

CONTEMPORARY CHILEAN POLITICS

I. Basic Political Institutions

II. Democracy Returns (1990-present)

III. Should Human Rights Trials Be Held?

I. Basic Political Institutions

□ EXECUTIVE

- 6-year presidential terms w/ no immediate re-election
 - 1989 reform removed reelection & 8-year term
 - 2005 reform shortened mandate to a 4-year term
- ballotage election:
 - 1st Round: need 50% of vote
 - 2nd Round: top 2 candidates in majority runoff
- powers
 - veto (2/3 to override in each chamber)
 - exclusive introduction of budget law
 - includes exclusive ability to propose revenues
 - Congress has 60 days to react or PRES budget passes
 - can name & remove all ministers
 - needed approval of NSC for military personnel decisions until Aug. 2005 reform

□ LEGISLATURE

- lower house: *Chamber of Deputies*
 - representation by population
 - 4-year terms elected every 4 years
 - binomial electoral system
 - 2-person slates in 60 districts
 - must win double the votes of second-place to win both seats
 - system aims at a two-party system
 - might provide room, though, for the center-left Concertation to compete separately
- upper house: *Senate*
 - 2 per 19 districts
 - plus 9 appointed
 - plus former Presidents who served 6 or more years
 - 1989 reform added 12 more elected seats (to original 26) so that appointed seats no longer held 1/4 of Senate
 - 8-year terms w/ roughly half elected every 4 years
 - binomial electoral system
 - 2-person slates in 19 districts
 - must win double the votes of second-place to win both seats
- 2 coalitions dominate LEG thus far:
 - Concertation v. the Union for Progress
 - Concertation dominates elections but can't get 2/3 to amend constitution
- NOTE: unelected seats were abolished in Aug. 2005 effective beginning w/ 2006 session

JUDICIARY

- Supreme Court & judiciary held in low esteem (as in many countries) due to:
 - corruption allegations
 - slow speed of system
- 1997: Frei Ruiz-Tagle government mobilized broad support in LEG for sweeping reforms
 - Supreme Court expanded to 21 members
 - appointed by PRES from list generated by the Court
 - confirmed by 2/3 vote of Senate
 - new mandatory retirement at age 75
 - new Public Ministry separates investigation & prosecution from judges' role
 - prior to this reform, Chile followed norm in LA & Europe
 - MAGISTRATE MODEL: judges investigate & preside over trial

II. Democracy Returns (1990-present)

- **Patricio Aylwin (1990-1994)**
 - "Concertation" candidates wins 55% of the vote
 - won 60% of CofD but held < 1/2 of SEN
 - majority of vote, but appointed seats & new electoral system prevented majority

- **Eduardo Frei Ruiz-Tagle (1994-2000)**
 - won 58% of PRES vote
 - but still no SEN majority

- **Ricardo Lagos (2000-2006)**
 - won 51% in runoff
 - 1st round was 48 to 48 v. J.Lavín
 - majority in SEN after Pinochet left

- **Michelle Bachelet (2006-2010)**
 - won 53.5% in historic victory as first female victor without spousal ties
 - 20-18 edge in new SEN
 - began term w/ struggles re: transportation & education
 - ended term with very high approval ratings

- **Sebastián Piñera (2010-present)**
 - center-right billionaire won 51.6% in runoff against Eduardo Frei Ruiz-Tagle
 - both candidates' parents had founded the Christian Democratic party; Piñera is the first non-Concertation president
 - Piñera saw his popularity rise from miners' rescue & fall amid persistent protests regarding higher education policy

III. Should Human Rights Trials Be Held?

III.A. Human Rights in the Southern Cone

TABLE on Regional Summary

	<i>Disappearances & Political Murders</i>	<i>Other Victims</i>	<i>Military Self Amnesty</i>	<i>Trials Held Quickly</i>
Argentina	36+	??	yes	yes
Brazil	0.2	15	yes	no
Chile	27	2,623	yes	no
Uruguay	8	900	no	no

NOTE: victims listed per 100,000 inhabitants

III.B. Human Rights in Contemporary Chile

- **1978 Amnesty Law** → covers 1973-78
 - 1990: Supreme Court upheld law
- **III.B.1. Aylwin government**
 - **Rettig Commission on Truth & Reconciliation:** in speech on 3/4/91 Aylwin
 - reported 2,279 deaths
 - asked forgiveness
 - urged military to do likewise
 - **National Corporation for Reparation & Reconciliation established in 1992**
 - continued to investigate whereabouts
 - **1992-93 efforts to annul amnesty law failed**
 - **Military "saber-rattling"**
 - 5/28/93: forces put on alert near government buildings

III.B.2. Frei government

- **The Orlando Letelier case**
 - heads of DINA convicted of ordering 1976 murder of ex-minister (then in exile in Washington, DC)
 - Supreme Court rules in May 1995 against appeal while the nation waits and troops are on alert
 - both generals hold out for over a week before the government moves in to arrest first P. Espinoza &, months later, M. Contreras
- **Stalemate in the Senate:**
 - *a variety of bills all stall from mid-1995 through 1999*
 - RIGHT: extension of amnesty through 1990
 - CENTER: amnesty in exchange for collaboration
 - LEFT: annulment of the 1978 Amnesty Law
- **3/11/98: Pinochet is sworn in as senator for life upon his military retirement**
- **10/16/98: Pinochet arrested in U.K. under Spanish warrant**
 - Chilean government attacks the arrest in the name of sovereignty
 - many Socialists and Communists celebrate the arrest
 - tensions within the Concertation worsen
 - British Law Lords (to the surprise of many)
 - reverse a lower court ruling overturning the arrest
 - grant an unprecedented appeal

- the second hearing also upholds the arrest (but under narrower reasoning & scope)
- Pinochet appeals a subsequent court decision affirming his eligibility for extradition
- 1/11/00: British Home Secretary Jack Straw announces that Pinochet appears medically unfit to stand trial
 - 3/2/00: Straw releases AP who returns home
- **New legal action paves the way for more trials in Chile**
 - legal justification in July 1999 decision is failure to produce the bodies
 - charge of kidnapping (*secuestro calificado*)
 - no amnesty & no statute of limitations because crime is ongoing
 - Supreme Court has already upheld that reasoning
 - in September 1999, the “Caravan of Death” case is opened regarding events in October & November 1973
 - charging 5 officers with responsibility for 18 “kidnappings”
 - (documents 57 homicides in which the location and identity of the remains are known)
 - over 50 cases opened against Pinochet by January 2000
 - in March 2000, judge Juan Guzmán adds AP to “Caravan of Death” case

III.B.3. The Lagos gov’t

- **Some trials proceed**
 - 6/21/00: conditional amnesty law passed
 - amnesty to military officers who provide information that helps to locate disappeared persons
- **Initial AP cases suspended on appeal**
 - courts cite “moderate subcortical dementia” as rationale
 - critics argue that AP does not suffer from an inability to understand the process and, therefore, should stand trial
 - all recognize that the ruling likely prevents AP from serving in the Senate
 - *If he has sufficient faculties to be a Senator, then he would have sufficient faculties to stand trial*
 - 7/4/02: AP resigns from the Senate
- **REPARATIONS**

Aug. 2003: Lagos announces plans to increase by 50% reparations paid to families of the disappeared

 - plan also calls for lighter sentences for junior officers on the grounds that they had limited knowledge & authority
- **INVESTIGATION of TORTURE:**

Nov. 2004: gov’t Commission on Political Imprisonment reports systematic torture at over 1,100 detention centers during the military regime

 - report leads to plans to provide reparations to over 27,000 verified living victims of torture
- **Riggs Bank scandal eats away at AP’s support**
 - 9/2005: AP loses immunity re: Operation Colombo
 - 10/2005: AP loses immunity re: tax fraud charges
 - corruption charge weakens AP in public opinion polls

III.B.4. The Bachelet gov't

- END of ERA re: PINOCHET
2006: neither case is suspended on health grounds
 - Dec. 2006: Pinochet dies at age 91
- TRIALS EXPAND
By May 2011,
 - 276 convictions & 66 result in jail sentences
 - Time's passing used to justify many probations
 - Over 500 more people face charges & over 500 other investigations did not result in trials
 - Probability of conviction & sentencing depends markedly on which judge presides
- POLITICS of MEMORY
Bachelet spearheads creation of a museum
- LEGISLATIVE STALEMATE REMAINS
New "interpretive law" sidestepping the 1973 amnesty never emerges

III.B.5. The Piñera gov't

- pressure to hold trials still there
- military & others opposed to trials
- The presidential victory of center-right businessman Sebastián Piñera (over Eduardo Frei Ruiz-Tagle) ushers in a new era as the Concertation has lost power for the first time
 - What will happen on the human rights front?
 - *As a Chilean citizen, what would you want to do & why?????*

Transitional Justice in Argentina, Chile, & Guatemala

	<i>Argentina</i>	<i>Chile</i>	<i>Guatemala</i>
<i>Disappearances & Summary Executions</i>	36 / 100,000	27 / 100,000	360 / 100,000
<i>Military Self Amnesty</i>	yes	yes	no: Peace Accord
<i>Civilian Government Action re: Amnesty</i>	1983: repealed 1986-1987: restored 1989-1990: pardons 2003: repealed 2005: overturned by courts	1990: affirmed by courts 1999: partially overturned by courts	NOT APPLICABLE
<i>Truth Commission</i>	yes	yes	yes
<i>Reparations</i>	yes	yes	yes, eventually
<i>Prosecution during the first decade</i>	Limited to the high command & then reversed	Limited to cases involving foreigners	Varied, but focused on subordinates & conducted amid considerable turmoil
<i>Prosecution during the second decade</i>	Resumed re: child trafficking (an offense not covered by amnesty)	Resumed for hundreds of cases at all levels for kidnapping (an offense not covered by amnesty)	NOT APPLICABLE
<i>Prosecution during the third decade</i>	Resumed for hundreds of cases at all levels	NOT APPLICABLE	NOT APPLICABLE

Some Issues to Consider

- **Can the end ever justify means that violate human rights?**
 - If so, when?
- **Is a universal standard desirable?**
 - If so, on what issues?
 - How could & should it be enforced?
- **Are neighboring governments likely to support trials?**
 - Why or why not? If so, under what conditions?
- **Are domestic trials likely to help or harm democratization?**
 - What national conditions make trials more likely to occur?
 - Are they the same conditions that make trials more likely to help?
- **Should trials be held even if the risks are considerable?**