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Performative Punishment: Argentina's Novel Approach to Transitional Justice at the Trial of the
Juntas

On my honor I have neither given nor received unauthorized information regarding this work, I have followed and will continue to observe all regulations regarding it, and I am unaware of any violation of the Honor Code by others.

Emerging from nine years of state-sponsored torture and terror at the hands of a military dictatorship during the Dirty War (1974-1983), the new Argentine democratic government confronted calls for transitional justice, defined by political scientist Omar Encarnación as “the attempt to hold an old political regime accountable for its crimes.”¹ While this basic idea of accountability for the prior regime dates back to the French Revolution, Encarnación traces transitional justice’s modern form back to Argentina’s approach in the 1980s.² In this way, Argentina was a trailblazer, particularly within Latin America, where national amnesia had been the norm before the 1980s.³ From the amnesty policy issued by South Africa to Peru’s Truth and Reconciliation Commission to the prosecution of war criminals in Yugoslavia, transitional justice can take many forms. While acknowledging the presence of alternatives, Encarnación reveals the traditional “retribution or reconciliation” binary within the politics of transitional justice since the 1980s: either hold the perpetrators of atrocities accountable in the legal system or prioritize national unity and the exposure of the truth above formal punishment.⁴

In the context of this binary, the 1985 Trial of the Juntas, a cornerstone of Argentina’s transitional justice architecture where the government put nine of the most notable leaders of the military dictatorship on trial, initially seems understandable only as a retributive event. Scapegoating specific leaders of the prior regime and subjecting them to punishment through the law, the trial appears a textbook example of retributive transitional justice. Despite the Trial of the Juntas meeting this formal definition of retribution, the strategic choices that surround it reveal its true pedagogical and reconciliatory goals. Primarily interacting with the film

Argentina, 1985, a recent historical retrospective drama addressing the trial, and reflections on

¹ Omar G. Encarnación, “Transitional Justice at 40: A Critical Appraisal.” *Current History* 123, no. 849 (2024): 3.

² Ibid.

³ Francesca Lessa, “Transitional Justice in Argentina (1983-2012): A Global Protagonist with Its Ups and Downs,” In *Memory Politics and Transitional Justice*, ed. Jonathan Allen (Palgrave Macmillan, 2013). 55.

⁴ Omar G. Encarnación, “Transitional Justice at 40: A Critical Appraisal.” *Current History* 123, no. 849 (2024): 3-4, 8.

the trial from two Argentine legal philosophers intimately involved in the trial, I contend that rather than a pure legal reckoning, the Trial of the Juntas should be interpreted as a performative act of nation building and promoting democratic values.

Stretching from the appointment of prosecutor Julio César Strassera on the junta case all the way to the court's sentencings of the junta members, *Argentina, 1985* had an entire life cycle of a trial from which it could select a culminating moment. Its rejection of the verdict revelation in favor of Strassera's closing statement reveals the trial's focus on being educational to a nation, not retributive towards a junta.

Many legal dramas position their climax during the reveal of the verdict, seemingly the key moment of any trial truly oriented around achieving the desired punishment. *Argentina, 1985* subverts this norm. Revealed in the final scene of the film in Strassera's dark apartment as he informs his preteen son Javier of the news following a phone call from the court, the verdict lands with an almost eerie placidity to the audience.⁵ Lacking a dramatic score or a strong reaction from its protagonist Strassera, the scene is characterized only by Javier's emotions, which swing between elation at the life imprisonment of some leaders and disappointment at the exoneration of others. Without strong context clues indicating an unambiguously positive or negative result, viewers struggle to make clear meaning from this event. As a result, in the context of the entire film, this scene lands somewhere between an afterthought and an epilogue. Given this relegation of the verdict to the periphery of the film, director Santiago Mitre clearly did not view the trial's outcome as its primary source of meaning.

Regardless of whether they view the trial as a positive development, scholars tend to agree that the verdict is far from the focal point of the trial. Criticizing the trial's minimal tangible value, Jaime Malamud Goti, an Argentine legal philosopher who advised President

⁵ *Argentina, 1985*, directed by Santiago Mitre (1990; Amazon Studios): 2:08:43.

Alfonsín in the lead-up to the trial, argues “there is little point in convicting state criminals to deter similar actions. Very seldom do we refrain from fear of a hypothetical punishment when we are supported by an ideology, a whole bureaucratic apparatus and find comfort in almost all our comrades and the superior cadres.”⁶ Malamud Goti indicates that the true audience of the trial is not future potential tyrants, who he contends will be undeterred by the abstract, seemingly far-fetched possibility of retribution for their despotism. In a truly legalistic scenario, this deterrence model would form the basis for the trial.

Instead, the imperative to persuade not just a court of law, but the national court of public opinion of the guilt of the junta and the importance of democratic norms defines the trial. Praising the trial as holding up “miraculously well,” Carlos Nino, another academic helping Alfonsín formulate a legal approach to the junta, points to the remarkable source of legitimacy for this prosecution: not “an invading army or a division of the armed forces backing the trials—literally[...]nothing other than moral appeal.”⁷ The verdict of the trial would be moot if it did not imbue the populace with the reverence for democracy and animosity towards the junta necessary to accept and uphold its ruling. This demonstrates a degree of civil sovereignty rarely seen in trials, which rarely take such pains to justify their legitimacy.

Consequently, the moment that defines *Argentina, 1985* is the state’s best opportunity to directly address the public: Strassera’s closing argument, anointed the “film’s emotional and dramatic zenith” in a review from the North American Congress on Latin America (NACLA).⁸ While Strassera is clearly the star, delivering an 8 minute monologue, numerous choices within the scene accentuate the importance of the national audience.

⁶ Jaime Malamud Goti, “What Went Wrong With the Trials in Argentina,” In *Herbert Morris: UCLA Professor of Law and Philosophy: In Commemoration*, ed. George Fletcher (Mazo Publishers, 2023). 45.

⁷ Carlos S. Nino, “The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina.” *Yale Law Journal* 100, no. 8 (1991): 2637-38.

⁸ Humberto J. Rocha, “Argentina 1985: The Revival of Democracy (Review).” *North American Congress on Latin America* (2023): 1.

From the very start of the scene, where Strassera sits in the courtroom alone as the camera zooms out and time lapses to reveal the spectators entering, the importance of the audience is clear.⁹ The prosecutor may be the protagonist; however, he is only so consequential because of the existence of a populace to persuade. From there, Mitre expands the scope of the viewership to transparently include not only the observers in the courtroom, but the rest of the country by repeatedly showing a television camera filming Strassera delivering his argument.¹⁰ Strassera is not preaching exclusively to the court which will issue the verdict, nor to the relatively small assembly of people in the crowd. He is addressing all of Argentina.

The broad nature of Strassera's audience is clear from examining who the camera pans to as he concludes his remarks with the iconic Argentine transitional justice slogan "Nunca Más!" (Never Again).¹¹ We do not see the emotionless, impartial faces of the judges determining the junta leaders' fate, who would be Strassera's principal audience if this trial were truly about legal retribution. Instead, Mitre lingers on the impassioned faces of the citizenry—from those who publicly testified regarding human rights violations by the junta to regular, unknown people—who typify the participants of future nation building efforts commenced by Alfonsín's transitional justice regime.

The Argentine philosophers emphasize the efforts depicted in *Argentina 1985* to galvanize the public, justifying its intent even if they had mixed views of its execution. Lamenting the trial's ultimate inability to change minds, Malamud Goti lays out the standard that "Convictions may contribute to restoring the citizens' lost dignity insofar as the populace assumes that, beyond satisfying retributive emotions, the courts are impartial and that

⁹ *Argentina, 1985*, directed by Santiago Mitre (1990; Amazon Studios): 1:47:36.

¹⁰ *Ibid*, 1:56:16.

¹¹ *Ibid*, 1:57:57.

convictions are grounded in shared notions of moral responsibility.”¹² For the citizenry to recognize a legitimate conviction and a genuine democratic transition, the state had to first convince them of the existence of a fair legal process and the fact that the junta was morally (if not also legally) culpable of atrocities. Unfortunately, Malamud Goti did not believe the Trial of the Juntas achieved this persuasive effect. He points to the continued appeal of political violence and torture to much of the citizenry, the usage of dictatorial rhetoric by politicians, and renewed electoral success from officials affiliated with the junta to conclude that the “trials were not the reflection of the country’s abomination of violence” and “did not achieve the goal of fostering reliable democratic values among Argentina’s society.”¹³

On the other hand, while Nino recognizes a “degree of public criticism” which limited future legal forays into junta accountability, he ultimately celebrates the two public relations victories of the trial: “the pride of the citizens in the results of the trial and the satisfaction of the victims.”¹⁴ This pride and satisfaction manifested itself through a shift in Argentine political culture denied by Malamud Goti but lauded by other academics. For instance, Emilio Crenzel contends, “military junta trials represent a horizon on which those seeking accountability for past human rights violations can set their expectations, and they gave Argentine society new meaning by restoring justice and the law to its political culture, which were elements it had been lacking for half a century.”¹⁵ This budding democracy even garnered tacit support from much of the military, as Nino points out that intra-military rebellions from a radical faction of mutineers “were repressed by the bulk of the military, which now clearly expressed their support for

¹² Jaime Malamud Goti, “What Went Wrong With the Trials in Argentina,” In *Herbert Morris: UCLA Professor of Law and Philosophy: In Commemoration*, ed. George Fletcher (Mazo Publishers, 2023). 44.

¹³ *Ibid*, 52.

¹⁴ Carlos S. Nino, “The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina.” *Yale Law Journal* 100, no. 8 (1991): 2638.

¹⁵ Emilio Crenzel, “Revisiting the origins of Argentina’s military junta trial: political, moral, and legal dilemmas of a transitional justice strategy.” *Canadian Journal of Latin American and Caribbean Studies* 42, no. 2 (2017): 160.

democratic institutions.”¹⁶ While Malamud Goti may clash with Crenzel and Nino on the efficacy of the prosecutors’ efforts, both camps uphold improving public belief in the political/legal system as a central, if not preeminent goal of the trial.

In *Argentina, 1985*, viewers see this trend of rising faith in the nascent democracy taking place not only through roused faces in the courtroom but via the illustrative story of assistant prosecutor Luis Moreno Ocampo’s conservative mother Magda. Prior to the trial, Magda viewed junta leader Jorge Rafael Videla as “a good man who did the right thing.”¹⁷ She added that Moreno Ocampo’s uncle with a military background characterized the trial as “against him, against the family, and against the country.”¹⁸ To well-off families of the time, this was not an unfamiliar story—the NACLA review describes Magda as a “stand-in for Argentina’s upper classes.”¹⁹ Much like the moderates and conservatives who came to privately oppose, rather than publicly denounce, the actions of the junta, Magda’s arc never features a dramatic evolution where she becomes an outspoken activist.

Instead, her journey takes shape over three brief, understated scenes where she reacts to media coverage of the trial. In the first, she shakes her head dismissively while knitting as the TV plays incriminating testimony, leading to a discussion between Strassera and Luis where Luis expresses concern regarding his mother’s antipathy towards the trial.²⁰ Strassera deems her too conservative to have any hope of persuading, while Luis continues to hold out some hope for a change of heart.²¹ That hope is validated when following the testimony of Adriana Calvo de Laborde, who the military kidnapped, threatened, and forced to go into labor, Magda calls Luis.

¹⁶ Carlos S. Nino, “The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina.” *Yale Law Journal* 100, no. 8 (1991): 2629.

¹⁷ *Argentina, 1985*, directed by Santiago Mitre (1990; Amazon Studios): 33:59.

¹⁸ *Ibid*, 51:01.

¹⁹ Humberto J. Rocha, “Argentina 1985: The Revival of Democracy (Review).” *North American Congress on Latin America* (2023): 1.

²⁰ *Argentina, 1985*, directed by Santiago Mitre (1990; Amazon Studios): 1:02:19.

²¹ *Ibid*, 1:03:38.

In a visceral reaction to the testimony, she asks “How can anyone be so cruel? Showing no mercy to a pregnant woman” before going on to conclude that “Videla should go to prison.”²²

While her assertion facially resembles more of a formal legal judgment than a political sentiment, it nonetheless demonstrates a shifting national identity which is increasingly alienated from the junta. After the raw shock of Calvo de Laborde’s testimony, Magda clearly participates in this identity reformulation. Late in the film, as she watches Luis on a news program lambasting the junta’s atrocities, she beams with pride, positioning herself firmly on the side of democracy.²³

The victory of democratic values in the mind of Moreno Ocampo’s conservative mother indicates that *Argentina, 1985* had a similar interpretation of the pedagogical effect of the trial as Nino and Crenzel. To Mitre, the trial’s exposure of facts on junta-sponsored atrocities and staging of a national conversation between the democratically elected government and its public was a success, leading even some staunch conservatives to renounce the junta and embrace democracy. Magda’s character is a walking testament to that fact.

To convince Argentines like Magda of the imperative to move forward with democracy and abandon the junta, the approach of thoroughly and publicly trying a select few notable perpetrators was a perfect method of education. However, if Alfonsín truly wanted to achieve significant legal accountability and retribution, he would have gone after far more than nine people and implicated culpable sects of society beyond just the military. Decrying such a narrow scope of prosecution, Malamud Goti laments that exclusively prosecuting military officers “pin[ned] the blame almost exclusively on one social group, the military” and allowed “those who should have shared the moral and legal responsibility for supporting the systematic use of

²² *Argentina, 1985*, directed by Santiago Mitre (1990; Amazon Studios): 1:20:44.

²³ *Ibid*, 1:45:02.

violence” to get off scot-free and turn from accused to accusers.²⁴ Such a selective approach to prosecution is not consistent with principles of justice and rule of law. However, from a perspective of nation building, generating a singular, relatively contained scapegoat and welcoming the rest of society—even those complicit in the atrocities of the scapegoat—into the nascent democracy is shrewd politics in a moment where success hinged on mass support. Nino concurs that drastically limiting the subjects of prosecution was “necessary to protect the only force backing the trial—the democratic system” when inciting significant backlash threatened to thrust Argentina back into military rule.²⁵ Thus, in a nation where full legal accountability was of great value, Magda and her friends and family connected to the junta may have found themselves the defendants of their own trials. Instead, Alfonsín, Strassera, and the rest of Argentina’s transitional justice regime viewed the support of people like her as crucial to the trial’s legitimacy. Due to the trial’s prioritization of education over retribution, people like Magda went from the potential subjects of prosecution to its audience.

Argentina’s choice of educational performance over a relentless pursuit of punishment is a controversial one through the prism of 2025, when the term “performative” is frequently used pejoratively to convey a sense of disingenuousness and misrepresentation. On the contrary, in the context of post-junta Argentina, performance was crucial to enlightening much of the population to the atrocities of the dictatorship. Convicting a few leaders to life sentences would have fairly inconsequential effects on Argentine political culture if its meaning failed to permeate public discourse. In this context, Alfonsín’s Impunity Laws severely limiting the scope of prosecutions and his successor Carlos Menem’s pardons of the junta leaders are more ideologically consistent

²⁴ Jaime Malamud Goti, “What Went Wrong With the Trials in Argentina,” In *Herbert Morris: UCLA Professor of Law and Philosophy: In Commemoration*, ed. George Fletcher (Mazo Publishers, 2023). 53.

²⁵ Carlos S. Nino, “The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina.” *Yale Law Journal* 100, no. 8 (1991): 2623.

with one another. Alfonsín's reluctant responsiveness to political conditions and Menem's normative belief in the promise of pardons are radically different sources of motivation. However, to both presidents, once the trials had exhausted their pedagogical value, their administration had minimal interest in prosecution.

The clear impact of the trial on the Argentine populace, quantified by a 1986 poll where 94% of Argentines believed "only a democratically elected government could solve their problems," reflects the difference between "performative" and "hollow," two terms used as quasi-synonyms today.²⁶ While the Trial of the Juntas was certainly performative, featuring numerous choices made for the benefit of its audience, it was anything but hollow. It had meaning. It had consequences. It had resonance.

Though popular at the time, the relatively bloodless approach pioneered by Argentina at the Trial of the Juntas eventually proved insufficient for its people. By electing Nestor Kirchner over Menem in 2003, the Argentine public indicated its preference for a leader who would not forgive the junta for the transgressions of the Dirty War, leading to the repeal of the pardons and the resumption of prosecutions. Still, the Trial of the Juntas was crucial for arriving at that point, as it unified Argentina to the point where the civilian government could fully seek legal accountability for the junta without fearing another coup.

The Trial of the Juntas challenges many assumptions of its time and of today. Democracy flourishing does not require the collective consent of the military. Performative law does not mean meaningless law. Pure retribution or pure reconciliation are not the only two options in transitional justice. Given *carte blanche* at the forefront of a new era of internally reckoning with past atrocities, Argentina blazed a new path for turning the page on dictatorship and

²⁶ Classified, "Argentina: Strengthening Democratic Institutions" *Central Intelligence Agency* (1986): 3.

violence—true to both the practical political considerations of its time and the intellectual interests of its architects—which continues to inform global efforts towards transitional justice.

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