfilm collection of pamphlets and periodicals published by Argentine human rights groups during this period. I supplemented these with the Madres de Plaza de Mayo newsletters that I had found in the small Asociación Madres de Plaza de Mayo library while I was in Argentina. In these publications I found the information I needed to create a new vantage point from which to view the trials, and developed my notion of the three objectives of justice, truth, and peace. The fact that this vantage point, as well as the essay in general, is based primarily on sources produced by the human rights movement is both a result of what sources were most readily available to me, and of the direction I chose to take with the essay.

As I thought more carefully about it, my idea of using what I had called “Argentine voices” to create a vantage point from which to view the trials transformed into the idea of using the voices of Argentine human rights activists in particular. Much of the secondary literature, despite its many disagreements, did agree on the fact that the human rights movement was centrally important in determining the path of the Argentine transition. Furthermore, one of the most interesting things I had learned about in Gilbert Joseph’s seminar on the Latin American Cold War was the notion of history from the bottom up, or history as defined by groups that are not usually considered major historical actors like the government or military tend to be. It seemed to me that not only were human rights activists (and especially family-based human rights organizations) a good example of this type of group, but they were also those most concerned with and affected by transitional justice. Thus, if I truly intended to base my vantage point on the perspective of those who were most closely involved in the transition, it made sense to focus on sources produced by the Argentine human rights movement.

Once I had developed my three objective view of the transition, I began using it to analyze the Junta trial and its aftermath, as well as the reopened trials of 1985. It was at this point that I brought in the government perspective, using mainly Raúl Alfonsín’s autobiography and a book called *Radical Evil on Trial*, written by Alfonsín’s advisor Carlos Santiago Nino. For the latter part of the transition, especially the reopened trials, I also brought in the perspectives laid out by Argentina’s leading daily newspapers: the left-wing *Página 12*, the right-wing *La Nación*, and the centrist *Clarín*. I would have liked to use these newspapers in my analysis of the earlier parts of the transition as well, but I found them difficult (if not impossible) to obtain for that period.

The final sources I examined were non-Argentine newspapers. Having not entirely abandoned my original idea of comparing domestic and international perspectives on the Junta trial, I planned to use these sources to write a final section of the essay focused on that topic. I mainly looked at the *New York Times*, and the editorials it published about Argentine transitional justice over the years. I wrote a section which analyzed the *New York Times* as engaging in a type of hero-worship of Alfonsín, while villainizing his opponents and generally oversimplifying the complexity of Argentina's transitional situation. However, as I revised my essay, I found that this section did not effectively fit with the other pieces I had written. I decided that the question of international perspective was another topic entirely, which I may have an opportunity to research and write about more thoroughly in the future. I devoted the space this freed up to engage in a closer examination of the reopened trials and the transitional process that continues in Argentina to this day.