

Chile: A Study of Justice - An Araucanian Perspective

Jane Newton MA, Montreal, Canada

Since the establishment of a constitutional government in Chile, there would appear to be a common sentiment among many affected by the military dictatorship that justice has not been achieved. Some would maintain that measures such as erecting monuments, declaring national holidays, recognising the truth and offering reparation are insufficient attempts at condemning nearly twenty years of institutionalised violence. Although a positive beginning, the aims of the Truth and Reconciliation Commission have been questioned since it does not address the deep-rooted political contradictions that can perhaps only be repaired through radical institutional reform.

The objective then, of the present study is to compare the meaning of *justice* as intended by the Truth and Reconciliation Commission to the notion of *justice* envisioned by the families affected by the military dictatorship (primarily 1973-1978) in *La Araucanía* (IX region), located south of Concepción and north of Puerto Montt. The impetus to study this region was the author's particular interest in the Mapuche people. Quite similar to Canada's native peoples, they have been discriminated against, pushed off their land and have struggled for centuries for their right to exist as indigenous people. They imposed their own frontiers for nearly three centuries, notoriously brave for their resistance to Spanish conquerors. Despite their strength and resistance to colonisation, this area suffered the most during the dictatorship. Although greater Santiago was the region with the largest absolute number of deaths and disappearances, the numbers are higher on a per capita basis in *La Araucanía*.

Often used synonymously with "reparation" or "truth", the author's goal was to see if there was a discrepancy between the perceptions of justice. If so, could a compromise be reached that would satisfy both parties' perspectives taking the following into account: current impunity

underway in Chile; routine social interaction with the perpetrators; and financial and other forms of compensation. Through research and interviews this qualitative study aims to reconcile the perceptions and rendering of *justice*, the pillar of Chile's Truth and Reconciliation Commissions, through the Transcend method of conflict transformation. Transcend International is an organisation for peace and development that was founded by Norwegian peace researcher Dr. Johan Galtung. The Transcend method consists of a six-dimension structure which aims to uncover and transform systemic structural or direct violence. These six dimensions of conflict especially address the four basic human needs (survival, identity, well-being, freedom) that define and guide conflict. It also presents a solution-oriented medical metaphor to conflict analysis: Diagnosis, Prognosis, Therapy, which will be explained later on in the paper.

It is important to recognise that this study makes no claims of comprehensiveness and the interviews that the author conducted represent only the individuals interviewed. The author made no attempt to generalise stories, feelings or experiences offered by those who wanted to share them. The most substantial contributions to the present paper come from Professor José Araya, Professor of Human Rights at the *Universidad de Temuco* and Executive Secretary of the *Corporación de Promoción y Defensa de los Derechos del Pueblo*; Rodrigo Lillo, lawyer and head of the *Programa Derechos Indígenas*; Roberta Bacic, who is a Chilean human rights researcher and works for *War Resisters International* in London and Víctor Maturano, who was imprisoned and exiled during the dictatorship. Due to the highly personal nature of the subject, the other contributors understandably requested that their names be omitted from the study. The interviews were conducted very informally in Spanish, at times on a one-on-one basis and at times in groups before or after victims-support meetings to which the author was invited but did

¹ Due to the limited scope of the study, no particular distinction is made here between Mapuche and non-Mapuche experiences.

not participate. Ages ranged from university students in their early twenties to middle-aged small business owners and retired politicians.

Military dictatorships are not an unfamiliar phenomenon in Latin America. Paraguay suffered a brutal military regime for more than forty years, and Brazil for nearly twenty years. Argentina experienced various military regimes from the 1970s until the mid-1980s, and Uruguay lived under a military government during the 1970s and 1980s. Finally, for seventeen years, Chile witnessed a military dictatorship under General Pinochet. The present report will focus on the latter, particularly the experiences in the IX region of Chile, *La Araucanía*, which proportionally suffered the most from the military regime.

There seem to have been two prevailing stances in response to the military coup that installed a brutal dictatorship that ended up ruling the country for nearly two decades. The first response was that the military regime expressed an institutionalised and militarised reaction to the emerging popular sectors whose concern and growing demand for social reform threatened those in power. On the other hand, many welcomed the military regime with relief and saw it as a necessary reaction that would control the social chaos prevalent at that time between extreme leftists and extreme rightists².

Regardless of one's opinion, three distinct stages in the regime can be identified. The following section briefly describes the main activities that characterise the three periods.

September 1973 - December 1973

- consolidation of the military regime

² Herzfeld-Bacic, Roberta, Pérez-Durán, Teresa and Pérez-Sales, Pau, Muerte y Desaparición Forzada en La Araucanía: Una Aproximación Étnica, Ediciones Universidad Católica de Temuco, Santiago de Chile, 1998.

- main objective of the armed forces was to gain absolute control of the country in as short a time as possible, minimizing the risk of armed resistance
- *intendentes*,³ or military commanders appointed by the president, were bestowed the power to hand out death sentences
- the *Central Nacional de Informaciones*⁴ was created

January 1974 - August 1977

- *Oficina de Guerra Psicológica*⁵ was created in which psychiatrists and psychologists collaborated in the design of propaganda operatives destined to maintain a climate of fear
- a detention-disappearance campaign was launched

September 1977 - March 1990

- meaningful popular responses to the military regime appeared and signs of armed resistance groups surfaced (*Movimiento de Izquierda Revolucionaria (MIR)*, *Unión Popular*, *Frente Patriótico Manuel Rodríguez*, *Movimiento Lautaro* etc...)
- selective disappearances continue, although less frequent
- “*caceroladas*”⁶ and “*jornadas de no hacer*”⁷ i.e.: not leaving the house, not sending children to school, not going shopping etc.

³ *Intendentes* are the president’s representatives in every region, during the dictatorship they were military personnel

⁴ Its predecessor, the DINA (*Dirección de inteligencia nacional*) consisted of specialists in torture and repression.

⁵ Bureau for Psychological Warfare

⁶ *Cacerola* = pan; as part of demonstrations in response to the worsening economic crisis, women would beat pots and pans in the streets in order to protest the lack of food.

⁷ “do nothing” days

- many large scale protests and demonstrations against the regime between 1983- 1985 – in 1981 the protests were mainly in Santiago but by 1983 they spread throughout the entire country; this fuelled a counter-response by the armed forces → more repressive activity

While the repressive measures differed according to region, three elements remained the same:

- 1) In most operations, there was direct cooperation between the police (*carabineros*) and the military and this, not only in terms of exchange of information but also in the actual carrying out of repressive activities, the targets of which were leftist militants, were somehow connected to leftist political parties, or who did not adhere to any political ideology in particular.

- 2) There was civilian participation: neighbours or acquaintances would identify targets and actually help the military to detain / interrogate / execute them

- 3) An obvious benefit for the civilians who aided the military operations cannot be seen since none of the deceased were direct land owners or possessed valuable goods (they were, for the most part, workers at wood processing plants). The most likely motivation was an ideological affinity with the regime and the resulting conviction that a “*depuración social*”⁸ was necessary.

Given the magnitude of the human rights violations and the deep-seated repercussions from which the population suffers, the most acceptable form of acknowledgement was to establish a truth commission that would reveal what really happened, thus providing closure to many families and survivors.

⁸ social purification

Aims and Objectives of the Chilean Truth and Reconciliation Commission

A Truth and Reconciliation Commission aims to uncover the “truth” about traumatic, often protracted, social conflicts. While revealing concrete facts in the form of a public report, it is important to realise that a Truth and Reconciliation Commission is a *process* which describes the events in order to raise social consciousness about a traumatic period in a nation’s history, often consisting of systematic violations of human rights. The idea is to deter similar events in the future. Indeed, the title of Argentina’s 1984 report “*Nunca más*”⁹ (“never more”) expresses this precisely. Since the objective of a Truth and Reconciliation Commission is to expose historical facts based on exhaustive research and investigation, it does not aim to replace legal instruments which decide and condemn perpetrators according to what was disclosed in the investigation.

The president of Chile’s transition government, Patricio Aylwin, nominated eight commissioners¹⁰ known for their credibility, impartiality and objectivity to the country’s Truth and Reconciliation Commission (the “Commission”). The president of the Commission was Chilean lawyer Raúl Rettig Guissen, who headed the team of sixty professionals, all Chilean as well. In general, human rights organisations were pleased with the choices.

In order to conduct their investigation thoroughly, the Commission was granted access to records, files, and sites and could conduct interviews when necessary, if those to be interviewed were willing. Predictably, most civil servants gave incomplete or ambiguous information, admitted that information had been destroyed, or plainly refused to cooperate.

⁹ “Never more”

¹⁰ The names of the commissioners are as follows: Jaime Castillo Velasco, Jose Luís Cea Egaña, Mónica Jiménez de la Jara, Ricardo Martín Díaz, Laura Novoa Vásquez, Gonzalo Vial Correa, José Luis Zalaquett Daher and the secretary was Jorge Correa Sutil.

The Commission was officially created on April 25th 1990, and its mandate was to investigate human rights abuses which took place between the coup d'état in September 1973 and the establishment of a constitutional government in March 1990. The final three-volume report was given to the President of the Republic on February 8th 1991. He disclosed it to the public on March 4th of the same year. In 1992, through law 19.123, the *Corporación Nacional de Reparación y Reconciliación*¹¹ (CNRR) was created in order to implement some of the recommendations proposed by the Commission. In general the report was well-received. Human rights organisations accepted the work and deemed it an irrefutable and official establishment of the truth, a collective national memory. On the other hand, right-wing politicians were ambiguous in their public declarations. In some cases they would condemn the human rights abuses, but they could also be heard commenting that although the violations were not justifiable, they were explicable since the Marxists were wreaking havoc: “...*la izquierda marxista sembró vientos y cosechó tempestades.*”¹² The armed forces and the *carabineros* (police) refuted the report and instead of apologising, qualified their actions as patriotic obligations.¹³ It must be noted that political measures were indeed necessary at that time in order to control the prevalent and increasing violence between extreme rightists and leftists at the end of Allende's regime. However, the methods by which the military put an end to the social unrest are shocking and should be noted as well.

A major flaw in Chile's Truth and Reconciliation Commission was the omission of information about survivors of torture. The Commission's mandate was to investigate cases of

¹¹ National Corporation for Reparation and Reconciliation

¹² “...the Marxist leftists sowed winds and harvested storms”, Espinosa Cuevas, Victor, Ortiz Rojas, Maria Luisa and Rojas Baeza, Paz, Comisiones de la Verdad. Un Camino Incierto? Estudio comparativo de Comisiones de la Verdad en Argentina, Chile, El Salvador, Guatemala y Sudáfrica desde las víctimas y las organizaciones de derechos humanos. CODEPU, Santiago de Chile, 2003, p. 80

¹³ *Ibid*, p. 80

torture resulting in death, detentions and disappearances and politically motivated executions. Since torture was the most common violation of human rights, some say that its omission makes for an incomplete and inaccurate report even though it was decided that the time allotted for the investigations was not enough to do justice to the sheer volume and seriousness of the cases¹⁴.

Another critique of the Commission is with regard to reparations. Upon introducing the idea of monetary compensation to victims and families of victims, the predominant sentiment in Chile was anger, frustration and shame. Most recipients felt that they were selling themselves out and did not want to receive monetary compensation for the disappearances of their loved ones. Others criticized it by saying that there is no such thing as “reparation”, only reparatory *methods* (i.e. covering a pension plan or providing educational scholarships). These indirect methods of compensation would seem less condescending and humiliating. Interestingly, in *Mapuche* communities, it was culturally unacceptable for one to come into large amounts of money. Since sudden financial gain is seen with suspicion, it would perhaps be more appropriate to make the reparation payments more community-based so that one person or family is not ostracised. In response to these delicate financial questions, many family members conveyed that the most acceptable form of reparation was not monetary, but symbolic, specifically the creation of cemeteries. It is worth noting that to a large extent it was human rights organisations, the families or the victims themselves who assured the creation of these special sites, rather than the government, which did, however, support the initiatives.

A third issue worth examining is the identification of those responsible for human rights abuses in the Commission report. In some cases¹⁵, such as the South African and El Salvadorian

¹⁴ Informe Annual Sobre Derechos Humanos en Chile 2003 (Hechos de 2002), Facultad de Derecho, Universidad Diego Portales, Santiago, p. 142.

¹⁵ El Salvador and South Africa are two examples.

Commissions, actual names of perpetrators were revealed. Yet, Chile's Commission was more moderate and excluded names of individuals. The first part of Chapter II of the Commission report states that the inclusion of names would imply that the Commission was publicly accusing individuals of crimes for which they could not defend themselves, as the Commission's mandate did not allow for trials. Without assuring proper due process procedures, it violates Chilean domestic law, and thus, constitutes a violation of human rights.¹⁶ Most human rights organisations expressed that due to the investigative nature of the Truth Commission, legal procedures were beyond its jurisdiction:

*"...se sentía imposibilidad de imputar responsabilidades penales a determinadas personas, fuimos partidarios que el Informe de Verdad y Reconciliación aportara en cuotas de verdad, pero sin hacer un juicio respecto a quiénes eran las responsables, porque esa es tarea de los tribunales."*¹⁷

However, numerous survivors and family members disagree with this. A human rights advocate and family member of a victim states:

*"el gran error de la Comisión fue no nombrar a los culpables de las detenciones, de los desaparecimientos y las responsables de los campos de concentración, los campos secretos de tortura, eso no se registró en ningún momento."*¹⁸

The omission of names in the report is still a contentious issue among many in Chile. Nonetheless, it should be noted that while individual names were not mentioned, the names of organisations, forces or groups were.

A final critique is the defined period of investigation. While it is necessary to demarcate the period of time included in the study, excluding the build-up as well as the aftermath of the dictatorship could be detrimental to a proper analysis. Clearly, the events leading up to the dictatorship are just as telling as the events of September 11th, 1973. The spiral of violence and

¹⁶ Espinosa Cuevas, Victor, Ortiz Rojas, María Luisa and Rojas Baeza, Paz, Comisiones de la Verdad, Un Camino Incierto? Estudio comparativo de Comisiones de la Verdad en Argentina, Chile, El Salvador, Guatemala y Sudáfrica desde las víctimas y las organizaciones de derechos humanos, CODEPU, Santiago de Chile, 2003, p. 68.

¹⁷ Ibid, p. 69

¹⁸ Ibid, p. 69

repression coupled with propaganda before the coup d'état require as much attention as the events themselves. Since conflicts do not generally “begin” and “end” on specific dates, more analysis of the social situations before and after the dictatorship should be warranted. Although some maintain that the time allocated for the Commission was insufficient given the magnitude of the violations, it lasted nearly nine months¹⁹.

The Truth and Reconciliation Commission: Does it Deliver Justice

Considering the complex questions above, the next part of this paper will examine the connection between justice and the Truth and Reconciliation Commission. First, it must be clear that the Commission Report highlights the symbolic, preventative nature of justice. It stipulates that after adequate consideration, the State should exercise its punitive functions so as to avoid the recurrence of human rights violations. Justice then is more of an abstract goal, wrought by the revelation of the facts and national recognition. Once the government, military and civil society has acknowledged the facts, ideally, there could be reconciliation and healing. To this end, the Commission recommended the creation of the National Corporation for Reparation and Reconciliation which would assess the implementation of the Commission's recommendations and would respond more directly to legal questions. So although the Commission could not assure “justice” in the traditional legal sense of the word, on some levels it did provide answers to questions that had been ignored for many years, which for some was justice in and of itself.

On the other hand, there are still quite a few families and survivors of torture who are not satisfied with symbolic justice. They still want to know who committed the crimes, find out where the bodies of their loved ones are, and see the perpetrators punished. During the

¹⁹ From May 9th 1990 to February 8th 1991

Commission's investigation, three main tendencies²⁰ were noted throughout interviews discussed above. The first tendency was expressed by those who believed that justice could only be served after sufficient investigation and punishment. The second tendency was that legal accountability must come before reparation; monetary compensation had no value as long as the perpetrators were free. The last tendency was prevalent in rural areas where many have lost all faith in the judicial system: "*La justicia no existe para los pobres.*"²¹ Many felt that although the Commission was a positive first step, the State shrugged off judiciary obligations and left legal questions up to civil society. Ultimately, the victims were made to feel like past human rights violations were their problem and need not be addressed by the State.²² Truth Commissions, therefore, should not be considered as the only strategy for identifying human rights abuses, since their mandates are much too limited. They must be considered as part of a more extensive peace and reconciliation *process* which includes active participation on behalf of civil society and sound political consensus, followed by a complementary realisation of justice.

In summary, it is accurate to say that there is indeed a discrepancy between justice the Truth and Reconciliation Commission provided and that wanted by victims and their loved ones. As expressed in the interviews by the families of victims and by victims themselves, justice plays a central role in the establishment of a democratic government. A step in this direction offered by the Commission is, of course, the *Corporación Nacional de Reparación y Reconciliación*²³ (CNRR). Therefore the question now is whether or not the recommended CNRR, coupled with on-going legal pursuits, will actually bring about justice and democratic change. The next section

²⁰ Roberta Herzfeld-Bacic, Teresa Pérez-Durán and Pau Pérez-Sales, *Muerte y Desaparición Forzada en La Araucanía: Una Aproximación Étnica*, Ediciones Universidad Católica de Temuco, Santiago de Chile, 1998.

²¹ "Justice does not exist for the poor"

²² Roberta Herzfeld-Bacic, Teresa Pérez-Durán and Pau Pérez-Sales, *Muerte y Desaparición Forzada en La Araucanía: Una Aproximación Étnica*, Ediciones Universidad Católica de Temuco, Santiago de Chile, 1998.

²³ National Corporation for Reparation and Reconciliation

explores some serious institutional obstacles and the anti-democratic nature of the present Chilean political system, which is currently preventing effective implementation of punitive measures.

In 1980, during the military regime, a new constitution was created but without a parliament, election registries, or overseers. Twenty-four years later the political system is made up of the same government and the same laws. Since the dictatorship, no major constitutional changes have taken place. This is primarily the result of a series of institutions that not only impede but actually prevent democratic constitutional reforms. During the dictatorship, the Ley de Amnistía²⁵, or Amnesty Law, was also created. This three-article decree was craftily introduced by the “military parliament” (this is to say, four generals) who wanted the military to evade all responsibility for the crimes committed between 1973 and 1978. This guaranteed the military total impunity from politically motivated killings, deaths, detentions, disappearances and torture. It was created in order to protect the military from legal / moral responsibility after the dictatorship. Until 1998, trials were few and far between. The cases that *were* underway were slow and often closed because the Amnesty Law was invoked. Due to pressure from the United States, the only case that was not dismissed in the name of the Amnesty Law was the case of Orlando Letelier, who was killed by a bomb in Washington, D.C. in September 1976. In this situation, the former general director of DINA, Manuel Contreras, was sentenced to seven years in prison and Pedro Espinoza, co-conspirator and army brigadier, was sentenced to six years. The Amnesty Law still exists today.

²⁴ Ironically, the current President of the Senate is an ex-military general who supported Pinochet.

²⁵ Amnesty Law

The Consejo de Seguridad Nacional²⁶ is a security advisory council that was actually created before the dictatorship but was slightly modified in favour of the military during the dictatorship. This council was subordinated to the President and would serve a mere military advisory role. During the military regime however, the armed forces could summon the council without the president's approval and the commander in chief could supersede his authority, like a veto power. This is still the case today.

Although the dictatorship may have ended in 1989, it left behind significant traces which, despite the progress of Chile's Truth and Reconciliation Commission, make it very difficult to offer the kind of justice that victims and their families would like to see served through the *Corporación Nacional de Reparación y Reconciliación* (CNRR). The current political system makes it difficult to carry out trials. Indeed, the military is protected by self-made laws. To the author's knowledge, the military in Chile is the only institution in Latin America which managed to create an architecture of impunity and power, that persists today.

The CNRR and Current Institutional Constraints: Transcending the Contradictions

The next part of the report will aim to transcend the contradictions between the *Corporación Nacional de Reparación y Reconciliación* and the current institutional constraints in Chile. However, in order to understand why the CNRR seems to be only partially fulfilling its mandate, a brief examination of the Corporation's background is necessary.

Pinochet's opposition won the 1988 plebiscite and, among other human rights issues, promised to abolish the Amnesty Law. The parameters of the transition government were

²⁶ National Security Council

²⁷ Constitutional Court

negotiated. During dialogue with the military, the CNRR became frighteningly aware that the promises, mainly about human rights, of which they boasted in the lead up to the plebiscite, could not be fulfilled. However, there would be consequences should the CNRR refuse to lower its profile. Thus the military basically laid the groundwork for transition and as a result not much changed. The CNRR must therefore function within this limited framework and instead of playing a juridical role, is resigned to playing a social assistance role (educational scholarships, health benefits etc). Lawyers cannot act as they wish either since they are subordinated to the policies of the CNRR, which is in turn subordinated to the government, which is thus in turn subordinated to the agreements decided upon during the transition negotiations. This contradiction will be studied in the next section.

The conflict analysis and diagram below offer a schematic view of this judicial / political system contradiction and demonstrate how the conflict could possibly be transcended. This is a mere suggestion for an extremely complex issue which, of course, requires much more research. The following section introduces the six-step procedure for conflict transformation, *The Dimensions of Conflict Transformation*, as elaborated by the Austrian Study Center for Peace and Conflict Resolution in Stadtschlaining, Austria, based on Johan Galtung's conflict theories.

With conflict transformation becoming a more internationally recognised and respected field, conflict theoreticians and peace practitioners are increasingly experimenting with and presenting new ways of dealing non-violently with conflict. It is easy to become confused by the overwhelming nomenclature that has been created as a result of this. However, for the purpose of this study, conflict transformation can be defined as "...a process of engaging with and transforming the relationships, interests, discourses and, if necessary, the very constitution of

society that supports the continuation of conflict”²⁸. Conflict occurs when those concerned have *incompatible goals or needs*. In order to determine what goals are legitimate, peace researcher Johan Galtung finds that four *non-negotiable* principles, which cannot be compromised, are at the heart of the transformation process. As such, if parties to the conflict have demands that cannot be related to their survival, well-being, identity or freedom, then they should be deemed illegitimate. The definition of survival is the most straightforward. In this case it refers to the fundamental human right to life. Well-being consists of fundamental material needs, i.e. housing, education and health. Contrary to well-being, which is what humans need to live *from*, Galtung refers to identity as something to live *for*. Unlike Maslow’s basic needs theory which implies that survival needs are more important than identity, Galtung’s four basic needs are of equal value; indeed some people are ready to die in order to preserve their identity. Thus, humans need something to believe in, be it a religion, a partner, an ideology or the family. Freedom signifies that one has the means by which to decide how they guarantee the above. All four points are of equal importance; therefore, one should not take precedence over another in any situation. Should a party’s demands draw on any one of these aims, the demand should be considered legitimate. Oftentimes, basic needs are compromised or neglected. It is only through investigating the deeper dimensions of the culture and structure in question that one can determine the real cause of the conflict. In order to properly investigate the deeper dimensions of conflict, Galtung suggests a six-step procedure:

1. Exploration of the present (Investigate main ideas and assumptions of the conflict...)
2. Remembrance of the past (What is the conflict *really* about?)
3. **Prognosis** of the future (How is the conflict most likely to continue?)

²⁸ Hugh Miall, Conflict Transformation: A Multidimensional Task, Berghof Research Center for Constructive Conflict Management, Germany, 2001

4. Deep **diagnosis** of the past (Differ between legitimate and illegitimate goals)
5. Deep **therapy** for the future (Proposal of an over-arching formula that satisfies every party's *legitimate* basic needs)
6. Prescription of the present (How to put the formula into action)

One might wonder why medical terms such as diagnosis, prognosis and therapy are used here. As in medicine, Galtung's perception of conflict shares the common idea of a system (of actors, of cells), well-states and ill-states. Word-pairs such as "health / disease" from health studies and "peace / violence" from peace studies can be considered as specifications of these broader ideas.²⁹ He got the idea from his father, who applied these concepts in medicine, where they have been common for centuries. In order to deal with conflict properly, a thorough diagnosis is required. Similarly, creative therapy is required in order to find solutions. Medical science is a natural science with a clear value-orientation; health. A doctor will suggest some form of therapy after explaining the diagnosis and the prognosis to a patient. If a society were considered as a patient suffering from violence, then conflict transformation workers would also need a clear value-orientation in the social sciences. However, traditional social sciences such as International Relations, Political Science, Conflict Studies and others sometimes suggest a prognosis as well as a diagnosis, but never a therapy. That is the main reason why Johan Galtung established Peace Studies.

Therefore, DPT is an integral part of the six-step procedure for transforming conflict. It allows for a solution-oriented analysis (therapy) which is essential and not provided nearly often enough in the media or in educational institutions. The **diagnosis** is a state of violence, be it

²⁹ Johan Galtung, Peace by Peaceful Means, Peace and Conflict, Development and Civilization, Sage Publications, London, 1996, p. 1

direct (torture, murder), cultural (used to justify direct or structural violence, i.e. flags, inflammatory speeches, military parades etc.) or structural (more difficult to recognize; violence here is built into the very social, political and economic systems that govern societies, states and the world). A **prognosis** is a prediction of the trajectory of that system over time, whether the processes of violence will increase, stay the same or decrease. Based on this, an accurate prognosis will determine the best way in which to deal with the conflict. The **therapy** consists of the deliberate efforts made by the parties or imported from external forces in order to get “well” again. Therapy can be a process of violence reduction (negative peace) or a process of life enhancement (positive peace).

In applying the above formulation to the Chilean context, the following characterisation can be made:

- Diagnosis: The current (anti-democratic) political system impedes complete justice
- Prognosis: No true justice will take place, making reconciliation more difficult
- Therapy: Abolish structural obstacles; i.e. the amnesty law and violent political structures

The analysis here consists of two main parties: the *Corporación Nacional de Reparación y Reconciliación* and the current Chilean political system. The author met with human rights professors, human rights lawyers, representatives from non-governmental organisations, as well as with victims and supporters of the regime. As a result of those meetings, following is the six-step procedure which the author took in order to better understand and transform the contradictions between “justice” and the political system. These steps could be used in any order,

and adhere to no pre-determined timeline. Due to time constraints, a more thorough analysis of the conflict in Chile was not possible. Therefore, the following steps serve as a mere introduction to the conflict transformation process. Ideally the steps would be done during and after significant research and jointly with a variety of parties to the conflict in order to make sure the information produced is as accurate as possible.

Exploring the present: what is the conflict about? The major question to be answered in this study is the way in which the government expects to carry out complete justice when it still espouses laws and principles from the military dictatorship. While the families would like to see the perpetrators held responsible for their actions, it seems impossible that this will happen due to institutional obstacles and anti-democratic practices such as systemic impunity.

The goal of the CNRR is to ensure that the recommendations made by its predecessor, the National Truth and Reconciliation Commission are implemented. Yet, the goal of the current government is to maintain the status quo and not to adhere to any major constitutional changes.

Reliving the past: what happened in the past that could have made for a different outcome? In retrospect, little that could have been done to prevent the creation of laws such as the *Ley de Amnistía* and organisations like the National Security Council since the military was so efficient at sowing fear and repressing dissent. They also had a glorious and honourable military history in their favour. For many, the military represented the epitome of national security and, having never lost a war, was worthy of respect. At the risk of generalising, this could have secured some of the population's confidence in the regime.

Prognosis for the future: how is the conflict likely to continue? If it continues in this manner, what will future generations have to contend with? There will be neither

reconciliation nor justice. Very slight changes are being made such as the binominal system is being re-evaluated, the national security council can no longer be auto-summoned, and the Supreme Court is making some headway in terms of overcoming judicial obstacles. Subordinated to Pinochet during the dictatorship, the Court now faces a somewhat new political reality as well as fresh faces who can reinterpret current amnesty laws. For example, if a case occurred during the time outlined by the Amnesty Law, it would not even be looked at. Now, investigation and documentation are mandatory, even if the perpetrator is not judged. A certain renovation and reinterpretation of the Amnesty Law is taking place. The mistrust and lack of confidence that many civilians have in their government is likely to escalate. Perhaps once Pinochet dies, perpetrators will feel less intimidated to come forward and reveal the locations where remains can be found. This could also provoke the desire for justice, exacerbating pressure on an unprepared government.

Deep diagnosis of the past: differ between legitimate and illegitimate goals; power versus basic needs for example. The victims' families' desire to know what happened to their loved ones is a perfectly legitimate goal. That they would also like to see justice be served is also legitimate. The objectives of the Truth and Reconciliation Commission and the *Corporación Nacional de Reparación y Reconciliación* are trying to respond effectively and efficiently to these goals but are blocked by the illegitimate institutions of the past dictatorship, i.e. power through political and economic monopoly. Arguably, some form of organisation was needed in response to the increasing social chaos and failing economy. However, the way in which the instability was controlled de-legitimises the regime. The current government, though not a dictatorship, is denying a large part of the population their legitimate basic needs by upholding principles characteristic of the dictatorship.

Deep therapy of the future: proposal of an over-arching formula which satisfies the legitimate goals of each party. Situate parties on the conflict diagram (either, or, compromise, transcendence, withdrawal) See conflict diagram below.

Prescription for the present: how to put the formula into action. Begin by creating a truly democratic system. A joint victim-government dialogue could take place as often as necessary in which both sides concretely express how they would like to see justice served with respect to the new governmental / legal framework. Suggestions should have timelines and be followed up by designated organisers. A timeline for the trials and legal proceedings should be established. Further approaches to reconciliation, at the local, regional and national levels could also be discussed.

The national security council (armed forces) should not have more power than the president. Of course, the Amnesty Law and other protective measures should be abolished. In matters of human rights and humanitarian law, international law should transcend the current Chilean national law. The transition negotiations should be re-evaluated, especially re-framing the role of justice so as to allow for trials. Peace, non-violence and human rights should be mandatory subjects in schools. More awareness about and interest in the political system is crucial. As globalisation reaches even the most remote corners of the globe, approaches for reconciliation should not reflect the accumulation and consumer-driven values that it forces, to the detriment of an efficient and just political system. Many interviewed, especially university students, admitted that constitutional changes and a democratic government are not a priority. Education, therefore, plays a crucial role in forming politically aware, active and responsible citizens.

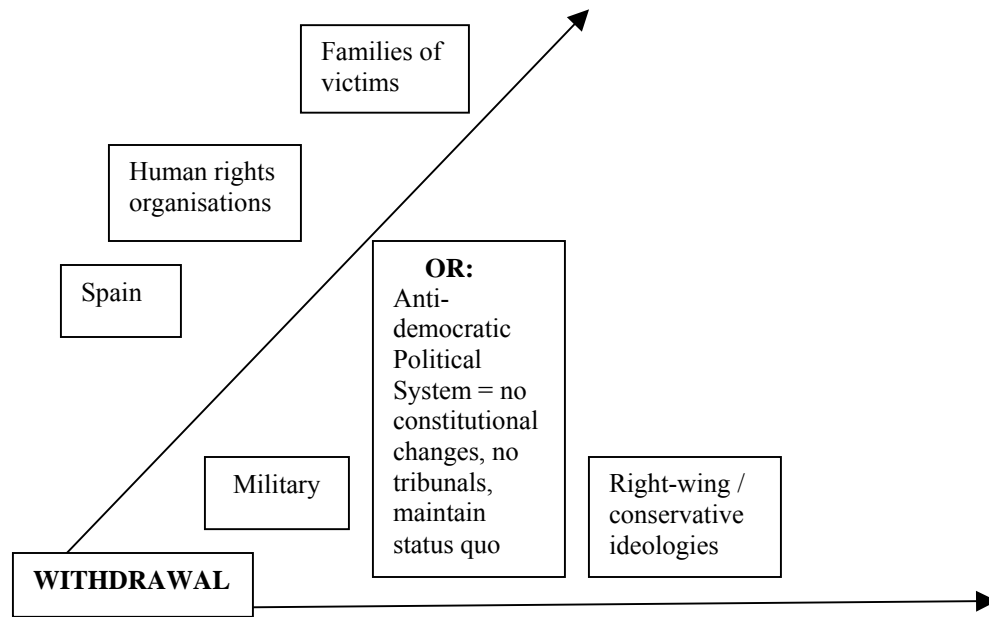


EITHER:
National
Commission for
Reparation and
Reconciliation /
victims = trials
and ensuing
constitutional
changes for a
democratic
political system

Victims

TRANSCENDENCE:
Justice = Cancel the
legal instruments created
during the dictatorship,
revamp the senate, let
international law
supersede national law
and proceed with trials,
promote peace education
and the study of non-
violent conflict
transformation in
schools.

COMPROMISE:
Justice = Legal
proceedings but
no structural,
governmental
reforms



The above conflict transformation diagram is based on three points: withdrawal, compromise and transcendence; the two main parties (violent institutions and the NCCR) are situated accordingly. Should conflict parties manage to *transcend* their original goals, something new has emerged from the process of conflict transformation, meaning that the positive aspect of a conflict has been made use of. The original goals have not been lost but have been broadened³⁰. The main ingredient required for transcendence is creativity. Both legitimate goals have been realised, perhaps somewhat transformed. Should parties *compromise* on their original goals, less than full-goal achievement has been accepted for both; they accept a moderate solution. Finally should one or more of the parties *withdraw* from the process, the goals have been given up or put on hold, for some time or forever. In the chart the Chilean political system is located in this area while the NCCR is much closer to transcending the conflict. Conflict transformation introduces the opportunity for positive and constructive methods of transcending the status quo. Conflict,

³⁰ Johan Galtung, Peace by Peaceful Means, Peace and Conflict, Development and Civilization, Sage Publications, London, 1996, p. 96.

viewed as a *creator* instead of a *destroyer*, can go beyond compromise towards an area in which the legitimate needs and interests of all can be attained, hence the name of the method: Transcend.

At the risk of sounding apologetic, the author makes no claims of originality or easy solutions. It is hoped that the reader gained insight into the Chilean conflict through the Transcend method of conflict transformation and will begin to look at other conflicts in a new, solution-oriented framework. Perhaps what the Chilean political system requires is more vision and creativity in order to be able to finally respond to those who still suffer from the military dictatorship.

Bibliography

Chomsky, Noam, *Chomsky on MisEducation*, Rowman and Littlefield Inc., Maryland, United States, 2000.

Espinosa Cuevas, Victor, Ortiz Rojas, Maria Luisa and Rojas Baeza, Paz, *Comisiones de la Verdad, Un Camino Incierto? Estudio comparativo de Comisiones de la Verdad en Argentina, Chile, El Salvador, Guatemala y Sudáfrica desde las víctimas y las organizaciones de derechos humanos*, No. 8, CODEPU, Santiago de Chile, 2003.

Comisiones de Verdad, Memoria del Seminario Internacional; Tortura, reparación y prevención, y del Foro público Comisiones de la Verdad: El caso de México, La Comisión de derechos humanos del Distrito Federal, México, 2003.

Galtung, Johan, *Peace by Peaceful Means, Peace and Conflict, Development and Civilization*, Sage Publications, London, 1996.

Galtung, Johan, Jacobsen, Carl. G and Brand-Jacobsen, Kai Frithjof, *Searching for Peace, The Road to Transcend*, Pluto Press, London, 2002.

Herzfeld-Bacic, Roberta, Pérez-Durán, Teresa and Pérez-Sales, Pau, *Muerte y Desaparición Forzada en La Araucanía: Una Aproximación Étnica*, Ediciones Universidad Católica de Temuco, Santiago de Chile, 1998.

Informe de derechos humanos 1990-2000, Número especial, Programa de Investigación Corporación de Promoción y Defensa de los Derechos del Pueblo – CODEPU, Santiago, Chile, 2001.

Informe Annual Sobre Derechos Humanos en Chile 2003 (Hechos de 2002), Facultad de Derecho, Universidad Diego Portales, Santiago.