



THE YALE REVIEW OF
INTERNATIONAL STUDIES

SOLDIERS OF GOD



THE MUSLIM
BROTHERHOOD
AND EGYPTIAN
DEMOCRACY



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Dear Reader,

We are pleased to present you with the fourth annual edition of the Global Issue. The Global Issues is our mark key international issue in which we feature some of the best undergraduate scholarship from students across the world. The mission of this annual issue is to feature the voices and perspectives of students from outside the United States — a guiding principle of our tenure as Editors-in-Chief.

We would like to take this portion of the letter to thank our proceeding Editors-in-Chief, Tyler Jager and Numi Katz, for their continued support, guidance, and work to help make YRIS the publication it is today. Throughout the ongoing Covid pandemic, Tyler and Numi have guided YRIS through numerous challenges and changes. We hope to follow your leadership in transforming the publication for the 2021-2022 cycle.

We would further like to thank our incredible design staff, editors, and all the individuals who submitted their work to our publication. We recognize the incredible privilege and support system we have as we deliver on our promise of sharing student scholarship through our medium. Our board, especially, has been instrumental in helping us resuscitate an in-person YRIS environment — from training our writers to scouring for international writing talent, our staff continues to inspire us to deliver.

Our global issue this year focuses on the theme of **justice amidst conflict**. In light of the COVID-19 pandemic and the several structural issues it highlighted, we hope that the work of our featured authors sheds greater light on issues truly significant to the development of the modern status quo in the international relations landscape.

Sincerely,
Vishwa Padigepati and Blake Bridge
Editors-in-Chief

MOSTAFA EL SHARKAWY

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Essays

Soldiers of God

The Muslim Brotherhood and Egyptian Democracy

On January 25, 2011, popular demonstrations exploded across Egypt to demand the ousting of Hosni Mubarak's autocratic regime.¹

¹ Beverly Milton-Edwards, *The Muslim Brotherhood: The Arab Spring and its Future Face* (London: Routledge, 2015), 3.

On January 25, 2011, popular demonstrations exploded across Egypt to demand the ousting of Hosni Mubarak's autocratic regime.¹ Curiously, the democracy-driven revolution enjoyed the backing of Egypt's most powerful Islamist organization: the Muslim Brotherhood. Since its conception in the early twentieth century, this organization has sustained itself within Egyptian identity by opportunistically adapting to the moment's socio-political fervor. Given its ambivalent relationship with democracy, the Brotherhood's contributions to the 2011 revolution beg the question: can the organization be committed to democracy? Analyzing the Brotherhood's ideology, leadership, and relationship with the military lends validity to the argument that democracy is not a central belief of the organization. However, given that Egypt's only democratically

elected president was a member of the Brotherhood, the organization has sufficiently proven its adaptability to democracy,

This paper argues that periods of internal strife following the death of its founding member, particularly the isolationism of the older generations, and its ideological warfare with Gamal Abdel Nasser reduced democracy to an ideological accessory often sacrificed for more lucrative ideological goals. The Muslim Brotherhood exercised multiple roles – it was a social idea, a political organization, a militant group, and a religious advocate. During critical periods, such as Gamal Abdel Nasser’s regime and the 2011 Revolution, it utilized those roles strategically. It is this multiplicity and adaptability of agendas that has characterized the Brotherhood as preachers, terrorists, and activists simultaneously, ultimately precipitating the demise of its democratic experiment.

The Formative Years: *Dawa’a* at Coffee Shops

A schoolteacher in rural Egypt, Hasan Al-Banna found himself disillusioned by the exploitation of British colonialism.² He believed that Egyptian society could only be saved from imperialist exploitation through religion,³ inspiring the Brotherhood’s iconic slogan: “Islam is the Solution.”⁴ Since the organization’s founding in March 1928, the Brotherhood was marred by an organizational detail that would haunt the organization until its demise: an ill-defined relationship between the leader and the followers. Originally, the Brotherhood’s goals were to return Egypt to purist Sunni Islam. It planned to utilize *dawa’a* (act of inviting one to Islam), political organization, cultural-educational unions, and commercial companies to achieve this goal.⁵ It was a social idea, malleable in form but rigid in ideology. The organization sought to permeate every facet of Egyptian society, alarming secularist, nationalist, and liberal groups.

In his memoir, *The Call and the Preacher*, Hasan Al-Banna explains his *dawa’a* approach and in doing so invents a morphing Islamist organization. He argues that Islamic teachings have been missing from Egyptian society,⁶ convincing his peers that their first *dawa’a* should be to people at coffee shops in order to reach ordinary Egyptians.⁷ Al-Banna’s approach defined the Brotherhood’s identity and cemented its role as a socioreligious actor. This organization would not be a Muslim organization preaching to Muslims in a mosque; it would be applying Islamic teachings to everyday life. So, while



"THE MUSLIM BROTHERHOOD EXERCISED MULTIPLE ROLES – IT WAS A SOCIAL IDEA, A POLITICAL ORGANIZATION, A MILITANT GROUP AND A RELIGIOUS ADVOCATE."

2 Richard P. Mitchell, *The Society of the Muslim Brothers* (New York: Oxford University Press, 1993), 7.

3 Mitchell, *The Society of the Muslim Brothers*, 12.

4 Milton-Edwards, *The Muslim Brotherhood: The Arab Spring and its Future Face*, 3.

5 Mitchell, *The Society of the Muslim Brothers*, 14.

6 Hasan Al-Banna, *Memoirs of the Da'wa and the Preacher* (Kutub Arabiyah, 2007), 65.

7 Al-Banna, *Memoirs*, 66.

democratic values were absent during the Brotherhood's formative years, its practicality, inclusivity, and adaptability made it a formidable socio-political force regardless. Notably, despite the Brotherhood's potency and discontent with the state of affairs it did not challenge the government. The organization, through Al-Banna's heavy-handed guidance, distinctly defined itself as an activist group, not a political organization. The fact that the goals of the organization revolved around those of the leader pointed to a broader struggle for authority within the organization: what would happen when Al-Banna is gone? Especially given that Al-Banna personally believed democracy provided accountability, his criticisms revolved around colonialism.⁸

Until 1952, most organized groups in Egypt were obsessed with the singular task of ridding the country of colonial influences – an obsession that proved to be favorable in expanding the Brotherhood's presence. Al-Banna, during the 1919 Revolution, explained that service to the nation is a jihad (struggle) that cannot be shied away from.⁹ In this regard, the Brotherhood collaborated with secular nationalist groups, like the nationalist Free Officers Movement. Even their fiercest critics, like Gamal Abdel Nasser, had short-lived membership within the Brotherhood because of its extensive infrastructure.¹⁰ It is during this time that the Brotherhood established its paramilitary organization, the Special Apparatus, to combat colonial influences and support the Palestinian nation-state against Zionism.¹¹ The evidence that suggests Al-Banna was willfully blind to the militancy of the Brotherhood demonstrates the group was loosely defined, particularly in the militant realm.¹² Nonetheless the significance was profound – the Brotherhood's transnational ambitions were realized in the establishment of the Brotherhood's Palestinian offshoot, Hamas.¹³ More significantly, it signified that the organization grew faster than it could keep up with, meaning that the multiplicity of its roles was increasingly difficult to discern – fewer and fewer Egyptians identified the Brotherhood as a social organization. Despite early religious and social activities, the internal struggle for direction after Al-Banna's death and clash with Nasser forced an expansion into politics and militancy – fertile ground for radicalization – where the organization could best survive.

The Prison Years: Radicalism, Qutb and the Nasserist State

Following the assassination of Al-Banna in February 1949, the Brotherhood's General Guideship fell to Hasan Al-Hudaybi, a man unable to tame factions within the organization, especially the Special Apparatus.¹⁴ Al-Hudaybi's personal struggle with Nasser led an all-out war with the state, costing the Brotherhood precious socio-political capital.

8 Khalid Al-Anani, *Inside the Muslim Brotherhood: Religion, Identity and Politics* (New York: Oxford University Press, 2016), 7.

9 Al-Banna, *Memoirs*, 42.

10 Fawaz A Gerges, *Making the Arab World: Nasser, Qutb, and the Clash That Shaped the Middle East* (Princeton: Princeton University Press, 2018), 164.

11 Mitchell, *The Society of the Muslim Brothers*, 56.

12 Kramer Gudrun, *Makers of the Muslim World* (London: OneWorld Publications, 2010), 100.

13 Shaul Bartal, *Jihad in Palestine: Political Islam and the Israeli-Palestinian Conflict* (London: Routledge, 2015), 44.

14 Barbara Zollner, *The Muslim Brotherhood: Hasan Al-Hudaybi and Ideology* (Routledge, 2009), 2.

This period significantly fragmented the Brotherhood and transformed the organization into one that was unrecognizable to the Egyptian people. It was at this point that the Brotherhood adapted to a hostile environment, when its ideological goals were threatened radicalism and militancy became a convenient justification for rank-and-file members.

When the Free Officers and the Brotherhood each took credit for the departure of colonialism from Egypt, the organizations engaged in an ideological war.¹⁵ Clearly, the Brotherhood's own ideological force was much stronger than the Free Officers. Nasser's confidant conceded that their movement rested on "transcendental hopes."¹⁶ Nasser's recognition of this deficiency forced him to marginalize the Brotherhood from all spheres of influence. Although this frustrated Al-Hudaybi, Nasser had no interest in power-sharing or democracy.¹⁷ Nasser's ability to obtain political legitimacy through non-democratic means normalized autocracy and contributed to an illiberal culture that would hamper the Brotherhood in 2011. Since democracy lacked intrinsic value and because it was politically costly, the Brotherhood chose an alliance with Nasser that guaranteed its temporary survival. However, years of Nasser-manufactured criticism created a menacing image of the Brotherhood in the eyes of the public as an organization that restricts private life and monopolizes the definition of a Muslim.¹⁸ It is this public campaign, led by one of Egypt's most popular figures, that contributed to a generational fearfulness and mistrust of the Brotherhood. In 2011, when the Brotherhood would compete in elections they could not recast their image. They could not be both activist and terrorist.

The attempt on Nasser's life by the Special Apparatus in 1954 caused Nasser to ramp up his repression of the Brotherhood and gave rise to a radical adaptation of Al-Banna's social idea. As a consequence of the vague relationship between the leader and the led, radicalism caused factionalism within the organization. Nasser used the attempt on his life to exterminate the Brotherhood from public life; show trials painted the Brotherhood as terrorists, many members were jailed without charge, and more died in prison.¹⁹ During these years, the Brotherhood's cohesion dissipated and, in its place, as justification, radicalism spurred.

Among those arrested was the Brotherhood's propagandist, Sayyid Qutb, who theorized about the Islam's role in society and the concept of jihad while in prison. In his book, *Social Justice in Islam*, he explains that the separation of religion and politics is "Western" and should not be accepted in Islamic societies.²⁰ In this, Qutb envisioned a role for Islam that would be rejected by most Egyptians but embraced by many Brothers. While Al-Banna believed in the political system, Qutb had no use for it at all. Those prisoners suffering at the hands of repression adopted Qutb's extremist view, depicted in his manifesto, "Milestones." In that text, he explains that no political or material power should hinder one's ability

15 Gerges, *Making the Arab World*, 77.

16 Gerges, *Making the Arab World*, 79.

17 Gerges, *Making the Arab World*, 81.

18 Gerges, *Making the Arab World*, 95.

19 Barbara Zollner, *The Muslim Brotherhood: Hasan Al-Hudaybi and Ideology*, 38.

20 Sayyid Qutb, *Social Justice in Islam*, trans. John Hardie and Hamid Algar (Islamic Publications International, 1999), 203.



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to preach Islam and that those thinkers who say Islam has only prescribed defensive war are not real Muslims.²¹ Qutb's distortion of the conventional understanding of jihad to an existential war resonated with some members who would carry out actions that would depict the Brotherhood more as terrorists than preachers.²² Additionally, Qutb expands the understanding of the Muslim homeland and radicalized transnational ambitions. It was under these pretenses and this argument that some inmates undertook a radical mission upon release, including Mustafa Shukro who established the militant group Al-Takfir wa al-Hijra. Other followers of Qutb's Milestones were Al Qaeda's Dr. Ayman Al Zawahiri and the Islamic State's Abu Musab Al-Zarqawi.²³ That radicalism's deep penetration of the Brotherhood undermined its charitable and social activities. Factionalism created both a new perception of the Brotherhood in the eyes of Egyptians and in the eyes of the West.

The prison years temporarily disarmed Nasser's rivals, but they also allowed Qutb's radical and violent agenda to fester in Egypt's prisons. Nasser's defeat in the Six-Day War killed Pan-Arabist ambitions in the region and created an ideological vacuum.²⁴ It was an opportunity for the Brotherhood to exercise its transnational goals and expand its reach across the region. Nasser's successor, Anwar Sadat, allied himself with the U.S. for this reason; he recognized the efficacy of the Brotherhood and the threat it posed to Egypt's national interests. Qutb's influence in particular exemplified both an internal schism but also the weaponization of his theoretical teachings. While the 1948 Palestinian War saw the Brotherhood's first regional military excursion, Qutb's beliefs were operationalized in the creation of Al-Qaeda in Pakistan and ISIS in Iraq. Qutb's successful inspiration of the militant forced the West to endorse monarchical regimes, weakening the cause of democracy in Egypt and the Middle East. While this radicalization made its way into factions, the core Brothers attempted to work within the system under President Mubarak.

The Mubarak Years and the 2011 Revolution: Everything to Everyone

Hosni Mubarak's loosening of political organization restrictions provided an opportunity for the Brotherhood to advocate for mainstream legitimacy.²⁵ After the Mubarak regime agreed to hold parliamentary elections following pressure from the Bush Administration, the Brotherhood won 20% of the seats in Parliament, making it the second-biggest bloc after Mubarak's National Democratic Party.²⁶ Under Mubarak, some leading reformists in the organization argued that the Brotherhood's message was being misconstrued and that Islam requires government to be chosen by the people but governed according to Islamic rule.²⁷ These arguments from traditionalist factions became so intense that when

21 Sayyid Qutb, *Milestones* (Kazi Publications, 1964), 65.

22 Sayyid Qutb, *Milestones*, 71.

23 Paul Berman, "The Philosopher of Islamic Terror," *The New York Times Magazine*, March 23, 2003, <https://www.nytimes.com/2003/03/23/magazine/the-philosopher-of-islamic-terror.html>.

24 Gerges, *Making the Arab World*, 19.

25 Tarek Osman, *Egypt on the Brink: From Nasser to the Muslim Brotherhood* (New Haven: Yale University Press, 2013), 181.

26 Mariz Tadros, *The Muslim Brotherhood in Contemporary Egypt: Democracy Defined or Confined?* (Routledge, 2012), 24.

27 Tadros, *The Muslim Brotherhood in Contemporary Egypt*, 51.

protests erupted on the 25th of January, the Brotherhood chose to take no sides at all. In retrospect, siding with democratic reforms is an easy choice but by design, the old guard of the Brotherhood hampered quick decision making. The hesitancy of the Brotherhood's leadership, conditioned to reject reform, caused a repeat of the organization's position in the 1952 Revolution. When it tried to be preacher, activist, and politician, the Brotherhood could not successfully be any of them at all.

The youth groups that organized demonstrations against the Mubarak regime consisted of many of the Brotherhood's own youth leaders. Young Brotherhood leaders, like Islam Lotfy, joined the protests despite orders expressly forbidding it. It was this division between the traditional old guard occupying the leadership posts and the reformist youths that carry out day-to-day operations which exemplified an Al-Hudaybi era factionalism. When the Brotherhood finally endorsed the protests, it took an Islamic approach that was rejected by those at the centre of the revolution – young Brotherhood members, by virtue of the leadership structure, were forced to resign or be sidelined. Lotfy was forced to resign for his dissent, but he still believes that had he followed instructions, Mubarak would have remained in power.²⁸ Members like Lotfy demonstrate the ways that the Brotherhood became victims of its own actions. As Al-Hudaybi engaged with Nasser only to be imprisoned by him, his successors did the same with Mubarak only to face the same fate by the people, not the state. A consequence of monolithic leadership and lopsided relations with the state, reform, democratic or otherwise,



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became unwelcome and ideology and the religious advocate role reigned supreme.

In 2011, the Brotherhood leadership's hesitancy to reform saw a missed opportunity to capitalize on beneficial democratic reforms. Following Mubarak's ouster, senior leadership at the Brotherhood entered talks with the Mubarak regime in this it betrayed the revolution but secured its survival.²⁹ The Brotherhood attempted to be everything to everyone, from a status quo actor benefitting from the mercy of the military regime to a proponent of reform and democratization. The multiplicity of roles became harder to maintain. Many Egyptians saw the Brothers as opportunistic, religious fear-mongers or terrorists. Still, the Brotherhood enjoyed the largest socio-political infrastructure in the country and so

²⁸ Tadros, *The Muslim Brotherhood in Contemporary Egypt*, 33.

²⁹ Tadros, *The Muslim Brotherhood in Contemporary Egypt*, 32.



when parliamentary and presidential elections came in 2012, they won a majority and the presidency.

Despite the decision to include Christians and minorities within

the political wing of the Brotherhood, the organization was opposed by powerful actors in Egyptian society. The armed forces moved to take away key parliamentary powers and limit the civilian powers of the president.³⁰ The Mubarak-era media continued to exaggerate and sometimes falsify its reporting on President Mohammad Morsi, even suggesting that he was planning the sale of the Pyramids of Giza.³¹ One might argue that criticism of government is a healthy and central aspect of democracy. However, Egypt's lack of democratic culture that began with Nasser and an inherent resistance to Islamist ideals made criticisms ill-willed. It's carefully crafted image in 2011 could

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not be accepted by those powerful agents. It's unwillingness to compromise made it ineffective, often authoritarian, within party politics. Having failed to receive a popular mandate, despite elections, the armed forces removed President Morsi in 2013.³² The organization's history cannot be separated from that of the military regime, in fact, its survival rested on it. Unlike under Nasser, the internal strife and multiplicity of roles could not withstand repression, but the movement continued to spread abroad.

The Transnational Movement

For most of its history, the Brotherhood has acted as a shadow government, influencing the decisions of the military regime and while it never achieved power permanently, it inadvertently affected domestic and foreign policy decisions. In 1948, the Brotherhood lent both material and ideological support to a cause that would later be adopted by Hamas, an organization that would threaten Egypt's relationship with Israel. Its anti-Israel sentiment destabilized the military regime. One of its former members assassinated Anwar Sadat.³³ There is no doubt that its alliance with other Islamist groups like Hamas have contributed to the Palestine-Israel conflict since 1948. The repression of the Brotherhood, particularly after the Manshiyya incident and Morsi's ouster, created an exile community in the Middle East and Europe that has succeeded in creating an unlikely transnational movement envisioned by Al-Banna and Qutb. While some have argued this has created a web of jihadist cells, others

30 Milton-Edwards, *The Muslim Brotherhood: The Arab Spring and its Future Face*, 45.

31 Rod Nordland and Mayy El Sheikh, "Contrary to Gossip, Pyramids Have No Date with the Wrecking Ball," *The New York Times*, July 23, 2012.

32 Milton-Edwards, *The Muslim Brotherhood: The Arab Spring and its Future Face*, 48.

33 Joseph Finklestone, *Anwar Sadat: Visionary Who Dared* (London: Routledge, 1996), 13.

insist that in Europe the Brotherhood was able to reconcile with secular democratic governance.³⁴ Perhaps this is evidence that democratization of Brotherhood values is possible, just not in the Middle East, where the opportunity to monopolize power is too great. Furthermore, its ideological opposition to communism jeopardized Nasser's relationship with the Soviet Union. If the Brotherhood could wield power, it could tip the scales in the Arab Cold War and end Soviet influence in Egypt.³⁵ The ideological influence of Qutb on the Afghanistani mujahideen even contributed to the USSR's defeat in 1989.

Situated outside the religious realm, the Brotherhood challenged the regional interests of established theocracies in the Middle East. Regional alliances, particularly in the Gulf, are interested in crushing the Brotherhood because of the threat it poses to their monopoly over religious authority. These Gulf nations allied with the West were equally fearful of jihadism. It is this co-dependent policy between Gulf monarchies and Western nations to dispel Islamist influences in the region that may be chiefly responsible for the lack of democratization. This is not to say that

the Brotherhood would have surely succeeded absent this policy, but it severely undermines democratic political culture in the region. The rise of the Brotherhood in the 2011 forced the U.S. to decide between geopolitical interests or moral ones – evident by President Obama's late backing of the revolutionaries,³⁶ the Brotherhood's rise unveiled American hesitancy with a non-secular conception of democracy. The Brotherhood's ability to unify Islamist groups

played an important role in policy towards Palestine, the Arab Cold War and the West's Middle East policy. While it may not have established an Islamic caliphate, the Brotherhood has influenced governments and guided the course of Islamist movements around the world.

Conclusion

As activists, militants, politicians, and preachers, the Brotherhood has changed the socio-political landscape of the Arab world. At conception, the organization was designed around the ideals of its leader and became subject to internal struggle over the judgement of that leader. Throughout its history, internal divisions emerged to reflect and adapt to the social currents



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34 Milton-Edwards, *The Muslim Brotherhood: The Arab Spring and its Future Face*, 168.

35 Annika Elena Poppe, *US Democracy Promotion after the Cold War: Stability, Basic Premises, and Policy towards Egypt* (London: Routledge, 2019), 159.

36 Annika Elena Poppe, *US Democracy Promotion after the Cold War: Stability, Basic Premises, and Policy towards Egypt* (London: Routledge, 2019), 182.

of the time. It was the inability of the structure, enabled by leadership, that made the values of the Brotherhood vulnerable to radicalism, as with Sayyid Qutb, and reform, as with Islam Lotfy. Ideologically, the Brotherhood has shown that it can operate within a democratic system, but its factionalism served to its detriment. Internationally, its potency changed the course of Western-led democratization in the Middle East and forced relationships with Arab monarchies. And while a Brotherhood-led democracy in Egypt would complicate the strategic Western interests in Israel and Egypt, the chances of its success are slim. The internal splintering – a symptom of the organization's structural leadership – compounded by foreign interference and hostile domestic culture cannot equip the Brotherhood with the necessary discipline to compete in democratic elections. Its ideological adaptability has proven to be a blessing and a curse; ideology helped the Brotherhood survive the Nasserist state, but doomed its only chance at power. Throughout its history, survival and opportunity motivated the Brotherhood's stance on democracy – not an intrinsic belief. Perhaps the Brotherhood will re-emerge in another revolution but, at that time, it must contend with its roles and divisions.

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Development or Dependency?

A Critical Analysis of Structural Adjustment in Argentina

The degree of political determination that a nation can exercise is very often contingent on its ability to determine a broad index of economic structures and practices.

This degree of autonomy is also heavily associated with the specific contours of the global economic system within which it is placed. The nation of Argentina is no exception. It is no secret that within the vast system of the global economy, certain regions have been deferentially treated in relation to others. Some of these very same regions have intentionally structured the global political economy (GPE) in particular ways based on their national interests. The tumultuous history of political economy in Latin America garnered widespread attention in the 20th century and has been the impetus for rich theoretical insights into the inner workings and power struggles of the GPE. This paper focuses on the structures and practices which characterize the current landscape of international political-economic relations and their effect on Argentina in the 20th-century.

This research paper aims to thoroughly explicate the political

economy of Argentina and the structural adjustment programs (SAPs) that it has implemented at the behest of keystone international economic organizations (KIEOs) such as the International Monetary Fund (IMF) and the World Bank (WB). Here, a historical and theoretical exegesis of the SAP regime will be instructive to my analysis. In the process, I tackle numerous aspects of the GPE concerning Argentina, including the country's debt and monetary crises, its trade regimes, and the overarching transition towards economic liberalization in the late 20th-century. I will further examine SAPs and Argentina through the lens of the critical political-economic theory known as dependency theory. In doing so, I attempt to construct a political theory of economic institutional determination and sustainable development and growth. In this paper, I argue that the implementation of structural adjustment policies in Argentina by KIEOs such as the IMF and World Bank have had a negative effect on development and curtailed institutional economic determination in the country. I will be deploying dependency theory as the analytical framework to explain the role of SAPs in the developmental and institutional shortcomings as well as to explain the transition toward neoliberal hegemony imposed on Argentina.



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DETERMINATION IN THE COUNTRY. "**

During the 1980s, many heavily indebted developing nations adopted an index of economic restructuring policies now famously referred to under the structural adjustment umbrella. A wide body of scholarship strongly suggests that the policy prescriptions attached to the idea of structural adjustment were not merely a host of prescriptive economic measures aimed at increasing growth in developing nations but consisted in a systematic subversion of existing institutions to conform to specific workings of the market.¹ Essential features of these programs included

industrial privatization of formerly nationalized sectors, regulation rollbacks, and currency convertibility schemes that aimed to attach capital inflows with the nation's internal currency. It is important to note that many, if not all, of these policy reforms were grudgingly accepted by the politicians of developing countries through "conditionality" programs wherein debt-ridden countries received much-needed loans from these KIEOs on the condition that they carried out policy changes. These reforms saw entire state institutional practices and administrations discarded under the auspices of capital aid and necessary macroeconomic stability offered by such programs.

¹ Anne Marie Ejdesgaard Jeppesen, "Economic Adjustment and Cultural Change: Peronist Unions in Argentina 1990," *International Journal of Manpower* 15, no. 9 (1994): 77-88; Bernhard Reinsberg, Alexander Kentikelenis, Thomas Stubbs, and Lawrence King, "The World System and the Hollowing Out of the State Capacity: How Structural Adjustment Programs Affect Bureaucratic Quality in Developing Countries," *The American Journal of Sociology* 124, no. 4 (2019): 1222-1257; Manfred B. Steger and Ravi K. Roy, *Neoliberalism: A Very Short Introduction* (Oxford: Oxford University Press, 2010); Miguel Teubal, "Rise and Collapse of Neoliberalism in Argentina: The Role of Economic Groups," *Journal Developing Societies* 20, no. 3-4 (2004): 173-188.

Argentina's national economy, like many others, became the subject of a structural adjustment regime dominant among developing countries during the outset of the neoliberal era. This era, however, is only the latest juncture to emerge out of the paradigmatic relations of the post-war global economy between the core and periphery nations. Prospects of development and the imposition of developed countries' mode of governmentality was one of the main theoretical subjects of the highly popular development framework in the 1960s known as dependency theory. Dependency theory was the theoretical brainchild of Marxist and structuralist approaches to development relations that had a targeted focus on development in Latin America.²

Dependency theory was frequented by developmentalist intellectuals, including Argentine economist Raul Prebisch, Andre Gunder Frank, and former Brazilian president Fernando Henrique Cardoso.³ The primary thrust of their work, and the theory generally, was to dissect the structural factors of development in Latin American regions and the obstacles to development by the intentional structural relations of global trade and finance between DCs and LDCs. The dependency school rejected conventional notions that predicted increasing growth and modernization by way of global trade and financial integration of these LDCs and instead argued that periphery nations would encounter declining terms of trade.⁴ The theory imputes a structural and relational struggle between the two paradigms of the GPE in which developed nations not only benefit from favorable trade conditions but also impose structural practices in LDC economies that ultimately disadvantaged them and further reinforced a dependent relationship. Therefore, a central claim of dependency theory is that LDCs are bound to experience sclerotic growth by the very fact of their economic association with DCs.

Such a relationship encourages financial and trade penetration into these LDCs by DCs. More than this, dependency theory aimed to shed light on the internal factors that simultaneously reinforced the relation and stifled prospects of autonomous sustained growth over time. For instance, as Tausch notes, the advancement of modernization brought about by dependent development limits the formation of a national entrepreneurial and middle class and consolidation of labor strength. The integration issue, argued Sunkel, was its partial nature which saw a certain class of national elites and entrepreneurs engage with and incorporated into the enterprise of transnational corporations.⁵ The remainder of the workforce consisting of the middle and working-class would be subjected to disarticulation from the social and economic benefits of capital penetration thus consolidating a stark class divide. In response, developmentalist economists like Prebisch encouraged protectionist trade policies such as import barriers which would serve to protect LDC industries from exploitation by core countries; many of which were adopted by politicians during this period only to be reconstituted or completely abandoned during the neoliberal turn.⁶

2 Theodore H. Cohn, *Global Political Economy: Theory and Practice* (New York: Routledge, 2016).

3 Arno Tausch, "Globalization and Development: The Relevance of Classical "Dependency" Theory for the World Today," *International Social Science Journal* 61, no. 202 (2010): 470.

4 Cohn, *Global Political Economy: Theory and Practice*.

5 Tausch, "Globalisation and Development," 470.

6 Roy and Steger, *Neoliberalism*.

A Brief History of Argentine Political Economy

It is often remarked that Argentina is the only country to be regarded as developed at the beginning of the 20th-century only to become a developing one at the beginning of the twenty-first. A massive influx of foreign capital helped to bolster an export market of agricultural goods such as grain, meat, leather, and wool. Overall, the large South American country experienced rapid economic growth during the early twentieth century with per capita income higher in the country than many prominent European countries shortly before the onset of the first world war.⁷ Some scholars, however, have argued that much of this growth occurred in lieu of equitable distributive economic policies.⁸ The agricultural sector, for instance, was dominated by wide-reaching privatization controlled by an oligarchy that would take advantage of most of the benefits of agricultural expansion prior to World War I and exercised cast influence in political affairs as well.

The political-economic trajectory of the nation would change fundamentally with the elections of its most pivotal political leader Juan Domingo Perón in 1946. Perón had founded the nationalist-populist Justicialist party in 1945 after a military junta seized power in 1943. He was democratically elected in 1946 based on intransigently populist sentiments. Perón's presidency has been categorized as dictatorial and has even drawn comparisons to fascistic regimes in twentieth-century Europe, with observers confirming that Perón drew much inspiration from fascism's tenets.⁹ "Perónism" consisted of inherently nationalistic economic and political policies which emphasized the necessity for national economic independence and determination as well as the assurance of social justice and labor security.¹⁰ Both Juan Perón and his wife (and eventual successor) promoted protectionist policies as prescribed by Raul Prebisch. Immediately after World War II, the Peróns utilized policy instruments such as "import and export taxes, import controls, exchange rate and wage policies to turn the domestic terms of trade between agricultural and manufactured goods in favor of the urban industrial and working classes."¹¹ Peronism's communitarian ethos, underscored by fervently distributive policies to the urban working class and strong political alliances between his administration and the labor union, garnered wide support from the voting base throughout his tenure. Support for Peronism largely persists to the present day.¹²

Unadulterated Peronism and its attendant economic policies did not go unchallenged, however, nor were these policies unassailable when it came to prospects of economic prosperity. Protectionism would eventually see the decline of agricultural production and sclerotic export

7 Nauro F. Campos, Menelaos G. Karanasos, Bin Tan, "From Riches to Rags, and Back? Institutional Change, Financial Development, and Economic Growth in Argentina since the 1890s," *The Journal of Development Studies* 52, no. 2 (2016): 206-223.

8 Werner Baer, Pedro Elosegui, and Adrés Gallo, "The Achievements and Failures of Argentina's Neo-Liberal Economic Policies," *Oxford Development Studies* 30, no. 1 (2002): 63-85.

9 Ejdesgaard Jeppesen, "Economic Adjustment and Cultural Change," 83.

10 Ejdesgaard Jeppesen, "Economic Adjustment and Cultural Change," 85.

11 Baer, Elosegui, and Gallo, "Achievements and Failures," 64.

12 María Victoria Murillo and S.J. Rodrigo Zarazaga, "Argentina: Peronism Returns," *Journal of Democracy* 31, no. 2 (2020): 125-136.

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sectors which contributed to the country's balance of payment crises in the 1950s.¹³ Eventually, Perón was ousted in 1955 and exiled to Spain for nearly two decades before dying of pneumonia in 1974. Shortly after, Juan Perón's wife Isabel succeeded her husband as president of Argentina. The country continued to face mounting tumult due to several economic and political crises. A military coup against the democratically elected Isabel eventually usurped power and ushered in the transition toward neoliberal governance in the country.¹⁴

The military junta which organized against Isabel Perón's democratically elected government began to introduce initial neoliberal reforms. During the seven-year military dictatorship (1976-83), numerous policy measures were implemented which only vaguely tended down the path of the neoliberal revolution taking place across the globe during the late 1970s and 1980s. Known as "Proceso," this dictatorial regime designed its policies to favor increased financial speculation. Financial reforms occurring during 1977 made financial operations more flexible and foreign debt in Argentina much more prevalent. Argentine foreign debt raised from \$7 billion USD at the beginning of the dictatorship to \$46 billion USD at its end in 1983.¹⁵ The military dictatorship collapsed shortly after their defeat in the short-lived Falklands War with Great Britain in 1982. Newly elected president Raul Alfonsín of the Union Civica Radical party (UCR) would come to inherit a rapidly corroding national economy, inflation and currency debt crisis along with the national outrage associated with such crises.¹⁶ Crises for which he and his eventual successor, Perónist leader Carlos Menem, would respond with more aggressive neoliberal reforms and structural adjustment policies than had been heretofore achieved in the country. The 80s and 90s were two pivotal decades in Argentina marked not merely by economic and political crises but a sharp and widespread transition in policy and governance practices toward neoliberalism that would have lasting impacts on its prospects for political determination and economic development.

The Role of Structural Adjustment Programs

The KIEOs, especially the IMF and WB, have been two mainstays of post-war international economic coordination and governance as well as being the fundamental structural vestiges of economic distribution and development. SAPs have been a tool widely deployed by the KIEOs to address underdevelopment in the global south for the last three decades with varying degrees of effectiveness. Blanton et. al. mentioned other IMF and WB lending programs such as Stand-By Agreements, Extended Fund Facility programs. SAPs are comprised of a combination of two types of policies disambiguating stabilization and structural adjustment. The former is tackled by the IMF and the latter the World Bank.¹⁷ According to the researchers, stabilization policies are those that attempt to "return an economy to equilibrium path that was followed prior to a shock" and

13 Baer, Elosegui, and Gallo, "Achievements and Failures," 64.

14 Roy and Steger, *Neoliberalism*.

15 Teubal, "Rise and Collapse of Neoliberalism in Argentina," 175-176.

16 Roy and Steger, *Neoliberalism*.

17 Robert G. Blanton, Shannon Lindsey Blanton, and Dursun Peksen, "The Impact of IMF and the World Bank Programs on Labor Rights," *Political Research Quarterly* 68, no. 2 (2015): 324-326.

are typically short-term and corrective in nature.¹⁸ Meanwhile, structural adjustment takes aim at a more sustained growth and development issues by addressing “better supply responses to market liberalization and efficient macroeconomic management.” Moreover, the major objectives of SAPs are as follows: “(1) macroeconomic stability; (2) the need for prices to reflect relative scarcities; and (3) a reduction in the role of the state in economic affairs.” These objectives are achieved by employing the following policies instruments and/or practices:

To achieve the objectives of SAPs, the primary policy instruments employed are (1) exchange rate adjustment, primarily devaluation; (2) control of the money supply and credit ceilings; (3) interest rate policy, allowing interest rates to respond freely to market forces; (4) debt rescheduling; (5) fiscal policy, including measures to reduce public expenditure and mobilize resources; (6) deregulation of prices of goods, services and factor inputs; (7) liberalization of trade and payments. (Kayira & Hope 1997, 118)

SAPs have long been touted by the IMF and WB as viable solutions for developing regions to tackle institutional challenges. More than this, however, it has long been argued that the SA policy regime, including and especially in Argentina, was a forceable imposition of liberalized economic governmentality at the behest of the United States, which then and now wielded vast influence on the incumbent KIEOs. As I will attempt to show, SAPs affected numerous aspects of Argentina’s economy since its subtle to rapid transition to a neoliberal mode of economic governance. Effects that run the gamut of trade, currency stability, union power, and productive capacity.

Effect on Labor and Trade

One prevailing policy conditionality that came along with the SA or the “Washington Consensus,” was the immediate liberalization of trade. In the literature, trade liberalization is often measured as cross-industry tariff cuts on imports.¹⁹ The Menem years, beginning with his election in July 1989, saw a stark reversal of the import substitution industrialization (ISI) strategies in place during the three decades preceding the Second World War.²⁰ National and regional protectionism seen in import substitution and targeted sector subsidies between Argentina and its larger neighboring countries were rapidly replaced by some of the most sweeping liberalization reforms in the global South during this period. Acosta and Montes-Rojas point to the large import tariff reductions implemented on frequently imported resources to the country such as wood, paper, chemical and petrochemical resources, and electrical equipment.²¹ The

18 K.R. Hope and G. Kayira, “Development Policies in Southern Africa: The Impact of Structural Adjustment Programmes,” *The South African Journal of Economics* 65, no. 2 (1997): 118.

19 Guillermo Cruces, Guido Porto, and Mariana Viollaz, “Trade Liberalization and Informality in Argentina: Exploring the Adjustment Mechanisms,” *Latin American Economic Review* 27, no. 1 (2018): 1-29.

20 Teubal, “Rise and Collapse of Neoliberalism in Argentina,” 173-188.

21 Pablo Acosta and Gabriel Montes-Rojas, “Informal Jobs and Trade Liberalisation in Argentina,” *The Journal of Development Studies* 50, no. 8 (2014): 1104-1118.



"ESSENTIALLY, BECAUSE TRADE LIBERALIZATION OPENS UP THE AVAILABILITY OF SUBSTITUTES FOR SYNTHETIC AND NON-TRADED GOODS, PRICE RESPONSIVENESS OF IMPORT DEMANDS WILL LIKELY INCREASE."

large commercial regional trade bloc agreed between Argentina's large neighbors (Brazil, Paraguay, and Uruguay), known as MERCOSUR, was instrumental during this period of tariff reduction too. Their data indicate a sustained decline in import tariffs from 21% in 1992 to 14% in 2003 and an inverse rise in trade openness as a measure of GDP from 14% to 39% across the same period.²²

An associated rise in international imports from \$6.8 billion USD in 1990 to \$32 billion USD in 1998 and an import of goods and services/GDP ratio increase of 12.6% to 22.2% in 2000 are notable here as well.²³

Londero theorizes an effect on price responsiveness on exports due to trade liberalization. Essentially, because trade liberalization opens up the availability of substitutes for synthetic and non-traded goods, price responsiveness of import demands will likely increase.²⁴ This

was the main impetus for the import substitution prescriptions offered by Prebisch in the 1960s as means of trade protection for Argentina's heavily industrialized sectors. Londero argues that reducing protections for exports has a strong positive relationship with the reduction of "labor intensive manufactures in total exports and to an increase in the share of more rent intensive products."²⁵ Liberalization, therefore, may lead to decreased price responsiveness of a country's exports. Argentina during the latter decades of the twentieth century experienced one of the greatest increases in import coefficients in Latin America.

Structural adjustment, whether explicitly imposed by the KIEOs or tacitly implemented, underwrote the intention for global economic liberalization tout court. This is to say, this policy regime and alternate form of economic governmentality bore credence to a rapidly transitioning global economy in which American and British neoliberal economic policies of monetary, trade, and industrial liberalization were instituted as the new norm. That said, the SA policies modestly undertaken first by Alfonsín and then more aggressively by Menem had staggering effects on industry and labor both on economic and political levels. According to Ejdesgaard-Jepesen, Menem's introduction of economic reforms based on intense liberalization, wage restraints, privatizing welfare sectors and other industries, and cutting down public expenditure, was conducted to attract foreign capital investment and gain favor with the IMF and WB to negotiate new credits and payments.

Alfonsín and Menem's administrations saw Argentina go from

22 Acosta and Montes-Rojas, "Informal Jobs," 1106.

23 Baer, Elosegui, and Gallo, "Achievements and Failures," 63-85.

24 Elio Londero, "Trade Liberalization and Adjustment in Argentina," *The Journal of International Trade & Economic Development* 12, no. 3 (2003): 225-246.

25 Londero, "Trade Liberalization," 231.

being one of Latin America's industrial powerhouses, on par with that of South Korea in terms of technological integration into industry and industrial production, to an industrially sclerotic and socially disarticulated nation. Specifically, the Economic Emergency Law passed by Menem in 1989 which eliminated a number of subsidies for manufacturing eliminated redundancies for public sector employment and a State Reform Law which legalized the wide-scale privatizations that took place.²⁶ Under the new regime of accumulation occurring during the mid-1970s dictatorship, which marked the neoliberal structural turn in Argentina, ISI was slowly beginning to be abandoned. Under import substitution and protectionism, large corporate conglomerates in Argentina existed in equanimity with medium and small-sized businesses.²⁷ Other major effects of liberalization in this era were the shift in employment rates and hiring practices. The privatization of public companies and enterprises during the 80s and 90s saw a marked reduction in the total share of public sector employment between 1990 and 2000 all across Latin American, with some of the most severe reductions in public sector labor occurring in Argentina.²⁸

Using a time series between 1980-2001, Cruces et al. examines the strong connections between Argentina's SAPs, including and especially trade liberalization and the increase in labor informality. Informality can be described as a lack of both taxation and regulation compliance by employers and a lack of social protection for workers. This may also include limited ability to contest for higher wages, social security, and other benefits. Across the time frame of the data set, tariffs fluctuated considerably but a continuous downward trend was recorded from an

average of 40.95% in 1980 to 18.73% in 2000, only for it to rise dramatically in 2001 to 25.51%; this is presumably due to the economic collapse experienced by Argentina during these two years discussed later in the paper. Acosta and Montes-Rojas' work show similar results that within both natural resource industry and service industry, labor informality from 1992-2003 increased steadily across crucial manufacturing sectors.

" . . . LARGE CORPORATE CONGLOMERATES IN ARGENTINA EXISTED IN EQUANIMITY WITH MEDIUM AND SMALL-SIZED BUSINESSES."

Their study's findings further corroborate Teubal's work to the extent that labor informality experienced as a result of trade liberalization after SA implementation had a more disproportionate impact on labor belonging to smaller firms. In their words, "In the cross-section, inter-industry differences in tariff cuts increase labor informality being the effect

26 Baer, Elosegui, and Gallo, "Achievements and Failures," 64.

27 Teubal, "Rise and Collapse of Neoliberalism in Argentina," 175.

28 Christoph Hermann, "Another 'Lost Decade'? Crisis and Structural Adjustment in Europe and Latin America," *Globalizations* 14, no. 4 (2017): 519-534.



differentially stronger in industries with a larger share of small-size firms.”²⁹ The neoliberalization of Argentina during these decades is defined by numerous approaches to economic liberalization and financialization that does not strictly harp on trade openness as described here. Nonetheless, the reversal of ISI was a serious hamper in the country’s development prospects. As a result, income distribution began to regress, wages and income of lower-income groups declined, and unemployment and poverty in numerous forms increased.³⁰ Much of these trends, I suggest are the direct results of the specific aspect of trade liberalization within the SA regime adopted since 1983 after the fall of the Proceso dictatorship. Liberalization, in essence, spelt a new form of capital consolidation and accumulation, privileging larger conglomerates of old and new and disarticulating capital from workers.³¹ Menem’s reforms came as a surprise to Argentine labor at the time of implementation. Menem, then leader of the Perónist party, campaigned on the distinctly nationalist protectionist sentiments and values as the Peróns had practiced only to eschew the close ties to labor that had fostered political cooperation between governmental institutions and labor in the 40s and 50s. Perónism had then (and still does) a massive economic and symbolic gravity in the lives of labor unions and ordinary working-class Argentines who viewed Perón as the man who proffered to them a dignified and secured position within the economy and society.³² The subsequent gradual transition to liberalization and asymmetrical capital accumulation can be viewed, in their eyes at least, as no less than political betrayal, regardless of the perhaps earnest economic stabilization efforts of Alfonsín and Menem.

Monetary Crisis

When considering the impact of SA, especially as it came to define Argentina from the mid-1970s onward, one would be remiss to not thoroughly examine the role that the neoliberalization of finance and currency in the country had to play in its various crises. A confluence of factors contributed to the particular direction and scope of economic policy during the military dictatorship. The Proceso made foreign indebtedness a hallmark of its economic policy. The beginning of Argentina’s neoliberal turn included a newly found openness toward financial penetration and speculation within a once populist and highly protectionist economy. National debt began to quickly diverge from the imports or exports of commodities and capital goods to pure finance. Foreign debt and the interest on it rose exponentially by nearly \$39 billion USD.³³ According to Teubal, the major impetus for the accumulation of such debt was Proceso’s preoccupation with the integration of Argentina’s finances with the international financial markets and the monetary liberalization—including floating exchange rates and capital mobility—that defined it then and now. The financial regimes implemented in 1977-79 which introduced full mobility of foreign finance capital and financial activities

29 Cruces, Porto, and Viollaz, “Trade Liberalization,” 16.

30 Miguel Teubal, “Structural Adjustment and Social Disarticulation: The Case of Argentina,” *Science & Society* 64, no. 4 (2000): 466.

31 Teubal, “Rise and Collapse of Neoliberalism in Argentina,” 173-188.

32 Ejdesgaard Jeppesen, “Economic Adjustment and Cultural Change,” 77-88.

33 Teubal, “Rise and Collapse of Neoliberalism in Argentina,” 176.



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all but guaranteed that foreign debt would come to categorize economic affairs in the country for years to come.

Amid the crisis of 1981, public enterprises were deprived by the central government of the liquidity necessary to finance their operations or investments to be put toward public services. Instead, these funds were allocated for speculative uses by the governments in foreign exchange markets, which effectively funded capital flight from the country.³⁴ In 1981, the country experienced extraordinary levels of inflation. Soon to follow was a currency devaluation of 500 percent. A crisis for which the reaction under Alfonsín was to carry out stabilization mechanisms that were inadequate at tackling the deepening economic and social crises of the runaway inflation and mounting foreign debt. The consequences of this pervasive speculation and the failed attempts at stabilization were that foreign creditors in both the United States and Britain as elsewhere exercised enormous leverage over domestic economic policy in Argentina, every ally translating to more vehement IMF conditionalities and, thus, greater structural adjustment. By 1989, inflation had grown to annual rates of 5000 percent.³⁵ Menem would appoint several neoliberal-oriented 'Chicago Boys' (economic thinkers influence by the University of Chicago brand of economic liberalism) to important government posts, including the finance minister Domingo Cavallo. Cavallo introduced the infamous Convertibility Law in 1991 which mandated that the Argentine peso be pegged to the US dollar. This entails that the Argentine currency maintain a fixed exchange rate between itself and the US

dollar.

Under the new currency convertibility law, price indexing was prohibited and the full backing of the US dollar—which became legal tender—was required for monetary circulation. Money creation not backed by the foreign exchange reserves of the Central Bank or by a foreign inflow of capital was distinctly prohibited.³⁶ The embrace of this extreme financial neoliberalization was justified by Cavallo under the promise that the currency peg would curtail inflation by tamping down on devaluation expectations. As Felder and Muñoz-Martinez explain, part of the Convertibility plan was to “back the circulating money with the foreign reserves accumulated in the central bank” and that “the central bank had to sell or buy both currencies without restrictions.”³⁷ Monetary creation in this context was the imbrication of the peso to foreign reserves ultimately entrenching an exogenous mechanism for the creation of money beyond the control of the domestic economic authorities. What convertibility meant was that the prosperity of the Argentine currency was no longer in

34 Teubal, “Rise and Collapse of Neoliberalism in Argentina,” 177.

35 Ben James and Kishore G. Kulkarni, “Critique and Analysis of the Currency Crisis in Argentina,” *The Journal of Applied Business and Economics* 9, no. 3 (2009): 1-13.

36 Ruth Felder and Viviani Patroni, “Austerity and its Aftermath: Neoliberalism and Labour in Argentina,” *Socialist Studies: Journal of the Society for Socialist Studies* 7, no. 1/2 (2011): 259-281.

37 Felder and Patroni, “Austerity and its Aftermath,” 48.

the hands of Argentina.

There were some positives to be taken from the Convertibility plan, at least ostensibly. The liberalization of finance from earlier regimes coupled with the currency peg and low-interest rates on foreign reserves meant a large inflow of capital and a penchant for foreign reserves. The tacit implementation of neoliberal reform that came with a bevy of financial and industrial reversals to their traditionally protectionist values and policies appeared to bring beneficial results. Exports increased, agricultural activity experienced a boom and the country was becoming competitive again.³⁸ The stability experienced after these massive adjustments were short-lived, however. The original success of the swift neoliberalization under Menem and Cavallo was pivotal in securing the legitimacy of SAPs in Argentina even if this came at the real and symbolic expense of labor strength and economic determination which underpinned the early developmentalism of Prebisch and Perón.

A combination of external shocks such as the Mexican liquidity crises in its banking sector in 1995, the precipitous rise in international interest rates not to mention that the Argentine peso was perennially overvalued caused the economy to suffer. Rising interest rates reduced capital inflows to emerging markets, currency overvaluation seriously hampered exports, and competitiveness and the trade deficit became imminent. The abiding currency peg to ensure stability became unsustainable as US reserves became increasingly expensive and the peso continued to devalue, even as outlying deficits payments loomed. Unironically, only an assistance package conditioned by the IMF was able to prevent courage flight and halt an irremediable debt crisis.

The veritable solidification of economic dependence came in 1993 when Argentina joined the Brady Plan with an aim at restricting outstanding debt and the attached interest. The plan would securitize the debt principal and some of the interest into US Treasury bonds. In other words, old bonds were repackaged and consolidated into new bonds with less interest. Although the previously defaulted bonds were now able transformed into new ones with less interest to pay, a new and more intractable cycle of public debt emerged in its place.³⁹

SA reforms presented a surreptitious issue of economic governmental indeterminacy. The sad fate of Argentina after the fall of Perónism in 1976 was that the gradual neoliberalization of the economy steadily relinquished economic (namely financial) determination to an ever-advancing neoliberal order imposed more after each crisis by IMF and WB conditionality as a stopgap to preceding crises. For instance, a price the Argentine people had to pay for the high and stable currency peg was domestic production becoming more expensive thus paving the way for an influx of cheap imports that devastated local industries and jobs. The Argentine economy became more unstable with the implementation and progression of SAPs until it eventually teetered on collapse—only to be rescued by the two KIEOs whose conditions for crisis mitigation expanded over time and fostered greater dependency on relations to the

38 James and Kulkarni, "Currency Crisis in Argentina," 1-13.

39 Felder and Patroni, "Austerity and its Aftermath," 264.

core. A dependency that elides the labor relations to economic stability, social welfare, and development in favor of a regime of capital accumulation for economic elites.

A Critical Theory of Structural Adjustment: Tackling SAPs with Dependency Theory

After exploring the structural reforms made to Argentina's economy since the incumbency of the Proceso through to Alfonsín and Menem, I wish to take a critical view of the SA regime. It is difficult to examine the neoliberal SAPs adopted throughout this period and their gradual ascendance in Argentine political-economic policies without establishing linkages between a newly liberalized mode of economic governance and the manifold interests and institutions at play on a global economic level. The trajectory of Argentina since the Proceso has been the one tending towards greater SAs along neoliberal lines either taken implicitly or under the burden of IMF and WB conditionalities to attain economic relief. The coming and passing of each crisis has resulted in a deeper entrenchment of KIEOs and foreign capital involvement in Argentina's economy. Hence, the structural crises SAs were deployed to solve has only worsened further.



"THE LIBERALIZATION OF FINANCE FROM EARLIER REGIMES COUPLED WITH THE CURRENCY PEG AND LOW-INTEREST RATES ON FOREIGN RESERVES MEANT A LARGE INFLOW OF CAPITAL AND A PENCHANT FOR FOR FOREIGN RESERVES."

Dependency theory was a widely embraced critical analytic framework to view the relationship of the core global capitalist system that enjoys profound influence over KIEOs and the periphery countries that behold it. Moreover, many developmentalist economic strategies such as those contained within the ISI regime were highly sought after by LDCs in the 1960s and 1970s.⁴⁰ However, there was a radical shift in the approaches of many LDCs during the global neoliberal turn in the late 70s and the early 80s. It reoriented economic governance to more open interaction between the core and the periphery under the auspices that liberalization was an indubitable spur to economic

growth and development. So far, this hypothesis has come back with mixed results at best and I shall try to analyze why this might be the case.

SAPs carry out a systematic externalization of structural economic relations between the institutionalized apparatuses that design such adjustment measures (namely the IMF and WB) and who condition monetary distribution around them and the developing countries that implement them to attain said distribution and capital inflows. To avoid the conceptual opacity that has been the object of criticism of dependency theory in the past, I want to make my nuanced position clear: I do not believe that Argentina has always been an undeveloped, let alone an

40 Cohn, *Global Political Economy*, 109.

underdeveloped country. Ample imperial evidence exists to show the wealth of natural resources and the depth of industrial potential displayed in the county for generations. As such, within the dependency theory, I adopt the position that the economic development in Argentina was regressively inhibited by interaction with the core via the integration of SAPs during the period in consideration.

The neo-liberalization of Argentina caused a regression in numerous key areas in the economy spanning from national institutional capacity and the regression of labor's social positions to capital accumulation, and the potential of its currency among other things. Each in their turn, unraveled the protectionist systems of accumulation and growth the country once experienced and how they incrementally undermined its economic determination. More than just a mere scrutiny of the institutions and practices which have influenced this developmental trajectory, a critical theory of SA ought to account for the specific interests of the institutions at play within these structural relations. The IMF and WB have long functioned as the designated arbiters of global financial order and developmental stability, especially through their distribution of capital loans and liquidity. But, more attention should be paid to the relationship existing between loan conditionality and the soft enforcement of economic restructuring under a neoliberal guise in developing regions such as Latin America.

It is crucial to acknowledge the conceptual fissures between Frank's contributions to dependency theory and the Cardoso-Faletto strain. While the former preferred to strictly examined the external factors of underdevelopment, the latter dually examined the multiplicity of internal and external factors contributing to asymmetrical capital accumulation and the underdevelopment. The same would later come to plague countries in the global south with Argentina being the main culprit. In taking on gradual SA, Argentina unfortunately brought about a transformation of its structural relations to the globally institutionalized neoliberal order, perhaps its most vital feature. Thus, Argentina lend itself to dependency through the 'valorization of financial capital'.

Potts argues that debt crises have long served as the economic leverage necessary for KIEOs to employ SA and stabilization measures in developing countries through the means of bail-out loan conditionalities.⁴¹ Foreign financial concentration and foreign debt provided the perfect opportunity for various creditors including the U.S. to make Argentina a financial emissary. High levels of financial concentration manifest in foreign investment and reserve debt incentivize creditors to influence policy levers in recipient DCs to protect investments.⁴² Studies have found that higher concentrations of financial penetration in DCs and a "robust long-term negative effect on growth in GNP per capita that begins in the initial 1970-1975 period and lasts through 1990."⁴³ As Menem continued to accrue debt through foreign loans in the 1990s, they found it

41 Shaina Potts, "Deep Finance: Sovereign Debt Crises and the Secondary Market 'Fix'," *Economy and Society* 46, no. 3-4 (2017): 452-475.

42 Jeffrey Kentor and Terry Boswell, "Foreign Capital Dependence and Development: A New Direction," *American Sociological Review* 68, no. 2 (2003): 304; Reisenberg, Kentikelenis, Stubbs, and King, "The World System and the Hollowing out of State Capacity," 1128.

43 Kentor and Boswell, "Foreign Capital Dependence and Development," 308.

difficult to repay interest on loans that the IMF kept giving through 2000. Overvaluation of the peso pegged to the US dollar experienced an upturn in value which all but guaranteed incoming crisis.

When President Fernando de la Rúa came to power in 1999, a recession had set in. The looming crisis necessitated a preventative loan orchestrated by the IMF, WB, Inter-American Development Bank, and the other creditors. Several claims suggest that this loan, while being presented as a stimulus, actually was a protection for creditors against default of foreign loans. Kentor and Boswell's suspicions proved true and dependency only continued.

Another political-economic vestige that KIEOs directed their reforms toward were the unions. Justification for labor reforms in recipient countries of IFI loans is founded upon concerns that labor inflexibility and the structural unemployment that strong unions are known to cause will have adverse effects on growth potential.⁴⁴ It is often the case that the participation in IMF and WB SAPs directly undermines collective labor rights and instead cultivates the conditions for the disarticulation of capital accumulation among workers. This was realized in Argentina during the Proceso era when trade liberalization devastated labor for formality. Depletion of labor came to pass again in 2001 when default on foreign debt placed the country in a state of collapse and the conditions of the loan provided by the IMF and WB mandated a swath of policies aiming labor. Pensions were overhauled to reduce benefits, legal protections for workers were eliminated giving employers increased powers to lay off workers, and salaries for government employees were slashed.

Argentina's SA regime came to a head when in a flagrant attempt to reel in inflation and reverse negative GDP growth, Menem instituted full austerity measures. Menem massively cut government spending and to further reduce public expenditure, several industries including oil companies, gas, electricity, water utility, post office, and telephone were privatized. Less than five years after taking office, the President privatized thirty state public sectors accumulating over USD 15 billion in government revenue by late 1993. The development literature is clear on the extent of state contribution to differentiated rates of capital accumulation, and by whom, through the design or repeal of economic policies.⁴⁵ Policies for example, may include export subsidies, sectoral subsidies, import tariffs, and the nationalization of debt. Indeed, the inverse of these sort of policies that promote liberalization frequent and characterize Argentina's political economy from the 70s and onwards.

Castellani discusses three widely accepted explanations for underdevelopment in Latin America. All three are incisive when considering crisis and economic governance in this particular context. According to her, these perspectives consist of:

- 1) the structural explanation, which understands that underdevelopment is a structural phenomenon rooted in the

⁴⁴ Blanton, Blanton, and Peksen, "The Impact of IMF," 326.

⁴⁵ Ana Castellani, "Privileged Accumulation Spaces and Restrictions on Development of State-Business Relations in Argentina (1966-1989)," *The American Journal of Economics and Sociology* 72, no. 1 (2013): 90-121.



**"IT IS OFTEN THE CASE THAT
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historical dynamics of capitalism and thus the state is the main actor that can promote the economic “take-off”; 2) the neoclassical/neoliberal explanation, which considers that excessive state intervention causes severe distortions in the economic system hindering development because it obstructs the elementary market mechanisms; and 3) finally, the neoinstitutionalist explanation, which considers that the quality of state intervention and institutional framework can explain the causes of underdevelopment and its persistence.⁴⁶

One source of internal contribution to Argentina’s dependency was the proliferation of Privileged Accumulation Spaces (PAS). Castellani defines these as:

A permanent source of privilege quasi-rents for the private corporations operating in it. That is to say, they are spaces where corporations earn extra profits derived from privileges given by the state without the need to take compensating actions to raise development possibilities, either because they are not established beforehand or because the state fails to control their compliance.⁴⁷

PAS are relations that perpetuate the privilege of capital accumulation by the largest corporations. These relations largely remain unchanged even in the advent of policy changes. Accumulation in this sense obstructs the dissemination of technology; information transfer and innovation begin to stagnate and the increase in the economic power of the large business factions contributes to further underdevelopment. Unfortunately, a lack of state capacity reproduces the cycle of political domination which further enables asymmetrical accumulation which in turn leads reproducing state indeterminacy and underdevelopment.

In its early stages, ISI was successful in creating the conditions for industrial growth and development. As Castellani explains, these positive outcomes were evinced by the expansive involvement of the state in economic dealings especially regulating income distribution and enlarging its productive capacities. However, during the later stages of Perón’s last administration, this did not last. Bureaucratic porosity and the slim financial capacities hindered state and business relations and the pursuit of development projects. Thus, towards the end of ISI, state autonomy in economic functions reduced significantly to allow for public and private capital accumulation. PAS would only grow in depth and scope as the transference of capital and quasi-rents to large corporations rose. The military dictatorship and the democratically elected Alfonsín and Menem administrations all shared the tendency for state allowance of private expansion. Public resources continued the transfer of domestic concentrated capital and increased profits remained constant.⁴⁸ PAS, an already existing practice in Argentina, was necessary in some ways but at various instances, it did more to regress development and the state capacity

46 Castellani, “Privileged Accumulation Spaces,” 91.

47 Castellani, “Privileged Accumulation Spaces,” 93-94.

48 Castellani, “Privileged Accumulation Spaces,” 104-105.

to carry it out. It was the very impetus of state hollowing out that allowed for this one-sided capital accumulation to become so utterly gratuitous. In my opinion, there are major corollaries between the consistent and deepening restructuring of the economy toward liberalization as a part of KIEO conditionality and international financial integration and the constraint of development because of both internal and external factors.

The importance of state intervention or lack thereof is demonstrable in each explanation including the neoliberal and neo-institutional. Namely because a mixture of state diminution —as a part of liberalization — and privatization in addition to state oversight —when implementing the Convertibility Law in 1991 and other global financial integration measures summarizes the new regime of adjustment and capital accumulation after Peronism. A testament to the neo-liberalization of Argentina was the state’s simultaneous diminishment in allowing trade and financial liberalization, sectoral privatization, and its interventionist mode of governmentality. They were necessary to eschew its once-close ties to its unions in order to ally with international financial capital and imports which would weaken local industry and shed jobs. All of this coincided with the capture of the entirety of Argentina’s economy by SAPs which allowed capital integration, a series of crises stemming from this soon to follow. Goldin and Mariathasan assert that greater the deregulation and integration of an economy, the less reliable its domestic policy is at ameliorating the effects of exogenous shocks to its citizens



"BUREAUCRATIC POROSITY AND THE SLIM FINANCIAL CAPACITIES HINDERED STATE AND BUSINESS RELATIONS AND THE PURSUIT OF DEVELOPMENT PROJECTS. "

and businesses.⁴⁹ Incidentally, the vulnerability of the Argentine state due to its neo-liberalization effectuated vulnerability to endogenous events as well. This is precisely because the externalization (integration into foreign markets and liberalization elsewhere) of its economy became structured by SAP implementation. Hence, “Harmonization not only increases vulnerability to external or exogenous “shocks” but also catalyzes risks within the system or endogenously.”⁵⁰

Semi-peripheral nations or the ones that have experienced levels of development of which Argentina is one present another conceptual wrinkle in dependency theory or so some have argued. I contend that significant levels of dependency can still occur even in the case of a semi-peripheral country like Argentina whose industrial, infrastructural, financial development have fluctuated throughout its history. In his quantitative study of dependency and development, Tausch lists several

49 Ian Goldin and Mike Mariathasan, *The Butterfly Defect: How Globalization Creates Systemic Risks, and What to Do about It* (Princeton: Princeton University Press, 2014).

50 Goldin and Mariathasan, *The Butterfly Defect*, 33.

quantitative indicators pointing toward dependency, such as:

- high foreign savings rate
- high Openness-index (export + import shares per GDP)
- MNC penetration (Multi-National Corporations)

Others exist but among these, the author highlights the significance of MNC penetration above the others and declares that Argentina experiences a low level of MNC penetration as a percentage of GDP.⁵¹ Nevertheless, the other quantitative indicators have been more than present in Argentina and support the multiplicity of internal and external factors that help to produce dependency. I have demonstrated how SAP implementation was pivotal in the creation of dependency both internally and externally. At the very least, I have put into focus the correlation between SAPs and structural/institutional dependency. Viewing SAPs from a critical lens, as I have done here, should reinvigorate the fundamental positions of dependency theory. The financial and institutional penetration by the developed capital center of the semi-periphery and periphery produces limitations to self-sustained growth and engenders unbalanced structures of capital accumulation and class relations. This happens both within peripheral societies (semi-peripheral in this case) and between them and the center.⁵²

Conclusion: Toward and Political Theory of Institutional Dependence and Determination

The primary issue with Argentina was the neo-liberalization of its state's form of governmentality. That is to say, Argentina by dint of SAP implementation intentionally reduced their state's capacity for economic determination instead of ceding more economic territory for capital accumulation and control to large domestic businesses internally and international financial institutions externally. Over time, the power of the state was harnessed to dilute itself and its relation to domestic development so that the dominant place could be given to the core of the world system and big capital.

I have discussed how the recent study of Reisenberg et al. holds that the conditions of intrusive structural adjustment reforms diminish the bureaucratic quality and capacity of the peripheral and semi-peripheral nations that implement them. On utilizing data from 1985-2014, and accounting for internalized or endogenous conditionality and non-random selection of IMF programs, the findings show structural adjustment reduced bureaucratic quality in developing countries. Liberalization lowers the ability of the state to obtain and retain qualified personnel which affect the efficacy and distribution of public services including social security, average wages, and benefits. Not to mention, SAPs mandate the hollowing out of labor, the public sector, and regulations which corral business and finance seeking more privilege at the expense of local industry. Stabilization regimes did not evoke the same effects but the SA was singled out as an indisputable condition under which state bureaucratic capacity for

51 Tausch, "Globalisation and Development," 473.

52 Tausch, "Globalisation and Development," 468.

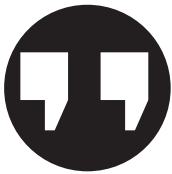
policymaking and social welfare, were demeaned.

While defining the relationship between institutional determination and economic growth and development, business and state relations are insoluble. A robust business class is imperative in prospects for development across financial and industrial sectors where private investment is often the sine qua non for local industrial productivity, healthy levels of exports, and employment. Moreover, well-established links suggest that strong state bureaucracy requires particular degrees of state integration with societal actors, notably big business. Understanding the significance of business class involvement in development does not necessarily undermine the part state capacity plays in helping to regulate disingenuous corporate practices that disadvantage labor and local industry and enable unbridled capital accumulation for a particular economic class.

Frustration and tension with state vulnerability and regression as a course of economic integration and dependency will only affirm the political risks inherent to globalization. The benefits of globalization notwithstanding the internal and external solidification of class disparity due to consolidation of capital by the domestic and foreign business class and the international institutional apparatus that buttress these class divisions will become increasingly untenable. The national populist tendencies

evident in Argentina's tumultuous history can only become more destabilizing and the benefits of democracy and globalization will vanish once the desire to become economically insular grows more attractive.⁵³ Protectionist intervention already began to creep back into Argentina shortly after the default crisis with a popular backlash to external calls for additional fiscal austerity and liberalization. In 2002, in opposition to IMF conditionalities, the economic authorities in the country stepped in to regulate capital movements and control currency devaluation. The elections of Perónist Néstor Kirchner and his wife Cristina Fernández de Kirchner in 2003–2007 and 2007–2011,

respectively, signaled the rejection of international and domestic pressure to stay the neoliberal course. The political decision in the 2000s to raise



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⁵³ George Ciccariello-Maher, "Cutting the Populist Knot," *Latin American Research Review* 55, no. 2 (2020): 368–378.

exchange rates resulting in the reduction of domestic costs and improving conditions for import substitution sparked a subtle revitalization of industrial capacity. Competitive exchange rates and rising prices for the country's agricultural and industrial resources helped in supporting export growth. State taxation on primary goods export has raised revenue and partially offset the foreign exchange and inflation crisis plaguing the country the decade prior. Adding to this, the reversal of fiscal austerity has widened the policy space for the state to reimplement subsidies and reinvigorate welfare and social security for its people. For better or worse, the consequences of this reversal have been the specter of inflationary pressures extending from growing consumption and wage demands coming from renewed union strength. Despite this tradeoff, the economic dynamism felt by the repletion of national economic institutional should not be neglected.

One of the central claims of this paper is that the neo-liberalization of Argentina's economy via SA was the exertion of international force by KIEOs as a means to cultivate institutional dependency and the synthesis of my research was aimed at proving this. A political theory of institutional determination for economic development will both recognize the impact of structural adjustment in this context in the creation of systemic vulnerability and institutional dependency on the semi-periphery and its appending international neoliberal institutions. Liberalization in all the key aspects of political economy: trade, financial, and industrial induced positive results for only a short time when in reality, the depletion of state capacity at the behest of the WB and the IMF only produced toppling financial crises, decimated labor in every way, sullied the social attitudes and relations between the people and the state, all while failing to reverse the fiscal crises that implementation was promised to solve. There are considerable research gaps to fill regarding the competitive quantitative impact of particular dependency indicators such as foreign capital penetration and MNC penetration. Indeed, ambiguity still lingers over the strength of the relationship between these indicators and peripheral countries and semi-peripheral countries like Argentina who have enjoyed a degree of development and international financial integration in their history.

Neoliberalism has been lionized as the most viable form of economic governance for the growth and modernization of LDCs. The consensus on this has been greatly reversed as the DCs and LDCs neoliberalism was meant to help only damaged them further, prompting a form of economic neocolonialism. Technological, financial, and informational penetration, in theory, should expect to increase competitiveness and efficiency leading to productivity gains and improvements in the marginal product of labor. Trade liberalization is also predictive of reduced inequality of wage differentials in LDCs. These theoretical predictions are very often counter to the real-world evidence we see in these regions, however. The frequency of mimetic isomorphism or when states emulate the policy practices and behaviors of SAP success stories should be approached with caution. Considering the vastly different political and historical factors that define a country's political economy and the fact that degrees on implementation, as in Argentina, have effectuated crisis and vulnerability which in turn

reduces state capacity, any form of volitional economic mimesis should be reluctant at best and only done after a thorough assessment of the potential impacts this will have on industrial and financial durability and resilience.

This paper has further analyzed how the infamous SAPs were crafted and imposed by KIEOs on developing countries for decades in the twentieth century. The KIEOs put in focus during my research were the IMF and WB who have been the most influential regulators of the global economy since their introduction and who have conducted most of the significant capital transfers and redistributive measures in the GPE. Additionally, this paper has delved into the modern political and economic history of Argentina and the volatile relationship it had with KIEOs and the SAPs it candidly embraced beginning in the 1970s, marking a distinct break with its formerly national protectionist policies under Peronism. Using the once very popular dependency theory as my critical theoretical framework, I uncover the various means by which SA implementation in Argentina has systematically dissolved the country's national state capacity for strengthening its internal economic relations and forwarding development in this way.

Argentina was once a paragon of self-sustained development and growth, enjoying a wealth of natural resources and comparative advantage in the global economic context. In equal measure, this nation has faced a plethora of complex and far-reaching economic crises which throughout its modern history has placed into its course a series of gradual structural alterations to its economy that have slowly eroded its national capacity and social relations attached to state oversight, notably ISI and social security. The dissolution of national economic institutional capacity in Argentina, as I have shown, was largely caused by, and inevitably helped to further, a broad index of neo-liberalization. Many of the benefits of these reforms were transient at best and financially calamitous at best. The price of capital integration in the country was the radical destabilization of the state and its industries across the most significant spheres. Trade liberalization such as tariff reduction helped to consolidate capital accumulation by large conglomerates and depressed labor. The massive increase in imports devastated local industrial capacity. Deregulation of finance allowed a free-for-all for foreign and domestic capital to speculate irresponsibly, for personal interest, and ultimately, against the peso in 1981. Monetary convertibility attached the heavily overvalued currency to a hegemonic US dollar and as reserve borrowing waxed, financial stability and determinacy waned. The deregulation and privatization of over 30 important industries by the early 1990s in a bout of fiscal austerity forged an avenue for greater imbalance in capital accumulation for the corporate class to the detriment of the working industrial class. Finally, the total neoliberal transformation of the Argentine state by the prevailing SA regime mobilized its political powers for the very purposes of diminishing itself to be permeated by a neoliberal policy that would quickly produce crises. The solution to which even greater neo-liberalization, greater institutional corrosion, and greater internal contradiction and dependency had to occur. Recent economic trends in Argentina offer optimism for a renewal of institutional determinacy that rejects the internationally imposed institutionalization of crises and dependency. Optimism founded upon the recognition that

national economic and institutional determination often comes down to political choice. Argentina is far from being free of economic crisis and uncertainty. One does not escape one's history and the choices defining that history without some measure of struggle. Yet, if there is anything to be learned from the structures and crises that have come to underlie the historical nexus of neoliberal governmentality and Argentina, it is that if progress is to be made in the country, such a nexus needs to be reimagined, if not broken.

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Genocidal Rape and the Justice System:

A Victim-Based Analysis of the Insufficient
Restorative Justice Afforded to Rwanda's
Sexual Assault Survivors

The Rwandan genocide of 1994 is considered one of the most egregious human rights violations in modern history.

The Rwandan genocide of 1994 is considered one of the most egregious human rights violations in modern history. In 100 days, ethnic Hutu extremists killed an estimated one million Rwandans.¹ The extremists carried out the murders with machetes at a rate three times faster than the killings during Nazi Germany's peak.² While Rwandan citizens collectively reeled from the horrific scenes of slaughters marring their countryside, Rwandan women suffered an additional burden. During the 100 days of genocide, an estimated 500,000 women and girls were raped.³ Many faced multiple assaults by military personnel who apprehended women and girls attempting to flee the scene of their initial attacks.⁴ The assaults amounted to genocidal rape, which Dr. Christopher Mullins, a professor and author on the structural and cultural aspects of

1 Nicole Fox, "Oh, Did the Women Suffer, They Suffered So Much: Impacts of Gendered Based Violence On Kinship Networks in Rwanda," *International Journal of Sociology of the Family* 37, no. 2 (2011): 279.

2 Daniel Burke, "Holocaust, Rwandan Genocide Compared." *LancasterOnline*, April 3, 2006, https://lancasteronline.com/news/holocaust-rwandan-genocide-compared/article_26dd84e9-7ac0-5c7d-8061-ae459fd0ad8c.html.

3 *Ibid*, 288.

4 *The Uncondemned*, directed by Michele Mitchell and Nick Louvel (Film at Eleven Media, 2015).

violence, defines as

“...mass rape that extends beyond men satisfying their immediate sexual desires in a forceful demonstration of hypermasculinity... but as a tool of terror and of population elimination ... used to generate fear in a subdued population, humiliate the population (both men and women), derogate women (through spoilage of identity) and create a cohort of mixed-ethnic children to maintain the humiliation/soilage/domination.”⁵

The use of rape as a weapon of war represents a particularly damaging blow to Rwandan culture because Rwandans consider family the genesis of identity and the source of social development.⁶ In committing genocidal rape across Rwanda, perpetrators created a gash in the fabric of Rwandan identity. For over half a million women and girls, the end of the genocide’s 100 days marked the beginning of surviving with the

trauma of sexual assault. This paper considers international and domestic courts’ attempts to provide sexual assault victims with restorative justice. Using the background provided by the Rwandan case-study, the paper will argue that restoring justice to survivors of genocidal rape requires the international court system to work with domestic courts in establishing a community of survivors. Victim-based justice for sexual assault survivors also necessitates that courts conduct legal

proceedings in a culturally appropriate way by adjusting court expectations such as language and procedure to adhere to community norms. As an inherently victim-centric approach, this paper will mirror restorative justice principles to consider how to tailor policies to survivors’ needs.

History

Rwanda was part of German East Africa from 1894 to 1918 before its transfer to Belgium under the League of Nations’ mandate system.⁷ Belgium exploited ethnic divisions between the Hutu and Tutsi ethnic groups, encouraging the Hutu to resist Tutsi control. Until Belgian rule, the issue of race was irrelevant to tensions between the Hutus and the Tutsis. Instead, early strains between the two were focused on political clout as the Tutsi, an ethnic minority in Rwanda, held more political power than the Hutus.⁸ Racist Belgian colonial masters who argued there were inherent differences between Hutu and Tutsi supported the 1959 Hutu Revolution.⁹ This ideology of intrinsic superiority perpetuated by



"VICTIM-BASED JUSTICE FOR SEXUAL ASSAULT SURVIVORS ALSO NECESSITATES THAT COURTS CONDUCT LEGAL PROCEEDINGS IN A CULTURALLY APPROPRIATE WAY."

5 Fox, “Oh, Did the Women Suffer,” 279.

6 Ibid, 283.

7 “Rwanda under German and Belgian Control,” Encyclopædia Britannica, accessed March 28, 2021, <https://www.britannica.com/place/Rwanda/Rwanda-under-German-and-Belgian-control>.

8 Ibid.

9 J. B. Kayigamba, “Without Justice, No Reconciliation: A Survivor’s Experience of Genocide,” in

Belgium sparked the eruption of violence in 1994. As genocide survivor J.B. Kayigamba put it, “The colonial rulers sowed the seeds of hatred that led to later massacres of Tutsi.”¹⁰ The direct influence of external actors in creating ethnic tensions in Rwanda produces a responsibility for these states to contribute to Rwanda’s recovery.

Restorative Justice

Restorative justice requires victim participation in legal proceedings and reparation determinations.¹¹ As Claire Garbett, an External Research Fellow at the International Victimology Institute Tilburg notes, restorative justice is considered highly effective in promoting long-term stability in societies reeling from recent conflict and is therefore critical in conceptualizing responses to genocide in Rwanda.¹² Restorative justice provides victims a degree of agency in the justice system. It seeks to equilibrate the power imbalance implicit in typical court proceedings. Not only are the evidentiary hurdles particularly high in legal cases involving sexual assault, but the limitations associated with sharing testimony within the rigid parameters of typical courtroom proceedings can rob victims of their power throughout the process.¹³ At the heart of restorative justice are three key pillars: encounter, amends, and reintegration.¹⁴ Following an initial crime or assault, victims move into the amends pillar. There is a common misconception that, according to this pillar, the legal community expects victims to forgive their assailants. This is not the case. Consider genocide survivor J.B.’s comment that “unlike what is suggested in Rwanda, I have never heard survivors of the Holocaust being asked to reconcile with the Nazis.”¹⁵ As J.B. alludes to, forgiveness can be an impossible benchmark for victims to meet. However, this does not invalidate the potential for amends. Victims can seek amends in various form including as a judicial conviction, an acknowledgment of guilt from the attacker, or through discussions with the attacker’s family. The paths for victims to seek amends are unlimited, but the needs and desires of victims must drive all requests.

In a divergence from traditional court proceedings, restorative justice introduces flexibility into the justice system to acknowledge the diverse needs of survivors. The reintegration pillar is especially relevant for sexual assault survivors. It creates a responsibility to ensure protection and facilitate healing among survivors. Reintegration can catalyze linkages between the justice system and centers for survivors, providing resources to manage trauma. Through its emphasis on victims’ needs during the legal process and in healing afterward, restorative justice is a method already tailored to aiding survivors of sexual assault. Therefore, the following

After Genocide Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond, ed. P. Clark & Z. D. Kaufman (New York: Columbia University Press, 2009), 34.

10 Ibid, 35.

11 Claire Garbett, “The International Criminal Court and Restorative Justice: Victims, Participation and the Processes of Justice,” *Restorative Justice* 5, no. 2 (2017): 199.

12 Ibid, 199.

13 Kathleen Daly, “Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases,” *The British Journal of Criminology* 46, no. 2 (2006): 353.

14 Claire Garbett, “The International Criminal Court and Restorative Justice: Victims, Participation and the Processes of Justice,” *Restorative Justice* 5, no. 2 (2017): 201.

15 J. B. Kayigamba, “Without Justice, No Reconciliation: A Survivor’s Experience of Genocide,” 41.

analysis of courts litigating post-genocide crimes in Rwanda seeks to uncover where restorative justice is lacking. Additionally, the subsequent policy section frames prescriptions in terms of restorative justice to re-ingrain agency in survivors' legal experiences.

The Gacaca Court System

The Gacaca Courts began as an informal dispute resolution system in Rwanda as early as the 13th CE.¹⁶ Deriving from the root word 'grass,' the Gacaca Courts are a communal experience intended to facilitate transparency by conducting trials publicly.¹⁷ The system was revised in 2001 and repurposed as a means of administering justice post-genocide. Reforms mandated there be a minimum of 100 community members present before proceedings could commence. They also outlined that elected key leaders (including trained judges, local politicians, and 'people of integrity') would serve as judiciaries. By making the cases publicly visible, Rwandan leaders intended to build a body of collective knowledge that citizens could contribute to. With rulings decided in the public eye, the community could close the case together and move into the healing process united. By 2005, Gacaca Courts operated across Rwanda, and although it was a rather ad hoc system, they effectively adjudicated approximately 1.2 million cases.¹⁸ This efficiency played a significant role in the nation's ability to heal from genocide crimes.

Some legal professionals have criticized the Gacaca Courts as corrupt committees lacking the adequate legal training to rule on cases. However, when examining statistics, these claims are unfounded. Of the 169,442 Gacaca judges, only 443 were dismissed for corruption.¹⁹ This is not to say that only 443 judges were corrupt, as some corrupt judges may not have faced dismissal. However, the decentralized nature of Gacaca Courts contained internal incentives, such as accountability to the community, to reduce corruption and improve governance. It is therefore unlikely that many judges were able to get away with misconduct.²⁰ Additionally, when comparing sentences assigned by the Gacaca Court to those ordered by the International Criminal Tribunal of Rwanda (ICTR) and national Tribunals, scholars found the distribution of sentences administered by the three systems was strikingly similar.²¹ This indicates the Gacaca Courts were not doling out disproportionate sentences but instead adhering to legal standards. Thus, concerns about the lack of expertise among some judges did not manifest in unfair sentences.

Since the Gacaca Courts were not externally imposed, citizens saw them as legitimate and wanted to contribute. Individuals mobilized to gather evidence, and, using kinship networks, private citizens developed

16 Colin O'Reilly and Yi Zhang, "Post-genocide justice: The Gacaca Courts," *Development Policy Review* 36, no. 5 (2016): 536.

17 "IV. Barriers to Justice For Sexual Violence Crimes," Rwanda: *Struggling to Survive: IV Barriers to Justice for Sexual Violence Crimes*, accessed March 28, 2021, <https://www.hrw.org/reports/2004/rwanda0904/5.htm>.

18 Department of Public Information, "The Justice and Reconciliation Process in Rwanda," *Outreach Programme on the Rwanda Genocide and the United Nations*, March 2014.

19 O'Reilly and Zhang, "Post-Genocide Justice," 569.

20 *Ibid.*, 568.

21 *Ibid.*, 567.



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tens of thousands of case files.²² The system allowed nationals to contribute to the restorative process and granted universal access to knowledge of genocidal crimes. The international community was quite skeptical of Gacaca Courts, but they amassed legitimacy among Rwandans because of their links to the Rwandan community. Of 504 Rwandans in 2011, over 90% stated they had confidence in the Gacaca process.²³ This is a heartening statistic because it suggests the communal nature of Gacaca Courts allowed the community to move on from the atrocities of genocide somewhat effectively.

While the Gacaca Courts successfully aided many Rwandans' attempts to move past the trauma of genocide, they failed to do so with victims of sexual assault. Although beneficial in increasing transparency and communication among community members, the public nature of the courts was daunting and dangerous for victims of sexual assault. Rwandan culture emphasizes a taboo of any sexual discussions or mentions of the body. It is therefore against cultural norms for women to discuss sexual assault.²⁴ One woman who did testify was accused of lying and later stated "I would have preferred to testify in private because after I spoke in front of the assembly, [community members] snickered and whispered."²⁵ Another woman who decided not to participate in Gacaca Courts said, "They [members of the Gacaca assembly] cry out and you become traumatized, you begin to cry. If you remember what happened, you feel that something has changed inside. An old woman like me, how can I stand before people and tell them everything?"²⁶ To violate cultural norms surrounding discussions of assault in front of a crowd was terrifying for many survivors. They worried that they would be considered impure following any public assault testimony and cited fears their husbands would leave them or they would never marry after testifying.²⁷

The public nature of Gacaca proceedings also created safety concerns for victims. Attendee numbers at Court could range from 100 to several thousand, and since witnesses stood up before these observers, there was no option for anonymity.²⁸ The accused and their family members were often among the many onlookers. One woman, B.R. described the terror she felt that her rapists would harm her remaining family. "I think of my family which was large, with many children...Everyone was killed. Try to understand, there are only three children and my mother who remain alive."²⁹ After discussing her rape with some community members, her rapists began threatening B.R.'s mother, and given the inadequate security afforded by the Gacaca system, B.R. quickly fell silent. B.R.'s statements emphasize the danger forced upon survivors and their loved ones when

22 Ibid, 567.

23 O'Reilly and Zhang, "Post-Genocide Justice," 573.

24 Jonneke Koomen, "Without These Women, the Tribunal Cannot Do Anything": The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda," *The University of Chicago Press Journals* 38, no. 2 (2013): 259.

25 "IV. Barriers to Justice For Sexual Violence Crimes," Rwanda: Struggling to Survive: IV Barriers to Justice for Sexual Violence Crimes, accessed March 28, 2021, <https://www.hrw.org/reports/2004/rwanda0904/5.htm>.

26 Ibid.

27 Ibid.

28 Ibid.

29 Ibid.

they stood up to accuse community members of sexual violence.

Reliving their past trauma is already common for sexual assault victims in private trials.³⁰ Remembering the events of one's attacks repeatedly takes a toll on survivors' psyches. To undergo this difficult process publicly and without security protections was enough to dissuade many brave women from pressing charges through Gacaca Courts. Consequently, the Court witnessed few sexual assault trials. "Since the launch of the pilot program in June 2002, 581 gacaca courts in ten provinces had registered approximately 134 cases of rape or sexual torture [as of 2004], as compared to approximately 3,308 cases of non-sexual violence crimes, such as murder, assault, or looting, brought before the same courts."³¹ This is a small sampling, but it provides insight into the disproportionate numbers of non-sexual violence cases that Gacaca Courts heard. Given these discouraging numbers, it is clear the Gacaca system did not provide restorative justice for victims of sexual assault. Most survivors were unwilling to testify about their attacks in the public settings Gacaca Courts insisted upon. They were unable to prosecute their assailants for fear of social and physical backlash. Any system that intrinsically silences victims cannot be considered an appropriate avenue for gaining justice. Therefore, while the Gacaca Courts benefited the community by promoting agency and healing from genocidal crimes other than sexual assault, it was not an appropriate system to try cases relating to rape.



"I WOULD HAVE PREFERRED TO TESTIFY IN PRIVATE BECAUSE AFTER I SPOKE IN FRONT OF THE ASSEMBLY, [COMMUNITY MEMBERS] SNICKERED AND WHISPERED."

The International Criminal Tribunal for Rwanda

The United Nations Security Council established the International Criminal Tribunal for Rwanda (ICTR) on January 1st, 1994, to "prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighboring States."³² The Akayesu case represented the first charges of rape as a crime against humanity and the first time rape was recognized as a means of perpetrating genocide.³³ Akayesu was the mayor

30 Gail Stekete and Anne H. Austin, "Rape Victims and the Justice System: Utilization and Impact," *Social Service Review* 63, no. 2 (1989): 293.

31 "IV. Barriers to Justice For Sexual Violence Crimes," Rwanda: Struggling to Survive: IV Barriers to Justice for Sexual Violence Crimes, accessed March 28, 2021, <https://www.hrw.org/reports/2004/rwanda0904/5.htm>.

32 "United Nations International Residual Mechanism for Criminal Tribunals," The ICTR in Brief | United Nations International Criminal Tribunal for Rwanda, accessed March 28, 2021, <https://unict.r.irmct.org/en/tribunal>.

33 *The Uncondemned*, directed by Michele Mitchell and Nick Louvel (Film at Eleven Media, 2015).



"THE PROSECUTION PRESENTED THE EVIDENCE THEY HAD GATHERED FROM WITNESS H TO THE JUDGES TO INCREASE THE CHARGES AGAINST AKAYESU. ONE OF THE JUSTICES . . . GRANTED THE PROSECUTION'S REQUEST TO ADD THE CHARGE . . . "

of Taba, Rwanda found guilty on a variety of counts, including crimes against humanity and violations of the Geneva Conventions. Following testimony about Akayesu raping Rwandan women at his offices during the genocide, the charge of rape as a crime against humanity was added to his

indictment.³⁴ For the international community, and particularly for victims of genocidal rape, the conviction of Akayesu acknowledged the deep fragmentation sexual violence causes. The decision set a landmark precedent and now acts as a deterrent for using rape as a tool of war. Soldiers watching the convictions knew that the decision to partake in such violence would no longer go unpunished.

While the decisions of the ICTR were critical in establishing an official ruling on rape as a means of warfare, they did not effectively provide victims with restorative justice. Patterns of victim exploitation permeated various cases the Tribunal

handled. The original indictment in the Akayesu case did not include a charge of rape despite the widespread evidence of sexual violence that human rights organizations gathered.³⁵ The Tribunal did not initially seek to provide victims of genocidal rape with justice. However, the Jean-Paul Akayesu case changed this. Akayesu was the mayor of the Taba Commune where he had exclusive control over the Commune's local police force. Under Akayesu's control 2,000 people were killed during the genocide.³⁶ However, the prosecution against Akayesu worried that their case to prove genocidal intent was not strong enough to guarantee a guilty verdict. Therefore, when Witness H, a Rwandan women called to present evidence against Akayesu, discussed unbelievable system of mass-rape originating in Akayesu's Bureau Communal during her testimony, the prosecution pounced. Since the prosecution had not considered evidence of rape relevant to their case, they had not asked women about witnessing assaults. It took a great deal of independent bravery from Witness H to bring these crimes to light. Given the scale of sexual assaults occurring in the Bureau Communal which included an inhumane system of signing women out against their wills, the prosecution moved to add charges of rape as a crime against humanity and rape as a crime of genocide to Akayesu's indictment. The prosecution presented the evidence they had gathered from Witness H to the Judges to increase the charges against Akayesu. One of the Justices on the panel granted the prosecution's request to add

34 Ibid.

35 Ibid.

36 "Jean-Paul Akayesu Case." Tackling Violence against Women, Centre for Women, Peace, + Security, accessed August 7, 2016, <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/jean-paul-akayesu-case/>.

this charge to the indictment, and investigators returned to Rwanda to gather evidence on sexual assaults. Since the original investigation did not emphasize the collection of sexual assault evidence, so upon returning to Rwanda, investigators had to start from square one.³⁷

Upon returning to Rwanda, the Tribunal failed to liaise with local female leaders. Consequently, Tribunal workers intimidated Rwandan women as the workers jumped out of the white UN vans to bluntly question survivors about their trauma.³⁸ Very few felt comfortable enough in this setting to discuss the details of their sexual assaults. “Even those rare investigators who documented sexual violence did not gain the confidence of survivors and failed to ensure that witnesses were protected from possible retaliation.”³⁹ As a result, Tribunal workers left Rwanda and returned to Tanzania and the Hague (the two ICTR locations) with porous versions of events. The haste and insensitivity with which Tribunal members gathered data inhibited a complete account of the extent of sexual violence. The shallow nature of the investigations also failed to take customary Rwandan sexual violence responses into account.

Discussions or accusations of sexual assault violated Rwandan cultural norms, which, in turn, deterred victims from sharing their experiences. Ineffective privacy regulations by the ICTR meant Rwandans often knew who had flown to the Tribunal to testify, and these witnesses and their families were targeted. One witness to the Tribunal, witness T.A., returned from the ICTR to find her home and family attacked. As she attempted to pick up the pieces, her fiancé left her for violating cultural norms.⁴⁰ The accused and their family members had no trouble uncovering the whereabouts of witnesses given the ICTR’s ambivalence regarding witness protection. Thus, the lack of security provided by the Tribunal put these women and their loved ones in great danger. No system using women to strengthen a Court case without subsequently protecting them can be considered an example of restorative justice.

Accounts of the Tribunal’s deafness to Rwandan culture emerged time and time again throughout the ICTR’s proceedings. One such example was the use of language. Rwandan women often described their sexual assaults as “getting married.”⁴¹ This phrase frustrated the Eurocentric counsellors in the room because it was not the standard language used to describe sexual assault in Western courts. The counsellors were comfortable working with the term rape and refused to adjust their conviction of the “right” way to label sexual assault. As one Rwandan Court interpreter put it, “In my culture you don’t say the words for genitalia. But in court you have to. It is a shock for interpreters as well as witnesses.”⁴² As she noted, the Court was inclined to force victims to adjust their vernacular to the Western norm, rather than recognize that the Court should prioritize the comfort of the victims testifying.

The Tribunal grappled with the convergence of several systems of law since leading judges and lawyers differed in their nationalities. There

37 *The Uncondemned*, directed by Michele Mitchell and Nick Louvel (Film at Eleven Media, 2015).

38 Koomen, “Without These Women, the Tribunal Cannot Do Anything,” 265.

39 *Ibid.*, 259.

40 Koomen, “Without These Women, the Tribunal Cannot Do Anything,” 267.

41 *Ibid.*, 265.

42 *Ibid.*, 265.

was no overarching document establishing a protocol for how witnesses should be treated during either interviews or trials. One early Tribunal worker, Lisa Pruitt, created a guide for conducting appropriate interviews with victims of sexual assault. Pruitt emphasized the importance of treating witnesses with dignity and compassion while providing a safe place to share their memories. She was publicly ridiculed for creating such an ‘unnecessary’ document, and eventually left the department.⁴³ It was not until the case of Akayesu some years later that her memo resurfaced, and efforts to make victims of sexual assault feel more comfortable in interviews began. This change only occurred when Counsel recognized the merit of the rape charges against Akayesu; no efforts were made to support sexual assault survivors before they were directly relevant to the Court proceedings.

The Tribunal also suffered from the lack of consensus on the treatment of witnesses in the courtroom. No provisions regarding badgering the witness were agreed to before proceedings. When Pierre-Richard Prosper, an American lawyer, objected to the badgering of sexual assault victims during their cross-examinations, the presiding judge, Laity Kama of Senegal, dismissed his objections. Kama’s national legal system did not recognize the merit of such objections and thus he refused to entertain them.⁴⁴

There were also accounts of inadequate professionalism and excessive questioning during ICTR cases. Witness T.A. endured both during her testimony. The opposing Counsel in the Butare trial insinuated that witness T.A. could not have been raped because she had not showered and therefore must have smelled.⁴⁵ A judge began laughing at this demeaning line of questioning but did not shut it down. After this cruel conduct, Witness T.A. faced another fourteen days of questioning. On the fourteenth, the opposing counsel once more asked her to go through her story, to which witness T.A. replied, “Counsel, I would like you to be told on my behalf that since I have been here, this matter has been put to me more than a hundred times. I don’t want to answer as if I have come here to sing some kind of chorus before the Tribunal.”⁴⁶ Instead of allowing her to reclaim her story and begin the healing process, inadequate legal protections exposed her to further trauma.

As Steketee and Austin note, delays in the justice process directly correlate with extended recovery times for victims.⁴⁷ Witness T.A. experienced numerous delays and extensive traumatization during her testimony at the ICTR. She faced pressure to retell her trauma countless times and faced badgering and belittling. Throughout all this psychological abuse, the ICTR made no provisions to protect her. The lack of regulatory action taken to avoid such inhumane treatment of witnesses dealing with trauma is appalling.

The rigidity of the ICTR curtailed witnesses’ abilities to tell their stories. Many victims agreed to make the trip to the Tribunal under

43 *The Uncondemned*, directed by Michele Mitchell and Nick Louvel (Film at Eleven Media, 2015).

44 *Ibid.*

45 Koomen, “Without These Women, the Tribunal Cannot Do Anything,” 266.

46 *Ibid.* 266-267.

47 Steketee and Austin, “Rape Victims and the Justice System,” 297.

the impression that they could tell their story in full. Instead, personal narratives were sliced into sterile pieces intended to aid the prosecution's case by providing only digestible soundbites directly related to their argument. This clipping of victims' stories promoted the prosecution's legal agenda but prevented victims from taking ownership of their stories. The gathering of ICTR witness statements mirrored this issue. Investigators translated the complex and traumatic events that witnesses recounted into a one-page document that prioritized dates over victims' experiences.⁴⁸ These statements did not provide survivors an opportunity to explain their stories; rather they were hyper-edited documents intended to benefit court cases. The Tribunal co-opted victims' experiences, forgetting the central goal of restorative justice for victims.

The use of sexual assault victims as pawns in the legal process showcases the lack of attention to victim-based justice that characterized the ICTR. The prosecution in the Tribunal became more concerned with the logistics of winning cases than with protecting and providing justice for survivors of sexual assault.

Comparative Analysis

Before moving into recommending reforms, readers must understand where the Gacaca system prevailed when the ICTR could not and vice versa. Outlining their shared deficiencies builds the foundation for necessary reforms. While the ICTR suffered time and time again from its cultural illiteracy, the Gacaca Courts were firmly grounded in the community. The strength of these ties allowed for the mobilization of Rwandans in evidence collection and facilitated rapid rulings. The ICTR's limited partnerships with local Rwandans harmed their evidence-gathering efforts since investigators did not know what witnesses should be contacted and were ignorant to Rwandan sexual assault vernacular. The differences in location between the two judicial systems serve as a stark reminder of which prioritized communal healing. The Gacaca's location in Rwanda undoubtedly contributed to the high numbers of cases adjudicated, and witnesses presented there. Meanwhile, witnesses testifying for the ICTR had to fly to Tanzania or the Hague and lodge in unfamiliar accommodations for weeks at a time. The inconvenience and danger presented by such a trip could have been avoided if the ICTR had decided to operate in Rwanda.

The ICTR did serve an essential function in bringing Rwandan justice to the international stage. Its efforts in evidence-gathering confirmed the reality of the genocide to international actors. The landmark ruling of rape as a form of genocide was also incredibly validating for victims and witnesses, and its significance should not be overlooked. Given the individual merits of both systems, adjudication at both the domestic and international level is critical in cases of genocide.

Most of the shared deficiencies of the Gacaca Courts and the ICTR stem from the lack of sensitivity taken towards victims of sexual assault. Neither system set out with a commitment to care for the well-being of sexual assault survivors, and thus attorneys took no additional effort

⁴⁸ Koomen, "Without These Women, the Tribunal Cannot Do Anything," 261.

during interviews or cross-examinations to reduce the PTSD associated with assault. Both courts failed to ensure protections for witnesses, and many survivors consequently suffered retaliation. Women were killed, their families were attacked, and their properties were ransacked. By requesting testimony from these women while ignoring their subsequent security needs, both court systems treated witnesses as expendable pawns. Such practice certainly strayed far from the amends and reintegration principles of restorative justice. Additionally, both systems often forced victims to confront their attacker during trials. In permitting the accused's attendance while witnesses re-lived their trauma, both Courts showed a profound insensitivity to the trauma associated with sexual assault.

Judicial Reform

Survivors of sexual assault face specific trauma that judicial members must be sensitive to. The development of a handbook for conduct in such cases would help reduce the re-traumatization of witnesses. Lisa Pruitt and her memo regarding appropriate interviewing tactics for victims of sexual assault can serve as a foundation for a regulatory publication.⁴⁹ As part of this judicial handbook on managing sexual assault trials, clear limitations need to be placed on badgering the witness. The conduct at witness T.A.'s trial where she recounted her story over fourteen times is an unnecessary and unprofessional use of the court's time.⁵⁰ As Pierre-Richard Prosper, the lead prosecutor in the Akayesu case, made clear during Akayesu's trial, the lack of a consistent ruling on witness badgering was to blame for its use against sexual assault survivors.⁵¹ Since no higher document existed dictating how Kama should rule on witness badgering, witnesses were left unprotected as Kama ruled against every objection. A potential handbook could include characteristics of witness badgering so judges from all nationalities could identify the practice. This simple addition to the handbook could significantly reduce the Court-induced trauma that sexual assault victims face.

The sexual-assault Court handbook should also include protocols regarding the presence of the accused at the trial. Should the witness request attendance from the accused in a desire to face them once more, the current system would suffice. In that case, the accused can witness the testimony. The witness can point out the accused in the trial space as is currently practiced. If, however, a witness requests that the accused be banned from the trial room during testimony, this must be respected. Attorneys could present witnesses with several photographs before the court and ask witnesses to point out their assailant as a means of identifying the accused. They could then single out their attacker without having to see them face to face. This is a far more humane method of conducting trials since coming into direct contact with their attacker can exponentially increase survivors' anxiety and re-traumatization.⁵² Such a method for managing the accused would be simple to outline in a potential handbook and place no further cost on the Courts.

49 *The Uncondemned*, directed by Michele Mitchell and Nick Louvel (Film at Eleven Media, 2015).

50 Koomen, "Without These Women, the Tribunal Cannot Do Anything," 266-267.

51 *The Uncondemned*, directed by Michele Mitchell and Nick Louvel (Film at Eleven Media, 2015).

52 Koomen, "Without These Women, the Tribunal Cannot Do Anything," 264.

Allowing narration in the courtroom must be an additional reformative component of the handbook. Legal jargon used in Court is a particular form of language. Short sentences are praised, and the desire to win is palpable. This linguistic style does not condone the nonlinear recollections of witnesses suffering trauma. Consequently, legal methodology needs to be adjusted to allow for alternative narration styles. Before the direct examination, the witness should be given time to tell the entirety of their story, un-edited for legal convenience. When the direct examination is the only method for witnesses to tell their stories, witnesses have no agency because of their inability to control the direction of testimony. Rather than being able to recall everything that happened to her, an abused woman must stick to telling the pieces of her story that are relevant to what the accused is charged with. For example, if a victim is brought in to testify about sexual assault, she cannot subsequently discuss the murders of her children that might have happened the same day since those events do not contribute to the specific sexual assault charges.⁵³ All the pieces of an assault story contribute to the realities of trauma. Therefore, curtailing witnesses' stories to what is 'relevant' is synonymous with dictating what 'matters.' Such a value judgement strips the witness of agency in the process. Thus, the recollection of events strays from a reclaiming of power lost, and becomes another way in which stories are suppressed,

and courtroom retraumatization is introduced. Once the witness is afforded adequate time to deliver her story, the direct examination can help the witness and the Court narrow in on the especially pertinent pieces of testimony. Such reform represents an inexpensive commitment to granting survivors' control over their trauma.

Building Relationships

The ICTR would have had more success and saved time if it invested in building connections with the local community — specifically with Rwanda's female leaders. The taboo nature of sexual assault applied to all aspects of a survivor's life, and thus, when the burden of untold sexual assault became too great, it was often women leaders who women privately confided in.⁵⁴ Godelieve Mukasarai, a female Rwandan social worker, was instrumental in liaising with local women. She founded Solidarity for the Development of Widows and Orphans to Promote Self-Sufficiency and Livelihoods (SEVOTA) to seek justice for genocide survivors and immediately began facilitating the healing process for rape survivors in her community. Since she previously worked with other Rwandan based NGOs and developed relationships through them, an NGO director put her in contact with the ICTR during their second attempt to collect evidence on sexual assaults.⁵⁵ Mukasarai became critical to gathering



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53 Koomen, "Without These Women, the Tribunal Cannot Do Anything," 264-265.

54 *The Uncondemned*, directed by Michele Mitchell and Nick Louvel (Film at Eleven Media, 2015).

55 *Ibid.*

witness testimony for the ICTR.⁵⁶ Mukasarai put it succinctly in saying, “The bridge between international justice and women had to be a member of the community.”⁵⁷ Given this sharing method, the ICTR tribunal investigators could have avoided a great deal of inefficiency and cultural illiteracy if they liaised with local female leaders. Since the Tribunal did not initially tap into these networks, they missed out on hundreds-of-thousands of witnesses because women were unwilling to break the taboo of their culture for insensitive strangers. The investigation would have benefited from additional time spent in communities, talking with women, and working to develop relationships.

Connecting with local female leaders could have offset the anxiety that Tribunal investigators induced, while aiding in the codification of culturally appropriate terms for sexual assault. Given the frustration over the phrase “getting married,” local vernacular needs to be indexed such that everyone in the Court understands what witnesses are referring to. If women feel at-ease using “getting married” to describe their sexual assaults, then they must be allowed to do so. The ICTR investigators could have worked with local female leaders to draft a document outlining phrases that Rwandan women would be comfortable using. This document could then be distributed to all Court staff. Again, the process’ goal is restorative justice, supporting victims to help them move on with the aid of the justice system. As such, the system itself must be geared towards protection for victims.

Witness Security

The most extensive oversight shared by the Gacaca system and the ICTR was undoubtedly their indifference to witness security. The public nature of Gacaca Courts made them incompatible with protecting security for victims of sexual assault. Instead, the National Rwandan Court network should have exercised complete jurisdiction over sexual assault cases because of its potential for privacy. The National Courts required no community participation and thus removed the security threat associated with allowing the accused’s loved ones to witness the testimony.⁵⁸ Given this division of powers, the Gacaca Courts could continue benefiting the country through effective prosecutions without intensifying the risk and stigma for victims of sexual assault.

Secure and discreet transportation between witnesses’ homes and the courts should also have been a priority. Under the National Court system, witnesses could be picked up at predetermined locations to avoid the dangerous optics of court employees coming to their homes. International tribunals should mirror this method. First, if possible (i.e. if active fighting is not occurring) a tribunal handling a country-specific issue should be based in that region. This serves to link the tribunal to the local community and reduce the burden on witnesses. Had the ICTR been based in Rwanda, secure and discreet transportation could have been

56 “Meet Godelieve Mukasarasi, Rwanda,” last modified August 26, 2016. <https://nobelwomensinitiative.org/spotlight-godelieve-mukasarasi/>.

57 Ibid.

58 Department of Public Information, “The Justice and Reconciliation Process in Rwanda,” *Outreach Programme on the Rwanda Genocide and the United Nations*, March 2014.

provided for witnesses. The tragedy of witness T.A.'s return to Rwanda after being at a remote ICTR location for over two weeks likely could have been avoided if her testimony was concealed.

In the cases of both Tribunals and local judicial systems, methodologies for physical witness protection must also be put into place. The risk that witnesses accept in testifying is too significant to justify a lack of security. First, the severity of the threat towards a specific witness should be assessed. If that witness has received threats, knows of an imminent attack planned, or can reasonably indicate a real and present threat to herself or her family members, security should be provided. Witness security post-testimony could take one of two forms. First, should the witness request it, a bodyguard could be assigned to her and/or her family until the imminent threat has passed. Second, should the threat escalate, the witness and her family could be granted sanctuary in a community shelter for women (more information to follow). By tapping into the shelter networks, relocating the witness and her family should the threat fail to cease becomes possible.

Responsibility to Facilitate Healing

Pillar two of the Responsibility to Protect (R2P), a global political commitment endorsed by all United Nations member states to prevent global atrocities, outlines the international community's duty to help States build the capacity to protect their populations.⁵⁹ While this pillar conventionally refers to preventing genocide, it is equally relevant in protecting genocide-affected populations. R2P centers around states' responsibilities to protect their populations from atrocities or significant harms. Ingrained in this prescription are the requirements to react and rebuild.⁶⁰ The responsibility to rebuild is gaining greater traction with questions of *jus post bellum* or the morality of the termination phase of war.⁶¹ R2P affiliated states could use its framework to funnel funds for post-genocide protection into Rwanda. These contributions would off-set the costs associated with witness security discussed above. They could also be leveraged as a means of financing centers for victim healing.

The IBUKA (Rwanda's largest genocide survivor organization meaning "never forget" in Kinyarwanda) developed a peer-support program to help women gain the tools necessary for surviving with trauma.⁶² Their teachings focused on assisting women in pushing past traumatic memories. While this was a useful framework, it was entirely too small to benefit the majority of Rwandan women. In 2013, there were only 30 women enrolled in the peer-support program.⁶³ Thus, while the materials provided by the IBUKA helped manage the trauma of some women, the limited access to the program inhibited healing and reconciliation. If instead, the IBUKA were accessible as a source of expertise in methods for female trauma

59 "United Nations Office on Genocide Prevention and the Responsibility to Protect," United Nations, accessed March 28, 2021, <https://www.un.org/en/genocideprevention/secretary-general.shtml>.

60 Alex J. Bellamy, "Conflict Prevention and the Responsibility to Protect," *Global Governance* 14, no. 2 (2008): 135.

61 *Ibid.*, 135.

62 Cameron Macauley, "Women After the Rwandan Genocide: Making the Most of Survival," *Journal of Conventional Weapons Destruction* 17, no. 1 (2013): 36.

63 *Ibid.*, 37.



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reduction and healing on a wider scale, it could have produced educational materials for local communities. These resources could then have been distributed to the local women's shelters constructed using R2P funding. These centers could tap into networks of female leaders to spread education and facilitate safe spaces for victims to discuss their trauma.

Victoire Mukambanda, a sexual assault victim who testified during Akayesu's trial, said, "Keeping quiet kills you softly. That pain in your heart destroys you. But when you open up and you talk about it, the wound gradually gets better."⁶⁴ Given the consistent theme of healing through participation in female support groups, this process must be encouraged for survivors. It is an international responsibility to contribute to establishing local centers dedicated to protecting and healing abused women since their reintegration is critical to rebuilding the state. National organizations such as the IBUKA do have a place in providing education for these local communities, but managing trauma ultimately takes place through intimate conversations at the grassroots level.

Framing Justice in the Victim's Terms

The modern justice system concludes with declaring an accused either guilty or not guilty. This verdict is not enough to cover the complexities associated with granting victims of sexual assault restorative justice. For many survivors, a verdict of guilty is insufficient in making a difference for their attempts to heal. Instead, many survivors cite a desire for a personal acknowledgment of guilt from their attacker.⁶⁵ Victims often find the impersonal ruling of the Court superficial when compared to the validation afforded by an accused admitting to their role in an attack. At the end of one woman's testimony in Akayesu's trial, she looked directly at him and said, "Can't you at least say you're sorry."⁶⁶

Given that victims of sexual assault face intense scrutiny over the veracity of their statements, an acknowledgment of the reality of an attack can make a substantial difference in allowing women to process their trauma. Court systems could develop several avenues to accommodate this need specific to sexual assault survivors. In the proposed handbook, a provision should be made to allow a convicted assailant to write personal acknowledgments of guilt to survivors. This measure could not be forced upon the convicted but would be looked favorably upon by the court. Victims of the assault would be under no obligation to read the acknowledgment of guilt but would have the opportunity if they so choose. This is an example of a free method that prioritizes victims' needs and wants over strict adherence to traditional court practice. Small evolutions in legal norms, such as this one, promote restorative justice since the reparations process is developed in part by victims.

Reconciling Opposing Views

These policy recommendations focus on feasible methods for introducing restorative justice into sexual assault cases, but this integration is not supported by all legal personnel. Traditionally, law has been an

⁶⁴ *The Uncondemned*, directed by Michele Mitchell and Nick Louvel (Film at Eleven Media, 2015).

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

inflexible institution. Legal scholars rationalized that if courts treated everyone the same, without bias or sensitivity, an equitable system would emerge. The phrase “justice is blind” indicates legal rulings should be made without considering victims’ specific circumstances. Some legal personnel cling to this norm, arguing processes of restorative justice remove impartiality and corrupt the judicial system. This reasoning directly contributed to the traumatization of sexual assault victims in Rwanda.

In the Gacaca system, women could not testify privately despite the widespread knowledge that the Courts’ public nature negatively affected rape survivors. The Gacaca system prioritized legal norms over victims’ access to justice. In the ICTR, skepticism over introducing any restorative justice processes was rampant. The early rejection of the Pruitt memo indicates a disinterest in engaging with victims of sexual assault differently than other witnesses.⁶⁷ In 2005, ICTR prosecutors were reluctant to allow witnesses to access counselors. One prosecutor stated that if victims spoke to counselors, “the defense could say that someone put these stories in their heads.”⁶⁸ While this stands as another example of the prosecution prioritizing legal success over the well-being of their witnesses, it also indicates an underlying critique of reformative justice. Prosecutors feared that external involvement by counselors for sexual assault victims would compromise the impartiality that the legal system supports. As a departure from traditional practice, allowing access to counselors for victims of sexual assault violated the prescriptions of “blind justice.” It is this archaic, inflexible thinking that counters every principle



"THE PHRASE 'JUSTICE IS BLIND' INDICATES LEGAL RULINGS SHOULD BE MADE WITHOUT CONSIDERING VICTIMS' SPECIFIC CIRCUMSTANCES."

of restorative justice.

Allowing sexual assault survivors access to counselors would not have affected the veracity of any sworn in statements because such counselors are tasked with aiding survivors, not manipulating their memories. Instead, the practice could have served to initiate the healing process for victims. Adjusting to a restorative justice system has no effect on the fairness of a trial since the underlying evidence provided remains the same. Rather, restorative justice reforms change the process of court proceedings to accommodate the particularities of trying sexual assault cases. By forcing justice to be ‘blind’ the legal system becomes blind to its own implicit biases, and the needs of those seeking justice. Such rigidity actively harms witnesses, whereas restorative justice has the potential to

⁶⁷ Ibid.

⁶⁸ Koomen, “Without These Women, the Tribunal Cannot Do Anything,” 272.

protect and heal survivors.



"THIS REASONING DIRECTLY CONTRIBUTED TO THE TRAUMATIZATION OF SEXUAL ASSAULT VICTIMS IN RWANDA."

Conclusion

The tragedies of genocidal rape in Rwanda cannot be undone.

The heartless cruelty of perpetrators left the nation fractured. However, Rwanda is a case study capable of rewriting how international and national communities deal with genocide and sexual assault going forward. Investigation of the ICTR yields the overwhelming conviction that future international Tribunals must be grounded in the local culture of the region they are adjudicating.

National systems of justice excel in cultural literacy and can mobilize the community to accommodate a vast number of trials. Both the ICTR and the Gacaca Courts demonstrate the complexities associated with providing justice for sexual assault survivors, who are a vulnerable population in need of specialized legal provisions. A handbook regulating legal conduct in sexual assault cases could significantly reduce the trauma of victims currently imbedded in court proceedings. The failures of the ICTR and Gacaca Courts emphasize the importance of witness security for assault survivors. Such witnesses must be kept out of the public eye and protected from retribution. Concerns about witness security also emphasize the importance of secure centers for healing at the local level, which can inform reintegration policy. Finally, the necessity of facilitating female relationships throughout the justice process became clear in both the ICTR and Gacaca systems. These networks are central to both evidence-gathering and the trauma-reduction processes. The Rwandan genocide went down in history as the genocidal rape of a nation. To honor all victims, it is the responsibility of legal scholars to rewrite local and international judicial norms. It is only through such revisionary practices that the facilitation of restorative justice for sexual assault survivors can become a reality.

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Patrice Calancie

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