Synergy, rights bundling and truth-justice-reparations interaction effects in transitional justice practice: The case of the 'Valech Commission' in Chile

Abstract

Recent thinking and practice in transitional justice posits a holistic model in which victims and societies are deemed to hold, and encouraged to exercise, simultaneous rights to truth, justice and reparations after serious gross human rights violations of human rights, and/or major infractions of international humanitarian law. Such a model implies that increasing synergy may be expected or sought in public policy initiatives claiming to guarantee and deliver these rights. This paper examines recent developments in Chile in the light of this emerging framework. It finds few signs of increasing holism, with a recent official truth commission in fact designed explicitly to decouple truth revelations from juridical consequences. Moreover, it exposes the potentially contradictory or counterproductive outcomes that may arise from the yoking together of truth and reparations functions, despite this being a trend that the holistic model would seem to encourage.

Introduction

Modern transitional justice thinking seems to be moving away from a modular, 'mix and match' management of the truth, justice and reparations legacies of political violence towards a holistic, rights-based, and victim-centred framing. An essentially normative understanding of this framework posits that victims, communities and/or societies as a whole hold simultaneous and complementary right(s) to truth, justice and reparations in the aftermath of serious human rights violations and/or violations of international humanitarian law.[1] Some variants add a fourth, forward-looking, dimension of 'guarantees of non-repetition', to remedy what they see as historical neglect of the institutional reform aspect of the transitional justice imperative. [2]

For Latin America, this incipient 'bundling' of TJ-related rights into an indivisible set, at least as regards the classic core 'triad' of truth, justice and reparations, can be detected in recent practice and jurisprudence of the Inter-American human rights regime (Commission and Court). The clustering of these elements into an apparently consubstantial whole is also increasingly

[1] See, inter alia, UN Updated Set of Principles to Combat Impunity (2005, E/CN.4/2005/102/Add.1); UN study on the right to truth (2006) E/CN.4/2006/91; UN Basic Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law (2005, UN GA Resolution 60/147).

[2] This dimension was, for example, explicitly incorporated into the title and mandate of the recently inaugurated UN Special Rapporteur for transitional justice issues. (UN Human Rights Council resolution 18/7, September 2011). For Latin American post-authoritarian transitions of the 1980s and 1990s, it was often subsumed under a democratisation agenda.

apparent in domestic public policy, and, sometimes, judicial practice. Examples include Colombia,[3] Argentina,[4] and Brazil.[5] The trend is encouraged by a two-tier regional human rights system – Commission and Court – which often produces recommendations or verdicts in TJ-related cases with implications across all three dimensions.[6] The inextricable nature of measures adopted under separate headings is also increasingly clear: a single measure often has an impact across more than one dimension. Judicial proceedings may reveal truth as well as providing justice;[7] civil claim-making in the courts is one route to economic reparations; 'lustration' can be at the same time a justice measure and a forward-looking reform measure, and memorialization fulfils both truthtelling and reparatory functions.

Theoretical concerns and research questions

A 2013 London conference discussing rights-based transitional justice experiences in Latin America suggested that in the past, these dimensions were often demanded and delivered in disaggregated ways.[8] Thus groups might campaign for - and states deliver (or not) – truth initiatives to meet a historic demand such as '¿Dónde Están?' ('where are they?'), regarding victims of enforced disappearance. An anti-impunity campaign carried out in a different moment might seek concessions or change in the justice dimension, such as over the status of amnesty. Reparations might be addressed separately if at all, sometimes treated as a poor relation even by victims'

[3] Viz. the Victims and Land Restitution Law of 2011, and interim peace agreement documents from 2013, o file with author. These latter, unusually, explicitly foreground transitional justice parameters.

[4] Although Argentine official transitional justice practice has arguably been principally concerned with one or other of the truth, justice and reparations triad in separate historical moments, Argentina pioneered an explicitly rights based approach within individual dimensions (viz. the 'right to truth', Lapacó case, Inter-American Commission, 2000). Argentine state and non-state actors have also used the interconnection between mechanisms to leverage advances at times of apparent stasis. Thus the 1990s 'truth trials' used trials to produce factual revelation at a time while amnesty still precluded punishment.

[5] The powerful symbolic and reparatory effect of the Brazilian Amnesty Commission's 'Memory Caravan' hearings, at which former political prisoners are acknowledged as such, runs alongside truth demands. Truth actions have included a hybrid state-civil society commission on the dead and disappeared and, later, a fully-fledged official truth commission (ongoing at time of writing). The commission sits in parallel with attempts by survivors and at least one state prosecutor to open proceedings for torture. The country's first related criminal (as distinct from civil) case was opened in December 2013. See http://transitionaljusticeinbrazil.com/

[6] Typically, for example, requiring 'due expedition' of judicial proceedings together with state acknowledgment and economic or symbolic reparations. See inter alia Inter-American Court cases La Cantuta v. Peru (2006); Almonacid (2006) and Garcia Lucero (2013) v. Chile; Gelman v. Uruguay (2013); and El Mozote v. El Salvador (2012).

[7] A fact often overlooked in debates over the relative merits of truth or justice. As Wilde remarks, for Chile, "[h]istorical truth was uncovered above all through the pursuit of justice." Alexander Wilde, 'A Season of Memory', in Cath Collins, Katherine Hite and Alfredo Joignant, eds, *The Politics of Memory in Chile* (Boulder: Lynne Rienner, 2013), p. 39.

[8] Conference 'The right to truth, justice and reparations in Latin America', Institute for the Study of the Americas, University of London, 4 June 2013.

groups.[9] Although some early organisations adopted slogans linking related demands – truth and justice, or justice and memory - it is arguably more common today to find campaigns with a multiple, rather than a single-issue, agenda.[10] Are truth, justice and reparations now seen on the ground as a bundle of entitlements akin to a single right? Are official TJ practices responding to this holistic agenda? Do authorities, for example, increasingly design TJ measures that deliver harmoniously across dimensions? At a minimum, where transitional justice has a relatively long history in a particular country, do TJ policies move toward better delivery of truth, justice and reparations guarantees while reducing negative synergy?

Case study: The interconnectedness of truth with other transitional justice dimensions in present-day Chile

This paper explores these questions through a case study of recent measures in one setting. Chile, an example of Latin American authoritarian-to-democratic transition, has seen significant recent modifications to its early truth, justice and reparations practice, driven by demand from civil society groups as much as by enlightened elite policymaking.[11] There is relatively little evidence of explicit official concern to improve the fit between national offerings and regional or international standards. Nonetheless, changes in truth, justice, reparations and forward-looking human rights institutionality are often cited by the Chilean state as evidence of its continued preoccupation with its responsibilities over dictatorship-era abuses.[12] These changes seem, on paper, to represent welcome expansions of early cautious incursions into truth and reparations. They include dilution of previous blanket impunity, leading to prosecutions of individual perpetrators of past crimes; ratification of the Optional Protocol against Torture; the institution, in 2011, of a National Human Rights Institute which can access official detention centres without notice; and a promise to finally incorporate the specific criminal offence of torture into the criminal code by 2015. However, policy initiatives in Chilean TJ have remained stubbornly, perhaps even increasingly, fragmented

[9] Some groups can be inclined or persuaded to see reparations as a morally ambiguous demand, which if adopted might lay them open to accusations of self-interest or cast them in a supplicant role with respect to the state.

[10] At least for Chile, the setting with which this author is most familiar. Expansive group agendas, particularly notable since 1998, now commonly include '*verdad, justicia y reparación integral* (truth, justice, and holistic reparations)' or *verdad, justicia y memoria* ('truth, justice and memory').

[11] See Cath Collins 'Human Rights Policy under the Concertación', in Peter Siavelis and Kirsten Sehnbruch (eds) Democratic Chile: The Politics and Policies of a Historic Coalition, 1990–2010 (Boulder: Lynne Rienner, 2014), pp. 143—172; or Cath Collins, 'Chile a más de dos décadas de justicia de transición'. *Política,* 51:2 (2013), pp. 79-113.

[12] See for example official submissions to the Inter-American Court in the Almonacid and Garcia Lucero cases (2006 and 2013), Universal Periodic Review submissions to the UN Human Rights Council (2009 and 2014), or judicial and other authorities' responses to the 2012 report of the UN Working Group on Forced and Involuntary Disappearances' mission to Chile, on file with author.

and isolated one from another.[13] This isolation has recently come under pressure from civil society and explicit challenge from the judicial branch, regarding a secrecy law barring public and judicial access to the results of recent official truthtelling. Chile is therefore a suitable setting in which to assess a re-shaped transitional justice 'package' from this new, bundled rights, perspective.

Research focus and scope

This paper discusses recent innovation along the truth dimension of Chilean TJ policy, analysing both its sufficiency from a 'right to truth' perspective and its interrelationship, or not, with justice and reparations. I will argue that, far from exemplifying increasing holism in official practice, Chile's most recent truth measure attempted to isolate truth advances from justice, linking them strongly and explicitly to reparations, but studiously avoiding a rights-based framing for the latter. The main innovation under discussion is a second official truth commission, known as the Valech Commission, which functioned in 2004/5, with a second iteration in 2011.[14] The commission dealt with political imprisonment and torture, taking individual testimony and performing followup study before acknowledging a total of almost 39,000 individual survivors. Valech was closely modelled on its predecessor, the 1991 Rettig Commission, which identified around 3,200 victims of death and forced disappearance.[15] Valech – unlike Rettig – happened at a time when more holistic and aspirational transitional justice policy language was becoming a regional and international given. Both Valech proper and its 2011 iteration (henceforth referred to as 'Valech II') moreover took place in a national context of 'demand inflation', when formal justice for past crimes had been re-activated after a long hiatus due to amnesty. Notwithstanding – or perhaps because of – this fact, Valech in both iterations was deliberately shorn of justice implications, by means of a 50-year secrecy law forbidding public and judicial access to any of its deliberations, testimony or documentary archive. Only a final report (2004/5), or a list of names and statistical appendices (2011), were released into the public domain. Its archives were dispatched in 2012 to a sealed vault beneath the national Museum of Memory and Human Rights.

'Sober and austere' reparations measures had been pre-announced as likely corollaries of Valech. In his 2004 speech announcing the report's conclusions,[16] then-President Ricardo Lagos (2000-2006) also promised "institutional measures" – guarantees of non-repetition – including a national Human Rights Institute to protect future rights and safeguard the "privacy" of commission

[13] See INDH, Informe Anual 2013, and 2013 memorandum on human rights subsecretariat draft bill (http://www.indh.cl/wp-content/uploads/2012/09/Minuta-subsecretaria-DDHH1.pdf-ok1.pdf). Spanish only.

[14] For differing perspectives on the reasons and process that led to the creation of the commission see Wilde, op. cit.; Elizabeth Lira and Brian Loveman, 'Torture as Public Policy, 1810-2011' in Collins, Hite and Joignant (eds.), op. cit., pp.91-132; and entry by Elizabeth Lira on the Valech Commission in the Cambridge Encyclopaedia of Transitional Justice. Lira was a member of the Commission in both iterations.

[15] The initial total of 'Rettig victims' was completed in 1996. There have been minor adjustments since, including Valech II, which added 30 people in 2011. For details, see below and the document 'Totals of Victims and Survivors […] recognised by the Chilean state', available at the Bulletins and Publications section of www.icso.cl/observatorio-derechos-humanos, the webpage of the Observatorio DDHH, a project set up at Chile's Universidad Diego Portales in 2009 to map transitional justice developments.

[16] Later published as the prologue to the report, under the title 'Para nunca más vivirlo, nunca más negarlo'.

proceedings. Individual reparations, with a '"juridical and economic" dimension, were also mentioned. Lagos was, however, careful to stipulate that the 'juridical dimension' meant "basically"… "restoring the dignity of [survivors]".[17] No mention was made of prosecuting perpetrators. For good measure Lagos added that the Armed Forces, "an integral part of national life", should not consider themselves maligned in any way.[18]

In the event existing reparations were updated and improved, then extended to survivors named in the Valech lists.[19] Valech and Valech II accordingly offer a useful focal point for analysis of recent transitional justice change in Chile, exemplified through this significant policy innovation focused on truth. The intention is, firstly, to see whether the innovation displays increased adherence to the holistic model, for example, by recognising the necessary justice implications of truth and vice versa. Secondly, I will evaluate some practical and theoretical implications of any such yoking together of the truth, justice, reparations and/or preventive (non-repetition) dimensions of TJ practice.

Sources

Valech has to date been relatively little-studied in English-language literature.[20] This paper draws heavily on domestic secondary sources, namely, electronic publications by the Human Rights Observatory project of the Universidad Diego Portales, Santiago, Chile. The paper also draws on numerous interviews with key actors in, and users of, the Valech commission and reparations measures consequent upon it. Interviews took place between 2004 and the present, clustered around the periods 2004-05 and 2012-13. Semi-structured interviews were carried out by this author and (for 2012-13) by Observatory researcher Jennifer Herbst, to whom the author is indebted. Other members of the Observatory team were also indispensable in producing the secondary sources cited here. Their contribution is gratefully acknowledged.[21] Some interviews were initially carried out for an (unpublished) report on national reparations policy commissioned from the Observatory by Chile's National Institute of Human Rights, (henceforth INDH),[22] in 2011-12. Only interviewees who authorized citation of their views in additional academic studies such

[17] Taking the form of, for example, wiping criminal records for those whose only offence had been political opposition to the regime.
[18] Valech report prologue, pp 2 and 3, author's translation.
[19] Valech's initial 2004 work produced a substantial printed report accompanied by survivor lists. In 2005, appendices of newly recognised cases were added. The 2011 iteration was explicitly mandated to produce only a victim list and accompanying statistics. See Observatorio DDHH: 'Taller Comisión Valech II – Aspectos Metodológicos' available from the Observatory website, op. cit. (Spanish only).
[20] Exceptions include Lira and Loveman, in Collins, Hite and Joignant op. cit.
[21] The team has included, since 2008, Juan Pablo Delgado, Mayra Feddersen, Karinna Fernández, Maria Florencia Gonzalez, Boris Hau, Rodrigo Hernández, Jennifer Herbst, Antonio Poveda, Tabata Santelices, and Paulina Zamorano. Lidia Casas of the UDP law school was invaluable at the design stage of the project, previously supported by the Ford Foundation, the Heinrich Boell Foundation and the Research Council of Norway.
[22] Instituto Nacional de Derechos Humanos. See www.indh.cl

as this one have been included here, and only open source, publicly accessible data gathered in the course of research for that report has been alluded to. All conclusions drawn remain the exclusive responsibility of this author.

Structure and analytical framework

This paper argues that the developing regional and international norm set described above[23] can be used as a benchmark to evaluate the sufficiency of efforts in the truth, justice, and reparations dimensions of present-day transitional justice policy. This benchmark is unambiguously normative, derived as it is from an emerging, somewhat aspirational set of standards discernible in regional and international soft law and jurisprudence even where not as yet codified in positive treaty obligations. Nevertheless, this yardstick allows us to say something substantive, and potentially comparative, about a particular country's present transitional justice practice. After sketching out this normative framework in more detail, the paper briefly outlines the origins and principal features of the Valech truth initiatives before analysing their strengths, weaknesses, achievements and limitations with reference to the framework.

The emerging norm set of holistic truth, justice and reparations

A survey of practice, jurisprudence and discussion about the truth, justice and reparations triad can lead us to think in terms of an emerging meta-right, or overarching principle, that each part of the bundle must be made available, even if not necessarily simultaneously.[24] It also suggests that more developed conditions of sufficiency are increasingly being applied to each dimension. These include that truth should be public, reliable, complete, and widely-known; while also being a step towards justice or, at least, preserving possible links to justice. Truth should, in other words, have consequences. Justice, meanwhile, ought to be timely, proportional, and proactive. If states wish to fully meet their international obligations to prosecute and punish the most serious violations of international human rights law and humanitarian law, it is therefore probably not sufficient to merely tolerate the bringing of claims or complaints by victims and/or third parties.[25] Nor is it

[23] Analysed in an abundant academic and practitioner literature, inter alia, Félix Reátegui *Transitional Justice: Handbook for Latin America* (Brasilia, NY: Brazilian Ministry of Justice/ ICTJ, 2011)*; Revista Tribuna Americana*, 6 (2006), Special Edition 'Justicia en Procesos de Transición Política'; Katya Salazar and Thomas Antkowiak, *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America* (Washington: DPLF, 2007); SLADI, 'Justicia Transicional en América Latina: Primer Informe del grupo de trabajo', 2011 http://www.cpvista.org/docs/CPV-sladi-lasil-justicia-transicional-Feb2011.pdf; and Kai Ambos, Ezequiel Malarino and Gisela Elsner (eds.) *Justicia de Transición* (Montevideo: Konrad Adenauer Stiftung, 2009).

[24] See Cristián Correa, 'Reparation Programs for Mass Violations of Human Rights: Lessons from Experiences in Argentina, Chile and Peru', in Reategui, op. cit., pp. 409ff., on the need for coherence and mutual reinforcement between truth, justice and reparations measures to become a fundamental TJ design principle.

[25] Such as NGOs or other civil society associations, whether in-country or inter/ transnational. Some Iberoamerican legal systems allow such groups to act as complainants where the public interest would demonstrably be served by so doing.

acceptable to impede prosecution or abrogate the possibility of punishment through the undifferentiated application of blanket domestic amnesty and/or statutes of limitation, at least for war crimes and crimes against humanity.[26] States should, in other words, be able to demonstrate an active prosecution policy for those crimes that clearly require it. Reparations are increasingly conceptualized as necessarily holistic – dealing, for instance, with consequences for mental as well as physical health; taking account of the reality of referred, including intergenerational, harm; allowing for genuine victim participation, and explicitly redressing assaults on victims' 'good name'.[27] How, then, does Chilean practice around truth, justice and reparations, for relatives of victims of death and disappearances and then for torture survivors, measure up?

Truth Commissions and the Evolution of Victim and Survivor Totals in Chile

Chile's first truth commission was the National Commission on Truth and Reconciliation (CNVR or 'Rettig Commission'), 1990-91. Rettig officially acknowledged deaths and disappearances caused by grave human rights violations and political violence occurring during the 1973-1990 military dictatorship,[28] but did not individualize cases of torture. A successor body set up to complete classification of cases Rettig had not been able to resolve reported in 1996, under the title of the National Commission on Reparations and Reconciliation, CNRR. An accumulated total of 3,195 victims was acknowledged by the CNVR and CNRR. (Henceforth these results will be referred to under the generic title 'Rettig'). Truth was connected both to reparations and to justice in this phase. Reparations including a modest monthly pension, instituted after the 1991 report,[29] were extended to the immediate family of all those named in the accumulated lists. Background information on cases submitted to Rettig, whether finally acknowledged or not, was sent to the courts. This brought little immediate justice change - beyond a brief flurry of investigations

[26] These outer limits to the acceptable use of amnesty and similar devices are increasingly clear in the practice of the Inter-American human rights system. See, particularly, Par Engstrom and Andrew Hurrell. 'Why the Human Rights Regime in the Americas Matters', in Mónica Serrano and Vesselin Popovski (eds.), *Human Rights Regimes in the Americas* (Tokyo, United Nations University, 2010) and Par Engstrom (2013) 'Transitional Justice and the IAHRS', draft paper, cited with permission. Existing domestic amnesties have almost without exception been challenged or interpretively narrowed in recent years in Latin America. The frequency of their adoption as initial transitional devices also declines over time. See Cath Collins, 'The End of Impunity?', in Nicola Palmer, Phil Clark, and Danielle Granville (eds.) *Critical Perspectives in Transitional Justice* (Antwerp: Intersentia, 2012) pp. 399-423

[27] For instance, by overturning victims' criminal convictions where these were false or politically motivated. Brazil's Amnesty Commission, spearheading a reparations-led TJ process, has been particularly inventive in designing reparations practices with a genuinely powerful symbolic component. See Marcelo Torelly and Paulo Abrão 'The Reparations Program as the Lynchpin of Transitional Justice in Brazil' in Reategui, op. cit., pp 443-485. See also Paulo Abrão and Marcelo Torelly 'Resistance to Change' in Francesca Lessa and Leigh Payne (eds.) *Amnesty in the Age of Human Rights Accountability,* Cambridge: Cambridge University Press, 2012, pp. 152-81.

[28] Including non-attributed and non-state violence.

[29] Law 19.123, 8 Feb 1992. Other measures instituted around the same time, including access to the lowest tier of the public health system, were later extended to various categories of victim and survivor including Rettig families. See table 2.

reopened at Aylwin's request - since judicial practice in 1991 and 1996 was resolutely pro-impunity. It nonetheless represents a significant difference between this commission and the subsequent one: Rettig, unlike Valech, left open a connecting door between truthtelling and justice.

Relatives' groups continued to maintain that the Rettig lists constituted underreporting. There was nonetheless active resistance from the political class to reopening the lists, particularly from the political right. Thus although the year 2000 saw activity around the question of disappeared (as opposed to executed) victims, with an official Dialogue Roundtable convened supposedly to stimulate the search for remains, no variation was admitted in victim lists. Changes were forbidden until, in 2007, a man classified on the list as 'disappeared' turned up alive and well in neighbouring Argentina. Skeptics on the political right could hardly contain their glee. Since regime disinformation had insisted all along that the 'disappeared' did not really exist, were victims of infighting on the left, and/or had secretly gone into voluntary exile, this was a propaganda coup for diehard regime supporters. The man, and the family he had left behind, were roundly vilified in the press. The case succeeded in breaking the tacit embargo on the revisiting of victim lists: the possibility that official totals might go down undoubtedly pleased some. The pejorative phrase 'false disappearances' was quickly deployed, and it stuck. A further 9 or 10 cases of errors or subsequently disproven names came to light.[30] Names were removed from the official monument in the capital's general cemetery, and Chile's official victim total should in theory have fallen accordingly, to approximately 3,216.[31] This adjustment, in the end quite modest, paved the way for the idea of a fuller reopening of official lists. This finally took place at the end of the 2000s, in the context of the Valech commission (see below).

The Valech Commission: survivors as victims in their own right

Chile's second official truth commission, the National Commission on Political Imprisonment and Torture, was announced by president Ricardo Lagos in 2003, as part of a broader 'human rights policy package' entitled 'No Hay Mañana sin Ayer'. The timing itself is suggestive: the decision was sparked by a groundswell of justice demands, in the aftermath of the Pinochet arrest (see below), and in anticipation of the thirtieth anniversary of the military coup, due to take place in September 2003. The commission, which would eventually be chaired by senior cleric Sergio Valech, came to be the centrepiece of the new policy announcement. However the package also contained promises which led eventually to an ambitious Human Rights and Memory Museum and a National Human Rights Institute, which could be considered a preventive (non-repetition)

[30] Including two infants recovered many years later by Grandmothers of the Plaza de Mayo in Argentina, having been subjected to forcible adoption by their military abductors.

[31] Unlikely as it may seem, no official body in Chile is charged with the monitoring and updating of this list, nor that of survivors accredited by Valech. The various agencies who pay out reparations and oversee legal cases have separate, and contradictory, records of which names were considered 'false'. Strenuous attempts by the Observatory in 2012 to acquire updated official lists were unsuccessful.

measure.[32] Valech operated between 2004 and 2005, receiving testimony and documentation in Chile and abroad from or on behalf of people who had survived detention or torture by state agents between 1973 and 1990. After a slow start, people came forward in unexpectedly large numbers as the original submission deadline drew near. The deadline had to be extended, and additional statement-takers hired, as the sobering range and depth of atrocities hitherto largely ignored came into focus. After a period of additional research and verification, Valech published a report that served as an exhaustive, grim catalogue of the depths to which the regime had sunk in efforts to dehumanise, break and terrorise the men, women and children it chose to designate as enemies.

The public impact of Valech was in some ways perhaps greater than that of Rettig had been. At a longer distance from events, and against the backdrop of the gradual political and judicial discrediting of Pinochet and some of his more notorious henchmen, details emerged of crimes including the setting of dogs on naked female prisoners, the torture of children to make their parents talk, or the 'collateral damage' of miscarriages induced through sustained beating and sexual assault of incapacitated, blindfolded prisoners. These accounts were hardly susceptible to the 'exigencies of war' justifications that some had found at least plausible with regard to the deaths of militant young men - portrayed as 'enemy combatants' - in the immediate aftermath of the coup. Additional classifications in 2005 led to a revised total of almost 29,500 recognised survivors. Reparations previously available to Rettig relatives were updated and extended to Valech survivors or their families.

By the time of 'Valech II', in 2011, the battle to also reopen registers of victims of death and disappearance had been won. Moreover, the human rights lobby managed to obtain the considerable concession that the reopening would only be used to add, not remove, names. Thirty new death and disappearance – strictly, 'Rettig' - cases were acknowledged by Valech II. Other names were submitted but not found proven. The anomalous effects of having Rettig victims accredited under the Valech framework, discussed further below, included the placing of all the new 'Rettig case' submissions in legal and administrative limbo. These case files were not treated in the same way as previous Rettig cases: they were instead subjected to the much more restrictive legal framework designed specifically for Valech.

[INSERT TABLE 1 ABOUT HERE]

Origins and Design of 'Valech'

[32] Both instances were designed and delivered under the subsequent presidency, that of Michelle Bachelet (2006-2010). See Cath Collins and Katherine Hite, 'Memorials, Silences and Reawakenings', in Collins, Hite and Joignant, op. cit., pp. 133-164.

Like much of Chile's patchwork of official transitional justice measures, the backstory behind the Commission was as much about civil society chivvying, pressure and lobbying as executive decisiveness or strong political will. The civil society organisation Comisión Etica contra la Tortura, and historic human rights organization CODEPU, were amongst those who had long campaigned for the issue of torture and torture survivors to be given moral and political attention befitting its seriousness. A flurry of interest in justice claims following the 1998 UK Pinochet arrest and other significant tipping points[33] also helped to constitute survivors as newly visible and self-conscious actors. Associations of former political prisoners began to form and proliferate, by region, by political militancy, or by affinity group. They agreed about little except, increasingly, about the need for 'more' – more truth, more justice, and reparations that would put them on an equal footing with the relatives who had for so long been Chile's main reference group for victimhood.

Truth, Justice and Reparations in the Leadup to Valech

In the leadup to the first Valech iteration, survivors and others who had campaigned for it had two principal sets of concerns. First, what would be the relationship between any new initiative and justice? Rettig had handed results to the courts, but at a time when amnesty protected perpetrators and the courts were demonstrably not interested in pursuing accountability. Pressure for a new instance acknowledging crimes and their survivors however took place in the very different climate of the aftermath of the Pinochet arrest, his return to Chile, and the substantive reopening of the justice debate. Hundreds of judicial cases for deaths and disappearances had been re-activated. Would any official initiative around torture similarly acknowledge the justice imperative? Second, how would the new initiative affect existing reparations? This concern was eminently practical, driven not so much by the desire for advance as by the fear of regression. Some torture survivors already had entitlements to health programmes and modest pensions, through schemes recognising other aspects of victimisation. Would those rights be affected by any new scheme? What would become of survivors whose cases were not acknowledged? Would they lose access to services, including counselling, precisely at a time when they were vulnerable to the potentially (re)traumatising effects of having testified, and been made to feel they had not been believed?

Answers emerged to both sets of questions once the terms of reference of the new initiative became known. Regarding the first, the 50-year secrecy law[34] would not only discourage but actively forbid the redirection of material from the new truth commission into the judicial domain. It was, however, acknowledged that documents shown or supplied by survivors to the Commission remained inalienably their own, implicitly available for other kinds of action as the individual saw fit. The stated purpose of the secrecy law was, after all, not to dissuade justice activity but to protect the privacy of survivors, to maximise the numbers who felt able to come

[33] Inter alia, Pinochet's retirement as Army Commander in Chief (February 1998), his accession to the Senate (March 1998), the 25th coup anniversary (September 1998), and Pinochet's cynically triumphant return in March 2000 from house arrest in the UK.

[34] Law 19.992 of 24 December 2004. Initially to be set to thirty years, the term was extended to 50 in the law as passed.

forward. Nonetheless, the exact meaning of the 'personal property' exception was not spelled out, giving rise, as we will see, to contrasting later interpretations of it. Decisions about function also affected form: the standardised record sheet which Commission statement-takers completed on behalf of each person (or which individuals could self-complete) did not set aside space to record the name of any mentioned perpetrator. The Commission's archive of individual files from testimony is accordingly likely to have less specific evidentiary value than some seem to believe (although some files contain additional data and documentation obtained by researchers while pre-assessing applications).

Regarding the second concern, about the interaction between different kinds of entitlement, the law that established 'Valech reparations'[35] did not attempt – as had the 'Rettig' version before it - to decree incompatibility between Valech payments and reparations that might in future be obtained judicially (eg by a civil lawsuit). Nor did it interfere with the pensions some survivors were already receiving as, also, relatives of victims of death or disappearance. It did, however, make the new pension mutually exclusive with pensions received under the '*exonerados políticos*' programme.[36] Survivors now recognised by both instances would have to opt between the two sets of economic entitlements. Those now recognised by Valech who had previously been admitted to the 'PRAIS' health programme – giving access to the lowest tier of the public health system but also, importantly, to specialist mental health support – would continue to be entitled. People recognised by Valech and not previously in PRAIS could also now join. The remaining question mark was over those previously admitted to PRAIS according to its own, in-house, procedures but whose cases might now be rejected by the truth commission. Would these people lose their right to treatment? Might they even become the object of ignominy or suspicion of fraud? These worries, some of which have to date proved groundless,[37] did not seem at all fantastical at the time. They were fuelled by the fact that during the runup to Valech II, the Health Ministry ordered PRAIS to produce the first ever central register of accredited users. [38]

[INSERT TABLE 2 ABOUT HERE]

[35] Law 19.992, 24 Dec 2004. See table 2.

[36] For people sacked from their jobs for political reasons during the dictatorship.

[37] Legal proceedings for fraud have, however, been instigated against a few dozen Valech applicants and some prior applicants to the separate *exonerados* programme. See Observatorio DDHH, 'Verdad, Justicia y Memorialización por Crimenes del Pasado', *Informe Anual sobre DDHH* (Centro DDHH, Universidad Diego Portales, Santiago, Chile, 2012) and 'Verdad, Justicia y Memoria a 40 años del golpe de Estado', *Informe Anual sobre DDHH* (Centro DDHH, Universidad Diego Portales, Santiago, Chile). Available from www.derechoshumanos.udp.cl. The 2013 report is also available in translation as 'Truth, Justice and Memory for Dictatorship-Era Human Rights Violations, 40 Years After Chile's Military Coup', from www.icso.cl/observatorio-derechos-humanos

[38] At the time the Ministry, like all official bodies including Valech II itself, was operating under a right wing administration (sworn in in 2010). Many survivors were instinctively suspicious of intervention by a right wing government in this issue area.

What Valech did and did not do: the careful construction of the 'dejudicialised' survivor

The emergence of survivors as a collective, rights-bearing subject challenged the existing de facto 'hierarchy of victims', which had emerged in Chile over the years as it does in many post-transitional and post-conflict settings. Certain groups come to inhabit, whether deliberately or not, the centre of a set of virtual 'concentric circles' at whose heart official concern and public attention are more prevalent and group demands are more likely to be attended to. In Chile, the disappeared and their relatives occupied the centre ground. Relatives of victims of political execution came next. Survivors had generally occupied a more peripheral place, in the third tier. They were considered and consulted, if at all, primarily as potential sources of intelligence about the fate of others: the dead, the disappeared. Prior to Valech, their place in the public policy matrix was largely subsidiary. They might be 'patients', if they availed themselves of health services through PRAIS. They might, if they had been blacklisted or forcibly exiled, have or have access to pension credits or other services.[39] But the sole, stark fact of having been locked up, beaten, and abused in the most unspeakable ways by agents of the state was not in itself deemed worthy of individual acknowledgement or action prior to 2003.

There are many reasons for this, not all as simple as official dereliction of duty. Amongst militants, to have survived at all was somehow suspect –it was often assumed, rightly or wrongly, that activists who were released had broken or been turned. Other groups scarcely considered themselves 'true' victims at all. These included non-militants; those never detained but 'only' beaten and abused during house to house searches; and women, children or elderly relatives tortured or held hostage in their own homes to trap unsuspecting family members. A full discussion of the politics of victimhood in Chile lies outside the scope of this paper, but the messiness of these overlapping Venn diagram categories of victimhood seems to have escaped those who designed the 2003 policy. Alternatively, they perhaps felt that the complex could usefully be simplified, and two problems subsumed into one. Either way, the eventual announcement was of a commission that would deal with torture only in association with, and through the lens of, political imprisonment.

Immediately foreseeing problems that did in fact arise, those who had pressed for specific attention to the pernicious and lasting social effects of torture protested that the yoking together of the two issues would dilute the specific attention paid to torture. In this they were undoubtedly proved correct. Once the mandate for the instance was fleshed out, it was decided that torture would not be accredited in its own right, but only as a 'given' or assumed fact where imprisonment could be demonstrated and accompanying testimony also spoke of torture. Although this did acknowledge, as had Rettig, that torture had been a widespread and systematic regime practice, it preserved a fiction to which Rettig had also clung. Rettig had claimed that torture was simply unprovable at the level of the individual victim, a roundly disputed assertion that has nonetheless also hampered attempts to obtain justice or compensation through the

[39] Under the programmes of reparations for *exonerados*, and for *retornados* (returnees), respectively.

courts.[40] The Valech mandate meant that individuals who had 'only' been tortured, or had been tortured and detained for a shorter length of time or in places or conditions other than those specified, would not be acknowledged. (Those detained for political reasons but not tortured would, however, be included).

In any case, the instance went ahead amid much controversy about its purpose and the levels of confidentiality that survivors could expect (an issue to which we will return below). Reparations had been promised for those named on the final list. Nevertheless, it was by no means clear at the time that the commission would become the only turnstile for access to the category of recognized survivor. Nor was it anticipated, at least not publicly, that entitlements previously extended to survivors accredited by other means might be withdrawn in future if they refused or neglected to take part. People therefore chose to testify, or not, based on factors other than their views about or need for (continued) access to reparations. What was, however, known was that there were to be absolutely no judicial consequences to Valech testimony. Names of perpetrators were not to be revealed (nor, it turned out, systematically solicited or recorded). Although a final report would be published, no-one, not even judges, could have access to supporting testimony or any other source material.[41]

This absolute embargo was to last for a full 50 years from the date of publication. This single fact about Valech is perhaps one of the least widely known to external commentators, and is the gulf that qualitatively divides it from Rettig. It also constituted both a disincentive and an incentive to participation. More militant ex-prisoner groups who wanted a justice connection felt they were being silenced or bought off. They boycotted the instance, launching their own parallel efforts to publicly denounce torturers. In other cases, of course, the safety net of confidentiality was the only thing that persuaded some people to talk about what they had lived through. One of the many practical and ethical dilemmas raised by subsequent campaigns to change the secrecy rules is precisely the difficulty of differentiating after the fact between those in the latter group and those who are, or would have been, prepared for their testimony to be handed to a judge or made public.[42]

Other commissions have resolved these dilemmas in different ways. Peru's truth commission, for instance, allows limited researcher access to files. Valech is, however, particularly extreme in the blanket nature and length of the access embargo. Valech is thereby regressive with respect to

[40] After the year 2000, survivors bringing legal claims began to be routinely referred for forensic medical examination by judges at a loss as to how to investigate allegations of historic torture. The search for physical manifestations, or at the very least clear-cut signs of post-traumatic stress, became a spurious method for differentiating between group claimants. The absence of a definitive diagnosis of PTSD was erroneously treated by some judges as a direct refutation of the veracity of survivors' accounts. Interview with Dr. Paz Rojas, Santiago, January 2013; and remarks by claimants and forensic service personnel at a closed seminar convened by the Observatory in the same month.

[41] The 2011 iteration, moreover, was not authorised to produce a 'report' but solely a statistical account and list of names.

[42] A point cogently made by Claudio Herrera, who served as the Commission's executive secretary, commenting in a personal capacity. See Observatorio DDHH, 'Taller Comisión Valech II', op. cit.

Rettig in at least two significant ways: the complete, publicly accessible nature of the truth produced is lesser in Valech, and connections with one of the other major dimensions of transitional justice – justice itself – are markedly absent. This attempted severing of justice connections took place, moreover, at a time when the courts had finally begun to respond to justice demands. The possibility of real judicial action was accordingly significantly higher in 2004, 2005, and 2011, than it had been in 1991. There are many possible interpretations of this growing separation between official truth and official justice. Some senior judicial figures advance a partly pragmatic explanation. There were, they say, genuine fears in their own ranks that the specially-designated magistrate system, already working at capacity over death and disappearance cases, simply could not cope with an influx of thousands of new investigations. A more political explanation, which tends to find favour in civil society, is that official dislike of the post-1998 justice reactivation led to executive efforts to pre-empt new justice claims or divert them into truth-and-reparations instances.

Challenges to Valech secrecy

Over the course of 2012 and 2013, the judicial branch became both object and origin of challenges to the secrecy regime surrounding Valech. First, in 2012, individuals whose cases had not been acknowledged requested court orders to enable them to challenge the specific grounds on which they had been turned down. The arguments included those of equality: the 2004/5 instance of Valech had a personal notification and appeals system which the 2011 iteration lacked. Although most of these initial applications failed, the INDH decided in late 2012 to seek a definitive ruling from the Comptroller General's Office, Contraloría, as to the terms of its inherited role as keeper of the files. The result broadly upheld a strong interpretation of the duty of secrecy.[43] This was not, however, the end of the story. The constitutional bench of the Supreme Court persisted, seeking access to the file of a woman whose Valech application had been turned down. Using of the personal property exception stipulated in the original law,[44] the bench insisted that in acting at the woman's behest, it was in effect acting as her agent. The Institute's reply made it clear that while their sympathies were with the request, their prevailing understanding of the existing law made it impossible to accede. The Court decided, on 13 Dec 2012, to drop the request[45] (albeit by the slimmest possible, 3-2, majority). The dissenting voters moreover included Sergio Muñoz, a one-time human rights case judge who became Supreme Court President in early 2014, at a time when it was clear that the issue was set to resurface. Chile's second Universal Periodic Review before the UN Human Rights Council, on 28 January 2014, produced a recommendation from the Mexican delegation that Valech confidentiality be repealed.[46] The issue was also referred to in the

[43] Dictamen no. 60303, Contraloría General de la República, 1 Oct 2012.
[44] In Art. 15 of Law 19.992, Dec 2004.
[45] Resolución 5377-2012, 13 Dec 2012.
[46] See Draft Report of the UN Working Group on the Universal Periodic Review - Chile, A/HRC/WG.6/18/L.3, 30 January 2014.

campaign manifesto of Michelle Bachelet - who began a second (non-consecutive) term as the country's president in March 2014 – albeit in the vaguest possible terms.[47]

The other issue that has led judicial personnel to request access to Valech files is that of deaths and disappearances. The 30 new cases acknowledged – and arguably also those received but not acknowledged – ought, strictly speaking, to be judicialised in the same terms, and with the same vigour, as earlier cases. That seems at any rate to be the view of those investigative magistrates who have begun to include Valech archives amongst the official sources from which information is sought when a case of presumed dictatorship-era death or disappearance is put before them. Over the course of 2013, magistrates attached to the Valparaíso, San Miguel and Santiago district courts made such requests.[48] None has to date been acceded to. On 19 November 2013 the INDH made a fresh appeal to the Contraloría to square the circle of transparency, justice and the duty to 'safeguard and keep' the files.[49] Should the Supreme Court eventually decide to throw its full weight behind some limited opening of the archives, under current leadership it is particularly unlikely to countenance the argument that a secrecy disposition made in a transitory article of secondary legislation cannot be overruled by the Court.

Conclusions

Public policy efforts in Chile to deal belatedly[50] with the rights of survivors of torture and political imprisonment fall short in both conception and execution of the holistic framing developed in the initial sections of this paper. This is particularly true as regards the benchmark of 'reliable, complete, and widely known' truth, constituting a step towards justice, or at least not a step away from it. The Valech report of 2004 certainly had public impact, and Commissioners strove to make results both reliable and complete, within the limits of their permitted frame of reference. Those limits were nonetheless significant, particularly regarding the definition of torture. The completeness of Valech was further limited, as has become almost routine in the truth commission model, by the deliberate omission of perpetrator names or clear assignation of institutional responsibility. The 'knowability' of Valech's outcomes and implications moreover

[47] Criticism of the lack of any explicit discussion of human rights policy in any major presidential candidate's platforms at August 2013 prompted the release by the Bachelet campaign of a 'civil society consult' document. This mentioned 'looking into' the 50 year confidentiality of 'judicial records'. Although many took this as a reference to Valech, the formulation contains no firm promise of action nor any explicit reference to Valech documents – which are certainly not, moreover, classifiable as 'judicial records'. See Observatorio DDHH 'Truth, Justice and Memory', 2013, op. cit.

[48] Examples include an *oficio* from the 1er juzgado civil de Valparaíso, criminal section, 27 Dec 2013, or Resolution No 791, sent from the Investigative Police to the INDH at judicial behest (2013, n/d). Copies on file with author.

[49] A duty that falls by law to the Institute. INDH Ord. 506, dated 19 November 2013. No response had been obtained at time of writing (June 2014).

[50] 'Belated' in regard both to the normative horizons of the American Convention on Human Rights, which speaks of 'timely' justice; and also when compared to much earlier official action over victims of death and disappearance.

diminished between iterations and over time. The second iteration published no full report and failed to notify applicants directly,[51] while the Commission itself was definitively and completely dissolved once the 2011 list was delivered to the president. Today, it is no easy feat to trace a complete set of the published reports in any single official repository.[52]

Turning to the proposition that justice should be provided or guaranteed in a timely, proportional and proactive fashion, the shortcomings of Valech are self-evident. They include its explicit de-coupling from justice implications as well as attempts, to date successful, to legislatively forbid the 'recycling' of information provided to it for judicial purposes.[53] More generally, it is clear that justice remains the most restricted dimension of the transitional justice matrix for Chile's survivors. Almost all privately-initiated judicial claim-making to date has focused on the dead and disappeared. When the state, or parts of it, began timidly to move beyond the toleration of private claims to the development of an active prosecution policy,[54] deaths or disappearance were similarly prioritised. The relegation of survived violations to a lower, virtually inactive, tier became if anything more explicit.[55] Proactive state behaviour over justice is currently exclusive to death and disappearance, while proportionality in final sentencing is questionable in regard to both categories (victim/ survivor).[56]

If we move beyond a focus on Valech to ask what we can deduce about general approaches to TJ rights entitlements, reparations policy is often, and rightly, believed to be one of the more successfully delivered dimensions of official transitional justice practice in Chile. 'Rettig measures' were updated then extended to Valech survivors. Additional and alternative measures had always existed for other categories of victim or survivor. Intergenerational reach, one of the aspirational policy goals mentioned above, is partially present in various measures, and was introduced to

[51] Notification was via a single website list, now removed. Considering the socioeconomic , geographical and age profile of applicants, this was perhaps the single least appropriate method that could have been chosen, even considering Chile's relatively high levels of urbanisation and connectivity.

[52] Online legislative archives contain copies of some relevant legislation. The INDH offers web access to the 2011 list and advice on entitlements. No governmental site however hosts the 2004-05 and 2011 report(s) and lists in their entirety. The major governmental agency concerned with past crimes is the Human Rights Programme of the Ministry of the Interior, which however excludes Valech reports from its otherwise comprehensive online collection of state documentation on the grounds that the issue of survivors lies completely outside the Programme's purview.

[53] Except for the personal property exclusion, discussed above. This however represents little more than an acknowledgement that the requisitioning of personal documents, or swearing of survivors to secrecy, was beyond the commission's remit.

[54] Through, respectively, ex officio investigative orders made by a judicial prosecutor in 2011 and criminal complaints (*querellas*) made by the Human Rights Programme in its own right once a full legal mandate for this was acquired in 2009.

[55] A Supreme Court pronouncement in 2010 supported the contention of one specially-designated 'human rights case' magistrate that such cases did not include torture or sexual assault, which should be investigated as ordinary crimes. Vigorously contested, the disposition has been at least partly reversed. See Observatorio DDHH. 'Verdad, Justicia y Memoria', 2012, op.cit.

[56] See, inter alia, Observatorio DDHH 2012 and 2013, op. cit., and annual reports for 2012 and 2013 by the National Human Rights Institute, INDH, at www.indh.cl .

others in 2004.[57] The integral nature of these and other measures is however more questionable. A study of existing reparations policy carried out by the Observatorio in 2012 adopted a person-centred planning perspective to model the effects of the different packages on composite profiles of a range of victims/ survivors over time. Measures showed no sign of having been designed to accompany the individual life cycle, nor high levels of synergy one with another.

In the symbolic arena, reparations policies demonstrate another significant weakness. Almost universally described as 'benefits' rather than entitlements, reparations programmes are periodically subject to accusations of undue generosity or outright fraud. Their continuity was, as we have seen, thrown into question for a large number of survivors during and after Valech. The subsequent definitive closure of lists moreover means that no state entity oversees lists or reparations on an ongoing basis. There is therefore no official body promoting a language of recognition and apology rather than begrudging parsimony. Correa points out that this lack of wholehearted recognition blunts or even diminishes the force of reparations as a performative act, capable of restoring trust between state and citizen.[58] Temporally limited truth commissions have become the sole entry portals for Rettig and Valech reparations packages. Operational disputes or ambiguities over compatibility between measures; their liability to taxation; apparently arbitrary cutoff periods for applications, and whether they can be discontinued in cases of error or suspected fraud, are resolved by non-specialist administrative bodies on an ad hoc basis.

This concentration of truth and reparations responsibilities in single, temporary instances arguably not fully mandated or resourced to carry out either, exposes the potential downside of the overlapping of functions that a holistic 'rights bundle' model suggests. If these functions are not entrusted to a suitably equipped body, operating an explicitly rights-based approach - specific measures risk falling by the wayside or simply stalling under the weight of internal contradictions. Valech secrecy laws, and persistent confusion about how, and even whether, newly-recognised Rettig families could in practice apply for reparations, are cases in point. Thus in practice rights entitlements are being allowed to lapse even though the condition of victimisation that gave rise to them persists. Survivors recognised by Valech meanwhile have no official representatives to fight their corner, and there is no administrative method for extending (or indeed rescinding) victim or survivor status in response to adjudication of ongoing judicial proceedings. Judicial branch deliberations are in this sense being overlooked or simply ignored by the state's executive and legislative arms.

This exploration of recent Chilean practice in regard to transitional justice policy accordingly shows little sign of increasing holism or synergy over time, even when a larger quantity of individual truth or reparations measures is accumulated to the overall 'pile'. It suggests both that more should not automatically be mistaken for better, and that policy integration cannot be assumed and must instead be consciously designed for. Our discussion of the Chilean case nonetheless also suggests

[57] When educational scholarships offered as part of Valech entitlements were made transferable to children and grandchildren.
[58] Correa in Reategui, op.cit.

that the desirability of policy integration, assumed or implicit in the emerging holistic model, needs further interrogation, and it is to this broader theoretical question that we now turn.

The already enunciated theoretical concerns underpinning this paper include the notion of a bundle of inter-related rights, and its possible and actual effects on state-level design and implementation of TJ measures. They also include the question of the implications of synergy, or alternatively of mutual insulation, between truth, justice and reparations measures, in particular. In regard to the former, we may question whether any such bundling of rights is, or could ever be, an unqualified good. The loading of simultaneous truth, justice and reparations responsibilities and expectations onto any particular state measure or point in time in a post-authoritarian or post-conflict process may indeed prove on further examination not only impractical but in some senses undesirable. It may, for example, place unrealistic logistical or administrative burdens on fragile or resource-poor states even before attention to conflict-related damage is considered. Thus the logistical challenge of constructing a single unified victim register in Peru have proved so substantive that plans to postpone all reparations payments until its completion had to be abandoned. Even in Argentina, where the justice dimension of TJ has recently been vigorously pursued, truth and reparations advances have not kept pace. In fact there remains no official, publicly available, updating of 1985 truth commission figures which only document forced disappearances.

The simultaneous front-loading of truth, justice and reparations expectations onto the already considerable challenges faced by the ongoing Colombian peace process have meanwhile produced, inter alia, visible pressure on the Inter-American Court to soften the strong pro-prosecution presumption visible in its pre-2012 jurisprudence.[59] While the political dimension of domestic veto player resistance to TJ may be particularly predictable in regard to prosecutions, the recent experiences of Peru, El Salvador and others show that truth and reparations measures can equally produce controversy and resistance that at times risks derailing the entire TJ endeavour.[60] In negatively affecting the credibility of human rights discourse in general, such setbacks can also arguably have deleterious effects on guarantees of non-repetition. A partial solution perhaps lies in foregrounding the notion of phased, rather than consecutive, responsibilities of states. Thus while TJ policy may be encouraged or required to address each of the elements of truth, justice, reparations and guarantees of non-repetition, perhaps not every measure should be expected to contribute equally, or even at all, in every element. Enshrining in the norm framework itself the permissibility of sequencing and phasing, allowing states to begin with the measure that generates least internal resistance, might both better map existing practice and encourage reluctant states to start along a TJ road even if they feel unequal to the task of simultaneously meeting a single, ever-growing, agenda of all-or-nothing demands.

[59] See Inter-American Court, El Mozote v. El Salvador (2012).

[60] See Ojo que Llora controversies in Peru, and the subsequent threat by Peru to withdraw from the Inter-American system (Katherine Hite. *Politics and the Art of Commemoration* (NY: Routledge, 2012). For El Salvador, civil society completion of a truth commission-mandated victim memorial provoked a right wing municipality to erect a statue to death squad founder Roberto d'Aubuisson.

This suggestion returns us to our second concern, regarding synergy or insulation between measures. This paper has taken a largely critical view of state attempts to mutually isolate truth and justice in the design of recent truth measures in Chile. This critique nevertheless proceeds from very specific circumstances: a long-running (two and a half decade) TJ process, in a country with robust economic capacity demonstrably not threatened by imminent authoritarian regression, with strong rule of law indicators and explicit acceptance of prevailing international and regional human rights norms. Reluctance to adopt a rights-based framing for TJ, and in particular the recent attempt to row back from truth-justice linkages achieved in the country's previous truth commission, are particularly difficult to justify in such a scenario, although there may well be other scenarios in which the classic truth-or-justice tension still persists, in its classic or in a more dilute form.[61] Maintaining a regional focus on Latin America, however, extensive regionalisation of past state terror, combined with strong present-day cross-border civil society mobilisation – facilitated by common languages, pre-transitional solidarity and exile links – mean that attempts to seal off judicial consequences to truth, or to corral truth revelations within one set of national borders, swim against the tide. States' best options may accordingly be, at the very least, to abandon pretensions to draw subsequent measures more tightly than earlier versions.

Where truth-reparations or justice-reparations synergy is concerned, the dilemmas are somewhat different. Where justice activity has included civil demands against individual perpetrators or the state, some states have attempted to pre-empt this by constructing alternative, administrative reparations programmes which are then declared incompatible with the judicial route. Others have allowed routes, while some clearly hope to discourage either. Since existing norm frameworks are largely silent on which mode of delivery of the right to reparations is to be 'preferred', all of these alternatives except for the last are arguably legitimate. However, the increasing emphasis on victim-centredness which surrounds reparations discussions is potentially both internally contradictory and disruptive of synergy, whichever mode(s) are in operation. Internally contradictory in the sense that victim-centredness would seem to reinforce a case for needs-based, tailor-made, participatory models of reparation. Requirements of transparency, fiscal responsibility, and adequate entry filters for reparations programmes can nonetheless pull against the presumption of veracity. Tying reparations access to truth commission lists or justice processes if anything increases this difficulty. In a trial setting, harm that is to be adduced as evidence against a defendant will necessarily be subject to stringent due process safeguard and probatory cause-effect standards that may be wholly inappropriate and indeed damaging viewed from a symbolic or therapeutic perspective.

Yoking together official truth acknowledgement with reparations entitlements meanwhile in effect adds economic connotations to inclusion on victim lists. This can add perverse incentives or disincentives to inclusion, and in either case inescapably alters the nature and purpose of truthseeking. It is also particularly likely, in symmetrical or quasi-symmetrical conflicts, to add a new edge to debates about state versus nonstate, individual versus collective, attribution of responsibilities. At present these complexities are in scarce evidence within individual state

[61] See Alison Bissett, *Truth Commissions and Criminal Courts* (Cambridge: Cambridge University Press, 2012).

procedures, as we have seen. Nor are they commonly found in the core texts of regional and international norm sets, as is perhaps to be expected. Nonetheless, Inter-American system resolutions and verdicts increasingly straddle multiple dimensions of TJ. The underlying suppositions about holism and synergy that underpin such resolutions may repay closer study, particularly in relation to the Inter-American Commission, whose extensive 'unseen' advisory, exhortative and capacity-building work with states means that much regional system practice in this area goes unremarked.

10781 wds

Table 1

Terms, Accessibility and Current Location of Major Official Truth Initiative Archives in Chile

	Rettig and CNRR 1991; 1996	**Dialogue Roundtable 2000/01**	**Valech I 2004/05**	**Valech II 2011**
Official title	Rettig: National Commission for Truth and Reconciliation (*Comisión Nacional de Verdad y Reconciliación*) CNRR: National Commission for Reparations and Reconciliation (Comisión Nacional de Reparaciones y Reconciliación)	Dialogue Roundtable (*Mesa de Diálogo*)	Comisión Nacional sobre Prisión Política y Tortura (National Commission on Political Imprisonment and Torture) Created by DS 1.040 of Min of Interior, 2003	*Presidential Advisory Commission for the Classification of Victims of Disappearance, Political Execution, Political Imprisonment and Torture* *Comisión Asesora Presidencial para la Calificación de Detenidos-Desaparecidos, Ejecutados Políticos y Víctimas de Prisión Política y Tortura*
Mandate	Victims of death or disappearance by state or nonstate agents	Channel information about the location of remains of victims still missing	Survivors of political imprisonment (and torture) by state agents	Survivors of political imprisonment (and torture) by state agents And Victims of death or disappearance by state or

				nonstate agents
Official final report published?	Yes	No (list of names and final destinations only) Report of proceedings of the deliberative phase was published by NGO FASIC	Yes	No (list of names and accompanying statistics only)
Background information and files accessible?	Yes, to courts and Human Rights Programme		No	
Names of victims specified?	Yes	Yes	Yes	Yes
Names of perpetrators specified?	Not published, but included in material passed to courts	No.	No	No
Secrecy and anonymity specifications		Secrecy law preventing those who received information from identifying sources Anonymity and immunity from prosecution for sources	50-year 'secrecy' embargo on all testimony and background information (Art 15 of Ley 19.992) 'without prejudice' to the right of the individual to dispose freely of their own testimony and personal documents	50-year embargo on all testimony and background information for both 'Valech' and 'Rettig' cases, 'for all legal effects'
Current Physical location of archives	Human Rights Programme of the Interior Ministry	Not known	Sealed vault of National Museum of Memory and Human Rights	Sealed vault of National Museum of Memory and Human Rights

Table 2

Major Chilean reparations measures and legislation[62]

Measure	Objectives, content and intended recipients
Health Programme, Programa de Reparación y Atención Integral en Salud, PRAIS Began 1991, officially established 16 December 1992, Resolución Exenta no. 729	Access to the public health system and to specialized mental health support for those directly and indirectly affected by grave violations (relatives, survivors and their immediate families, holders of most other categories of reparations measures, and human rights defenders who had worked in direct accompaniment of victims.
Reparations for relatives of Rettig victims Law 19.123, 8 February 1992	Established pensions, health access, educational scholarships and exemption from military service for immediate family members of those recognized in the Rettig report as victims of disappearance or political execution. Subsequently modified (increased or extended) by Law 19.980 (2004) and Law 20.405 (2009)

Valech-related measures: **Law 19.980** 9 November 2004 **Law 19.992** 24 December 2004	**Law 19.980**: Improved 'Rettig reparations' (Law 19.123 of 1992), increasing amounts of pensions for relatives of the dead or disappeared and/or incorporating new categories of individual. Eliminated previous discrimination against common law partners and their children. **Law 19.992, 'Valech reparations':** Established a monthly pension, health access and educational scholarships for those recognized by Valech as survivors of torture and political imprisonment. Incompatible with pensions for politically-motivated dismissal. Art 15 of the law established 50 year 'secrecy' of documentation

President Michelle Bachelet, 11 March 2006 - 10 March 2010	
Extensions of existing	

[62] For a fuller account of symbolic and economic measures, see Collins (2014) in Sehnbruch and Siavelis (eds.)

economic reparations	
Law 20.134 22 November 2006	Law 20.134 established a one-off lump sum payment for victims of politically-motivated dismissal (*exonerados)* whose cases had already been recognized
Law 20.405 10 December 2009	Law 20.405, which created the National Institute for Human Rights and re-opened the Rettig and Valech lists, also made educational scholarships transferable to grandchildren and expanded exemptions from military service. (Art 3º transitorio created Valech II; para 6 subsection 1 of which established 'reserve' for 'all legal effects'

Sources: Research assistance by Boris Hau, from primary sources original texts and Lira and Loveman (2005) *Políticas de Reparación*