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Injustice and the Persistence of the Dirty War Lie

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Injustice and the Persistence of the Dirty War Lie

Human Rights Honors Thesis

Samantha Marie Montalbano
Class of 2013

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Acknowledgments

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Introduction

“There exist no provisions in our law that perfectly and precisely describe the form of criminality that shall be judged here”

(Julio Carlos Strassera, Chief Prosecutor of the Military Junta War Criminals)

Inside the chamber where the people of Argentina waited to hear the sentencing of two oppressors, I felt the pulse of Argentina, its desire to move forward, and its inability to find justice for its past. The mundanity of the event seemed surreal within the context of its significance. Justice hung in the balance for 181 lives. 181 victims forever changed. 181 cases of oppression, lies and cruelty beyond the standards of humanity; 181 Argentines that, rather than protected by the government, died at its hand. I was lucky enough to be privy to a moment in history. A moment some of those victims and family members of victims have waited decades to realize. A moment that I believe illustrates Argentina’s unrest in its inability to attain justice; a justice that the world perceives already remedied Argentina.

On June 19, 2012, a Thursday morning, I attended the sentencing of Pedro Santiago Godoy and Omar Alfredo Feito. Once powerful military officials operating a repressive circuit of clandestine centers, Atlético –Banco - Olimpo, now these two men awaited their legal punishment. Years of impunity left these two men untouched by penalty for the 181 criminal cases. Penalties that only now have become possible; yet these men exuded impunity. The two perpetrators refused to look at the standing-room only chamber behind them, ignoring the curses yelled by Argentines. Curses have never been said with so much emotion behind them: so seriously, as if each curse could somehow batter down the wall of impunity that these repressors had sat behind for decades: a wall these repressors continue sit behind, according to many Argentines. Godoy and Feito seemed incapable of seeing the people affected behind them;

unable to take responsibility for the lives they took. At stake, not only were the lives of the victims but those of the victims' families and in a very real sense, Argentina.

The three judges of the Tribunal entered the Court, settled in their enormous chairs, and signaled to the press. Suddenly the photographers flooded the Tribunal, getting within inches of the faces of each of the repressors, a barrage of camera flashes filling the room. And yet the repressors did not even flinch. It was as if these two men were untouchable, unable for anyone to affect them. The photographers captured the faces of the men, their impunity, and their injustices.

In the other room, where I stood in the back, a very different picture could have been taken. All of these Argentines greeted each other warmly, conversed with each other about previous sentences, future trials, and their families. I watched a community of persons, young and old, prominent Mothers of the Plaza de Mayo and inconspicuous others, all connected by a determination to attain justice. Their collective need for justice stifled the room, brimming with tension as the Judges read the sentences. The sentences were timely, based on an efficient trial, and yet they were well overdue for the nation in its pursuit of justice. The crimes they had committed were egregious on every level, unable to be understood fully, the illegal deprivation of liberty with the application of torture, its designated title. Unfathomably, all those people in the chamber, and so many others who couldn't attend, spent years, decades pursuing justice for themselves, their loved ones, their fellow Argentines. Looking around the room, I could not imagine a more frustrating quest.

The Tribunal held that crimes against humanity are far too egregious to have a statute of limitations for its prosecution. Godoy, nicknamed "Calculin" after a cartoon scientist whom he unsuitably resembles, received 25 years for 152 cases of kidnapping and torture. As Chief Justice

Jorge Tassara read the sentence, the people of the chamber, those most affected, gasped, cheered, and cried. Each person had a different reaction but everyone seemed to feel the same thing, a catharsis after years of struggling with injustice. Finally, a state official, known for tearing apart the lives of hundreds, would be held legally accountable.

What is the significance of legal accountability? For these Argentines, tirelessly pursuing Godoy's prosecution for decades, legal accountability signifies responsibility. A responsibility that these crimes must be accounted for, that the demise or disappearances of those people constitutes a crime. No longer would disappearances remain unanswered. For Argentina, this sentence finally meant recognition and acknowledgment of the crimes committed. For decades, the lie of the 'dirty war' blamed the tragedies of the period on the 'subversives' and the 'need for order'. Now, with these legal sentences, the state began to acknowledge a different truth.

The sentencing for Omar Alfredo "Cacho" Feito invoked a very different reaction. Feito received 18 years in prison. Upon the sentencing, the Argentines collectively gasped, this time shocked by the leniency of the penalty. A sense of unfairness and outrage enveloped the room. They could not believe how the Tribunal granted Feito seven more years of freedom. Once elated, the victims in the room (as all Argentines fell victim to the terror of the military regime in one way or another) showed defeat. Despite the crimes committed under his command, his atrocities received less acknowledgment of their gravity than the repressor to his left.

Yet how much do these legal prosecutions really do for Argentines in their pursuit of justice? Due to Godoy's age, his 25-year sentence granted him a comfortable house arrest. Sentenced to house arrest seems like a pretty lenient penalty, if it even constitutes a penalty at all for the disappearance and torture of 152 Argentines. What does it mean to Argentines if the penalty for the crimes pales in comparison to its atrocity?

The notion that the repressors' sentences ought to differ was never entertained by Argentines. Watching their reaction, you would have imagined that each man committed the exact same crimes. And to Argentines, they have committed the same crimes. Every official was involved in a systematic plan to rid the nation of its targeted civilians, labeled as subversives. The state concocted a war, a 'dirty war' that justified its actions. Every quotation, interview, and pardon made apparent that it was not just people but the entire state establishment responsible for these atrocities. Pardoned in the beginning of the 1990's, since the officials 'were just following orders', it seems that true justice could only come from holding the establishment accountable. It was the fundamental 'dirty war' lie that the state waged with its own people that has made every effort to find justice in Argentina futile.

Given the state's primary responsibility to protect its people from harm, both from the outside and inside of the country's boundaries, the state waged a war upon its people, in the most egregious of offenses/ The Dirty War Lie signifies blamelessness, and impunity, and an utter lack of acknowledgment for the state's choices. A war suggests that there was no alternative, that all potential alternatives were considered or attempted. Yet could Argentina's military and dictatorship claim that to be the case? This Dirty War Lie allowed the state to get away with murder and it still permits the former regime to remain immune to consequences. After so long and decades of impunity based on a foundational lie, does Argentina even have a chance of attaining justice?

Some thirty years have passed and yet this period of terror in the life of Argentina lingers in unrest. The pursuit of justice continues. For Argentines, injustice and its impunity remain. The idea of justice as a notion seems so abstract until you get to experience this kind of tension. This chamber of Argentines experienced the emotions of both a catharsis from the positive pursuit of

justice and defeat in the face of injustice within minutes of each other. These legal proceedings are far more than legal trials. The lives of Argentines hang in the balance. Without justice, Argentines remain trampled by the former military regime. Victims remain disappeared into a blameless limbo. Without justice, Argentines remain vexed by the past, as all former victims of the state.

Argentina has been in pursuit of justice since the end of its latest military regime in 1983; however, those measures have failed to produce the ability for Argentina to progress forward with a resolution. Thus, the vital question surfaces as to why establishing justice for Argentina has been so difficult, as a nation that has led the world in transitional justice and legal accountability for its state actors? Without an answer to the question that has plagued Argentina for decades, justice will continue to elude the nation.

This thesis aims to explore this gap between the international community's perception of the justice achieved in Argentina and the clear perception of injustice within the nation. Once the gap is understood, then the cause of this distinction in the perceptions of the international community and the nation will become clear: as the role of the Dirty War Lie and its justification of the atrocities of the military regime. As the Dirty War Lie justified these crimes, by utilizing a wartime justification and compromising the efforts of the trials and confessions as tools utilized by Argentina to achieve justice, injustice prevailed over these efforts. All the efforts resulted in the prevalence of the injustice in the nation, even as the efforts seemed to create justice from the perspective of the international community.

As the Dirty War Lie impeded Argentina's process of achieving justice, the question arises as to how and why the justification persisted into democracy. Through a focus on restorative justice and legalized impunity, the democracy promoted the injustice experienced by

the nation, even as methods of justice attempted to heal the nation from the past atrocities of the regime. Rather, the democracy continued the injustice of the nation due to its priority to maintain the support of the powerful military. Thus, the democracy forced the reconciliation between the military and the nations by compromising efforts of achieving justice, in an attempt to gain the support of the military regime. Argentina's military regime's status as a power institution proved to be a great incentive for the democracy to abide by its doctrines. The democracy chose to follow the military's political influence, under threat of usurpation, rather than an effort addressing the atrocities of the past through a real perception of its crimes, without the foundation of the Dirty War Lie. The impunity of the state realized in the continuation of the Dirty War Lie proves to be the significant obstacle facing Argentina in its pursuit of justice. This thesis will explore the rationale and evidence underlying these initial questions, analyzing the existence and prevalence of the Dirty War Lie, its consequences, and its motivations.

Chapter 1: The Two Realities of Argentina

To understand the obstacle in Argentina's quest for justice, its presence must be understood as two conflicting realities. There are two perceptions of Argentina, two distinct realities. The international community perceives Argentina as a pioneer nation for transitional justice and legal accountability for state perpetrators. Within the nation, Argentines perceive their nation as one where impunity reigns just as prevalent now as it did in 1983. As these realities conflict, it is difficult for the reigning injustice of Argentina to be understood or even acknowledged by the international community. Thus, these realities cannot be reconciled.

Importantly, the sources of continuous injustice cannot be identified via a perspective of Argentina as a nation where transitional justice has solved the problems of impunity. The question arises as to how the international community's perception veered from Argentina's reality. It is that misguided aspect of the perception held by the international community that leads them to falsely hail Argentina as a model of transitional justice. While Argentina initially commissioned a compilation of truth and recently begun legal prosecutions for accountability, these measures did not achieve justice; and these measures will continue to fail as long as they occur upon a foundation of injustice and impunity.

Internationally, Argentina has been understood to be a model of transitional justice after deplorable actions of the state through state terrorism. Two crucial and necessary actions for transitional justice attribute to this international understanding of the nation: its truth commission and its legal prosecutions of state officials.¹ Seemingly with these accomplishments, justice has been achieved. Yet, while both actions could obtain justice for a nation in other circumstances, it is the particular circumstance of Argentina that prevents these measures from attaining justice for the nation.

¹ Kathryn Sikkink, *The Justice Cascade* (New York: W.W. Norton & Company, 2011).

Immediately upon the start of the new democratic state in 1983, the executive of the fragile democracy, President Alfonsín established the nation's first truth commission, La Comisión Nacional Para la Desaparición de Personas, or CONADEP.² Comprised of independent and respected citizens, CONADEP concentrated on uncovering the reality of the past by exposing events through investigation and testimonies.³ The commission, operated by nationally respected writer Ernesto Sabato, compiled the celebrated report *Nunca Más* that detailed the atrocities committed during the military regime.⁴ As a prominent truth commission at a time where the norm for former military-terrorist states included immunity from crimes in pursuit of 'reconciliation', Argentina's report helped to establish "a new model of transitional justice . . . to fill the gap left by compromised criminal justice".⁵ *Nunca Más* critically gave a narrative voice to those victims who had their voices taken by the state.

The report provided vindication to victims, while not through accountability but through acknowledgment of the brutalities afflicted to them and the hundreds and thousands of Argentines disappeared without acknowledgment by the state.⁶ Established within the first few days of Alfonsín's presidency, the commission served its objective, not to provide national reconciliation, but to uncover the truth for a period of history where the state deceived the nation.⁷ With this objective, *Nunca Más* achieved great success as it provided truth for a state haunted by the inability of the state to truthfully recognize its crimes.⁸ The report ought to be

² Carlos Santiago Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996): 2623.

³ Antonius C.G.M. Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," Hinton, Alexander Laban. *Transitional Justice: Global Mechanisms and Local Realities After Genocide and Mass Violence* (New Brunswick, N.J.: Rutgers University Press, 2010): 180.

⁴ Nino, 2623.

⁵ Lisa J Laplante, "Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes". *Virginia Journal of International Law* 49, no. 4 (2009): 916 – 984, 924; Sikkink

⁶ Nino, 2623.

⁷ Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," 180.

⁸ Sikkink.

considered a component of the “ongoing, dynamic process, of which storytelling is a vital part”.⁹ Its report did not preempt legal accountability from occurring nor did its commissioning constitute societal accountability. The obstacle lies in the report’s failure to achieve justice by focusing on only one aspect of the necessary components of justice (truth), while disregarding accountability or national reconciliation.¹⁰

Although the commission granted a voice to previously silent victims, many of its effects held little significance to Argentine society. Argentines received the report with disbelief, as for many little had been known of the violence due to the fervent secrecy and denial by the military and its supporters.¹¹ Such ignorance on a national crisis must be attributed to the critical lie that claimed the violence to be “unfortunate but necessary”, due to the danger of subversives.¹² *Nunca Más* exacerbated the denial of the previous state as the military dismissed its findings, and sustained this denial for decades.¹³ This denial coupled with the notion that a nation could attain either truth or justice, not both, strengthened the perception of Argentina as a nation that had reconciled its past and achieved justice. While the truth commission relaxed the “tension between justice and the politics of making peace”, it became an excuse for ending all measures of creating justice. By simply declaring that the commission provided the societal accountability necessary for justice, opponents of these efforts could claim the attainment of justice.¹⁴

Legal accountability through criminal prosecutions constituted the other type of accountability necessary for justice, whereby then both the international community and the Argentina military could assert justice had been achieved and the nation could progress

⁹ Robben, “Testimonies, Truths, and Transitions of Justice in Argentina and Chile,” 186.

¹⁰ Ibid, 180.

¹¹ Alexander Laban Hinton, “Introduction: Toward an Anthropology of Transitional Justice.” Hinton, Alexander Laban. *Transitional Justice: Global Mechanisms and Local Realities After Genocide and Mass Violence*. (New Brunswick, N.J.: Rutgers University Press, 2010): 15.

¹² Ibid.

¹³ Robben, “Testimonies, Truths, and Transitions of Justice in Argentina and Chile,” 185.

¹⁴ Laplante, 928.

forward.¹⁵ Along with the truth commission, President Alfonsín initiated legal investigations and prosecutions of principal Junta leaders but also the leftist guerrilla groups the Montoneros and ERP (Ejército Revolucionario del Pueblo), furthering the idea that a ‘war’ had occurred between the Military state and leftist groups. Initially equating the two sides, the state military and the leftist terrorist groups, these prosecutions cemented the notion of the Dirty War for the first time by the democracy. This will prove to be a part of the significant obstacle Argentina faces in its attempt to establish justice in the future.

While pardons followed these initial prosecutions and sentencing, in 2007 the Tribunal ruled the pardons to be unconstitutional. By the following year, there were 385 suspects in protective custody for crimes committed by state terrorism.¹⁶ With the significant amount of legal prosecutions, one could easily mistake these prosecutions as the remedy for the past lack of legal accountability. Yet the past pardons are far from forgotten. While strikingly different from the prosecutions of the 1980’s, which resulted in decades of impunity, the influence of the previous ruling of immunity is as prevalent today, as “national prosecutors open criminal prosecutions against almost three hundred military officers who benefited from earlier amnesty laws”.¹⁷

These dual measures for the establishment of justice create the attractive idea that Argentina can serve as a model for the attainment of justice after state terrorism.¹⁸ Simply seen, the truth commission provided a voice to victims, resulting in societal accountability, and legal prosecutions provided the state a “duty to uphold a victim’s right to a remedy”, resulting in legal

¹⁵ Sikkink.

¹⁶ Robben, “Testimonies, Truths, and Transitions of Justice in Argentina and Chile,” 190.

¹⁷ Laplante, 980.

¹⁸ Sikkink.

accountability.¹⁹ In other circumstances, these measures ought to be the model, having the ability to suffice the quest for justice in a nation once plagued by state terrorism.²⁰ The use of truth commissions in tandem with criminal trials can avoid creating tensions and tradeoffs and instead complement each other in creating a more encompassing form of justice for the nation.²¹ However, it is the foundation of injustice that these measures occurred upon that led them to achieve little justice for the nation. The circumstances specific to Argentina's past and present prevented these valid measures from creating the desired effect.

Argentina's past injustices in legal and societal accountability hold little relevance to the international community's opinion of the transitional justice that Argentina seems to have obtained through its truth commission and legal prosecutions. These two important measures falsely eclipse the real injustice of the nation's past and present. While critical measures in establishing transitional justice include these prominent actions, little will be achieved whilst injustice prevails nationally.

In Argentina's attempt to rectify the past, it began a dominant trend of retreating from justice measures through legal immunity. At the end of these measures of justice, the truth commission's final report and the initial legal prosecutions completion, the same state, that ordered these measures of justice, enacted the greatest tool of impunity for Argentina. These two laws, tools of impunity, strengthened the obstacle preventing justice both as a reality and now as an impression of the past. Alfonsín passed two laws in 1986, the Law of Full Stop (Ley de Punto Final) and the Law of Due Obedience (Ley de Obediencia Debida). The first law ensured a concrete end date to the trials, where no trial concerning the military dictatorship of 1976-1983 could occur after that date. The second law provided immunity to subordinated officers, claiming

¹⁹ Laplante, 940; Sikkink.

²⁰ Sikkink.

²¹ Laplante, 982.

that as long as the actions could be attributed to an order or within the scope of their duty, the officials sustained immunity from prosecution. Both laws implied notions, which have become significant obstacles to Argentina's transition to justice.²²

The Final Stop Law prevented hundreds of new cases of human rights violations from reaching a trial, thus preventing these crimes and victims to be acknowledged by the state as a crime which the state and the nation has a duty to remedy. Complementing this amnesty, the Due Obedience Law made it impossible to prosecute any official other than the top tier for their actions. The state-supported claim of obedience to military orders exempted and forgave hundreds of officials for their crimes.²³ These amnesties proved to the Argentine people that state officials who committed crimes, which led the nation into a state of fear, could go free without a fear of prosecution; they remained exempt from their crimes.²⁴ The significance of these amnesties prevails with lasting effect today: the notion that officials cannot be blamed for the brutality of the military regime persists. Their actions became warranted and necessary by the state. While these laws have been deemed unconstitutional, the message of their enactment, both explicit and implicit, remains to plague efforts to create justice.²⁵

Before the amnesty laws, all were responsible for the atrocities as both the state and leftist organizations were subject to investigation and prosecution. Yet with the amnesty laws, the notion became "no one is responsible".²⁶ These laws terminated any individual responsibility for crimes.²⁷ All could be attributed to the highest-ranking military officials, who could no longer

²² Ibid, 923.

²³ J. Patrice McSherry, "Military Power, Impunity and State-Society Change in Latin America." *Canadian Journal of Political Science* 25, no. 3 (1992): 463-488, 472.

²⁴ Diana R. Kordon, "Impunity's Psychological Effects: Its Ethical Consequences." *Journal of Medical Ethics*, Vol 17, Supplement: Proceedings of the Symposium of Torture and the Medical Profession (1991): 29-32, 29.

²⁵ Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," 190.

²⁶ Kordon, 30.

²⁷ Ibid.

be prosecuted based on the end of the period of prosecution. More importantly, the actions of the high-ranking military officials found justification in the perceived, or concocted, reality of the Dirty War. After the amnesty laws ended - in reality stopped short - all measures of justice, the sense of impunity in Argentine society, strengthened. It was the end of silence, as military officials could speak of the atrocities free from the fear of prosecution. As the military began to speak, the Argentine people desired accountability for the crimes now being admitted to and detailed:

Tombs, exhumations, human remains, description of torments – all were splashed onto the audience by government agencies in order to produce an emotional impact or, at best, a catharsis. Everything was contextless, avoiding the whys and wherefores. The apparent overinformation was aimed at causing a saturation that counteracted any possible discussion of the subject in order to make the people think of something else.²⁸

Yet, there was no remedy as the new state determined that the ‘justice’ achieved could sufficiently lead the nation forward, and no further means of justice would be necessary.

Pardons only strengthened the implicit message by the government that this form of justice would suffice. In 1989, President Menem pardoned over 200 military officers, and in December 1990 he pardoned the notorious junta and military/ security leaders who had been convicted for their atrocities in the Dirty War.²⁹ By pardoning the senior military officials from their crimes, of which they had been tried and convicted, Menem sent the unarguable message that the officials had repaid their debt to society.³⁰ To the government, these officials no longer

²⁸ Ibid, 29.

²⁹ McSherry, 472.

³⁰ Michael Humphrey and Estela Valverde, “Human Rights, Victimhood, and Impunity: An Anthropology of Democracy in Argentina.” *Social Analysis* 51, no.1 (2007): 179 – 197, 182.

owed a debt to the Argentine people for their crimes, crimes they had committed as their protectors and heads of state. The state needed the military's support, and the military adamantly opposed pursuits of accountability. Thus, these pardons controlled and restricted trials against the military, a sacrifice made by the democratic government in pursuit of the military's support, which it had not yet gained and needed.³¹

The power of the military after the end of the dictatorship remains a significant factor that hardly receives proper attention. The same armed forces responsible for the previous "regime's 'Dirty War against subversion' still retained a monopoly on state coercion, united in their opposition to the trials".³² To gain the support of such a powerful component of the state, the executive felt limits of justice had to be enacted in order to protect the new democratic system.³³ Regardless of whether military compliance with the new democracy necessitated these amnesties and pardons, the state decided to establish these measures of immunity for the military, deciding to condemn the people of Argentina to a society plagued by impunity. Not only did these amnesties and pardons prevent justice from occurring, a justice Argentina greatly desired, it furthered notions of injustice, pushing the potential attainment of justice farther and farther into the future.

For Argentina, justice remains as elusive now as it was in 1986, at the commencement of the amnesty laws and actions. Along with the public disapproval for criminal sentencing and public demonstrations, as a call for justice, two anecdotes have become the manifestation of Argentina's inability to achieve justice as impunity of the past remains in the present. Both stories of disappearances occurred within the last decade. One story illustrates how old injustice

³¹ Christopher Larkin, "The Judiciary and Delegative Democracy in Argentina." *Comparative Politics* 30, no. 4 (1998): 423-422, 431.

³² Nino, 2623.

³³ Ibid.

remains for present crimes, and the other story shows how old injustice remains for past crimes. Argentines persistently use both examples of Argentine injustice to illustrate the injustice that the nation has never evaded.

Luciano Arruga was a 16-year old boy when he disappeared in December of 2009. Disappeared under democracy, Arruga's family immediately attempted to seek justice for this crime. Witnesses and friends claimed Arruga had a history of being pursued by the police to join their illicit scheme: the police would enlist the help of young boys to steal for them; if the boy refused, the police would falsely charge him with some crime. In Arruga's case, he had been harassed by the police to work for them on several occasions, all of which Arruga refused. After his disappearance, the police failed to collect evidence; instead they claimed he was just 'another youth dealing drugs'. Luciano Arruga's disappearance by the police became a symbol for police corruption and the continuation of the police's immunity from accountability, akin to that of the military during its last regime.³⁴

The most prominent story used by Argentines to illustrate how impunity of old crimes runs rampant presently is the story of Julio López. As a former political prisoner during the military regime, Julio López testified against one of the primary leaders of the Junta, Miguel Etchecolatz, who had been convicted for his crimes during the principal legal prosecutions, before the amnesty laws; he was later pardoned. López's testimony proved to be an integral factor in Etchecolatz's conviction. As one of the first trials since a tribunal found the amnesty laws unconstitutional, this trial would set the standard for future attempts at utilizing the judicial system for prosecuting former military officials. However, the night before López was scheduled to issue the final part of his testimony, he disappeared and has since never been found. Questions

³⁴ Marie Trigona, "Where is Luciana Arruga? Disappeared in Argentina's Democracy." *Toward Freedom*. February 11, 2010. <http://www.towardfreedom.com/americas/1854-where-is-luciano-arruga-disappeared-in-argentinas-democracy>

of whether the former state or the present state participated in the disappearances have only led to a greater understanding of how officials of the past military regime remain officials in today's democracy.³⁵

Julio López's disappearance, as a key witness in a trial that would end the reign of impunity for one prominent military official, became a symbol for the strength and vulnerability of witnesses and victims. The powers of the oppressors remain and the vulnerability of the victims persists. His disappearance highlights how crimes occur without accountability, as the lack of acknowledgement of disappearances still plagues Argentina. Best said through the now iconic phrase painted upon almost every street and building in Buenos Aires: "Sin Julio López, Sin Justicia" (Without Julio Lopez, Without Justice). So long as Julio López remains disappeared, as a disappearance holds tremendous consequences in the persistence of injustice, Argentina will not be able to achieve justice for the past atrocities of the state.

Although it seems Argentina accomplished all the necessary steps to achieving justice, injustice continues to plague the nation. If the international community perceives that the nation has seemingly found justice, why is there such unrest over injustice? Why is the international community mistaken about the sufficiency of these valid measures? Why will it take more than the truth commission's report and the legal prosecutions for Argentina to achieve justice? The circumstances of Argentina that the international community omits from its perception accounts for the gap between the international community's perception and Argentina's reality.

Some argue that justice could be achieved in Argentina so long as the nation stops prodding and searching for truth and crimes and simply reconcile with the present. It is the argument of Hinton and others that the "incessant search for the truth" led to a perception of

³⁵ Marie Trigona, "Argentina: Missing Witness Awakens Dark Past," *Toward Freedom*, October 21, 2006. <http://mujereslibres.blogspot.com/2006/10/argentina-missing-witness-awakens-dark.html>

injustice for the society.³⁶ While it would be far more simple to solve Argentina's problem with injustice if Hinton's argument held true, "wounds cannot be swept under the rug and warned against" for they will only create conflict and prevent reconciliation.³⁷ The search for truth and justice did not serve as obstacles to reconciliation; rather those pursuits constituted the first steps of reconciliation. Yet these steps will prove futile if the real and prevailing reason for Argentina's continued lack of justice remains unacknowledged.

The demand for justice has been great as "the abhorrence at the state terror inflicted on the Argentine people, the military's denial of the disappearances, and the public call for accountability" constituted an unwavering national need for a justice that could sufficiently remedy the deplorable and significant atrocities of the past state's terrorism.³⁸ Rather it is due to the "persistent denial of human rights violations by the retired military [that] Argentine society has no position to fall back on" that is rooted in justice.³⁹ Argentina cannot default to its past before the last military regime, as it founded the nation in injustice. In the new state's attempt to reconcile past wrongs while maintaining support from the military, it promoted the lie of the Dirty War and its two-demon narrative, which left those culpable for the crimes less burdened, and the people of Argentina outraged for the blame placed upon the victims.⁴⁰ While from the outside Argentina utilized important measures to create justice, from within the nation those measures accomplished little. Instead, measures of the state catered to impunity and promoted the lie of the Dirty War, which led injustice to prevail for decades. An egregious miscalculation by the newly democratic state, those measures neither prompted reconciliation nor justice, but rather continued the reign of injustice.

³⁶ Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," 180.

³⁷ Laplante, 934.

³⁸ Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," 186.

³⁹ Ibid, 186.

⁴⁰ Hinton, 15.

Chapter 2: Justice in Theory and Argentina's Attempts in Practice

The gap between perceptions of justice in Argentina by the international community and the domestic reality is clear. For decades, efforts to create justice have failed Argentina. Thus, the question becomes why do Argentines insist on continuing this pursuit? Regardless of the tools implemented that ought to have manifested justice, justice still eludes the nation. The persistent aspiration of realizing justice continues, yet Argentine attempts are a history of failure. In a post-terrorist state, the realization of justice becomes pivotal to its progress in the future. By understanding how Argentine attempts to establish justice resulted in even greater notions of injustice, this analysis can further uncover why justice continues to elude Argentina after so many years.

Attempts to chase justice only seem to exacerbate the injustice felt by Argentines, when endeavor after endeavor fails to be successful. Argentina seems unchanged from the period of state terrorism, as the military and the state continue to bolster the philosophy of the time that justified the Dirty War.⁴¹ Perceptions of injustice matter; “such perceived injustices are real in their consequences”.⁴² This concept manifests itself in the recent history of Argentina, a nation widely perceived by the international community as a bastion of justice while internally perceptions of injustice are the norm.⁴³ What exactly would the achievement of justice entail in Argentina? It is far simpler to identify justice in a society than to create justice after a period of complete and utter injustice.

This chapter will first illustrate some of the foundational injustices of the Dirty War Lie. This analysis will begin by understanding what would justice mean to the nation, the components

⁴¹ Jaime E. Malamud Goti, *Game Without End: State Terror and the Politics of Justice*. (Norman: University of Oklahoma Press, 1996): 146.

⁴² Susan Eckstein and Timothy P. Wickham-Crowley, *What Justice? Whose Justice?: Fighting for Fairness in Latin America*. (Berkeley: University of California Press, 2003): 1.

⁴³ Sikkink.

it would entail and how the wartime justification of the Dirty War proves to ground the period in injustice. Then the failed attempts at achieving justice will be understood, especially in their effect of compounding concepts of injustice, through the use of legal trials and official military confessions. This will prepare the way for understanding how the Dirty War Lie, as the foundational obstacle to justice in Argentina, persisted into the democracy. Thus this analysis will recognize the promotion of restorative justice and the legalized impunity established by the democracy as grievous obstructions to realizing justice in Argentina.

Justice in Theory

With ongoing injustice, one wonders about the attitude that Argentines hold about the significance of justice. After years of government-supported impunity and attempts at justice that only resulted in the prosperity of injustice, have Argentines become disillusioned with the notion of justice and its virtue to society? Surprisingly, despite the seeming impossibility for Argentines to achieve justice in their society, Argentines continue to praise the value of justice, recognizing the threats of allowing injustice to continue.⁴⁴ Even with this history of impunity and injustice, the importance of justice has not been lost. The nation's persistence in this quest is a critical reason why Argentina is considered a world leader in human and international justice.⁴⁵

Argentina exemplifies how the mere pursuit of justice does not guarantee its achievement. Justice must follow a process that both rests upon a just foundation and utilizes just tools. Implementing just tools such as trials or truth commissions cannot achieve justice if these tools are based on an unjust philosophy. Argentina demonstrates this idea. Justice is both outcome and process. Justice can and ought to be understood as both an ends and a means. Both must operate in conjunction with each other; likewise, many elements of justice must be

⁴⁴ Susana Kaiser, *Postmemories of Terror: A New Generation Copes with the Legacy of the 'Dirty War'*. (Gordonsville, VA: Palgrave Macmillan, 2005): 129.

⁴⁵ *Ibid*, 131.

implemented, not simply one avenue.⁴⁶ The process and realization of justice must be understood in such comprehensive terms if it is to succeed. Justice certainly does not simply occur with a sentencing or a report; more needs to be done to foster a national sentiment of fairness vis-à-vis the state.

State terrorism is fundamentally unjust. As the primary responsibility of a state is to protect its citizens from physical harm, the people of a nation hold an implicit trust in state governments for that protection and security. State terrorism not only destroys that trust but also replaces it with a real and pervading fear of the state. A state's methods for invoking this fear delve a nation further into injustice as it establishes a rationale for the egregious actions. State terrorism's foundation in injustice derives from the idea that the state invokes terror in the nation. As a nation rebuilds itself after a political transition, justice remains the trampled foundational element, left almost unsalvageable after state terrorism. This makes the achievement of justice in Argentina all the more daunting.

Arguably, justice after state terrorism must include both notions of retributive justice and restorative justice. While notions of justice differ based on their intent and method, these principles may work in conjunction with one another for the most comprehensive effect. Retributive justice pursues justice through a focus on the wrongdoing of the perpetrator, the unjust act itself. In contrast, restorative justice aims to resolve the subjective effects of the act, the anger, resentment, and desire for vengeance in the relations between the interested parties, the perpetrator, the victims, and the nation.⁴⁷ Very often, efforts of achieving justice take the form of retributive justice, repairing the rule of law through prosecuting perpetrators of unjust

⁴⁶ Roger Duthie, "Afterword: the Consequences of Transitional Justice in Particular Contexts," Hinton, Alexander Laban. 2010. *Transitional Justice: Global Mechanisms and Local Realities After Genocide and Mass Violence*. (New Brunswick, N.J.: Rutgers University Press): 256.

⁴⁷ Mark R Amstutz, *The Healing of Nations: the Promise and Limits of Political Forgiveness*. (Lanham, MD: Rowman & Littlefield Publishers, 2005): 110.

acts. Yet a critical component of justice that cannot be achieved through legal prosecutions alone is the concept of reconciliation promoted by restorative justice.⁴⁸

This pursuit of justice focuses on the restitution of the nation, moving forward by repairing its common foundation of trust and security. After state terrorism, both of these modes of justice must be utilized to rectify the injustice of the principles of state terrorism. As legal accountability evades a nation suffering from state terrorism, its achievement is pivotal in the pursuit of justice. Deeply fragmented societies, like that of Argentina, ought to rely on the healing aims of restorative justice, with reconciliation and justice being complementary concepts rather than exclusive.⁴⁹

Justice is the “first virtue of social institutions”, a principle foundation, upon which a society relies.⁵⁰ One of the principal philosophers who theorized about the abstract notion of justice is John Rawls. His principles detailed in *Theory of Justice* remain a leading notion of justice for former state terrorist regimes. According to Rawls, justice is understood as a general consensus of fairness within society.⁵¹ This conception of justice remains dependent upon a balance of motives: “the sense of justice that it cultivates and the aims that it encourages must normally win out against propensities toward injustice”.⁵² If a society can foster these goals, than justice will have been established. In Argentina, these goals – and therefore justice itself – remain elusive.

Injustice in a nation is continually fostered by the “distrust and resentment [that] corrode[s] the ties of civility”.⁵³ A nation suffering from injustice therefore cultivates its

⁴⁸ Ibid, 92.

⁴⁹ Ibid, 113.

⁵⁰ John Rawls, *A Theory of Justice*. (Cambridge, MA: Belknap Press of Harvard University Press, 1999): 3.

⁵¹ Ibid, 5.

⁵² Ibid, 398.

⁵³ Ibid, 6.

continuation. Under state terrorism the state abridges basic liberties such as, political liberty, liberty of conscience, freedom of thought, and freedom from arbitrary arrest and seizure as defined by the rule of law.⁵⁴ The state not only abridges these foundational rights; it takes them with no form of recourse. The state, moreover, can then infringe upon other fundamental rights, including the right to personal security and life. For justice to be returned, all Argentines ought to have the same basic liberties and rights protected.⁵⁵ This notion of equality in the rights and liberties granted is integral to Rawls's conception of justice. This is an equality that certainly evaded Argentines during the period of state terrorism as the state terrorist regime divided the nation between supporters and subversives, with anyone who didn't actively support the state being defined as a subversive.

Wartime Justification

For Rawls there are two principles of justice necessary for society, one of which is applicable to post-transitional justice. This principle addresses a fundamental obstacle that Argentina, and any post-conflict society, faces in its pursuit of justice. Principle to the existence of justice in society, "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others".⁵⁶ The last military regime eroded this principle by dividing the nation between supporters and subversives. The military regime justified its actions as the self-defense of protecting society from the illicit threat of subversion.⁵⁷ The strategy employed by the military regime entailed, in the infamous words of General Iberico Saint Jean: "First we kill all the subversives; then, their collaborators; later, those who sympathize with

⁵⁴ Ibid, 61.

⁵⁵ Ibid.

⁵⁶ Ibid, 60.

⁵⁷ Malamud Goti, 62.

them; afterward, those who remain indifferent; and finally, the undecided”.⁵⁸ Anyone who did not actively support or aid the regime’s agenda was an enemy of the state. With this first principle of justice shattered by the former military regime, Argentina was left to rebuild its social foundations.

One of the most fundamentally detrimental components of the injustice created by the terrorist regime was the institutionalized defense of that injustice. In justifying their actions, the military regime maintained that the casualties during the war on subversion were not victims, but rather active threats to the country.⁵⁹ By pointing to an ideological threat as the enemy, the military regime justified its purported need to control the nation through military control.⁶⁰ The Dirty War Lie relied upon the notion that the state acted in accordance with the necessities of the political situation, in a war between the military regime and the subversives associated with the guerrilla movements. Ironically, it defended a period of injustice as “tolerable only when it is necessary to avoid an even greater injustice”.⁶¹ It was depicted as a lesser evil, compared to the injustice that the subversives would incite if they were to reign. The military regime vindicated its actions with a form of justice theory. The former state thus laid a foundational unjust lie, compelling further injustice and making eventual justice all the more difficult to attain. Under democracy, Argentina would have to establish a new set of foundational truths about the past.

The military officers executing the orders of higher state officials were immune from blame, as they were only following the orders of the regime; and this was the pivotal component of the Dirty War Lie. This morality of authority and its role within justice theory is crucial. In the Dirty War Lie, the “unusual demands of the practice in question [made] it essential to give

⁵⁸ Leslie F. Anderson, “Of Wild and Cultivate Politics: Conflict and Democracy in Argentina.” *International Journal of Politics, Culture, and Society* 16, no. 1 (2002): 99 – 132.

⁵⁹ Robben, “Testimonies, Truths, and Transitions of Justice in Argentina and Chile,” 182.

⁶⁰ Malamud Goti, 41.

⁶¹ Rawls, 4.

certain individuals the prerogatives of leadership and command”.⁶² Defending against subversives required the military regime to wage war against them, giving the military officers the veneer of a just regime. This ‘unusual demand’ necessitated its actions; the Dirty War Lie vindicated the military regime from its injustice. Such complex notions of justice raise deep challenges for post-conflict accountability; society feels that justice eludes them while one version of the past purports that the entire regime acted justly given the situation. These ideas are irreconcilable, yet both remain prevalent and conflicting in present Argentina.

Since even state officials promoted this lie, including officers of legal accountability such as judges, the consequences of the injustice were only compounded. At the outset, the military regime replaced the tribunal system, making any decision of ‘justice’ other than a decision of the military regime impossible. The tribunals’ inability to “adhere to the appropriate rules” of justice left a long legacy of injustice that continued well after the end of the military regime.⁶³ Defining justice as a means of defending against the ‘greater injustice’ of subversives is the anchoring principle upon which the Dirty War Lie relied. That the lie was reinforced by the lie’s ongoing pervasiveness in society has led many of the nation’s principles of justice to be tainted and many Argentines unsatisfied. Decades of indoctrination reinforced the idea that the war on subversives did exist and that the military regime was justified in killing 30,000 of its own people. Such a grave fact surprised many Argentines who supported the military regime, sheltered from the injustice imposed on the victims of the war on subversion. CONADEP’s *Nunca Más* report led to disbelief for those who believed the military regime’s narrative that depicted the violence of the state against citizens as “unfortunate but necessary”.⁶⁴

⁶² Ibid, 409.

⁶³ Ibid, 59.

⁶⁴ Hinton, 15.

Justifying the inhumaneness of the military regime with a ‘wartime’ rationale made justice a tool of the regime. Any state of emergency or wartime situation lowers the threshold of justice, as the state seeks to defend security and protect against greater injustice. The Dirty War Lie, or the notion that the military regime fought a just war against subversives or opponents of the military regime and its principles, falsely justifies the military regimes’ actions. Such a falsity allows a rationalization of the regime’s behavior under a fictional situation; of the 30,000 persons disappeared by the military regime, less than one percent of victims were associated with the guerrilla movements.⁶⁵ Clearly, the military regime’s tactics were not limited to actual subversives, in neither statements nor actions. Yet, the notion that the military regime fought a just war with those who became victims drove these justifications for injustice and remains prevalent. Remnants of the lies purported during and after the regime as justification continue to be a significant obstacle to justice in contemporary Argentina.

Failed Argentine Attempts at Justice: Trials

In thinking about the kind of environment that might foster justice, philosopher Hannah Arendt is highly relevant. For Arendt and others, the most effective method of attaining justice is legal accountability, as justice “demands that the accused be prosecuted, defended, and judged”, with all other questions of justice subordinate to these legal endeavors.⁶⁶ Trials, moreover, must not merely be an outlet of anger, but rather sorrow, where the consequences of the inhuman acts being prosecuted get full acknowledgment.⁶⁷ The subject of justice must be the victim, not the perpetrator. With publicized and stylized trials, as illustrated in the opening anecdote, much of the focus in Argentina’s trials has been on penalties to the perpetrators, penalties that the

⁶⁵ Ibid.

⁶⁶ Hannah Arendt, *Eichmann in Jerusalem: a Report on the Banality of Evil*. (New York, NY: Penguin Books, 1994).

⁶⁷ Ibid.

perpetrators understood as farcical. A telling example of how the Dirty War Lie prevailed in the trials comes from Emilio Massera's claim during his trial: "my critics may have the chronicle, but history belongs to me, and that is where the final verdict will be decided".⁶⁸ Perpetrators assumed the trials to be an unjust procedure, undermining their urgency.

The experience of trials in Argentina exemplifies some of Arendt's insights. While Argentina attempted to reap the benefits of trials, it failed to achieve the aims promoted by Arendt, as the trials occurred under the premise of the Dirty War Lie. These trials revealed the Dirty War Lie and its narrative that the state fought an organized party of subversives, a threat to the nation, by prosecuting officials and guerrilla commanders alike.⁶⁹ By trying state officials and guerrilla commanders to the same degree, democracy equated the two parties as if their atrocities had the same grievous effects.

For Arendt, the objective of criminal prosecution is simply to render justice in the question of "individual guilt or innocence, the act of meting out justice to both the defendant and the victim".⁷⁰ Criminal proceedings cannot rectify injustices outside the legal scope of the trial, according to Arendt. Still, they symbolize far more than the individual guilt or innocence of an alleged perpetrator. Trials reveal legal acknowledgement and accountability for actions taken against victims. It allows victims, both immediate and distant, recognition by the state that a wrongful act occurred and that a pursuit of a remedy ought to be conducted. These acts represent far more than a simple guilty or innocent verdict. Legal accountability signifies protection against wrongful acts that challenge the security of citizens.

⁶⁸ Mark Osiel, "Making Public Memory, Publicly," Hesse, Carla Alison; Post, Robert. *Human rights in Political Transitions: Gettysburg to Bosnia*. (New York: Zone Books, 1999): 232.

⁶⁹Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," 185.

⁷⁰ Arendt.

In a state attempting to find justice after a period of state terrorism, where the state justified the brutality of its actions, acknowledgment of crimes and legal accountability is critical. Each government adopts the “political responsibility for the deeds and misdeeds of its predecessor and every nation for the deeds and misdeeds of the past”.⁷¹ Past injustice never remains in the past, since each government is responsible for the injustice of its past even after regime change. For this reason, acknowledging that past abuses occurred and pursuing justice through legal prosecutions signifies far more than the literal event. For a nation reeling from injustice, this kind of recognition - after decades of defending the crimes - means the vindication of victims. While legal accountability can be critical in ending impunity, it can also be critical in the broader pursuit of rational justice. For a nation suffering to recover from the abuses of a terrorist regime, legal accountability can reshape perceptions of justice. However, the Argentine implementation of trials only reenacted the horrors of the Dirty War in terms of that narrative.⁷²

Significantly in Argentina, military officers received exemption from accountability, and many still feel they are immune to blame for their egregious acts. While this may seem like an ordinary manifestation of injustice, its consequences are extensive. One of the most abhorrent features of the injustice created in Argentina is the ongoing defense of the normalcy of these egregious acts. This notion invokes Arendt’s most famous comment on the evil of injustice. In her analysis of Adolf Eichmann’s trial in Jerusalem, she claims that the most alarming aspect of Eichmann’s evil and the greatest justice emanates from his “fearsome, word-and-thought-defying banality of evil”.⁷³ It is the routine nature of his actions, his justifications, which create the greatest evil of these actions.

⁷¹ Ibid.

⁷² Owen M. Fiss, “Human Rights as Social Ideals,” Hesse, Carla Alison; Robert Post. *Human Rights in Political Transitions: Gettysburg to Bosnia*. (New York: Zone Books, 1999): 268.

⁷³ Arendt.

Even though an officer of the Nazi regime, Eichmann defended his actions in the same manner as Argentine officials: they were simply following orders. It was perceived as normalcy, that people could commit appalling acts, torture and murder for no reason other than orders from a top official. For Eichmann, like Argentine officials adopting the Dirty War rationale,

“this diligence in itself was in no way criminal; he certainly would never have murdered his superior in order to inherit his post. He merely, to put the matter colloquially, never realized what he was doing”.⁷⁴

Without the orders, without the political situation, none of these crimes would have been committed. This idea is unnerving due to its implication that any person could be such a vicious perpetrator; in that situation, the acts seemed normal. For Arendt, the ‘banality of evil’ is the normalcy of perpetrators; they can seem no different than others and yet they can commit such atrocious acts. This banality of evil within the military officials of Argentina reigned during the period of state terrorism and afterwards. After the end of the regime, perpetrators walked among victims, as if a society customarily operated in such a way. Arendt’s perspective on trials promotes its ability to foster justice based on trials’ somber focus on the injustice placed on victims. Unfortunately, Argentina failed to manifest this effect because of the trials’ promotion of the Dirty War Lie, through the wartime justification narrative and the due obedience of the officers. This does not satisfy Arendt’s criteria of effective trials, which might achieve justice.

Failed Argentine Attempts at Justice: Confessions

Repressors walked among Argentines because of the Due Obedience and Full Stop laws. The Due Obedience Law, enacted at the end of the military regime, dictates that all acts committed by state officials must be assumed to have been the execution of due obedience with

⁷⁴ Ibid.

orders.⁷⁵ The Full Stop law exempted officers from prosecution for crimes committed when executing orders. Yet well before the laws' repeal in 2005 and a more thorough commencement of prosecutions, some repressors came forward to confess their actions. In a society where former officials were immune from prosecution and the Dirty War Lie reigned as the justification for the unjust crimes, little risk faced repressors for confessing. Former Naval Officer Adolfo Scilingo took advantage of this environment and described his crimes to a journalist almost ten years before his immunity from prosecution finally ended.⁷⁶ This first confession of many broke the initial barricade of silence, where the nation knew the atrocities of the past but collectively remained silent, leaving the extent of the atrocities undiscussed.

Scilingo's confession illustrates Arendt's conception of evil, revealing how "seemingly normal people could commit mass murder".⁷⁷ Years after his crimes were committed, and legally untouchable from prosecution, Scilingo described his role in disappearances and in the death flights. His confession marks the first anecdotal evidence of a truth Argentina knew but remained silent about, that each week planes ejected over a dozen naked and drugged captive persons in approximately 200 flights between 1977 and 1978. Scilingo claimed to be involved in two of the death flights and other egregious crimes such as torture and murder committed against Argentines. Although the confession fostered a conversation where a repressor came forward claiming responsibility, it was tainted by a lack of remorse through simply confessing in order to criticize the high command of the military.⁷⁸ Confessing to committing atrocities and failing to acknowledge the injustice of the acts disappoints the pursuit of justice.

⁷⁵ Antonius C.G.M. Robben, "How Traumatized Societies Remember: The Aftermath of Argentina's Dirty War". *Cultural Critique* 59, (2005): 120 – 164, 140.

⁷⁶ Horacio Verbitsky, *The Flight: Confessions of an Argentine Dirty Warrior*. (New York: The New Press, 1996).

⁷⁷ Eckstein, 162.

⁷⁸ Verbitsky.

In return for his confession, the military stripped him of his retired military status and jailed him for fraud. Rather than exalting the commencement of the dialogue about the past atrocities, the new government warned other military officials of the dangers of confessing; it was an implicit but clear message that the new government aligned with the former military regime.⁷⁹ Instead of being penalized for the atrocities, which he admitted to committing, he was penalized for speaking out against the former military regime. Even as it shed light on the injustice, now exposed, his confession and the reaction it garnered revealed the military regimes' influence under democracy.⁸⁰

Astiz's confession exemplifies how the Argentine perpetrators' truth only fortified the Dirty War Lie. Alfredo Astiz was a commander in the Argentine Marine Corps who confessed after Scilingo's confession along with other military officials. Taking advantage of the immunity given to the former military officials, Astiz confessed but denied any personal involvement in torture. He claimed the acts he committed cannot be attributed to him personally as he did them upon command from his superiors, an essential platform of the Dirty War Lie.⁸¹ Only confessing to a willingness to commit torture due to its alleged necessity, his confession "glorified the heroism in torture: the manliness, expertise, and danger".⁸² He admitted that torture occurred, committed by the regime, but justified these actions based on the Dirty War Lie. To Astiz, those actions were "necessary to protect the nation from subversives immune to conventional military strategies".⁸³ Astiz, along with all other repressors who confessed, neglected to address why the military employed unconventional military strategies to combat citizens. Repressors spoke of victims as subversives of the government who were justifiably held captive by the state.

⁷⁹ Eckstein, 165.

⁸⁰ Osiel, 237.

⁸¹ Eckstein, 169.

⁸² Ibid, 70.

⁸³ Ibid, 172.

These military confessions demonstrate a gap between truth and justice. Confessions emit truth; however, none of these confessions have advanced the pursuit of justice. It can easily be argued that without the immunities established by unjust laws of impunity, many of these truths would not have been exposed.⁸⁴ The safety of confessing where there could be no consequences allowed perpetrators to express their crimes, granting truth about a past riddled with silence to victims and the nation. Yet one must also wonder about the significance of truth when the perpetrators cannot be prosecuted for the crimes admitted. The truth, coupled with immunity from prosecution, created a society where past torturers and murders could openly acknowledge their crimes, untouchable by law. This only reinforced the notion that the state terrorist regime remains unjustly exempt from accountability. If anything, these military confessions highlight the prevalence of the military regime and the notions of injustice that underlie the nation's perceptions of the past.

From the perspective of the international community, perpetrator confessions may seem like a step toward accountability for past crimes. However, these confessions did little to advance the pursuit of justice. In reality, their significance only cemented the notion that military officials remained immune from prosecution and acted as an outlet for reinforcing the Dirty War Lie. Ideally, perpetrator confessions ought to have filled the role of establishing truth, acknowledging victims' stories and promoting individual and societal healing, while creating collective memory in the hope of avoiding a repeat of the past.⁸⁵ Perpetrators' confessions challenge the national silence that envelopes the atrocities of the past.⁸⁶ These confessions ought, in principle, to help initiate a dialogue about the past. While some measure of truth was attained, this dialogue still remained underscored by a series of lies that justified the regime and its actions.

⁸⁴ Ibid, 178.

⁸⁵ Ibid, 159.

⁸⁶ Ibid, 159.

This reality for repressors and the military continued to exist even with these confessions, decades after crimes were committed. These confessions only made clear how the Dirty War Lie persisted, strengthening its infiltration into society with time, only challenged by a dwindling number of immediate victims and their families. As with Scilingo and other confessors, the state convicted Astiz for the ‘fraud’ of his confession.⁸⁷ Contrary to the international community’s perception, these confessions did not signify a genuine desire to pursue restorative justice and peace; rather, these confessions flaunted the established impunity in Argentina. These confessions provided the “means to reinforce, maintain, and adjust the official story to maintain its dominance”.⁸⁸ In these cases, the truth only served as the lie of the military regime, supporting its longstanding justification and perpetuating its continuation long past the end of state terrorism. Theoretically, confessions ought to foster justice. Rather than fostering justice, as the international community assumed these confessions did, the repressors flaunted the injustice, reinforcing injustice’s foundational lie in order to continue its reign. Truth telling and trials account for the international community’s perception of Argentina’s commitment to justice, yet these confessions failed to deliver justice. To the contrary, these confessions justified and even glorified acts of violence.⁸⁹ Even though these confessions disturbed the ‘conspiracy of silence’ about the Dirty War, they only supported the justifications upon which the lie relied.⁹⁰

How Trials and Confessions Failed

The question becomes how did trials and confessions fail to achieve justice within society? The international community perceived these methods as having successfully attained justice for Argentina. Yet the national foundational framework of the Dirty War Lie, invisible to

⁸⁷ Ibid, 170.

⁸⁸ Ibid, 171.

⁸⁹ Ibid, 160.

⁹⁰ Ibid, 162.

the international community, provided an inescapable barrier to justice, impeding the nation from successfully achieving justice. Through the application of the Dirty War Lie, both trials and confessions proved only to compound the sentiments of injustice felt by Argentines, placing the attainment of justice further from Argentina's reality.

The Dirty War Lie framework infiltrated the trials, structuring the legal prosecutions of the state as equal to the prosecutions of the leftist terrorist organization, who committed significantly fewer atrocities. This framework defined the military regime as a time of war against organized parties, rather than a period of state terrorism against civilians. The Dirty War Lie's prevalence in the trials falsifies the situation, justifying the acts of the military regime based on a wartime rationale. With this foundation, victims are subversives, the human rights violations become acts of war, and the atrocities could be considered justifiable. This framework wrongfully removes some of the responsibility for the crimes from the military regime, an unjust effect.⁹¹ By removing some of the responsibility from the military regime in justifying the acts of the military through a wartime scenario, the injustice of the period becomes seemingly less unjust to the world. By perpetuating an understanding that claims less injustice than what was felt by Argentines, a sense of impunity for crimes and injustice only grows within the nation.

Similarly, the Dirty War Lie framework prevented justice from being achieved in Argentina by flaunting the impunity of the regime and demonstrating the pervasiveness of the Dirty War Lie's justification. At the time, perpetrators freely admitted to their crimes; yet confessions occurred through a lens of wartime justification and due obedience to the Junta regime. Like Astiz's testimony, many of the confessions framed the crimes in terms of the necessity of the Junta and the military to fight the subversives, or citizens. Thus, these

⁹¹ Aryeh Neier, "Rethinking Truth, Justice, and Guilt after Bosnia and Rwanda". Hesse, Carla Alison; Post, Robert. *Human rights in Political Transitions: Gettysburg to Bosnia*. (New York: Zone Books, 1999): 51.

confessions only highlighted the justification for these injustices, thereby making justice seem even more out of reach for Argentina. Instead of creating a national truth, these confessions showcased a distinct divide between the truth of the military regime and the truth of the victims.⁹² Injustice became more pervasive and the attainment of justice seemed more difficult as the confessions illuminated the national polarization.

For both the trials and confessions, the Dirty War Lie impeded the attainment of justice as it highlighted how the lie justified the atrocities of the state. Even with these tools of justice, the foundational philosophy of the Dirty War Lie prevailed. Both the trials and the confessions of officials played out in ways that only supported the notions of the Dirty War Lie and how it justified the atrocities of the regime. With this false justification supporting the military regime, little justice could be achieved. Instead of creating justice as many Argentines intended, the trials and confessions only highlighted the unjust justification of the Dirty War Lie. With the wrongful lie illuminated as the justification of the military regime for its injustices, the trials and confessions only compounded the sense of injustice experienced by Argentines.

How the Dirty War Lie Persisted in Democracy

Attempts at finding justice only resulted in ongoing injustice. In Argentina, trials equating the crimes of the military regime and the much smaller guerrilla organizations supported the former terrorist state's justification for their actions; this pursuit of justice occurred with unjust disclaimers and limitations of responsibility. Additionally, the confessions seemed to flaunt the impunity of perpetrators, as they confessed to crimes but could not be held legally accountable for them. As the state failed to pursue justice, Argentines themselves decided to assume the role of seeking justice. With this role of administer of justice, Argentines created *escraches* - a way of holding perpetrators accountable to the public. *Escraches* attempted to

⁹² Malamud Goti, 180.

realize a necessary component of restoration, as “offenders must be diminished through public condemnation”.⁹³ Argentines frustrated and exasperated with the failure to achieve justice took to the streets, publically labeling the homes of former military officials as perpetrators of kidnapping, torture, and murder. Paint and destruction of property became the only way to demonstrate to the community that amongst them lived an official responsible for the atrocities of the military regime. *Escraches* took perpetrators out of anonymity, making their confessions public. People making their own justice proved controversial. *Escraches* displayed guilt when confessions served to relinquish guilt.

One would have assumed that once the military regime relinquished control of the state, the new democracy would relinquish the military regime’s justification for injustice. Instead, the democratic government supported the Dirty War Lie by supporting a divided reality, focusing on restorative justice, and legalizing the impunity of the military repressors. These steps in fact served to obstruct Argentina’s realization of justice.

The first attempt to achieve justice under Argentine democracy was to create the truth commission, CONADEP, which aimed at ascertaining the truth after years of military control.⁹⁴ Yet, the truth acquired through this national demand never received the full approval of the state as the military dismissed its truth; and even after decades, it is dismissed by the military today.⁹⁵ This dismissal confirms the idea of a fragmented truth; one part of the nation’s reality differs greatly from the others. As the military exercised its power through a fragmented truth, CONADEP sought to deny this truth.⁹⁶ Yet the military persisted in dismissing each testimony as false, each allegation of responsibility as wrong, depriving Argentina of a just foundation from

⁹³ Amstutz, 106.

⁹⁴ Osiel, 240.

⁹⁵ Robben, “Testimonies, Truths, and Transitions of Justice in Argentina and Chile,” 185.

⁹⁶ Malamud Goti, 124; Ibid, 88.

which to understand the atrocities of the past regime.⁹⁷ This divided reality manifested itself through a gap in information accepted as truth, with the military and its supporters promoting an alternate reality to the one insisted upon by the victims of the military regime.⁹⁸ This divided reality promoted by the military becomes highly relevant when the influence of the military is a determining and prevalent factor in the new democracy.

There seems to be a distinct difference in the notions of restorative and retributive justice, especially as they have played out in Argentina. Retributive justice is the justice desired after years of impunity. As one 20 year old Argentine student expressed: “Society already knows what happened. There are no longer ways of covering it up, except as it’s being done, which is with absolute impunity”.⁹⁹ The people of Argentina know what happened, thus impunity only frustrates, knowing the injustices that have occurred and knowing that no one has been held accountable for these atrocities. For many, justice will only be achieved with criminal prosecutions of many repressors, because as one Argentine says: “in order to placate people, everybody must know that these people are in jail paying for what they did; that if you do the right thing you’ll be fine but if you do the wrong thing, as they did, you go to jail”.¹⁰⁰ The legalization of impunity made the notion of retributive justice and criminal prosecutions more desirable.

Instead of focusing on retributive justice, the democratic government and military pushed an agenda of restoration to move the nation forward. Yet within the context of impunity, attempts at restorative justice failed. Instead, tens of thousands of Argentines protested the

⁹⁷ Robben, “Testimonies, Truths, and Transitions of Justice in Argentina and Chile,” 179.

⁹⁸ Malamud Goti, 132.

⁹⁹ Kaiser, 179.

¹⁰⁰ Ibid, 180.

government's forced attempt at restoration.¹⁰¹ Forced reconciliation with repressors only strengthened feelings of injustice, eloquently expressed by one Argentine: "we are being asked to reconcile with our torturers, and they're being asked to do nothing".¹⁰² Rather than pursuing restoration as reconciliation among former repressors, the military regime, and its victims, restoration served as a means to vindicate "their victory in 'defeating subversion'".¹⁰³ By advocating for restoration but practicing amnesty, the state seemed unwilling to pursue a fair form of justice. The Dirty War Lie continued, claiming that the 'war against subversives' justified past atrocities.

The new democracy aimed to find common ground between the military and its victims by promoting the narrative of the wartime justification.¹⁰⁴ Yet this promotion did not simply allow the Dirty War Lie to exist, it exacerbated its injustice. The new democracy promoted this notion by emphasizing the military's agenda of restoration.¹⁰⁵ This restoration had little to do with moving the nation forward; it was intended to avoid responsibility for the atrocities.¹⁰⁶ The military advocated for a post-war "healing process" that framed restorative justice as moving past the atrocities of the 'war', regardless of whether the nation placed responsibility for the injustice on a cause or a perpetrator.¹⁰⁷ The continuing offences of the military regime, insisting on the justness of its actions and refusing to release information about disappearances and murders, made the democracy's call for reconciliation an "empty gesture, or worse, another

¹⁰¹ Priscilla B Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions*. (New York: Routledge, 2002): 188.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Hinton, 15.

¹⁰⁵ Hayner, 188.

¹⁰⁶ Amstutz, 131.

¹⁰⁷ Michael Feher, "Reconciliation". Hesse, Carla Alison; Post, Robert. *Human rights in Political Transitions: Gettysburg to Bosnia*. (New York: Zone Books, 1999): 334.

name for impunity”.¹⁰⁸ Legalized impunity only fostered this notion that the crimes against subversives had been acceptable.

Democratic Argentina institutionalized impunity after a futile and quick attempt at achieving justice. At the end of the Alfonsín administration, the new democracy convicted fifteen officers with forty cases in the midst of prosecution, even as the Due Obedience and Full Stop laws remained in place.¹⁰⁹ For the people of Argentina, the military committed atrocious violations of their rights, so that the pursuit of retributive justice through legal prosecution warranted persistence.¹¹⁰ Thus upon President Menem’s administration of amnesties to prosecuted repressors, the national narrative from the government changed drastically from pursuing justice to nullifying their guilt.¹¹¹ In effect, President Menem extended the legalized impunity within Argentina by granting pardons to those few officials who were prosecuted at the conclusion of the military regime.¹¹² These pardons, based on political reasons, explored in the subsequent chapter, actively destroyed the nation’s prior and positive attempts at justice. This action established a reality that the injustice of the past military regime, the blamelessness and the blaming of the victims as “threatening subversives,” would survive and prosper into the democracy.¹¹³

¹⁰⁸ Amstutz, 14.

¹⁰⁹ Fiss, 272.

¹¹⁰ Ibid, 268.

¹¹¹ Osiel, 239.

¹¹² Eckstein, 160.

¹¹³ Malamud Goti, 139.

Chapter 3: Can Argentina Close the Gap Cain Created?

As the final President of the Military Junta left the Casa Rosada, the home of the terror of the Junta for years, a message in the back of the car expressed Argentina's most vexing question: "Cain, where is thy brother?"¹¹⁴ The car sped into the distance, leaving the nation only with that question. At the end of the Military Junta, Argentina awaited the result of life without the reign of the military dictatorship. After years of powerful military terrorism, would the return of democracy change the nation? Argentines faced these questions as the nation reeled from its past, attempting to move forward to reconciliation. Yet, as argued throughout this thesis, Argentina's valiant efforts in achieving justice failed and only led the country into a deeper and more systemic form of injustice. Invisible to the international community, Argentina's pervasive injustice, which stemmed from the Dirty War Lie, led the nation further into an injustice masquerading as justice: an incredibly frustrating form of injustice that leaves the nation hopeless. Consequently, if justice is to come to Argentina, the nation must confront its foremost obstacle, the persistence of the Dirty War Lie.

This analysis lays the burden of the Dirty War Lie on the post-atrocity democratic regime. What still remains unclear, and what must be understood in order to determine how to achieve justice in Argentina, is why the Dirty War Lie persisted into the democracy. If the regime ended, why did the Dirty War Lie continue? This chapter will begin with these questions, culminating in an analysis illustrating how politics and the influence of the military pushed for forced reconciliation. This politically driven, forced reconciliation only deepened the notion of injustice within the country; without adequate consequences, the leaders asked the nation to reconcile with the military. After a period of fratricide, founded upon the extreme influence of the military, how can the nation simply reconcile with only fleeting mechanisms of justice?

¹¹⁴ Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," 179.

Simply put, the Dirty War Lie remained prevalent in the nation due to the politics and influence of the military, which led the government to advocate for forced political reconciliation at a time when the idea seemed to mock the injustice felt by so many Argentines.

The question thus remains as to how can Argentina close the gap between the nation's unjust reality and the international community's perceptions of Argentina as having achieved justice? In defeating the obstacle of the Dirty War Lie, impunity must be resolved. As long as impunity persists, Argentina will be unable to conquer the lie of the Dirty War. However, this impunity is not simply one of legal prosecutions, an area in which the nation has excelled in comparison to other post-authoritarian nations.¹¹⁵ This impunity concerns the impunity of the state assuming responsibility for the former state, for the military regime's true role in repressing citizens labeled 'subversives' indiscriminately. Once the state takes responsibility for the reality of the former regime, for the betrayal of its citizens' trust, then, and only then, might Argentines begin to rebuild their trust in the nation.

Why Has the Dirty War Lie Persisted?

At the end of the Junta's regime, an Argentine poll revealed that the "most unpopular institutions in the country was the military".¹¹⁶ Seemingly, democratic state leaders ought to have politically distanced themselves from the military. Yet the influence of the military persisted, strengthening after the democracy's valid attempt to rid the military of its dominant influence. The politics of the nation and the influence of the military regime structured its path to justice.¹¹⁷ The elite position of power held by the military during the regime, and far before, allows its influence to continue, an influence that prevailed even with a democratically elected government of a nation who severely distrusted the military.

¹¹⁵ Sikkink.

¹¹⁶ Malamud Goti, 59.

¹¹⁷ Hinton, 15.

The military's influence over national politics, even into the democracy, proved to be the reason why the Dirty War Lie persisted. For the new democracy, greater political advantage derived from supporting the military than pursuing justice. Argentina's new democracy under President Raúl Alfonsín initially attempted a route to justice without the influence of the military; yet, the politics of the military thwarted his efforts. The political influence held by the military culminated in the political reconciliation ultimately forced upon the nation. This forced reconciliation cemented the persistence of the Dirty War Lie, as the message became 'the nation must now reconcile after the war as justice has been achieved'. This false message created by the political influence of the military sustained the Dirty War Lie's persistence into democracy.

Political Influence of the Military

Similar to most democratic efforts after a devastating period of state terrorism, the attempt to build democracy in Argentina took place in an uncertain political context. When the Buenos Aires Trials occurred shortly after the regime's transition, the military still wielded "strong and autonomous force within Argentine society" and within its ranks.¹¹⁸ In order to successfully transition into democracy, the new state had to distance itself from the prior regime of terror.¹¹⁹ Nonetheless a new democracy must also obtain strong political support from major political actors. As the military wielded significant power, the government chose to condition its path to justice upon the military's influence in order to ensure its own survival.¹²⁰ Still, that choice came with the price of persistent injustice. Political actors hoped that justice could be achieved only through a blitz of justice measures in the first few years of the democracy; and then, with justice achieved, the democracy could quickly return to supporting the military,

¹¹⁸ Fiss, 267.

¹¹⁹ Hesse, Carla Alison; Post, Robert. "Introduction," Hesse, Carla Alison; Post, Robert. *Human rights in Political Transitions: Gettysburg to Bosnia*. New York: Zone Books, 1999, 15.

¹²⁰ Amstutz, 101.

aligning itself with its influence and power. Thus, the political actors put all attempts of achieving justice into a short time period, riding upon the success of the legal prosecutions, prosecutions compromised by the military's influence on the judiciary.¹²¹ It was an experiment destined to fail.

Argentina's attempted justice at the beginning of Alfonsín's regime remains true to the notion that transitional justice measures are inherently political.¹²² On December 13, 1983, President Alfonsín ordered the Military Supreme Court to prosecute nine former junta commanders, placing much of the power of the trials in the hands of the military. Yet, only a few days later, Alfonsín instituted the National Commission on the Disappearance of Persons, signifying that the military's method of justice would not be the only method of justice employed by the nation. This distrust of the military notably affected the military's support of the government.¹²³ Yet the military's influence warranted this distrust as the court prosecuted only a handful of over two thousand formal complaints of abuse by commanders.¹²⁴ Seemingly light sentencing for the highest ranked officials and the minor amount of prosecutions in comparison to complaints suggest that the military's influence tainted even this valiant attempt at justice.¹²⁵

Since the start of the legal prosecutions, the disdain for the new democratic state and measures of justice grew among the ranks of the military. Such tension resulted in rebellion in April 1987, when military offices refused the subpoena orders of the court; officers broke rank to take charge of their garrisons, deploying weaponry in protest of the prosecutions.¹²⁶ Argentina's pursuit of justice resulted in chaos for its strongest institution, the institution of law and order.

¹²¹ Duthie, 255.

¹²² Ibid, 253.

¹²³ Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," 181.

¹²⁴ Malamud Goti, 63.

¹²⁵ Ibid, 70.

¹²⁶ Fiss, 269.

The reigning officers yielded their influence over the state, with the military rebelling against its superiors in protest of the legal prosecutions. Quickly after the military's rebellious outbreaks, the administration proposed and Congress swiftly passed the amnesty law known as the law of Due Obedience.¹²⁷ The effort Argentina made to seek justice aside from the military's influence failed, resulting in sweeping amnesty for lower rank officials. This political action began a series of actions, which signified to Argentines that the military's influence remained strong within the democracy.

Once the military pressed its influence through the short-lived rebellions, the state began cowering to the military's political influence. Commencing with the law of due obedience, the military advocated for a law that would support the Dirty War Lie's persistence. By establishing that officers ought not be prosecuted for following the orders of their superior officers, the law grants legal support to the Dirty War Lie. This resulted in a presumption that the officers committed the heinous crimes for a more superior purpose, just as the Dirty War Lie asserts.¹²⁸ Alfonsín sought to bring closure to prosecutions, "fearing that prosecutions would go on indefinitely".¹²⁹ Yet the prosecutions underway only amounted to a percentage of those officers culpable for egregious crimes during the military regime. Instead, Alfonsín appeased the discontent among the military and placed Argentina further from achieving the justice that the nation pursued.¹³⁰

Again gaining strength, the military increased its political influence over the new democratic regime as Alfonsín's successor Carlos Menem pardoned indicted and convicted officers, including the five convicted junta members only after serving a year or two of their

¹²⁷ Ibid, 270.

¹²⁸ Ibid.

¹²⁹ Ibid, 269.

¹³⁰ Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," 188.

sentences.¹³¹ By claiming that these acts occurred in the interest of national unity and reconciliation, Menem and the state signaled, in essence, to the people of Argentina that the justice they had received would be sufficient.¹³² Yet, the people of Argentina could not reconcile with those they felt had yet to serve their sentences, had yet to take responsibility for state terror. People took to the streets, protesting the injustices of the government due to the democracy's submission to the military's political influence and to forced political reconciliation.¹³³

Instead of attempting to appease the need for justice within society, the democratic government clearly sought the military political support.¹³⁴ While democracy may have ensured against a military coup, the state cost the nation the opportunity to attain justice under the new regime. In effect, the political influence of the military regime ensured that the military maintained its powerful voice among Argentines. With the state's support, the military wielded its Dirty War Lie into democracy, in defense of the inhumane actions of the past. The military's influence created a platform for the Dirty War Lie to persist under democracy, strengthening its effect on society and its obstruction of justice.

Forced Political Reconciliation

The Dirty War Lie persisted due to the military's forced political reconciliation. If political reconciliation could occur, then the nation could progress forward without castigating the military through retributive justice. Thus, the military used its political influence to give the democracy only one method of deterring a military coup, forcing political reconciliation between the military and the nation. To some scholars, President Alfonsín lacked a better political option

¹³¹ Ibid.

¹³² Jones, Adam. *Genocide: A Comprehensive Introduction*. (London: Routledge, 2006): 348.

¹³³ Hayner, 188.

¹³⁴ Feher, 333.

than supporting the military's efforts.¹³⁵ Regardless of whether the new democracy could have avoided politically supporting the military's agenda, the result remains the same. The foundations of injustice's persistence into democracy relied upon the new state's need to support the military regime; thus, the foundations of injustice relied upon the military's political influence.

Yet how can Argentina be expected to forgive the military and reconcile with its past if the military offers none of the necessary requirements for reconciliation? Political forgiveness, similar to personal forgiveness, necessitates certain elements in order to be successfully achieved. Reconciliation requires "consensus about past wrongdoing, remorse and repentance, renunciation of vengeance, empathy, and mitigation or cancelation of a deserved penalty".¹³⁶ In a nation reeling from a period of state terrorism, reconciliation becomes more difficult, as the state previously defended its unjust action based on its supreme values; now the state must retract these justifications in order to regain the trust of the nation and demonstrate its repentance.¹³⁷ Forgiveness need not require justice nor does justice require forgiveness; for this reason, the democratic government called for a path to progress that would avoid the pursuit of justice, wary of retributive justice and its consequences.¹³⁸ Additionally, the ethic of political forgiveness suggests that with forgiveness the need for legal prosecutions and castigating for wrongdoing would cease, yielding to the reconciliation achieved by parties.¹³⁹

Forced political reconciliation proved to only exacerbate the injustice felt by Argentines based on the trials' failure to produce a sincere dialogue and the nation's divisiveness over perceptions of the military. Both these ideas fortify the Dirty War Lie. For many, the military

¹³⁵ Feher, 334.

¹³⁶ Amstutz, 77.

¹³⁷ Malamud Goti, 88.

¹³⁸ Amstutz, 105.

¹³⁹ Ibid, 91.

prosecutions expressed the same dialogue employed by the military regime.¹⁴⁰ Framed in a manner that supported the notion of the military regime's valid war, the trials undermined the autonomy of the judiciary in terms of military influence. The only avenue Argentines received for justice came shrouded in the military's domineering influence; the typical conception of this form of justice culminated in the notion that a valid effort to seek justice had yet to be employed. The trials only proved to be another means of enforcing the Dirty War Lie by framing the prosecutions in terms of this lie, abiding by the notion that officers had to follow the orders of superiors and equating the need to prosecute leaders of the left-wing movements and military leaders.¹⁴¹

Not only did the state advocate for obtaining a form of political reconciliation that the nation could not achieve yet, the state also advocated for a reconciliation of the society's perceptions of the past. Indeed, given the military's political influence, society remained divided as to its perception of the past. Disputed facts regarding the strength of the left-wing organizations and the number of victims, among other intricacies, left the nation's opinion of the period divided, unable to settle upon a baseline set of facts.¹⁴² While the evils of the Junta seemed evident to many Argentines experiencing its terror, for those outside the realm of 'subversives' the idea that the military committed such atrocities resulted in disbelief.¹⁴³ It was far easier to imagine the necessity of war than the idea that the state had merely terrorized its citizens.¹⁴⁴ Thus, the military employed the 'two demons' narrative of the Dirty War Lie, supporting the opinion of those who failed to see the brutalities of the state. This narrative caters to the authoritarian logic of thinking in terms of 'allies or foes', which dominates in Argentina,

¹⁴⁰ Malamud Goti, 196

¹⁴¹ Ibid, 198.

¹⁴² Ibid, 180.

¹⁴³ Osiel, 230.

¹⁴⁴ Hinton, 15.

as Malamud-Goti claims.¹⁴⁵ Forced reconciliation between the military and an unwilling society becomes even more difficult when society itself is divided over its perception of the former military regime.

For those reasons, political reconciliation had its intended result for the military: the prevalence of the Dirty War Lie and a lack of culpability for the past atrocities of the military regime. Yet, while political reconciliation was the desired narrative, forced political reconciliation never occurred. This left the Argentine nation struggling with the unrest of injustice. In Argentina's reality, "Nobody talks of reconciliation in Argentina, nobody touches it. It's not that anybody is actively opposed to it, it's that the word has no meaning here. Nobody has seriously put that question on the table".¹⁴⁶ While the state advocated for political reconciliation, Argentines never accepted the farce. As political reconciliation still eludes Argentina so does the notion of justice.

What Would It Take to Achieve Justice?

The military's political influence has cost the nation its achievement of justice. By employing the Dirty War Lie to avoid culpability for their crimes, the military obstructed the nation's effective pursuit of justice through innovative means. The most significant question still remaining is whether and how Argentina can overcome these obstacles and at last achieve justice. Argentina could close the gap between the international community's perceptions of its achieved justice and the domestic reality of injustice. Yet, this effort would require the complete abolition of state impunity, not simply through legal prosecutions but also by acknowledging the state's responsibility for instigating and then manipulating the Dirty War atrocities. In essence,

¹⁴⁵ Malamud Goti, 72.

¹⁴⁶ Hayner, 188.

the state must cease to refer to that period as a war, terminating the necessity for wartime justification.

The state must now facilitate accountability through both truth and justice without obstruction. The state must begin to acknowledge its wrongdoings to the fullest extent.¹⁴⁷ Additionally, the state must dismiss the notion that actions can be justified through a military hierarchy or state bureaucracy, relieving “the individual responsibility for great crimes”.¹⁴⁸ Rather than enforcing the arguments of the military regime, the state must “delegitimize the prior regime” in the claims it made that justified the egregious acts of injustice.¹⁴⁹ Furthermore, and omitted from Argentina’s previous attempts at justice, the state must pursue a universal form of justice; particular elite groups cannot be exempt from this pursuit.¹⁵⁰ Argentina failed to pursue universal justice when the government permitted the military to wield political influence. Any chance of achieving justice in Argentina will depend on dismissing the notion that the military’s political influence requires deference.

Another requirement of Argentina’s pursuit of justice must be its locality. While Argentina played a significant role in changing the course of international legal prosecutions, these international efforts lacked local results. The pursuit of justice must occur with the complete support of local society and government, due to the nation’s complexities. A foreign movement for justice without an initiating locality “fails to attend to critical on-the-ground realities”.¹⁵¹ Political reconciliation, the attainment of sufficient justice, cannot occur through external means, regardless of their quality.¹⁵² Local measures must be employed to signal to the

¹⁴⁷ Neier, 39.

¹⁴⁸ Ibid.

¹⁴⁹ Osiel, 244.

¹⁵⁰ Hesse, 19.

¹⁵¹ Hinton, 17.

¹⁵² Ibid, 19.

citizens of the nation that a beneficial change is on the horizon. After state terrorism, justice can only be attained through an understanding by society that this new state will be different.

Argentina's new democracy failed to separate itself from the military's powerful political influence, and in doing so, signified to the nation that the new democracy would function upon the same foundation of injustice.

While Argentina must employ additional elements in the pursuit of justice, many current practices must be omitted. In order to achieve political reconciliation, Argentina must address the effects of the Dirty War Lie as well as its causes, since these causes only propel the nation further into injustice. As "factual truth informs political thought", the effects of the Dirty War Lie fuel the political dialogue and focus upon conflict resolution through a post-war lens.¹⁵³ Yet the pursuit of justice cannot focus solely upon legal prosecutions.¹⁵⁴ The nation must pursue justice holistically, tending both to truth and justice; these two factors must occur simultaneously in order to grant the nation a realistic opportunity to reconcile.¹⁵⁵ Argentina must separate its pursuit of justice from the Dirty War Lie. This lie, propelled by the political influence of the military, sustains itself through its legacy under democracy.

Eradicating Complete Impunity

Argentina must assume responsibility for the atrocities of the Dirty War Lie. Argentines sacrificed for political reconciliation, without any reciprocating sacrifice from the state.

Argentines "are being asked to reconcile with our torturers, and they're being asked to do nothing".¹⁵⁶ While the public understood that the 'Dirty War' narrative was a lie to Argentina,

¹⁵³ Hesse, 15.

¹⁵⁴ Amstutz, 42.

¹⁵⁵ Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," 202.

¹⁵⁶ Hayner, 188.

these public truths paled in significance to the judicial truth held by the trials.¹⁵⁷ Laws must approve of the stories victims tell, rather than boosting the story of the Dirty War Lie through amnesty laws and trials.¹⁵⁸ The persistence of the Dirty War Lie illustrates the military's ability, as supported by the democracy, to define political interests.¹⁵⁹ The truth no longer belongs to Argentina as a nation but to the military.

While one could argue that the Argentine case “suggests that the very pursuit of accountability may imperil the disclosure and acknowledgment of factual and interpretive truth about past political violence and may exacerbate political divisions within the nation”; this notion omits the true reason for the political divide in Argentina.¹⁶⁰ This idea only holds true because of the deference bestowed on the military by the state. If the state could pursue accountability based on a truthful and communal understanding of the period of the military regime, then a foundation would be set for the successful pursuit of justice. In order to have the greatest opportunity for success, trials should be devised in “light of more adequate understanding of social solidarity”, as trials in pursuance of accountability need a common foundation of truth understood by society.¹⁶¹ A communal foundation of truth, of understanding the true systematic atrocities of the military regime and how its lie perpetuated its injustices, will allow trials to determine accountability in satisfaction of justice rather than resulting in a political divide. This political divide and lack of reconciliation cannot be attributed to the court's pursuit of accountability, but rather to the divided truths held by the state and the state's people.

In order to attain justice, all of the culprits of injustice must take responsibility for their actions, though this may not necessitate punishment; these actors of injustice must acknowledge

¹⁵⁷ Robben, “Testimonies, Truths, and Transitions of Justice in Argentina and Chile,” 186.

¹⁵⁸ Osiel, 237.

¹⁵⁹ Hayner, 188.

¹⁶⁰ Amstutz, 132.

¹⁶¹ Osiel, 251.

the consequences of their actions in order for any form of justice or reconciliation to occur.¹⁶² As Argentina currently stands, many of those deeply involved in state terrorism escaped blame and accountability for decades.¹⁶³ Even with legal prosecutions, the truth of the extent and nature of the ‘war’ eluded society. Thus, the true character of the regime was inaccurately represented and its allies understated. The process of state terrorism incorporates far more people and far more injustice than individual egregious acts; it is the unjust doctrine that Argentines must face in order to reestablish justice within the society. A lack of state culpability remains, even while legal trials prosecute the former regime’s ranking officials.

This type of impunity infiltrates every component of society and its quest for justice, so that all methods of attaining justice become futile. Legal prosecutions alone cannot remedy impunity that systematically reigns over Argentina. For if possible, than the nation’s domestic perception of justice would not differ from the international community’s. Furthermore, if the legal prosecution had simply achieved its objective, Argentina would have become a just society after the 1985 trials, regardless of the pardons. Yet, this hypothetical failed to become reality when Argentina focused on the prosecutions of officials rather than the acknowledgement of truth’s absolute value in a society reeling from state terrorism. A focus on the truth of the period, not simply fixated upon the acts but rather the unjust rationale that incited the acts, would have allowed the legal prosecutions and other methods of attaining justice to be far more successful.¹⁶⁴ The crux of this idea illuminates that both truth and justice are needed, but that the truth must focus on underlying rationales, as well as witnessing or confessions.

The state must no longer have impunity for supporting the rationale for the atrocities. Far more than the atrocious disappearances, the greatest injustice experienced by Argentines is the

¹⁶² Amstutz, 43.

¹⁶³ Malamud Goti, 179.

¹⁶⁴ Amstutz 131.

state's acceptance of the rationale that justified the Dirty War. This greatest injustice maintained its fervor into the new democracy, which left Argentines without a capable path to pursuing justice. In order to remove state impunity, the state must assume responsibility for its actions during the military regime and subsequently in political support of the military under democracy. Then the nation can utilize various valid tactics to pursue justice, such as trials, in order to finally achieve justice. Additionally the state must universally condemn all parties responsible for the regime's 'Dirty War' against civilians. With universal condemnation, the state will finally signal to Argentines that the state reprimands not only the acts of the regime, but also its rationale.¹⁶⁵ By doing so, the state will slowly earn the trust of its people, as Argentines begin to feel secure in the idea that the horrors of the regime truly will never happen again, *nunca más*.

¹⁶⁵ Neier, 49.

Conclusion:

The injustice of the military regime remains as prevalent today as it did immediately after the regime. For decades, Argentines have sustained a fear and endured the rationalization of atrocities, unable to escape how the injustices of the past have persisted into the present democracy. Still, the injustice of the past military regime prevails through memories of the atrocities, empty spaces left by the victims, and the reigning justification blaming the victims as threats to the nation.

Internationally, Argentina leads the world as a model for addressing injustice after a period of state terrorism. Nationally, Argentina remains plagued by its past injustices, only compounded by injustices into the present. If Argentina could eliminate this gap, by achieving the injustice that it has pursued for decades, then the nation's domestic reality would drastically change. Justice would lead the nation to foster trust and unification nationally, a reality not experienced by Argentina in decades.

This analysis has demonstrated the key obstacle impeding the attainment of justice for Argentina: the Dirty War Lie's prevalence in each of the means of attaining justice under democracy. As the military regime created the Dirty War Lie to justify their egregious and unjust crimes, its persistence in democracy signals to the nation that injustice remains and the military regime escaped responsibility. The military regime's ongoing position of power illuminated the impunity facing Argentina. State impunity, as experienced in Argentina, has manifested itself in the denial of state responsibility its past crimes, and the current democracy's role in perpetuating the rationalization of these crimes. This analysis has traced the Dirty War Lie's prevalence in the democracy to a forced political reconciliation in which the government seeks to garner support from the still powerful military institution. By understanding the

principal obstacle to justice in Argentina, the obstacle can be addressed, eliminated and then and only then, can the tools that have been implemented by Argentina in pursuit of justice have the opportunity to be effective.

If Argentina addressed the state impunity manifested by the democracy's persistence of the Dirty War Lie, then the nation might successfully close the gap between the international perception of justice and the injustice experienced within the nation. The justice perceived by the international community could finally become a domestic reality. If this occurred, the question becomes what would Argentina look like without the struggle of injustice prevalent in the nation. What would it mean to Argentina if the nation finally achieved the justice that it has pursued for decades? Such a long-lasting pursuit surely has become significant and fundamental to the nation. One could argue, in fact, that the identity of the post-military democracy has been marked by the pursuit of justice in the wake of the previous atrocities.

What form would justice take in a nation known for its persistent and enduring pursuit of justice? The nation could be more unified in its understanding of the 'Dirty War' period as a time in which the military utilized terror and fear to commit atrocities against its citizens rather than wage a war against subversives. Argentines could understand past atrocities within the actual framework of state terrorism, not wartime. The democracy would take responsibility for the atrocities of the past regime, understanding their role is persisting its unjust rationalization, or the Dirty War Lie. A reconciled Argentina would be able to pursue justice in other ways. Argentina could move forward in the pursuit of a more universal justice for its entire people by using a renewed sense of political momentum. Finally, the disappeared would no longer be ghosts among the citizens; the terror of the previous regime would no longer sustain the fear of the nation. Argentina would be able to move beyond that period. Argentina would finally be the

model of pursuing and attaining justice after a period of state terrorism, as it had been perceived to be by the international community.

For Argentines, the attainment of justice would mean so much. It would mean that their pursuit did not occur in vain; that their quest for justice at last provided them the relief and solace they desired. Finally the ghosts of the disappeared can rest, unburdened by the blame of their crimes. Argentines would finally be treated as citizens of the state rather than threats. Justice persistently eluded Argentina for decades. If Argentina could close the gap between the international perception of justice in the nation and its domestic reality, then the nation could be at peace with its past.

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