

JOSÉ ZALAQUETT, INTRODUCTION

Report of the Chilean National Commission on Truth and Reconciliation  
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This report is the core of Chile's earnest response to a major ethical and political dilemma of our time. The problem may be summarized as follows: How can a country overcome a legacy of dictatorial rule and massive human rights violations if the new government is subject to significant institutional and political constraints? How, in those circumstances, can the equally necessary but often conflicting objectives of justice and social peace be harmonized? What are the moral tenets which should guide the politician's actions in such ambiguous situations?

Chile came to confront this dilemma after the inauguration of elected President Patricio Aylwin on March 11 of 1990, which put an end to more than sixteen years of military rule. . . .

Defining a policy involved first establishing ultimate objectives. These made themselves evident: 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. These questions could not be answered in a void. At least four major considerations had to be duly weighted: the nature and extent of the human rights violations committed and the measure of investigation of the truth and justice for which they called; the restrictions imposed by the existing laws and institutions and by the likely reaction of the Chilean armed forces; the relevant experience of other countries; and the duties dictated by international human rights norms . . . .

On September 11 of 1973 the Chilean armed forces attacked La Moneda, the presidential palace in the center of Santiago. Within hours Chile's elected president, Salvador Allende, lay dead (this report concludes that he committed suicide), and a military junta presided by General Augusto Pinochet took power.

There followed an intense political repression which resulted in political killings and 'disappearances', the imprisonment or exile of countless Chileans, and the widespread use of torture. These massive human rights violations shocked the world.

... The military government always insisted that it had been waging a war, albeit an unorthodox one, against an insidious, subversive enemy. Yet under no accepted definition of armed conflict could such an allegation be sustained. As established in this report, except for isolated acts of resistance on the day of the coup d'état and in its immediate aftermath, the military government exerted effective control over the country. It was able to suppress any opposition, whether peaceful or not. . . .

These realities dictated that the human rights policy of the Aylwin government should focus, as a priority, on revealing the truth about the fatal victims of political violence: victims of assassinations and 'disappearances' committed by agents of

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the government (the vast majority) but also political assassinations committed by rebel groups. The practice of torture by the government also had to be accounted for.

A second factor the Aylwin administration had to take into account was the set of institutional and political constraints it inherited. Among the most salient was an amnesty law decreed by the military government in 1978. . . . The worst and most systematic human rights violations perpetrated by the military government occurred in the period covered by the amnesty. . . .

. . . [T]he thinking about dealing with State crimes was largely framed by the foremost precedent of our time: the Nuremberg and Tokyo trials. This precedent emphasized the duty, imposed by the conscience of humankind and by several international legal norms, to prosecute and punish certain crimes and the necessity of such measures in order to preserve the collective memory and to build up an effective deterrent. . . .

However, the postwar model rested on a necessary material condition: the war criminals who were brought to trial did not lose power through political means but through a complete military defeat. The victors did not have to wrestle with questions of correlation of forces.

[A]fter the rapid succession of political transitions . . . , in all regions of the world (from the Americas, to Eastern and Central Europe, to Africa) the whole array of complex ethical, legal, and political issues involved in the change from dictatorship to democracy became fully apparent. In most of these countries the successor governments did not come to power as a result of military victories but through tortuous political paths. The perpetrators and their supporters were still a force to be reckoned with. Often before they left power they managed to impose institutional and legal arrangements to limit the scope of action of the incoming government. In some cases there had been an internal armed conflict, but it ended in a negotiated peace, with no clear victor; or else, one of the parties did emerge victorious, but feared to antagonize the rival ethnic or national groups through widespread prosecutions, lest the conflict be reignited.

. . . In what concerned Chile, President Aylwin could draw from recent examples in Argentina and Uruguay. These countries were not only Chile's South American neighbors. Like Chile they had been ruled by military regimes, following a similar process of political polarization. Human rights violations in all three countries were of comparable gravity.

Argentina emphasized truth telling, through an official commission which produced a thorough report on disappearances. It also annulled an amnesty law passed by the military. But eventually the Alfonsín government felt compelled to back off from its initial stance and passed, under pressure, legislation to preclude further prosecutions. . . .

The lesson for the Aylwin administration was that it should stake out a policy it could sustain. Reparation and prevention were defined as the objectives of the policy. Truth and justice would be the primary means to achieve such objectives. The result, it was expected, would be to achieve a genuine reconciliation of the divided Chilean family and a lasting social peace.

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The truth was considered as an absolute, unrenounceable value for many reasons: In order to provide for measures of reparation and prevention, it must be clearly known what it is that ought to be repaired and prevented. Further, society cannot simply black out a chapter of its history, however differently the facts may be interpreted. The void would be filled with lies or with conflicting versions. The unity of a nation depends on a shared identity, which, in turn, depends largely on a shared memory. The truth also brings a measure of social catharsis and helps to prevent the past from reoccurring. In addition, bringing the facts to light is, to some extent, a form of punishment, albeit mild, in that it provokes social censure against the perpetrators or the institutions or groups they belonged to. But although the truth cannot really in itself dispense justice, it does put an end to many a continued injustice—it does not bring the dead back to life, but it brings them out from silence; for the families of the 'disappeared', the truth about their fate would mean, at last, the end to an anguishing, endless search. . . .

Based on these considerations, the Aylwin administration promised 'the whole truth, and justice to the extent possible'. Responsibility dictated that during the transition this was the most that could be aimed for. In fact, if the government had made an attempt (however futile, given Chile's existing legality) to expand the possibilities for prosecutions, most likely it would have provoked tensions and reactions resulting in that neither truth nor justice could be achieved.

The human rights policy, therefore, rested mainly on disclosing the truth. The government was conscious that for the truth to achieve the expected purposes it had to be established in a manner that elicited the respect of all Chileans. That is how President Aylwin came to appoint the National Commission for Truth and Reconciliation, a panel of eight people from across the political spectrum, which produced this report.

The establishment of the Commission was strenuously objected to by the armed forces. However, in the end, they abided by the President's authority to do so and responded (mostly in form rather than in substance) to the Commission's many inquiries. Political parties which had also objected to the establishment of the Commission finally accepted its need and lent to it their cooperation.

On February 9 of 1991 the Commission delivered its report to the President. On March 4 in a televised address to the nation President Aylwin presented the findings of the Commission and, as the head of State, atoned for the crimes committed by its agents. The report was then widely disseminated. Congress passed a unanimous resolution commending it. All political parties acknowledged the truth of the facts investigated, although some disputed the historical interpretations contained in it. . . .

The Commission named the victims but not the perpetrators. It mentions the branch of the armed forces or police responsible for the acts and even the specific unit, but it does not attribute guilt to individuals. However, it sent to the courts the incriminating evidence it could gather. The Commission was not a tribunal and was not conducting trials. To name culprits who had not defended themselves and were not obliged to do so would have been the moral equivalent to convicting someone without due process. This would have been in

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contradiction with the spirit, if not the letter, of the rule of law and human rights principles.

Those who worked to produce this report became keenly aware of the cleansing power of the truth. Interviewing thousands of relatives of victims and other witnesses nationwide was a necessarily rigorous method. But, as the interviewers soon discovered, it was at the same time a means to heal the wounds, one by one, and thus to contribute to the building of a lasting peace. They were also humbled by the generosity shown by the relatives of the victims they met. Certainly, many of them asked for justice. Hardly 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.

## REPORT OF THE CHILEAN NATIONAL COMMISSION ON TRUTH AND RECONCILIATION

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### Chapter 1: Methodology and Work of the National Commission on Truth and Reconciliation in Preparing this Report

#### A. *Objectives of the Commission*

As it began to operate, the Commission believed that its primary duty was to determine what really had happened in every case in which human rights had been seriously violated. . . .

. . . The president judged that in order to meet its objectives the Commission should complete its task in a relatively short period of time. Accordingly, only the most grave violations could be considered and investigated. The decree [establishing the Commission] defined such violations as disappearances of people who had been arrested, executions, torture leading to death when committed by agents of the government or people in its service, and those kidnappings and attempts on peoples' lives committed by private citizens for political purposes. . . .

. . . In order to achieve its purposes the Commission was empowered to carry out whatever inquiry and measures it judged appropriate, including requesting reports, documents, or evidence from government authorities and agencies. The same decree obligated government officials and bodies to offer their full collaboration within their own specific area of competence. The Commission did not have the authority to oblige anyone to appear before it and testify.

#### B. *Knowledge of the Truth*

##### 1. *Deciding which cases the Commission should consider*

After approving an overall work plan and by-laws, and hiring the first staff

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members, the Commission sought to invite all the relatives of the victims of these events to register their cases. . . .

Through registration by family members and information presented by [the armed forces, the police, and other sources such as labour organizations], the Commission was able to decide on the overall body of cases it should examine. After duplications and errors had been eliminated, a little more than 3,400 cases remained.

### 3. Testimony from family members

Each session lasted from forty-five minutes to an hour, although some lasted much longer. The Commission sought to obtain from relatives any information they could supply about the events. It particularly wanted any evidence that might serve to advance the investigation, such as the names of witnesses, and any information concerning proceedings initiated in the courts, human rights organizations, and other agencies. Relatives were also asked to explain the impact of these events on the family so that this aspect of the truth could be made known. This information was also intended to help provide the basis for devising policies for making reparation. The families were amazingly willing to put their trust in our group. For many of them, this was the first gesture made by the Chilean government to acknowledge their situation.

### 4. Subsequent investigations

In practically all cases in which the evidence gathered indicated that agencies of the armed forces or police might have been involved, the head of the respective branch was consulted as well as the chief of staff when appropriate, and they were asked for any evidence their institution might have on those events. The Chilean Army replied to more than two-thirds of these requests. In most of its replies it pointed out that in keeping with the legislation in force and its own by-laws, the evidence on such events that might have existed had been burned or destroyed when the legal period for doing so had passed. . . .

The Chilean Police almost always responded to such requests by indicating that the documents from that period had been legally burned. . . .

When information on the involvement of their security agencies was requested, the army, the navy, and the air force pointed out that they were legally prohibited from providing information having to do with intelligence activities.

In almost every case in which the evidence gathered made it possible to pick out a particular person [in the armed forces or police], the Commission asked that person to give testimony. . . . After explaining that the individual member had been mentioned in a document the Commission had received, noting that such

testimony was voluntary and could be made confidentially, and that it was not the Commission's role to determine whether individuals were guilty of crimes, these officers were asked to inform the individual members how important their testimony was considered to be. The Commission requested the testimony of one hundred and sixty members of the armed forces and the police. . . . With the exception of a few cases, . . . those who were on active duty refused to offer testimony to this Commission. . . .

5. *Individual decision on each case*

The first cases were presented to the Commission at the end of October 1990. In sessions lasting until mid-January 1991, the Commission individually examined about 3,400 cases, until it had reached agreement over how it was going to present each case in which human rights had been gravely violated or in which people had been killed as a result of political violence. In other cases it concluded that it had not been able to come to such a determination or that the case was beyond its competence. . . .

D. *Acknowledgement of harm inflicted and proposals for reparation and prevention*

In addition to examining what the relatives of the victims of grave human rights violations had suffered, the Commission consulted with relevant experts and persons who could offer guidance on proposals for reparation and prevention such as the decree had urged it to prepare. The Commission consulted with a large number of national and international organizations. . . . [T]hey were asked about measures that might strengthen the legal order and institutional framework, or promote a culture more respectful of human rights in order to assure that such events never again take place in our country. One hundred and nine organizations were consulted in this fashion, including those of the victims' family members, human rights agencies, the main universities and centers of learning, the political parties, the churches, and other moral authorities. Internationally, the request was sent primarily to those intergovernmental and private bodies with the greatest experience in protecting and promoting human rights. . . .

### VIEWS ON FUNCTIONS AND UTILITY OF TRUTH COMMISSIONS

Consider the following excerpts from the roundtable discussion in Truth Commissions: A Comparative Assessment, p. 1217, *supra*.

Bryan Hehir

I think that truth commissions function at three levels. The first entails catharsis. . . . The second level involves the process of moral reconstruction. . . . Society

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