

FACTS AND CONTEXT*

Lucas Sierra

Once more, in 14 years, the past is being brought forward to the present. Once again we are discussing causes and responsibilities. Nevertheless we are not discussing the basic events of the past. Its “context” is generating, and will go on generating, controversy but not the actual events.

The same happened with the Rettig Report. Nobody talks about those “presumed” to have disappeared nowadays, much less when a few years later, at the Table for Dialogue, the men in uniform confessed to having thrown bodies into the sea. Today something similar is happening with the report of the commission led by Archbishop Valech, in which I participated.

Again, different interpretations are competing over the “context” of political imprisonment and torture, but little by little the fact is emerging that such practices existed. The reaction of the military has helped in this. In contrast to what their reaction in the face of the Rettig Report, their disposition has been receptive and, in general, they have accepted the content of the new report.

If, up to now, we have heard that political imprisonment and torture have been “isolated” events, it is now no longer possible to continue doing so. We can argue about causes and responsibilities but not the fact that there was a systematic practice, which involved legal regulations and fiscal resources, and which was a reflection of an unprecedented concentration of power, of a hypertrophied State that exceeded itself as far as treating individuals was concerned.

What sense does this have 30 years later? I think it has two fundamental points. With respect to the victims, an attempt to re-establish a certain balance between themselves and the State, a balance that was broken in a brutal manner. With respect to society, an attempt to illuminate the facts of a past perceived in different ways, with more questions than answers. If the perception is diffuse, if there are more questions than answers, then it is impossible to look realistically to the future: we cannot

Lucas Sierra. Lawyer, University of Chile. Ph.D in Social Science and Politics, Cambridge University. Professor of Law at the University of Chile, columnist for the newspaper *El Mercurio* and researcher for the Centro de Públicos. Formed part of the National Commission for Political Imprisonment and Torture that elaborated the report given to President Lagos November 28th 2004.

* Column published in *El Mercurio*, December 6th 2004.

advance peacefully treading on doubts. Only if these are cleared away can we draw a line between the past and the future.

Some people fear that this will open old wounds. The reaction of the men in uniform suggests that we are talking about a fear that is unfounded. But the point is relevant so as to deal sensitively with the question of responsibilities, especially as far as civilians are concerned.

How much did we know? Who has to be accused? Those who didn't take up arms or even participate in a protest demonstration?. Those who voted Yes in 1988? It would be absurd since it supposes that knowledge is binary: we know all or nothing, as in black or white. Nevertheless experience teaches us that it is gradual: we know more or less, and even sometimes, and understandably, we don't want to know.

And the civilians who participated in the regime? Obviously there are degrees of participation: those who were more in favour of the use of force appear to be more compromised. But among these we have to distinguish between those who have retired from public life and those who are still there. The first are in the hands of their consciences. The second, on the other hand, have decided to let their past be scrutinised publicly. They are in the hands of the electorate. □

REPORTS*

The return to democracy has witnessed two reports: the one from the Rettig Commission and the more recent one from the Valech Commission, in which I participated. This is not rare in societies that, like our own, have experienced breakdowns in their democratic regimes, which have been followed by a concentration of power that, inevitably, leads to abuse. It is part of the legacy of authoritarianism.

This legacy mortgages the return to democracy. What can we do with it?. Difficult: those responsible are still alive and, sometimes, with power. There are amnesties and provisos: the knowledge of what happened takes time in being established since the concentration of power that permitted the abuse has drawn a veil over it. Whatever sense of justice there is, slams against a brick wall. Literature calls this real karma of transitions "transitional justice".

The Rettig and Valech Reports are part of our transitional justice. Obviously they do not carry out justice in the legal sense of the term but they do in others, since they give a long delayed visibility to the victims

* Column published in *El Mercurio* on December 27th 2004.

and they throw light on practices in which the powers at the time were involved. In this way they make denial difficult and encourage recognition. There is something just in this. In a historical sense, perhaps.

The purpose of relating a history is similar in both reports, like two chapters of a same account. Nevertheless there are significant differences between them that are both quantitative and, more importantly, qualitative.

The cases known to the Rettig Commission are a tenth of those known to the Valech one. This has to do with its very different character: the first got to know about executions and those who disappeared, the second about political imprisonment and torture. It also explains the different way in which they came to their conclusions.

To begin with the Rettig Commission could not count on the testimony of the victims. Moreover there is little trace of the executions, a deficiency that makes it extremely painful in the case of those who “disappeared”. The drama surrounding these is precisely the fact that there is no trace of them.

Of the cases in the Valech Commission there is more trace. The victims are alive to give testimonies. Moreover in a great number of cases of political imprisonment there is documentary proof: the lists of the Armed Forces, certificates, proclamations published in the press, legal proceedings, and files. The repression in Chile had a bureaucratic face. It can sound chilling but it is very useful in reconstructing history.

Torture is different. It almost never leaves traces so many years later and, obviously, there is no documentary proof. Because of this, as its report indicates, the Valech Commission did not seek to prove torture in every particular case but, given the immense number of testimonies that coincided about methods, places and times, the accusations made at that time and other background details, it did become convinced that it was of a systematic character and, also, that there are no reasons to doubt the political prisoners whose accusations take a similar line. □