



## Notre Dame Law Review

Volume 67

Issue 5 *Symposium: Theories Of Dispute Resolution*

Article 13

April 2014

# Post-Lecture Discussion

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### Recommended Citation

Jorge S. Correa, *Post-Lecture Discussion*, 67 Notre Dame L. Rev. (1992).

Available at: <http://scholarship.law.nd.edu/ndlr/vol67/iss5/13>

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## Post-Lecture Discussion

SPEAKER: JORGE CORREA  
MODERATOR: SCOTT P. MAINWARING  
SPEECH: "DEALING WITH PAST HUMAN RIGHTS VIOLATIONS:  
THE CHILEAN CASE AFTER DICTATORSHIP"  
DATE: FEBRUARY 22, 1992

*Professor Mainwaring:* [Professor, Department of Government, University of Notre Dame.]

We have fifteen or twenty minutes for questions. Does anyone have a question, please, or a comment?

*Participant:* I think we are all very grateful for your very eloquent talk and for explaining to us the work of the Chilean Commission on Reconciliation.

In the general public, there is a certain amount of cynicism in that it tends to remind people of the Nuremberg Tribunal after World War II which investigated war crimes. But it only investigated the war crimes that were committed by the defeated against the victors. It did not look into the whole question of crimes committed in the war, especially by guerilla forces, that were committed by the victors against the side that was defeated.

Now, my question is, is there a parallel here in that you have the victors who are looking at crimes of human rights committed against the victors by those who are out of power? Is that not just a part of the truth? And if only a part of the truth is presented, is not reconciliation made difficult? Or is it that there is terrorism, for example, say, on the left, on the part of the guerrillas, to murder minor officials which leads to terrorism on the part of the right, the military, and that leads to more terrorism on the part of the left who feel justified because of those excesses, and more terrorism, and so on?

I hope I've made my question clear. Is this an example of only partial truth, and can there be reconciliation with only partial truth?

*Professor Correa:* I was trying to make the point that the Commission not only focused on the human rights violations committed by the authoritarian regime, but it also focused on the political

crimes that were committed by the left against policemen in the streets, who were killed just because they were near policemen.

But, of course, very important distinctions have to be drawn between one and the other. It's a very difficult issue. There's a big discussion among scholars of human rights about whether you can call that a human rights violation. Situations like Peru are widely discussed, and you can call what happened there human rights violations.

But, classically, the scholars have been limiting the word human rights violation to those acts committed by the state. Of course, there's a big difference when the one who is supposed to be guarding public order, with all the resources, commits these crimes.

In the Chilean situation, it must also be acknowledged that those crimes committed by the left happened after the 1978 amnesty. So, both cases were investigated by the courts. But in one type of case where the army was the violator of human rights, the courts didn't have the help of the police to get to the truth in those cases.

So, it was already known that the people from the left were tried in most cases. While people on the right were generally not tried in the courts. But the Commission tries to focus on both issues. The President decided to do that.

And I think, to a large extent—not wanting to second guess him—but I personally think, to a large extent, that he needed a report that would be viewed as something that would be authoritative as the truth. It was very important for us.

For example, the first thing we did was to ask the armed forces for their own casualties. And they complied with that. After they had complied with our first request, we made a second—please tell us who killed whom, or what happened to this person.

So, it was very important for us to first ask who are your people. But, of course, the numbers are very different. It's about two hundred thousand against eighty cases.

*Professor Fisher:* [Roger Fisher, Williston Professor of Law, Harvard Law School.]

In your arguments against criminal punishment—with which I strongly agree—you suggest that's perhaps the best way to express moral values, I believe, and experience suggests, that's a very bad

way to express moral values because the ambiguity in carrying out orders is likely to be a very blurred message.

And if you focus on the punishment of officials engaged in this conduct, for example, Lieutenant Calley in Vietnam, gunning down women and children in a trench. You know, the whole army is under orders. Excessive duty went too far, of course, and did too much.

But to me the biggest argument—a big argument against trying to punish past official violators—is that when you go after them, there is such reluctance in the community to punish people who are, quote, “doing their duty,” and who may have been excessive and may have gone too far.

The result is you don't punish them enough, you punish very few, they get pardoned, they get excused, they get suspended sentences. So, condemnation is much less effective than a report that says the truth and lets people focus on it.

In this country we have a crime. It's a crime to break and enter—for the police to break and enter to seize evidence. We have had thousands of cases where evidence has been excluded from a trial because it's obtained in violation of our Constitution. As far as I know, there is only one such case in which the person who authorized the break in ever went to jail.

And so, it is practically very difficult to get a society to punish those who break the law. The moral message that comes from attempting to do that is likely to be less effective in court. At least, that's my opinion—I just believe you cannot—it's not just in Chile that there are political reasons against doing it. It's a well-organized society. We have great difficulty in punishing our military who exceed authority, punishing those police who exceed authority. Just trying to punish them ends up undercutting the very values we are seeking to establish.

*Professor Correa:* I was making the point of the ideal restrictions more than the desired goals between truth and punishment. But I'm sure somebody else would like to discuss that issue. I would like to comment on that. It is highly contested and will probably produce some discussion.

*Participant:* On the one hand you could agree with Roger and say you cannot do it; it does not work. But on the other hand, you must. And it's exactly that tension in the reconciliation of a society that is at issue.

That is, that for the lack of the ability to re-instill values about accountability, you have on the other side the possibility of a whole series of victims and those who reference off the victims losing confidence in one, the State's ability to live according to the rule of law, and losing accountability and faith in institutions that investigate the law.

Which makes, I think, the focus on the judiciary in Chile a very interesting approach. In some respects one would say this is the kind of kicking of the dog. Well, the judiciary had the responsibility; it didn't have direct control. It had participation, but it didn't give the direct orders.

And the approach to the judiciary in Chile is very different than what is happening in Argentina in that regard.

It's that kind of tension between what we cannot do and what we must do for the other section of society that makes this a special case, it seems to me.

*Professor Correa:* Let me give you just one argument in favor of punishment that, although we could not achieve it, I would still insist that I want.

Your argument, I think, is very strong when you deal with the minor cases and the people in the lower ranks. But it's not so strong when you deal with the people who plan a whole range of disappearances of the people. They don't derive a lot of compassion from the public as easily as the guy with the gun.

There is a legitimation argument there that I think is quite important. We still have some guerilla movements on the left claiming that they're not very important and not very dangerous to the whole stability of the country. But they can still make the claim that they're legitimate because we were not able to punish the people who committed the human rights violations—the criminals. They are going to take up arms in order to retaliate against what the society was not able to do.

And we have a difficult answer there. They don't gain a lot of support because of their argument, but they have an argument there.

*Participant:* I'm particularly interested in the question of secrecy. You discussed that in the context of how to help bring about reconciliation. And from the report, I'm wondering if you would be willing to comment on how you encourage dealing with secrecy in the category of preventing future violations.

It seems that there are a lot of studies that suggest that in societies in which torture is widely practiced you often find secrecy occurring because of this extreme desire on the part of some to control the behavior of others which is always facilitated—this kind of authoritarian behavior—is facilitated by secrecy. And I see it as a really important and difficult problem, not only in Chile, but everywhere in the world in the future of democratic governments.

So, I'm wondering if you would be willing to comment a bit further about it in this other domain as a prevention in the future.

*Professor Correa:* It's so impressive, I had the chance to talk for eight hours or more with a woman who was part of the secret police in the worst years. And it's incredible to see the human side of the people who were torturing. I mean, they were good fathers. In the middle of the torture, they called home to see if the kids were okay. They are people who in certain environments just changed radically, and secrecy is one very important factor of it.

But, really, the big issue there—and, of course, a very broad answer to your question—is democracy. You need to have some kind of institution that will focus on those issues and bring them to light, by media and the judiciary. It's very difficult in a dictatorship—the worst kinds of dictatorship—to open up those secrets. The whole system works with that.

The first thing you have to do is grant immunity to the secret police. Even when they were subpoenaed to court, they used their secret names given to them by the police. It's very difficult to open them up.

*Participant:* In many ways the first victim of this terrorism we're talking about was the president. I'm wondering if there has been a movement in Chile to rehabilitate his family?

*Professor Correa:* Yes. The Commission states the case of Allende and acknowledges that he committed suicide when the governmental palace was being bombed. The report considers him a victim of political violence, not of human rights violations exactly. Then, we would have had to claim that the takeover of the government was illegitimate, and half of the Commission believed that the takeover of the government was legitimate. We solved the

problem by calling them the victims of political violence and not the victims of human rights violations.

His memory is being recovered. There was a symbolic burial. They brought the remainders from Valparaiso where he was buried with six people to the place in Santiago. And the President, with all the government, directed that symbolic funeral with the widow and others being there.

*Participant:* When you spoke about the theory of retribution, you said it was contested. I was wondering how strong it was among the victims, that they felt these people should suffer? Or did they feel that maybe the retribution theory is no good anyway and that they should somehow compensate?

How much do they feel that there has to be an equality of suffering?

*Professor Correa:* Right. Very mixed and different feelings. You would find people that would make impressive statements saying I have already pardoned and I don't want anybody to be punished in this case. Of course, they are the rare exception.

They all talked of justice. They wanted these people in the courts, they wanted them to answer the questions, to be cornered. It's not just the impunity of somebody who's in jail or who has liberty. But it's the impunity of somebody who walks in the streets feeling that he is important.

That's a very important difference. I'm not sure if they wanted all of them in jail, but they wanted them cornered and pressed and suffering. They just wanted them facing the responsibility of what they have done. Even if they didn't finally go to jail. That's the common denominator among the relatives.

*Participant:* One thing we were discussing yesterday was religion and reconciliation. It hit me that part of the reason for violence is the idea that suffering and violence are divine creations to right the wrongs of the world. And even if many people don't believe that anymore, their attitudes may have been formed by it. And so, in a way, religion is contradicting itself in emphasizing nonviolence because many people still think that suffering is the appropriate and the divinely sanctioned way to restore justice.

I don't know how strong that kind of feeling comes out.

*Professor Correa:* I don't know how much that had to do with religious factors. One could talk about the role the Church played—and it played the major role in the Chilean situation, no doubt—in comforting the victims and finding out the truth.

The report of the Commission is a revision of the archives and the documents of the Catholic Church, being convinced about them. Also, we have some forms of additional information. We have some kind of official information that was not destroyed, the Red Cross reports, for example.

But we mainly focused on the work of the Church. And the Church, the Catholic Church, has been the great defender of human rights in the Chilean situation.

*Professor Fisher:* Just trying to relate to the discussion—doing what they're doing. I would say you expressed regret that the army officials had not expressed regret.

*Professor Correa:* Right.

*Professor Fisher:* I was thinking about that. I would find that whatever they said, there would be those that said it was not enough. And the third party might well get a small working group of army officers and relatives of the victims together and try to reach a mediating point. To get a statement that would do the pardoning, a third party could be just the one to work out the statement to do that.

So, to get some of that problem met and going forward, a third party could be helpful. A third party could get kind of a joint statement. Such as, "We were not the only ones responsible, but we did make mistakes, you know. Evil things were done."

That's an area where going forward in dispute resolution might be relevant. It might be relevant in going forward.

*Professor Correa:* Right. Well, they made statements. And I think that some of that has been achieved through the answers of the armed forces, except for the army. They all acknowledged this was important, that this may be true. That in order to understand the excesses that were committed—that was the word they used—one would have to acknowledge more than the Commission did, i.e. the whole political situation the country was facing. Those kind of statements were made by the navy, by the air force, by the police. Now, the army is stronger. But even the army did not deny any of



the facts. At least, the government is making strong use of their statement that this continues to be the uncontested truth.

But some signs of that have been appearing in the area of the other branches except for the army. I think it's really difficult to have Pinochet say, "Well, this story is not the story I've been telling you for seventeen years." But some of that could be worked out after he retires perhaps.

*Professor Mainwaring:* Let's have a big hand for Jorge Correa's excellent presentation.