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**Transitional Justice and Economic Development in Argentina and Guatemala**

This thesis has been submitted on this day of April 19th, 2016 in partial fulfillment of the degree requirements for the NYU Global Liberal Studies Bachelor of Arts degree.
Abstract

Using Argentina and Guatemala as case studies, I argue that transitional justice practitioners should adopt an amenable sequencing framework which requires functioning institutions to be in place before implementing transitional justice mechanisms of truth, justice or compensation. In the long run, this strategy benefits economic development by assuring that transitional justice is implemented fully and legitimately, so its equalizing and empowering effects can reverberate throughout society. As demonstrated by the contrasting case studies, the stronger a country’s institutions, and the less power the previous authoritarian regime has in a new democracy, the more likely the country is to succeed. Transitional justice measures in Argentina built on an already fairly cohesive democratization process while Guatemala’s transitional justice program was layered on top of a political system wrought with structural issues. The two case studies show that stable, responsive, and autonomous institutions must be a precondition to transitional justice in order to benefit both justice and development.
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Chapter I:

Introduction to the Relationship Between Transitional Justice and Economic Development
The goals of transitional justice and economic development exist in a precarious relationship to each other in societies where governments have failed to meet the needs of its citizens. In a broad sense, both goals seek to improve living conditions for individuals in societies beset by injustice. While economic development focuses on injustice propelled by poverty and income inequality, transitional justice seeks to redress issues concerning broadly defined human rights and the rule of law. Transitional justice is often interpreted as a therapeutic tool; implemented in order to make a society feel good post-mass human rights abuse. However, given their similar goals, there are ample opportunities for synergies between transitional justice and economic development that have pragmatic value.

A surface-level scan of societies that have implemented transitional justice and economic development mechanisms demonstrates that the two fields are not inherently mutually reinforcing. Economic development is not always a product of justice, and justice is not always a product of economic development. Additionally, while economic development is largely a forward looking task, undertaken based on the potential of the future, transitional justice is backward-looking, focused on issues of the past. However, this distinction is ultimately where a potentially positive relationship between the two fields exists; remedial justice could cause eventual economic development.

The following analysis serves to determine and highlight the circumstances in which transitional justice promotes economic development in order to understand how transitional justice can be implemented in a manner that is economically viable. For the purpose of this argument, and because I believe the two fields benefit from distinction, I draw clear boundaries between transitional justice and economic development. Using Argentina and Guatemala as case
studies, my thesis seeks to assess whether there is a correlation between each respective country’s developmental trajectory and the strategy they employed while implementing their unique interpretation of transitional justice. This being said, it should be noted that transitional justice is not the only factor which influences economic development post-human rights abuse. Economic and political histories play an essential role in shaping economic development, and influence the extent to which transitional justice can be implemented. This study will highlight the specific circumstances, and the tools employed within those circumstances, in which transitional justice serves to enhance or detract from economic development.

**Defining Transitional Justice**

Transitional justice has developed largely out of practice rather than as a result of academic discourse, as people have sought redress for the wrongs they have suffered. Because of this, implementations have often been uncoordinated, with a focus on bringing oppressors to justice rather than on societal improvement. While this has its advantages (namely a focus on practical application), it does not maximize the potential of transitional justice. Academia is now beginning to think systematically about how transitional justice has emerged in practice and focus on its potential to repair the social fabric of a society following a mass atrocity. By examining transitional justice beyond its potential as a tool of punishment, theories and tactics to achieve more far-reaching goals like economic development are coming to fruition.

Given the many unique renditions of transitional justice, offering a definition of the concept poses a challenge. For the purpose of my argument, I define transitional justice by both its goals and the processes used to achieve those goals. The purpose of this approach is to clearly draw links between transitional justice and economic development, and to establish well-defined
boundaries between the two fields. While each individual transitional justice tool has its own set of goals, the system as a whole seeks to “promote recognition, civic trust, and the democratic rule of law.” As mentioned, the goals of transitional justice are closely related to the goals of economic development; a society that has attained the goals associated with transitional justice is best positioned to also achieve economic development. The United Nations describes transitional justice as:

The full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses… including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations.²

But, as Roger Duthie explains, “the list of measures varies, as does the relative importance of each and, particularly, the point of implementing them.”³ The definition provided by the UN serves as a framework to determine what kinds of tools could be considered parts of transitional justice, and also clearly distinguishes transitional justice tools from typical economic development programs.

**Defining Economic Development**

While economic development has been particularly well-theorized, the concept still remains ambiguous. In order to adequately articulate the potential connection between transitional justice and economic development, I adopt a definition of economic development that considers both a qualitative and quantitative explanation of the term to determine how and to

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what extent an increase in wealth has been distributed throughout society, and the opportunities for which this distribution allows.

Traditionally, economic development has been defined strictly in terms of numerical growth. However, in the 1950s and 60s, many developing nations were able to expand their economy, but did not see an enhanced standard of living among their inhabitants. This phenomena led to the formation of a broader definition for the term “development,” which takes standard of living and as well as economic growth into account. In a broad sense, economic development is defined normatively by considering the human condition as demonstrated by an analysis of empirical evidence, and operationally directed toward promoting economic growth as it improves quality of life and promotes human rights. Thus, development is related to the “social, institutional and political factors that could impinge on economic well-being.” Defining economic development broadly facilitates connections between the fields of transitional justice and economic development. Transitional justice seeks to improve the systems that determine social, institutional and political recognition, and development requires this recognition to progress. As Michael Todaro and Stephen Smith explain,

Development, in its essence, must represent the whole gamut of change by which an entire social system, tuned to the diverse basic needs and evolving aspirations of individuals and social groups within that system, moves away from a condition of life widely perceived as unsatisfactory toward a situation or condition of life regarded as materially and spiritually better.

This perspective utilizes frameworks like the capabilities approach to development and the human rights based approach to development alongside traditional economic measurements in

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6 Todaro and Smith, *Economic Development*, 16.
order to express a comprehensive analysis of societal and individual well-being. It is important to note that while numerical definitions of growth are not indicative of a society’s well-being in isolation, they serve to ground human capabilities and human rights based frameworks in data that is reliably available globally. Furthermore, traditional metrics serve as broad indicators of economic progress, but they do not tell the entire story, and may be misleading if they are not interpreted carefully.

Given my intended comprehensive approach to analyzing economic development, my economic analysis will consider traditional economic development indicators (GDP, Gini Index and GNP), in conjunction with the new human development index, the inclusive wealth index, incidence of poverty statistics and depth of poverty levels. By determining economic development levels from a variety of directions, new pathways open up to analyze the effect transitional justice has on development that is inclusive of overall well-being. Essentially, a wider scope allows for a deeper analysis.

Traditional economic growth metrics like gross domestic product, the Gini Index, and gross national product have been used globally for an extensive period of time, which makes them useful in assessing changes in development levels pre- and post-transitional justice implementation, and in comparing the development levels of different countries. Additionally, while broad conceptions of development take very individualistic approaches to assessing the phenomena, GDP, the Gini Index and GNP can attest to a nation’s overall economy, indicate its integration to the global market, and frame growth in the context of income inequality.

In assessing the relationship between transitional justice and economic development, connections can be drawn between both quantitative and qualitative development metrics.
Adopting the language employed by Amartya Sen, traditional growth measurements serve to draw “instrumental links” between the two fields, while human rights and capabilities approaches make more holistic, “intrinsic links.” Instrumental links are direct economic consequences of implementing transitional justice measures that inject capital into the economy. These interrelationships serve to enhance capabilities inherent in intrinsic links. Intrinsic links serve to strengthen civil society, which from the perspective of Amartya Sen and Martha Nussbaum, enhances development. The transitional justice tools I choose to focus on for the development of this argument include truth telling, judicial cases, reparations, and institutional reform.

**Transitional Justice Tools: Instrumental Links to Development**

**Truth Commissions**

Truth telling, which is defined as “a measure of transitional justice that deals with the reestablishment or the recovery of truth about past human rights violations,” is typically interpreted as the foundation of transitional justice. Truth commissions form an essential basis for economic growth instigated by judicial trials, reparations, and governmental vetting by gathering information needed to inform these processes. The instrumental links truth commissions have to economic development manifest in their “potential to modify the way in which interpersonal relations are thought of and, ultimately, to enhance the experience of citizenship, equality, and institutional fair play among the inhabitants of the post-conflict or the post-authoritarian society.” By eliminating the barriers human rights abuses form between

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individuals, the relative cooperation and stability attainable through truth commissions allows for social and economic interaction between victims and abusers, promoting a freer exchange of capital that has a direct correlation to economic growth. Inequality (measured through the Gini index) is reduced when victims are integrated into the larger economy, and GNP/GDP increases when more people are spending money.

Judicial Proceedings

While judicial cases in isolation may not have any direct economic consequences, their result in the recuperation and subsequent redistribution of resources accumulated by human rights abusers can increase the size of a country’s economy. For this reason, focusing judicial action around economic crimes can have a substantial instrumental effect on economic development. Doing so directly targets those who used corrupt power structures for personal economic gain, which deconstructs systems of power that might continue expending economic resources. Even when judicial cases do not focus on economic crimes, they can uncover illegal activity like embezzlement and money laundering that have severe economic consequences, and redirect funds to fund infrastructure projects, social programs and reparations.

Reparations:

By fining those who are guilty of violating human rights, or by forcing the return of confiscated economic resources, wealth can be redistributed back into the economy through social programs and reparations to spark economic growth. Reparations are the distribution of funds and goods to those who were affected by human rights abuses, and are usually distributed in the form of monetary compensation or restitution, but can also fund social programs, healthcare and education systems. Directly offering cash to victims injects capital back into the
economy and promotes economic growth. By funding social programs, healthcare or education, reparations prevent members of society from having to pay for these services, thus allowing for a freer flow of capital within the economy.

**Institutional Reform**

Institutional reform serves economic growth by preventing money from being taken out of the economy in order to pay off political favors, and reduces the costs of doing business by improving efficiency.\(^{10}\) De Greiff explains that this benefit can extend beyond eliminating corrupt politicians to eliminating corrupt agencies all together. He states:

> The savings, both direct and indirect, of shutting down, for example, security agencies involved in massive human rights violations—savings from reduced security-related expenditures, from efficiencies that result from increased security, and so on—the argument goes, could be put to better use in the area of development.”\(^{11}\)

Bureaucracy is a prime breeding pool for corruption, so cutting superfluous government agencies serves to enhance economic development by allowing for funds to be funneled into more efficient and effective government programs. Further, institutional reform allows for the complete implementation of transitional justice measures without the restrictions of remnant authoritarian power structures.

**Transitional Justice Tools: Intrinsic Links to Development**

The capabilities approach to development incorporates, but is not limited to, economic development. Under this framework, development is conceived more broadly to include “substantive freedoms,”\(^{12}\) which offer individuals the ability to direct their lives in whatever course they choose. The capabilities approach to development explains that the ability to achieve

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\(^{10}\) Corruption costs the global economy about 5% of its annual GDP. (World Economic Forum)


\(^{12}\) Sen, *Development as Freedom*. 
success (as defined by the local community) should be understood in terms of one’s ability to exercise individual opportunities. This approach to development allows for the analysis of the relationship between transitional justice and economic development to expand beyond direct links to a correlation between objectives. Connecting objectives rather than causal relationships enables the articulation of productive interactions between the two fields.

A key focus of the capabilities approach to development is offering people individual agency; that is, the ability to choose their own actions and outcomes. Sen explains that the “achievement of development is thoroughly dependent on the free agency of people.” Agency is diminished as a result of human rights abuses, as they instill a sense of fear and distrust into those they affect and stimulate social exclusion. Transitional justice, which seeks to rebuild civic trust and promote a sense of recognition among people who have been affected by human rights abuses, affirms norms by cultivating and demonstrating trustworthiness amongst citizens and between citizens and government. Strong governmental institutions and social relationships as a result of a politically trustworthy environment promote recognition and social integration that allow for stable economic development. De Greiff explains that trust between citizens and government “is crucial for large-scale social interactions...weak networks of trust severely limit the range of options of action available to economic agents. An environment characterized by mistrust is one that requires agents to make large investments in information, monitoring and sanctioning.”13 Establishing relationships of trust increases one’s capability to more easily integrate into the social and economic fabric of a society that previously excluded them. Maria Amparo Cruz Saco explains:

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Social integration eradicates stereotypes and (“mainstream”) privilege, increases the
voice of persons or groups that are vulnerable and have been marginalized, creates
opportunities for their political participation, creates stable and decent job opportunities
for traditionally underrepresented persons and groups, and promotes the development of
capabilities among vulnerable populations so that they can overcome poverty and
deprivation.\textsuperscript{14}

As a result, transitional justice positions itself to provide agency to people by reintegrating them
into a trustworthy society, allowing people to act upon their opportunities and thus promote
development.

In the human rights based approach to development “the plans, policies and processes of
development are anchored in a system of rights and corresponding obligations established by
international law.”\textsuperscript{15} Directly, international law and international human rights include economic
rights, and thus development conceived through the human rights approach considers economic
development. Indirectly, fulfilling human rights provides a platform from which economic
development can thrive. The human rights based approach to development serves as a
supplement to the capabilities approach. According to Nussbaum, while the capabilities
approach “give[s] us a general sense of what societies ought to be striving to achieve, …because
of Sen’s reluctance to make commitments about substance (which capabilities a society ought
most centrally to pursue), even that guidance remains but an outline. And [it gives] us no sense
of what minimum level of capability for a just society might be.” Given this critique, human
rights provide a set of goals to pursue within the purview of the capabilities approach. The

\textsuperscript{14} Cruz-Saco, Maria Amparo. “Promoting Social Integration: Economic, Social and Political Dimensions
with a focus on Latin America.”

\textsuperscript{15} “Frequently Asked Questions on a Human Rights Based Approach to Development Cooperation,”
human rights based approach is better understood in the context of capabilities. Nussbaum explains, “the best way of thinking about what it is to secure [fundamental rights] to people is to think in terms of capabilities... to secure a right to citizens [is] ...to put them in a position of capability to function in that area.”\[16\] Given this analysis, development can similarly be measured in terms of a society’s legitimate fulfillment of human rights. This approach is based more upon achieving justice, while Sen’s focuses on achieving freedom.

Sen’s capabilities approach and Nussbaum’s human rights approach to development help explain the broader effect transitional justice has on economic development. These correlations are embodied in my conception of “intrinsic links.” Social integration as a result of fostering civic trust, affirming norms, and providing recognition results in the fulfillment of human rights and enhances individual agency which improves individual and collective confidence and certainty in the system, and therefore provides an impetus to participate in it economically.

**Truth Commissions**

While truth commissions arguably provide the basis for the larger conception of transitional justice, and their potential as a mechanism for change is primarily based in this fact, they prove useful as a tool for qualitative change in isolation. Truth commissions offer victims a venue to formally and openly discuss their abuses. Through this, they provide “a politics very different from the current one, a politics seriously embraced as the sphere in which citizens construct, all together, what their future will have in common.”\[17\] The qualitative effects of normalization repair the broader social fabric through individual reconciliation, which

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reverberates through society as a sign of institutional change, cultivating trust between government and the public that was eroded due to human rights abuses. Lack of trust diminishes agency, and by repairing the relationships between citizens and governments, the individual regains their capacity to function without imminent fear of being violated.

**Judicial Proceedings**

Judicial proceedings support intrinsic development through both the human rights and capabilities based approaches to development. A justice system provides legitimate rights to the entire society and affirms that rights are accessible and reliable. The human rights based approach indicates that everyone is entitled to a set of rights, and in order to achieve them, specific actions must be taken. Judicial proceedings directly prompt these actions.

[While] human development thinking has always insisted on the importance of the process of development, many of the tools developed by the human development approach measure the outcomes of social arrangements in a way that is not sensitive to how these outcomes were brought about. Human rights thinking offers tools that amplify the concern with the process of development.\(^\text{18}\)

Under the human rights based approach to development, unaddressed violations are understood as inhibitors to development. Thus, judicial proceedings enhance development by addressing violations. In addition, judicial proceedings enhance social capital (vertically and horizontally) by promoting civic trust and democratic rule of law and demonstrating reliable institutions.

**Reparations**

As mentioned, reparations come in the form of both monetary compensation, and through increased access to education, healthcare and other social programs like microcredit. Reparations concretely enhance capabilities by offering access to core human rights that were not previously

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available. In fact, reparations themselves are considered a human right. Article eight of the Universal Declaration of Human Rights reads: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” More complexly, reparations are linked to development through their potential to increase civic trust. De Greiff explains:

Reparations can foster civic trust by demonstrating the seriousness with which institutions now take the violation of their rights, a seriousness that is manifested, to put it bluntly, by the fact ‘money talks’ -and so do symbolic reparations measures- that even under conditions of scarcity and competition for resources, the state responds to the obligation to fund programs that benefit those who were formerly not only marginalized but abused.20

Reparations concretely indicate that a government is taking its human rights violations seriously. Reparations legitimize other transitional justice measures (like truth telling and judicial proceedings) by offering tangible consequences as a result of their outcome.

**Institutional Reform**

Like many of the other transitional justice measures, institutional reform proves relevant to economic development in the way it affects perceived (and actual) government trustworthiness, demonstrates recognition of human rights abuses and key violators, and strengthens democratic rule of law. Primarily, “vetting can induce trust, and not just by ‘re-peopling’ institutions with new faces, but by thereby demonstrating a commitment to systemic norms governing employee hiring and retention, disciplinary oversight, prevention of cronyism, and so on.”21 Dedication to the elimination of corrupt government officials improves

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21 Ibid.
impunity rates, functions as a punitive measure and indicates commitment to norms in a way that fosters civic trust.

**Transitional Justice and Economic Development: Mutually Reinforcing or Undermining?**

As conflicts continue to erupt worldwide, and as developing nations that have not recovered from past conflicts continue to struggle economically, there is obvious potential for a mutually beneficial relationship between development and justice practitioners to explore new strategies and approach their topics from new perspectives in order to tap into innovative forms of success. Considering that human rights abuses are commonly a cause or result of poor economic conditions, there is a correlation between the fields of economic development and transitional justice that needs to be further explored. While justice and economic development are not conventionally seen as fields that overlap, they both share a fundamental similarity in their ambition to improve the human condition. “The key concepts of [development]-participation, empowerment and community based processes- are all relevant to transitional justice.” Given their similar goals, the two fields can support one another by sharing resources and designing programs that jointly benefit both of their priorities. Transitional justice is both retrospective and prospective; it seeks to mend issues of the past in order to foster a functioning future. Alongside immediate economic development efforts, transitional justice may be able to address root problems that cause economic distress.

However, the two fields also share potential dangers, and their overlap could compound poorly instituted programs. Duthie explains, “the key concepts of [development]—participation,

empowerment, and community-based processes—are all relevant to transitional justice, but so too are the potential risks: romanticization and co-option, which involve the imposition of external agendas and the denial of power dynamics within civil society.”

The notion of justice as implemented by transitional justice programs is inherently western, which risks local perception of the program as being imperialistic, and insensitive to native social, cultural and political structures. The organizations that administer transitional justice (The United Nations, International Criminal Court, etc.) are informed by a uniformly western perspective, and are thus entrenched in western bias. For this reason, transitional justice programs that are crafted and implemented by international organizations without the input of domestic advocacy groups have a lesser effect on economic development, as they are often perceived negatively by local communities and fail to address nuanced challenges facing countries post transition.

Additionally, the political environment from which transitional justice developed was one that highly valued western-style democratic values. Dustin Sharp explains, “The paradigmatic ‘third wave’ transitions at the origins of transitional justice, transitions from authoritarianism and communism to market oriented, Western-style democracy, were crucial not only to structuring the initial conceptual boundaries of the field but also remain relevant to understanding the field’s existing practices today.”

Modern renditions of transitional justice maintain the underlying notion that liberal democracy is the sole path to peace. Through an imposition of western justice, transitional justice, despite its intention to empower violated citizens, can diminish autonomy among local communities. Externally implemented economic development programs are often

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24 Ibid.

similar in nature. If transitional justice and economic development programs are put in place simultaneously by external agencies, they present the risk of exacerbating negative sentiments toward western assistance and undermine its potential.

Additionally, capacity issues (both political and financial capacity) could prevent the full implementation of economic development and transitional justice agendas. In the case of Chile, after Pinochet was voted out of office, his successor could not implement transitional justice programs because of political backlash and economic restrictions. Their delay ultimately prevented the program’s full effectiveness.

When external forces are not working in conjunction with each other, the challenge of financial capacity is further aggravated. Jon Elster explains “transitional justice may be an obstacle to distributive justice, if entitlement trumps needs in situations of extreme scarcity.” That is to say, victims of human rights abuses are entitled to compensation because of their status as victims and systems that allowed for human rights abuses to occur inevitably need restructuring. Institutional restructuring and the redistribution of resources are costly endeavors that post-human rights abuse societies, which notoriously lack resources, may not be able to implement completely. The lofty aspirations associated with transitional justice can also undermine the program’s potential productivity when goals are not attained, leaving the citizenry feeling disappointment, disdain and distrust towards both the system that abused them and the system that attempted to help them.

Conclusion

The following two chapters will include case studies on Argentina and Guatemala to demonstrate the specific circumstances in which transitional justice tools serve to support economic development, and highlight when they undermine factors of intrinsic and instrumental economic development. The final chapter will summarize the findings from both case studies and establish a set of conclusions that serve to enhance the conception of transitional justice with its potential to benefit economic development.
Chapter II:
Argentina’s Democratic Transition and the
Effects of Transitional Justice on the Country’s Economic Development
The military dictatorship in Argentina was a response to the popularization of Marxist and left-wing policies in the country and surrounding region. Known as the Proceso de reorganización nacional (National Reorganization Process) among members of the military and their sympathizers, or colloquially as the Guerra sucia (Dirty War), between 1976 and 1983 the military dictatorship in Argentina sought to eliminate the threat of leftist subversion and assert conservative structural order within government institutions. The military came to power branded by the slogan “we must move from an economy of speculation to one of production.”

In the case of Argentina, the economic effects of the dictatorship have manifested in two key ways. Of primary interest to the argument discussed in this thesis, and relevant to the traditional mechanisms of transitional justice, are the “patterns [of] economic inequality and exclusion, and lack of economic, social, and cultural rights [that] lie behind [the] conflict.” Second, is the lasting issue of poorly constructed fiscal policy. Because the military junta’s project was inherently economic, the policies implemented by the dictatorship and subsequently rescinded and reformed by democratically elected governments have had long lasting effects on development in the country. Argentina’s successful transition from its authoritarian regime has been key in constructing a transitional justice project that positively correlates with economic development. The country’s strong institutions that were constructed by the initial transitional regime allowed for transitional justice to continue despite changing perspectives of political leadership in the country. Since re-establishing democracy, Argentina’s transitional justice

project has addressed these issues with varying success through truth commissions, judicial proceedings, institutional reform and reparations programs.

**A Developmental Disaster: Human Rights Abuses and Economic Crimes**

Citing national security as a justification to begin interrogations and arrests, the junta’s tactics of control evolved into kidnappings, concentration camps, and mass murders. The means of preventing leftist control were vile and reduced the country’s population by an estimated 30,000, leaving remaining members of society crippled by fear. Originally targeting specific “threatening” groups like communists, students, intellectuals, reporters and Jews, the military eventually began killing unarmed citizens. The ways in which this impacted the economy are clear: threatened and subjugated groups did not participate in the economy either due to fear of interacting with the military junta or because they had already been apprehended, thus reducing its size and efficiency. Jaime Malamud-Goti explains the phenomenon as it manifested on the individual level: “Vast portions of society sequestered themselves in their own family circle, restricting non-kin relationships to old friends. This tactic proved to be extremely isolating; … macroauthoritarianism thus turned into microauthoritarianism.”

In its attempt to implement a liberal free market economy driven by values of personal freedom and private enterprise, the military junta instead instituted a system of repression that promoted isolation, and was detrimental to its economic project.

As gruesome as the junta’s human rights abuses were, the effect of the regime’s economic policy arguably had a wider human impact. The economic policies implemented during the dictatorship sought to decrease inflation through wage freeze and tax reform

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initiatives, and open up markets by removing trade barriers. While according to many economic theories, this should have resulted in the growth of the country’s GDP, Argentina’s domestic economy struggled and small businesses were forced to close as a result of increased competition. Despite actions taken by the military government, inflation continued to rise.

Poverty jumped and inequality deepened under Argentina’s military dictatorship… Low-income households suffered the largest drop in income between 1974 and 1987, and many of the well-educated middle class were also pushed into poverty. In Buenos Aires, the proportion of households below the poverty line rose from 7.6 percent in 1980 to 28.5 percent by 1990, as post-military governments struggled to stabilize the economy.30

The Minister of Economy, José Alfredo Martínez de Hoz, former CEO of Acindar, one of Argentina’s largest steel companies, focused his economic policies on issues that would best benefit companies like his own, with no attention to the effects his policies had on individuals.

The aim was to do away with an economic structure on which rested a convergence of interests of workers and national businesses, and an economic functioning whereby the demands of organized and politicized social forces were channeled toward the state, which sought to respond to those demands through the application of controls and incentives.31

Given these goals, Martínez de Hoz implemented policies that eliminated the threat of unions and lessened governmental restrictions and regulations. “Through a prohibition on union activity and control over wage setting, the military government ensured that organized labor, rather than capital, bore the brunt of the crisis; real wages fell sharply from 1976 to 1983, especially as the economy went into deep recession after 1982.”32 In June of 1977, Martínez de Hoz clearly demonstrated his commitment to the private sector over public good through a project that eliminated risk for banks and domestic businesses by transferring the responsibility for any bad

loans and debts to the state. This marks the beginning of Argentina’s historically suffocating struggle with national debt.

In response to the threat of riots from workers, the minister of the economy reduced the severity of wage freezes. However, in the face of sustained high inflation rates, the minister was forced to pair this change with a program that would counteract its inflationary effects. He created a crawling peg regime to progressively decrease currency devaluation, coined as *la tablita*, and the currency was devalued at a fixed rate at pre-established intervals as a means to ease inflation. As Argentina’s currency began to become stronger abroad, foreign goods and credit became cheaper than domestic products. As a result, a second wave of domestic businesses were forced to close due to decreased demand. Eventually, Martínez de Hoz faced strong criticism for his failed economic policies from both within and outside his party. One month before resigning from his position in 1981, the minister decided to derail *la tablita* and abruptly devalue the peso, leading arguably to the most intense economic crisis Argentina has ever encountered.

Failed economic policies under the dictatorship were coupled with high levels of government spending. While many populist social programs and business incentives were cut from the budget under the military regime, these savings were matched and exceeded by increased military expenditures. In 1975, the Argentine government was spending $1.28 billion

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33 In 1976, the country had 8 billion dollars in debt, by 1983 that number had increased to 46 billion (La Deuda Externa Argentina, Carlos Rodríguez, 1986, http://economica.econo.unlp.edu.ar/documentos/20090318024825PM_Economica_336.pdf)
(US dollars), or 2.04% of total GDP on the military. By the end of the authoritarian regime, the government was spending $2.5 billion, or 4.39% of total GDP on the military.\textsuperscript{34}

As a means to regain political support and economic strength, the military regime engaged in war with the United Kingdom in 1982 and attempted to seize the Falkland Islands (Las Malvinas). The strategy failed to gain public support; Argentina lost the war and thus solidified the regime’s demise. At the same time, the country’s economy suffered the worst downturn since the beginning of the military dictatorship. Six months after the loss in the Falklands, Argentina held a democratic election in which Raúl Alfonsín was elected president.

Alfonsín inherited a society that had been gravely affected by the previous seven years of military leadership, corrupt institutions and an economy that was a supreme failure. Juan Carlos de Pablo and Rudiger Dornbusch explain that “the Martínez de Hoz overvaluation had sown the seeds of financial destruction, but the actual unraveling came only over the next four years.”\textsuperscript{35} The overvaluation caused Argentina’s debt to skyrocket during the transition to democracy, putting the country into an economic crisis that lasted until the 90’s.

**Return to Democracy: President Raúl Alfonsín**

At the beginning of Alfonsín’s presidency (1983-1989), he had little incentive to deal with the debt problem. The debt accrued during the dictatorship exceeded Argentina’s earning power, and “fixing the debt problem would have meant paying huge amounts to creditors, without the possibility of rolling over the debt.”\textsuperscript{36} Combined with a politically divided Congress,

\begin{itemize}
\item \textsuperscript{34} Bohoslavsky and Verbitsky, *The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts*, 111.
\end{itemize}
and the left leaning Peronist party ruling the Senate, the president had little control over fiscal policy. Given his lack of control on economic matters, Alfonsín directed his focus to repairing civil society’s social fabric. While Alfonsín’s delay in addressing the issue of debt had a profound negative effect on Argentina’s economy, his actions to solidify democratic systems has been essential to the country’s relative economic success.

With political stability as the primary concern, Alfonsín and the new government faced a balancing act that included offering solace to victims of human rights abuses and their families through government recognition of abuse, vetting and restructuring corrupt institutions, and looking to the future in an attempt to leave the country’s recent grotesque history behind. In his memoir, Alfonsín explains that his primary concern as the newly elected president was to “prevent the future commission of human rights violations.” His focus was on building a stable democratic system that could withstand the pressures of opposing political perspectives without collapsing and resorting to military rule. Alfonsín explains:

The beginning of democratic life in Argentina required society to explicitly consider the issue of state repression. And bringing perpetrators of violence to justice. But it had to be done without losing sight of the democracy’s fragility. Many times I wondered whether defending the human rights that had been violated in the past would put human rights at risk in the future. That is to say, I wondered if I was putting the stability of the democracy at risk, and consequently, the safety of the citizens.

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38 Ibid. Text translated by Madison Ordway. Original text reads: “El comienzo de la vida democrática Argentina exigía poner a consideración de la sociedad explícitamente, el tema de la represión ejercida desde el Estado. Y llevar a los responsables de la violencia ante los tribunales. Pero había que hacerlo sin perder de vista la situación de fragilidad de la democracia. Muchas veces me pregunté si por defender los derechos humanos que habían sido violados en el pasado no arriesgaba los derechos humanos del porvenir. Es decir si no estaba poniendo en peligro la estabilidad de la democracia y, en consecuencia, la seguridad de los ciudadanos.”
Alfonsín’s focus was primarily on striking the balance between strengthening rule of law, weakening the military and bringing oppressors to justice, as he believed that broad punitive action could destabilize the delicate development of government institutions. He reversed the policies of the prior military government, including releasing political prisoners, purging the supreme court, cutting military spending and implementing new military leadership as a means to secure relative stability prior to instituting transitional justice. These measures were the first steps in building governmental legitimacy, reintegrating victims of abuses back into the economy, and balancing the government’s budget, which were essential to promoting economic development in the country.


On December 14, 1983 (four days after the President Alfonsín was sworn in) the government created the National Commission on the Disappearance of People (CONADEP) with the goal of investigating what happened in the country under military rule. After just nine months, the Commission gathered over 50,000 pages of testimony. In order to communicate its findings to the public, the Commission published a report titled Nunca Más (Never Again) in 1984, and signaled government recognition of the atrocities that occurred in the country during the military dictatorship. Once the report had been published, the government created an Under Secretariat for Human Rights to continue research with the goal of uncovering the full truth about military repression.

In general, truth commissions are used as a means to reconstruct the narrative associated with a repressive regime. Argentina’s military dictatorship was unique in that it functioned in a

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completely clandestine manner; even under the junta’s own law, their human rights abuses were completely illegal. Much like the famous bananero story told in Gabriel García Marquéz’s *100 Years of Solitude*, where thousands of protesters are massacred and their dead bodies are put on a train to the sea, with the public square immediately cleaned to appear as if nothing had happened, human rights abuses in Argentina took place in plain sight, though the perpetrators remained hidden from public view. “The dictatorship officially denied any responsibility for [the human rights abuses]. This was coupled with the fragmented nature of their orchestration, made up of public moments – the abductions – and secret moments – clandestine captivity, torture and murder – which made it difficult to secure a comprehensive knowledge of the practice.”\(^{40}\) The military manipulated Argentine citizens by limiting the information accessible to the public in a way that instilled fear. Malamud-Goti explains “terror requires that the populace be paralyzed by the evidence of brutality. Thus, people learned about ongoing violence with a sense of unreality, as in a dream.”\(^{41}\) During Argentina’s transition to democracy, it was essential that the government help construct a collective reality that members of society could reflect on and make sense of. As a means of attaining that goal, the country implemented a system of truth commissions to provide clarity and demonstrate that the government recognized the terror that occurred.

CONADEP was a revolutionary part of the transitional justice “tool-kit,” and demonstrated the government’s commitment to working with civil society to reconstruct collective memory and offer recognition to those who were affected by human rights abuses. The


\(^{41}\) Malamud Goti, *Game Without End: State Terror and the Politics of Justice*, 103
process had a positive correlation with economic development because it affirmed norms essential in building trust and demonstrating democratic rule of law. The initial step of creating a truth commission built trust between civil society and its new government, demonstrating an institutionalized equality that benefits economic development intrinsically by enhancing personal agency. The government collaborated with human rights organizations (HROs) during the process, giving the truth commissions a democratic air important to building governmental reliability. The process of truth telling, being heard, and listening to peers validates personal experience and builds solidarity, serving to both enhance personal agency and build social capital networks. The actual process of truth telling as facilitated by CONADEP helped repair the social fabric of Argentine society, allowing for a less restricted flow of ideas and capital; thus improving economic development. Further, the government’s decision to collect information on the dictatorship and publicly disseminate it is a tangible representation of recognition that cannot be retracted. The Nunca Más report was a newsstand hit in Argentina, repeatedly selling out upon its release. Emilio Crenzel explains:

"The Nunca Más report, proved its effectiveness in the field of representations of and ideas about the past by becoming and remaining the interpretative model for the dictatorship's violations. It also popularized, through the title of its final report, the slogan that summarizes, in Argentina and its neighboring countries, the determination to prevent the recurrence of such violence."  

Public recognition of the abuses signaled a legitimate commitment to upholding the rights of all citizens through democratic institutions. It functioned to assure Argentinians that they could live comfortably in society without fear of further repression.

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Truth commissions in Argentina are unique in the sense that they provided an essential framework for the subsequent prosecution of military leaders. Many countries which institute transitional justice measures use truth commissions as a therapeutic mechanism with no punitive power. Although not its initial intention, CONADEP “strengthened judicial mechanisms for prosecution, trial and punishment that were developed in cases against the top leaders of the military dictatorship.” Thus, the effect truth commissions have on economic development manifests partly in the key role they play in expanding the capabilities of judicial proceedings. In addition, the process of deciding whether the information would be submitted to the courts in Argentina also demonstrates a commitment to democratic values. Against the will of the executive, CONADEP decided to submit its findings to the courts as a means to move forward with trials against junta leaders. This demonstrates the success of the structure of governmental institutions in their ability to respond to the demands of its constituency. Crenzel explains:

In making these decisions, CONADEP demonstrated its independence with respect to the executive; its commitment to human rights organizations by making available to them the material it had gathered, including the cases submitted to the courts, and its commitment to the accusers by making evidence submissions subject to their approval. The survivors and the relatives of the disappeared acquired an authoritative role because it was they who decided which courts would hear their testimonies.44

Civil society played a key role in determining how information uncovered by the truth commissions would affect development of transitional justice in the country. Argentina’s relatively strong democratic institutions allowed justice to become a grassroots project, avoiding

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the often inhibiting issue of elite-driven justice. As a result, the truth commissions were instituted in a way that benefited the community, avoiding the risks of implementing a top down project that did not respond to the people it was set out to help. Furthermore, by offering civil society a voice in the process, it enhanced individual agency in a way that empowered and improved overall capabilities.

Given that Argentina’s truth commissions were the first of their kind, they should be considered an overwhelming success. However, the strategy employed failed to address the dictatorship’s economic crimes. Argentina’s truth commissions “focused exclusively on forced disappearances, despite the range of civil and political rights abuses in which the military had engaged, to say nothing of economic crimes and corruption.”

Economic crimes in Argentina included, but were not limited to, corporate complicity, the extortion of businesspeople and the seizing of their property, and monetary assistance from banks and corporations. Businesses in Argentina played a key role in “consolidating the regime and facilitating the execution of its criminal plan.” In analyzing the effect truth commissions have on economic development, it is important to note that uncovering information that highlights the corrupt economic power structures that allowed human rights abuses to occur would have had a positive effect on economic development, especially given Argentina’s persecutions as a result of truth commissions. De Greiff explains,

the impact may be enhanced if investigations and prosecutions were to focus directly, and not incidentally, on “economic crimes”; and if the class of perpetrators was enlarged to include both those who enabled human rights violations by, among other things, making their perpetration economically feasible by sustaining the structures without which systemic crimes would not have been possible, and those who knowingly benefitted from

those violations. 47

Including the discussion of economic crimes in the truth commissions would have had the same positive effects (trust building, offering agency, demonstrating strong democratic systems) that discussing forced disappearances had, with the added benefit of shining light on systems that prevented economic development under the dictatorship and may continue under a democratic regime. Horacio Verbitsky and Juan Pablo Bohoslavsky explain:

Not taking into account the economic factors that contributed to maintain a dictatorship poses a certain danger of historical blindness that can result in an amnesia that compromises the promise of never again. Addressing only the political factors of a period of repression and omitting the economic dimension promotes the risk that – because they have not received any kind of penalizing signal from the law, and very especially when the activity has been profitable – those same economic factors will again facilitate the emergence and maintenance of a similar regime in the future. 48

Addressing systemic issues from the outset is important in constructing a democracy that is free from the continuing threat of corruption. While skeptics regarding a comprehensive approach to transitional justice might point to capacity issues as a restraining factor to addressing economic crimes, it is apparent that the issues which plague Argentina’s democracy and economic development today are largely those which were not directly addressed during the country’s transition. Alfonsin’s focus on political stability and serving justice to human rights abusers strengthened the country’s democratic institutions, but left the remnants of economic instability from the dictatorship to fester.

47 De Greiff, Transitional Justice and Development: Making Connections, 35.
The Power of an Autonomous Judiciary

In December of 1983, Law 158 was passed, annulling the military’s self-proclaimed amnesty laws that were introduced towards the end of the dictatorship as a means to prevent punishment for the human rights abuses committed under its reign. This allowed for the prosecution of leaders of the armed forces under the junta by the Council of Armed Forces (CSFA). “It thus gave the military justice system ‘first shot’ at judging its peers. It also stipulated that those who had obeyed orders would not be liable to prosecution. The government thereby hoped to limit trials to commanders of repression.”49 This strategy helped the president meet his election promises of dealing with past abuses, while maintaining stability and a relatively positive relationship with the military, which was essential to his success as a leader. The military conducted a (rather meager) purge, turning in nine leaders of the military juntas to be judged by the CSFA. Early on in the process it became evident that the CSFA was actively delaying the adjudication of cases, prompting the government to change the system in which cases were handled. In response, the senate passed law 23.049, which allowed civilian courts to act in the case of a delay that lasted more than six months.50 Despite the obvious incentive for the CSFA to follow through with its obligation to prosecute the nine men, they continued to delay the cases. In April of 1985, the Federal Court of Appeals initiated proceedings. Eight months later, the nine heads of military juntas had all been convicted of committing mass human rights

49 Barahona de Brito, The Politics of Memory: Truth, Justice, Memory and Democratization in the Southern Cone, 121.
abuses. While it was the government’s intention for this trial to be the only act of punitive justice post-dictatorship, the trials inspired previously discouraged HROs to bring cases to civil courts. “By the end of August 1984, HROs had handed in a total of 2,000 cases to the courts. The government faltered; faced with mid-term election in November, it hesitated to pass any laws favouring impunity. By the year’s end a further 1,087 cases had been handed in by the CONADEP… The government now faced a process of calling to account that it could not control or limit.” The democratic stability and strong governmental institutions Alfonsín formed at the beginning of his term had fostered an environment in which the government could truly responded to the desires of its constituents, resulting in the review of over 6,000 human rights cases by 1986.

While not Alfonsín’s intention, the construction of a strong autonomous judiciary that respected the rule of law, and did not cave into the political desires of the president or the military, positively affected economic development via strengthened institutional legitimacy. Acuña explains the friction between a strong judicial branch and the need for political stability during a transition, indicating that while this is a valid concern, an independent judiciary is essential to establishing a democratic system that will later breed stability:

Courts that serve the law before the political needs of the presidency can, no doubt, become sources of tension in processes characterized by unstable equilibria. In this sense, politicians are right to be careful about the risks entailed by an autonomous judiciary. Their error lies not in being cautious about these risks but in assuming that the problem lies in the judiciary when, in fact, it is inherent in democracy as a regime of governance and conflict resolution.

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52 Barahona de Brito, The Politics of Memory: Truth, Justice, Memory and Democratization in the Southern Cone, 121.
Arguably the most important role Alfonsin played in the transitional government as it relates to economic development was in creating a judicial branch that was able to deal with the human rights abuses of the past, and assured citizens of proper response to any future abuses.

Institutional legitimacy has both an instrumental and intrinsic value to economic development. The reliability associated with a strong judiciary reduces the transaction costs of doing business by demonstrating accountability: “The protection of private property rights and the facilitation and enforcement of long-term contracts are essential to raising levels of investment and rates of economic growth.” During Argentina’s dictatorship, norms had been violated to such an extent that citizens could not trust their government to uphold basic rights. Property rights were regularly violated, and approaching a government entity regarding rampant corruption or economic discrimination would likely result in disappearance, discouraging many from engaging in economic activities. Consolidating rule of law and thus enhancing institutional legitimacy has the opposite effect, and promotes reintegration post dictatorship. Intrinsically, the rule of law guarantees substantial freedoms and capabilities, that under Sen’s theory, constitutes development by providing “freedom from torture and other abuses of civil liberties by tyrannical rulers, freedom of expression, freedom of political association, freedom of political opposition and dissent,” etc. By creating a set of reliable norms, people are able to realize their claim to rights, enhancing the ability to act on those freedoms.

55 See Jacobo Timerman’s account of his experiences under the dictatorship in *Prisoner Without a Name, Cell Without a Number*.
56 Trebilcock and Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress*, 5.
In December of 1986, Alfonsín implemented the *Ley de punto final* or “Full Stop Law,” reducing the statute of limitations for human rights cases to sixty days in order to put an end to judicial proceedings. The law was perceived negatively by the public and expended much of Alfonsín’s political capital. Although these policies had a negative effect on immediate political stability and constituent support of the executive branch, it demonstrates a system in which the executive does not maintain full power over the government. Despite Alfonsín’s attempts, court cases continued to be presented at a rapid pace. Instead of curbing the number of cases introduced, the law initiated an onslaught of new cases. Barahona de Brito explains, “the Alfonsín administration essentially lost control of the policy it designed, miscalculating the level of independence and the commitment of the judiciary to justice, as well as the institutional autonomy the judicial process, once set in motion.”

The judicial branch, eager to assure the highest form of justice attainable was reached, worked through holidays to facilitate the mass of new cases. “By the February deadline 300 military officers had been indicted, and the first cases of contempt of court had been heard.” Clearly unsuccessful in its attempt to prevent the further prosecution of members of the military, the law also did not serve its purpose of quelling military fears and promoting a strong relationship between political and military institutions. In 1987, Congress passed the *Ley de obediencia debida*, or “Due Obedience Law” which prevented the prosecution of members of the military who acted under superior order and duress. In practice, the law resulted in the dismissal of about 300 cases. Intrinsically, the effects of a due obedience policy on development are demonstrated through Nussbaum’s human rights based approach to

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58 Ibid.
development: “The legacies of unaddressed atrocities arguably undermine most of the basic capabilities in Nussbaum’s version… of development— that is, most of those capacities that make a life human….Thus, if development is understood in terms of basic capabilities, as it is by Nussbaum, unaddressed atrocities impede development.” Some of these capabilities include, the right to exercise emotions, the ability to use practical reason, the right to engage in affiliation without humiliation, and the right to have control over one’s political and material environment. When human rights are conceptualized as an integral component of development, laws like the Obediencia debida and Ley punto final undermine development by demonstrating commitment to perpetrators of human rights abuses instead of their victims. While these laws have since been reversed, their negative developmental effects took root directly after implementation, as the emotional aspects of Nussbaum’s conception failed to be addressed immediately and festered for years before receiving recognition. Obediencia debida and Ley punto final were perceived negatively throughout civil society. This, paired with a withering economy plagued by hyperinflation, led Alfonsín to step down from power.

Despite the sweeping failures Alfonsín experienced at the end of his term, the democratic systems developed under his presidency successfully established a robust commitment to the rule of law, creating a legal system that “concerns not only how a democracy deals with the past, retroactive justice, but how it is able to defend and realize the rights of its citizens in the present.” While widely interpreted as unintentional, the institutional changes Alfonsin made during his time in power afforded the Argentine government a semblance of legitimacy that would not have otherwise existed.

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60 Elster, Retribution and Reparation in the Transition to Democracy, 237.
Forgive and Forget: The Presidency of Carlos Menem

In July of 1989, Carlos Menem became president. Like Alfonsín, President Menem struggled to find a balance between appeasing the military and maintaining a positive public image among those who were negatively affected by human rights abuses. However, instead of employing a strategy of “truth and justice” (like Alfonsín), Menem opted to implement policies that followed the mantra “forgive and forget” with the goal of inspiring society to collectively move on. Three months after being sworn into office, Menem implemented an amnesty program that pardoned 277 military personnel committed human rights abuses under the dictatorship. In January of 1991, Menem announced a second pardon, this time including two generals and an ex-guerrilla leader. The pardons undermined rule of law and indicated that although democracy is superior to authoritarianism, reelection provides space for the reversal of policies that constituents widely accepted as positive. However, as Acuña explains, the positive effects of judicial action under Alfonsin were not totally eliminated because of the pardons: “Once the judicial intervention transformed historical facts into evidence, proven guilt, and sentences, neither a pardon nor an amnesty could revert to human rights situations similar to those cases in which a law of ‘oblivion’ or an anticipated amnesty blocked investigation and judgment.” Alfonsín’s policies had a lasting effect by recognizing human rights abuses and setting a precedent of addressing abuses.

Hush Money: Menem’s Reparations Program

While Menem’s amnesty laws were undoubtedly a backstep in the field of transitional justice as it relates to governmental legitimacy, his “forgive and forget” strategy instigated the
creation of a robust reparations system. In 1991, soon after the presidential pardons, laws were passed that offered reparations to those that had suffered illegitimate detention...those who had been detained ‘at disposition of the Executive Power’ and all civilians detained by decision of war tribunals; those who had been detained in military facilities without being sentenced by a war tribunal; conscripts who had been sentenced by war tribunals (equating their situation to that of civilians who had been sentenced by war tribunals); children born in captivity of mothers included in this law; and all those detained in clandestine centers.\textsuperscript{61}

For each day spent in detention between November of 1974 and December of 1986, a person received $74.60 USD. In 1994, the government introduced a law that allowed parents and children of a disappeared person to collect reparations. “The compensation per person was defined as equivalent to one hundred times the monthly salary of Category A of the National System of Public Administrators, resulting in a total amount of US$220,000 per person.” In 2013, The International Center for Transitional Justice reported that “Argentina committed 1.17 billion Argentinean pesos in compensation for a total of 15,573 victims of prolonged and arbitrary detention and about 1.9 billion pesos to the families of 7,785 victims who were killed and disappeared, a time when the peso had parity value with the US dollar (but which later changed due to devaluation).”\textsuperscript{62} Argentina implemented one of the most sizable reparations programs in history.

The effects such an extensive reparations program had on economic development manifested in contrasting ways both instrumentally and intrinsically. Its instrumental value to development was substantial given the high amounts of capital it re-injected to the market. In contrast, it presented a serious fiscal burden to the Argentine government- which was already

\textsuperscript{61} Ibid.
marred by extreme debt. As a means of limiting immediate fiscal impact the programs had on the economy and building a reputation of reliability, the government opted to pay victims in bonds that could be collected in pesos or US dollars, “the beneficiaries… have the option to sell the bonds at market price, at this point covering around 75 percent of their face value, or wait until the bonds mature, when they will be worth the full face value.”63 Although this program successfully prevented victims from cashing in their payments immediately upon receiving them, it has added to the number of regular payments the government must make (along with foreign debt payments), which may play a role in preventing the country from stabilizing its debt problem. Additionally, given Argentina’s historic struggle with maintaining a stable currency value, bondholders are likely to collect their money prior to an anticipated change in valuation, which could aggravate already precarious economic situations. Furthermore, during times of economic struggle, the population and the state simultaneously face restraints on limited capital, leading victims to cash in on their bonds when the government has nothing to offer. This issue occurred concretely in Argentina:

The 2001 financial crisis temporarily led to the suspension of the payment of bond proceeds, and forced many victims to sell their bonds on secondary markets for less than face value in order to obtain needed cash. Thus, richer and younger recipients were able, in practice, to receive more than those who were poorer, older, or with fewer alternative sources of funds.64

These issues present a serious issue to the potential intrinsic value of reparations programs, as they undermine government reliability. The intrinsic effects reparations have had on development in Argentina depends on the time period in which they were being offered. Under Menem, “reparations were offered at a point in time when there was no intention of bringing the

63 Elster, Retribution and Reparation in the Transition to Democracy, 216.
64 De Greiff, Transitional Justice and Development: Making Connections, 197.
perpetrators to justice and when those who applied had to renounce further compensation. Thus, these reparations were often interpreted politically as a means by which President Menem tried to ‘buy’ silence and compliance.\textsuperscript{65} However, when they were offered in a context in which there was no impunity, reparations benefited development by demonstrating government recognition and remorse, and expanded the right to freedom of expression as it “was seen as a form of recognition of what had been silenced and publicly unacknowledged for a long time. The fact that the cases had been evaluated and reparation endorsed was interpreted as an acknowledgment that a crime had taken place.”\textsuperscript{66} Argentina’s experience with truth commissions serves as empirical evidence for Elster’s claim that reparation without justice is negatively perceived, proving that reparation should never exist in isolation.\textsuperscript{67}

**A Focus on Economic Crimes: Kirchner to Macri**

In 2005, under Peronist President Néstor Kirchner, amnesty laws were deemed unconstitutional by the Argentine Supreme Court. This important development has allowed for the continued investigation of state inflicted human rights abuses and instigated a trend of trying non-state actors. In the 2015 World Report, Human Rights Watch explains that “as of August 2014, 121 trials had been conducted for crimes against humanity originating from the dictatorship, resulting in 503 convictions...and another 1,611 suspects are under investigation.”\textsuperscript{68} Most remarkable for the field of economic development has been the focus on economic crimes committed under the dictatorship.


\textsuperscript{66} Ibid.

\textsuperscript{67} Elster, *Justice, Truth and Peace.*

Trials on economic crimes in Argentina can be separated into four core groups: “(1) direct complicity in criminal violence; (2) violations of labor law; (3) financing repression; and (4) illegal business” committed by businesses under the regime. These trials bring powerful economic actors to justice who “armed, financed, informed, or otherwise supported” the military dictatorship. Since 2005, there have been 18 trials involving businesses who assisted in implementing and sustaining the military’s economic project under the dictatorship. The trials benefit economic development instrumentally by redistributing resources accumulated illegally, as “accountability for financial complicity offers an opportunity to provide remedy for victims.” That is to say, trying corporations involved in supporting corrupt regimes could help in reducing the financial burden of reparations programs on the government by expanding culpability to a wider group of institutions. Further, it could fund a more extensive reparations program that assists those who had property stolen or damaged under the regime, or those whose businesses were seized by the military. Intrinsically, trying economic crimes enhances development by raising the cost of violations, thus disincentivizing future offenses, and affirming norms. Further, addressing economic crimes makes the transitional justice package more comprehensive, indicating recognition of the full range of abuses, and demonstrates commitment to eliminating the power structures that permitted them. Argentina’s dictatorship was rooted in an economic project, and the torture that happened under the regime had clear economic goals. For this reason, addressing economic crimes in Argentina is essential in unassembling the

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structures that permitted and justified human rights abuses for the regime, and is what many consider to be Argentina’s final step in coming to terms with its past.

In a 2012 case on economic crimes committed by the company Ledesma, the court explains “the jailing, torturing, murdering, and disappearing of individuals by the security forces during the last civilian-military dictatorship were not only motivated by the desire to preserve a certain ideology, but the purpose of illegal repression was also to establish and defend an economic model with neoliberal overtones that would be free of threats from labor demands and claims.” With recent addition of trying economic crimes as part of Argentina’s transitional justice toolkit, the country has demonstrated a comprehensive commitment to reconciling past abuses and constructing a political and economic system that will not permit the same kind of abuse in the future.

**Argentina’s Greatest Success: Legitimate Institutional Change**

The comprehensive approach taken by Argentina, with its initial focus on constructing reliable government institutions, has been key in enhancing the individual capabilities that constitute development. While Argentina’s transition to democracy has undoubtedly been imperfect, its relative success can be attributed to the initial institutional changes implemented by Alfonsín. By creating an autonomous judiciary, the country was able to collectively distance itself from the authoritarian regime and create a precedent for a strong rule of law. By establishing a clear distinction between the military dictatorship, the new democracy established

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institutional legitimacy, which assured that transitional justice measures were accepted positively by society, limiting the risk of programs being interpreted as empty promises. The institutional changes allowed for a more robust transitional justice package, which focused not only on physical rights violations, but on the economic crimes that allowed for physical rights abuses to take place. Although these developments came later in the transitional process, they are currently helping to dismantle power structures that may instill residual fear in society, and to prevent future violations from occurring within the same establishments. By addressing human rights violations comprehensively, Argentina’s transitional justice campaign had a stronger instrumental and intrinsic relationship to economic development.

Argentina’s political system and its economic levels are certainly still imperfect. But, given the temporal proximity of the country’s destructive dictatorship, the country has certainly made noteworthy progress towards an inclusive society in which freedom and economic growth occur alongside each other.
Chapter III:  
Guatemala’s Counterinsurgent Transition: Corruption, Violence and Poverty

“With the bloodthirsty flies came the Fruit Company, amassed coffee and fruit in ships which put to sea like overloaded trays with the treasures from our sunken lands. Meanwhile the Indians fall into the sugared depths of the harbors and are buried in the morning mists; a corpse rolls, thing without name, a discarded number, a bunch of rotten fruit thrown on the garbage heap.”

-La United Fruit Co., Pablo Neruda
Guatemala’s continued struggle with economic prosperity and human rights is a direct result of sustained counterinsurgent structures that were not successfully dismantled at the conclusion of the country’s civil war (1954-1996). Unlike Argentina, which transitioned out of an authoritarian regime to a relatively successful democracy, leaders of the military regime in Guatemala continue to play a key role in the democratic government post transition. Because of this, key issues which caused and perpetuated violence and marginalization in Guatemala during the military regime continue to plague the country today. Under the guise of democracy, corruption, institutionalized racism, impunity, low social expenditures, rejection of land rights, extreme violence, and poverty persist in Guatemala.

While transitional justice has proved to be a beneficial tool in recalibrating many societies post-authoritarian regime, its potential can only be fully realized when authoritarianism no longer exists. In the case of Guatemala, the potential transitional justice had to enhance economic development was marginal because of the context in which it was employed. While the framework for transitional justice in Guatemala, constructed primarily by the United Nations, was impeccable, it was not implemented fully given the restraints of the country’s quasi-democratic government. State institutions lack the political support and funding to act on agreements made in the peace accords, and the programs that were implemented did not address root problems such as land reform, sexism, racism and the need for institutional change. For that reason, many of the transitional justice programs implemented in Guatemala were interpreted as cosmetic solutions by society, and did not serve to enhance the experience of citizenship for those who had been marginalized by human rights abuses.
This is not to say, however, that no success has been attained in Guatemala. Because government initiatives have been so unsuccessful, civil society has rallied to construct new collective identities and reframe interactions in society by empowering those who were most damaged by the civil war through local initiatives like exhumations, and the construction of monuments and memorials. While these may appear to be simple projects, they demonstrate the indigenous community’s rejection of military domination and their demand for recognition. Although, as Guatemalan history demonstrates, a strong civil society is not enough to overcome institutional corruption.73

The following analysis serves to demonstrate the historical and institutional factors which have prevented transitional justice from having a strong effect on economic development in the country, despite strong civilian commitment to the cause.

**Roots of the Conflict: Colonialism and Neocolonialism**

Guatemala’s damaging civil war is a result of the country’s history of internal tensions rooted in agrarian inequalities imposed by Spanish colonialism that date back to the 1500s. In 1524, when the Spanish first arrived in Guatemala, they imposed a feudalistic land distribution regime that stripped the indigenous population of economic independence, forcing many into poverty. The economic potential of the indigenous population was at the mercy of Spanish elites, who employed the Mayans as slaves through the *encomienda* system. Indigenous marginalization under Spanish rule created a pattern of social, political, cultural and economic exclusion that allowed for the persecution of Mayan populations during the Guatemalan Civil War, and continues to damage the development potential of Mayan communities today.

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In 1821, when Guatemala gained independence from its colonizer, a right-leaning ladino (non-indigenous social elite) government took power and continued the trend of systematically denying rights to indigenous populations. Systems of land distribution inherited from the colonial era, compounded by internationalization, further pushed those of Mayan descent to the margins of society and deprived the ethnic community of an ability to productively integrate into the economy. The 1879 constitution in Guatemala excluded the indigenous population, which officially legalized discrimination and deprived Mayan communities of democratic rights and liberties. It was not until the 1940s when a leftist government came into power that the indigenous populations received any recognition from the government.

Between 1944 and 1954 Guatemala experienced what is known as Diez años de primavera, or the Ten Years of Spring, during which social programs were greatly expanded, the labor code was edited, agrarian reform occurred, and indigenous populations were recognized as rights-bearing citizens. President Jacobo Arbenz implemented the Agrarian Reform Law of 1952, which helped reverse historic systems of oppression against indigenous populations. The law allowed for the expropriation of fallow land owned by private companies, and redistributed it to members of the lowest, primarily indigenous, classes. The reform successfully distributed over 160,000 acres of land to more than 100,000 families, directly benefitting 500,000 people in a population of only 3,000,000. While the immediate tangible effects of the law were undoubtedly positive, they inspired intense class antagonism within Guatemalan society and

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74 “Internationalization is the increasing importance of international trade, international relations, treaties, alliances, etc...Globalization refers to global economic integration of many formerly national economies into one global economy, mainly by free trade and free capital mobility.” Daly, Herman E. “Globalization Versus Internationalization,” 1999.

from foreign stakeholders. In an attempt to regain the land lost through agrarian reform, The United Fruit Company asked the United States government to intervene and restrict Arbenz’s recent changes. The Eisenhower administration proved to be a receptive audience: The head of the US Central Intelligence Agency and Secretary of State had previously done legal work for UFCo, and in the context of the Cold War, the administration’s approval ratings would benefit from combating budding communism close to home. Given these circumstances, the CIA initiated a political movement that ended the country’s popular revolution and led to the inception of Guatemala’s thirty-six year long civil war. The CIA orchestrated a coup to overthrow the democratically elected President Arbenz in 1954. The US justified its actions by framing President Arbenz as a threat to democracy in the region and deployed a leader who was committed to the neoliberal values of private property, fiscal austerity and economic deregulation. The subsequent conflict was then framed in the context of the Cold War; atrocities were portrayed as warranted in order to protect the region from Communism. Under the new leader, the Agrarian Reform Law of 1952 was reversed and elites received their land back, which perpetuated the structural inequality that plagued Guatemala since the 1500s and marked the beginning of a civil war that resulted in the loss of over 200,000 lives.

The layers of conflict that inspired the civil war’s inception are important factors to consider when discussing transitional justice measures and their potential effects on economic development in Guatemala. Transitional justice practitioners must take a unique set of historical complexities into account when crafting an implementation strategy for Guatemala, as the variety of structural causes for conflict complicate its potential resolution. First and foremost, the
injustices surrounding land distribution in Guatemala results in a class divide that is intensified by racial and political ostracization. The World Bank’s 2003 land policy research report explains land conflicts originating in historical inequities… can have far-reaching impacts on social peace… Deprivation of land rights as a feature of more generalized inequality in access to economic opportunities and low economic growth have caused seemingly minor social or political conflicts to escalate into large-scale conflicts with devastating economic and social consequences.  

From the instrumentalist perspective, limited access to land rights prevents people from making money. Intrinsically, poverty increases vulnerabilities in the political, social, cultural and physical realms. In the construction of a developmentally conscious transitional justice program, the web of interactions which formulate the detrimental instrumental and intrinsic effects of violated land rights must be deconstructed in order to “promote recognition, civic trust, and the democratic rule of law.” Additionally, the United States’ role in instigating the conflict highlights an economic project similar to that of Argentina with the goal of preventing the development of communism, but one that manifested much differently as a result of simultaneous racial tensions in Guatemala. Given the economic requirements imposed by the United States’ project in Guatemala, transitional justice measures have struggled within the confines of a neoliberal fiscal policy that requires austerity. As a result of the taxation system constructed by conservative leaders supported by the US, Guatemala’s government revenues as a percent of GDP remains the lowest in Latin America, and consequently, Guatemala has the lowest public spending in the world relative to the size of its economy. 

77 De Greiff, Transitional Justice and Development: Making Connections, 56.
creating a robust transitional justice system and in funding social programs that more directly correlate to instrumental and intrinsic economic development, strict neoliberal policies in Guatemala must be reversed in order to increase capabilities and inject capital into the economy. Guatemala’s Civil War was a demonstration of the convergence of colonialism and neo-colonialism, both of which adopted destructive practices at the expense of Guatemalan society in order to assert economic power in the region. After the country’s devastating civil war, the Guatemalan government adopted some transitional justice measures that have been implemented with varying degrees of success.

**The Guatemalan Civil War: 1954-1996**

After the CIA-orchestrated coup d'état, Guatemala’s politics became extremely polarized, dividing the country into two distinct camps: leftist guerrillas and the conservative military regime. The leftist movement supported socialist-oriented policies as characterized by President Arbenz’s regime, while the military sought to dismantle “unions, political parties, agrarian communities and mass organizations.” The conflict, which was profoundly influenced by the Cold War, became a battle between right wing neoliberals and leftist social democrats. Indigenous populations, who had greatly benefitted from the progressive liberal policies implemented by Abenz largely sided with the left:

The new leftist guerilla [sic] movements initially obtained the support of some indigenous Maya, who viewed the guerillas as the last hope for redressing the economic and political marginalization of the indigenous communities. However, this link between the Maya and the guerillas eventually became an idée fixe for the government, who promulgated an ideology that perceived all Maya as natural allies of the insurrection, and thus as enemies of the state. The natural extension of this belief was the deliberate

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targeting of the civilian population, in order to “starve” guerilla forces of their popular support.\(^8^0\)

With this perspective driving the direction of the conflict, the use of selective terror was replaced by non-selective strategies in the late 70s.\(^8^1\) With support from the American CIA, the Guatemalan military began sweeping all towns that were suspected of supporting the guerrilla movement. A US secret cable released by a Freedom of Information Act (FOIA) request indicates that the entire Mayan population in Guatemala was subject to the murderous tactics of the government, and highlights continued US involvement in acts of terror throughout the war. The report reads: "The well-documented belief by the [Guatemalan] army that the entire Ixil Indian population is pro-EGP has created a situation in which the army can be expected to give no quarter to combatants and non-combatants alike."\(^8^2\) The United Nations sponsored Historical Clarification Commission reports that extrajudicial killings increased from 100 in 1978 to more than 10,000 in 1981 as a result of non-selective terror strategies. According to the regime’s own estimates, the army destroyed 441 rural villages during this period.\(^8^3\) In 1982, General Ríos Montt assumed power. During his rule the country experienced its most deadly year of the war. The conflict intensified as the military employed scorched-earth tactics to eliminate the perceived enemy. This technique recalls the initial point of contention in the Civil War: The struggle for land as a means for economic power. The destructive strategies employed by the Guatemalan military completely eliminated any potential for indigenous communities to attain


\(^{8^1}\) "Guatemala, Memory of Silence = Tz'inil Na'tab'al; Report of the Commission for Historical Clarification, Conclusions and Recommendations." (Guatemala, Guatemala: CEH, 1998.)


economic independence and political freedom by destroying crops and livestock essential for basic sustenance. Between March 1982 and August 1983, 70,000 indigenous people were killed or disappeared, and the government destroyed 626 villages.\textsuperscript{84} Despite Ríos Montt’s extreme power during 1982 and 1983, internal tensions coupled with a struggling economy and widespread domestic and international opposition, the military dictator was ousted in 1983, leading to the deescalation of conflict and the introduction of democratic systems in Guatemala. Despite marking the official end of the military regime, economic, political, cultural and social marginalization continued as remnants of power structures from the civil war remained.

**Counterinsurgent Constitutionalism: Guatemala’s Counterfeit Democracy**

While society became relatively safer, military control in the economic and political spheres did not reduce after the coup. Through the sustained power over state institutions and strategic seizure of productive agriculture plots, the military continued to commit economic, social and cultural human rights violations against indigenous populations by depriving them of economic and political autonomy.\textsuperscript{85} These kinds of power structures were crystallized through the ratification of a new constitution in 1985 that legalized all counterinsurgency institutions.\textsuperscript{86} The Guatemalan military built a “Counterinsurgent Constitutional State,”\textsuperscript{87} in which state violence was institutionalized as constitutional democracy. Guatemala never experienced a true governmental transition; those in power during the military regime maintained power after it concluded. Continued corrupt power structures restricted the development of institutions that

respond to the broader needs of the Guatemalan citizenry, undermined potential for government legitimacy in the country, and have allowed for violence to persist into the present day, which are all powerful inhibitors to promoting and sustaining economic development. Drug and gang wars that plague the country today are based in the same networks that proliferated violence during the civil war. A 2012 report indicates that

during the civil war period in Guatemala spanning 36 years, on average, there had been 5,556 murders per year, as compared to 4,585 murders during the post-conflict years, a mere 17% reduction. Considering also the brutality of certain crimes, such as femicide and drug-related massacres, not much has changed in terms of victimisation in Guatemala.\footnote{Thorston Bonacker and Christoph Safferling. \textit{Victims of International Crimes: An Interdisciplinary Discourse}. (The Hague: T.M.C. Asser Press, 2013), 18.}

The presence of this violence restricts intrinsic development by violating human rights. It damages instrumental development through increased health costs, institutional costs (justice and policing), private security costs (for both businesses and individuals), and materials losses, ultimately costing the Guatemalan economy 7.7% of its annual GDP.\footnote{“Crime and Violence in Central America: A Development Challenge,” (The World Bank, 2011) https://issuu.com/world.bank.publications/docs/crime_and_violence_in_central_america_en} The first president of Guatemala’s modern democratic era, Vinicio Cerezo, “failed to investigate army human rights abuses seriously. This was partly due to a general amnesty set in place before Cerezo’s inauguration… However, the president had also assiduously avoided making promises on military impunity, stating that if investigations took place ‘we would have to put the whole army in jail.’”\footnote{Sieder and Wilson. \textit{Negotiating Rights: The Guatemalan Peace Process.}} Cerezo’s neglect to address Guatemala’s recent history of human rights abuses established a benchmark of impunity in the country, creating a harsh environment for both intrinsic and instrumental economic development:

First, impunity in Guatemala has permitted those state agents who are most responsible
for human rights violations to retain their power and influence, which allows them to continue committing human rights abuses. Second, impunity in Guatemala has embodied the state's selective refusal to enforce its existing criminal laws against morally reprehensible acts. Guatemala's selective enforcement of its criminal laws has increased tolerance for the use of repressive tactics by state agents and private actors alike, particularly when directed against certain vulnerable sectors of Guatemalan society. Impunity in Guatemala has also contributed to victims' and the public's growing feelings of insecurity and complete distrust that the judiciary is willing and capable of protecting them against the widespread violence. 91

Granting offenders impunity undermines any action to provide redress for human rights abuses by demonstrating weak commitment to the cause, and by perpetuating structures that allowed for abuses to happen. In Guatemala, this has intrinsic and instrumental effects on development by allowing for continued marginalization and violence against the Mayan communities, which prevents a freer circulation of capital and denies capabilities.

The transition to democracy in Guatemala was, and continues to be, a slow process wrought with challenges. During the transition and into the present day, the military continues to hold strong political influence, resulting in *de facto* impunity and watered-down transitional policies that fail to address the structural issues that allowed the civil war to take place. After the transition to democracy, the army’s role in politics remained powerful and corrupt. Unlike the case of Argentina, in which peace, political transition and democratic consolidation all occurred simultaneously, the end of Guatemala’s military regime did not signal any of these important changes. Continued violence and corruption were able to occur as a result of residual power structures established during the war. The post-conflict governments have demonstrated minimal commitment to transitional justice, and the policies that have developed were primarily imposed

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by the international community, which have a lesser effect on economic development than those that emerge organically.\footnote{See “Social Repair at the Local Level: The Case of Guatemala” by Laura Arriaza and Naomi Roht-Arriaza for a deeper analysis on this topic.}

**Symbolic Change: International Peace Talks**

Although Cerezo failed to address human rights abuses with judicial action, he supported regional transitional peace talks to placate conflicts. Supporting international action gave the new president marginally more credibility within the international community but did not expend political capital among military supporters nationally, successfully appeasing both camps. The strategy employed by Cerezo, while a slight improvement over complete neglect, was not a substantial step in addressing human rights abuses and moving towards economic prosperity.

Led by the Contadora Group, which was comprised of foreign ministers from Colombia, Mexico, Panama and Venezuela, Central American countries adopted a Document of Objectives… [which] declared a shared intention to promote democratisation and an end to armed conflict in the region, to act in compliance with international law, to revitalise and restore economic development and co-operation in Central America, and to negotiate better access to international markets.\footnote{Sieder and Wilson, *Negotiating Rights: The Guatemalan Peace Process*.}

Later, the group enacted a more detailed accord that initially fell through as a result of low regional support and opposition from the United States. The group’s failure to come to a regional peace agreement revealed strong residual tensions between governments and guerrilla forces throughout Central America, and highlighted the US’s continued presence in the region.

Despite the initial failure, Central American countries were eventually able to to sign *Esquipulas II*, a peace accord that laid the framework for future intervention from the United Nations and mobilized the Catholic church into action. “Within the framework of Esquipulas II, … three specific events occurred: (1) a general amnesty was declared for those who had been
involved in the armed confrontation; (2) the [National Reconciliation Commission] was formed…; and (3) an official meeting was held in Spain between members of the Cerezo administration and representatives of the [Unidad Revolucionaria Nacional Guatemalteca].”

The peace accords clearly demonstrated that the goal of the transitional government was to make amends regarding past abuses in order to secure a prosperous future, but not to take action against perpetrators. The Oslo, Stockholm and Madrid peace accords were signed in 1996 and officially marked the end of the Civil War, instilling a sense of optimism in the Guatemalan electorate. The symbolic nature of these accords reverberated throughout the country, as they demonstrated a departure from the culture of silence regarding human rights abuses during the civil war. The Peace Accords allowed for a strengthening of civil society, increased government trust, the recognition of Mayan populations, and opened opportunities for integration into the global economic market. These peace accords assisted in reshaping interactions in Guatemala by demonstrating a symbolic break from policies of government complicity towards human rights abuses, and by showing indigenous communities that their plight would be recognized, thus establishing a more balanced power structure in society.

However, the symbolic peace accords without tangible action to dismantle institutional systems of corruption were a superficial change that distracted from the country’s illegitimate democratic transition. While the peace negotiations highlighted a significant desire within Guatemalan society to consolidate democracy and end human rights abuses, the political climate

95 Arnson, Comparative Peace Processes in Latin America. 118.
posed a legitimate challenge to accomplishing what was promised, and prevented the potential benefits of the peace accords from coming to fruition.

In the end, the provisions from the Peace Accords have yet to be translated into constitutional law. Without this, the government lacks the legal basis to implement reform and to demand strong changes within the government. While some minor provisions of the Peace Accords have been implemented, compliance with the substantial parts of the agreement remains weak. Political parties have remained divided over the implementation of the Peace Accords and as a result, Congress has left many proposals waiting to be approved. As former guerrilla commander Carlos González told El Nuevo Diario, “There aren’t any transformations in the country in the economic, social, or political realms. The transformations are superficial; they are not real as intended by the Peace Accords.”

Because the conflict in Guatemala was largely structural, in which the organizational structure of society created the conflict, it is essential that root causes be deconstructed in order to comprehensively address the human rights abuses committed during the civil war. While symbolic transformation helped develop public discourse, which could eventually result in policy change, it has not proved to be a sufficient or efficient means of dealing with vast human rights abuses. Despite the deployment of a UN verification commission, MINUGUA, to assure the implementation of promises made in the Peace Accords, a vast number of the promises still have not been met. Because the Peace Accords did not result in action, they had little, or perhaps even a negative, effect on economic development, as it demonstrates weak government credibility and commitment, and diverted attention from real issues. Additionally, the Peace Accords did not even symbolically address issues of impunity, land reform, or high rates of

97 It should be noted that MINUGUA was relatively successful in that under the UN deployment, human rights abuses decreased significantly and there was increased political tolerance that allowed for peace solidify.
poverty (which was 75% in 1995), as these issues are not discussed in the accords. The effects this neglect has had on a potential correlation between Guatemala’s transitional justice policies and economic development are obvious; without addressing key economic issues that propelled the conflict, there is neither an intrinsic nor an instrumental link to the promotion of economic development. Because Peace Talks in Guatemala occurred in an environment in which there was no political will to dismantle societal and governmental structures that allowed for human rights abuses to occur, they had little potential for success. If a genuine transitional government had been in power during the peace talks, they would have had a more profound effect on recalibrating society, and thus on economic development.

**Truth Without Justice: Truth Commissions and Reports**

Following the Peace Accords, Guatemala’s transitional justice program was equipped with two separate truth commissions: One spearheaded by the UN, and the other initiated by the Catholic Church. The two projects complemented each other by having access to different sets of information bases and by involving different groups of people. The United Nations truth commission, called the *Comisión de Esclarecimiento Histórico* (CEH), was the result of peace accords signed in 1994, which required the establishment of a commission to “clarify past human rights violations and acts of violence,” as a means to “end to the armed conflict and help lay the bases for peaceful coexistence and respect for human rights among Guatemalans” through the “promotion of a culture of harmony and mutual respect that will eliminate any form of revenge or vengeance is a prerequisite for a firm and lasting peace.” The program led by the Catholic

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99 “Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer,” United Nations,
Church, called the Recuperación de la Memoria Histórica (REMHI) and established in 1995, was an effort to support the official truth commission by conducting research that was not limited by mandate and time.

**REMHI Truth Commission and Nunca Más Report**

The REMHI project was a domestic endeavor mobilized by civil society. Its grassroots, bottom-up nature enhanced the CEH by providing facts that might have otherwise been inaccessible to international actors, and by offering legitimacy that could only be afforded through representative action. The report published by REMHI in 1998, aptly titled Nunca Más, explains: “Our search for information centered on rural communities whose physical inaccessibility and linguistic diversity would complicate the [CEH’s] task.”100 Because of its natural community integration, REMHI expanded the number of people included in, and thus affected by, the scope of truth commissions in Guatemala. The Catholic Church served as a confidant and mediator between the rural communities most affected by the Civil War, and the United Nations, which was tasked with helping to resolve the conflict. Thus, “the project both laid the groundwork and raised the bar for the CEH, sensitizing rural communities to the need to tell, furnishing data and challenging the official Commission to confirm the prevalence of these punishable crimes and to probe the charge of genocide.”101

REMHI recorded over 6,000 testimonies, registered over 55,000 victims and more than 25,000 murders, attributing 80% of the violence to the state and 9% to leftist guerrilla

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movements. An analysis published by the North American Congress on Latin America explains that the report “was researched and written by Guatemalans for other Guatemalans rather than for the international community. Its authors and protagonists are ordinary citizens once silenced by fear and now willing to speak. The REMHI report is less a collection of information and statistics as much as it is an anthology of the unmistakable words of Guatemalans.” This inclusivity was essential in constructing a narrative that accurately represented Guatemala’s plight between 1960 and 1996. The dissemination of this narrative forced society to recognize the atrocities committed against indigenous people during the conflict. The REMHI truth commission should be interpreted as a great success for Guatemala; its grassroots nature with international reach provided recognition to the indigenous populations on a broad scale.

However, because truth telling and the subsequent Nunca Más report was organized by the Catholic church, which already had a strong reputation for supporting human rights, the process did little to improve the relations of trust and institutional legitimacy between victims and the government that are key in positively affecting economic development. Further, “the brutal murder of Bishop Juan Gerardi, the REMHI coordinator, less than two days after the report’s release shattered the illusion that revealing the truth would somehow foster reconciliation, strengthen peace and consolidate transitional democratic gains. It also exposed the enormous political risks of confronting the past.” Bishop Juan Gerardi’s murder undermined

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102 Barahona de Brito, *The Politics of Memory: Truth, Justice, Memory and Democratization in the Southern Cone.*
the report’s potential for stimulating positive change by making clear the very marginal progress that had been made in the country since its official transition to democracy, and discouraged further grassroots action on the cause. The judicial response to the murder completely ignored its political incentive and thus demonstrated low levels of governmental legitimacy. Despite fact that that the war officially concluded two years prior to the bishop’s murder, government institutions continued to respond to the military, and not to the law. Truth commissions’ correlation to economic development lies in its “potential to modify the way in which interpersonal relations are thought of and, ultimately, to enhance the experience of citizenship, equality, and institutional fair play among the inhabitants of the post-conflict or the post-authoritarian society.”105 Any progress that REMHI made in these realms was compromised by the obvious lack of tangible change that had occurred within governmental institutions, which became flagrant after the bishop’s murder. The initiatives spearheaded by the Catholic Church undoubtedly contributed to a strengthened and more empowered indigenous population, however, this movement alone cannot fully develop a society. It must be augmented by substantial institutional changes within the political class.106

**UN CEH Truth Commission and Report**

The UN-brokered truth commissions published its report in February of 1999. Building on the information provided by REMHI, the report was based on over 8,000 testimonies and estimated that 200,000 people had been killed or disappeared during the Guatemalan conflict by way of 658 massacres. The report attributed 93% of violence to the military, and just 3% to


106 Yashar, *Demanding Democracy: Reform and Reaction in Costa Rica and Guatemala*. 64
leftist guerrillas.\textsuperscript{107} The report specifically highlights the socioeconomic roots of the conflict, analyzing exploitation, racism and political exclusion as the cause of violence. Further, It includes statistical evidence of the country's health, education, literacy and nutritional indicators to show the extreme social inequality that has made the country among the most unjust in the world despite an abundance of national wealth. [It]... goes back hundreds of years to the Spanish colonial culture that subordinated the Mayan population in order to effect economic advancement. Structural inequality resulted in ongoing cycles of violence, often sparked by popular masses protesting for economic, political, social or cultural change, which provoked state repression aimed at maintaining social control.\textsuperscript{108}

By highlighting the culture of systemic exclusion in the country, the CEH report points to concrete issues to solve in order to prevent similar abuses in the future. This acknowledgement demonstrated that the government’s project relied upon the consistent marginalization of indigenous people in order to promote its political and economic agenda. This concession removes blame from indigenous people, who might have otherwise been conditioned to feel that their economic plight was a result of their own actions. The process of removing blame releases a burden from those who have been affected by mass atrocities and enhances personal empowerment, thus improving the access to capabilities that are key in development.

Additionally, the action of truth telling itself is empowering:

By dignifying victim-survivors, truth seeking helped transform Guatemalan victims into survivors and resisters. In recovering their stories, the CEH reminded them of the shared nature of their experiences and their capacity collectively to organize and resist. As they discover their voices, they also grasp their capacity to intervene politically and sense their potential influence.\textsuperscript{109}

Truth telling empowered indigenous communities to join together and advocate for themselves, which promoted economic development in two ways. Intrinsically, creating community bonds

\textsuperscript{107} Barahona de Brito, \textit{The Politics of Memory: Truth, Justice, Memory and Democratization in the Southern Cone.}

\textsuperscript{108} Isaacs, Anita. "At War With The Past? The Politics Of Truth Seeking In Guatemala."

\textsuperscript{109} Ibid.
enhances social capital, and offers individuals a wider safety net and more opportunities to act on their personal desires. Instrumentally, groups of indigenous populations were together able to advocate for themselves economically, socially and politically through civil society coalitions that would not have been manageable on the individual level.

Despite these successes, the mandate for the CEH was weak, and did not permit information found through the truth commission to serve as incriminating evidence, or for blame to be assigned to any specific person. The official agreement states: “The Commission shall not attribute responsibility to any individual in its work, recommendations and report nor shall these have any judicial aim or effect.” 110 Because the instrumental relationship between truth commissions and economic development exists in its potential to provide information for future judicial trials and vetting procedures, 111 this aspect of the CEH prevented the truth commissions in Guatemala from having a sizable effect on development in the country.

The CEH report outlined a variety of recommendations to deconstruct the systems which allowed for extreme marginalization and mass atrocities to occur. Some of these recommendations included:

Significant restructuring of the military and security forces… [the implementation of] an ambitious programme of compensation, including psychological and economic assistance through a National Reparations programme, the location and exhumation of clandestine graves… the establishment of a National Commission for the Search for Disappeared Children… the erection of monuments in memory of those killed, and the official acknowledgement by the state of its responsibility. 112

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110 “Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer,” United Nations.
111 Refer to Chapter 1 for a more detailed description of this argument.
112 Barahona de Brito, The Politics of Memory: Truth, Justice, Memory and Democratization in the Southern Cone.
However, most of these recommendations were never implemented in the country, and having not been addressed, contribute to the lack of institutional legitimacy in Guatemala. *Transitional Justice and Development* explains:

Truth commissions often exist in a sort of tension between, on the one hand, their objectives and results and, on the other, a reality external to them over which they exercise no direct control. This gives rise to situations in which the commission affirms the urgency of justice and reparation in the face of crimes committed with impunity, but, once its work is concluded, its recommendations are implemented only partially or not at all. In the end, a declared urgency left unaddressed tends to confirm the skepticism to which those societies have a propensity.  

The lack of action following recommendations from the well-researched truth commission undermines its potential to have a transformative effect on development. Instead, the truth commissions were widely interpreted as cosmetic, confirming society’s belief that the government is not truly invested in eliminating the inequalities that caused, and were a result of, the civil war.

**The Politics of Guatemala’s Reparations Program**

Despite having been included in the 1999 CEH recommendations, a reparations program was not introduced in Guatemala until 2004.  

The program, called the *Programa Nacional de Resarcimiento* (National Compensation Program), was created by executive decree rather than a legislative initiative in congress. This meant that the law was under the president’s direct power, and could easily be manipulated without congressional consent. The negative effects of these technicalities became apparent within two years of the program’s implementation, when the president changed the composition requirement for the commission that is responsible for

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executing the program. Previously, civil society was afforded half of the seats on the committee, so the people most affected by reparations programs would have a voice in constructing them. Now, however, the program is run solely by government employees who were not affected by the mass atrocities committed during the country’s civil war. This change reduced the program’s potential to have a transformative effect on economic development, as those who best understand how reparations would be most effective no longer play a role in constructing the programs. This legal technicality is part of the country’s larger representation issue; Mayan communities are often marginalized from the political process and have little opportunity to help shape policies that directly impact their lives, which completely undercuts development as defined by the capabilities approach.

In theory, Guatemala has a robust reparations program, but in practice it fails to deliver to those it is meant to help. The programs themselves have been very poorly implemented, resulting in the unproductive use of funds and the ostracization of individuals who were affected by human rights abuses during the civil war: “Rather than problems of noncompliance, the issues surrounding monetary compensation have to do with the effects on the beneficiaries, on community solidarity, on the incentives for bringing cases, and on the interaction with the National Reparations Program (PNR) established in 2003.” Reparations in Guatemala come in one of three forms; 1) Monetary payments to an individual as a means to rectify the personal effects of state instigated human rights abuses, 2) Monetary payments to a community in order to redevelop areas that were destroyed as a result of state terror, and 3) Rehabilitative programs to

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deal with the mental health and community development issues that were negatively affected by the civil war. All three programs in the country have spent money inefficiently, thus resulting in unproductive programs that do not fulfill their full potential to strengthen economic development. Additionally, inefficiency contributes to a lack of popular confidence in the government’s willingness to redress past wrongs.

Payments to individuals have been limited in scope because of underfunding and the lack of an institutional framework needed to implement the program, and overall, have been interpreted poorly by the people who receive the payments. Because the program is under presidential power, it is susceptible to political manipulation. Since 2008, the budget for the program has reduced from 300,000,000Q to just 25,000,000Q (roughly 39,000,000 to 3,000,000 USD) due to change in executive political perspectives.\(^\text{116}\) In 2008, the year when the program had the highest budget in its history, it only sent checks to 10,477 victims. Further limiting the program’s reach, it lacks the capacity to find many victims or relatives of victims because many were never registered at birth, and many civil registries were deliberately burned during the war.\(^\text{117}\) Because of limited funding, creating a database of victims and potential victims has not been treated as a priority.\(^\text{118}\) For these reasons, the potential for reparations programs to have an instrumental impact on economic development has been restricted by lack of funding and the institutional capacity to distribute the funds that are available. Further, the PNR has been


\(^{118}\) Ibid.
negatively regarded by the communities who have received funds, preventing the significant intrinsic value reparations programs can have on development from coming to fruition.

For example, victims’ groups have complained that checks to victims of human rights violations are perceived as equivalent to checks issued at the same time to civil patrollers (who were often human rights violators) for forced labor. In that situation, there are also (with rare exceptions) no symbolic or apologetic aspects to the handover of funds, and groups report that people are confused and upset by different amounts being handed out to different families, notwithstanding the fact that the differing amounts had a clear logic behind them.119

Demonstrating weak coordination between community members and those who formulate reparations programs, the money that is directed towards victims of human rights abuses is implemented in a manner that is widely perceived as careless. In the context of Guatemala, reparations fail to act as a tool to build civic trust, which is important in recalibrating societal norms in a way that supports economic development.

Similarly, community reparations initiatives in Guatemala have fallen short of international expectations, and have very little positive correlation to economic development as a result of their poor implementation. Community reparations programs in Guatemala come in the form of both cash transfers and development programs. In the case of cash transfers, the initiatives have received insufficient support from the government in helping to invest money in a forward-looking manner: “In several cases, individuals and communities have been woefully unprepared to receive such large sums of money. Some have spent the compensation money on drink or, in one case, on an Evangelical chapel, while their living situations have remained precarious.”120 Without proper planning, the large sums of money given to communities which

were destroyed as a result of human rights abuses have no positive effect on the reconstruction of capabilities that constitute development, nor do they affect development instrumentally when they are used on perfunctory projects. While community payments, in theory, should function as an important means of intrinsic and instrumental economic development through capabilities building and direct capital injection, neither functions are achieved when money is not used in a way that can genuinely improve well-being.

Community development programs have attempted to address problems such as ongoing mental health issues, assist in grave exhumations, and support the construction of memorial spaces. In all cases, these programs have fallen short of the simple expectation to help communities who suffered mass atrocities. The case of mental health programs is perhaps the most telling. When the Inter-American Court ordered Guatemala to include mental health services to victims,

the state responded by sending therapists with no experience dealing with victims of massive crimes into rural areas, where they were completely ineffectual. Moreover, local people complained that the doctors who were sent to staff the local health clinic as part of reparations to the affected community were... racist and dismissive of their complaints… so much so that many victims no longer visited the clinic.121

In this case, the program was not only ineffective, but destructive by wasting funds and by further ostracizing Mayan communities.

Because Guatemala’s civil war was aggravated by low levels of development in Mayan communities, reparations programs in the country are a potentially essential tool in expanding human development for indigenous communities. However, carelessness on the part of the government has resulted in a program that has not only fallen flat, but has undermined its own

intention of improving capabilities within communities. The poor implementation of this program is, once again, representative of the negative effects of not taking time and effort to dismantle corrupt governmental power structures prior to initiating transitional justice.

The Politicization of Guatemala’s Judiciary: A Failure for Development

The judiciary in Guatemala continues to suffer from interference from political and societal actors, and insufficient funding from the government, resulting in high levels of impunity in the country. Domestic judicial action on human rights abuses that occurred during the civil war in Guatemala has been practically non-existent. Impunity has plagued the country throughout its history, and prevented the consolidation of the rule of law during the country’s transition to democracy, which is an essential component of building a developed society. High levels of corruption as a result of the legacy of counterinsurgency authoritarianism has created a climate of distrust, especially among indigenous communities, towards the judiciary.

In the rare occasion that cases make it to trial, they are often stopped, or antagonistic rulings are reversed, in order to protect those involved with the military. The cases that have resulted in prosecutions are a result of intense pressure from the international community and non-governmental organizations, and did not develop until decades after the country’s transition to democracy.\textsuperscript{122} The international community has played a key role in bringing criminal cases to light, but has been relatively unsuccessful in punishing those involved with committing genocide due to lack of cooperation from the Guatemalan government.\textsuperscript{123} Spanish judges have worked tirelessly to extradite military commanders, and to research cases and present evidence so that

\textsuperscript{122} The Myrna Mack, Juan Gerardi and Ríos Montt cases serve as relevant examples.

trials could transpire domestically. Neither of these strategies have been successful. In 2007, the UN introduced the International Commission against Impunity in Guatemala (CICIG) in order to “support the Public Prosecutor's Office (MP), the National Civil Police (PNC) and other State institutions in the investigation of crimes committed by members of illegal security forces and clandestine security structures and, in a more general sense, help to disband such groups.”124 In order to accomplish this, CICIG investigated 20 complex cases and helped strengthen institutions so that Guatemala could deal with similar cases independently in the future. When the commission entered the country in 2007, the impunity rate was 95%. When the commission left the county in 2015, the rate had reduced to 70%.125 While this is a vast improvement in a short amount of time, none of the cases CICIG addressed were in relation to the genocide committed by the Guatemalan government, thus setting a precedent for continued impunity on cases related to the civil war.

Lack of organic judicial trials, high levels of impunity, and the extensive amount of time it has taken for trials to come to court, indicate a weak commitment to rule of law in Guatemala. When human rights abusers have been called before a court, they notoriously employ the writ of amparo (asserting that the right to life, liberty and security is violated or threatened by appearing at trial) in order to prevent cases from being heard. While under conservative power, the courts have ruled against their own constitution, as well as clearly stated international law, in order to prevent extradition of high profile military leaders.126 The courts respond to political interests

instead of the rule of law, demonstrating low levels of judicial autonomy and institutional legitimacy.

Impunity in Guatemala affects development in a variety of ways. First and foremost, impunity sustains power structures that allowed for genocide to occur in the country, which allows systematic violence to continue, which as noted, has severe negative effects on economic development. Second, within the framework of the rights based approach to development, impunity denies human rights to those affected by violence, thus directly undermining development in the country. And third, impunity demonstrates low levels of governmental commitment to the most marginalized sectors of society, which deteriorates the agency of these communities to advocate for themselves politically and economically.

As an institution whose key role is to affirm rights, the weaknesses of the judicial branch in Guatemala undermines development by denying substantive freedoms to those who were affected by human rights abuses in the aforementioned ways. The human rights based approach to development identifies the government as a duty-bearer, while individuals are considered rights-holders; when impunity persists, the government does not uphold its role to fulfill human rights, and individuals are denied capabilities. Impunity inhibits development by preventing the consolidation of the rule of law, which has negative instrumental and intrinsic effects on development. The instrumental perspective “emphasizes that the protection of private property rights and the facilitation and enforcement of long-term contracts are essential to raising levels of investment and rates of economic growth,”127 which are entitlements afforded by a robust rule of law. In Guatemala, this manifests in high rates of income inequality as the result of investment

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127 Trebilcock and Daniels, Rule of Law Reform and Development: Charting the Fragile Path of Progress, 4.
opportunities being available to a small portion of society, which concentrates wealth among those who can trust the political elite. Rule of law’s intrinsic value lies in its ability to offer freedoms, which

is both the ends and the means of development…. Freedom from torture and other abuses of civil liberties by tyrannical rulers, freedom of expression, freedom of political association, freedom of political opposition and dissent, are defining normative characteristics of development; rule of law to the extent that it guarantees these freedoms, has an intrinsic value, independent of its effect on various other measures of development.¹²⁸

The judiciary system in Guatemala has clearly failed to address these issues by allowing those who committed genocide to roam free. Further, the imposition of an illegitimate legal system in rural areas has resulted in extrajudicial lynching conducted by community members committed to crime reduction and punitive justice. These practices further exacerbate the negative instrumental and intrinsic effects of a weak rule of law on economic development in the country.

**Guatemala’s Missing Piece: Legitimate Transitional Government**

The potential for transitional justice to have a positive effect on economic development in Guatemala was compromised by the lack of a true transitional government after the country’s devastating civil war. While the country transitioned from military authoritarianism to democracy in name, the corrupt power structures present during the counterinsurgent years have maintained strength into the present day. Unlike Argentina, where the opposition forces won the war, Guatemala’s leftist guerrillas lost a significant amount of power during the democratic transition, and played little role in constructing the “new” government. While the 1996 peace agreements marked a symbolic departure from the violence that occurred in the civil war, they

¹²⁸ Trebilcock and Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress*, 5.
did not require any significant institutional changes to dismantle systems of violence and corruption, and did not secure the development of an operative democracy. For this reason, when more comprehensive transitional justice measures were implemented, they did not have the governmental support to recalibrate societal interactions. Despite being textbook versions of transitional justice tools, given the context in which they were implemented, transitional justice did not have a positive effect on economic development in the country. Guatemala’s experience demonstrates the difficulty of employing a perfectly crafted transitional tool within a very imperfect society. This case study demonstrates that transitional justice can only have a strong correlation with economic development when it is applied in the context of a legitimate transition. Guatemala continues to struggle with deeply rooted systemic problems of corruption and marginalization with meager economic means and political will to reverse them, resulting in a spiraling trap that is perpetuated and sustained by, and results in, deeper poverty and more violence.
Chapter IV:

The Importance of Institutional Change: Findings, Conclusions and Recommendations
The Effectiveness of Transitional Justice Mechanisms in Argentina and Guatemala

A comparison of Argentina’s and Guatemala’s respective experiences with transitional justice illuminates the importance of institutional commitment to truth, punishment and reparation in order for transitional justice to have a positive correlation to economic development. In the case of Argentina, there existed political will for democratic reform, which in turn generated pressure to devise and implement transitional justice measures that had the strength to benefit economic development. In Guatemala, the political will has not yet developed, which has resulted in a looser relationship between transitional justice and economic development in the country.

Judicial Action

Judicial action has proven to be a challenge in both Argentina and Guatemala. Because of continued military influence, and differing political perspectives on whether a strategy of justice or one of “forgive and forget” should be employed, Argentina and Guatemala have often had to depend on international justice systems to try those involved with human rights abuses. In the case of Argentina, the country has engaged international support as a means to augment the justice program already established. In contrast, justice in Guatemala still relies upon the international community to carry out nearly all legal trials on its behalf.

Under President Alfonsín the Argentine judicial branch established a precedent of political autonomy and dedication to the rule of law that has played an important role in the country’s development success. The initial standards established by the judiciary affirmed that rights in Argentina are accessible and reliable, which, in the context of the capabilities approach and the human rights based approach to development, enhances intrinsic development. Further
augmenting intrinsic development, the judiciary’s dedication to punishing human rights abusers promoted civic trust by demonstrating the reliability of democratic institutions. Although the country has experienced various setbacks, since Néstor Kirchner took power in 2003 there has been a general understanding that trying those involved with the military dictatorship benefits society by promoting civic trust and democratic rule of law and demonstrating reliable institutions, so cases continue to be brought to trial. The judiciary’s focus has recently shifted to economic crimes, which has a direct instrumental correlation to economic development. Trying and punishing economic crimes in Argentina has uncovered corrupt power structures that unfairly divert resources, allowing for a more fair distribution of capital in the country. Judicial action has been an area of relative success for Argentina. While political action has often slowed the trial process in the country, the dedicated and autonomous judiciary has demonstrated its commitment to bringing perpetrators of human rights abuses to justice, positively influencing intrinsic and instrumental development.

In stark contrast, Guatemala’s government has shown little commitment to punishing those who committed human rights abuses during the country’s civil war. The impunity rate in the country remains at seventy percent, which has played a key role in sustaining power structures that allowed genocide to occur in the country. This allows systematic violence to continue, which as noted, has severe negative effects on economic development. Additionally, impunity denies human rights and capabilities to marginalized sectors of society, directly undermining intrinsic development. Further, impunity demonstrates low levels of governmental commitment to its constituents, which erodes individual and community agency. From an
instrumental perspective, impunity denies property rights and the reliability of contracts, which negatively affects investment rates and numerical economic growth.

As an institution whose key role is to affirm rights, the strength of the judiciary is crucial in promoting economic development. The case studies demonstrate that the economic benefits of justice can only be realized if there is institutional commitment to the cause, highlighting the need for institutional reform prior to the introduction of transitional justice measures.

Truth Commissions

Truth commissions in both Argentina and Guatemala were impressive, and despite weak mandates, produced strong reports that brought human rights abuses to light. These processes provided essential recognition to victims, and had an intrinsic link to economic development in both countries. However, after the reports in Guatemala were published, the evidence they provided was not applied to judicial cases in order to try those involved with human rights cases, preventing a potential link to instrumental development. On the other hand, in Argentina, the leaders of the truth commission decided to submit its findings to the courts as a means to move forward with trials against junta leaders. This demonstrates the success of governmental institutions in their ability to respond to the demands of their constituency, and further enhanced economic development by bolstering the rule of law.

Reparations

While Argentina’s reparations regime is often regarded as one of the best in the world for its comprehensiveness, Guatemala’s reparations is often considered one of the worst.

Argentina’s reparations program distributed large amounts of money to those who suffered human rights abuses, and was also equipped with social programs (to help find remains,
provide health care, etc.) to assure the money was not received negatively by society. The instrumental benefits of reparations in Argentina included increasing civic trust by demonstrating the seriousness with which the Argentine government took human rights violations. The program successfully injected large sums of money back into the economy, which facilitated instrumental development by enhancing the country’s GDP.

The Guatemalan reparations program was underfunded as a result of low tax rates in the country, and was not paired with smart spending programs, resulting in the misuse of money in many communities. Given the country’s elite-led legislature, attempts to raise tax revenues in order to fund social programs and monetary reparations programs have been repeatedly thwarted. The small reparations program that was implemented in Guatemala was negatively perceived by the public because, as Elster has argued, truth and reparations without justice “is likely to generate resentment and bitterness rather than catharsis and healing.”  

The reparations program in Guatemala was interpreted by many as the government “buying off” victims in order to prevent continued conversation on the matter of human rights abuses.

**International vs. Domestic Action: The Importance of Organic Change**

Argentina’s transition benefitted by having the capacity to institute transitional justice measures organically, with limited assistance from the international community. While this resulted in a slow transitional justice process that was regularly challenged by military pressure and right-leaning governments, domestic institutions were strengthened and gained legitimacy by designing and conducting their own transitional justice regimen. Additionally, given the deeper understanding of cultural nuance on the domestic level, Argentina’s domestic institutions were

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better situated to respond to civil society than a large international organization. The country’s domestic transitional justice regime, however, certainly required higher levels of democratic stability and development in general than what was available in the case of Guatemala.

Guatemala’s transitional justice package was designed primarily by the UN through the country’s 1996 peace accords. The UN outlined a very ambitious set of goals for Guatemala. However, without the institutional, monetary and political resources to implement the accords fully, the programs were instituted thinly, and did not carry the weight that they initially intended to. Further, the international actors did not sufficiently integrate the needs and desires of civil society into the transitional justice regime. This is especially important given the nuclear nature of Guatemalan society; national programs had little effect on local issues. With the majority of Guatemalan society living in remote and tribal communities, the country’s transitional justice regime required a more careful consideration of the vast cultural differences that exist amongst Mayan communities than it received. While Guatemala certainly needed international assistance through its transition, the country’s experience highlights the importance of first addressing issues of institutional strength and corruption prior to expending resources on reparative, distributive and punitive justice measures. Alongside the analysis of Argentina’s history, Guatemala’s case demonstrates that reformed domestic institutions are more equipped to implement transitional justice measures than an international entity that cannot address the nuances of culture and power structures of a post-conflict society.

**Constructing Institutions: The Role of the Past in Shaping the Future**

When analyzing the connection between transitional justice and economic development, it is crucial to consider context. It would be naive to attribute Argentina’s economic success and
Guatemala’s economic stagnation solely to their transitional justice regimes. While Argentina and Guatemala employed similar transitional justice tools, they were implemented amid very different social, cultural, political and economic contexts, which has ultimately led to profound differences in each country’s respective developmental trajectory. Transitional justice measures in Argentina were built on an already fairly stable democratization process. Guatemala’s transitional justice program was layered over a political system wrought with structural issues. Given their political and economic historical differences, regardless of their differing transitional justice programs, Argentina and Guatemala were positioned to follow very different developmental paths. In order to compensate for these historical differences, Guatemala would have benefitted from focusing first on the consolidation of legitimate democratic institutions, before attempting to implement mechanisms of truth, justice and reparation. The two case studies demonstrate that stable, responsive and autonomous institutions must be a precondition to transitional justice in order to benefit both justice and development.

Argentina and Guatemala differ greatly in their political and economic histories, which is reflected in the nature, development and conclusion of the conflict in each country. The relatively strong democracy in Argentina prior to the Dirty War provided a framework for society and political practitioners to look back on in order to shape the country’s government at the conclusion of the war. Guatemala, on the other hand, has a history of government corruption and the institutionalized sexist, racist and economic marginalization of Mayan people, which shaped the country’s institutions during its “transition” and after signing the UN Peace Accords. As demonstrated by the contrasting case studies, the less power the previous authoritarian regime has in a new democracy, the more likely the country is to succeed.
Prior to Argentina’s Dirty War, the country sustained a relatively fragile democracy. The pre-war government in Argentina was by no means perfect, as Argentine politics has a strong history of fervent political polarization. However, Argentina’s homogenous population\(^\text{130}\) and strong women’s rights campaign\(^\text{131}\) allowed for a relatively inclusionary political system that promoted intense debate among all members of society. Argentina’s conflict was based in contrasting perspectives on economic policy. In a polarized political arena, the right sought to eliminate the threat of leftist subversion and assert conservative structural order within government institutions. At the culmination of the war, the new government was tasked with returning the system to a level of stability that could withstand opposing political and economic perspectives. Going into this project, the government had a loose framework to refer back to, and was able to retrospectively implement it with a critical eye for improvement. Similarly, citizens who survived the conflict had memories of functioning government institutions, which offered a sense of trust and hope for peace within a democratic framework. With a focus on a separation between the executive, judicial, and defense branches in order to assure institutional fair play, Alfonsin was able to return the government to a level of stability that had the strength to grapple with human rights abuses through transitional justice measures. While opposing political and economic perspectives were still present during the transition, they had eroded as a result of the regime’s military loss in the Falkland Islands coupled with a failing economy, and thus posed little threat to adequate democratization. With lower than normal levels of political opposition, and a history of democracy to build upon, the causes of the Argentine conflict were relatively easy for the government to address, as it was its own institutions that needed to be reconstructed

\(^{130}\) 97% of Argentina’s population is of European descent (CIA World Factbook)

\(^{131}\) In 1912 universal male suffrage was passed, and in 1947 all females were afforded the right to vote.
in order to foment a successful transition. After institutional reform had occurred, the government implemented truth commissions, which dealt more directly with the human effects of the military regime.

Argentina’s democratization process benefited from a legitimate transfer of power from the military to a social democratic regime, which allowed for the development of relatively strong democratic institutions. Specifically, Argentina’s autonomous judiciary was able to maintain the rule of law, rather than succumb to political interests. It was thus capable of checking governmental power, resolving conflicts pertaining to the dictatorship and strengthening juridical institutions. In this environment, transitional justice has flourished, and has demonstrated its potential to modify social, political and economic interactions in a way that enhances capabilities and expands the economy. Argentina’s clear break in ideology from the authoritarian regime resulted in governmental legitimacy because it aligned itself with strong democratic institutions. These institutions pushed for strong transitional justice programs, which enhanced instrumental and intrinsic development by equalizing society through retributive, distributive and restorative justice.

In contrast, Guatemala’s failed democratization process did not benefit from a genuine regime change. After the 1984 elections, military leaders maintained their positions of power under the guise of democracy. Like putting a fresh coat of paint on an old house, the country was marginally improved by the peace accords, truth commissions and reparations programs, but structural issues have remained. And in some cases, transitional justice measures have even distracted from essential issues of corruption, poverty and violence. The new “constitutional counterinsurgency” continued using repressive and violent control tactics as a means to maintain
“national security.” In his 1987 military-published booklet titled *La tesis de estabilidad nacional*, General Héctor Alejandro Gramajo explains the new regime’s guiding ideology:

> In Guatemala, politics must be the continuation of war. But that does not mean that we are abandoning war; we are fighting it from a much broader horizon within a democratic framework. We may be renovating our methods of warfare, but we are not abandoning them.... We are continuing our [counterinsurgency] operations [against] international subversion because the Constitution demands it.\(^{132}\)

With this perspective driving the direction of the government, transitional justice measures in Guatemala accomplished little. Because repressive power structures did not change after Guatemala’s superficial transition to democracy, systemic economic oppression also continued. The cosmetic transitional justice strategies employed in the country did little to uproot systems of injustice, thus having a marginal, and perhaps even negative, effect on economic development. Transitional justice strategies depend on stable political institutions that are responsive to the needs and desires of the citizenry in order to be successful, and to have a positive effect on economic development.

Different from Argentina, race, class, and gender-based marginalization have been paired with corrupt democracies throughout Guatemala’s history. The layers of conflict that have existed since Spanish colonization in Guatemala were exacerbated during the civil war, and made a successful transition nearly impossible. Calibrating social interactions to eliminate racism, classism and sexism, with no prior systems of inclusion to look back on is a challenging task, and in order to be even marginally improved upon, it requires proactive government action to promote integration. However, given the nature of the country’s ongoing struggle to transition to democracy, active hostility toward indigenous populations eventually developed into apathy,

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and marginalization continued to undermine transitional justice measures and potential for economic development. Institutional corruption and systemic marginalization were the roots of the Guatemalan conflict, and thus should have framed how transitional justice was implemented at the end of the military regime. However, truth without justice or effective reparations in Guatemala demonstrated a commitment to cosmetic remedy, and did not assist in reversing systems of corruption, or racist, sexist and classist social tendencies. Entrenched systems of marginalization continue to isolate Mayan communities, and strip them of political and economic autonomy, which affects economic development intrinsically by denying human rights, and instrumentally by preventing their productive integration into the national economy. In order to promote economic development within indigenous communities, the Guatemalan government must establish trust that has never existed between the two groups. In ideal situations, transitional justice has the capacity to enhance trust, but given Guatemala’s obvious institutional corruption, this effect never took place.

Argentina’s well-integrated, relatively stable democratic tradition served as a framework for progress during the government’s transition to democracy. In contrast, Guatemala’s history of marginalization and weak democratic institutions remained intact during the country’s democratic transition and end of the civil war. The conflicts that developed were a result of each country’s respective struggle with democracy, but Argentina’s struggle between economic perspectives proved easier to resolve than Guatemala’s institutionalized classism, racism, and sexism.
Overall Discoveries and Recommendations

While transitional justice measures have proved to be a beneficial tool in equalizing and advancing many post-authoritarian societies, their potential can only be fully realized when there is legitimate civil and political will for change. In the case of Guatemala, the potential for transitional justice instruments to effect economic development is marginal because of the context in which they were employed. While the framework for transitional justice in Guatemala was impeccable, it was not implemented fully or legitimately, given the restraints of the country’s quasi-democratic government. For this reason, many of the transitional justice programs implemented in Guatemala were interpreted as cosmetic by society, and did not serve to enhance the experience of citizenship for those who had been marginalized by human rights abuses and thus did not have a positive correlation with economic development.

Consistent with the argument made by Sen in *Development as Freedom*, the analysis of Argentina and Guatemala’s transitional justice programs indicates that economic development benefits from the presence of responsive democratic institutions. Sen explains,

> the connections [between political freedoms and the fulfillment of economic needs] are not only instrumental (political freedoms can have a major role in providing incentives and information in the solution of acute economic needs), but also constructive. Our conceptualization of economic needs depends crucially on open public debates and discussions, the guaranteeing of which requires insistence on basic political liberty and civil rights… The intensity of economic needs adds to- rather than subtracts from- the urgency of political freedoms… Developing and strengthening a democratic system is an essential component of the process of development.133

Instrumental and intrinsic development is enhanced when institutions are structured to genuinely respond to the needs and desires of the broader constituency. Democratic institutions allow for

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the free flow of information and provide the political incentives for a developmentally conscious transitional justice strategy to be employed.

In the context of transitional justice, the value of strong democratic institutions inheres in their accountability. Legitimate democratic institutions are accountable to the rule of law and to the populace. Politicians and appointed officials are then required to act in accordance to a set of norms established through law and public opinion, and if they act in contradiction to these norms, they risk losing their position through election or impeachment. This ensures that transitional justice is implemented in a way that is both fair and responsive to the desires of the constituency. The positive effects of this are manifold; established institutional fair play means that truth commissions, reparations programs, and judicial action are crafted and employed in a way that addresses problems that the general population has indicated are most important, with a limited risk of corruption or phony projects. If transitional justice programs are not functioning, civil society has the power to change its representation; and if misconduct is detected, a country with strong rule of law will remove practitioners from power.

This analysis indicates a correlation between transitional justice and economic development. In the case of Argentina, transitional justice was employed within a society that could withstand the pressures justice puts on a new democracy, and served to benefit development. Guatemala’s case highlights the importance of legitimate political commitment to promoting peace and autonomous governmental institutions to ensure transitional justice is not undermined by politics. The correlation between transitional justice and economic development in Guatemala has not been uniformly positive, as it often distracted from many of the structural issues plaguing Guatemalan society. The value of a transitional justice program cannot be fully
realized without first reforming the state’s oppressive governmental framework. For that reason, future successful transitional justice strategies should employ a sequencing framework which first focuses on consolidating democratic institutions, prior to expending resources on justice, truth and reparation programs.

Transitional justice is commonly interpreted as a therapeutic tool to help a society come to terms with its history of human rights abuses. I argue, however, when implemented within the context of a legitimate transitional democracy, transitional justice has a pragmatic value. When past crimes are addressed and victims are offered redress, a greater standard of living can be achieved in post-authoritarian societies.
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