

Option 1 (Lacuna article) Truth and Justice: is it one or the other? Chile after Pinochet

Recent political protests throughout Chile prove that human rights violations are not consigned to the country's history, as the armed forces respond to protests over rise in metro fares with disproportionate violence. The reaction inevitably evokes the darkness of the earlier period of dictatorship where human rights violations were not an unusual occurrence. How did the country recognise such violations in the immediate period after the end of the dictatorship? In examining the official responses of the state, such as the 1991 report from the National Commission of Truth and Reconciliation, we can trace the path of truth and justice to provide insight into how a nation comes to terms with the state having betrayed its role as protector of citizens in order to hold it accountable for any future injustices.

Examining transitional justice—a form of justice shaped by a changing political environment, in the case of Chile it implies the transition to democracy from dictatorship— is a way to examine the relationship between truth and justice in countries that have suffered human rights violations. The idea of transitional justice is important to bear in mind when considering Chile. The issue of truth and justice was raised in the aftermath of the dictatorship of General Augusto Pinochet. Addressing human rights violations during the dictatorship's period of 1973 to 1990, was essential in order to draw a line between the past of the dictatorship to a future where violations should never occur again. The combination of truth and justice is what most victims and survivors of the dictatorship wanted as acknowledgement of their experiences. Within a society recovering from the trauma would this be possible?

One of the crucial steps towards democracy undertaken in transition was the National Commission of Truth and Reconciliation, known as the Rettig Commission because of its chair Raúl Rettig. As is evident from its title, the Commission focused on uncovering the truth about the dictatorship years which was seen as the path towards a national reconciliation. Yet, notably absent from the title is the term 'justice'. The apparent oversight of justice was crucially reflected in the words of President Patricio Aylwin who commissioned and oversaw the Rettig Report. Aylwin promised 'truth and justice as far as possible'. His qualification of justice implied a recognition that achieving justice would be problematic as well as an acceptance that there would be a limit to the extent justice could be carried out. If justice was something the Chilean people were calling for on the eve of democracy, what could be preventing President Aylwin from promising the people what they wanted?

The limitations to the free pursuit of justice, came from a number of sectors. Justice was sidelined because of its apparent threat to democracy. Historians have linked the establishment of transitional justice, connected to democracy, as being dependent on the strength of economic and political

institutions such as the courts of law. In a country such as Chile where General Pinochet orchestrated his own retirement from office, institutions were still heavily connected to their functions during dictatorship years. In fact, Chile still has the same 1980 constitution today as it had under Pinochet.

Given the dependence of Chilean institutions on practices used during the dictatorship, the country was not considered to have had the capacity to fully pursue justice without the breakdown of society. Trials would only be effective in enacting justice if the country had strong legal institutions and something the Rettig Report chose to highlight was the abysmal failure of the judiciary in addressing human rights violations during the dictatorship. The courts were so unwilling to enact justice, most likely because many in the courts shared the ideology of the military regime, that they facilitated the human rights violations committed under the regime.

We may question how the Rettig Report was able to identify the problems hindering justice-the judiciary- but not able to improve or enact justice itself? The role of the Rettig Report as a Commission was only to provide a truthful version of the dictatorship. The Commission had no prosecutorial powers and so was incapable of doing anything but supplying suggestions as to future steps. Perhaps one of the most frustrating aspects of the Report itself, published in 1991, was the fact that it couldn't even provide the names of those responsible for the human rights violations it sought to recover in such detail. The lack of names appears a serious oversight, not only to establishing the truth, but most importantly to enacting justice. How can the perpetrator of a crime be punished if they are unknown?

Many have criticised the structures that prevent the information of the perpetrators from being brought to light. Perhaps, the most antagonising of all is the upholding of the 1978 Amnesty Law that the military granted themselves to prevent prosecution for acts committed from the coup in 1973 until 1978. While some academics insist that amnesty laws are an important element to assuring a smooth transition to democracy, others condemn amnesties as forms of impunity that perpetuate injustice. The Chilean people themselves when asked in a national poll in 1989, a year before Pinochet formally left office, whether they supported justice proceedings or a continuation of the 1978 amnesty voted overwhelmingly-67.5 percent\*- for justice.

The Rettig Report, although praised for ascertaining factual truth during a period of chaos, was criticised for its obvious prioritisation of truth over justice. Disappearances were a key point of focus for the Report: the need to work out exactly what had happened to those whose bodies lie somewhere unknown. Here, the interaction of truth and justice is important since with disappearances, the pursuit of justice is necessary to complete the truth of the circumstances of

## Example Practical Written Assignment (Article) Part 2

disappearance. In another context, justice may have been prioritised as greatly as the truth, but by putting 'transitional' before justice limit was imposed to the boundaries of justice enquiry.

The fear of political instability and the fragile nature of the transition, was the given justification for the absence of proper justice in Chile. Fortunately, historian Cath Collins offers some hope to the problem of justice in transitional democracies. Collins' sees justice as being possible to achieve in the future of the nation. Time appears as the healer, providing retribution but only when a certain number of years have passed which not only allow for the stabilisation of the new post-dictatorship state, but also for the rawness of memory to have slightly abated. When the immediate political situation can be distanced and separated from the outcome of trials, is when true justice can be enacted. Justice serves as a warning that the past should not be repeated. The lessons we learn from the successes and failures of the Rettig report serve as a reminder of the importance of truth and justice. Historians agree that it was the actions and protests of civil organisations, such as relatives of the disappeared, that ensured the establishment of the Rettig Commission into human rights violations. The need for truth and justice will not be forgotten by the people. Protests will continue as long as the people feel the state is failing to perform its duty to hold it to account.

\*statistic from page 67 of Steven Stern's book *Reckoning with Pinochet: the memory question in democratic Chile, 1989-2006*

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Chile: Rettig Commission Report, 1990:  
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