# The Past Among Us:

## Memory and the Pursuit of Justice and Truth

## in the Southern Cone

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Coming to terms with past violence and repression is an intense and painful process. Each society, like every individual, must formulate its own strategy to deal with such a past, but inevitably, that strategy will be fraught with compromises and contention. Patricia Hayner, Director of the Peace and Justice Program at the International Center for Transitional Justice, interviewed a Rwandan official about a year after the 1994 genocide. When she asked him whether he would prefer to remember or forget the atrocity, he replied, "We must remember what happened in order to keep it from happening again...But we must forget the feelings, the emotions, that go with it. It is only by forgetting that we are able to go on" (Hayner 1). His answer demonstrates the difficult balance that survivors must reach between remembering and forgetting, or perhaps between remembering and forgiving.

Considering the conflicting feelings that survivors of crimes against humanity have, it is not surprising that transitional governments struggle even more to strike the appropriate balance. In the Southern Cone, the presidents who came into power immediately after the transition to democracy had strong attitudes in favor of human rights in justice. Still, they tended to strive, like the Rwandan official, more toward forgetting. Patricio Aylwin of Chile and Raúl Alfonsín of Argentina both enacted truth commissions to investigate the crimes of the dictatorships. However, they and their immediate successors generally favored the policy that memory and transitional justice should help the country move on. These leaders wanted to turn the page on one of the ugliest chapters of their history. However, they would also have to take into account the activists and families of victims who favored remembering above moving on from the past.

The strategies toward justice, truth, and recovery in the Southern Cone have been hotly debated since the initial transition, and they continue to be renegotiated today.

Chile and Argentina both present interesting case studies in transitional justice and truth strategies, since they were among the first countries to undertake domestic truth-seeking and judicial processes. Likewise, these two countries represent an almost ideal scenario for a comparative study of transitional justice programs because of the similarities their cases shared. In the Southern Cone region, several countries experienced authoritarian military dictatorships during the 1970s and '80s, but Argentina and Chile had more than that in common. Throughout the dictatorships and afterward, both had relatively strong domestic human rights movements, while the judiciaries of each and much of the international community were either complicit or oblivious to the atrocities occurring in the region. Furthermore, both Chile and Argentina followed similar models of transitional justice strategies, including combinations of amnesties, trials, truth commissions, reparations programs, revisions to the historical record, and memorialization projects. Yet even more important than the specific strategies was the fact that both countries were compelled to revise their plans continually. First and foremost, the new democratic states and human organizations sought the truth about acts of violence committed by the military regimes.

In the context of the initial transition years, both governments were limited in the manner in which they could address past crimes. The transitional presidents, Raúl Alfonsín in Argentina and Patricio Aylwin in Chile, manifested their commitment to human rights by creating truth commissions through executive decrees. These bodies were instrumental in uncovering key evidence surrounding illegal detentions, torture, and disappearances. Their reports became the foundation for judicial proceedings as well as the public record of events.

However, in spite of their strengths, the truth commission reports were unable to resolve the underlying issues of impunity and limited legal recognition for victims. Broad amnesty laws and explicit pressure from the military and right-wing sectors prevented effective prosecution of the perpetrators. Even international laws and treaties could not overcome impunity until public consciousness shifted in the late 1990s.

Although the judiciary took a stronger stance against human rights violations, legal consequences for perpetrators were not always possible. For that reason, activists and policy makers worked toward institutional acknowledgement of the atrocities throughout their struggle for legal justice. To confirm the validity of their experiences and also to set a precedent against human rights violations, victims and activists call for recognition of atrocities by the government, international community, and perpetrators. When these institutions refused to recognize the crimes of the past or their significance, victims sought popular recognition through memory projects and historical narratives that challenged the "official" version of the past. Aside from uncovering evidence that supported the victims claims, these memory projects have also helped ensure the transparency of the state's memory policy with regards to the authoritarian regimes.

Finally, both activists and government institutions worked toward recovery from the military regimes through memorialization and the strengthening of democratic institutions. These projects contribute to greater accountability for past human rights by encouraging a more autonomous judiciary and helping change attitudes toward the past. However, they also contribute to the prevention of future human rights violations by changing the conditions that allowed authoritarian rules to take power. Most importantly, these initiatives toward recovery

help the state adapt to changing political climates without compromising the fabric of democracy.

## Background

"What I know now, I would not have imagined."-Anonymous Member of the Chilean Truth and Reconciliation Commission

After the multitude of atrocities committed under the authoritarian regimes in Chile and Argentina, victims and their families demanded explanations. One of the first truth commissions in the world was the National Commission on Disappeared Persons (*Comisión Nacional para la Desaparición de Personas*, CONADEP) in Argentina from 1983-1984. Raúl Alfonsín, the first Argentine president after the military regime, created CONADEP by executive decree to investigate the crimes committed by state agents from 1976-1983 (Hayner 316). The commission consisted of ten members selected by the president for their consistent stance on human rights; this group included the unanimously elected Chair of CONADEP, Ernesto Sábato. President Alfonsín also invited both houses of Congress to elect members to the commission, but only the House of Deputies chose three representatives to join the group (*Nunca Más)*. Estimates of the disappeared range from 10,000-30,000 during the seven-year period of the dictatorship, and CONADEP's report, *Nunca Más,*[1] presents evidence on 8,960 of these cases (Hayner 332).

In Chile, the situation after Augusto Pinochet's regime was somewhat different. Pinochet held power in Chile for almost 17 years, from the coup on September 11, 1973 to March 11, 1990. Approximately 1,200 were killed in the first year after he took power, and many thousands more disappeared throughout his regime. Experts estimate that 50,000-200,000 survived torture in detention centers during this period (Hayner 35). Even after the country

[1] Never Again

conducted democratic elections again in 1989, Pinochet and the military still possessed considerable power in the government; Pinochet had named himself a senator for life, created permanent congressional seats for members of the Armed Forces, and remained Commander in Chief of the Armed Forces until 1998. In spite of these challenges to truth-seeking, President Patricio Aylwin issued Supreme Decree no. 355 on April 25, 1990, shortly after coming into office.

This executive order created the National Commission for Truth and Reconciliation (*Comisión Nacional para la Verdad y Reconciliación*), known as the "Rettig Commission," for its chair, Raúl Rettig. According to many scholars, the eight commission members were split evenly between former Pinochet officials and human rights activists of the opposition in order to avoid the appearance of bias (Hayner 35 and Brahm). However, Roberto Garretón, a Chilean human rights attorney and former staff member of the Vicaría de la Solidaridad[2], asserts that although these commission members had at some point worked under the Pinochet regime, none of them had condoned human rights abuses. One ex-Minister of Pinochet's who served on the commission had publicly criticized the regime for its detention and torture policies already (Garretón, Interview). The commission determined that 3,400 of the cases presented fell within its mandate, and it investigated each of these in-depth, attaining definitive conclusions on 2,759 (Brahm).[3]

These two truth commissions were tremendously important to the legitimacy of the democratic transitions and to the production of a valid historical record, but they were

[2] Ecumenical organization that documented human rights violations throughout the dictatorship and provided legal, social, and psychological services to victims of human rights abuses and their families.
[3] Recent investigations reveal that some of the cases that were determined to be disappearances or extra-judicial executions by the Rettig Commission were actually not acts of political violence (Smink). However, since only seven of the determinations by the commission have been overturned, the Rettig Report still remains the most credible and comprehensive source on political murders committed during the Pinochet regime.

fundamentally flawed for multiple reasons. Both of the new democracies were fragile and at least partially dependent upon the cooperation of the previous regime leaders. Since the legislatures refused to enact a law to create truth commissions, the presidents of Argentina and Chile were forced to found the commissions by executive decree, which resulted in commissions with less power. Ultimately, the primary failures of the commissions were limited mandates and investigative powers, inability to compensate for judicial impunity, and inadequate reparations and recovery programs.

The mandates of the Argentinean and Chilean Truth Commissions focused only on specific types of crimes, which prevented them from documenting many of the crimes committed by the authoritarian regimes. In Argentina, Executive Decree 187 states that "the issue of human rights transcends public authorities and concerns civil society and the international community." CONADEP interpreted this decree as a mandate to determine the facts surrounding disappearances and, whenever possible, locate physical remains of disappeared persons (*Nunca Más).* However, since the commission was founded officially to investigate the disappeared, several types of human rights violations were either not investigated or not reported. These included:

> "killings by armed forces in real or staged 'armed confrontation;' temporary disappearances, when the person was released or a body was found and identified; forced exile; detention and torture (survivors were interviewed by the commission and their stories included as witness accounts, but they were not included in the list of victims); acts of violence by armed opposition; and disappearances by government forces before the installation of the military government in 1976" (Hayner 316).

Although the main demands of the populace were met through the investigation of disappearances, this limitation to the mandate devalued the experiences of torture survivors and prevented serious investigation of the crimes perpetrated against them.

The mandate of the Rettig Commission was also regrettably limited. The only crimes investigated were disappearances, extra-judicial executions, torture leading to death when committed by agents of the state, and kidnappings and murders committed by private citizens with political motives. Part one of the commission's report cites insufficient time as the determining factor behind the decision not to consider other crimes (*Rettig Report).* The report excluded torture that did not result in death, although victims were interviewed as witnesses; illegal detention, if the prisoner was released and survived; and forced exile (Hayner 317). As in Argentina, these restrictions prevented serious investigation of torture when the victim survived, and the victims were excluded from the report and any reparations. Although a later commission described the practices of torture in Chile and gave victims some recognition, this investigation did not begin until 2003, twelve years after the original *Rettig Report* was released (Ministerio del Interior). In Chile, the ramifications of the restricted mandate were more severe, since the proportion of torture survivors to disappeared persons was so much greater.

In both countries, the limits imposed on the mandate forced the commissions to overlook a large number of victims. Consequently, the commissions were able to investigate to investigate their smaller caseloads more completely. However, provisions should have been made soon after the transition to democracy for the rest of the victims to report human rights abuses. Various human rights attorneys and organizations in civil society attempted to create mechanisms for the victims excluded from the Rettig Report, but political constraints hampered their efforts. Until Pinochet stepped down as Commander in Chief of the Armed Forces in 1998 and was subsequently detained in London, the thorough investigation and prosecution of human rights violations was extremely difficult.

Like the mandates, the limits on the investigative powers of the commissions restricted the information gathered. Since both commissions lacked the powers of subpoena and search and seizure, they had to rely upon witness testimony and corroborating physical evidence at the torture centers. The Armed Forces and other collaborators collectively refused to cooperate with the investigation. There were only a few exceptions: around twenty retired Chilean army officers came forward anonymously to offer testimony, but almost all of them lived outside the country and so would not have to face reprisals from the military (Hayner 113). The commissions' inability to compel cooperation, in addition to complicating the investigation process, contributed to the aura of impunity surrounding the perpetrators.

Indignation with the immunity of human rights abusers from prosecution grew after the commissions released their reports and the information was not used to condemn the guilty. Neither CONADEP nor the Rettig Commission was ever intended to serve as a judicial body or establish criminal liability. However, as Garretón explained in a report on the transition to democracy in Latin America, "the value of truth is opposed to moral, historical and political impunity, and as a modern instrument, Truth Commissions oppose impunity as well" (Garretón, "Transition" 13). The Truth Commissions were expected to establish a historical record, and in so doing, counteract the apathy of the judicial system during the military regimes.

The courts' volitional negligence during the dictatorships allowed tortures and illegal detentions to occur without penalty. It also diminished the amount of foreign attention drawn to the human rights abuses, since victims did not have a forum in which to air their complaints. In Chile, the judicial powers already in place were willing to collaborate with Pinochet, declaring "their most intimate complacency with the purposes of the Military Junta" (Garretón, "Transition" 5). In Argentina, the Military removed the Court immediately after taking power

and appointed new judges who would swear to respect the Junta's principles above all. Both judiciaries were willing collaborators, but the differences between their acquisitions of power affected the way they operated. In Chile, judges wanted to maintain at least the semblance of autonomy from the Junta, so they heard all of the cases that were filed and kept records of the proceedings, even though they rarely decided with the claimants (Garretón, Interview). Since the Vicaría de la Solidaridad collected evidence on the vast majority of disappearances and always brought these cases to court, the Vicaría and Chilean courts already had a relatively complete record of events when the Rettig Commission began its work in 1990. The Vicaría and other human rights organizations turned their files over to the commission, which provided investigators with places, dates, and names of witnesses to interview.

In Argentina, on the other hand, the judiciary was not as concerned with the appearance of autonomy (Garretón, "Transition" 5), and the lack of a central organization between human rights groups compounded the judges' bias. The Catholic Church in Argentina was deeply complicit with the military regime; due to that complicity and other social factors, the Madres, Abuelas, and other activists groups did not share an umbrella human rights institution. Unlike the Vicaría, these groups did not have the resources or the administrative systems in place to keep thorough records of all human rights abuses. Moreover, over three times as many people were forcibly disappeared in Argentina over a seven-year period, whereas the violations under Pinochet's regime occurred over seventeen years. Nevertheless, even without the advantages of its Chilean counterpart, the Argentine Truth Commission collected more than 7,000 statements, including testimony from 1,500 torture survivors, and it conducted a sweeping investigation of the 365 documented torture centers (Hayner 34). The commissioners intended their investigation

to produce a historical record, but they also anticipated some sort of judicial proceedings for the perpetrators.

CONADEP had always intended that the information would pass to judicial authorities after the commission had fulfilled its mandate. In fact, the commissioners gave their files directly to prosecutors after releasing their report, helping to convict five key generals (Hayner 94). Many other perpetrators named in the report were acquitted or received only light sentences, but Argentineans and the international community were pleased with the first successful domestic trial of human rights violators. The Rettig Commission in Chile did not have the same opportunity to contribute to judicial proceedings, since it was working under more stringent amnesty laws and a Constitution put in place by Pinochet in 1980. Yet in spite of these laws, the truth commission's files were used in court to establish the identities of specific perpetrators, even though they could not be sentenced for their crimes (Hayner 98). Unfortunately, the pursuit of justice was hindered in both Chile and Argentina by widely encompassing amnesty laws. In Chile, a judiciary still largely sympathetic to Pinochet and the Military Junta complicated matters further.

Amnesty laws have a long and complicated history in the Southern Cone, and in the end, neither Chile nor Argentina has been fully successful in enforcing legal penalties against key human rights violators. In Chile, the Amnesty Law was put into place by the Military Junta in 1978 and covered all forced disappearances and political executions committed after that date. When democracy returned to the country, the new administration and human rights organizations sought out loopholes in the amnesty. The Rettig Commission criticized the amnesty heavily for "having hindered the clarification of facts that the tribunals discovered...leaving uncertainty as to the guilt or innocence of [persons investigated or interviewed]." When Aylwin took office, he

initiated a new interpretation of the law: he decreed that the amnesty "has not and will not be an impediment to the establishment of the truth, the investigation of events, and the determination of responsibility" (Garretón, "Amnistía" 2). The Aylwin doctrine allowed for the judiciary to investigate all of the crimes brought before it and determine the identities of the guilty, as long as the perpetrators were not prosecuted for their crimes. The democratic government was forced to work within the parameters of the amnesty because of the safeguards Pinochet injected into the 1980 Constitution for the Military and for himself personally.

Aside from the legal complications, until Pinochet's arrest in London in 1998, the majority of Chilean judges were unwilling to condemn former members of the Junta or Armed Forces who committed crimes against humanity. Spanish judge Baltasar Garzón issued a warrant for Pinochet's arrest to try him for crimes against humanity, and British police arrested the former dictator as he was recovering from surgery in London. The evidence Garzón presented against Pinochet was drawn almost exclusively from the Rettig Report. Many legal professionals agree that after the arrest, the "Garzón Effect" convinced judges to override the will of the Pinochetistas and hold trials for human rights abuses (Estrada). Since judges still work within the confines of the Amnesty Law, agents of the state cannot be tried for political murders or disappearances after 1978, but they are being tried for kidnapping and other offenses not covered by the amnesty (Tremlett). As Pinochet's power over the Chilean collective memory began to wane, judges and other government authorities became more willing to admit past crimes and condemn the criminals.

The debate over amnesty and impunity in Argentina played out differently. Like the Pinochet regime, the Military Junta declared an amnesty for themselves in the Law of National Pacification before relinquishing the government. However, President Alfonsín had the law

overturned in 1983, and several key human rights violators were convicted and sentenced to long prison terms. In response to the successful trials, the Armed Forces and collaborators with the Junta pressured the government into a new amnesty; the Full Stop Law passed in 1986, followed by the Law of Due Obedience in 1987,[4] and very few Junta or military officials were tried afterwards (Garretón, "Transition" 7). When Carlos Menem assumed the presidency in 1989, he pardoned all of the officials who had been convicted of crimes committed by state agents during the dictatorship (Hayner 94), and he issued a general pardon that prevented future trials from resulting in prison sentences.

After 1998, however, the Garzón Effect influenced judges in Argentina, Chile, and other Southern Cone countries to change their stance on the pardons. In spite of the amnesty laws, more judges began showing consideration of a universal jurisdiction in their treatment of cases of human rights abuses during the authoritarian period. Since the law was not actually a blanket amnesty, Argentine judges had greater freedom in their interpretation of the law. In 2005, under increasing pressure from victims and human rights organizations, the Argentine Supreme Court upheld a congressional decision to declare the Due Obedience and Full Stop laws void, along with Menem's general pardons. Since these laws were overturned, more than 300 hundred people have been charged with human rights abuses in Argentina, and thirty-two of those had been convicted as of February 9, 2009 (Estrada). Since 2000 in Latin America, the judicial response to human rights violations committed under authoritarian regimes has improved. Neither the the CONADEP report *Nunca Más* nor the Rettig Report clarified responsibility for the crimes to the satisfaction of the victims. Yet it may have been popular dissatisfaction with

[4] The Full Stop Law effectively ended prosecution of crimes committed by state agents under the military dictatorship with limited exceptions; the Due Obedience law prevented the prosecution and/or sentencing of any military officer below the rank of colonel.

the reports that eventually led to much broader reforms and more stringent guarantees for human and civil rights.

Immediately after the reports' release in each country, however, many of the victims identified by the commissions did not receive adequate reparations. Families of the disappeared in Chile received moderate pensions and medical and psychological care, but there were strict limitations as to who was eligible (Hayner 329). In Argentina, the beneficiaries also included political prisoners detained without due process, but the benefits were not as great and they were paid in government bonds in a one-time lump sum (Hayner 330).[5] The vast number of victims would have made adequate reparations impossible under any circumstances; more notable are the specific deficiencies in the reparations programs. The Chilean reparations exclude all torture survivors, including those who were handicapped by their imprisonment and are unable to work now. In fact, the daughter of one torture survivor states, "The tragedy of my family is that they didn't kill my father. He's destroyed, but they allowed him to live. It would have been better if they had killed him" (Hayner 174). Neither program included specialized trauma recovery or any private psychological care. The symbolic gesture of establishing a reparations program was a strong statement of vindication for the victims, but the amount and type of reparations were insufficient to help many of the victims recover and participate actively in the new democracy.

As two of the first Truth Commissions in the world, CONADEP and the Rettig Commission achieved significant victories for human rights. After 1994 in Argentina, victims' families could obtain certificates of "forced disappearance" rather than merely declaring their

[5] In 2004, a law expanded the reparations program to include monetary compensation to children born in captivity, and in 2005, a bill was introduced into Congress to extend reparations to victims forced into exile as well (Lichtenfeld). The first legislative initiative on exiles passed in the Senate, but stalled in the House of Deputies until it eventually lost its parliamentary status (Vidal). An identical bill, called the "Ley Olmedo" was proposed in 2007 and approved by the Committee on Human Rights, but as of April 2008, still needed approval from various committees, including the Budget Committee, before it could advance to plenary hearings (Grupo Exilio Argentino).

loved ones "presumed dead" (Hayner 177). The change in semantics resolved the same practical concerns for families—dealing with wills and inheritances, selling property, etc.—but left open the possibiliy of reappearance and the question of responsibilty. In Chile, the Rettig Commission represented the first objective investigation of state crimes in two decades. Both reports received domestic and international attention upon their release. *Nunca Más* has gone on to sell over 300,000 copies. In Chile, the armed Left attacked and killed three right-wing politicians in 1991, including Pinochet's close confidant, Jaime Gúzman; the assassinations prematurely stifled discussion of the Rettig Report by shifting the focus onto the threat of leftist terrorism (Hayner 37). Perhaps due to the limited discussion surrounding the Chilean case and the failure to address the issues identified in both reports, the victims were not satisfied. In spite of the incredible accomplishments of both commissions, activists demanded a stronger statement against impunity and in favor of universal human rights.

Too many injustices were left ingrained in the judicial and political systems. Neither the commissions nor staff were at fault for the failures. The commissions simply lacked the authority to conduct an exhaustive investigation and to ensure that their recommendations were fulfilled. More safeguards to democratic institutions and legal reforms were necessary to satisfy the demands for information, justice, and reparations.

The truth commissions in Argentina and Chile were strong political statements in support of human rights. However, the commissions were not intended to serve as permanent and enduring resolutions to the human rights violations committed by agents of the state, in spite of the expressed wishes of prominent politicians. Chilean Human Rights lawyers José Zalaquett and Roberto Garretón indicate four essential factors for recovery that remained unresolved after the initial truth commission reports. According to Garretón, "Impunity has four dimensions:

legal, political, moral and historical" (Garretón, Transition 12). Zalaquett underscores the need for justice and recognition in all of these aspects in his analysis of the Mesa de Diálogo (Zalaquett 10). The factor of moral recognition is too subjective and too dependent upon individual perpetrators to form part of a macro-scale solution, but all three other aspects must be considered to redress adequately any of the wrongs of the dictatorship. In order to thoroughly address these three aspects, judges, policy makers, and historians have continually had to reexamine the evidence of atrocities committed under authoritarian rule and consider new evidence as it comes to light.

**The End of Impunity: Legal Recognition**

"No punishment could have been equated with the enormity of their crimes. The important thing is that guilt was established and justice done before the eyes of the world..." -Simon Wiesenthal, on the trial of Adolf Eichmann

For political and pragmatic reasons, the truth commissions in Chile and Argentina could not tackle the impunity of former repressors. But in the wake of amnesty laws and discourses of reconciliation, civil society and international human rights groups refused to accept partial truths and the absence of justice. Through their various movements and the reactions from the state that the movements inspired, activists raised new questions about the disputed identities of the perpetrators, victims, and bystanders, and they stirred debate about responsibilities that should be attributed to each. In terms of legal measures, the democratic governments of the Southern Cone first had to confront the legacy of amnesties and general pardons. Current judicial processes are a vast improvement over those during the transitional period, yet certain obstacles to the pursuit of justice still remain, particularly in Chile, where the amnesty law of 1978 still stands and the 1980 Constitution, with various amendments, is still in place. Moreover, the government's

lengthy toleration—or in some cases promotion—of impunity raises questions about the need for broader reforms to the judicial system.

The first hurdles the new democracies needed to overcome to enact justice were the amnesty laws. In Chile, the law was introduced directly by Pinochet: Decree-Law 2.191 of April 1978 impeded the prosecution of "individuals implicated in certain criminal acts committed between 11 September 1973 and 10 March 1978" ("Chile: Legal Brief" 1). Although this law technically applied to political prisoners as well, the majority of them could not take advantage of the amnesty because their records either never existed or were destroyed or lost before the democratic government recovered the files. In 1979, the Chilean Supreme Court ruled that in spite of the amnesty law, cases of disappearances should be investigated until the details about victims and perpetrators were known. Nevertheless, due to the lack of cooperation from military repressors and the complicity of the majority of the judiciary, few cases were thoroughly investigated until after the transition to democracy ("Chile: Legal Brief" 2). Even under a democratic civilian government, the amnesty laws fundamentally constrained the possibilities for legal recognition of crimes against humanity.

The United Nations Human Rights Council (UNHRC) ruled in 1999 that Chile's amnesty was incompatible with the state's obligations to its citizens. In the council's Concluding Observations on Chile,

> "the Committee reiterates the view expressed in its General Comment 20[6], that amnesty laws covering human rights violations are generally incompatible with the duty of the State party to investigate human rights violations, to guarantee freedom from such violations within its jurisdiction and to ensure that similar violations do not occur in the future" ("Chile: Legal Brief" 7).

[6] The General Comment stated that amnesties were generally incompatible with the state's obligation to investigate and prosecute human rights violations.

Prior to the UN ruling, the Inter-American Court on Human Rights (IACHR) issued a similar judgement by ruling in 1996 and 1998 that the amnesty laws in Chile violated articles 1.1, 2, 8, and 25 of the American Convention on Human Rights, which was ratified by Chile in 1990 ("Chile: Legal Brief" 8).

In addition to these rulings, a clause in Article 54 of the Chilean Constitution specifically requires that Chile bring its national laws into compliance with international laws and treaties that the nation has ratified unless Congress or the President files a formal reservation or motion to retract its ratification (*La Constitución* 67). As of the beginning of Patricio Aylwin's presidency, Chile had ratified all of the following international precepts: the International Covenant on Civil and Political Rights (1972); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (1988), the Inter-American Convention to Prevent and Punish Torture (1988); and the American Convention on Human Rights (1990), according to which states are required to investigate and punish human rights violations and ensure adequate reparations to the victims ("Chile: Legal Brief" 4). The authoritarian government disregarded these conventions with complete legal impunity and relative political impunity in the international community. However, for the democratic government to assert legitimacy, it would not only have to prevent such abuses in the future, but also investigate and enact some sort of justice for the crimes committed under the previous regime.

Even in light of the international conventions and popular outcry at the end of the dictatorship, the Aylwin Administration's reluctance to dispute the amnesty law is understandable. The military maintained a disproportionately large share of political power, and the UNHRC and IACHR had not yet explicitly condemned the laws. In 1990, Chile's Supreme Court ruled that the amnesty decree-law was constitutional. Except for the stipulations in the

international conventions on human rights, which were somewhat vague anyway, the logic of the court's ruling was entirely scrupulous: naturally, the amnesty law adopted by Pinochet in 1978 lay within the confines of a Constitution written in 1980 by Pinochet's advisors. Moreover, the ruling on the constitutionality of amnesty did not completely preclude the pursuit of truth and justice. Investigations into atrocities committed under the dictatorship continued, in large part, thanks to the Aylwin doctrine.[7] Even ten years after Aylwin's vow to legally determine the truth, prominent human rights activists still espoused his doctrine. In his discussion of the Mesa de Diálogo (Mesa), José Zalaquett differentiates between conducting a thorough legal investigation and holding perpetrators legally responsible (Zalaquett 20). The former, he says, is the legal responsibility of the state and was one of the specific duties assigned to the members of the Mesa. The latter can only be established by judicial bodies in accordance with the standards of due process, and moreover, Zalaquett argues, justice does not necessarily require legal punishment for all perpetrators. According to him, the recovery of a post-conflict country and the pursuit of justice are not incompatible with clemency or pardon, as long as that pardon does not prevent the full disclosure of the facts or the establishment of a historical record (Zalaquett 10). His explanation echoes the Aylwin doctrine unequivocally.

The majority of Chileans accepted—if not supported—this interpretation. The right-wing Chileans, whether or not they were perpetrators themselves, refused to acknowledge that crimes against humanity had occurred, and so rebuffed any suggestion that military officials and civilians who perpetrated atrocities on behalf of the regime should be prosecuted. On the other hand, the center-right to center-left parties, allied under the new Concertación,[8] viewed the

[7] See p. 8 for more detailed explanation.

[8] Political coalition that has won every election to date since Chile's return to democratic rule; Includes the following parties: Party for Democracy, Christian Democrats, Socialists, and the Radical Social Democrats.

Aylwin doctrine as the only means of establishing the truth about human rights violations without risking the threat of another coup. Only some political actors from the left actively dissented: most notably, the Group of Relatives of Prisoners and Disappeared (Agrupación de Familiares de Detenidos-Desaparecidos) and the Communist Party strongly objected to policies that did not include provisions for holding the perpetrators legally culpable ("Chile: Testament" 3 and Zalaquett 14). In spite of objections from these and other groups, and in the face of legal and political maneuvers to bring the perpetrators to justice, the general consensus in favor of the Aylwin doctrine kept the military and other repressors free from prosecution until after 1998. The amnesty law—with various interpretrations—remains in effect to date.

Unlike in Chile, in Argentina amnesty was hotly debated immediately after the military ceded power to a civilian government. On December 22, 1983, inspired by President Raúl Alfonsín's decrees to prosecute members of the military juntas, the democratic Congress annulled the Law of "Self-Amnesty" decreed by officials of the military junta to shield themselves from future prosecution. Rather than merely repeal the law, Congress chose to annul it so that it would be considered invalid from the moment of its inception ("Ley"). The annulment opened the door to judicial proceedings, and with significant evidence and over 800 witnesses from CONADEP'S files, five members of successive juntas were convicted. Lt. General Jorge Videla and Admiral Emilio Massera were sentenced to life imprisonment, while Air Force Commander Orlando Agosti, Liutenant General Roberto Viola, and Admiral Armando Lambruschini received sentences ranging from four-and-a-half to seventeen years (Lichtenfeld 2).

Although domestic human rights activists were disappointed that not all of the individuals tried were convicted and that only two were given life sentences, the proceedings impressed the

international community. Not only were they the first successful domestic human rights trials, but the judicial processes began only eighteen months after the military junta left power (Lichtenfeld 2). However, the military establishment in Argentina, though largely weakened and discredited by the defeat in the Malvinas, still posed a threat to the democratic transition process.

In fact, a faction of the military led by the Carapintadas (Painted faces) explicitly threatened Alfonsín's government with a coup in 1986, which led to the President's proposal of the Full Stop (Punto Final) Law, setting a 60-day deadline for the instigation of new legal proceedings. Again in 1987, the military staged a revolt and insisted on full amnesty. Congress answered their demands by passing the Law of Due Obedience (Obediencia Debida), which disallowed prosecution of military officers with the rank of colonel or below. Alfonsín endorsed the law, and the Supreme Court declared it valid in 1987 (Lichtenfeld 3). Although these two laws were technically not general amnesties, pressure from the Armed Forces on all branches of government—with the Full Stop and Due Obedience laws as legal justification—prevented wide-scale prosecutions or lustrations. One of Menem's first initiatives after his election in 1989 was an even broader symbol of impunity. He issued two general pardons, one for military personnel already convicted for crimes committed during the dictatorship and one for officers who had not yet been tried or convicted (Lichtenfeld 3). Menem held onto the presidency through the remainder of the 1990s, and the amnesties and amnesty-like measures successfully preempted legal recognition of the dictatorship's human rights violations until after 1998.

International human rights organizations communicated their disapproval of the Argentine pardons in the same way they criticized the Chilean amnesty law. In the UNHRC's 1995 Concluding Observations on Argentina, the Committee deemed the Full Stop, Due Obedience, and presidential pardons "inconsistent" with the International Covenant on Civil and

Political Rights because the laws denied victims their right to an effective legal recourse ("Chile: Legal Brief" 7). According to the principle of *pacta sunt servanda*, states have an obligation to fulfill their international treaty obligations in good faith. The Permanent Court of International Justice has ruled that "judgements issued by national tribunals cannot be used as an impediment to fulfillment of international obligations," and Chile ratified this principle as part of the Vienna Convention on the Law of Treaties in 1995 ("Chile: Legal Brief" 9). Argentina, like Chile, had ratified all of the relevant international covenants before approving the amnesty laws. In spite of international commitments, both of the democracies bowed to pressure from the military and complicit civilian sectors during the transitional period. They maintained the constitutionality of the amnesty laws in the face of outrage from human rights groups and the explicit disapproval of international judicial bodies.

Demand for legal justice built throughout the 90s, but the actual change did not materialize until 1998 for various reasons. Aside from political pressures during the transitional period, leading scholars—including Samuel Huntington and José Zalaquett—argued that trials would hurt the democratic transition in the long run (Sikkink & Walling 428). After a precedent for truth commissions had been set, Sandrine Lefranc indicates that the rhetoric shifted: respected politicians and international organizations began to discuss the truth commission model not merely as part of a solution or an imperfect one, but rather as a viable alternative to legal justice (Lefranc 164). Understandably, many activists groups find this rhetoric offensive. Amnesty International takes the stance that "the adoption of any measures resulting in anything else than complete truth and justice would be insufficient and tardy" ("Chile: Truth" 1).

Also in oposition to the state's rhetoric, empirical data from a study in Latin America support the proposition that transitional justice mechanisms are "neither durable nor

dichotomous" (Sikkink & Walling 435). Truth commissions have been used in conjunction with human rights trials, rather than as alternatives to them, in fourteen of the seventeen Latin American countries in the study (Sikkink & Walling 442). In fact, all of the data from this study support the argument that truth and justice go hand in hand. Sikkink and Walling compared countries that had trials to those that did not, and they also ranked the improvements along the five-point Political Terror Scale (PTS) among countries that had between two and nineteen years of trials. Countries with both trials and truth commissions improved more than countries with just one or the other; countries with more trials (trials over a greater number of years) had higher average PTS improvement than countries with fewer trials (Sikkink & Walling 437-38). Empirical evidence gathered over time has discredited the original arguments against trials of repressors. Yet the rhetoric of recovery, and in some cases reconciliation, has sometimes yielded an even more insidious result for victims.

The argument that focusing on victims would resolve human rights issues is a fallacy. Not only does it undermine the collective identities of groups that were targeted by the military regimes, it also prevents critical examination of the human rights crimes. As Fernando Bosco explains, "Social networks that bond people together are often responsible for their transformation into activists and political actors" (Bosco 342). Yet when governments establish reparations programs, they must investigate the circumstances surrounding *individual* victims in order to assign the correct type and quantity of compensation. Thus, the focus on victims tends to individualize persons who were persecuted because they belonged to particular groups—political, racial, religious, cultural, etc. (Lefranc 181). The focus on individual victims also allows the government to concentrate on their suffering rather than the animosity that activist groups direct toward the state. The disregard for anger and privatization of suffering diminish

the importance of collectivities and vindicate the lack of justice in favor of soothing the suffering, generally through truth revelation (Lefranc 182).

The individualization of victims also benefits repressors more directly. The definition of the individual victim is no longer a person who has fought for a righteous cause and lost, but rather anyone who has suffered, including "fallen soldiers" who were torturers and mass murderers (Lefranc 183-4). Aside from the moral inconsistencies of this conception of victimhood, the distribution of reparations to victims without holding judicial proceedings countermines legal safeguards and processes of penal justice. Without thoroughly investigating and prosecuting the repressor, the state is forced to ignore crimes victims have committed and cannot take appropriate means to determine the level of victimhood (Lefranc 181). This subversion of justice prevents critical examination of the evidence. More specifically, the search for bodies instead of evidence of crimes benefits human rights violators by guaranteeing them impunity when they report their crimes (Lefranc 182). The Mesa de Diálogo offers an example of the possible consequences of these negative incentive policies. Members of the Mesa considered penalizing the withholding of information, in conjunction with amnesty and immunity from prosecution for those who came forward, but the military refused to cooperate until the penalty was dropped. In spite of previous amnesty laws, the Mesa granted further immunity from prosecution to anyone who came forward with information. Gonzalo Vial refused to sign the declaration for that reason (Zalaquett 23-24), and international human rights organizations lost faith in the dialogue process. When the military turned over files on 200 cases, much of the information contradicted evidence gathered by the Rettig Commission. Rather than encouraging or coercing good faith cooperation, the prioritization of truth over

justice in the Mesa seems only to have extended the aura of impunity surrounding human rights violators.

Chile and Argentina—with similar motivations—yielded to domestic military pressure to perpetuate the impunity of military repressors. Not surprisingly then, a single remarkable sequence of events induced both governments to reverse their stances on legal recognition of human rights violations. Throughout the period of perpetrators' immunity from prosecution, domestic and international human rights organizations steadfastly maintained their campaigns for justice. But Garzón's warrant for the extradition of Pinochet in 1998 became the first significant milestone in the progression from impunity to legal responsibility.

The crime of disappearance had no precedent in either domestic or international jurisprudence, so to confront this violation, a "juridical revolution" was necessary. Political Scientist Sandrine Lefranc points out that repressors contrived disappearances deliberately to engender a pervasive feeling of terror, while leaving no physical evidence that a crime had been committed at all (Lefranc 167). Indeed, the United Nations held its International Convention for the Protection of All Persons from Enforced Disappearance in 2006 (OHCHR). Before that, it fell to purposeful judges and a proactive approach to universal human rights to tip the scale against impunity. In 1998, Pinochet stepped down as Commander in Chief of the Armed Forces and took on the role of Senator for Life.[9] The same year, he was detained after surgery in London on an extradition request from Spanish judge Baltasar Garzón. The "Garzón Effect" inspired a reexamination of human rights violations and human rights law.

Garzón's indictment of Pinochet and other human rights abuses had a ripple effect not only in Chile, but also throughout Latin America and other post-conflict regions. According to

[9] He had made provisions for this transition in his rewriting of the Constitution.

international law, crimes against humanity are not subject to any statute of limitations ("Chile: Legal Brief" 3), so the former amnesties could not legally prevent trials of repressors. Although the Chilean government protested Pinochet's detention in London as a violation of its sovereignty, all of the branches of government realized that they must respond to the demand for justice in order to avoid more international conflict. In July 1999, Chilean courts reinterpreted the amnesty laws by classifying disappearance as an ongoing crime ("Chile: Legal Brief" 2). Although the law officially remained on the books, it no longer prevented trials of military personnel for crimes committed during the dictatorship.

When Pinochet returned to Chile, he had to prove to Chilean courts—after having been declared unfit to stand trial in London—that he was not only infirm, but also mentally deficient in order to avoid prosecution (Frazier 222). Activists and officials within the government protested this maneuver. Human rights groups in Iquique held a vigil in which they displayed handmade collages and biographical information that portrayed Pinochet's personal involvement in the acts of terror under his regime (Frazier 233); A doctor involved with Pinochet's mental examination claimed that evidence used to illustrate his incompetence was questionable, while other more reliable evidence was ignored (Frazier 224). Nevertheless, Pinochet lost a great deal in his struggle to maintain legal impunity: his popular support waned, the military and right-wing politicians distanced themselves from him, and he and his family had to maintain a low profile in public to avoid embarrassment or more serious threats.

Argentina has reversed its policy of impunity more explicitly. In 2003, under the leadership of leftist Patricia Walsh,[10] Congress annulled the Full Stop and Due Obedience laws, after previously repealing them. In 2005, the Argentine Supreme Court declared the annulment

[10] daughter of disappeared writer Rodolfo Walsh

valid, allowing courts to prosecute perpetrators retroactively (Arditti 14). Since these decisions, Argentina has increased domestic trials regarding human rights violations. Even before the Full Stop and Due Obedience laws were declared unconstitutional, the Argentine government under Nestor Kirchner had reversed its stance on the crimes of the military junta. Along with holding domestic human rights trials, the state had begun extraditing military officers to countries such as Spain, Italy, Sweden, France and Germany (Lichtenfeld 6). Kirchner formally ratified the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and he devoted state funds to legal and historical recognition of the abuses under the military dictatorship.

Argentina and Chile have taken different paths toward legal justice, but since 1998, both countries recognized the urgency of handling past crimes appropriately. Presidents and policy makers throughout the 1990s wanted to believe that the state was reconciled and the transitional period over, but victims' groups and international human rights organizations refused to abandon the quest for justice. The force of their protests resonated around the world as more countries progressed out of authoritarian rule and had to deal with their violent pasts. Advocacy groups witnessed these transitions and built up their arguments. They maintained the momentum towards the "juridical revolution" by building awareness in international arenas and keeping their issues under the scrutiny of the UN and IACHR. The Garzón Effect was the straw that broke the camel's back, but the revolution in justice only materialized thanks to the consistent efforts of civil society.

**Acknowledgement: Institutionally-sponsored Recognition**

"Is it possible to confess without acknowledging blame?" -Daniel Alarcón

Civil society groups campaigned for justice as an integral component of the transition to a legitimate democracy. However, even the most vociferous critics of impunity realized that legal

justice was not always a possibility; in some cases, perpetrators were dead, missing, unidentifiable, or agents of other governments. In these instances, legal justice sometimes remained a distant, ideal possibility, but *recognition* of past abuses was much more feasible. Recognition is not a substitute for legal justice, but it can be an acceptable alternative in situations like those mentioned above. Genuine acknowledgement must come from legitimate sources, including the perpetrators, current government, and the international community. It should encompass the admission of the facts, apology, attempts at reparations, and the prevention of perpetrators from holding public office. In the Southern Cone, many of the human rights violations were acknowledged even before the transitional period, but notable gaps in recognition have dragged the undertaking out into the present.

The Mesa de Diálogo was one attempt by the Chilean government to acknowledge the crimes against humanity in its history, but the rhetoric of the Mesa may have undermined its mission. According to José Zalaquett—a human rights attorney, member of the Rettig Commission, and participant in the Mesa—recognition of the truth implies accepting the veracity of the facts and admitting that the acts were censurable (Zalaquett 9). However, not all of the participants could agree on the definition of recognition or the other goals of the dialogues. The Defense Ministry defined five key aspects for resolving the human rights issue in Chile: truth, justice, pardon, reparation, and historical revision. Yet the Ministry only assigned the Mesa the tasks of discovering the truth about the detained-disappeared and beginning the historical revision process. Zalaquett believes this discrepancy stems from conflicting interpretations of "reconciliation," which was the government's stated purpose in forming the Mesa and both truth commissions (Zalaquett 18).

Whereas Zalaquett implies that different interpretations of the reconciliation plan are inevitable and understandable, Sandrine Lefranc maintains that the government's rhetoric of "reconciliation" and "pardon" are absurd in and of themselves. The use of moral or religious terminology for political concept veils the reality of reconciliation as an individual, voluntary choice (Lefranc 169). Although not all scholars would agree with her interpretation, the details surrounding the rhetoric of reconciliation in Chile and Argentina support Lefranc's argument. Most tellingly, the concept of reconciliation in the Southern Cone only really required compromises on the victims' part; the military not only enjoyed legal impunity, but also had no incentive to acknowledge past abuses. As Frazier describes the process, "Human-rights sectors were asked to forgive pro-military sectors pragmatically, given the moribund status of legal and political avenues for justice in the first decade of civilian governance and in spite of the insistence of pro-coup sectors that there was nothing much to be upset about" (Frazier 204). Thus, "reconciliation" actually signified a resigned acceptance of injustice on the part of the victims.

Presuming that Lefranc's analysis of the state's definition of reconciliation is sound, several contradictions become apparent. For example, if reconciliation is forgiveness, then the murdered and disappeared cannot be reconciled (Lefranc 170). Furthermore, even victims who genuinely want reconciliation and forgiveness with their former oppressors do not have the opportunity to forgive because the state's agenda only allows for a "simulacrum" of reconciliation. Lefranc calls the state's commitment to reconciliation "lindas palabras,"[11] since in both the short and long term, "las víctimas generalmente no perdonan; los agentes y

[11] "pretty words"

responsables de la violencia de estado no piden perdón; las sociedades no se reconcilian"[12] (Lefranc 174). Although it is possible to forgive without being asked for forgiveness, this pardon from the victims would not effect a state of reconciliation described by the new democratic governments because human rights violators would carry on unrepentant and the historical record of abuse would remain disputed.

Aside from the difficulties presented by asking victims to forgive their tormentors, the inequities within the state's reparations program constrained the reconciliation process envisioned by the government. A hierarchy of both class and suffering framed the reconciliation policy, which not only prevented many victims from receiving appropriate medical and monetary reparations, but even denied them the recognition of their trauma. The elite and military were easily pacified because they were better off than before, so token gestures and symbols of recognition satisfied their demands (Lefranc 164). Lefranc also refers to the elite sector's preference for stability (Lefranc 172), although she ignores significant benefits that elite garnered from the neoliberal system put in place by the military regimes. For these reasons, the majority of court cases that received attention were those that involved elite or middle class victims (Frazier 203). Probably because of the additional scrutiny, these were also the only cases that were likely to result in punishment for the perpetrators or more significant reparations for the victim. Overall, the elite and middle classes had either collaborated with or not drawn attention from the military dictatorships, so only a small minority of victims came from these classes. Victims from other backgrounds were doubly neglected by the government, in that they received fewer reparations and the crimes perpetrated against them were often not recognized, or only recognized as "excesses" of a well-meaning police force.

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[12] "Victims generally do not forgive; those responsible for the state-sponsored violence do not ask for pardon; societies do not reconcile."

The "amount" that a victim had suffered also affected the consideration he or she received from the state. Death vs. torture and imprisonment vs. exile determined the likelihood of the pursuit of legal justice and the level of reparations received (Frazier 204). For example, according to the original Chilean reparations program, family members of the dead or disappeared would receive a yearly pension of $5,781 per year along with other benefits, while torture survivors and political prisoners received no reparations aside from free access to state-run (i.e., lower quality) medical and counseling facilities (Hayner 329). In Argentina, benefits extended to political prisoners and those forced into exile, but their families did not receive the same benefits as the families of the disappeared or killed (Hayner 330).

Even human rights leaders prioritized dead victims over living ones: Chilean Judge Juan Gúzman, known for his strong stance against human rights violations, asserted that "it was more important to pursue cases of wrongful death, since that was the more serious crime and more urgent to resolve while family members were still alive to see justice" (Frazier 210). The urgency argument seems particularly counterintuitive, since survivors—particular those debilitated by torture or imprisonment—are more urgently in need of medical and financial support. Worse yet, survivors are sometimes judged as deserving of the mistreatment because they must have been "interrogated for a reason"(Frazier 210). Having a political stance against the government, or even giving the impression of having a political stance, may as well have been criminal. Political prisoners and torture survivors are still sometimes denied their rights, including access to medical care and the right to vote, because of the "crimes" they committed under the dictatorships. When they cannot prove that their arrests were politically motivated, they are presumed guilty (Frazier 211). The hierarchy of suffering within the reconciliation policy literally added insult—and psychological damage—to the injury of the initial trauma.

Without recognition of the abuses they suffered and some aid toward their recovery, victims have difficulty integrating into the new democracies, and "reconciliation" is a virtual impossibility.

The Mesa attempted to rectify some of these issues and prove that the rhetoric of reconciliation as forgiveness had some merit. Edmundo Pérez Yoma, Minister of Defense under Eduardo Frei, first proposed the Mesa in 1999. He drew inspiration from Itzhak Rabin, who believed that the greatest conflicts could be resolved only through a dialogue between the most virulently opposed parties involved (Zalaquett 13). The Mesa's objectives—truth and justice (moral, historical, and political)—fit the movement for acknowledgement and political recognition that had gained momentum in the eight years since the Rettig Commission. Its mandate explicitly excluded legal justice, since the participants did not claim the status of a court of law (Zalaquett 10). Nevertheless, participants expressed satisfaction with the mandate and the opportunity to begin the reconciliation process through dialogue (Zalaquett 7, 17). By the end of the of the twenty-two plenary sessions, the Mesa did achieve a symbolic milestone in the reconciliation process: Pamela Pereira, a human rights lawyer and daughter of desaparecido, refused to shake hands with the military representatives at the beginning, but chose to do so at the end (Zalaquett 16). Her gesture signified that she had developed respect for new leaders of the military, who had significantly distanced themselves politically from Pinochet, and that she was willing to forgive, provided that the military cooperated with investigations in good faith.

In spite of these successes, politics ultimately doomed the success of the Mesa as an instrument of reconciliation. Zalaquett asserts that the Mesa did not oppose amnesty, merely an amnesty that prevented the truth from being revealed—along the lines of the Aylwin doctrine (Zalaquett 10). This distinction eventually led the participants to cave to military pressures

regarding the collection of information. While the agreement originally stipulated that witnesses or perpetrators who brought forward evidence could not be prosecuted, it also included a penalty for withholding information. When the Mesa dropped the latter stipulation for the final version of the accord, human rights groups reiterated their previous qualms about the legitimacy of the Mesa. Amnesty International and the groups of Family Members of the Disappeared were especially critical. Amnesty agreed that the military and carabineros[13] took a significant step in acknowledging deaths under state custody, but qualified that assertion, stating, "after 27 years of unabated denial, the information provided is insufficient and inadequate, and often contradicts well-documented evidence" ("Chile: Armed Forces" 1). Most scholars agree that the information the military handed over, in accordance with the final agreement of the Mesa, was insufficient and in many cases, false.

Eventually, the compromises from both sides of the dialogue created further division among each sector, rather than bringing opposing groups together. Human rights activists were split between two camps: those who appreciated the compromises from the military acknowledgement and those who, like Amnesty, viewed this sacrifice as inadequate. Similarly, divisions arose within the military between officials who still supported Pinochet and maintained their innocence during his rule and those who admitted that military and state agents perpetrated human rights violations under the dictatorship. Admiral Jorge Arancibia Reyes, then the Secretary of the Navy, reevaluated the role the military should play in dealing with the past and participated in the Mesa, apparently with genuine intentions (Zalaquett 11). During the plenary sessions of the Mesa, the military claimed not to have information on the disappeared, but volunteered to cooperate and request that their respective branches comply with investigations

[13] Armed police force

(Zalaquett 22). However, this decision alienated officers who had repeatedly claimed to be unaware of any illegal detentions, torture, or disappearances.

Years earlier, the military and Pinochet did not question the specifics of the Rettig Report, but rejected the implications (Zalaquett 21). Likewise, after the Mesa, many officials ostensibly cooperated, and yet the military eventually submitted files on only 200 people, and some of those files were determined to be falsified. Ultimately, the Mesa failed as an instrument of national reconciliation, since neither the human rights activists nor the military could agree among themselves as to the appropriate course of the dialogues.

As evidenced by the Mesa de Diálogo and flawed reparations programs, the rhetoric of reconciliation can turn against the state. The push for forgiveness and an agreed-upon national narrative can inhibit the exploration of conflicting and plural memories, which may actually reinforce protests and division (Lefranc 175). Like the fallacy of victimhood, the attempt to mold a single version of history lumps victims and perpetrators together as citizens mourning the violence of the past. This concept of *the* "mourner," Frazier argues, "threatens to even more tightly constrain political agency, subsuming under the rubric of reconciliation those in the various sectors within Chile and outside Chile whose lives have been tattered or have benefited from this history of violence" (Frazier 233). So instead of effecting forgiveness and acceptance between former combatants, victims, and oppressors, this rhetoric merely obscures the sources of conflict and creates new ones. The state's vision of reconciliation, along with many of the selected means of fulfilling it, are counter-productive.

A more appropriate form of acknowledgement came in the form of confessions from military officers. However, although officers were willing to admit their guilt, many were unwilling to face legal consequences for their actions. Adolfo Scilingo's 1995 public confession

is the most well-known example of this acknowledgement. Scilingo admitted to being aboard the "death flights" from which detainees were drugged and dropped to their deaths in the ocean, and he also confessed to acts of torture that took place at the Navy Mechanical School (*Escuela de Suboficiales de Mecánica de la Armada*, ESMA) in Buenos Aires. In 1997, Scilingo volunteered to testify in Spain in front of Judge Baltasar Garzón, the same judge who called for Pinochet's extradition from London a year later. Although he subsequently retracted his confession, Garzón and a panel of National Court judges sentenced him to 640 years in prison for the murders and acts of torture ("Dirty War").

The confessions of Scilingo and other military officials represented one of the most significant forms of acknowledgement for victims. Not only were the perpetrators the best sources to legitimize victims' denunciations, but they also represented recognition from the leadership of the military regime. Regardless of the legal processes that followed, these confessions helped diminish the aura of impunity surrounding the human rights violators and contributed to strengthening the victims' political voice by substantiating their claims. Unfortunately, few officers who still lived in Argentina and Chile were willing to break the military's code of silence, and some who did, like Scilingo, later recanted for fear of prosecution. The limited and inconsistent trend of confessions was insufficient to satisfy human rights groups' demands for acknowledgement, so the struggle for recognition continued.

In response to the inadequacy of the state's recognition of abuse, members of civil society expanded their protests and other activities. The Madres de Plaza de Mayo, who had actively protested their children's disappearance since 1977, expanded their mission defend human rights in general. The Mothers resented that CONADEP's report did not include the list

of perpetrators,[14] and demanded official acknowledgement from the perpetrators and the government. Journalist Jorge Guinzburg, in response to a 2006 letter from a reader who vindicated the military regime, argued in favor of expanding the Madres' demands. He claims that the slogan of the Madres "Aparición con vida,"[15]—originally conceived to protest exhumations of the disappeared without official recognition—should also be applied to less tangible losses during the dictatorship, such as pride in the nation and the armed forces and the conviction that political participation can improve the situation of the country (Guinzburg). The Madres had already begun expanding their protests immediately after the transition to democracy, more than two decades before Guinzburg's article.

Drawing on the techniques and strategies they had developed during the dictatorship, the Madres built their movement outward to encompass virtually all human rights issues. According to Fernando Bosco, "Today, the Madres are involved in the struggle for human, civil, and political rights in Argentina, Latin America, and beyond" (Bosco 342). The Madres continue their weekly protests in the Plaza, conduct an annual twenty-four-hour March of Resistance, and also travel abroad to defend the cause of human rights. But according to Bosco, the most important work that these women perform for human rights is not the act of protest itself, but the "emotional labor" of maintaining their social networks of resistance. In fact, he says, "The effectiveness of the Madres in remaining together for almost thirty years has a lot to do with these women's capacity, through emotional labor, to stop seeing themselves as victims and as passive mothers of the disappeared and to transform themselves into Madres de Plaza de Mayo" (Bosco 361). The force that originally drove the Mothers to meet for weekly protests—the

[14] A source within CONADEP leaked the list of 1,351 perpetrators to the press immediately after Nunca Más was published (Hayner 111).

[15] "Reappearance alive"

demand for acknowledgement—remained unresolved even after the democratic transition, inspiring not just a continuation of the same demonstrations, but a burgeoning civil society fully capable of confronting the government's deficiencies and intent upon protecting human rights on all fronts.

The same unresolved issues of impunity and injustice inspired younger generations to form their own protest movements. The Children for Identity and Justice (Hijos por la identidad y justicia contra el olvido y silencio, H.I.J.O.S.) in Argentina hold festive protest gatherings called "escraches" to reject the notion of impunity. In fact, one of the group's slogans is, "Where there is no justice, there will be an escrache" (Taylor 182). Members of H.I.J.O.S. prepare for the protest weeks or even months in advance by placing flyers in universities and around the neighborhoods where the escrache will be held. Their purpose is not only to demand a response from the government, but also to inform more of the population that a perpetrator of horrific atrocities still lives among them or that a torture center was located within residential or business districts.

These creative and interactive protests inspired the Funa movement in Chile. The group Truth and Justice Action (Acción Verdad y Justicia) organized the first FUNA in October of 1999, after the detention of Pinochet in London had opened up political space for more active protests. The Funa Movement, as the group later dubbed themselves, employed the same theatrical protest tactics as escraches and they also adopted the same slogan, "Si no hay justicia, hay funa" ("Quiénes Somos"). Neither group considers recognition an acceptable substitute for justice, but both believe that recognition and acknowledgement are necessary aspects of the recovery process, and probably prerequisites of justice. One member of H.I.J.O.S. says of the escraches, "Buscamos señalar al represor, marcar el lugar donde vive y hacer que quede en

evidencia, expuesto ante la gente y los vecinos. No creemos que eso sea justicia, pero al menos nos aseguramos de que el señor empiece a ser conocido por lo que verdaderamente es" (Licitra 1).[16]

The quest for recognition and acknowledgement through escraches and similar protests has achieved notable successes. For example, internal mobilization and international pressure were instrumental in the Chilean Supreme Court's decision to revoke Pinochet's immunity. In Pinochet's hometown of Iquique, activists arranged a vigil in the Plaza Condell during the Court's deliberation period. Frazier describes it,

> "Day and night, the Association of Families and Friends of the Executed and Disappeared displayed homemade collages of print media documenting regional deaths and presenting a biography of General Pinochet that explicitly invoked his self-promoted image as omnipotent persona and military man and assigned him historical agency and accountability for state violence" (Frazier 233).

While not all protests had such substantial influence as this one appeared to, the majority of funas and escraches achieve their aim to inform the people. With signs like, "'You are here'—five hundred meters from a concentration camp" (Taylor 165) and protests songs playing on loudspeakers, these groups give voice to the victims that were unable to represent their causes in life and could not bear witness to the brutalities they suffered before being disappeared.

The public protests in Chile and Argentina have ensured that, even when perpetrators and government officials are unwilling to acknowledge crimes against humanity, the majority of the people do recognize that the atrocities took place. However, one notable culprit has avoided serious domestic repercussions for its role in supporting the military dictatorships: the United States, particularly the Nixon and Ford Administrations. In spite of reports from Amnesty International and human rights groups in the U.S. and abroad, few U.S. officials have

[16] "We want to point out the repressor, mark the place where he lives and ensure that it is known, exposed in front of neighbors and all people. We don't believe that this is justice, but at least this man becomes recognized as what he truly is."

acknowledged any wrongdoing, much less admitted their own complicity. Perhaps even worse, the protests are not widespread or well-publicized enough to inform the American populace, so the majority of Americans are probably still unaware or indifferent to the role the U.S. played in the human rights violations in the Southern Cone.

It may be unreasonable to expect the U.S. to monitor human rights violations at all times, even in the territories of its allies. However, Kathryn Sikkink portrays the duty of the hegemon with regards to human rights as similar to a doctor toward patients. The doctor is not responsible for all the decisions the patient makes, but he should not deliberately influence the patient to take actions that are risky or outright unhealthy. According to Sikkink, the U.S. disregarded the "highest obligation in the human rights realm: Do no harm" (Sikkink 81). The excuse that some officials have offered—that the government was unaware of the existence or extent of the human violations—is ludicrous for various reasons. First of all, the Vicaría de la Solidaridad and domestic human rights groups in Chile and Argentina provided constant information to international contacts, who in turn made this information available to policy makers (Sikkink 109). But knowledge and neglect alone are not necessarily enough to condemn the U.S. The actions that government officials took consciously to empower dictators in spite of the well-known abuses were the true crimes.

Even while publicly condemning human rights violations, the U.S. continued to support the military dictatorships both financially and politically. If the American government wanted to send a message to Chile and Argentina to end the atrocities, then the amount of U.S. Aid to the foreign government should correlate inversely to the number of violations, i.e., where there are more violations, there should be less aid. But the data in Argentina and Chile during the dictatorships reveal an opposite tendency. Between 1974 and 1976, when disappearances rose

continuously to a peak of almost 4,500 per year in Argentina, U.S. military aid also increased from around $15 million to almost $40 million (Sikkink 101). In Chile, U.S. military aid rose from around $5 million to almost $20 million during the first two years of the dictatorship, which was by far the most violent period. Total U.S. economic aid peaked at almost $100 million in 1976, just after the most extensive wave of violence (Sikkink 102). Rather than attempting to dissuade the military juntas from illegal detentions and disappearances, the trends in U.S. aid seemed to suggest that the American government supported the violence.

However, direct statements from government officials in support of the military regimes are even more telling. A transcript of meeting held on October 7, 1976 between Henry Kissinger and Admiral Guzzetti of Argentina reveals explicit U.S. support of the juntas. Following a discussion of human rights and the international outcry after the coup, Kissinger stated, "Look, our basic attitude is that we would like you to succeed. I have an old-fashioned view that friends ought to be supported...The quicker you succeed, the better." Kissinger suggested that the junta apply for as much foreign aid as possible before the "human rights problem tied the hands of the U.S. administration" (Klein 158). Kissinger had a similar message for Pinochet. In a confidential, but recently declassified message, he told the general, "In the United States, as you know, we are sympathetic with what you are trying to do here...We want to help you, not undermine you" (Sikkink 110).

When other U.S. officials questioned the policy of supporting the regimes while they carried out atrocities, Kissinger attacked. In one instance, a formal complaint was filed against the U.S. ambassador to Chile because he discussed torture and human rights issues with Chilean military officers. After hearing of his criticisms, Kissinger told the State Department, "Tell Popper to cut out the political science lecture" (Sikkink 109). Other high-ranking officials also

acknowledged the human rights violations privately, but did not condemn them publicly. CIA agent Philip Agee admitted in writing that he and fellow agents were aware of torture being used as an interrogation technique by the police and military, yet they did not act—even through diplomatic channels—to bring it to an end (Sikkink 63). In these private dispatches, the Secretary of State and members of the intelligence community sent a clear message that the neoliberal economic policy of the dictatorships was more important to the U.S. government than any human rights issues.

In order to preserve the facade of human rights, this message needed to be delivered through convoluted and contradictory statements and gestures. In some cases, the meta-messages were contradictory because some officials genuinely opposed the human rights violations, but higher-ranking functionaries overrode their criticisms. On the other hand, the government often sent deliberately mixed signals to limit evidence of its complicity in the atrocities. For example, several members of Congress suggested that the U.S. consolidate its human rights stance into a policy that didn't impose domestic values, but rather upheld international human rights doctrine (Sikkink 69). By this point, international human rights groups had publicized the atrocities on a wide-scale, and members of Congress sought a resolution that would alleviate the situation without military involvement. Yet again, the executive branch undermined efforts to protect human rights. In a 1976 letter from acting U.S. Secretary of State Charles W. Robinson: "There are many well-meaning people in the United States, though perhaps somewhat naive, who indiscriminately take the side of those imprisoned in Argentina" (Sikkink 116). Ambassador Hill in Argentina received a similar response from Kissinger in 1976 after expressing concern to the junta about human rights violations that included the kidnapping of two Americans and several Argentineans working in U.S.

universities. Kissinger wrote to the junta encouraging them not only to continue, but to "accelerate" the "war against 'terrorism'" (Sikkink 112-113). The statements of the highest officials in the executive branch did not match those of the experts in the field, and neither did they fit the official American stance on human rights.

Toleration, or in some cases encouragement, of human rights violations by U.S. officials contributed to the general impunity of perpetrators both at home and abroad. After junta member Guzzeti returned from the meeting with Kissinger in Washington, he told Ambassador Hill that he, "had the impression that 'senior officers of the U.S. government understand the situation his government faces but junior bureaucrats do not'" (Sikkink 115). Not only did the Secretary of State condone the atrocities, but he also compromised the work of diplomats by continually contradicting them. On other occasions, the U.S. government even subverted the justice system on American soil. In 1976, Chilean human rights activist and former Defense Minister Orlando Letelier was assassinated in Washington, D.C. Within a year, investigations had established that Chilean agencies planted the car bomb that murdered Letelier and his American colleague Ronnie Moffit on Sheridan Circle in the middle of "Embassy Row." The federal government responded publicly with indifference, and in private messages to the Chilean government, Kissinger declared, "human rights policy [is] not the policy of the Ford administration" (Sikkink 110).

Sikkink points out that it was this constant contradiction between different branches of the government, rather than any one specific message, that caused the most damage. She asserts, "What is most important...is not the amount of aid that is cut but the clarity and consistency of the overall signal" (Sikkink 213). The message that the U.S. government presented, through

contradictions and veiled support, led the military regimes in Argentina and Chile to conclude, correctly, that the U.S. would condone the mistreatment of their citizens.

The explicit and implicit support from the executive branch would be enough to determine the complicity of the U.S., but the intelligence community involved itself even more directly in the crimes against humanity. After the coups in Uruguay, Chile, and Argentina, the C.I.A. developed a plan for Southern Cone intelligence-sharing known as Operation Condor or the Condor Plan. However, the plan not only encompassed sharing information, but also included political favors such as assassinations. Uruguayans Gutiérrez Ruiz and Michelini were murdered in 1976 by Argentine forces, for example (Sikkink 63). In fact,

> "After the coup in Argentina, 135 Uruguayans were killed or were disappeared in Argentina apparently as a result of their political activities in Uruguay. In addition, nine Uruguayan children were disappeared in Argentina, usually captured when their parents were disappeared. Of these, four later "reappeared," released by security forces or put up for adoption. Another four Uruguayans were disappeared in Chile, and two in Paraguay" (Sikkink 98).

The Plan allowed the military regimes to eliminate their political opponents even more effectively, but it also demonstrated the C.I.A.'s moral flexibility. When it came to eliminating the opponents of capitalism, intelligence officers were not above human rights violations. Rather, they orchestrated a more efficient way to carry out the atrocities.

Apparently, human rights violations have also taken root in another project of the intelligence community, the School of the Americas (SOA). Human rights organizations first criticized the SOA for using manuals that promoted torture, kidnappings, and extra-judicial executions. Although the school claimed to have dispensed with the objectionable material, the tainted manuals were actually used—with or without oversight—until 1991 (Sikkink 203). After these initial controversies, activists continued to denounce the institution as more and more connections between the SOA and perpetrators of crimes against humanity were revealed. In the

face of these criticisms, the school responded that only a small percentage of its graduates were perpetrators and that its record had improved over time.

Katherine McCoy decided to test their claims with an empirical study of 60,000 SOA graduates from 1946 through 2000. She began with two hypotheses: 1) that the more courses an SOA student takes on military professionalism, the less likely he or she will be to violate human rights, and 2) that the more recent graduates of the SOA will have a better human rights record than those of the past, since the human rights curriculum has improved (McCoy 51). Rather than compare the guilty SOA graduates to other human rights violators, she only compares SOA graduates with other SOA graduates. Her results reveal that the SOA is justified in claiming that only a small percentage of its graduates are human rights offenders: McCoy determined about 1.3% of graduates fit this category. However, with a high statistical significance, McCoy concluded that more training is directly related to higher rates of abusers within the sample and the human rights record of the school has not improved over time (McCoy 57-61). Based on her methodology, these results are credible.

Beyond explaining her determinations, McCoy also makes the startling observation that the SOA is the most transparent of all foreign military training programs (McCoy 61). According to an Amnesty report from after the school's 2000 transition, "training at the SOA today [has] greater human rights content and much greater transparency than other U.S. programs training military students from around the world" (Sikkink 205). These conclusions pose uncomfortable questions for other U.S. programs on foreign military professionalization. In any case, with America's history of complicity with violent authoritarian regimes, U.S. intelligence agencies must improve oversight of these institutions and also be willing to make

their work more transparent. Given the U.S. record for human rights violations, government officials cannot expect international organizations to trust their claims without verification.

In spite of the efforts of civil society and the new democratic governments, acknowledgement of atrocities by perpetrators has been delayed, insubstantial, or non-existent in both Argentina and Chile. Victims and human rights organizations require this official recognition in order to view the democratic government as legitimate, yet the fragile political agreements that initially allowed the transition to occur make this acknowledgement almost as difficult as legal recognition of the crimes. Nevertheless, the new governments did attempt to acknowledge the atrocities more and more over time by sponsoring initiatives like the Mesa and Truth Trials and by supporting civil society groups like the Madres, Abuelas, and H.I.J.O.S. Not only did the new administrations support the cause of human rights for ethical reasons, but they also realized that to validate their authority, they would have to satisfy the popular demand for acknowledgement.

**Remembering and Memory Politics: Historical Recognition**

"El olvido está lleno de memoria."[17] -Mario Benedetti

Motivations for historical recognition also stemmed from a need to legitimize the new democracies. But other reasons lay behind the attempt to establish a historical record as well. Argentinean and Chilean societies were broken after the long and brutal dictatorships, and policy makers judged correctly that people would need to have a clear picture of history to be able to understand and function in the present. This notion, after all, was the premise of the original truth commissions.

[17] "The act of forgetting is filled with memory."

However, like legal and political recognition, the concept of a historical record was not clear-cut. According to Frazier,

> "In the civilian leaders' narrative, the military dictatorship was a blip in a longer, progressively more democratic historical trajectory, rather than a manifestation of other kinds of undemocratic tendencies that can be traced both in long-range history and in the specific question of state continuity between military and civilian regimes" (Frazier 199).

Most people agreed that the victims should be identified and the remains of the dead located, but other aspects of "history" were more controversial. In Chile, the government and many human rights activists agreed that the historical record could help reconcile the divided society, whereas in Argentina, even the idea of reconciliation was offensive to victims and their families. Competing versions of the truth arose to challenge the democratic government's narrative.

Although the government did not intentionally encourage these contradictory "truths," the growing space for debate that arose during this period was a decidedly positive result. The idea of "making the past the Past" glosses over both unreconciled victims and unrepentant repressors (Frazier 197), neither of whom was willing to capitulate in order to promote a national consensus. As Sandrine Lefranc argues, the government's pronouncement of an official history challenges both civil society (victims) and former repressors to offer competing realities (Lefranc 176). In Chile, the contradictions inherent to the new state have even begun to form part of the official narrative. People like Dr. Elena Espinoza, a political prisoner and anti-government human rights activist turned Ministry of Health official, exemplify these contradictions. In an interview, Lessie Jo Frazier asked Espinoza about PRAIS, the psychologist-designed health program for victims in order "to better understand the state's position." Alarmed, Espinoza responded, "I'm the state?" (Frazier 220). According to Frazier, the conflicting position that many government officials hold "is a part of and produces the solidity of the idea of a singular,

continuous, and cohesive state in Chile and the ways actors become interpellated into that state position" (Frazier 226).

The state tends to view the conflicts these actors experience as passive—although they might not support all of the government's initiatives, they would never turn against it. The results of the Mesa tend to support this opinion. Both civil society and some military leaders, particularly Jorge Arancibia Reyes, promoted the Mesa as a means of locating remains of victims and "formulating an official historical interpretation" (Frazier 205). The willingness of human rights activists and military officers to sit at the same table, or even speak civilly to one another, supported the notion that even diametrically opposed groups could reconcile. Apparently, Chilean officials did not define reconciliation as coming to an agreement, but rather learning to live with each other. So although the Mesa ultimately did not fulfill its goal of locating the disappeared, many government officials and even some human rights and civil society organizations touted the dialogue as a success. Victims *wanted* to reconcile with their repressors, even though they could not agree on the particulars.

In reality, the motivations of activists and policy makers may be more complicated. While it is true that the activists who choose to work with the new government support the idea of democracy, their participation in government initiatives may stem just as much from protest against the government's policies as support for them. In one regard, the state is correct in its implicit argument of cohesion: the contradictory positions of activists-turned-policy makers embody a democratic polity of ideas. On the other hand, though, this same diversity of opinions challenges the government's discourse that the past is past. In discussing the development of the Madres movement, Fernando Bosco cites M.L. Pratt: "Social formations are 'constituted by (rather than in spite of) heterogeneity' and social bonding is 'constituted by (rather than in spite

of) difference'" (Bosco 344). This counter-intuitive hypothesis becomes the foundation for the competing national narratives. By accepting contradictions and conflicting positions *inside* the national narrative, the government invites more contradictions and conflicting ideas from *outside*.

The interests of the military and conservative sectors of society had strong representation within the new democratic governments because of the compromises inherent in the transition process. Nevertheless, many military officers still felt compelled to develop competing historical narratives in defense of the former regime. In Argentina, the military had recently experienced the humiliating defeat in the Malvinas/Falklands War, so the armed forces were in a more precarious position than their counterparts in Chile. Argentine military officers still promoted counter-narratives, but they had to be more cautious than the military in Chile, since they maintained their position of power only through explicit threats and attempts at coups. In Chile, on the other hand, the military had guaranteed seats in the Senate and Pinochet still boasted significant popular support as well as serving as Commander in Chief of the Armed Forces.

In light of their relatively secure position in the new government, Pinochet and other military officers felt free to disseminate bolder, more public counter-narratives. In 1993, the military mounted one of the most horrifying examples of opposition to the transitional state's discourse on memory. In protest of the selective investigation of human rights violations with high profile victims and the financial investigations of Pinochet and his family, military officers orchestrated a "boinazo," or saber-rattling. Essentially, they reenacted the the 1973 coup. Frazier describes the scene, "While President Aylwin traveled to Europe to garner economic support and to persuade those still in exile to return to Chile, the military donned formal battle gear, rode in tanks into the Plaza of the Constitution, and entered the presidential palace"

(Frazier 193-194). All that was missing from the scene were the exploding bombs and flames enveloping La Moneda, the palace. With military power so much more tangible in Chile, the boinazo had a marked effect. Not only did it further intimidate the government, but it cowed even active defenders of human rights. Some resigned party memberships or discontinued protest activities for fear of putting their loved ones in danger.

The Mesa de Diálogo represented the first major rupture within the facade of military solidarity. Although some Chilean officers had presented evidence to the Truth and Reconciliation Commission, most of those were living in exile and had done so on the condition of anonymity. At the Mesa, however, the military stated publicly that some state agents had been responsible for some excesses, i.e. torture and extra-judicial killings. The military ultimately relinquished files on only 200 victims and some of those included data that conflicted with the Rettig Report. However, Frazier notes, "The right-wing sectors most loyal to the military had doggedly denied for decades that anything untoward, excessive, or at least undeserved had happened; they were left out in the cold, politically, by the military's admission (albeit with false particulars) that atrocities had in fact happened" (Frazier 213). Many military leaders openly disparaged the Mesa. In August of 2000, two months after the members of the Mesa reached the final accord, General Guillermo Garín declared, "La Mesa de Diálogo está moribunda"[18] (Zalaquett 6). The military's acknowledgement of crimes against humanity in the Mesa, spearheaded by Navy Secretary Jorge Arancibia Reyes, marked the beginning of the end for the military's counter-narrative in defense of Pinochet's regime.

The confessions of Adolfo Scilingo and other prominent military officers had a similar effect in Argentina. As members of the Armed Forces came forward to publicly admit

[18] "The Mesa de Diálogo is dying."

wrongdoing, the military juntas' self-constructed discourse began to crumble. New leaders of the military distanced themselves personally and politically from the previous regimes, and popular support for both the military regime and the previous leaders waned. Although some right-wing advocates continue to defend the military juntas as necessary and beneficial to the country (Guinzburg), the political "moderates" shifted left on the spectrum and most right-wing sympathizers stopped openly defending the dictatorships.

Even while the military dictatorship openly validated the authoritarian regime, one alternative discourse was even more prominent. Former anti-dictatorship activists were the most vocal critics of the post-transition state's version of history, so their competing narratives were the most visible. These groups refused to legitimate the official initiatives towards memory. For example, the association of victims' groups refused to recognize the Mesa because members believed that it contributed to the impunity of perpetrators (Zalaquett 6 & Frazier 213). Yet the strongest rejection of the democratic state's official narrative came not in direct retaliation for government initiatives, but as autonomous struggles for remembrance of the victims' version of history. Frazier explains, "By the late twentieth century and beginning of the twenty-first, memory-making as a form of sociopolitical action had become even more central to state formation" (Frazier 191). Anti-dictatorship activists were just as motivated as government officials to enact their memory struggles, and in many ways, they were more effective because of their creativity.

Artistic representations of memory garner both popular support and official recognition from the government. The Abuelas' campaign "¿Vos sabes quien sos?[19]" included collaboration

[19] "Do you know who you are?"

with the group Teatro por la Identidad[20] to produce over forty plays around around the country in the first year of the cycle. Not only did the free performances draw crowds of more than 40,000 people, they also inspired seventy-two young people to come forward with questions about their identities during the year 2000 (Arditti 14). The Park for Peace in Santiago, located at the site of the former torture center Villa Grimaldi, has also sponsored several exhibits and performances in remembrance of victims of the dictatorship. One of these projects, Teatro por la Vida,[21] received the support and even participation of the highest government authorities. In October 2006, President Michelle Bachelet, who personally survived torture at the infamous Villa Grimaldi, inaugurated the opening performance of "Villa Grimaldi: The Archaeology of Memory in Three Cantos" ("La Presidenta"). Both of these theater projects represent of the successes of the creative movements that fight for memory, but not all such artistic performances on memory are as well-received.

In 1990, a Chilean artist accompanied her husband, a judge, as he examined evidence of atrocities committed during the first years after the 1973 coup. Her paintings featured abstract representations of memory, but they also helped document the exhumation of a mass grave in Pisagua. Unfortunately, during the transitional period, neither the judiciary nor other sectors of government were supportive of memory struggles that did not contribute to reconciliation. Frazier explains, "When her husband's career was destroyed by more powerful sectors of the pro-military judiciary, the artist destroyed all of her work in atonement for conjuring the past" (Frazier 227-28). Particularly in the early years of the transition to democracy, dissenting voices such as that of this artist were quashed to whatever degree possible by the government and right-

[20] Theater for Identity

[21] Theater for Life

wing sectors. Unlike this artist though, in the long run, the majority of activists refused to be silenced by political and social pressures.

The exclusion of the opposing narratives from political discourse strengthened the resolve of activists struggling to preserve their versions of history. Frazier describes the motivations of Chilean activists:

> "Memory represents a set of events and characters from the past that are violently excluded from the nation and whose words and stories must be reiterated, even though the general consensus among the Concertación (center-left to center-right parties) is that that past has only a cautionary relevance for the present and does not offer positive models for current political mobilization" (Frazier 190-91).

In the Southern Cone, activists fought for public recognition of their narratives. They defended the discourses that had been "violently excluded from the nation" and led dramatic popular movements like the escraches and funas to expose the public and the international community to their points of view. Activists also fortified their memory struggles by institutionalizing memory. State mechanisms like the truth commission reports and nationally sponsored memorials embodied the post-transition government's official policy on memory,[22] so activists responded in kind by creating their own institutions dedicated to memory.

One such project, the Identity Archive created by the Abuelas de Plaza de Mayo, combines physical DNA evidence with mementos of personal history to tell the story of the disappeared. This initiative was designed specifically for the second generation of disappeared—the children born in detention centers who were illegally adopted by the military or regime sympathizers. The grandmothers had sponsored many initiatives to help these children discover their identities, but as they aged, the women became concerned that they might not

[22] Both the Argentinean and Chilean governments sponsored some projects that were coordinated by the victims, including the Parque de la Memoria (Park of Memory) in Buenos Aires and the Parque por la Paz (Park for Peace) at Villa Grimaldi in Santiago. These efforts reflected a genuine commitment on the part of some government officials to acknowledge and try to make ammends for past wrongs. Nevertheless, the overarching discourse of the post-transition state focuses on memory as a means of overcoming and moving on from the past, rather than an opportunity to better understand the political and social currents that comprise the present.

survive long enough to impart their histories to the "found" grandchildren. Thus arose the concept of the Identity Archive, a place where memory could overcome death and deception. A National Genetic Data Bank, developed by scientists in collaboration with the Abuelas, could establish identity based on the "grandparent index" with 99.95% accuracy. Then the grandchildren had access to an archive with collections of photos, films, audiotapes, diaries, personal objects, and personal stories of their parents and grandparents (Arditti 14). This initiative created a well-organized, rigorously documented archive for memory.

The Abuelas also had the advantage of maintaining a congenial relationship with the government. Although their narrative challenged the post-transition official discourse of "turning the page on history," they conducted their projects in a legal manner and abided by most political and social conventions while building their institution—as compared to the escrache movements. Because of the strenuous research that went into the Identity Archive and the attitude of the Abuelas in developing it, the archive received widespread attention and a predominantly favorable reception.

The Abuelas' Identity Archive also contributes to a complete and accurate record of the victims, which is necessary to establish reparations programs. Actually, the work of the Abuelas on the National Genetic Data Bank is a form of reparation in and of itself. According to Article 8 of the UN Convention on the Rights of the Child, states must "respect the right of children to preserve their identities and to take action to restore them if they have been destroyed" (Arditti 13). As of 2007, the Abuelas had restored the identities of more than 86 children (Arditti 15). Before the Abuelas began their work, the concept of a "human right to identity" did not exist; their perseverance, along with many other advocates of children's rights, contributed to international recognition of the state's responsibility for protecting the rights of minors.

Both the original truth commissions and later initiatives by civil society groups like the Abuelas contributed to the production of a historical record. Unfortunately, neither of these kinds of groups received cooperation from the military, so it was impossible to establish the particulars of each victim's case or the locations of the remains. In order to ascertain the details that were lacking, both the Chilean and Argentinean governments organized trials—not to punish the repressors, but rather to obligate them to divulge information about the victims. In Chile, these procedures adhered to the Aylwin doctrine, and in Argentina, the trials that began in the mid-1990s became known as the "Truth Trials." The Argentine cases encountered less opposition from the public because the political climate had shifted so markedly in 1998. In Chile, on the other hand, the trials received limited popular support and very little cooperation from the Armed Forces, so in 1999 Chilean authorities devised a new method of gathering information.

The Mesa de Diálogo was explicitly designed for the same purpose as the truth trials. José Zalaquett explains that the objective of the Mesa encompassed two of the greatest challenges on the path toward reconciliation: 1) the truth of the fates of the victims and whereabouts of their remains and 2) the recognition of culpability for the rupture of the democratic order and coexistence of Chileans that led to gross human rights violations (Zalaquett 10). Members of the Mesa hoped to incentivize the testimony of military officers by offering immunity from prosecution, and ultimately the measure was partially successful. The declaration signed by Mesa members in June 2000 led to the military relinquishing documents on 200 victims, but some of these contained missing or falsified evidence ("Chile: Legal Brief" 3). Even though state officials and some human rights activists hailed the results of the Mesa as a meaningful step toward recognition and reconciliation, the files did not make a significant

contribution to the historical record or the search for victims' remains. The reinterpretation of amnesty laws after 1998 and more thorough investigations have brought new evidence to light. This situation implies that the threat of legal action actually has the opposite effect of that expected by members of the Mesa.

The case of the South African truth commission also supports this idea. Human rights violators there could be prosecuted unless they testified on the crimes they had committed; as long as the perpetrator "fully confessed" and showed that the crimes committed were politically motivated, he or she was granted amnesty. So many former repressors came forward to testify in order to avoid legal penalties that the Amnesty Committee had to continue its work for almost two years after the assigned deadline (Hayner 45). Immunity from prosecution, when it is offered without pre-conditions, does not inspire cooperation with investigations, while the threat of prosecution is much more likely to do so.

Incentives and hurdles to candid testimony are only two of the many inherent difficulties of navigating between competing versions of the "truth" and competing perceptions of reality. Deliberate and unconscious forms of denial, along with exaggerations, minimizations, and misperceptions all complicate an individual's perspective of the truth, so for a state to manufacture one official history that all citizens can accept would be nothing short of impossible. Nevertheless, the people will expect from the government an official form of recognition of the crimes of the former regime.

The most important element of any official discourse is transparency in the investigation process and openness to reexamination. As Lefranc points out, the obsession with unity and a unique, all-encompassing national narrative can create problems for a plural, free democracy (Lefranc 178). The state must permit dissenting narratives, regardless of their slant. Yet even

freedom of speech has limitations: hate speech and threats are not protected forms of expression. Due to the legacy of the past, states like Austria and Germany have even explicitly outlawed any Nazi discourse or denial of the Holocaust as forms of hate speech. The intricacies of historical narratives and memory struggles will create both similar and new legal questions in the Southern Cone, but fortunately, it is not necessary that the state settle all of these questions immediately or that the decisions be permanent. In fact, "Almost all the countries of the region have been revisiting and revising their transitional justice strategies over time" (Sikkink & Walling 442). The political climate, usually tense immediately after the transition to democracy, tends to shift as new generations begin to lead the country. Opportunities for more thorough investigations often arise with these shifts. According to the study conducted by Sikkink and Walling in 2007, "While trials were considered impossibilities in many countries immediately after transitions, with the passage of time conditions changed and trials became not just possible but likely" (Sikkink & Walling 443). These findings indicate that transitional justice mechanisms should fulfill their mandates to the best of their ability, but most importantly, must leave open the possibility of future investigations and reinterpretations with the discovery of new evidence.

**Recovery: Commemoration, Memorialization, and Strengthening of Democratic Institutions**

"How then do we embrace our enemies? How do we get rid of the hatchet forever instead of just burying it for a time and digging it up later?" -Desmond Tutu

All of these types of recognition—legal, political, and historical—are necessary to address adequately the issues of justice, truth, and memory. Even though each state must decide what particular forms the recognition should take, acknowledgement is a key prerequisite to the recovery of a traumatized society and the return to (or creation of) a strong electoral democracy.

However, the legal, political, and historical recognition are not the ultimate goals of the transition process. Instead, they lay the foundation for commemoration, memorialization, and the empowerment of civil society.

For several reasons, the state cannot be solely responsible for the creation of commemoration and memorialization projects. Mourning is a fundamentally individual process, so survivors and victims' loved ones need the freedom to create their own expressions of grief and memory. Nevertheless, since the state and its agents were responsible for the atrocities and loss, the government has an obligation to financially or logistically support memorialization and other commemoration projects. These symbols are necessary not only for the memory of the tragedy as a whole, but also for the individual mourning of the friends and family of victims.

Although the mourning process is unique to each individual, certain elements can help relieve the suffering for most people. For instance, mourners can benefit from a supportive environment in which to grieve. Frazier clarifies this need: "Melancholy emerges out of the struggle to engage in the labor of mourning in the absence of a supportive social space" (Frazier 228). Often, the creation of a specific place or time for mourning can provide this space. According to Frazier, the "crypt or grave localizes and contains loss" (Frazier 191), while the funeral represents the temporal localization of loss (Frazier 232). The containment of loss both in space and time can sometimes make the grief more manageable. The construction of graves and memorials, and the arrangement of funerals or other acts of commemoration can have a positive effect on the recovery of victims and their families, so the state should take appropriate measures to support these processes.

Sometimes in trying to provide for memorials, the state may overstep its role as a facilitator of memory projects. Frazier describes the construction of a memorial at a mass grave

in Iquique, during which the government appropriated and attempted to define the mourning process without victims' consent or participation (Frazier 218). The Ministry of Public Works designed the project entirely without input from victims' families or human rights organizations in the area, then gave residents one week to review the plan. Activists protested the project vehemently, but the state continued to propose projects that "sanitized" the legacy of atrocities (Frazier 214). In order to carry out the political agenda of reconciliation, the state sought to "tame" sites of violence by commemorating victims officially while ignoring the agents responsible for the atrocities and the will of the victims and their families. This type of official commemoration inspired a passionate reaction from activists and victims.

Survivors and advocates for human rights enact memory as a transformative exercise, in order to make sense of past experiences and provide guidance for the future. Unlike government officials who sought to commemorate the past in order to move on, survivors foresee a more meaningful role for memory. As Frazier puts it, "Memory raised solely in elegy cannot transform the conditions of life" (Frazier 229). The activists see memory struggles as an opportunity to bring to light the crimes of the past, but also as a means to strengthen civil society and continue to protest the injustices of the current system of government. Frazier noticed the ability of memory struggles to open up space for political dissent at a funeral for a prominent human rights activist. She explains, "I began to realize that such funerals could reverberate in many ways simultaneously—as lament for the dead and as political protest" (Frazier 230). Rather than simply mourn their losses and accept the discourse of reconciliation, activists continued to fight for truth and justice, and they utilized memory as a tool in that struggle.

Civil society organizations need to remain especially vigilant during the initial period of democracy. Transitional governments are often willing to sacrifice long-term legitimacy for

short-term stability, undermining the ultimate goals of democratization (Lefranc 166). Data on Brazil from a study of transitions in Latin America suggest that transition to democracy, in and of itself, does not guarantee an improvement in human rights practices (Sikkink & Walling 437). Rather, transitional justice mechanisms such as trials and truth commissions are necessary to come to terms with atrocities committed under the military regimes. Frazier reiterates, "The Chilean political leadership's version of memory-as-reconciliation may not constitute the public memory-work required to create a viable path to a more democratic polity" (Frazier 195). In other words, both the state and civil society must contribute to the formation of a national memory in order to ensure that the historical narrative reflects as little bias as possible.[23] Frazier's statement also underscores the need for a transparent process open to reexamination by scholars and human rights organizations.

The injustices that civil society protested stemmed from various issues. The military regimes had created some of the most profound obstacles to democracy before they relinquished control and immediately after the transition to democracy. The combined explicit threat of military intervention and structural constraints in the constitution and legal system crippled the new government's initiatives for truth and justice (Frazier 200). But the corruption of the military officials in power created another problem for new democratic regimes: the "debt bomb." The "dignified transition" in Argentina meant that new democracy absorbed a national debt that had risen from $7.9 billion before the coup to $45 billion at the time of transition. World Bank estimates that $10 billion borrowed by generals went to military purchases, i.e. weapons and salaries for torturers; vast quantities of the money simply vanished into offshore

[23] Alternatively, perhaps the government-sanctioned version of history should reflect as many biases as possible; then it might offer a greater understanding of the conflicts and political and social currents that remain in the national consciousness.

accounts (Klein 156-57). Witness testimony provides evidence to corroborate the suspicion of embezzlement: one prisoner at ESMA[24] was forced to type documents for offshore tax havens (Klein 158). So, in effect, the new democratic government—including tax-paying survivors of torture and families of the disappeared—became responsible for financing the regime of violence and repression, along with the "pensions" of some of the highest officials responsible for the crimes.

In Chile, the embezzlement was not quite as overt, although investigations later proved that members of Pinochet's family had surreptitiously funneled money from the government coffers into offshore accounts. As in Argentina, military spending in Chile increased to fight against the so-called internal subversion. Military spending tripled under Pinochet, when army troops rose from 47,000 in 1973 to 85,000 in 1980; the new democratic government was forced to absorb that debt (Klein 157). Government officials were reluctant to question the legitimacy of the debt because the country remained in a "terror hangover." Klein describes the political climate: "Having finally escaped the darkness of dictatorship, few elected politicians were willing to risk inviting another round of U.S.-supported coups d'etat by pushing the very policies that had provoked the coups of the seventies" (Klein 161). The debt bomb hampered the governments efforts toward recovery, and it also exemplified the injustices thrust upon the population that survived the military dictatorships.

Aside from the debt, the economic model in general may have stunted the development of democracy. Klein challenges the argument that democracy and neoliberalism are inherently compatible in her book *The Shock Doctrine.* She says, "This book is a challenge to the central and most cherished claim in the official story, that unfettered free markets go hand in hand with

[24] The Navy's Mechanical School which became one of the most infamous torture centers

democracy. Instead, I will show that this fundamentalist form of capitalism has consistently been midwifed by the most brutal forms of coercion" (Klein 18). Other scholars agree that the neoliberal model in Latin America has frequently run counter to the ideals of democracy. Tomas Moulian called Chile a "simulacrum of democracy," or neoliberalism in the guise of democracy (Frazier 203). Carlos Menem further undermined the democratic process by instituting an economic policy he called "shock therapy." Aside from the widening gap between the rich and poor and other difficulties of the neoliberal model, Menem's descriptions of the policy were blatantly disrespectful to victims of military repression. At one point, he referred to his economic changes as "major surgery without anesthetic," a horrifying analogy for a populace with personal experience of torture (Klein 167).

Whether or not the neoliberal model ultimately benefits the Southern Cone, the military dictatorships imposed capitalism by force and the democratic governments allowed the system to remain in place with the same right-wing elite who had condoned the repression. One activist in Chile framed the dilemma aptly by declaring, "Democracy and the economic model are distinct rivers and the question is whether they converge or in general if that is not possible" (Frazier 202). If democracy is to survive in the long term, the state will have to consider these criticisms and weigh the costs and benefits of the neoliberal model.

**Concluding Remarks**

The economic, social, and political realms are invariably intertwined, so the government cannot afford to ignore any of these spheres in its transitional justice and truth-seeking strategies. According to international law, after the repression of an authoritarian regime, the state has certain unquestionable obligations in any transitional program. It must prosecute and punish

offenders; restore, to whatever degree possible, what the victims have lost; and it must preserve victims identities, including children who may be unaware of their personal histories. In considering all of these factors, the new democratic government will never achieve a perfect resolution, and the process of "transition" is unlikely to fade into the past while victims and perpetrators still live and work in the same space. So only one aspect of the government's program will remain constant: the necessity of adaptation. In order to offer the most complete and fair history of past atrocities, the state must be open to scholarship, new evidence, and contradictory interpretations of facts. Only negotiation and renegotiation among all of the relevant actors of the programs for justice and truth has any chance of reaching an acceptable resolution to the issue of the past.

Beyond even adapting their own policies over time, states with a legacy of crimes against humanity must learn to conform to the increasingly global scope of human rights law. As the Garzón Effect and Adolfo Scilingo's conviction in Spain indicate, prosecutions of human rights violators are increasing around the world, regardless of where the crimes were perpetrated. Just as there is no statute of limitations on the prosecution of crimes against humanity, international tribunals and proactive judges are working towards the elimination of territorial boundaries where human rights are concerned. The universal jurisdiction of human rights is based on the premise that, since international laws and treaties have established uniform criteria for crimes against humanity, any legitimate national or international tribunal may prosecute violations. What remains unclear is how the evidenciary burden and sentencing requirements for international human rights violations will be defined, since these standards are not universal. However, while these last two issues raise questions about the role that national sovereignty will play in future prosecutions of human rights violations, one thing remains certain: it is becoming

more and more risky to commit crimes against humanity anywhere in the world.

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