

The Pinochet Affair: A Crisis of Transition

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1. Introduction

Following the arrest of General Pinochet in October 1998 a number of pundits and politicians in Britain as well as Chile feared dire consequences for Chilean democracy. Certainly Pinochet's detention by British officials was not the first crisis faced by the Chilean political system since the return to democracy in 1990. There were the *Ejercicio de enlace* in September 1990, resulting from allegations of financial irregularities involving the army and Pinochet's family, and *El Boinazo* in May 1993, so-called because of the elite black beret group which mobilised while President Patricio Aylwin was away on state visit to Russia. These are two examples which, occurring as they did early on in the life of redemocratised government, were more stressful and more overtly threatening to the survival of the democratic system². Yet even these were intended more as strategic demonstrations of force than as attempts at mobilising anti-democratic forces. If on those occasions the chances of a democratic breakdown were slim, they were even more following the arrest of Pinochet.

This paper argues that the crisis resulting from Pinochet's arrest, as serious as it was, was a crisis of Transition³, not of democracy. That is to say, at no point was democracy actually threatened. The Transition, however, was affected in a number of ways. First, the nightly demonstrations before the British and Spanish embassies indicated that deep fissures in Chilean society which were supposed to have been healed by a consensual transition were very much in evidence. Second, the Concertación government of President Eduardo Frei leapt to the general's defence, at some cost to its internal cohesiveness. This demonstrated the pacted transition mentality which continues to direct government action. Third, the Right gained a cause around which to rally, allowing it to build on its electoral success in the parliamentary elections of 1997 and further capitalise on the widespread sense of disenchantment. This began to alter the balance of political power which had been prevalent throughout the Transition. At the same time, however, the military's own internal transition was interrupted. Fourth, although the Chilean judiciary has long been criticised for its position vis-à-vis non-democratic aspects of the political system (see Galleguillos 1997), in the light of international scrutiny the Chilean courts began a campaign to disprove their impotence through an unprecedented level of activity in the pursuit of human rights cases. This paper concentrates on the first three of these effects, which demonstrate that the level of consensus upon which the supposed pact rests has either been broken, or never really existed. The changes in the judiciary represent a phenomenon unto themselves and deserve greater attention than can be given in this paper.

The next section examines the specific developments in the immediate aftermath of the arrest of General Pinochet and their impact on the transition. Examining effects on a transition obviously implies the existence of a transition – by no means a given in the Chilean case. Section three will provide an outline of this ongoing debate. More recent events, including the presidential election, are commented upon in the conclusion.

¹ The author wishes to thank Julia Buxton, Francisco Panizza and Alberto Peredo for their insights and constructive comments on earlier drafts of this paper. However the author assumes responsibility for any errors.

² For details on these two events see Drake and Jaksic 1995, Otano 1995 and Boeninger 1997

³ My capitalisation of the term 'transition' is explained in Section 3.

2. The Transition and Pinochet

As is now widely known, on the night of October 16th 1998 British police officers entered the hospital room of Augusto Pinochet while he was recovering from back surgery undergone while on a visit to London. The former Chilean dictator was detained on charges of crimes against humanity, setting off months of legal wrangling which, at the time of writing, has yet to come to a conclusion. The Pinochet case would set precedents in international law, raise serious questions about the British, Spanish and Chilean judiciary systems, and spur the United States to be more forthcoming about its role in the overthrow of President Salvador Allende. These were and remain important consequences, but in the country most affected, Chile, the arrest was like a bomb, destroying the calm veneer under which politics had been operating for close to a decade and challenging the widespread view that the man was a “criollo Superman” (Moulian 1999: 13), and thus, assumptions of his invincibility.

In the early days Pinochet’s allies lashed out. The Right accused the Left of “not really adhering to the pacted transition” (Temas Públicos #408). In the United Kingdom initial reporting of the case presented the situation in black and white terms, either by concentrating on the street demonstrations in Chile or by assigning pro-Pinochet motivation to those opposing extradition. This was not helped by those in the British pro-Pinochet lobby such as Lord Norman Lamont⁴, who capitalised on this argument, and who agreed with Lady Thatcher when she maintained that Pinochet had been a friend of Britain’s in an hour of need and he should therefore be set free. This may have been a strategy designed not at setting him free, but at influencing British public opinion (Moulian 1999: 13).

Secondly, the Chilean Right, many of whose members wasted no time in catching flights headed for London, appeared regularly on television threatening a breakdown of democracy should Pinochet not be immediately returned to Chile. Coming from that particular sector, the predictions of democratic breakdown were both disingenuous and malicious. Disingenuous in that representatives of this sector were showing an interest and concern for the well-being of a democracy which for so long they held in contempt; and malicious, in that the comments carried with them an implied threat which was unhelpful at such a critical time. Most disappointingly, this knee-jerk reaction was like a verbal version of the *Boinazo* of 1993, betraying the degree to which the Right had yet to prove its democratic credentials, for if democracy was threatened, by whom was it threatened? We were even subjected to some voices openly demanding that the armed forces intervene to expedite the return of General Pinochet. These were voices in the wilderness, however, as few inside or outside the military took them seriously. But they did indicate the degree to which certain sectors in society were still willing to turn to the military to resolve precarious political situations – an unhelpful but traditional Latin American reaction.

2.1 The Rules of the Game

This radical view, and the street demonstrations that soon developed, both arose out of endemic shock. The transition has become a static system of mostly implicit rules of political conduct, including a series of authoritarian enclaves (Garretón 1994) (such as immunity for Pinochet), which have defined Chilean politics. The system of protection and immunity that was created by the military regime appeared for many years to be airtight. There were three

⁴ Lord Lamont served in various ministerial roles in the governments of Margaret Thatcher and John Major and represents the Right wing of Britain’s Conservative Party.

main and interlinked components to this protective shield: the 1978 Amnesty Law, the parliamentary immunity granted to Pinochet when he assumed his lifetime seat in the Senate, and the structure of the judicial/parliamentary system which made it very difficult to challenge that immunity or alter the constitution. Pinochet's arrest challenged this system, and a fundamental rule of the Transition – Pinochet's untouchable status – had been breached. Ironically, of the entire complex system of *implicit* rules of conduct under which the Transition has operated, it was these *explicit* arrangements which were broken. Complicating matters further, this was done by two foreign powers. The domestic transitional consensus was being challenged by a foreign government.

The challenge, therefore, for the Concertación government of Eduardo Frei was to appear to be upholding the domestic “agreement” with the knowledge that it was playing with an empty hand. Critics accused the government of acting out of fear (Moulian 1999: 15). The more likely explanation is the habitual logic of pacted democracy. The two major arguments it was putting forward were the issue of Chilean sovereignty, and Pinochet's immunity as a former head of state. Despite the legal tradition of *locus regit acto*, wherein crimes are to be tried in the jurisdiction under which they are committed (Pérez 1999: 99), the British Law Lords would eventually reject the first argument, and only partially accept the second⁵.

2.2 The Divisions of the Left

While the government attempted to wade through uncertain legal waters, the very fact that it was doing so created a delicate internal situation within the Concertación. The Socialist (PS) and Party for Democracy (PPD) coalition partners, and even a minority of Christian Democrats (PDC), questioned the government's foreign policy position with respect to the arrest (Qué Pasa Interactivo, #1437).

Among the PS-PPD bloc, the initial jubilation in evidence at a rally attended by 30,000 people on 24 October, 1998, soon gave way to concern about government, party and national unity. Early concern for Foreign Minister Insulza, a former exile who was now charged with defending Pinochet would later turn to criticism. The Ambassador to London, Mario Artaza, another former exile, would also be criticised for what was deemed too vigorous a defense of the Senator.

At the same time, others in the Socialist bloc were struggling to appear balanced whilst maintaining their personal and political positions with respect to Pinochet. PS senator, José Antonio Viera-Gallo declared the detention to be “ethically just but judicially dubious” (La Tercera en Internet, October 23, 1998) and the President of the PS, Senator Ricardo Nuñez supported the use of the humanitarian argument (La Tercera en Internet, October 23, 1998) for liberating Pinochet. It was another Socialist, however, who would have the most difficulty, and have the most to lose, in a bid for fairness.

From the beginning there was anxiety about the effects on Ricardo Lagos' presidential prospects. The Concertación candidate for the 1999 presidential elections and a former Education and Public Works minister in both Concertación governments had been the front runner for months. Indeed some of the first signs of trouble came when he had difficulty articulating his position vis-à-vis Pinochet. A portent of things to come, PDC Senator Andrés

⁵ See House of Lords judgement in Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet, Regina v. Evans and Another and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet, March 24, 1999

Zaldívar, who was competing with Lagos for the candidacy, demanded that Lagos state his position. Furthermore, whether overtly stated or not, as the candidate of the Concertación Lagos was linked to the government's position. Lagos, the ruling coalition's first Socialist presidential candidate, was uncomfortable with the government's "defence" of Pinochet.

Lagos would go on to win the Concertación candidacy, and the presidential election, during whose campaign the Pinochet affair was studiously ignored by both candidates (for opposite, but similar reasons). Nevertheless, the Pinochet affair highlighted problems of policy and electoral strategy in the Lagos campaign – accusations of ambiguity, problems with campaign advisors – which would never be entirely overcome. Worse still, the public divisions within the Socialist bloc indicated to a nervous business community that Lagos was not in control of his entire sector. What meaning, then, would guarantees on other policy fronts have? As the polls show, the Pinochet affair was the beginning of Lagos' stagnation in popularity, while his opponent's support slowly caught up.

2.3 The Consolidation of the Right

A year before the presidential election leaders of the two major parties of the Right, the relatively centrist Renovación Nacional (RN) and the more Pinochetista Union Democatica Independiente (UDI) struck a deal setting out a strategy for selecting a single candidate. They agreed to hold primaries on 20 June, 1999 in order to settle the race between the RN's Sebastián Piñera, and the UDI's Joaquín Lavín. A week later, however, with poll numbers which rarely broke above the 5% threshold, Piñera withdrew from the race, leaving the Concertación alone to carry out its infighting.

These developments did not occur in isolation to Pinochet's arrest. In the race for the candidacy of the Right, Piñera was attempting to present a platform based on the liberal end of the conservative spectrum. His Renovación Nacional party was the less *Pinochetista* of the two main parties of the Right, and carried the banner of traditional Chilean conservatism. But with Pinochet's arrest, the party joined the UDI in leaping to the Senator's defence, and Piñera was left stranded. Lavín, meanwhile, grasped the opportunity to bring coherence to what had been, until then, a lacklustre campaign. Even before becoming the Right's official candidate for the presidency, Lavín was already being criticised for being too ambiguous, for lacking substance.

Pinochet's arrest contributed to an important change in the Right. First, it was now more united. Since at least the days of the 1988 plebiscite, tensions have existed among the forces of the Right. There were two world-views – one, generally associated with the UDI and more closely aligned with Pinochet and the military; and the second, linked to Renovación Nacional, which saw itself as the standard bearer of traditional Chilean conservatism. At the same time, both these camps shared a common political problem. Essentially, as with the Conservative Party in the UK, the Left had co-opted their programme. What policies could the Right advocate that would differentiate it from the government, now that the state had been scaled back, spending was under control, trade was open, and social services had been largely privatised?⁶ With the arrest of Pinochet, the Right at last had a piece of policy it could call its own.

⁶ In the 1999/2000 presidential elections the right attempted to address this problem that has been common in the United States – namely, the insertion of broad social issues (abortion, divorce, crime) into the political debate. This tactic was also useful in drawing attention to Ricardo Lagos' atheism.

Second, the Right also recognised the serious divisions within the Left, and along with the rest of the country witnessed some major stumbling from the presidential front runner, former public works minister Ricardo Lagos. Following Pinochet's arrest Lagos was forced by political expediency into a series of flip flopping statements that only served to confirm some of the fears about his leadership and his grip on his party members and policy.

Whatever benefits the Right may have accrued with its new-found unity were soon in danger of being sacrificed. A cousin of President Frei's, Arturo Frei Bolivar, a Christian Democrat, resigned from the party and from the Senate and, with the encouragement of a group of Pinochet supporters and Pinochet himself, presented himself as a presidential candidate. The essence of his platform was the Pinochet issue itself. This was deemed necessary by die-hard Pinochetistas because of Lavín's own ambivalent position. Indeed, once the weight of the Right had been thrown behind Lavín, the Pinochet issue was cast aside in the name of electoral success. But the unity which was forged throughout the previous months helped Lavín come closer to reaching the Moneda Palace than anyone from his sector had in a generation.

Would Lavín have forced a run-off election had Pinochet not been under arrest in London? It is impossible to say. But it is likely that the spectre of Pinochet, actively participating in politics from his seat in the Senate would have made it far more difficult for Lavín to project the modern, populist, forward-looking image he worked so hard to cultivate. As it was Lavín was able to capitalise on Pinochet's absence and a unified political machine.

2.4 The Military

As with the Concertación, the Pinochet affair forced the military into a compromising position. Since he took office in March 1998, Commander in Chief Ricardo Izurieta has had to walk a tightrope, consolidating his authority on an organisation which had bestowed on his predecessor the title of Honorary Commander in Chief for Life. He has attempted to move the army forward, trying to leave behind the more notorious aspects of the Pinochet legacy, having removed, for example, some 40 percent of Pinochet-era officers, including some of Pinochet's most important close collaborators, whose records are tainted by allegations of human rights abuses. He has also frozen some orders for military equipment (including a number of aeroplanes and tanks), which had been made and promoted by the old guard⁷. As a result – and although in many ways Pinochet remained the spiritual head of the Army – Izurieta has been called “the Commander in Chief of the Transition”⁸ – the transition, in this case, being the Army's own process of transition.

The degree to which Izurieta struggled to balance these two efforts was made evident in his statement that the senator was being defended, not the dictator (Qué Pasa Interactivo, #1437), and in the circumspect nature of other public declarations (La Tercera en Internet, October 22, 1998). This delicate balance also served to deal with whatever restlessness may have existed within the ranks. For example, when uniformed soldiers were seen among the pro-Pinochet demonstrators, Izurieta warned that if this continued they would be punished. Unlike his predecessor, Izurieta seemingly understands and respects the difference between the military and civil spheres. As long as the government maintained its defensive position vis-à-vis Pinochet, this attitude within the military would remain.⁹

⁷ Que Pasa, 18 July, 1998

⁸ Ercilla, 2-25 November, 1998

⁹ Izurieta reportedly said as much in a meeting with Defense Minister Troncoso on the day following the arrest (see Qué Pasa Interactivo, #1437)

3. A discussion on transitions

Clearly the arrest of Senator Pinochet had a tremendous impact on Chilean politics. But has it affected the transition? The issue then becomes whether Chile can still be said to be in transition. This is a question which continues to occupy the minds of countless academics and politicians in Chile. Recently – and especially since the last presidential elections – the issue has become somewhat unfashionable among some academics, but as long as it is unsatisfactorily answered, and as long as politicians and the media continue to refer to a transition, it remains germane. As Linz and Stepan have argued, “it is politically important [to define whether a transition has ended] because, if people accept that a transition has been completed when it actually has not, this may indicate that key members of the aspiring democracy have begun to accept nondemocratic constraints as bearable, or, in the worst hypothesis, in some way useful for the tasks of governing” (1996: 207). And Manuel Antonio Garretón emphasises that clarifying these definitions is more than mere word play – because “from these formulations arise options and political proposals” (1994: 23). Let us now turn to some definitions.

3.1 The incomplete transition

The question of when the Chilean transition began and when, or if, it ended is a major debate amongst Chileanists, perhaps more so in Chile than outside of it. Drake and Jaksic’s important book, *The Struggle for Democracy in Chile*, is telling, in that the first chapter is entitled “Transformation and Transition in Chile, 1982-1990”, and the last is called “The Transition to Civilian Government in Chile, 1990-1994” (1995). Did the transition begin or end in 1990? The final chapter may have been added to the second edition, but nevertheless, this illustrates the confusion which continues to exist among those who study the Chilean transition and the absence of a clear sense of closure. This is, of course, a key question in the analysis of the effects of the Pinochet affair on the Chilean transition.

The two titles in Drake and Jaksic’s book do intimate the way in which O’Donnell deftly addresses the question – by claiming that all transitions are, in fact, composed of two separate transitions. The first terminates with the installation of a democratically elected government. The second relates broadly to what others have called the period of consolidation, to the creation of a polyarchy¹⁰ (O’Donnell, in Mainwaring, O’Donnell and Valenzuela 1992: 18). Chile has experienced both of these transitions to some degree; questions regarding the end of the transition clearly refer to the second.

Earlier, with limited empirical benefit of consolidated transitions (compared to the wave that would occur later in the decade), O’Donnell and Schmitter had referred to a transition as the period in between two regimes (1986: 6). This emphasis on regime type rather than political or institutional conditions supports the assertion that the Chilean transition ended in 1990 as Chile has since then been governed by a regime which meets the minimal requirements for a democracy – it undeniably moved from an authoritarian to a democratic regime. Following this logic, then, the ever-present question of when the transition will end is misplaced or irrelevant.

¹⁰ Although O’Donnell adopts Dahl’s nomenclature, he differentiates between the creation of a political democracy and the broader forms of social and economic democracy.

But in institutional terms, clearly there have been impediments to consolidation, which have resulted in failures to democratise further. We seem to be stuck in between a regime type which suggests democracy, and its institutional constraints which raises questions on the level of democracy. As early as 1990 Enrique Correa, a minister in the Aylwin government, spoke of a process of gradual transfer of political power, implying at once that the transition was only beginning but being consolidated. (Correa, in Muñoz (ed.) 1990). For some a second transition/consolidation – ending with the installation of a democratically elected government – relates broadly the creation of a polyarchy (O'Donnell, in Mainwaring, O'Donnell and Valenzuela 1992: 18). In the Chilean case, a democratically elected government was installed, but polyarchy was not created. In that sense, we might refer to the post-authoritarian period as one of continuing democratic consolidation, pointing to those cases where the democratic government has failed or, less often, succeeded in making significant constitutional and political changes in favour of further, deeper, democratisation.

A more procedural definition comes from Linz and Stepan:

“A democratic transition is complete when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government de facto has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies *de jure*.” (1996: 3)

They claim that when the first post-authoritarian government took office in Chile, only the first of these conditions had been met, pointing, by way of example, to the existence of nine appointed senators out of a total of forty-seven (Linz and Stepan 1996: 207). The problem with setting strident conditions is that there are too many subjective variables. The question, for instance, of whether the Chilean government has been “sharing power” with the armed forces which limit its sphere of action cannot be satisfactorily answered any more than whether any government is “sharing power” with the global financial markets which limit theirs.

Earlier we saw Linz and Stepan's warning about accepting a non-completed transition as completed. But the converse is also true – that actors can attach themselves to the security blanket of transition even after the transition has ended. This has equally negative implications and, after a decade, might be applicable to the Chilean case. Again, this depends on one's definition of transition, but returning to O'Donnell and Schmitter we find that the coalitions which are formed in order to overthrow authoritarian regimes, or to oversee a smooth transition to civilian rule, can begin to exhibit monopolistic behaviour. In these circumstances,

the “...pacts involving such coalescent and ‘cramped’ behaviour by dominant civilian party elites – pacts establishing limited democracy, or *democraduras* – will last longer than the military pacts which sponsor the transition to liberalised authoritarian regimes or *dictablandas*. In the former case, the self-interest of participating party politicians and of established leaders of co-opted subcommunities encourages the perpetuation of such

cartels even after the initial conflicts and dangers which gave rise to such arrangements have diminished” (O’Donnell and Schmitter 1986: 41).

This underscores the interest in maintaining the status quo, including the threat of an authoritarian regression. That is not to say that a return to military rule is impossible, but that such a coalition might be tempted to manage the political reality in order to maintain the status quo.

To illustrate this point further let us examine the necessary conditions for a transition by transaction (Share and Mainwaring, in Selcher, 1986: 194-200):

- 1) the authoritarian regime must have enough support to be able to ‘manage’ the transition;
- 2) the regime must have the ability to control threats;
- 3) the opposition must accept the limits and rules set by the regime;
mass mobilisation must be limited;
- 4) deft political leadership¹¹

While all of these are relevant to the Chilean regime as it navigated through transition, what is more striking is that the conditions remain in place – these are all, with varying degrees of intensity, characteristics of the current regime. For the first condition, although Garretón has called the authoritarian regime the government of transition (1994: 22), the present government can be substituted for the authoritarian regime, and for the third condition, the opposition should be replaced by the current government. In doing so a remarkable, and slightly depressing, picture emerges of political continuum. Indeed, it can be argued that several of the country’s current political problems arise from the dilution of these conditions.

This is informative, in that if the transition has ended, if, as has been suggested above, it is merely the period leading to the installation of a democratic regime, then the Chilean transition appears to be frozen. A democratic regime is in place, but the underlying environment of transition remains. In part we can blame institutional anomalies, the authoritarian enclaves. However in including leadership and support, Share and Mainwaring’s conditions speak to more than institutions. They address an overall political environment, governability, and a mode of thinking which has permeated politics over the last ten year and which have been very much in evidence during the Pinochet case.

3.2 Democracy

The arrest of Senator Pinochet revealed both the resilience and weaknesses of Chilean democracy. Thus whether the transition can be said to be over depends as much on definitions of transitions as on those of democracy. The level or “quality” (Linz and Stepan 1996: 218) of Chilean democracy may have not yet reached its full potential and may never do so. But this is precisely the point. We simply do not know if anyone will ever succeed at changing the binomial electoral system, changing the composition of the National Security Council or removing designated senators.

¹¹ O’Donnell also stresses the importance of political leadership. He points out, however that while the politicians are in control of the process, they are by neither the only participants in democratisation, nor the only sector which must be democratised (in Mainwaring, O’Donnell and Valenzuela 1992: 22-23).

As mentioned above, the notion of a completed transition has been caught in a struggle between ideal, all-encompassing views of democracy and more realistic procedural approaches. This is an area where subtleties count, and Schmitter and Karl tread lightly when they claim that "... polities moving away from authoritarian rule can mix different components to produce different democracies. It is important to recognize that these do not define points along a single continuum of improving performance, but a matrix of potential combinations that are differently democratic" (in Larry Diamond and Marc F. Plattner, eds. 1993: 47). This approach is anathema to holistic views of democracy such as Dahl's, and is critiqued by Roberts (1998). But, while trying to avoid a descent into cultural relativism, it is tremendously helpful for understanding many Latin American case studies. Still, because of the difficulty in ascribing democratic norms – that is to say, to know how democratic a polity is able to become – it is helpful to think historically and locally. One may ask whether a system is more democratic than it was before the transition, and in the case of a re-democratisation, as less or more democratic than before its authoritarian period.

The problem of the ephemeral, intangible and difficult to define is evident in Valenzuela, who warns against the assumption that democracy, even once consolidated, is irreversible (in Mainwaring, O'Donnell and Valenzuela 1992: 59), and Linz and Stepan, who may have identified the quasi-permanent nature of the Chilean transition to democracy in predicting that the democratic regime might become accustomed to the stability of, and decide to maintain, a system which includes authoritarian enclaves (1996: 212). In stating this as a possible future scenario, they ascribe intentions which may or may not exist. In claiming that a new political arrangement was set up, I do the same. But the net result is essentially the same: a permanent transition.

O'Donnell would not accept this. For him, following Dahl, full democracy emerges once the fear of a return to authoritarian rule has disappeared. A consolidated democracy is one in which "actors no longer have as one of their central concerns the avoidance of a (sudden or slow) authoritarian regression, and consequently do not subordinate their decisions (and omissions) to such a concern" (in Mainwaring, O'Donnell and Valenzuela 1992: 48). Any existence of an authoritarian enclave is unacceptable. While his other conditions have generally been met, this central condition is problematic in the Chilean, and I think in the Latin American, case. As Garretón has commented, the likelihood of an authoritarian recurrence is unlikely in Chile. He claims that it became unlikely as soon as Pinochet lost the 1988 plebiscite (1994: 23). Yet enclaves remain. Indeed, Valenzuela recognises this, criticises the tendency to assign to consolidated democracies an unreachable ideal of democracy, and calls for definitions of consolidation to be minimalist and not maximalist (Valenzuela in Mainwaring, O'Donnell and Valenzuela 1992: 60).

3.3 Transition vs. transition

The picture that is emerging, which the arrest of Pinochet served to illuminate, is that of a country stuck in between, defying efforts at categorisation. Thus when Linz and Stepan suggest that "transitions may begin that are never completed, even though a new authoritarian regime does not assume power" (1996: 4-5) perhaps we should keep Chile in mind.

How do the problems highlighted above get resolved? How do the effects of the Pinochet affair on Chilean politics get evaluated if Chilean politics themselves seem impossible to categorise? One solution is to understand that there are two transitions in Chile. One lives in the realm of political theory. This theoretical transition encompasses the fairly short, generic

period during which the Chilean political system (or any system, for that matter) evolved from being non-democratic to democratic, as defined by several essential factors and fundamental freedoms. This can be called the small ‘t’ transition. The capital ‘T’ Transition, however, has come to represent Chilean politics since 1990, a political state of being or object resulting from a decade of academic dissection (Joignant and Menéndez-Carrión 1999: 17). It is essentially a continuing process of democratic consolidation. It forms part of the nomenclature of every day discourse, and it continues to be used without much thought to what is really meant. It is representative of the Concertación government; the product of an unusual alliance between academics and politicians.¹² It is also linked to ideas of political and social modernisation (Garretón 1994: 28).

3.4 The Covenant

A fundamental aspect of the psychology of the Chilean response to Pinochet’s arrest arises out of the type of transition that has taken place. The conventional wisdom within Chile has been that the transition been a kind of pact¹³. The Chilean sociologist and politician, José Joaquín Brunner, has outlined the key pacts of the process; the constitutional pact, the party pact which formed the Concertación, the electoral and governing pact, the institutional pact and a pact for economic development (Brunner 1990: 6,7). All of these pacts imply a level of negotiation and compromise, and barring the party pact, one questions to what degree the others involved negotiation and compromise.

The use of the traditional pact through negotiation has been convenient for Chilean politicians. Brunner admits that the pacted model appeals to some important “national identity myths”, including cool political level-headedness, adherence to the rule of law, and respect for order and hierarchy (1990: 6). Like many of his colleagues who once constituted the opposition and then found themselves in government, he overlooks the fact that the pacted model has been a useful marketing tool, appealing to these myths and disguising the less benign reality of acquiescence. Simply put, the opposition accepted Pinochet’s terms and the regime actually conceded very little.

I do not wish to minimise the hard work and lofty motivations of those who participated in a difficult process. The existence and significance of some “pacts” – principally that which united a group of opposition parties against the authoritarian regime – cannot be ignored. O’Donnell calls the agreement between democratic actors to united against an authoritarian regression the “great accord of the second transition”, and he differentiates between an accord, which is implicit and informal, and a pact, which is explicit and formal (O’Donnell, in Mainwaring, O’Donnell and Valenzuela 1992: 22)¹⁴. This semantic differentiation is useful, but ignores a further element. All pact and negotiations imply a certain equality of power; all parties must be participating because something has brought them to the table. There are weaknesses and strengths on all sides.

The Chilean case – an authoritarian regime buoyed by a degree of internal cohesion and external confidence, agreeing to negotiate the terms of a transition with the opposition (and a coalition, at that) – is in keeping with the general idea of pacted transitions and protected

¹² For an excellent examination of this symbiosis, see Puryear 1994.

¹³ See Brunner 1990; O’Donnell in O’Donnell, Mainwaring, O’Donnell and Valenzuela 1992; Cañas 1994; Otano 1995; Lagos and Muñoz 1999

¹⁴ This distinction provides a useful clarification of his earlier views on pacts. See O’Donnell and Schmitter, *Transitions from Authoritarian Rule*.

democracies. Yet in the final analysis, there is an undeniable air of acquiescence to the Chilean case. Looking back, we now see that the transition took place along the lines set out by Pinochet in the 1980 Constitution.

O'Donnell and Schmitter's definition of a pact contains an element that immediately highlights one problem as regards the Chilean case:

“A pact can be defined as an explicit, but not always publicly explicated or justified, agreement among a select set of actors which seeks to define (or, better, to redefine) rules governing the exercise of power on the basis of mutual guarantees for the ‘vital interests’ of those entering into it” (1986: 37).

In its application to the Chilean transition, this definition runs into difficulty in that it prescribes explicitness and there is a great deal that is *implicit* in Chile; implicit threats from the Right, as well as implied limitations for action from the Left. These “rules governing the exercise of power” do not constitute part of the pact *per se* – that is to say, they were never negotiated – yet their existence is recognised by practically everyone. A primary obstacle to continued democratic consolidation in Chile is the absence of similar implicit or explicit institutional limitations for the political Right – indeed, the Right enjoys institutional benefits.

Clearly delineated limits do exist within the 1980 Constitution, but again, these were not negotiated. Rather, some years after a referendum of dubious legality, the democratic opposition accepted the legitimacy of the document, including these limitations. They made known from the start their displeasure with what were clear constraints to democratic consolidation as well as their desire to introduce amendments, but they accepted it all the same. This was an explicit acceptance of explicit limitations – not an implicit or explicit negotiation for the establishment of the rules of the game.

Therefore I suggest that rather than pact, a better term would be “covenant”. A covenant, in its biblical meaning, is not negotiated but offered by a “greater power” and then accepted. Those acting in contravention of the covenant are punished. But at the cost of strict rules and responsibilities, comes great benefit. Viewed in these terms, the Frei government's reaction to the Pinochet case is illuminated. Part of the covenant, explicit arrangements regarding Pinochet's immunity were breached, so implicit expectations came into play. Questions of legal jurisdiction aside, there was never any question of the government's defense, because the rules called for such a response. Those who opposed the government's position were deemed to be breaking the pact (Temas Públicos, #408).

3.5 Disenchantment

A further point: O'Donnell and Schmitter discuss the undemocratic nature of pacts, in that they are elite-generated and managed (1986: 38). Negotiations are conducted by “...‘notables’ – respected, prominent individuals who are seen as representative of propertied classes, elite institutions, and/or territorial constituencies and, hence, capable of influencing their subsequent collective behaviour [who] seem to offer the best available interlocutors which whom to negotiate mutual guarantees” (O'Donnell and Schmitter 1986: 40). Throughout the transition – both before and after the restoration of democratic rule – Patricio Aylwin projected an image of non-ideological, apolitical leadership, morality, reconciliation and detached and competent management. His participation in the Lagos campaign was a great

asset.¹⁵ The reassuring presence of these actors is the political equivalent of a television commercial using a well-known celebrity. In the case of the Chilean transition, the use of notables served to sell the opposition's acquiescence to the public, and present it in more benign terms.

By and large this approach worked in Chile. Despite its history of political participation, and like most Latin American countries, politics in Chile is mostly a game for the elite. As long as the economy grew, and the country seemed stable, Chileans accepted this. But the last two years have seen an erosion of this confidence. The recession in 1999 was blamed in large measure for the new attitude, but a feeling of disenchantment, much discussed in the media, took hold long before. As sometimes happens in historical processes, a number of factors gathered together in 1998-99: the recession, a severe drought, an indigenous uprising, and the arrest of Senator Pinochet. As a result, increasing numbers of people began to question this elite consensus. The beneficiaries were those who promised, however disingenuously, a new approach, an end to elite deals and traditional practices. In the last election, the person who capitalised on all these sentiments was Joaquín Lavín.

4. Conclusion

After an election campaign during which the issue of Pinochet's arrest was barely mentioned, it is easy to forget the tremendous impact the events of October 1998 had on Chilean politics. The transition to democracy consisted of a series of explicit arrangements which amounted to norms and procedures, rules for political conduct – almost a second constitution. These included a desire for consensus overriding all other political considerations; a stable and moderate Left committed to democracy and to market economics; immunity for crimes committed prior to 1978 and especially for Pinochet (who was granted parliamentary immunity as a Senator-for-life); a military and political Right allowed to ignore the past in the hopes that it would have a stake in a democratic future. Through both empirical and theoretical study we have seen that the Pinochet affair, combined, it must be said, with a badly handled economic crisis, has affected all of these cornerstones of the Transition which for a decade has allowed for a high level of governability. As a result, the Transition itself was faced with its most serious challenge. Although the Concertación narrowly won its third presidential election in January 2000, the unity of the Left remains very much in question. The parties of the Right seem to be closer than at any time since the beginning of the transition. The military remains very concerned about the fate of its spiritual leader, but seems more concerned about the increased vigour which Chilean courts have exhibited in Pinochet's absence. And the economy was more vulnerable than it had been for close to twenty years.

Why was this institution called the Transition so affected? I believe that the transition was based on a faulty assumption: namely that the indisputable and dramatic changes in Chilean political society had overridden some previously existing realities. For example, it was assumed that a new consensus would replace old divisions. It was expected that time would heal, that, as the Transition matured, the consensus would solidify and the divisions disappear. But the opposite seems to be taking place. As the Transition matures, people feel more confident in holding on to old divisions, and feel less of a need to adhere to consensus. A new consensus did and does exist, but at the same time the old divisions have proved hard

¹⁵ As the ascendancy of Vaclav Havel or Corazon Aquino to the presidencies of Czechoslovakia and the Philippines, respectively, demonstrated, turning to such leadership figures is by no means an exclusive characteristic of pacted democracies.

to suppress, and periodically are exposed. Thus the street demonstrations in favour of and against Pinochet, and thus the almost even division between Left and Right in the last presidential election.

At the same time use of the Pinochet affair as a case study reveals some flaws in current attitudes towards the Transition. Whether it was pacted or not, as has been claimed, is disputable, and I have suggested an alternative concept. Furthermore, it is not a transition at all, but a sort of democratic consolidation with, so far, little hope of reaching an end. As a result it is a quasi-permanent state of political evolution, with unwritten rules which must be adhered to. Countries such as Great Britain have a tradition of unwritten constitutions, which are, in effect, norms of political conduct which have evolved over centuries. It would be ironic if the Chilean political system, steeped as it is in a legalistic tradition, were to inadvertently go down that same path.

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