

LAWYERS, CONFLICT AND TRANSITION

RESEARCH INSTRUMENT: CHILE

BACKGROUND

This is a comparative project looking at the role of lawyers in conflict and transition in Chile, Cambodia, South Africa, Israel, Palestine, and Tunisia. We are interested in the role that lawyers play during conflict and authoritarian regimes, as well as transitional periods, in defending and promoting human rights, engaging with civil society, litigation strategies as well as conversely using law to inhibit transformation. Themes include: (a) The meaning of the **rule of law in Chile** over time; (b) **Chilean legal culture** over time (c) The role of legal collectives e.g. **Bar Association** (c) **public perceptions** of lawyers over time (d) **Cause lawyering and social movements** (including strategic litigation and actions of lawyers outside the courtroom) (e) legal pluralism in Chile (e.g. role of **international human rights law** or **indigenous/bottom up** law). Project is an **independent academic research** project funded by the ESRC involving QUB Law and TJI.

INFORMED CONSENT, DIGITAL RECORDING AND ANONYMITY

Explain anonymity and consent, and digital recording.

INTERVIEWEE'S PERSONAL BACKGROUND

➤ (For Lawyers) What motivated you to become a lawyer?

RULE OF LAW AND LEGALISATION OF POLITICS

- What does the phrase '**rule of law**' mean in Chile?
- How is the term '**human rights**' understood in Chile? Is it only used in relation to the past? Is it viewed as an intrinsic part of the rule of law?
- Did a version of the **rule of law** exist during the Pinochet regime? What sort of version? From the outside, it did appear to use laws quite a lot – why did the regime do this? What explains the legal orientation of the regime (e.g. decree laws, new 1980 Constitution, preservation of courts)? What does the clandestine nature of DINA tell us about the rule of law under Pinochet?
- What effect does the **Pinochet era constitution** have on the rule of law in Chile today?
- How important is **dealing with the past** for addressing contemporary problems in Chilean society? (human rights, transparency, accountability)
- Can you identify a 'moment' during the transition when democracy became **embedded**? How was this different than the Pinochet notion of '**protected democracy**'?
- To what extent is the legal system (courts, judiciary, legal collectives etc) today free from **political, state, and military control**? Does the **military justice system** influence the civilian legal system?

- Chile is often described as a '**legalistic**' society. Firstly, what does **legalism** mean to you ? Why is Chile so **legalistic**? What are the consequences of such legalism ? Is it because of the abuses of the past ?
- On difficult political issues, do **politicians sometimes abdicate responsibilities** and expect lawyers or judges to sort things out for them – sometimes called the legalisation of politics. Can you give some examples? Why does this happen ?
- Are the Chilean people now more aware of their human rights ? What challenges remain for the rule of law in Chile?

LEGAL CULTURE AND GENDER

- How would you describe the **legal culture** in Chile?
- What has shaped legal culture (e.g. legal education, political history, the nature of the Chilean state)? **How important are personalities** (e.g. chief judge, bar council head, law school Deans) in shaping legal culture?
- Are there any traces of the **colonial legacy** on Chilean legal culture still be felt today? (e.g. education, practicalities, cultural traits – accents, language, ceremony). Any **neo-imperial** influences ?
- What impact, if any, did **the 1970-3 'socialist experiment'** have on lawyers?
- How did the legal community and legal culture change **after the dictatorship**? Was there a **transformation of legal culture**?
- Were lawyers themselves the **drivers** of changes in the legal culture driven by lawyers themselves or by other events (e.g. judicial reforms in the late 1990s, changes in the legal education, criminal justice reform)?
- Is law (and are lawyers) responsive to issues of **gender** in Chile? What influence does **gender** have on legal culture? Are women fully integrated into the legal profession, as judges, as lawyers, in the Bar?

LEGAL COLLECTIVES

- How would you describe the role of the **Bar Association** in Chile? Has it been a force for good in society? What is its role in broader public debates?
- How did the Bar Association function under the **dictatorship**?
- How do lawyers decide whether to join the Bar Association or not? Impact ?
- How are lawyers who breach the **Code of Ethics** held accountable if they are outside the Bar Association?

ROLE AND RESPONSIBILITY OF LAWYERS IN CHILEAN SOCIETY (MODERN AND HISTORICAL)

- What are the **responsibilities** of lawyers in Chilean society? Are they **simply representing their clients** or do they have **broader responsibilities** ? What are the characteristics of a typical (Chilean) lawyer?

- **How** are lawyers seen by the public in Chile? Are they ever seen as **arrogant? Greedy** ?
- **Cultural Capital**: Do lawyers **have power or influence** on local debates? Does the state care about what lawyers say publicly? Does the public? Do lawyers use their power wisely? **Do lawyers bring hope** for a better Chile?
- **Do lawyers ever -oversell the product of law and what it can achieve** ? **What is the relationship between lawyers and the state** in Chile? How do lawyers see the state? Does state **try to intimidate lawyers** ?

What About Historically - During the Pinochet Dictatorship (1973-1990)

- What **role did lawyers play in society** during the dictatorship (e.g. did they oppose 'state of emergency' decree)? Should lawyers have **boycotted legal proceedings** during the dictatorship ? Did the Bar **protest** or go along with the regime ? Were lawyers **targeted** by the regime? **Why target lawyers** ?

During the Transition (post-1990)

- What were the biggest **challenges** for the legal community at the start of the democratic period? Were lawyers **instrumental to strengthening** the rule of law, or peripheral to this process?

CAUSE LAWYERING AND SOCIAL MOVEMENTS

We are particularly interested in activist lawyers – those who work for or with civil society groups, or victims, or social movements – lawyers who litigate on behalf of these groups or help them with strategy – sometimes called '**cause lawyers**'.

- (For Lawyers) Do you see yourself as such a lawyer? If so, **why** did you become a cause lawyer? How would you define your 'cause(s)'?
- During the Pinochet Dictatorship (1973-1990) and 1990 onwards ?
- To what extent did **cause lawyering** take place during the dictatorship? If so, with what outcomes and consequences?
- What about from 1990 onwards ? And now ? Other types of cause (or 'activist') lawyers in (e.g. gender, indigenous rights, LGBT rights, labour rights ? dealing with the past)? Are there any lawyers **who stand out**? Why ?
- Doing such work, how does one maintain **professional 'neutrality'**? **Does professionalism mean neutrality**?
- How does one balance **competing obligations** (to clients, social movement, community, livelihood, family)? **main obstacles to legal activism** in Chile (e.g. resources, personal safety, effect on professional standing, legal culture ?)
- Are such lawyers seen as **trouble-makers in the profession**?
- Do lawyers tend to **dominate civil society organisations** – have the loudest voices with the most technical information? Or are they more likely to be

assistants to civil society leaders? Within social movements, do lawyers '**professionalise**' **activism**? Are they viewed as conservative? Are lawyers ever **inspirational** or dynamic in social movements?



LITIGATION STRATEGIES ON HUMAN RIGHTS ISSUES

- **How effective is litigation** as a tactic compared to other strategies (e.g. political lobbying, demonstrations)? **one or two examples where you can say yes, good lawyering, good litigation made a real difference to these people?**
- **Has human rights litigation** had a significant positive impact on **events outside of the courtroom**? Are there instances when **litigation distracted** people or resources ? **Cases which have provoked a backlash ? Failed triumphs ?**
- **What** is the relationship between lawyers and **victims**? Who controls the relationship and the approach taken **in cases – the victims** or the lawyers? Has this dynamic changed over time?
- (For Lawyers) Are there **clients you would not represent** and, if so, why not? Has this changed over time?

LAWYERS AND DEALING WITH THE PAST DURING THE TRANSITION

- To what extent did lawyers **drive the human rights agenda** during the transition? (compare victims; victims' groups; other civil society)
- Did lawyers **sustain interest** over the decades? Why or why not? Why was there **a switch from keeping old cases open** to launching new cases in the late 1990s?
- **How important was the televised trial of Manuel Contreras (or other major televised trials ?) for people to see justice performed ?**
- What does **justice mean for victims of the dictatorship**? To what extent does the Chilean legal system **deliver justice for victims** of the dictatorship or other human rights abuses? What are the **main obstacles**?
- What role did lawyers play in creating/ shaping the **truth commissions** in Chile ? What role did lawyers have **within** these commissions?
- How did more **rightist lawyers** challenge reforms or transitional justice?
- How has **legalism** impacted on the way in which the past has been dealt with in Chile?



➤ **LAWYERS AND POLITICAL NEGOTIATIONS (Negotiations Dealing with the Past and Constitutional Reform)**

- What role did lawyers play in **political negotiations** in the 1980s (including negotiations leading to 1988 plebiscite)? Were lawyers a **help** or a **hindrance**? Were many of the political leaders lawyers, and was their training as lawyers

relevant to the pace and outcome of agreements? Was the legal profession divided over the Plebiscite?

- What role have lawyers played, directly or indirectly, in **political reform** during the transition? In the post-dictatorship period, were lawyers active in negotiating with the military or addressing tensions between the government and military leaders?
- Have lawyers been involved in **post-2010 protests** and efforts to challenge the Constitution? What role have they played in the social movement?
- What role do you envisage for lawyers in the **forthcoming constitutional reforms**?

State Human Rights Institutions and Government Lawyers

- Do the new/modified **human rights institutions** of the state (*Instituto Nacional de Derechos Humanos, Museo de la Memoria y la Derechos Humanos, Programa de Derechos Humanos*) participate in cause lawyering? Do they occupy space previously taken by cause lawyers?
- What is your view of government lawyers? Can a **lawyer who works for the government** advance the cause of justice and equality? Would you work as a government lawyer? If not, why not?

LEGAL PLURALISM/ROLE OF INTERNATIONAL LAW

- **How does the Inter-American system** contribute to justice within Chile?
- Is local or **informal justice** important in Chile? If so, what role does it play now, and did it play a different role during and just after the dictatorship?
- Do **indigenous peoples** (Mapuche) in southern Chile articulate different understandings of law and justice? If so, how are their views received by legal professionals, policymakers etc?
- Are **human rights** part of Chilean legal culture or seen as 'Western' or 'neo-imperialist'? Are **judges receptive** to international human rights law arguments? What about role of **international humanitarian law** shaped understandings of dictatorship (borrowing rhetoric of the dictatorship to use against them?)
- **Role of international community** - Do lawyers who have international contacts have a particular status? Are lawyers **brokers/ bridges** between the local and the international? Does international funding effect local legitimacy?

ETHICS QUESTIONS

- Explain ethical **commitment to put something back** – two reports for local community – ask if they have any ideas? **Have you had any previous experiences (good or bad) with international researchers?** What made them good or bad in your view? **Does international research actually help the people of Chile? Why did you agree to take part in this research?**