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**Trial and Error: Mechanisms of Justice in Argentina**

In its recent history, Argentina has commanded the attention of the international community for two reasons: atrocious human rights violations, and the country’s subsequent efforts to enforce justice. From 1976 to 1983, Argentina was governed by a military dictatorship that committed crimes against thousands of citizens. After President Alfonsin was elected in 1983, the world observed the country, fixated on efforts to reveal the hidden crimes of the Dirty War hold its creators accountable. Argentina’s attempts at justice since 1983 used diverse approaches over an extended period; however, every mechanism Argentina used to pursue justice was rooted in creating legal precedent, reforming existing institutions, or truth in order to punish perpetrators and acknowledge a period of state violence.

The Dirty War was a seven-year armed struggle between the Argentinian military dictatorship and their opposition that resulted in the systematic disappearance, torture, and death of thousands of individuals that were suspected of supporting a left-wing agenda (Notes, 2/15/18). In 1983, the military regime, led by Reynaldo Benito Bignone, was forced into allowing general elections due to pressure to address a national economic crisis, coupled with the military defeat in the war over the Malvinas/Falklands islands (Nino, 43). Raul Alfonsin was the first president elected after the military dictatorship (Nino, 62). During his first week in office, he created the "National Commission on Disappeared Persons" (CONADEP) and repealed the military amnesty that had protected its members from investigation. CONADEP was charged with investigating the fate of the disappeared and producing a final report to the President (Nino, 72).

The Commission was given access to all government facilities, and the security forces were ordered to cooperate. However, it was not given subpoena powers or the ability to compel testimonies. If it happened to uncover evidence of crimes, CONADEP was supposed to hand over that information to the relevant courts. CONADEP established branches in several provincial cities, and staff and commissioners travelled all over the country to receive testimonies (Nino, 73). The result was the *Nunca Mas* report. This report declared that the Dirty War had been a coordinated and systematic set of human rights violations, documented more than 8,000 cases of disappearance, and confirmed the existence of more than 300 clandestine detention centers throughout Argentina (Nino, 80). CONADEP established the first attempt at discovering the truth of the extent of the Dirty War. Truth was the first tool used by Alfonsin to create an environment that would foster support for human rights and legal justice.

However, Argentine human rights NGOs would have preferred that the government channel more support towards active investigations leading to prosecutions and punishment (Notes 3/1/18). In their eyes, while discovering the truth was important, trials and retributive punishment were true acts of justice. At the time, the Alfonsin administration sought to protect the independence of the judiciary by insisting that the courts should conduct those inquiries with the means at their disposal. The Argentine people, particularly victims and their families, were not satisfied by CONADEP’s investigations. The revelations of what had taken place in the years of the Dirty War only resulted in greater demands for justice. Starting in 1983, Argentine human rights organizations began providing legal representation to relatives of the disappeared who wanted their cases to be taken to court (Notes, 2/22/18). As new testimonies were brought to public attention, victims and families sought the intervention of the judiciary.

Information collected by the Commission was crucial in the trial of the military Junta in 1985, and five generals were eventually imprisoned (Nino, 81). These trials were important because they fulfilled Alfonsin’s promise of holding military leaders accountable to human rights violations. However, the new administration was restricted by the threat of the military regaining control by force. While Alfonsin advocated for human rights investigations and prosecutions, he also pragmatically needed to placate military leaders. Lower military ranks began to agitate against the threat of prosecutions resulting in the Alfonsin government’s decision to close avenues of criminal accountability. The president’s worst fears were realized with the 1987 “Easter Rebellion,” when the military responded to the arrest with the threat of rebellion. Only negotiations between Alfonsin and the rebellion’s leaders ended the potentially detrimental conflict (Rosenberg, 135). Alfonsin denied promising any sort of amnesty to the rebels during these private deliberations, but a few months later Congress passed the Due Obedience law (Nino, 100). Under this law, nearly all lower-ranking officers were pardoned for their involvement in dirty war crimes, with the justification that they were merely “following orders” (Nino, 101).

Even with this compromise Alfonsin’s actions during his presidency gave worth and legitimacy to the country’s institutions. By establishing CONADEP, he highlighted a national need for the truth. By placating certain military actors, he ensured that Argentina did not experience another military coup. By allowing the courts to follow their own procedures, he ensured that the executive branch did exert too much influence on the judiciary. Early attempts at trials as a form of justice were restricted to protect democracy, but actions were taken to create an environment to foster justice.

A few years later, much of this progress seemed to be moving backwards. Alfonsin fell from power and was replaced by President Carlos Menem. Between 1989 and 1990 Menem did huge damage to the cause of post-dirty war justice by pardoning nearly every person who had been convicted of dirty war crimes, including high-profile Junta leaders (Rosenberg, 137). Essentially with these pardons, no one would face any significant punishment for the state terrorism of the Dirty War. President Menem defended the pardons, stating that Argentina needed to move towards reconciliation and national solidarity (Roht-Arriaza, 98). In the eyes of many, especially those active in civil society, Argentine attempts at justice had failed.

While Menem’s pardons did not help Argentinian justice move forward, other foundations of justice were being laid throughout his time in office by other government institutions. During his presidency, democratic processes continued to develop through the creation of new legal precedents. In 1994, Argentina reformed its constitution to enhance democracy and to raise international treaties ratified by the Congress to the status of constitutional law (Roht-Arriaza, 99). This meant that international human rights treaties would be prioritized over national practices (Notes, 3/1/18). The reformed constitution obligated the state to adopt measures to ensure human rights. As a result, the chief international legal instruments for the protection of human rights received constitutional status, which allowed Argentinian judges to learn about international law and apply it to the national courts. Argentina also adopted the 1968 Convention on the Non Applicability of the Statute of Limitations to War Crimes and Crimes Against Humanity and, shortly after this, the 1994 Convention on Enforced Disappearances (Roht-Arriaza, 99). Adopting these constitutional reforms reinforced Argentina’s commitment to transitioning into an internationally accepted democracy.

One year later Argentina was rocked by the public confession of former naval Captain Adolfo Scilingo regarding his involvement in ‘death flights’ (Roht-Arriaza, 97). This revelation was groundbreaking because it was the first time an Argentine military officer took responsibility for his crimes. This confession paved the way to legitimizing the category of the “disappeared.” This created legal groundwork that disappeared cases were not affected by any statute of limitations; technically the cases were ongoing (Notes, 3/1/18).

These institutional changes created an environment that fostered Argentina’s truth trials. By 1998, neither Menem nor the military held the same power they did before and despite Menem’s efforts to move past the Dirty War, the pressing issue of the “disappeared” remained. Families craved any knowledge on the fates of their missing relatives, and persistently appealed for government investigations. In 1998, an Argentinian national lodged a complaint to the Inter-American Commission on Human Rights (Roht-Arriaza, 102). In 1999, the Commission brokered a settlement where Argentina agreed to guarantee the “right to truth” which meant using government resources to obtain information on the fates of the “disappeared”. The agreement made it an official obligation of the state to continue judicial investigations of the "disappeared" (Roht-Arriaza, 104).

In the truth trials, the courts almost acted as temporary truth commissions, following the legal procedures of a trial to discover the truth about many dirty war crimes despite the fact that the guilty could not be punished. They were based on the right to know the truth, and the right of the relatives to bury and mourn their dead (Roht-Arriaza, 105). In that sense, truth became a form of justice. While the trials themselves did not provide justice they laid foundations for future criminal prosecutions. The truth trials were a conglomeration of different methods meant create space to pursue truth despite Menem’s restrictions of criminal investigations.

Furthermore, in 1998, former Chilean dictator Augusto Pinochet was arrested while in London. This arrest had a significant effect on judges in Argentina, who were already being pressured by victims and human rights organizations to order arrests, reopen prosecutions, and ultimately nullify the amnesty laws (Roht-Arriaza, 97). The Pinochet arrest added a layer of international responsibility to Argentina’s justice proceedings, and gave the national government incentive to revisit the idea of criminal trials. The Pinochet effect also sent a message to dictators and human rights violators; that they risk being arrested and tried in other parts of the world due to international law.

When President Kirchner took office in 2003, Argentina’s progress since 1983 had created an environment where justice could be implemented. While Kirchner’s political agenda drove the goal of justice into the public sphere, Argentina’s democratic and legal institutions were finally strong enough to support those endeavors. Democracy had become a part of Argentina by Kirchner’s presidency. In 2003, President Kirchner obtained a national Supreme Court ruling permitting extraditions in cases of crimes against humanity (Lessa, 70). That same year, Congress repealed the Full Stop Law. In 2005 the Supreme Court ruled that the 1986 and 1987 laws shielding officers accused of crimes were unconstitutional (Beyond the Readings, 3).

This rapid removal of legal restrictions paved the way for a reopening of trials in 2006. The trials had massive public support and rallied a universal condemnation of the state terrorism used during the Dirty War (Lessa, 73). Between 2006 and 2012, this wave of trials allowed 1,926 people to be accused of dirty war crimes. Of those, 262 have been convicted (Beyond the Readings, 4). Although these perpetrators were tried many years after their crimes were committed, that time was spent fostering the development of Argentina’s national democratic institutions. These trials would not have been sustainable immediately after the transition to democracy.

Nations emerging from repression have developed different methods of transitioning from dictatorship to democracy, and of dealing with legacies of violence. Through many starts and stops, Argentina wove a path towards implementing justice in the wake of the Dirty War. Specific to this case, Argentina’s attempts at justice were closely intertwined in their definition of democracy. Therefore, as democratic activities fostered institutional reforms, more effective tools to achieve justice were established. Because legal efforts and politics were dependent on one another, the country went through different periods of progress in setting legal precedent. Their use of truth as a tool in law and reform contributed to their most recent push in pursuing criminal justice. Argentina’s transitional justice process is defined by their commitment to using existing government institutions and creating their own legal precedent.

Ultimately, the largest element of Argentina’s attempts at justice was something no one can dictate or control: the passage of time. Legality and democracy depend on one another, and it takes time for democracy to develop after a dictatorship. Public participation in Argentina’s democratic institutions created the dialogue and change that eventually led to trials and justice for the victims of the Dirty War.