

Post-Conflict Justice: Do Truth Commissions Work?

The Legacy of Argentina and Chile

Flynn Coleman
Senior Thesis
Justice and Peace Studies Certificate Program
March 31, 2003

Acknowledgements

This project has been in the making since last February, when I first arrived in Santiago, Chile. Much of my preliminary research was done in the National Library of Chile as well as the law school libraries of La Católica Universidad and La Universidad de Chile. I owe particular gratitude to a professor of law at La Universidad de Chile, Mr. José Zalaquett, for answering my many questions and being a source of inspiration for this work.

I must also express my deep appreciation for the team of people that pushed me to complete the final product: Professor You-Me Park, Professor Henry Schwarz, and Professor Christopher Joyner. Special thanks go to Professor Joyner, without whose tireless editing and refining this project would never have been possible.

The conclusions of this project are only feasible because of the extraordinary passion of human rights advocates in Argentina, Chile, and around the world, who have dedicated their lives to achieving social justice for others. Above all, my most sincere admiration goes to the families and friends of the disappeared in Argentina and Chile, who, in their struggles to find the truth, have become heroes.

Finally, nothing in my life is possible without the loving support of my friends and family, who never leave my side.

I. Introduction-Theories of “Post-Conflict Justice”

The idea of “post-conflict justice” only recently reached an international level of recognition, in which bodies such as the new International Criminal Court have begun to gain legitimate credibility in regards to being a part of solving national conflict. Further, issues of international human rights have only become the language of international cooperation in the past fifty years, beginning formally with ratification of the Universal Declaration of Human Rights in 1948. Before this new era of international human rights standards and their implications began, state sovereignty was considered absolute, and in fact still holds the majority of power in today’s reality. “Post-conflict justice” includes many aspects of retributive and restorative justice with respect to human depredations that occur during violent conflicts. It also consists of restoring and enhancing justice systems that have failed or become weakened as a result of internal conflicts.¹ Therefore, the past, present, and future of a society must be examined collectively in order to transition out of an era of crisis. In situations where a nation has suffered severe violations of human rights, most often the solution must involve a combination of many factors. These factors must be both tailored to each individual state, as well as planned to work well into the future. Many times the conflict requires both national and international intervention in order to rebuild a shattered society through time. The healing process moreover, should include various levels of resolution including juridical action, governmental action and public acknowledgement of wrongdoing.

This study centers on the truth commission as one legitimate element of post-conflict justice. Historically, Latin America has set several precedents for drafting truth

¹ Cherif M. Bassiouni, introduction to *Post-Conflict Justice* (New York: Transnational Pub., Inc., 2002), xv.

commissions in the aftermath of massive violations of citizens' human rights. During the 1970's this region experienced a series of military dictatorships in which state violence often consisted of the "disappearing," or the kidnapping of its own citizens. This phenomenon first surfaced on a massive scale in the Southern Cone of South America, namely in Argentina and Chile. These two countries, after dealing with the horrific effects of such violations, became pioneers in terms of drafting truth commissions to serve as part of post-conflict justice. While these states made mistakes in their approaches, Argentina and Chile have created a model that is still followed and improved upon in post-conflict justice today. One expert on truth commissions, Priscilla Hayner, has defined the truth commission's basic aim as "to discover, clarify, and formally acknowledge past abuses; to respond to specific needs of victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past."² These ambitions comprise the basic goals of a truth commission, and Argentina and Chile were among the first states to experiment with this concept and test its efficacy in the rebuilding of civil society.

However, there is no doubt that a truth commission alone cannot heal a society; other solutions must be a part of any successful effort at securing post-conflict justice. The commission in Argentina completed its final report in 1984, and Chile followed seven years later. The Chilean situation can therefore be analyzed in light of its Argentine predecessor in determining to what extent Chile followed, reformed or veered away from Argentina in its post-conflict action. Taken together, these two countries thus serve as a useful backdrop for the more recent well-known post-conflict situations in South Africa,

² Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 24.

Rwanda and Yugoslavia, as well as in many other states, including much of Latin America. Overall, the experiences of Argentina and Chile reveal valuable lessons for the future and contribute to international law as their societies seek to recover from their painful pasts. Finally, these two case studies illustrate the complexities of maintaining that delicate balance between telling the truth and administering justice while attempting to rebuild a shattered civil society.

How does one weigh truth with justice? How can one ascertain the value of each ideal? How can thousands of people just vanish without an explanation from the government or even an excuse from the society? Finally, what can be learned from the human atrocities committed in the past? These are the questions one must ask when attempting to understand the events and the aftermath of the era of disappearances in both Argentina and Chile throughout the 1970's and the 1980's. These two countries experienced the similar phenomenon of acute political polarization between persons who agreed with the military dictatorship and persons who did not. During the Cold War, the ideology of "we" versus "them" reigned, and the United States and the Soviet Union effectively drove most governments to one side or the other. In Latin America, a pattern of military dictatorships emerged that was generally rightist and authoritarian in nature. Fueled in part by North American paranoia of communism, many Latin American countries under military reign, motivated by hatred of the "subversion" of the Left. Dissidence could not be tolerated, for it was viewed as a threat to the very essence of what the ruling leaders held as their weapon: control and power over the citizens. These dictatorial regimes believed that the "enemy" must be suffocated in order to save civilization from the doom of a communism. Only two sides existed. There was no

middle ground. While similar situations occurred throughout Latin America, this study focuses upon Argentina and Chile as two countries whose experiences profoundly effected the global human rights movement. In both Argentina and Chile, the armed forces began a siege of arrests, torture and executions that shocked “the conscience of mankind.”³ People were taken from their homes at night without warning or warrants. Husbands, daughters, mothers, brothers, sons and sisters were subjected to unimaginable types of abuse and violation, detainment and death. These so-called “enemies” were usually never heard from again. There were no records of their whereabouts, and there were no answers or explanations from the authorities regarding their fates.

It would take the sluggish transition to democracy and a shift in the ideological paradigm of the Cold War for the truth to be revealed. But this came about only slowly. From international diplomatic pressure to “fact-finding” reports by religious institutions, to the grandmothers of the lost, a movement of solidarity in search for the truth began to compel the authorities at least to show guilt through their silence. The formal investigation of events that occurred between 1973 and 1990 in Chile and 1976 and 1983 in Argentina became focused around each country’s publication of a report that detailed what each commission found through agonizing interviews and investigative work. Since the Chilean report followed the Argentine report by seven years, the Chilean case can be analyzed in reference to its Argentine predecessor. A newly democratic Argentina was confronted with massive violations of human rights, without any model on which to base its actions. When Chile finally resolved to begin its own healing process, it did so in the shadow of what Argentina had done. Given that reactions to the era of disappearances are quite recent, much remains unresolved and unanswered. The painful process of healing

³ United Nations General Assembly, *Universal Declaration of Human Rights*, 1948, Preamble.

and rebuilding continues today in both countries. Not surprisingly, the present situations of justice in each country are constant reminders of steps taken and avoided in the search for truth during the era of the forced disappearances.

II. Two Case Studies-Argentina

In looking at the recent history of Argentina, the path was clearly laid for crisis. The end of the Second World War created the scene for a new era of acute political polarization, set in a new international order.⁴ The beginning of the Cold War solidified the new polarization and created an international game consisting of two sides. The history of Argentina was no exception, as it became a stage for the radicalization of the left and the increase of violence between political factions. Argentina had always been a nation in flux, experiencing political changes and coup d' etats that kept the country wondering who will rule next. Raul Alfonsín, the first democratically elected president after the military regime, later referred repeatedly to the Argentine "authoritarian culture that infused Argentine politics to the core."⁵ This culture of violence developed as a result of competing guerilla factions and political parties that remained in constant conflict. The influence of the United States in its search to purge all traces of communism also placed the importance of national security over the importance of security of the individual.⁶ In 1946 and again in 1973, Juan Peron, a rightist leader with a huge following of popular support, became the military dictator of the country. Thus a pattern

⁴ José Zalaquett, "Procesos de Transición a la Democracia y Políticas de Derechos Humanos en América Latina," *Presente y Futuro de los Derechos Humanos* (Costa Rica: Instituto Interamericano de Derechos Humanos, 1989), 109.

⁵ Mark Osiel, "The Making of Human Rights Policy in Argentina: the Impact of Ideas and Interests on a Legal Conflict: Lecturas Seleccionadas Política del Cono Sur en América Latina," *Journal of American Studies* 18 (1986): 158, 135-180.

⁶ Iain Guest, *Behind the Disappearances* (Philadelphia: Penn UP, 1990),15.

of militaristic and authoritarian rule began that carried over into the 1980's. The power of the military created a "profound gulf between civilians and the military" that stifled individual opinion and the rights of citizens. Further, the military despised Juan Peron, and when he was ousted in 1955, his followers were forced by law to vote, but were forbidden to vote for Peron. Jeane Kirkpatrick noted the "legitimacy gap" that lasted for years to come, even though Peron re-entered office in 1973.⁷

After Peron's first presidency, those who did not comply with the military formed radical groups that the military labeled "subversives." The 1960's were generally a time of blooming socialism, beginning in 1959 with Fidel Castro's revolution in Cuba, and then spreading throughout Latin America. Guerilla terrorist actions and violence ensued, with the Peronist Montoneros and the Revolutionary Army of the "Pueblo" (ERP) leftist group as the two main factions. When Peron returned to power, he chose his third wife Isabel as his vice-president and severed all chances of reconciliation with either rightist or leftist guerilla groups. After Juan Peron died in July of 1974, Isabel took office and declared a state of siege that same year. She then ordered that the guerilla forces be destroyed. Beginning in her term, the Argentine armed forces started to detain and torture members of leftist groups, a process that continued until 1983. The decisive coup occurred in 1976, prompted by the "corruption" and "inefficiency"⁸ that plagued the rule of Isabel Peron.

Thereafter, the first of three juntas came to power that engineered the infamous abuses of human rights. An incredible and innovative aspect of these events in Argentina

⁷ Guest, 17.

⁸ José Zalaquett, "Derechos Humanos y Limitaciones Políticas en las Transiciones Democráticas del Cono Sur," *Colección Estudios Cieplan No. 33* (December 1991), quoted in *Truth and Partial Justice in Argentina: An Update* (New York: Americas Watch, 1991), 169.

is that the armed forces “were planning to launch an undeclared war against their own people, the likes of which has never before been seen in Latin America.”⁹ Jorge Rafael Videla was appointed head of the Junta, and he subsequently dissolved the Congress (as was also done in Chile), replaced 80 percent of judges and “suspended” articles of the constitution.¹⁰ The provisions that were discarded were the rights to free speech, association and press, as well as the rights to due process and a fair trial. These eradications of law included closing the federal and provincial parliaments, banning political parties and meetings, and outlawing trade union activity. Universities were also shut down, and the government took control of the television and radio channels. In addition, the death penalty was introduced, and the new age of criminal responsibility was lowered to 16 years. Suspected subversives could also be detained indefinitely and tried in a military tribunal.¹¹ In order to evade prosecution for criminal acts, the Junta effectively erased the law and its judicial processes. Thus the tone of violence and radical political polarization was set in Argentina long before the coup actually occurred that would turn militaristic patterns into crimes against humanity. This downward spiral into violence resulted in confusion and fear that inhibited organized action against the disappearances largely because of the military and political turmoil that was set into motion some time before. The year of the Argentinean coup came in 1976, three years after the coup in Chile. At this point the Argentine Junta was following the lead of the Chilean military. In Chile, many more abuses occurred in public, including use of the national football stadium as a detention center and the site for the execution of foreign

⁹ Guest, 21.

¹⁰ Americas Watch, *Truth and Partial Justice in Argentina: An Update* (New York: Americas Watch, 1991), 5.

¹¹ *Nunca Más: A Report by Argentina's National Commission on Disappeared People* (London: Faber and Faber Limited, 1986). xii-xiii.

reporters. The Argentine regime was “determined not to make the same mistakes that Pinochet had made in Chile.”¹² Basically, all detentions would be secretive in an attempt to conceal what Chile did not.

The so-called “dirty war” in Argentina that began in 1976 was mainly a war against the masses of reformists, militants and leftist citizens within the country. It is therefore all the more tragic that the vast majority of these followers were active young people and students. These young people were seen as a threat just as great as any guerilla force, and anyone associated with the “leftist” cause was considered a “subversive” and enemy of the military. The armed forces led this war. All sections of the forces participated, although not the national police, as was the case with the Carabineros¹³ of Chile. The military dictatorship that ruled until 1983 committed egregiously violent crimes against the Argentinean population for seven years. People were seized from their homes, detained, tortured, or killed, without any record of what happened or even a face to their killers. Some victims were drugged and thrown alive and naked from airplanes over the ocean in the so-called terrifying “death flights.” Others were sent to labor camps, never to be heard from again.

Specific to Argentina was the stealing of babies from doomed mothers and giving them to army officials with false documents and identities. The mothers were usually killed or left to bleed to death without medical assistance. This marked the first time abuses such as these had been committed on such a massive scale in Latin America, and most of the victims came to be characterized by the name “desaparecidos,” first coined for victims in Chile. Without a record of physical proof of death, these people could only

¹² Guest, 22.

¹³ *Carabineros* is the name of the police force in Chile.

be called “disappeared persons,” leaving a legacy of lack of closure that devastated the general population. The psychological effects of not only losing a loved one, but also losing him or her without any legal record of their death or whereabouts were agonizingly frustrating and endlessly painful for the victims’ families. Their government was lying to them, and they not only could do nothing about it. They had no way of knowing what had happened to their relatives and friends. Kidnapped children, widowed wives and husbands, mourning grandmothers and the rest of the society would continue to suffer as the long awaited process of truth brought more awful news.

The military regime in Argentina knew that it had to suspend the law in order to carry out its dirty work. Claiming that in a state of siege normal laws must be set aside for the sake of security, the army dissolved the Supreme Court, replaced judges, and nullified habeas corpus. Moreover, between 1976 and 1983 no fewer than 109 lawyers disappeared, 23 others were murdered, and many more were detained without being tried and charged.¹⁴ Lawyers were terrified to defend the family members of those disappeared, and many judges dismissed conclusive evidence of foul play. While the constitution remained, it was also “suspended” by the regime in power and blatantly disregarded. As Iain Guest observes, “The disappearances were a testament to the legal tradition in Argentina. The armed forces knew their murderous campaign was illegal. This is why it had to be conducted in secret, away from prying eyes.”¹⁵ The psychological effects of this clandestine, lawless war are extraordinary and extremely relevant. When one commits a crime and breaks the law, the fact that he goes to jail is reassuring, because judicial practice follows written law. A system is in place where

¹⁴ *Nunca Mas: Informe de la Comisión Nacional Sobre la Desaparición de Personas*, (Buenos Aires: Editorial Universitaria de Buenos Aires, 1985). 417-418.

¹⁵ Guest, 27.

punishments can be predicted according to an agreed upon set of rules. However, when arrests are made in private without reference to the law, a nation becomes paranoid, terrified, and distrustful of the authorities. The future of Argentine society would depend upon how the rule of law could be restored in the country.

The End of the Argentine Era of Disappearances

How did these human rights violations finally come to an end? As José Zalaquett observes, in Argentina, “The military defeat of 1982 in the war of the Malvinas precipitated the fall of the regime.”¹⁶ The army suffered a total moral loss and no longer had the strength or resilience to keep up its dictatorial role. Had they not lost the war, they might have still had the stamina and confidence to retain power and keep committing abuses. Unlike most other Latin American dictatorships in the 1980’s, including that in Chile, the Argentine military was compelled to compromise with the emerging democratic government. Lacking the resolve and the legitimacy to hold power, the armed forces no longer could exercise their unconditional authority. In addition, the country had fallen into a severe economic recession and was primed for a serious change in governmental systems. Raul Alfonsín of the Radical Civil Union Party was elected to the presidency in 1983, and the “dirty war” finally ended. The transition to a democracy began, but the long, painful road to revealing the truth tested the limits of morality and justice in Argentina. When voices were finally raised and heard by a new government willing to begin the search for truth, there was no precedent to look to and no pattern to follow. The attempts at post-conflict justice and truth in Argentina, therefore, must be analyzed with the realization that this society was acting without a premise or a guide.

¹⁶ Zalaquett (Procesos de Transición), 120.

Reactions

South America is generally a deeply religious group of countries, and Argentina and Chile are no exceptions. The Catholic Church in these two nations plays a powerful role in both the political and everyday lives of citizens. The beliefs of the Catholic Church hold that “military discipline does not create the duty to obey illegal orders.”¹⁷ However, in Argentina, the conservative Church remained tragically silent in a time of great need for its followers. During the military dictatorship, the Church did not speak out against the violations of human rights when its legitimacy as an institution could have saved lives. This silence may be as incriminating as the guilt of anyone who stood by and watched as people were tortured to death. For scholar and critic Mark Osiel, “Leaders in the Catholic Church...who remained silent (or expressed vocal support) were no less responsible-morally and historically, if not legally-than the immediate ranks of the officer corps who similarly stood by passively as the death toll soared to the thousands.”¹⁸ Without opposition coming from the moral standard of the Church, the military felt even more at ease to do as it pleased, and the people remained afraid, confused, and without religious leaders to follow. Fortunately, while the Church remained on the whole passive, local human rights organizations were founded that became a beacon for the coming international human rights movement.

In Argentina, absent support by the Church, another group arose that became world renowned as a grass roots local organization with a most obvious reason for being so determined in their fight. The Madres de la Plaza de Mayo organization was founded in 1976 by Azucena Villaflor Vicenti, a woman who eventually disappeared herself. The

¹⁷ *Truth and Partial Justice in Argentina: An Update*, 36.

¹⁸ Osiel (*Making Human Rights Policy*), 153.

women in this group were mothers of disappeared individuals, and they refused to sit quietly after their children had been kidnapped. These women, dressed in black, still march around the Plaza de Mayo in Buenos Aires at 3:30 every week, on Thursdays. They wear white bandanas each day with the names of their lost sons and daughters on them, showing a unity and a devotion that became the image of the Argentine disappeared. Throughout this struggle for truth and justice in Argentina, the Madres of the Plaza de Mayo were subjected to constant threats, harassment, and even disappearance and death on account of their powerful protests against the repressive government. The “Nunca Más” report by Argentina’s commission on disappeared people would later praise this organization by reporting, “ En los momentos mas negros de la dictadura-en portavoces de la conciencia cívica de la Nación.”¹⁹ [In the blackest moments of the dictatorship, they became the civic conscience of the nation] These women, along with the connected Association for the Abuelas (Grandmothers) of the Plaza de Mayo, became a major factor in revealing the missing children who were taken from their mothers and given to unlawful parents, usually Army officials and their wives. With the National Genetic Data Bank and the National Commission for the right to Identity that was founded in 1992, the Abuelas of the Plaza de Mayo have been able to prove that the biological parents of many children were not the ones that they believed were their parents.

While these findings provided breakthrough proof of the horrible kidnappings and murders that took place, the psychological effects on these “misplaced” children continue to be damaging. Thus the painful recovery of the truth continues through the dedicated work of many local organizations. The search remains an issue today, even

¹⁹ *Nunca Más: Informe de la Comisión Nacional Sobre la Desaparición de Personas*, 426.

though the military has criticized many of the findings. America's Watch notes, "The Argentine human rights movement had been highly successful in keeping the question of the fate of the disappeared in the courts, in the press, and on the streets."²⁰ While the movement lacked the sheer number of groups that surfaced in Chile, the fact that coverage by the press kept the issues alive, and extensive public and private court hearings were held, made the Argentinean search for truth more transparent. Overall, the human rights movement that began around this issue of the "disappeared" became a primary reason why Argentina was able to recover from such violations of human dignity. While the Church remained passive and weak, other groups, such as the Madres de la Plaza de Mayo, were able to collect enough testimony from survivors so that eventually some trials could be successful. A commission alone could never have done its work without the perseverance of these groups, most of which still persist in their work to this day. Furthermore, these local groups in Argentina truly contributed to launching the global human rights movement that continues to grow today.

Political Transition

Aside from the work of an expanding human rights network within Argentina, the government of Raúl Alfonsín that immediately succeeded the military rule had much to do with the degree of justice and truth accomplished. As usually happens in the writing of history, agency will dictate much of how smoothly, in this case the transition to democracy, will be. The people of Argentina elected President Raúl Alfonsín on December 10, 1983, and his influence set the tone for the incredible debate over government policy regarding the disappeared. In a speech just three days after his inauguration, Alfonsín remarked that, "The past looms somberly over our

²⁰ *Truth and Partial Justice in Argentina: An Update*, 11.

future...extremely atrocious violations of rights which form the essence of human dignity were committed by terrorism and the repression that followed. They cannot go unpunished, for impunity would constitute a betrayal of basic ethical principles and would put at risk the prevention of such violations in the future.”²¹ Alfonsín appeared to be on the right track towards a democracy in which the past is confronted and handled with the up-most respect for the families of the disappeared.

Once again, hindsight is convenient. Alfonsín had no pattern to follow as he sought to find a balance between the families and human rights organizations that wanted justice and the armed forces that still dominated rightist opinion in the country. At first, the prospects of Alfonsín’s new government seemed very promising, given his initial announcement of the impending annulment of impunity laws that had favored the armed forces²² and insulated them from prosecution. He made great progress towards post-conflict justice by appointing a National Commission for the Disappearance of Persons. Alfonsín also began the process of indicting and trying nine members of the Junta and suggested passage by Congress of stricter laws to punish torturers and those who attempt to usurp the government. During the mid 1980’s he also ratified the International Convention of Political and Civil Rights, the American Convention on Human Rights, the United Nations Convention against Torture, and agreed to abide by decisions of the Inter-American Court of Human Rights.²³ Among Alfonsín’s decisions, one of the most important was the formation of La Comisión Nacional de la Desaparación de Personas (CONADEP), or the National Commission on the Disappeared.

²¹ José Zalaquett, “The New Republic: End of the Era of the Generals,” *From Dictatorship to Democracy* (December 16 1985), 17.

²² José Zalaquett, “La Reconstrucción de la Unidad Nacional y el Legado de Violaciones de los Derechos Humanos,” *Perspectivas 2* (Santiago, Chile 1999), 389.

²³ *Truth and Partial Justice in Argentina: An Update*, 13.

CONADEP-Comisión Nacional sobre la Desaparición de Personas

Alfonsín favored creation of a commission in order to immediately address the human rights issues that plagued Argentina. In an interview with Professor Priscilla Hayner, a key advisor to President Alfonsín noted that “An investigative commission on the disappeared was discussed the very first morning of Alfonsín’s presidency.”²⁴ He established the Argentinean commission, named The National Commission on the Disappeared, or CONADEP in Spanish. Interestingly, neither the words “truth” nor “reconciliation” was included in this title, as they came to be in many subsequent commissions. This was a project without precedent and was challenged with the need to deal with a huge number of cases, far surpassing the number of victims in Chile. The commission also had to go into rural areas to seek information, where accounts were far less available and less organized. The commission was comprised of thirteen members, including the President of the commission, Ernesto Sabato, and three from the Congress Chamber of Deputies (the Senate refused to send representatives). Five departments were installed “to deal with the different aspects of the Commission’s work,”²⁵ each with its own chairman, from all walks of life in the Argentinean academic, professional, and political spectrum. Interviews and investigations were conducted throughout the country to discover any possible factual evidence and testimony concerning what had happened to the victims and who the offenders were. Even so, while thousands of Argentines agreed to testify for the report, “The commission received almost no cooperation from the armed forces, despite repeated requests for information from the commission’s investigators.”²⁶

²⁴ Hayner, 33.

²⁵ *Nunca Más: A Report by Argentina’s National Commission on Disappeared People*, 429.

²⁶ Hayner, 24.

This lack of communication with the military, which obviously knew more than the rest of the population, served both to prove their guilt and to stifle efforts at reconciliation.

In 1984 the report was published by the government with the title “Nunca Más,” or (Never Again). Every case and interview was documented, which amounted to 50,000 pages. Some 8,960 people were indicated as missing, although this number does not reflect the information received during the latest stages of publication or afterwards. Therefore, the number could be significantly higher. Victims were taken to at least 365 detention centers around the country, where three to four hundred people participated in their tortures and deaths. People in unexpected numbers came to talk to the representatives and tell their stories, even those who had left Argentina in exile. Fear was put aside as thousands finally stood up and spoke of the massive numbers of casualties in this “war against subversives.” The testimony taken and the research gathered by the commission was compiled into the 1984 *Nunca Más* report, which sold 300,000 copies and became a national best-seller.²⁷

Breakdown of the report

The first section of the CONADEP report addresses “The Repression,” and detailed how and where kidnappings, detentions and torture took place. Great specificity was placed on recounting the horrible details of the detention centers and methods of murder. This chapter also illustrates why and how the military believed they would be immune from prosecution. The *Nunca Más* report states that the repressive regime’s goal “was to seek to instill in the population as a whole a sense of utter defenselessness in the face of a multi-faceted power, through carrying out selective attacks which went

²⁷ Ibid., 34.

unpunished and were impossible to redress.”²⁸ Within this chapter are also several individual stories of kidnappings and testimonies, including that of the Jewish founder of the liberal newspaper, *La Opinion*, Jacobo Timmerman, who since became very famous for his book entitled *Prisoner without a Name, Cell without a Number*. This introductory chapter includes several photographs of detention centers and significant landmarks of the repression, as well as a final note on how the perpetrators profited from their crimes against humanity.

The second chapter details the 8,960 victims of the crimes covered by the commission, providing many statistics and categories of people who were seized. The report does assert, however, that the list of 8,960 persons “is not exhaustive;”²⁹ there may be mistakes and unknown information, as well as the unrecorded suffering of thousands of friends and family members. Individual stories are woven into general reports of pregnant women giving birth in prison and their children then being taken away. In addition, children during this time suffered numerous abuses, from pain inflicted on their mothers while in the womb to the emotional trauma of watching a parent be detained and taken away or even tortured in front of the entire family.³⁰ As the report continues, the truth becomes plainly obvious: entire family structures were ripped apart by these forced disappearances. Whole families were kidnapped. At other times victims survived the prisons, only to live the rest of their lives besieged by state of constant nightmares. Scores of journalists were reported missing in “an attempt to silence a very important group in society, in order to prevent all public debate.”³¹ Priests and nuns that spoke out

²⁸ *Nunca Más: A Report by Argentina's National Commission on Disappeared People*, 236.

²⁹ *Ibid.*, 284.

³⁰ *Ibid.*, 308.

³¹ *Nunca Mas: Informe de la Comisión Nacional Sobre la Desaparición de Personas*, 362.

were also punished, as well as trade unionists and even well known individuals who challenged the dictatorship. The horrifying aspect of this evil is how well contrived and planned it was, in an attempt to silence a whole society and erase all possibility of change. People turned into numbers and bodies, all victimized in the name of military power and control.

The third part of the *Nunca Más* report concerns the judiciary during the years of repression. Aside from a minority of judges that chose to uphold human rights as best they could, most judges were either replaced or corrupted by the armed forces. The *Nunca Más* report details this corruption through both individual stories of injustice, as well as general commentary on the lack of legitimate judicial authority. At least 106 jurists were disappeared during the military dictatorship as well, while many among the Madres de la Plaza de Mayo were tormented along with many members of other human rights organizations. This section of the report ends with a discussion of the role of “international solidarity” in Argentina. In other words, “the depths plumbed by the repressive phenomenon of state terrorism in those ill-omened years pricked the consciences of sensitive people all over the world, and they joined forces to end the barbarism unleashed on Argentina.”³² Specifically mentioned and commended are the Inter-American Commission for Human Rights of the Organization of American States, the United Nations and the International Red Cross, as well as Amnesty International. Overall, this chapter of the report stresses the ineffectiveness of the court systems in bringing about justice and the subsequent birth of key organizations that, along with international support, collected the information and put pressure on the Argentinean government to end the suffering.

³² *Nunca Más: A Report by Argentina's National Commission on Disappeared People*, 425.

The report concludes with a synopsis of the creation and work of CONADEP. The methodology of the commission as it compiled its report is described, with a stress on both thanking those persons who made the report possible, as well as stating that the “prime consideration in the work was that when coming to a conclusion the Department should not be influenced by anything that has not been reliably checked.”³³ Further, while lists were compiled and double-checked by computer systems donated by a firm called CUPED, most of the research and analysis was done through tedious interviewing and investigation. The report lists the steps it took throughout the nine months of the commission’s operation, such as holding press conferences, setting up committees, and adjusting regulations.

Next, Part V discusses the “doctrine behind the repression” by referring to several speeches and events in order to explain the ideology behind this era of disappearances. President Alfonsín is quoted as the last speaker in this section, asserting on December 10, 1983 in his inaugural speech that “What both the military and the civilians forget here, to the detriment of both the country and the Armed Forces, is that golden rule which applies in all civilized nations whatever their political system or ideology, which is that the Armed Forces should always be subordinate to the civilian authority established through democratic institutions.”³⁴ This comment sets down the basic premise of a democratic society, and the essence of what was lost during the years of repression in Argentina.

Finally, Part VI outlines a set of recommendations for the future. Among these are declaring “forced abduction a crime against humanity,”³⁵ adhering to international and national human rights organizations, and ensuring progress of court trials in Argentina for

³³ *Nunca Más: A Report by Argentina’s National Commission on Disappeared People*, 435.

³⁴ *Ibid.*, 445.

³⁵ *Nunca Más: A Report by Argentina’s National Commission on Disappeared People*, 446.

the perpetrators. A further plea was made for the passing of appropriate laws to help compensate suffering families and engrain this tragedy into the laws and history of Argentina. The report then concludes with a summary of the era of the disappearances, including a poignant statement³⁶ that people of all walks of life were kidnapped and murdered in this campaign, not just “militant leftist subversive enemies.” CONADEP ends with a stern conviction that “There is enough evidence [in the report] to allow us to confirm that people who are still missing passed through secret detention centers and that the truth as to their subsequent whereabouts will come out as progress is made in determining which individuals are responsible for the acts of repression committed.”³⁷ All in all, while the *Nunca Más* report only identifies the victims, and 8,960 cases remained unresolved, Argentina did investigate and publicly reveal what had only a few years before remained unchallenged. For better or for worse, no individual names of offenders were revealed in an effort to retain a judicial fairness and a limited scope of denunciation.

On July 4, 1984, Raul Alfonsín aired a two-hour television special that revealed the CONADEP findings, including testimonies from survivors of the concentration camps and families of the disappeared. Alfonsín agreed to the program after a private airing and serious consideration that it might be too controversial to be seen on television. Ernesto Sabato added opening and closing remarks, while Minister of the Interior, Antonio Troccoli, reminded viewers of the revolutionary violence that helped cause the violence. Alfonsín also dismissed the Chief of Staff of the Army, General Jorge

³⁶This conclusion is also supported by a table that illustrates the percentage of the disappeared who were blue-collar workers (30.2), students (21.0), nuns, priests etc (.3) and so forth.

³⁷*Nunca Más: A Report by Argentina's National Commission on Disappeared People*, 449.

Aruindeguy, in an effort to illustrate his willingness to confront military pressure.³⁸ This television briefing brought the report to millions of viewers. While the Argentinean press had been active in covering the situation of the desaparecidos, this presidential broadcast sent the message around world. The report was then published as a book that sold 40,000 copies the first day, and has since sold around 300,000 copies.³⁹ Press material that had been state controlled or censored for the last eight years was corrected in this comprehensive treatment of the abuses committed. The report was turned over to the state prosecutor who, with this firmly established information, was then able to repeal the amnesty that the military had enjoyed since the 1970's. This data, including crucial testimony from direct survivors of detention centers, was the key to the trials of the military juntas.⁴⁰ Threatened by political opposition and working without a model, the *Nunca Más* report took a massive situation of thousands of victims, and produced answers to many here to fore unresolved cases of murder.

Laws of Impunity

In order to analyze actual measures of truth and their degrees of success in Argentina, the specific obstacles confronting the search must be spelled out. If justice and truth were two separate entities, with justice in this case being prosecution of the violators, then laws of impunity might have served to provoke admission of guilt. If the perpetrators were made immune from prosecution, then intuitively they would have been more inclined to speak out. However, justice and truth were in fact intricately connected in these cases and in general, and therefore the laws of impunity were permanently damaging to the discovery of information. In both Argentina and Chile, impunity laws

³⁸ *Truth and Partial Justice in Argentina: An Update*, 18.

³⁹ Hayner, 34.

⁴⁰ *Ibid.*

were adopted to protect the ruling dictatorship from present or future prosecution. Laws of amnesty were literally written into the constitution so as to create a law against persecution for these crimes against humanity. One reason the truth commission became such a vital part of the reconciliation process was because these laws of amnesty blocked most initial attempts to bring army officials to justice.

In 1983 the Congress finally succeeded in repealing the Law of Self-Amnesty, a law that “granted immunity to suspects of acts of state terrorism, as well as to all members of the Armed Forces, for crimes committed between May 25, 1973, and June 17, 1982.”⁴¹ The Supreme Court then began to prosecute military officials suspected of crimes, and enlisted the help of the Federal Appeals Court of Buenos Aires in 1984. The steps that the Argentinean government took to approve the amnesty were temporarily blocked by the judiciary, which began to process the more than 300 indictments of high-ranking military officials. However, most of these accusations never resulted in trials because of the two laws of impunity that dismantled the legal system and the additional regressions of the following presidency. While some judges did fight passionately to convict officials before their amnesty was reinstated, most of the officials walked free.

Pressured by the armed forces to move forward and not linger on past events, Argentina’s government, headed by Alfonsín, enacted two laws of impunity: The “Punto Final,” or, “Full Stop” law on December 5, 1986 and the “Obediencia Debida,” or “Due Obedience” law on June 5, 1987. The Punto Final law was an “extinction of penal action,” essentially clearing any member of the armed or security forces from any unlawful act committed before December 10, 1983. This law however does not exonerate

⁴¹ Carlos H. Acuna and Catalina Smulovitz, “Adjusting the Armed Forces to Democracy: Success, Failures, and Ambiguities in the Southern Cone,” in *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America* (Boulder: Westview Press Inc., 1996), 16.

“rebels” from prosecution.⁴² The Due Obedience law exonerated anyone who followed an order from prosecution for what he or she did on command. This “Due Obedience” clause stated in law that if someone follows an order, even if it is illegal, he or she cannot be punished.⁴³ This clause both gave credit to blind obedience and acted against the constitution. It gave the armed forces a legal means of escaping any punishment and became a reason not to worry about the consequences of violating human rights. Alfonsín felt tremendous pressure from the military to enact these crucial measures to halt the persecution of military officials. He therefore agreed to a general amnesty that stifled justice but kept relations between the army and the government relatively stable.

When the trials of army members began in Argentina, they were both highly anticipated and well covered by the press. Alfonsín succeeded in pushing the “Punto Final” law through the Senate, which generated much antagonism from the human rights perspective for allowing criminal trials to just stop unconditionally. It became clear that Alfonsín was giving the armed forces a chance to save their own reputation and his relationship with them by providing leniency with the “due obedience” clause to those who had merely followed orders. Alfonsín did not want to alienate the entire armed forces and keep Argentina in a state of complete military-government polarization. Commentary written in 1986 argues that “It became Alfonsín’s preeminent concern to ensure that his legal strategy blamed--and *appeared* to blame--not the officer corps as such, but the handful of men who had occupied its top offices.”⁴⁴ However, the Due Obedience clause stipulated that it could not be considered in the case of “atrocious and

⁴² See Law 23.492 “Punto Final,” Dec. 23, 1986: <http://www.derechos.org/ddhh/arg/ley/final.txt>.

⁴³ See Law 23.521 “Obedencia Debida,” June 4, 1987: <http://www.derechos.org/ddhh/arg/ley/ley23521.txt>.

⁴⁴ Mark Osiel. (The Making of Human Rights Policy), 154.

aberrant acts.”⁴⁵ Even so, to draw that line between guilty and not guilty when all had a hand in the abuses is to make an ethical distinction that seemed to be a convenient political strategy and compromise. At the same time, the “government’s insistence on its scheme, that is, to punish those who gave orders but to exculpate those who carried them out, early on became a source of inconsistencies,”⁴⁶ was a reoccurring theme in Alfonsín’s political tactics. What might be called Alfonsín’s theories of honesty and commitment to a transition to democracy ended up falling short of a practical and thorough enough campaign for justice and the punishment of those responsible.

Some have suggested that offering deals of immunity, or “plea bargaining”⁴⁷ to certain armed forces’ officials could have facilitated a confession of more truth and subsequent punishment for more military officials.⁴⁸ Without reason to confess, most military members did not. This posed one of the greatest challenges in measuring the truth, for members of the military possessed almost all of the needed information. Because Alfonsín could not practice what he preached, truth was relegated to less than first priority, and was thus not told in full. Some have also suggested that Alfonsín made a “self interested attempt to make political capital out of the disappearances,”⁴⁹ an opinion that should not be discounted.

Carlos Menem succeeded Alfonsín in office and pardoned many of the convicted military officials, starting with an initial set of pardons in 1989. He also pardoned some “subversives,” an apparent effort to remain impartial in his decisions, but the exact

⁴⁵ *Truth and Partial Justice in Argentina: An Update*, 16.

⁴⁶ *Ibid.*, 55.

⁴⁷ Zalaquett (*Derechos Humanos y Limitaciones Políticas*), 128.

⁴⁸ *Ibid.*, 175.

⁴⁹ Osiel, Mark. “The Making of Human Rights Policy), 175.

reasons for this remain unclear.⁵⁰ In total some 277 people benefited from these presidential pardons.⁵¹ However, in a demonstration that times had changed, 80,000 people gathered in Buenos Aires on December 10, 1989, the day news of the pardons was published, to protest their disapproval. These rallies continued around the country, especially when military leaders attempted to obtain passports.⁵² People were clearly less afraid and more certain this injustice was worth protesting. All in all, Alfonsín initially controlled the search for truth in Argentina, but, with no model to follow, he could not stand up for what he possibly believed in. He felt that the pressure was just too great to be thinking only of human rights. The “military’s resistance to the rule of law”⁵³ pushed Alfonsín to accept a halt to his ethical tendencies, although the legacy of his appointed truth commission did not stop here. Slowly the unquestioned power of the armed forces dissolved as the legal system was rejuvenated and the draft was eliminated, causing the army to drastically shrink in size. However, the military’s influence on the era of the disappearances and subsequent attempts to reconcile through trials and truth-telling measures was critically stifling.

Reparations

In Argentina, reparations are suggested in the “recommendations” section of the *Nunca Más* report. These recommendations, however, are vague in describing what would be an appropriate compensation for the families of the victims of repression in Argentina. The text includes only a single request, namely that “The appropriate laws be passed to provide the children and/or relatives of the disappeared with economic

⁵⁰ *Truth and Partial Justice in Argentina: An Update*, 66.

⁵¹ Acuna et al., 18.

⁵² *Truth and Partial Justice in Argentina: An Update*, 69.

⁵³ *Ibid.*, 57.

assistance, study grants, social security and employment and, at the same time, to authorize measures considered necessary to alleviate the many and varied family and social problems caused by the disappearances.”⁵⁴ This suggestion covers most key issues for the victims’ families and is broad enough so that any number of reparations programs would be able to fulfill these requests. However, the absence of specific solutions not only illustrates a lack of detail but also uncertainly as to how actually to deal with the idea of reparations in Argentina.

In reality, family members listed in the *Nunca Más* report or subsequently by the government’s Human Rights Office did become eligible to receive a one-time payment of 220,000 dollars. Children of the deceased also receive a monthly pension of 140 dollars a month until the age of 21. Further, “political prisoners held without trial” and kidnapped survivors also receive \$74 per each day for the period of their incarceration, including stipulations for those injured or who died while in prison. The commission opted to omit forced exile and torture not resulting in death, meaning that it did not list these people as “victims.” Argentina did interview these witnesses, even though ultimately they were not identified on the list of victims. Argentina also passed declaration to create the category of the “forcibly disappeared” in 1994,⁵⁵ as well as a waiver for military service and housing credits for children of victims. Overall, while suggestions were vague in the *Nunca Más* report, Argentina was able to assemble a solid list of reparations for families of victims, something not expected on account of the report’s recommendations alone. Now only the future would tell how much of the program would come to life.

⁵⁴*Nunca Más: A Report by Argentina’s National Commission on Disappeared People*, 446.

⁵⁵ See section on the legal implications of the disappeared.

Current state of Affairs in Argentina

Argentina today seems stalled in many ways in its progress by the government, while the judicial and international systems have come a very long way. President Rúa is often criticized for lacking human rights initiatives, such as in December of 2001 when he refused to extradite Captain Alfredo Astiz, a former naval officer, to Italy on charges of the kidnapping and torturing of three Italian-Argentines, two in 1975 and the third in 1977. The Argentinean government also denied an extradition request from Sweden on January 28, 2002. Previously Astiz was sentenced to life imprisonment in France in 1990 for the murder of two French nuns, but Argentina refused that extradition request as well.⁵⁶ Rúa and his followers have been also been unable to stamp out international and local rage surrounding the armed forces. In November 2001, the Federal Court of Buenos Aires upheld a nullification of the “Full Stop” and “Due Obedience” laws announced by Judge Gabriel Cavallo on March 6th. While judges may nullify laws for specific cases-- and the laws still have potential to grant immunity—this decision made a powerful statement about the unwillingness of the judiciary to allow the acts of forced disappearance and kidnappings to be exempted from justice.

In 1995, General Ricardo Balza acknowledged responsibility for several findings of the National Commission for the Right to Identity and the National Genetic Data Bank concerning the missing children of disappeared parents. In a long, apologetic speech delivered on April 25th, General Balza asserted that “El fin nunca justifica los medios” (the ends never justifies the means), and “Es la hora de asumir las responsabilidades que correspondan.” (It is time to assume the responsibility that corresponds [with the crime]). Balza’s candid willingness to take responsibility as commander of the army marked a

⁵⁶ See www.hrw.org.

bold move that separated the military from those members who were complicit in the disappearances. He announced publicly in his speech that “Nadie esta obligado a cumplir una orden immoral o que se aparte de las leyes y reglamentos militares. Quien lo hiciera, incurre en una inconducta viciosa, digna de la sanción que su gravedad requiera.” (No one is required to comply with an immoral order or an order that goes against military rules. Whoever does conduct a vicious order will be sanctioned with appropriate gravity).⁵⁷ This speech was the first public apology of its kind in Argentina, and represented a major step towards public acknowledgement of wrongdoing—an ingredient crucial for the realization of post-conflict justice. However, General Ricardo Brizoni, his follower in command, regressed this progress by denying the responsibility that Balza had accepted earlier, therefore setting back the progress Balza had made towards reconciliation.

Today’s President, Eduardo Duhalde, is a Peronist confronted with great challenges. Elected in a wave of five Presidents in two weeks, Duhalde must deal with Argentina’s worst economic crisis in two decades. Further, several people recently died in protests in which the police apparently were the killers. A member of the Madres de la Plaza de Mayo was also threatened by gunshots fired into her house that appear to be from an “official” weapon. In the recent past, Argentina and its military called for a panel meeting that modeled the Chilean “Mesa de Diálogo” (Roundtable Discussion), but no human rights groups supported it. Hence it was never created. In short, while Argentina has taken huge strides in dispensing justice and revealing truth, much work is still needed concerning the acknowledgment of responsibility. There has been a reoccurring pattern of steps forward in Argentina to ensure human rights and their validity, albeit subsequent

⁵⁷ Martín Balza, "Declaración del General Martín Balza," April 25 1995.

steps backward have encumbered the overall fight for human dignity. With the expansion of international law and its credibility, however, coupled with the persistent worldwide activities of human rights groups, the government of Argentina will find it more difficult to hide violations in the future. Too many people within the country are now ready to stand up and speak out against the authorities. In sum, Argentina's history and place in the human rights movement made huge strides during the 1990's towards a more effective international system of human rights monitoring. While many mistakes were made, the world watched and learned from the tragic case of the Argentinean disappearances. Chief among those societies benefiting from the tragic experience of Argentina was its neighbor, Chile.

Chile

The international polarization of the Cold War during the 1960's intensely affected Chile, a period in which ideology became the language of politics and communism was the most serious threat to those in power who opposed it. At first there existed a tolerance of diversity among different and opposing political parties, although it was not to last. The radical leftist group, the Movement of the Revolutionary Left (MIR), was one of a few similar groups that had formed in Chile, along with Popular Unity, the party of Salvador Allende and his followers. On the other side were rightist groups such as Tacna and Motherland and Freedom, who openly desired a coup when Allende and his Popular Unity came to power in 1970. The 1972 economic crisis heightened tensions that had been building within the country since Allende began to instill reforms towards a socialist nation. The 1973 coup d'etat by the armed forces marked a historical turning

point in the history of Chile, and the world. While the United States' involvement remains unclear, the Nixon administration early on demonstrated its hatred and fear of communism, and was implicated in assisting in the ousting of power and subsequent death of Allende in La Moneda Presidential Palace on September 11, 1973. General Augusto Pinochet assumed power that same day. Thus we find a key initial difference between the events in Argentina, in that in Chile the left had actually been democratically elected into power, and then was ousted.⁵⁸ In contrast, in Argentina the "threat" alone was enough to begin a civil war. It is possible that Argentina's military and rightist groups saw the rise to power of socialism in the form of Allende in Chile and were afraid that the same fate would one day befall Argentina when some communist student decided to run for President. Hence, they acted preemptively.

In Chile, 1973 marked the start of an effort by the armed forces and the police to squash any sentiment in favor of socialism or the political left. The Direction of National Intelligence (DINA), created on June 14, 1974, and headed by Army Colonel Manuel Contreras. The DINA and its descendent, the National Center of Information (CNI), became the military machines for ensuring control over the country. These secret policemen lead a massive movement of arrests, torture, and murder of all persons thought to be opposed to the Pinochet regime. As in Argentina, people were kidnapped from their homes at night and taken to labor camps and detention centers throughout Chile. There every imaginable method of torture was imposed on them.

⁵⁸ José Zalaquett, "Truth, Justice, and Reconciliation: Lessons for the International Community," in *Comparative Peace Processes in Latin America*, ed. Cynthia J. Arnson (Stanford: Stanford UP, 1999), 350.

Families waited in lines for days to receive information that never came. Little resistance surfaced at first by anyone still living today, as the dictatorship controlled the country through violence and silence. The public had never confronted a situation like this before, and “the fear, the surprise, and the lack of knowledge”⁵⁹ kept the society uninformed and without a way to fight back. Propaganda by the government and its influence on the public’s ability to obtain information obstructed the whole version of current events. One newspaper headline stated in 1979, “A young military official dies a victim of Extremism.”⁶⁰ The news was filled with tragic stories of fallen armed officials who were killed by extremist leftist terrorists. The Chilean public thus read about the violence of the “enemy” leftist radicals, instead of the much more frequent violence against citizens imposed by the regime. The subsequent report on the cases of the forced disappearances in Chile stated that relatives of the victims could not organize due to “the country’s lack of experience in situations of constitutional abnormality and systematic violations of human rights.”⁶¹ Chile’s society became a brutal experiment in what could happen if the people in power decided to do whatever necessary to eliminate disagreement. The country’s population had to devise the ways and means to fight back.

The End of the Disappearances

In Chile the situation was unique regarding how the violations ceased. Although the gravest and highest magnitude of abuses was committed by the military dictatorship during 1973-1976, Pinochet, the head of this force, retained power until 1989. There was no outside conflict to weaken the army, and guerilla resistance was minor except for

⁵⁹ Comisión Chilena de Derechos Humanos, Fundación Ideas, *Nunca Más en Chile: síntesis corregida y actualizada del Informe Rettig*, (Santiago: LOM Ediciones, 1991), 58.

⁶⁰ *El Cronista* 24 April 1979.

⁶¹ See www.derechoschile.com.

during 1979-1980. The forces that began the end of the period of the disappeared persons entailed an upsurge of both local and international organizations against the violations. Included among these were the disapproval of the Church, new local human rights organizations and the United Nations, as well as other international human rights monitors. Even so, the regime headed by Pinochet remained in power until defeated at the ballot box in 1989.⁶² The supremacy of “the system” in Chile is held on a very high pedestal. Law and order rules in this country, and change usually evolves in its traditionally proper place and time. In addition, the "blanket" amnesty that Pinochet granted himself proved to be the central impediment of the transition to democracy in Chile.

Laws of Impunity

The Chilean amnesty law, like the Argentinean statutes, engendered debate since its enactment, on grounds of its unconstitutional violation of ratified international conventions of which Chile is a signatory⁶³. The Chilean impunity law of 1978 exonerated all offenders of crimes they had committed since September 11, 1973. While the law did not cover the 1976 assassinations of Orlando Letelier and Ronnie Moffit in Washington DC by a car bomb, this law demonstrated that a military government could effectively write itself beyond and above the law without negative consequences. Pinochet's regime also succeeded in drafting a new constitution in 1980 that legitimized the new government. In fact, "According to the new constitution, Pinochet [began] a new

⁶² Zalaquett (Truth, Justice, and Reconciliation: Lessons for the International Community), 351.

⁶³ In fact, both Chile and Argentina are signatories to all of the major international conventions created thus far. These treaties include the conventions to protect: economic, social and cultural rights, civil and political rights, race, children, women, torture, and the international criminal court (which Chile has signed but not ratified).

http://www.bbc.co.uk/worldservice/people/features/ihavearightto/four_b/treaties_covenants.shtml.

eight-year term of "presidency." The constitution also control[ed] any future civilian governments until well past the year 2000 by granting Pinochet and the political right disproportionate representation in Congress once the governments of the "protected democracy" [were] elected. The election [was] held without voter registration lists or political parties and thus, no party-appointed poll watchers."⁶⁴ Corruption was hence institutionalized by the Pinochet regime that created a new constitution to legalize its immunity. Investigation of the violations of human rights in Chile had to either find ways to get the truth outside this amnesty law, or actually prove the law's illegitimacy and in doing so implicate hundreds, if not thousands of people, in crimes believed to be closed cases.

Political Transition

President Patricio Aylwin, who governed Chile from 1990 to 1994, created a similar National Commission for Truth and Reconciliation and also succeeded in reversing an established amnesty for some members of the military. His resolve to discredit the laws of impunity proved much stronger than that of his Argentine counterpart, Alfonsín, and his role in establishing the unlawfulness of the amnesty thus became larger. As Zalaquett notes, unlike Argentina, "The Aylwin government decided to follow a course it could sustain. It adopted the guiding principle that reparation and prevention must be the overall objectives of the policies regarding human rights violations."⁶⁵ Aylwin had more of a vision for his country. He did not immediately dive into promises he could not keep, and instead preserved his political capital. Greater focus

⁶⁴ "Chronology 1980," *Santiago Times* (Santiago: The Chiron Group, Inc., 2002). http://www.santiagotimes.cl/derechos/1980_eng.html.

⁶⁵ José Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law Journal: The Matthew O. Tobriner Memorial Lecture* 43, no. 6. (San Francisco: Hastings College of Law, 1992), 1432.

was devoted to the truth commission than to the immediate indictment of military officials, a switch from the Argentine approach. This resulted in prosecuting fewer of the accused, but produced more emphasis on the “fact finding” of events that occurred from 1973 to 1976.

The model of the Argentine method was flawed in that Alfonsín could not set a plan that he could reasonably sustain. The Aylwin administration learned from the Argentinean experience and took a different course. Many family members of the victims in the commission’s report are quoted as saying that they wanted to know what happened to their loved ones above all else, even before the prosecution of the perpetrators. While Aylwin was criticized for not extending the commission’s report’s findings widely enough,⁶⁶ today the report is widely known and read throughout the world, something not attributed to Aylwin. Similar to the case of Argentina, Eduardo Frei, who followed Aylwin in office, paid much less attention to human rights. He therefore stepped back from the human rights perspective, similar to what happened with the Argentinean government. Clearly the decisions of important individuals in government and elsewhere always affect history. In Argentina and Chile the search for truth was initiated by Aylwin and Alfonsín, respectively, stifled by Alfonsín and Menem, and eventually stifled by Frei of Chile as well.

Rettig Report

The Chilean National Commission on Truth and Reconciliation and its subsequent report followed the Argentinean model, albeit with notable differences. This was in part due to learning by example and also to the unique circumstances of the Chilean case.

⁶⁶ Zalaquett (Truth, Justice, and Reconciliation: Lessons for the International Community), 358.

Even though Patricio Aylwin had been elected to the presidency in 1990, he was restricted by the 1980 constitution that guaranteed the authority of the military, which kept Pinochet himself as its leader until 1998. After this date Pinochet would still remain Senator for Life. This immunity was the major obstacle for the new President as he attempted to reconcile with the harsh years of dictatorship and human rights violations. Deciding to focus on investigating the truth instead of fighting the amnesty, Aylwin created the National Commission on Truth and Reconciliation. The Commission was “legally constituted”⁶⁷ on May 9, 1990, and given nine months to finish its work. Eight individuals were chosen from various walks of life to research and write the report. He “intentionally select[ed] four members who had supported Pinochet, including former officials in the Pinochet government, as well as four who had been in opposition, thus avoiding any perception of bias in the commission’s work.”⁶⁸ This act of impartiality in a time of almost absolute division in Chile was novel, for Aylwin was implying his preference for truth over punishment. Raul Rettig Guissen was chosen to chair the commission. For his contributions to its effort, the report is often referred to as the “Rettig Report.”

Procedure

The representatives of the Chilean Truth and Reconciliation Commission traveled throughout the country to collect interviews and testimony from whoever had information to give. No one was turned away. Families of the victims were approached first, and “for many relatives this act was the first that the government had carried out to know and hear

⁶⁷ *Summary of Truth and Reconciliation Report*, 11.

⁶⁸ Hayner, 35.

their demands.”⁶⁹ The commission later took testimony from friends, witnesses, and anyone else who would come forward. The commission also made use of many resources from other human rights organizations that had compiled information, such as the *Vicaría de Solidaridad* and the *Association of Relatives*. Like the Argentinean situation, the Chilean military was very unwilling to cooperate; they hardly gave any information to the commissioners or to any of the other groups that attempted to collect testimony. Commissioners often attempted to verify information concerning the armed forces by consulting officers, but little in response was forthcoming. Later on, Chile became the center of a key issue in the debate concerning the effectiveness of the truth commission to achieve post conflict reconciliation, because Chile did not offer individual immunity to persons who came forward. As a result the commission collected very little information that the military most certainly had. Future commissions such as the Truth and Reconciliation Commission of South Africa decided to grant individual immunity to those who told their full accounts and proved that their crimes were political in nature. This South African body was able to collect a more substantial amount of factual data because it improved upon the Chilean model of a truth commission.

Even so, thousands of Chilean victims’ family members and witnesses did step forward to tell their stories and reveal secrets that had long been hidden. The policy of the Chilean commission was “to repair the damage caused by human rights violations both to individual victims and to the society as a whole; and to prevent such atrocities from ever happening again. The crux of the matter, however, was to decide on the means to achieve such objectives and on the likely extent to which they could be accomplished.”⁷⁰ These

⁶⁹ *Summary of the Truth and Reconciliation Report*, 12.

⁷⁰ José Zalaquett, introduction to *Report of the Chilean National Commission on Truth and*

goals are significant. They illustrate the realization that it is not enough to set a goal; there must be an acknowledgement of the likeliness of achieving this goal. After the experience of the Argentinean commission, Chile realized the need to admit the limits of such a report. If compromises had to be made in order to protect the future of Chile, so be it for the greater national good. The Chilean commission did not perfect the process of “truth-telling” by means of publishing a comprehensive report, but it learned from the mistakes of its predecessor and helped to pioneer the field of post conflict justice. Chile also had fewer cases of disappearance and could therefore amass a larger percentage of data. However, since crimes committed before the 1978 amnesty law would not be brought to trial, they would be recorded in the report.

The Rettig Report, which came to President Aylwin on February 9, 1991, was finished within the nine months allotted for the investigation. It was “published in the national press”⁷¹ and marked a cornerstone of Chile’s human rights history. The report trailed the Argentinean findings by seven years and covered some sixteen and a half years of abuse, more than double the period covered by Argentina. Like the Argentinean report, it “named the victims but not the perpetrators.”⁷² This is a significant aspect of the report in that the Commission agreed that, like Argentina, it would not identify individual criminals. While all clandestine detention centers, groups of armed officials and suspected branches were well researched and documented, the choice was made not to condemn any individual without “due process” of the law, even though the report itself did not constitute an official legal indictment.

Reconciliation vol. 1 (Indiana: Notre Dame UP, 1993), xxiv.

⁷¹ Eduardo Berrios Valenzuela, *Análisis Jurídico Procesal de la Comisión de Verdad y Reconciliación* (Santiago, Chile: PUC Facultad de Derecho, 1993), 9.

⁷² Zalaquett (introduction), xxxii.

The focus of the report remained on finding the facts of the abuses, not on exactly who committed them; this should be a judicial matter. This gesture of legality was one of many important clues that the commission intended to supplement legal trials of perpetrators instead of replacing them. Further, the commission “did not have the power to subpoena the appearance of anyone to declare before it.”⁷³ In other words, in Chile there was no legal manner on which to force individuals to testify before the commission. Later commissions around the world would reform this model of not naming individual criminals and not giving the commission the power to subpoena, believing that in Argentina and Chile insufficient effort was made to prosecute publicly each abuser. For example, the South African Truth and Reconciliation Commission took its inspiration directly from these two former reports and consciously chose to add a public forum of testimony. In addition, the Chilean commission’s “mandate excluded cases of torture that did not result in death.”⁷⁴ This choice was mainly practical in that the commission members only had nine months and limited funding in which to complete and publish a full report. The 50,000-200,000 survivors of torture in Chile were not included. Again, later commissions attempted to correct this by allocating more time and greater resources to the commission’s work. A truth commission should primarily help the victims of abuse, and the definition of “victim” in terms of state repression has indeed continued to grow to include more and more individuals.

In a decision to demonstrate fairness and credibility, abuses committed by the opposition forces were well documented within the report. Guerrilla factions were present in Chile, especially before and in the beginning of the military dictatorship. These groups

⁷³ *Summary of Truth and Reconciliation Report*, 12.

⁷⁴ Hayner, 36.

did commit abuses against agents of the state, although these numbers were far fewer and much more publicized in the news in an effort to rally anti-communist sentiment. In fact, each of the three body chapters of the *Rettig Report* that explain the number and circumstances of individual deaths includes all recorded instances of killings by guerrilla factions. Each chapter has a section entitled “Violations of human rights perpetrated by agents of the state or persons at its service,” as well as a section entitled “Violations of human rights perpetrated by private citizens under political pretext.”⁷⁵ Overall, at least 4,000 complaints from around the world were examined. Of the 3,000 complaints within the limits of the commission, 2,025 were determined by the commission to be deaths committed by the state, 90 were people who died in violent opposition, and 164 were not clearly recognized as human rights violations. Finally 614 complaints were set aside due to lack of proof, and kept open to investigation. By the close of the commission’s hearings, 70 percent of the examined cases were given clear conclusions,⁷⁶ of which “over 95 percent were attributed to state agents.”⁷⁷ These findings far surpass the Argentine data, even though few remains of bodies were discovered in either case. The Chilean report is admirable in that it attempted to investigate individual disappearances with as much accuracy as possible, using place names and methods of treatment to individualize each person’s case.

The first section of the *Rettig Report* explains how the violations were investigated and the norms and standards the commission followed. The commission then stated that it “had to be focused in the examination on how the most fundamental value-life-had been violated.” The main aims of the report were threefold: (1) to establish the

⁷⁵ See index of *The Chilean Truth and Reconciliation Report*.

⁷⁶ Zalaquett (Procesos de Transición a la Democracia), 128.

⁷⁷ Hayner, 36.

most facts possible concerning the disappearances of 3,400 people; (2) to recommend acts of reparation; and (3) to finally adopt measures to prevent future occurrences of such a violent and immoral nature.⁷⁸ The introduction to the report includes a synopsis of the methodology of the commission, illustrating the initial taking of testimony from witnesses and combining this data with the recent work of human rights networks within Chile. The commission proceeded to verify as much information as possible and then hand it over to the legal system, an actual stipulation made in the creation of the commission. The legal and institutional standards of international and national law are introduced as the report explains the ideology and thinking behind these crimes against humanity. The report then addresses ways of violating a persons' human rights and explains its reasoning for not naming individual perpetrators.

The second chapter examines the historical background of Chile, recounting the polarization of the left and right and the creation of the Dirección de Inteligencia Nacional (DINA), on June 14, 1974 that began to prepare for a war against “subversives.” This chapter summarizes the political backdrop of the Chilean situation and then discusses the legal framework of the abuses, in which the military trumped all constitutional and legal rights by concentrating all powers of the state into the hands of the dictatorship. The Congress was dissolved and a “State of Siege” was declared on September 11, 1973. This led to a destruction of the legal systems in place in Chile because under a State of Siege a “President of the Republic [can] transfer persons from one point of the country to an urban locality, arrest them in their homes, suspend or restrict the right of assembly and the right of opinion or movement.”⁷⁹ The judicial

⁷⁸ *Summary of Truth and Reconciliation Report*, 11.

⁷⁹ *Summary of Truth and Reconciliation Report*, 32.

system in Chile was altered again when the general amnesty was enacted. The introduction ends with a comment on the suspicious activity of the courts, and especially “the Supreme Court, which facilitated the violations of human rights.”⁸⁰ Overall, the judges, lawyers and legal system of Chile were corrupted and therefore failed to perform their central function: protect the rights of the citizens.

The next section of the *Rettig Report* contains the bulk of the “truth telling” and is divided into the three phases of the abuses: September to December of 1973; 1974 to 1977; and 1977 to 1990. This categorization explains the era of disappearances according to each period mentioned, which was more tightly organized than the Argentine report. Violations are broken down by region, and the reactions from various spheres of the society are summarized. Each period is outlined in terms of detailed accounts of the violations committed and how the society and the rest of the world reacted to these events. When necessary, the report includes statistical charts, photos and explanations that help us comprehend how this actually happened on such a massive scale. The paragraphs that detail the reactions of certain communities are a useful manner of understanding the mood of certain populations of Chile, including the initial action of the Church and the eventual support of both Chilean and international human rights organizations. Chileans slowly increased their activism and a “slow rebirth of the social habit of solidarity began, which later became a platform from which society as a whole would be able to react.”⁸¹ The ruthless nature of the disappearances began to fade in 1977 when the DINA was dissolved and the State of Siege ended. The media was still censored by the Decree Law 5720 of September 16, 1985 that stated during the State of Siege that

⁸⁰ Ibid., 40.

⁸¹ *Summary of Truth and Reconciliation Report*, 72.

coverage of “terrorist crimes” or “partisan political activities” was forbidden.⁸² Protest, however, was spreading among networks of human right advocates and the family members of victims. This chapter ends with several tables that group victims according to various social categories.

Finally the effects of the violations on the population of Chile are detailed, including examples of mental disorders and extreme grief among the general population that resulted from the era of disappearances. The special cases of “torture”, “kidnapping” and “disappearance” created a particularly vulnerable population that tore many families apart. On the other hand, the report does manage to add several quotes from witnesses to end this section on a positive note. One witness admitted that, “For us this a very painful but important moment. It’s the first time that we can speak. We need to talk about this situation with dignity and not continue hiding.”⁸³ So many individuals were bravely able to see through their agony and rejoice that they were finally given a voice and recognition in society

The report concludes with suggestions for reparations that build upon the advice of the *Nunca Más* report, while concurrently staying loyal to the specifics of the Chilean situation. This idea of reparations plays an important role and is treated more substantially below. The *Rettig Report* concludes with recommendations for the future of Chile, presenting the ideals of “reparation” and “prevention” as the main goals. These recommendations stand in stark contrast to the Argentinean report in several ways. The Chilean recommendations call for revisions to their Code of Military Justice, continued investigations into the cases of the disappeared, assigning pensions for victim’s families,

⁸² Ibid., 90.

⁸³ Ibid., 103.

and installing legal reforms. Interestingly enough, a recent book argues that in Chile, the laws should make a clear distinction between known deaths and presumed deaths of the desaparecidos, and treat each case accordingly.⁸⁴ This distinction was made into law in Argentina in 1994, and became a salient milestone in terms of post-conflict juridical precedents. This recommendation was contained in the Chilean report and basically understates the importance of having available a “special procedure for declaring the death of detained-disappeared persons.”⁸⁵ In other words, there should be a legal recognition between a death and a presumed death due to disappearance. In this manner, the pain and uncertainty of each family is officially acknowledged.

The Chilean commission hoped that the judiciary would be restored to being an independent and impartial judge of the accused. Further, the armed forces were asked to comply with human rights, and an organization was called for whose sole purpose would be to ensure that this horrible legacy of disappearances could never repeat itself. The report finally notes that the idea of human rights must become engrained within a society through a daily respect and effort on the part of all Chileans to not forget their nation’s past. The education of human rights and their meaning is the key to raising a new generation of Chileans who cherish human dignity and respect truth and justice as means to reconciliation. In the view of the commission, human rights can only develop “in an environment of healthy national coexistence”⁸⁶ because, in reality, both sides must live in the same state, and ideally under the same laws that reflect the highest values of their national culture. The report ends upon listing the identity of each victim investigated.

⁸⁴ Hernán Corral Talciani, *Desaparición de Personas Y Presunción de Muerte en el Derecho Civil Chileno* (Santiago: Editorial Jurídica de Chile, 2000),467.

⁸⁵ www.derechoschile.com/essentialdocuments.

⁸⁶ *Summary of the Truth and Reconciliation Report*, 114.

After perusing the report, President Aylwin announced its release on television and publicly asked national forgiveness for the crimes committed. Pinochet then responded to this apology by asserting his “fundamental disagreement”⁸⁷ with this apology. Presumably, many viewers had tuned into the Argentine address Alfonsín had given on television in 1985, and therefore had some perspective on what they saw. Again, Pinochet and the military argued against the report, but could not muster any evidence to undermine its credibility. In the end, the *Rettig Report* “had established the moral responsibility of the State for the violations of human rights.”⁸⁸ Unfortunately, three attacks on the right by the militant left in subsequent weeks shifted attention away from the report, and some commentators believe it has not recovered since. Plans for further social reconciliation were dropped indefinitely.⁸⁹ Nevertheless, the commission achieved something extraordinary: it proved, in writing, the culpability of the abusers, how they did it, where they did it, and why they did it. Moreover, the *Rettig Report* turned the country in a new direction. In later years it was called upon and praised internationally, and was also introduced as a source of evidence leading to the arrest of Pinochet in London in 1998.

Reparations in Chile

After the Rettig Report was released, a follow-up commission, the National Corporation for Reparation, was established. This body continued to investigate the whereabouts of the victims and implemented a reparations program for the victims’ families. The Chilean Truth and Reconciliation Commission defined a reparation as “a

⁸⁷ Hayner, 37.

⁸⁸ José Zalaquett, “La Mesa de Diálogo Sobre Derechos Humanos y el Proceso de Transición Política en Chile,” *Estudios Públicos* no. 79 (2000): 19, 5-30. 19.

⁸⁹ Hayner, 27.

host of acts which express the recognition and the responsibility of the government in the events and circumstances which are the subject of this Report.”⁹⁰ The commission suggested a list of reparations that were considered necessary steps toward national reconciliation in Chile. These suggestions included: public redemption of the individual victims, where perhaps a memorial is erected and acknowledgement is made of the worth and dignity of the victims. The report presents a list of possibilities to accomplish this public respect. To these ends, a monument to the Disappeared was erected in the General Cemetery in Santiago. A granite wall now stands that identifies all of the “desaparecidos” by name. More recently in December of 1998, the “Wall of Names” was built to commemorate the 230 victims of the concentration camp named Villa Grimaldi. At the base of the Andes mountains, the place this concentration camp was placed there now stands a semi-circular wall inscribed with these 230 names. Also written on the memorial is the same phrase that was written on the monument in the National Cemetery: “In forgetting, we always remember.” In addition, the report further mentions that the special case of the “disappeared” person should be legally recognized as unique from the case of a “deceased” person. While to date this legal recognition is not complete, it was in fact used juridically to discard the Amnesty Law of 1978, on the grounds that a kidnapping is an ongoing criminal activity.

The Commission also recommended that social security be adjusted so that families who have lost loved ones receive monetary compensation. In actuality, the Chilean government did implement a monthly cash payment policy for family members of those killed or disappeared in the amount of US\$481 a month for a lifetime. The report also stated a need for medical benefits that include help for both psychological and

⁹⁰ *Summary of the Truth and Reconciliation Report*, 104.

physical problems related to torture and disappearance. Specifically, the commission asked for a full diagnosis of each person and an agreement to provide long-term medical care for each individual. Chileans did receive a monthly medical allowance and “free access to special state counseling.” Nonetheless, while the Chilean commission did investigate and publish more information concerning the survivors of the era of disappearances, these people who lived through their own kidnapping or prison terms were not considered official “victims”. Both Argentina and Chile omitted forced exile and torturing not resulting in death from their mandates, but Chile also excluded as an offense illegal detention if a person survived. Even though the Chilean commission learned from the precedent Argentina set, it still had to adhere to its own restrictions in terms of allowable time and resources.

The report was also concerned with education of young people, and while its suggestions were vague as to what solution would be appropriate, the actual reparations program provided full tuition coverage for children of a disappeared parent until the age of 35. This education reparations program included the full payment of registration and tuition for secondary school, university, as well as professional and technical institute training, along with a monthly allowance for expenses.⁹¹ The report also called for the creation of a foundation to continue the search of the disappeared and keep alive and in the public eye the memory of these horrible events. The report asserts that policies be generated to continue collecting information while also focusing on the future of those still living with the memories of the past.

The final comment of the report examines hope that all those who conceal information will face punishment, but that if one does testify, then he or she will gain

⁹¹ See www.csur.org/za/papers/papedel.htm.

immunity for his or her crimes. In reality, many groups have been created to continue the search for information. Progress, however, has been slow, and few armed forces officials have come forward to tell their stories. Many experts on the Chilean situation suggest that proposals of amnesty in return for information should have been more vigorously sought, so that even if justice was not always served, there might be more hope of finding the remains of victims as well as piecing together the final moments of lives that have been a mystery for so many years. Chilean children of disappeared parents became exempt from military service, and those who lost jobs or were exiled during the repression were given opportunities to receive pension and compensation.

These actions allowed reparations to play a new and greater role in healing a post-conflict society. When the government responds to a report's findings and acknowledges that it does owe its citizens some form of compensation, at least the victims' families can feel that they are recognized as having been unfairly treated. At the same time, highly specific recommendations pressure officials to generate impartial reparations programs and can assist governments in planning such programs. The Chilean reparations program registered some success, but it fell short in one critical area. Reparations were not allotted to survivors of torture or illegal imprisonment; these victims were given only free access to medical programs. This lack of acknowledgment of the pain of the few who did survive their own disappearance remains a disgrace to human dignity and a clear weakness of the program. The report refers to "official victims" in its recommendations. Among these victims should definitely be included those who not die as a result of their injuries or incarceration. Future commissions and actions to instill post-conflict justice

must not forget to honor those who still live despite the egregious violations of their human rights.⁹²

Reactions

In Chile, the Church and its satellite organizations had a substantial impact on the movement to find the truth concerning the disappeared. The Church yields enormous power and credibility in Chile, a country that has illegalized both abortion and divorce according to Catholic regulations. Therefore, when the Catholic Church denounced the dictatorial regime, Chile attracted the attention of international organizations that respect the legitimacy of the Chilean Church as well as the religious leaders who endow the Church with incredible authority as a governing body. The Committee for Peace (Comité pro Paz), an activist organization of the Church, was founded immediately after the coup d'état took place. This committee gave legal assistance to 15,313 cases and medical assistance to 16,992 people throughout Chile.⁹³ After a paranoid Pinochet ordered the dissolution of the Committee for Peace in 1975, the Vicariate of Solidarity (Vicaría de Solidaridad) of the Catholic Archdiocese of Santiago was founded in 1976 as a replacement committee. Helping families as best they could, this organization recorded testimony from witnesses and bravely spoke out against the disappearances.

In 1975, the Foundation of Social Help of the Christian Churches (FASIC) was also created, and slowly the growing opposition to the government became more confident in its local movement against the dictatorship in Chile. Unlike Argentina, Chile gained most of its local support for human rights from these Church-related organizations. Leaders

⁹² See *Summary of Truth and Reconciliation Report* and Priscilla Hayner's reparation graph in *Unspeakable Truths*.

⁹³ Comisión Chilena de Derechos Humanos: Fundación Ideas, *Nunca Más en Chile: síntesis corregida y actualizada del Informe Rettig* (Santiago: LOM Ediciones, 1991), 81.

from the Church were among the first to speak out against the violations and they gathered the first information, including testimony concerning the disappeared, that became the foundation for the formal truth commission's report.

Along with the Church was a handful of local organizations that "came to be widely considered by the international human rights community as among the most effective groups working within a context of dictators."⁹⁴ Initially, public disinformation was rampant due to state control over the press and the resulting "auto censorship."⁹⁵ In 1974 the Group of Relatives of the Detained Disappeared was created, and was one of the first groups of its kind ever founded in Latin America. In the "third phase" of abuses of 1977-1990, several other local organizations joined the struggle, including a Chilean branch of Amnesty International and The Committee of Defense of the Rights of the Pueblo. What began as initial opposing reactions turned into a highly organized movement known world wide, more so than the actions taken in Argentina, although the Argentines had an advantage in having more liberty of expression in the press, something that Chile lacked until the later stages of the human rights movement.

On August 21, 1999, Chile began an unprecedented national roundtable discussion called the Mesa de Diálogo, in which a group of representatives across the political spectrum, including the armed forces, came together to discuss the future and past of human rights in Chile. Their main goals were finding out the true fates the victims and placing responsibility and solving existing problems.⁹⁶ The concept of both sides sitting at the same table together to discuss solutions was both controversial and experimental. While in some aspects the Mesa de Diálogo did not succeed in its aspirations, it became

⁹⁴ Zalaquett (introduction), xxviii.

⁹⁵ Comisión Chilena de Derechos Humanos, 82.

⁹⁶ Zalaquett (Mesa de Diálogo), 10.

clear that Chile was looking for ways to find information and solutions. Unlike Argentina, in Chile much more compromise was made with the armed forces in order to stay focused on finding out the fates the disappeared. Argentina's case illustrated that fair trials are unlikely with a weak judiciary and that in any case they did not focus enough on the individual victims of abuse. When a Chilean victim's daughter shook hands with an army official at the roundtable discussion, in some sense closure was given to this family, for her pain was acknowledged as legitimate and real. While her father's abuser will most likely never stand trial, at least she told her story and this army official accepted responsibility. There is no clearer example of how Chile attempted to accept and facilitate those compromises that at times must be made to find the truth.

On the international level, Argentina and Chile both received and gave help to the growing human rights movement. Orlando Letelier, who was a Minister of Defense in Salvador Allende's government and was exiled and working at the Institute for Policy Studies, was killed by a car bomb along with his colleague Ronnie Moffit in 1976 in Washington, D.C. This assassination demonstrated that this issue went beyond the Southern Cone. The "epic" battle of the socialist left versus the conservative right caught the eye of many international observers who began to pay attention to Argentina and Chile as the conflict ensued. The United Nations stayed very neutral at first, but did express, on December 5, 1977, their condemnation the continuing violations of human rights by the Pinochet regime⁹⁷. The UN published early reports of the human rights violations in both countries, working with local organizations to publicize the present circumstances of each nation. The Organization of American States played a significant

⁹⁷ "Chronology 1977," *Santiago Times* (Santiago: The Chiron Group, Inc., 2002) http://www.santiagotimes.cl/derechos/1977_eng.html

role as well, sending a representative to Chile in 1973 and then being cut off by the Chilean government in 1981. The Inter-American Commission on Human Rights was also involved and began to publish annual reports of the abuses of human rights in each country, denouncing the practices by the early 1980's. The High Commissioner of the UN for Refugees was also involved due to the massive number of citizens fleeing Argentina and Chile, as well as the extradition of accused armed forces members. The Red Cross was also present, helping political prisoners with their health concerns.

Non-governmental organizations were active as well, especially Amnesty International and Americas Watch, whose staff were constantly writing reports and communicating with local branches in order to both inform the world and help strengthen the human rights movement within Chile and Argentina. These two organizations achieved great success in their work, especially for the future. In 1991, America's Watch released a comprehensive report on Argentina entitled *Truth and Partial Justice in Argentina: An Update*, which became an invaluable resource for the human rights network in Latin America. Amnesty International kept news of the reconciliation progress in the public eye and has been a catalyst in the evolution of human rights in these two countries. The involvement of the international community marked an important moment in the history of human rights; the message had been sent that violations of basic human dignity were global problems, not purely national issues. What began as small steps toward publicizing and denouncing the Chilean and Argentinean governments became a worldwide trend towards the legitimacy of international law to solve human rights problems. The measures of truth in these two countries could only go

as far as local resources would allow, but the addition of global assistance made the revelation of the truth and pursuit of justice attainable goals.

While in Argentina today many officials have not been extradited for their crimes, many have been indicted and re-indicted, sparking a wave of new cases that underscores endorsement of the 1992 Torture Victims Act and press the legal system in Chile, which has not indicted nearly as many armed forces members. The International Torture Convention fervently endorses the “universal jurisdiction” clause, in which countries can now prosecute human rights violations around the world with a much wider scope. In 2000, the Human Rights Committee of the United Nations recommended, under Article 40 of the International Covenant on Civil and Political Rights, that “gross violations of civil and political rights during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary to bring their perpetrators to justice.”⁹⁸ This public demand of a national commitment to the international cause of justice illustrates a progression towards a more transparent system of post conflict reconciliation. The Argentine government has also ratified the International Criminal Court Convention, thereby agreeing to a new method of a global judicial system that could in the future indict many Argentine criminals abroad. The Mothers and Grandmothers of the Plaza de Mayo continue to fight with the National Commission for the Right to Identity for DNA testing and proof of child kidnappings, a cause that has won victories but also unearthed horrible identity crises with the children who were kidnapped who are now young adults. The most recent additions to the search for truth in Argentina have been legally focused, demonstrating a new trust in the judicial system to

⁹⁸ See www.hrw.org, *World Report 2002: Argentina*.

either convict or acquit the accused. What's more, many other countries have begun to investigate Argentine crimes, and Chilean crimes as well.

International indictments of Argentinean and Chilean officials

In February of 2001, Mexican officials indicted former military official Ricardo Cavallo of Argentina, and currently may seek to try him on grounds of "territoriality." This marks a major step in terms of international justice, as "Mexico becomes the first Latin American country to apply the principle of universal jurisdiction for human rights violations in an extradition context."⁹⁹ In another example, Major Jorge Olivera, a retired Argentine army official, was arrested in Italy in 2000 with a French warrant. In July of 2001 ex-General Jorge Rafael Videla was indicted by Argentina for "illegal organization." Videla has been under house arrest since 1998 for his involvement in the kidnapping of some 200 children from their disappeared parents.

This new upsurge of indictments and pressure on the perpetrators is extremely hopeful for the future of human rights in the country. The recent years have demonstrated that the era of desaparecidos in Argentina not only is still an issue, but that it has spread beyond Argentina and into the international domain. Many foreign countries have begun to investigate crimes committed in Argentina that affected citizens of their countries and these nations have used the information in the truth commission report as a guide for those investigations. Rigoberta Menchu of Guatemala was inspired by these new developments in Latin American human rights justice to file a complaint of genocide with Spain concerning her country, but Spain lacked the jurisdiction to see it through. While many cases and results are still pending, it is clear that the Argentine era of forced

⁹⁹ See <http://www.hrw.org/press/2001/01/cavallo.htm>.

disappearances is still represented in the courts and in the minds of its own population, as well as the rest of the global community.

Chile continues to take a socially organized approach to post-conflict reconciliation in recent years, as it relies on commissions and panels, including the Mesa de Diálogo and many human rights groups, both nationally and internationally, to deal with the past. In Chile, Pinochet himself personifies the image of the abuses, even though many others participated in the atrocities. In Argentina, with a more massive scale of victims, there are more officials to be held responsible, with less of a focus on just one man. Argentina has therefore hoped to find justice through indictments of some of the many military officials involved. In Chile, most attention has focused on the case of General Agosto Pinochet, who has become the symbol of the end of the age of impunity in which crimes against humanity will no longer go unpunished.

When Pinochet was arrested on October 16, 1998 in London, England, an irreversible step occurred toward the dispensing of justice in Chile. This act “was the first time that a former head of state, notorious for his human rights record, was detained upon the initiative of foreign countries acting ostensibly within the framework of the new developments in the international human rights law.”¹⁰⁰ The new international system of justice was unveiled, and Chile assumed a landmark place in its promotion. Pinochet is a name known around the globe and the well-covered disintegration of his amnesty is setting a precedent for other dictators and their oppressive regimes. The Executive Director of the Americas Division of Human Rights Watch, José Miguel Vivanco, believes, “The Pinochet case marks beginning of the end of impunity for the worst of

¹⁰⁰ José Zalaquett, “The Pinochet Case: International and Domestic Repercussions,” (online), 3.

state crimes.”¹⁰¹ The Spanish Judge, Baltasar Garzón, made history when he decided that Pinochet should be held responsible for his crimes against humanity, and proceeded to indict him. Judge Gúzman of Chile followed Garzón’s lead by further investigating the case of Pinochet, sending clear messages around the world that dictators who violate the human rights of their citizens will be held accountable.

The number of indictments and cases has been increasing world wide, and while many perpetrators remain free, the symbolic power of this new era of accountability remains strong. Because “in the end, the integrity of Pinochet’s figure is the last bastion to be protected”¹⁰² by his supporters. If Pinochet himself is morally castigated, then the accountability has gone all the way up the ladder of power. However, on March 2, 2000 the Santiago Appellate Court ruled in Pinochet’s favor and released him. On July 1, 2002, the court ruled that Pinochet should not stand trial, due to his ailing health and the claim that he has dementia, among other weaknesses including diabetes and a weak heart. There is no doubt that Pinochet, an 86-year-old man, is fragile and will not live much longer. While many human rights activists are disappointed with the court’s decision, Pinochet has not been exonerated of any crime. Just because he was found too mentally ill to stand trial does not mean that most people do not place guilt on him. In fact, José Zalaquett believes that the decision not to try Pinochet, a sickly old man, actually demonstrates the new ability of the Chilean legal system to protect the civil rights of all

¹⁰¹ José Miguel Vivanco, “Pinochet Decision Lamented: But Rights Groups Say Case a Landmark,” *Human Rights Watch World Report 2001: Chile*. www.hrw.org/press/2001/07/pino0709.htm.

¹⁰² Zalaquett (The Pinochet Case: International and Domestic Repercussions), 11.

Chilean citizens¹⁰³. Above all, Chile has set the precedent of publicly punishing dictators who commit crimes against humanity.

In Chile, there is still little acknowledgement by the armed forces of crimes committed in the past. Unlike Argentina, which has rectified many of its doctrines that invalidate violations of basic rights, Chile still has much work to do to eliminate the legitimacy of the abuse of human dignity.¹⁰⁴ Nonetheless, In August of 2000 the Chilean Supreme Court did halt Pinochet's immunity, upholding the June 5th decision by the Appellate Court by agreeing that the 1978 amnesty he and others held couldn't include forced disappearance and kidnapping. In sum, while we may never see the actual conviction of Pinochet in court, major victories have been made in simply stating that human rights violations and the immunity of their actors are not going to be tolerated. In the future we should expect to see much more punishment handed down to those involved in such crimes against humanity. While the international court system and its member countries must plan methods of approaching each individual situation, the era of international justice has begun. The international community has commenced a new system of universal culpability in which dictators and their accomplices are no longer safe from prosecution.

Current State of Affairs in Chile

Ricardo Lagos is the current President of Chile. He has repealed defamation provisions in the Chilean Criminal Code that, along with the constitution, made opposition to the government a criminal offense for many years. He has also reviewed

¹⁰³ José Zalaquett, International Law of Human Rights law school class, The University of Chile Law School: International Law Department, Fall 2002.

¹⁰⁴ José Zalaquett, "Balance de la Política de Derechos Humanos en la transición chilena a la Democracia," in *Entre la II cumbre y la detención de Pinochet: Chile 98* (Santiago: Flasco, 1999), 96.

privacy laws that still protect many forms of censorship in Chile. Lagos served under President Salvador Allende and is considered a moderate leftist. He was a member of a 1980's coalition against Pinochet, and was even imprisoned in 1986 for his involvement in this cause. His party, The Party for Democracy, is much more moderate than Allende's party, Unidad Popular (Popular Unity) was, allowing for much more discussion and compromise concerning many points of issue in Chile. While there is a long road ahead towards the full protection of human rights and liberty of opinion, Chile has progressed considerably, and the world has noticed and followed suit in many ways. In the future, international treaties and bodies will help to ensure that the past is not forgotten and that the future is protected from the mistakes various governments have made.

The Tokyo and Nuremberg war tribunals began the movement to hold accountable those involved in crimes against humanity, including all levels of the chain of command. Since these opening war crimes tribunals, the international sphere of justice has come together in defense of basic rights that should be promoted through the exposure and punishment of those who deny them. The trials of army officials in Argentina and the infamous arrest of General Pinochet in London have been major strides in the global movement for human rights. Recently, on February 25, 2003, five Chilean secret agents of the Pinochet era were arrested for killing General Carlos Prats and his wife Sofia Cuthbert in Buenos Aires thirty years ago. Manual Contreras, the former head of the DINA was one of the arrested, along with Pedro Espizona and three others.¹⁰⁵ These indictments of five major military figures are monumental moves after the dismissal of Pinochet's trial. The future will undoubtedly hold more arrests of this nature both in Latin America as well as the rest of the world.

¹⁰⁵ See www.hrw.org.

However, indictments alone cannot heal the wounds of the massive human rights violations that occurred in Argentina and Chile. A national plan of reparations and healing is also necessary so that the citizens of each country are able to find some sense of closure and acknowledgement of their grief. Finding the truth concerning what happened and why during the era of disappearances is the only way to move towards a new social system of individual dignity. The search must continue for the facts necessary to discover the remains of victims and to ascertain what happened to each of them, so that families can finally put their loved ones to rest. Each country has its own unique circumstances and its own ways of bringing closure and justice to all of those involved. These methods of measuring the truth have each had success and failures. Even so, they have unquestionably marked a new era of international post-conflict justice. The debate concerning weighing the “truth” of a commission versus the “justice” of a court trial is in fact a myth in terms of post-conflict justice. Critics have long argued over whether having a truth commission stifles chances of trials and vice versa. In reality, “the either/or of “truth” versus “justice” must be avoided; both truth commissions and trials have distinctive and mutually supplementary roles in achieving the multiple goals of transitional justice.”¹⁰⁶ The challenge for each nation lies in striking a balance between these two sides of the same societal coin.

Comparing Argentina and Chile

In looking at the histories of Argentina and Chile regarding to the precedent set for post-conflict justice, many aspects are clearly in common. As two of the Southern Cone states of Latin America (Uruguay being the third), Argentina and Chile share the

¹⁰⁶ David A. Crocker, “Truth Commissions, Transitional Justice, and Civil Society,” in *Truth vs. Justice: The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton UP, 2000), 105.

Andean border and the culture of being colonized by the Spanish. These countries have experienced guerilla warfare on both extremes of the political spectrum, as well as a turbulent societal past of military force and human rights violations committed by the state. In an interesting twist of history, Chile's elected Socialist leader, Salvador Allende, was overthrown in 1973 by a military regime that lasted until 1990, whereas in Argentina the military did not take over until 1976, only to survive until 1983. However, the *Chilean Truth and Reconciliation Commission* did not release its report until 1991, whereas the Argentine *Nunca Más* report was released in 1984. Chile's military dictatorship therefore had been ongoing for three years before the dictatorship began in Argentina, but the Chileans had six years to study the Argentinean truth commission before it undertook its similar 1991 investigation of the era of Chilean disappearances.

A brief summary of some of the main points of convergence and divergence between the Argentinean and Chilean attempts at post-conflict reconciliation is useful to understanding how they came to serve as pioneering models of post conflict reconciliation through both their successes and failures. In terms of purposes, each commission was appointed by the President to conduct a formal investigation of the violations committed during the previous military regime. However, neither of these commissions had the power to subpoena or to make final judgment concerning any person's punishment. The commissions were given however adequate resources for conducting and submitting a report that detailed the events in and around the respective time frames in which the abuses were committed. These resources included computer data programming equipment, nine months of time, the permission to question almost anyone, and the rights of final publication. The commissions were limited in their

mandates, and a crucial element of their service to society was that these “truth commissions [were] meant to function as moral panels, not legal courts.”¹⁰⁷ They were in not formed to replace the necessity of criminal trials and convictions, but to rather supplement the prosecutorial and reparations processes. However, as some critics later suggested, the reports that came out of these commissions, and especially their recommendations, could have made enormous headway had they been followed with more serious juridical consideration. Instead, the reports were usually viewed as alternatives to legal prosecution, a mindset that infuriated both those who wanted to see legal justice done, as well as truth commission proponents who saw the reports as just an initial fact-finding and publicizing step.

In total, the Argentinean commission accounted for 8,960 persons kidnapped by the state, whereas the Chilean commission concluded that 3,428 disappeared people were within its jurisdiction as official “victims.” These numbers are likely to be inexact, and do not consider some major abuses committed against individuals, such as injury and torture inflicted that did not result in death and disappearance. Further, the Argentinean commission had neither the time nor the resources to follow up investigations of any of the cases of the disappeared; in contrast, in Chile some 2,920, a majority of the listed victims had their cases subsequently investigated by the commission.¹⁰⁸ This change in methodology by the Chilean commission is a result of having less individual cases to process as well as a reaction to the negative feedback that Argentina received for only listing the names of the victims, even though a mere list of names was a dangerous piece of literature.

¹⁰⁷ Zalaquett (Truth, Justice, and Reconciliation), 356.

¹⁰⁸ Hayner, 318.

Nearly all subsequent truth commissions have made serious efforts at investigating in depth as many cases as possible. In addition, the Argentine commission only investigated cases of unsolved disappearance, even though “such explicit restrictions risk excluding a significant portion of the truth.”¹⁰⁹ CONADEP decided to strictly limit its mandate, and this choice would not only frustrate many family members and human rights advocates, but also severely restrict the amount of information that the commission could report. Chile did expand this mandate to include torture and force resulting in death, killings by private citizens as well as deaths resulting immediately after the coup (noncombatants and combatants). Yet, the Chilean commission also decided to eliminate torture and detention not resulting in death from its mandate. While Chile did recognize that more information should be included in its report, surviving victims were still not considered official “victims,” a use of terminology reformed by later commissions. Overall, a comparison of the Chilean and Argentine truth commissions will never be a conclusive example of the Chilean reform of the Argentine report. The unique circumstances of each nation make a clear comparison of the countries less than feasible. Nonetheless, one can suggest a pattern of reform and similarities that bind these two truth commissions as a general precedent of one aspect of post-conflict justice.

In another contrast between the two reports, the Argentine CONADEP report failed to include a clear distinction of the different stages of repression in Argentina. A report published in 1985, just one year after the publication of the *Nunca Más* report, devotes itself entirely to criticizing the Argentine commission for its incomplete research.

¹⁰⁹ Hayner, 72.

Among the complaints is the unfortunate “omission of clear stages of the repression,”¹¹⁰ in which CONADEP is criticized for not beginning its analysis years before the year of the 1976 coup, because the seeds of violence were sown much earlier by Isabel Peron. While the prologue and introduction of newer versions do include a vague history of Argentina pre-1976, there is certainly no division of the stages of repression. On the other hand, the body of the Chilean *Rettig Report* is divided into three distinct stages of repression, which include: (1) September 11 1973 through December of that same year; (2) 1974-1977; and (3) 1977-1990. For better or worse, in Chile the repression seemed to fit somewhat seamlessly into these time periods, and their report categorizes the setting of the conflict from these three subtexts. In this case the Chilean commission might be seen in terms of a definite improvement upon what was lacking in the organization of the Argentinean report. Overall, while again a simple comparison of the Argentine and Chilean truth commissions would be impossible due to their unique circumstances, there is a natural progression in many ways from the Argentine truth commission to the Chilean case. An analysis of truth commissions as one option in restorative justice almost always places them within the same category in terms of content and methodology. These two reports nonetheless also form their own dichotomy, which serves as a helpful example to illustrate how and why a truth commission should be utilized in post-conflict justice.

¹¹⁰ Foro de Estudios sobre la Administración de Justicia, *Definitivamente...Nunca Mas: La otra cara del informe de la CONADEP* (Buenos Aires: FORES, 1985), 20.

III. Elements of Post Conflict Justice as Illustrated by the two case studies

The terms “post-conflict justice” and “restorative justice” are often used to identify the goal of healing that a society sets after it has undergone a serious conflict, including violations of human rights and dignity. The dual experiences of Argentina and Chile have created a model for possible actions in a post-conflict situation. These two examples illustrate a variety of elements that can be beneficial in the long-term process to reconcile the present with a society’s painful past. Use of the truth commission is one possible option that, while not without flaws, can play a positive role in a nation’s return to social justice after an experience with massive abuses of human rights at the hands of the state. Truth commissions have different names, such as the Chilean “Truth and Reconciliation Commission,” or the Argentine “National Commission of the Disappeared,” that connote more specifically what a report is going to investigate and seek to resolve. Some reports may focus more on fact-finding about a specific group of people, such as the “disappeared,” whereas others may choose to include the word “reconciliation” in the title in order to stress the need to come to a compromise and a conclusion.

These reports also set specific standards that denote exactly which acts will be covered, depending on the scope of both the conflict and the resources of the commission. The main focus of a truth commission’s report, however, remains the public pronouncement of massive abuses of human rights, released into the public sphere to be read by as many people as possible. Because “exposure is punishment,¹¹¹” the truth commission serves as an excellent public medium for castigating the perpetrators. The

¹¹¹ Robert I. Rotberg, “Truth Commissions and the Provision of Truth, Justice, and Reconciliation,” in *Truth vs. Justice: The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton UP, 2000), 16.

intensive research that is conducted is necessary to obtain the most legitimate and accurate account possible so that the report will become and remain credible as fact. If a nation's citizens are in search of the truth, then a report that announces this truth of the past should do far more good than harm for the society. When a commission can prove and record that human rights violations did in fact occur, then the accused perpetrators will eventually have to acknowledge and answer to these allegations, whether it is in the courtroom or the newspapers.

Truth Commissions versus Trials

The subject of the truth commission remains a heated issue and its legitimacy as an element of post-conflict justice is often questioned. Many critics opposed to the notion of a truth commission believe that researching the past and “opening the old wounds... harms rather than helps beneficially to reconstruct a society in transition.”¹¹² A society needs to focus its attention and resources on the future instead of attempting to uncover painful information about past atrocities. The truth commission can cause a degree of trauma by asking the witnesses and families of victims to recount the worst days of their lives. After the testimony has been taken and the data is compiled into a report, it is possible that the perpetrators will go free and that the accounts of witnesses will blend into a comprehensive report that makes generalizations and broad judgments. These are all solid arguments that must be considered as possible costs of a truth commission. They are, however, fundamentally undermined by an overwhelming desire of most families and friends of victims to know the truth about the fate of their loved ones. A member of the Chilean Truth and Reconciliation recounts his experience of interviewing thousands of witnesses and family members of victims: “Many of them asked for justice. Hardly

¹¹² Rotberg, 7.

anyone, however, showed a desire for vengeance. Most of them stressed that in the end, what really mattered to them was to know the truth, that the memory of their loved ones would not be denigrated or forgotten, and that such terrible things would never happen again.”¹¹³ This was a common response during the interview process in Argentina and Chile, but does not necessarily mean that the trial process is not a crucial element of restoring the rule of law within a society.

The major controversy surrounding use of a truth commission in a post-conflict situation turns on its possible effects on the legal means of punishing those responsible for crimes against humanity. Many critics of the truth commission argue that it becomes a substitute for what should result from a trial, the most legitimate way of achieving justice, against the perpetrators. They suggest that if a truth commission is established and a report is published, the pressure to hold a trial becomes discarded in favor of promoting “truth” over “justice,” either by granting immunity to those who give information or just giving up on even putting this person on trial. These critics believe that when forgiveness is offered in exchange for facts, then the opportunity is missed to dispense justice.

However, the experiences of Argentina and Chile suggest two main arguments to refute this negative view of the truth commission as an option for post-conflict justice. First, “the judgment—that truth commissions are incompatible with accountability and sanctions—is mistaken.”¹¹⁴ What is often called “retributive” justice, or punishment and sanction of the perpetrators, does not have to be at odds with the publication of a truth commission report. In fact, Argentina and Chile have demonstrated the interdependency of social organizations such as the truth commission and the law. That is, much of the

¹¹³ Zalaquett (introduction), xxxiii.

¹¹⁴ Crocker, 103.

information compiled in both reports has gone towards making solid cases against officials in both countries. In Chile, the commission started its work by building upon the data already completed by local church organizations. The completed *Rettig Report* became a resource for both national and international lawyers and judges during the trial of Pinochet that began when he was arrested in 1998. In Argentina, all of the information compiled by the *Nunca Más* commission was submitted to the judiciary to aid their future prosecutions against army officials. In fact, trials in both countries followed the publication of these reports, and the commissions were also instrumental in recommending to the judiciary certain individuals that should be prosecuted.¹¹⁵ Recent events have illustrated that while the publication of a report may possibly impede a court trial on the outset, that in fact the invaluable information that is memorialized within the document can always be revisited.

The second rebuttal of the argument that a truth commission ruins the chances to hold legal trials is that in many circumstances, a truth commission can yield better results than a trial ever could. In other words, even if fewer trials result due to establishment of a truth commission, often more can be accomplished in achieving social justice through the medium of a truth report. Many scholars agree that often “litigation is not an ideal form of social action.”¹¹⁶ Traditionally, a legal answer to societal problems has been the accepted action against any manner of societal disruption and violation of citizens’ rights. However, trials are limited in their scope because they must try one person, incur great monetary costs, and nearly always take long amounts of time to complete, especially if

¹¹⁵ Crocker, 104.

¹¹⁶ Martha Minow, “The Hope for Healing: What Can Truth Commissions Do?” In *Truth vs. Justice: The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton UP, 2000), 238.

high levels of government and the armed forces are involved. Societies that have experienced something like the horror of the disappearances in Argentina and Chile become acutely divided among political and social lines. And, as Alex Boraine asserts, “deeply divided societies cannot rely on punishment to heal and reconcile their severed communities,”¹¹⁷ because punishment and trials can cause further rifts among society and in general do not provide an atmosphere of reconciliation that is necessary to bond a divided nation.

A truth commission on the other hand can provide a broader, more victim-centered approach to coming to terms with a painful past. Not only can a truth commission address a greater number of crimes, with less cost and less time, but it can also “provide a mechanism to do justice to and to acknowledge that there were victims and perpetrators on more than one side.”¹¹⁸ Thus we come to the heart of the truth commission: it centers on the victim rather than the perpetrator, and furnishes the opportunity for a collective testimony of those who wanted to tell their stories and be heard. Not only does a truth commission include many more members of society within its mandate, but also “it is the individual-centered approach of the best truth commissions that contributes meaningfully to restorative justice.”¹¹⁹ Argentina and Chile made this idea of individual attention and compassion their goals while creating these reports, and a trial could never give this kind of attention to members of society. The key to post conflict justice is asking people what they need in order to move on from the past, and a truth commission comes closer to this ideal than a trial on its own ever could. Retribution

¹¹⁷ Rotberg, 12.

¹¹⁸ Ibid., 11.

¹¹⁹ Ibid., 11.

is of course an important element of healing a society, but alone it just cannot reach enough individual members of a nation.

The truth commission does serve as a method of therapy for the families of victims as well as the survivors themselves. While a courtroom conviction will bring a certain amount of comfort to the family and friends of a victim, there are various problems with relying solely on a court trial to help ease a family's pain. Primarily, prosecution through trial can take many years to conduct, and this was most definitely the case in both Argentina and Chile. In a society with a weakened and corrupted judiciary, files are often "lost", especially those concerning controversial information that concerns the highest levels of state authority. Moreover, since people were killed on such a massive and dehumanized scale, families can often feel as if justice has been served to a nation, while their individual loss becomes only one among thousands. A commission's report can be utilized by the press, both nationally and internationally, to announce wrongdoing and publicize the crimes on a much more immediate basis. The telling of the "truth" after years of silence and repression is crucial for any society hoping to move on from its past. For example, as Hayner rightly posits, "Some victims and family members of those killed say that just having the full truth publicly told can provide some sense of justice."¹²⁰ Again, many of the countries in which such massive numbers of human rights violations were able to take place had serious defects in their legal systems. In these cases, "where justice is unlikely in the courts, a commission plays an important role in at least publicly shaming those who orchestrated atrocities."¹²¹ The influence of the press can be very strong. In addition, the press can carry the message of past events around the

¹²⁰ Hayner, 106.

¹²¹ Ibid., 132.

nation and the globe. Whereas a dependent and corrupt judiciary may not have the resources to convict a criminal at first, the lasting impression of public denunciation has long-term effects.

Another consideration of truth commissions is their reference to a suggested model of reparations that should be made to the families of the victims. As fore mentioned, both the Argentine and Chilean reports included suggested measures for compensation to families who had lost a loved one. As is usually the case, the reparations program actually implemented may not exactly replicate a truth commission's advice, nor is the report the sole reason for implementing such a program. However, the inclusion of a list of recommendations for reparations in a truth report remains significant in that a standard is set that the government must follow. After publication of the Argentine and Chilean reports, neither government could claim to have overlooked the issue of reparations, because a suggested model had already been made for them. Also, while a court trial can reprimand a specific perpetrator or sentence him/her to pay damages to a family, this trial must contain itself to a very limited scope. Only a government can approve a plan to cover all those damaged by this era of disappearances.

The reparations programs in both the Chilean and the Argentine reports did unquestionably play a role in the compensation awarded to families of victims, and for this reason they were a valuable asset to the citizens of both countries. Reparations can also include, aside from the monetary compensation that was explained earlier, certain public displays of apology and recognition of those who lost their lives or fought to end the violation of human rights. In Chile, a huge granite wall now stands at the front of the National Cemetery of Santiago, a monument that lists all those who died under the

military's siege of disappearances. In Argentina, most citizens acknowledge that the Plaza de Mayo itself, the Plaza in front of the Casa Rosada (Presidential Palace), has become a memorial to the disappeared. The Madres of the Plaza de Mayo, as their name will attest, have become synonymous with that Plaza, where they have demonstrated each week since their formation. One expert on the truth commission's process, Martha Minow, believes that, "No long-term vision of social transformation is possible if the need for reparations (such as monuments, parks, and renamed buildings as well as cash) is ignored."¹²² These physical manifestations of acknowledgement can provide a sense of pride in victims' families, as they are able to visually recognize changes in a society.

Finally, a truth commission can support the healing process of the families of victims by providing an outlet for their testimony and a forum for the creation of a collective memory of the abuses. Many times the investigation by a truth commission is the first time that witnesses are asked to tell their stories. In the cases of both Argentina and Chile, as well as many of the other sixteen commissions world wide created thus far, the commissioners had to travel to remote areas of the country in order to seek as many credible witnesses as possible. These witnesses would most likely never have had a chance to speak had there not been a specific mandate to gather testimony. Often times these two commissions are criticized for not having incorporated individual testimony in the report to the extent necessary for cultural healing. Later commissions such as South Africa made a highly specific effort to hear each testimony in full and in a public forum as well. The Argentinean and Chilean commissions heard testimony in private, and from these stories created a comprehensive report that included various quotes and summaries of their nine-month long investigations. Because the field of taking testimony of such a

¹²² Rotberg, 12.

massive scale was so new, these commissions feared they would both shock the public and enrage the military to a chaotic extent that would impede their progress.

In South Africa, the “commission not only insisted on public as well as private testimony, and the public interrogation of accused perpetrators by victims as well as prosecutorial figures from the commission’s staff, and by the commissioners themselves, but it also went a step further and permitted press and television reports.”¹²³ This change in truth commission methodology came in reaction to the ineffectiveness of past commissions such as Argentina and Chile to fully accomplish their goal of truth telling. It however was also a decision made based upon the specific characteristics of South Africa and the time in which the commission took place. In other words, a truth commission can never taken out of context and the demographics of each nation must always be carefully considered in the choosing of a plan for post conflict action towards justice. Such a public forum may have been too much for a Latin American commission at that time, considering the culture of silence that pervades Latin American societies such as Chile and Argentina.

Lastly, the concept of collective memory is an element of post-conflict justice that can be well supported by the use of truth commission. A main goal of any form of post-conflict justice should be to help heal the families that will live out the rest of their lives mourning the lost, wondering about their fate, or both. The truth commission supplies a way to provide some truth and justice not only to the families, but also to the future generations. Generally speaking, “truth commissions are intended to be both preventive and restorative,”¹²⁴ in the hope that both present and future societies can be shielded

¹²³ Rotberg, 5.

¹²⁴ Rotberg, 4.

from such violations of human dignity. Both figuratively and literally, the findings of a truth commission become a permanent testament to those who suffered and died. This information can be duplicated, translated and preserved so that citizens will always know what occurred. One member of the Chilean commission noted that, “Most of [the relatives of the victims] stressed that in the end, what really mattered to them was that the truth be revealed, that the memory of their loved ones not be denigrated or forgotten, and that such things never happen again.”¹²⁵ These requests are common among the families of disappeared persons, and can be served in part by the production of a report that details the past and provides a guide for a new future without state repression.

Public acknowledgement is essential to achieving a collective understanding of past events because it provides an outlet for truth and apology to the society. A scholar of law and Latin America, Mark Osiel, has been critical of the truth commission process as a much weaker alternative to actual trials. He does, however, admit that:

There is no legal right, one might say, to authoritative correction of collective memory. Official truth commissions, such the recent Chilean one, may *choose* to offer a formal apology on the government’s behalf for the acts of its agents. But apology is not the remedy that the law--civil or criminal—affords for the wrongs suffered.¹²⁶

The law, while important in the societal transition to justice, is limited in its potential healing power for individual sufferers of state violence. Overall, a truth commission’s report, once published, becomes a permanent archive of information and investigation that can be recalled at any time as a collective memory of the past. These reports became best sellers in both Argentina and Chile, illustrating the strong desire of thousands of people to understand their history of abuse so that the future will hold something better

¹²⁵ Zalaquett (Balancing Ethical Imperatives and Political Constraints), 1437.

¹²⁶ Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick, New Jersey: Transaction Publ., 1977), 277.

for them, and that the lost are always remembered.

IV. International Impact of the Argentine and Chilean Experiences

The impact of the Argentinean and Chilean experiences in their respective searches for post-conflict justice spread throughout the world. In the contemporary political atmosphere in which international justice is beginning to take legitimate form and action, the lessons learned from the tragic disappearances in Argentina and Chile can be applied to any country with a history of human rights abuse on a large, state-sponsored scale. Individuals that worked on the Truth and Reconciliation Commission in South Africa from 1996-1998 report that they “were greatly influenced and assisted in studying many of [the former] commissions, particularly those in Chile and Argentina.”¹²⁷ South Africa produced a commission that directly addressed many of the problems of the Chilean and Argentine reports in an effort to future improve the model of the truth commission while also adhering to nation-specific issues such as apartheid and racism. Other commissions have taken different routes. For example, in El Salvador, the 1993 commission included an international staff of participants. Every country has a unique set of circumstances that must be analyzed before reaching any decisions concerning plans of action in search of post-conflict justice. However, each new commission is also able to benefit and learn from the errors and shortcomings of its predecessors in other countries. In that way, newer commissions improve upon the old model of the commission so that it may continuously better serve as a part of the restoration of a just society.

¹²⁷ Rotberg, 143.

Model for the Human Rights Movement

The Argentine and Chilean experiences in restorative justice have truly been a standard for the ever-growing Human Rights Movement of contemporary times. As a result of World War II, the Universal Declaration of Human Rights was ratified as a covenant in 1948 and for the first time set down a number of universal rules and supposed shared beliefs. Then the European Convention of 1953 innovated the concept that individuals could complain against their own governments. After these documents were published, other covenants were drafted to bind nations together under a common set of human rights regulations. But there was and still is a lack of tangible enforcement by national governments of these pacts. Even so, the notion of “human rights” did become accepted within the language of international politics, meaning that while atrocious violations still took place, governments began to publicly deny human rights violations because of their new extremely negative connotation. “Human rights” is a term that a country can use to shame another country and a reason to deny its credibility as a nation.

Latin America became a crucial component of this emerging consciousness of human rights issues because of its history of state violence beginning with Spanish and English imperialism. The history of foreign domination and succeeding military dictatorships created an environment of state repression against individuals who disagreed with the government. One scholar of human rights notes “in particular, the coups in Chile and Uruguay in 1973, the coup in Argentina in 1976, and the upsurge of repression in Brazil in the late 1970’s were key turning points for the formation of the

human rights network.”¹²⁸ In all three of these cases state repression and abuse occurred on a massive scale, and truth commissions were later established as a result. The Argentine and Chilean experiences with the “disappeared,” especially the Chilean case, became landmarks of this growing human rights network. To that end, their experiments with measures of post-conflict justice and reconciliation have produced bitter but beneficial lessons for the international community.

Chile in particular had to call upon a variety of international organizations and resources because of a general lack of initial internal support for the truth commission experiment. After the similar events of disappearance that occurred previously in Argentina, human rights groups became stronger and more ready and able to help in Chile. Later, scholars looked back at the events that transpired in Chile during the 1970’s as turning points in the movement towards protecting basic rights for individuals. In sum,

“as one human rights advocate put it: ‘Human Rights was not in my vocabulary. Human rights entered my vocabulary on September 11, 1973 [the day of the Chilean military coup de’ etat that ousted Salvador Allende], when it was suddenly denied to one-third of the Chilean population.’” The profound strike against Chilean citizens was the event that motivated many human rights proponents worldwide to take more serious action. In fact, “membership in existing human rights organizations such as Amnesty International (in both Europe and the United States) grew in response to the Chilean coup, and new organizations were created, including the Washington Office on Latin America and the Council on Hemispheric Affairs. Chilean organizations that formed to confront government repression, especially the Committee for Peace (subsequently known as the *Vicaría de Solidaridad*) became models for human rights groups throughout Latin America as well as sources of information and inspiration for human rights activists in the United States and Europe.”¹²⁹

¹²⁸ Kathryn Sikkink, “The Emergence, Evolution, and Effectiveness of the Latin American Human Rights Network,” in *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America*, eds. Elizabeth Jelin and Eric Hershberg (Boulder: Westview Press Inc., 1996), 78.

¹²⁹ *Ibid.*, 63.

Few events in history have stimulated enough international response to become hallmarks of a new era of political language such as the movement for human rights. These new organizations and interconnections among human rights advocates also now had the beneficial resource of the truth commissions as permanent records of the abuses that took place.

Along the same vein, Argentina and Chile have set precedents in the juridical realm of human rights that have helped pioneer the legal implications of state violence both nationally and internationally. In reality, both Chile and Argentina had limited initial success in trying officials as perpetrators in civil courts. First, most military officials accused of criminal acts demanded to be tried in military tribunals (that would most probably acquit for having simply followed orders). Second, the extraordinary number of people who were kidnapped, detained and murdered in Argentina and Chile, (no less than 13,000), demonstrates the weakness of the judiciary at the time. Judges were fired and lawyers were disappeared on a regular basis, so that the fear of death as a legal official was real and ever present, stifling most attempts at an independent judiciary. While at that time most trials were unsuccessful or conviction sentences were ridiculously mild, the truth commission's findings still provided evidence for future cases that might otherwise be lost. As Ruti Teitel has defined them, "Legal practices bridge a persistent struggle between two points: adherence to established convention and radical transformation."¹³⁰ Recently, the legal implications of the era of disappearances have illustrated this connection between the national rule of law and the contemporary rise of international law that allows countries world wide to condemn the era of disappearances.

¹³⁰ Reed Brody, "Justice: The First Casualty of Truth?" *The Nation*, 30 April 30 2001, www.hrw.org.

The case of General Augusto Pinochet, who was arrested in London in 1998, has become an infamous example of the search for human rights justice in the new global legal community. At the request of Spanish Judge Baltasar Garzón, Pinochet was arrested in London under the “universal jurisdiction” clause of international law that “can provide the basis on which a court of any country can try an individual suspected of certain heinous crimes when the criminal conduct has no traditional connection to that country. It stems from the idea that certain crimes are so heinous that they offend the whole world and, as a result, every country (or “state”, as it is called in international law) has a right, and sometimes an obligation, to hold the perpetrators accountable.”¹³¹ More often there is a link between the state that indicts the accused, for example if the accused travels to the prosecuting country, has committed a crime against a national of that country, or has committed a crime within that country.

However, the severity of any horrendous crime allows for *any* state to prosecute genocide, torture, and other “crimes against humanity.” The specific laws of the prosecuting state will specify exactly which international laws have been ratified and set into law within that country and therefore which cases can actually be brought to trial under “universal jurisdiction.” In the Pinochet case, requests for his indictment were then sent to London by Spain under Judge Garzón as well as by France, Belgium and Switzerland. However, in 2000 Pinochet was declared mentally incapable of standing trial in England and sent home. In Chile he was then found “incompetent” to stand trial by the Supreme Court and stripped of his status as Senator for Life in July of 2002. This decision marked the end of the despicable Pinochet era. While it was disappointing for

¹³¹ See www.u-j.info/whatis/html.

many who sought justice, Pinochet will die a hated man, ostracized by the government and saved by the new democratic principles of the Chilean legal system.

The indictment of Slobodon Milosevic on May 27, 1999 launched a trial that is presently ongoing at The Hague and personifies another major stride towards securing international justice against the most powerful war criminals. The Pinochet case has also been a model for the indictment of Hissein Habre of Chad. As Human Rights Watch noted, “In 1999, with the Pinochet precedent in mind, the Chadian Association for the Promotion and Defense of Human Rights requested Human Right’s Watch’s assistance in bringing Habre to justice in Senegal.¹³² In February 2000, Habre was indicted for torture and put under house arrest by Senegal in the first case of an African being charged by another African country. The arrest of Pinochet was the first time that a dictator was charged outside of his own country for crimes against humanity under international covenants. This was only the beginning of a series of similar actions under international law.

The Special Case of “the Disappeared” in Legal Terminology

Along with the Pinochet case, the special circumstances associated with the term “disappeared” created a new genre of legal theory. The cases of Argentina and Chile were among the first countries in Latin America in which the State conducted mass kidnappings, and then denied knowledge of the whereabouts of the victims. This group of victims, later known as the “disappeared,” posed a new challenge for both the legal systems as well as the perpetrators of such abuses. The families of the victims were in a state of limbo; they had no knowledge of their loved ones, even though members of the

¹³² “The Pinochet Case—A Wake-up Call to Tyrants and Victims Alike, *The Pinochet Precedent: How Victims Can Pursue Human Rights Criminals Abroad*,” www.hrw.org.

military and secret police did. These families were often treated as if their loved ones were dead, which of course many certainly were. However, a mother will not often lose all hope of finding her son unless she knows for sure that he is gone. Due to this common theme of agonizingly waiting for answers, a new legal concept was called for to address the specific case of a “disappeared” person.

During the waning years of the dictatorships and the disappearances, confusion and corruption impeded the judiciary from being able to deal adequately with this new concept of a “disappeared” person. Legally speaking, though, not enough was done to honor the fate of the victims or their families. On May 11, 1994, Argentina passed Law Number 24,321, which created a “new legal category of ‘forcibly disappeared.. For all practical purposes, including the processing of the will and the closing of estates, the person was considered deceased. However, the possibility of reappearance was preserved.”¹³³ A book recently published argues that in Chile, as in Argentina, the laws should have come to make a clear distinction between death and the presumed deaths of the desaparecidos, and treat each case accordingly.¹³⁴ This was a recommendation of the Chilean truth and reconciliation report, and basically understates the importance of having a “special procedure for declaring the death of detained-disappeared persons.”¹³⁵ A legal recognition of what had happened is an important symbolic gesture that is both respectful of the family members as well as appropriate in juridical terms. By differentiating between a death and a presumed death due to disappearance, the law

¹³³ Hayner, 317. (also see Argentinean Code of Laws)

¹³⁴ Hernán Corral Talciani, *Desaparición de Personas Y Presunción de Muerte en el Derecho Civil Chileno* (Santiago: Editorial Jurídica de Chile, 2000), 467.

¹³⁵ www.derechoschile.com/essentialdocuments.

asserts that being kidnapped without a trace is not the same as being deceased. Thus the pain and lack of knowledge of each family is officially acknowledged by the state.

During the indictment and trial of Augusto Pinochet beginning in 1998, this issue of the act of “disappearing” an individual proved very significant. Pinochet had granted himself amnesty for all crimes committed from September of 1973 to 1978. He therefore believed that he was immune to all punishment for crimes he committed during this most brutal time of the dictatorship. However, “Courts in Chile and Argentina have recently ruled that the continuing nature of “disappearances” mean that these acts survive amnesties which bar the prosecution of crimes committed before certain dates.”¹³⁶ Because the fate of a missing person remains secret, and no evidence of his or her death has been found, the crime is legally considered ongoing and beyond the amnesty laws still in place. When Pinochet was arrested, his immunity could not cover “disappearances,” because “the crime continues as long as the fate of the victim is concealed.”¹³⁷ Even though Pinochet is now incompetent to stand trial, he would have been charged with these kidnappings had the court system declared him healthy enough to withstand the trial and punishment. Overall, the concept of the “disappearance” has forced legal systems in Chile and Argentina to reconsider their procedures and regulations concerning death and kidnapping. The families of these victims have found some peace in knowing that the state acknowledges their status as missing persons. From Chile’s painful experience, the international community has learned to appreciate the true nature of these tragic crimes, and has been given a model for action should these abuses occur in another state, in another time.

¹³⁶ Human Rights Watch, “The Pinochet Case”. www.hrw.org.

¹³⁷ Reed Brody, “Justice: The First Casualty of Truth?” www.hrw.org.

V. What Can Be Learned from the Argentinean and Chilean Experiences?

After having experienced the reality of the era of the *desaparecidos* of 1970's, both Chile and Argentina have begun to achieve post conflict restoration of their societies. Undoubtedly, the process of the truth commission has played a role in forging this justice. It has also been a source of wisdom for other nations as they struggle to recover from similar phenomena of state-inflicted terror. What remains to be seen is whether the truth commission will continue to evolve and serve as a successful option in seeking truth and justice. José Zalaquett, one of the eight commissioners of Chile's *Rettig Report*, suggests that the "ultimate goal of truth commissions, and indeed of any attempt to deal systematically with past human rights abuses, is, 'to put back in place a moral order that has broken down or has been severely undermined, or to build up a just political order if none existed in historical memory.'"¹³⁸ With this aim as a guide, the question becomes whether or not the truth commission can help restore this "moral order" within a nation torn apart by violence and violations of basic rights.

The cases of Argentina and Chile provide compelling proof that the use of the truth commission can in fact create opportunities for social justice, although these are still being tested within these communities. Argentina began the pattern with its unprecedented *Nunca Más* report that has since assisted in nearly every relevant trial within the country, and remains a nation-wide best-seller as well. In Chile, five officials were recently indicted after 30 years of silence, and Pinochet has become the face of evil both nationally and internationally. The phenomenon of the era of disappearances in these two countries created a worldwide effort to increase transparency and

¹³⁸ Elizabeth Kiss, "Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice," in *Truth vs. Justice: The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton UP, 2000), 80.

accountability up to the highest levels of government. Their truth commissions stand as permanent records of the need to prove the truth concerning atrocities and the injustice of denying these criminal events. The healing process in a society can only come with the knowledge of who committed the crimes, for what ends, and what became of the victims.

Inevitably, the language and debate over the effectiveness of truth commissions the argument turns toward the battle between “truth” and “justice,” as if one need be sacrificed in order to accommodate the other. Granted, the question of amnesty can hang upon the delicate balance between exchanging information for immunity from persecution and alleged offenders often walk free for fear that their trials would create too much chaos within an already weakened society. Argentina and Chile confronted the unfortunate development that the military regimes created blanket amnesties to absolve themselves of any blame for their actions. This amnesty, however, did not last, and it provided a meaningful lesson for other governments as they struggled over the exchange of immunity for information. They learned that while a general amnesty provided no justice, that individual exchanges of truth for forgiveness are often necessary in order to obtain the truth and eventually move forward. South Africa has been highly successful in its Truth and Reconciliation process by focusing on providing this balance between finding facts and dispensing legal punishment.

By learning from the mistakes and achievements of Argentina and Chile, the South African TRC and other commissions have realized that to restore a just society, a combination of post-conflict elements must be utilized in unison. Elizabeth Kiss spoke wisely when she said that:

Establishing the truth is instrumental to justice in at least two ways. Truth serves justice in a basic sense stressed by the Argentinean truth commission in its report *Nunca*

Más: without truth one cannot distinguish the innocent from the guilty. Less directly, truth serves justice by overcoming fear and distrust and by breaking cycles of violence and oppression that characterize profoundly unjust societies.¹³⁹

This statement symbolizes what the world can learn from the Argentinean and Chilean experiences: that the truth commission, by simply revealing the truth, can serve justice in a broader sense by ending confusion and lies that hold an era of state repression together. If great numbers of citizens in a country are demanding public scrutiny of horribly abusive state behavior, then a truth commission that reveal a set of answers to the most painful questions. The fate of thousands of people cannot be forgotten. Nor will a society become stronger by simply moving on without first dealing with the truth. Eventually, the memories that have been hidden from public view must be confronted so that the nightmare can end--For the victims' families, the perpetrators, and that society in general.

VI. Conclusions

The legacy of the disappeared in Argentina and Chile is a lesson in post-conflict justice. The truth commission process in these two nations cannot be copied directly by another country that seeks reconciliation with a past of human rights violations committed by agents of the state. Different cultures demand their own unique answers to the sensitive questions of restoring a just civil society. Nor were the truth commissions in these two states of Latin America without considerable flaws and failures that still compel these two countries to search for ways to heal the wounds of their citizens. This study in no way exhausts all possible benefits and costs of the truth commission. Nor does it delve deeply enough into all the ramifications of reparations and legal retribution,

¹³⁹ Kiss, 71.

two other worthy aspects of post-conflict justice. In addition, this study is limited by focusing only on Argentina and Chile, with little attention paid at length to the fourteen other states that created successful and unsuccessful truth commissions. The field of post-conflict justice only recently included international law, and much work remains to be done in the development of solid models of restorative justice. In the end, “No response to mass atrocity is adequate,”¹⁴⁰ because the damage to human dignity is in many ways unredeemable and permanent. What remains is the hope for a more promising future for the survivors and the next generations who can move forward into a better society, while also not forgetting the tragedies of the past.

That said, the cases of Argentina and Chile clearly suggest that the truth commission does work under certain circumstances to reveal the truth and help achieve social justice. Depending on the specific aims of a society that has suffered such atrocity, “There is positive value in what truth commissions seek, especially those like the Argentinean, the Chilean, and the South African versions—where the explicit goal was to restore a just society.”¹⁴¹ South Africa is often mentioned as the best example of a commission that modeled itself from the Argentine and Chilean cases and improved upon them to create a more successful plan for post-conflict justice. Other commissions, such as those in El Salvador, Guatemala, Haiti and Sri Lanka, are not discussed here; nevertheless, they have also become a part of the ever-growing body of knowledge concerning successful and unsuccessful elements of post-conflict justice.

After a state recovering from a repressive past considers all possible options, the “inherent *right to truth* held by all victims or survivors, or by society as a whole” must be

¹⁴⁰ Minow, 235.

¹⁴¹ Rotberg, 11.

honored. The reason is clear: it is the basic right that is most often demanded by those still living after massive human rights abuses. A society will not be able to move forward from its past without recognition and admission of harm done. The silence of a nation that denies its past only corrupts its chances at reconciliation. The truth commission is founded on the right of the victim and her family to know the truth about what happened. Naturally, Priscilla Hayner posits, “A truth commission can only begin to address the considerable needs of a transitional society,” because the government must implement the recommendations suggested and the judiciary must prosecute perpetrators with the information compiled.¹⁴² The truth commission must be followed by continued efforts to use the truth to find justice. It is only the beginning of a long and painful road to new beginnings. In short, the intrinsic value of the truth commission is its focus on the individual victim, because “only those who suffered can forgive.”¹⁴³ And it is only through forgiveness can we set ourselves free.

¹⁴² Priscilla Hayner, “Truth Commission: Exhuming the Past,” *North American Congress on Latin America: Human Rights Project* 32 no. 2 (Sep/Oct. 1998), 30-32. www.bard.edu/hrp/Hayner.htm.

¹⁴³ *The Pinochet Case*, dir. Patricio Guzmán, 149 min., First Run/Icarus Films, 2001, videocassette.

“He recorrido el mundo, he perdido todo lo que tenía por datos que nos han dado, todos falsos. Quiero descansar y morir en paz. Por eso necesito saber que pasó”¹⁴⁴

(I have gone around the world, I have lost everything that I have to get the information that they have given me, which is all false. I want to rest and die in peace. That is why I need to know what happened)

¹⁴⁴ *Informe de la Comisión Nacional de Verdad y Reconciliación 1 no. 2*, (Santiago: February 1991), 771.

Bibliography

Books

- Acuna, Carlos H. and Catalina Smulowitz. "Adjusting the Armed Forces to Democracy: Successes, Failures, and Ambiguities in the Southern Cone." In *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America*, edited by Elizabeth Jelin and Eric Hershberg, 13-38. Boulder: Westview Press Inc., 1996.
- Bassiouni, M. Cherif. Introduction to *Post-Conflict Justice*. New York: Transnational Pub., Inc., 2002. xv-xx.
- Boraine, Alex. "Truth and Reconciliation in South Africa: The Third Way," *Truth vs. Justice: The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson, 141-157. Princeton: Princeton UP, 2000..
- Crocker, David A. "Truth Commissions, Transitional Justice, and Civil Society" In *Truth vs. Justice: The Morality of Truth Commissions*, edited by Robert I. Rotberg and Dennis Thompson, 99-121. Princeton: Princeton UP, 2000.
- Guest, Iain. *Behind the Disappearances*. Philadelphia: Penn UP, 1990.
- Hayner, Priscilla. *Unspeakable Truths: Confronting State Terror and Atrocity*. New York: Routledge, 2001.
- Kiss, Elizabeth. "Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice," *Truth vs. Justice: The Morality of Truth Commissions*, eds. Robert I. Rotberg and Dennis Thompson, 68-98. Princeton: Princeton UP, 2000.
- Minnow, Martha. "The Hope for Healing: What Can Truth Commissions Do?" In *Truth vs. Justice: The Morality of Truth Commissions*, edited by Robert I. Rotberg and Dennis Thompson, 235-260. Princeton: Princeton UP, 2000.
- Osiel, Mark. *Mass Atrocity, Collective Memory, and the Law*. New Brunswick, New Jersey: Transaction Pub., 1977.
- Rotberg, Robert I. "Truth Commissions and the Provision of Truth, Justice, and Reconciliation." In *Truth vs. Justice: The Morality of Truth Commissions*, edited by Robert I. Rotberg and Dennis Thompson, 3-21. Princeton: Princeton UP, 2000.
- Talciani, Hernán Corral. *Desaparición de Personas Y Presunción de Muerte en el Derecho Civil Chileno*. Santiago: Editorial Jurídica de Chile, 2000.

Sancinetti, Marcelo A. *Derechos Humanos en La Argentina Post-Dictatorial*. Buenos Aires: Manuel Lerner Editores Asociados S.A, 1988.

Sikkink, Kathryn. "The Emergence, Evolution, and Effectiveness of the Latin American Human Rights Network." In *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America*, edited by Elizabeth Jelin and Eric Hershberg, 59-84. Boulder: Westview Press Inc., 1996.

Valenzuela, Eduardo Berrios. *Análisis Jurídico Procesal de la Comisión de Verdad y Reconciliación*. Santiago, Chile: PUC Facultad de Derecho, 1993.

Zalaquett, José. "Balancia de la Política de Derechos Humanos en la transición chilena a la Democracia". *Entre la II cumbre y la detención de Pinochet: Chile 98*, 87-98. Santiago: Flasco, 1999.

Zalaquett, José. "Truth, Justice, and Reconciliation: Lessons for the International Community." *Comparative Peace Processes in Latin America*, edited by Cynthia J. Arnson. Stanford: Stanford UP, 1999.

Periodicals

El Cronista. 24 April 1979.

Osiel, Mark. "The Making of Human Rights Policy in Argentina: the Impact of Ideas and Interests on a Legal Conflict: Lecturas Seleccionadas Política del Cono Sur en América Latina ." *Journal of American Studies* 18 (1986): 135-180.

Zalaquett, José. "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations". In *Hastings Law Journal: The Matthew O. Tobriner Memorial Lecture* 43 no. 6. (San Francisco: Hastings College of Law, 1992):1425-1438.

Zalaquett, José. "Derechos Humanos y Limitaciones Políticas en las Transiciones Democráticas del Cono Sur." *Colección Estudios Cieplan No. 33* (December 1991). Quoted in *Truth and Partial Justice in Argentina: An Update* (New York: Americas Watch , 1991), 169.

Zalaquett, José. "La Mesa de Diálogo Sobre Derechos Humanos y el Proceso de Transición Política en Chile." *Estudios Públicos* no. 79 (Santiago: Centro de Estudios Públicos, 2000): 5-30.

Zalaquett José. "La Reconstrucción de la Unidad Nacional y el Legado de Violaciones de los Derechos Humanos." *Perspectivas* 2 (Santiago, Chile, 1999).

Zalaquett, José. “Procesos de Transición a la Democracia y Políticas de Derechos Humanos en América Latina”. *Presente y Futuro de los Derechos Humanos*. (Costa Rica: Instituto Interamericano de Derechos Humanos, 1998): 107-132

Zalaquett, José. “The New Republic: End of the Era of the Generals.” *From Dictatorship to Democracy* (December 16 1985).

Zalaquett, José. “The Pinochet Case: International and Domestic Repercussions.”

Documents

Americas Watch. *Truth and Partial Justice in Argentina: An Update*. New York: Americas Watch, 1991.

Chilean Human Rights Commission and Centro IDEAS, *Summary of the Truth and Reconciliation Commission Report*. Santiago de Chile: Gráfica CeBe Ltda., 1992.

Comisión Chilena de Derechos Humanos: Fundación Ideas. *Nunca Más en Chile: síntesis corregida y actualizada del Informe Rettig*. Santiago: LOM Ediciones, 1991.

Declaración del General Martín Balza. 25 de Abril de 1995.

Foro de Estudios sobre la Administración de Justicia. *Definitivamente...Nunca Mas: La otra cara del informe de la CONADEP*. Buenos Aires: FORES, 1985.

Informe de la Comisión Nacional de Verdad y Reconciliación 1 no. 2. Santiago: February 1991.

Nunca Más: A Report by Argentina's National Commission on Disappeared People. London: Faber and Faber Limited, 1986.

Nunca Mas: Informe de la Comisión Nacional Sobre la Desaparición de Personas. Buenos Aires: Editorial Universitaria de Buenos Aires, 1985.

United Nations General Assembly. *Universal Declaration of Human Rights*, 1948. Preamble

Zalaquett José. Introduction to *Report of the Chilean National Commission on Truth and Reconciliation* vol. 1. Indiana: Notre Dame UP, 1993. xxiii-xxxiii.

Documentaries

The Pinochet Case. Directed by Patricio Guzmán. 149 min. First Run/Icarus Films, 2001. Videocassette.

Internet Sources

Brody, Reed. "Justice: The First Casualty of Truth?" *The Nation*, 30. April 30 2001, www.hrw.org.

Hayner, Priscilla. "Truth Commission: Exhuming the Past." *North American Congress on Latin America: Human Rights Project* 32 no. 2 (Sep/Oct. 1998): 30-32. www.bard.edu/hrp/Hayner.htm.

"Chronology 1977." *Santiago Times*. Santiago: The Chiron Group, Inc., 2002. http://www.santiagotimes.cl/derechos/1977_eng.html.

"Chronology 1980." *Santiago Times*. Santiago: The Chiron Group, Inc., 2002. http://www.santiagotimes.cl/derechos/1980_eng.html.

www.csur.org/za/papers/papedel.htm

www.derechoschile.com/essentialdocuments

<http://www.derechos.org/ddhh/arg/ley/final.txt>

<http://www.derechos.org/ddhh/arg/ley/ley23521.txt>

http://www.santiagotimes.cl/derechos/1980_eng.html.

www.hrw.org

<http://www.hrw.org/press/2001/01/cavallo.htm>

"The Pinochet Case—A Wake-up Call to Tyrants and Victims Alike, *The Pinochet Precedent: How Victims Can Pursue Human Rights Criminals Abroad*," www.hrw.org.

www.u-j.info/whatis/html

Vivanco, José Miguel. "Pinochet Decision Lamented: But Rights Groups Say Case a Landmark." *Human Rights Watch World Report 2001: Chile*. www.hrw.org/press/2001/07/pino0709.htm.

Zalaquett, José. "The Pinochet Case: International and Domestic Repercussions." Online.