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The dimension of the fairness in reparation policies for human rights violations: An analysis of the Chilean case

La dimensión de lo justo en las políticas de reparación para las violaciones de derechos humanos. Un análisis del caso chileno

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How to cite

Abstract

The normative or classical notion of Transitional Justice has been questioned in defence of a notion of transformative justice, in which lies a valuable potential for reparation. This paper aims to analyse the dimension of "fairness" that underlies Chile's reparation policy for human rights violations derived from the Reports of the Truth Commissions and materialised in a series of symbolic and material measures aimed at addressing the consequences of political violence on survivors and their families. Through a review of documents and bibliography, we delimit

what is understood by justice in the field of Transitional Justice and what is understood by justice, specifically regarding reparation policies. The case of the Chilean reparation policy as a response to the crimes against humanity committed during the 1973-1990 civil-military dictatorship is analysed. It defends the need to move towards a non-regulatory model of justice which, in addition to satisfying the demand for retributive justice of a significant proportion of the direct victims, also repairs indirect victims and acts as a preventive measure, helping to reduce segregation, inequalities and social polarisation; in short, a way to move towards greater levels of democracy, social justice and a culture of peace.

Resumen

La noción normativa o clásica de Justicia Transicional ha venido siendo cuestionada en defensa de una noción de justicia transformativa, en la cual radica un valioso potencial reparador. El objetivo de este trabajo es analizar la dimensión de "lo justo" que subyace en la política de reparación chilena por violaciones de derechos humanos, derivada de los Informes de las Comisiones de Verdad y materializada en una serie de medidas simbólicas y materiales orientadas a abordar las secuelas de la violencia política en las personas supervivientes y sus familias. A través de la revisión documental y bibliográfica se delimita qué se entiende por justicia en el campo de la Justicia Transicional y qué se entiende por justicia, concretamente, en torno a las políticas de reparación. Se analiza el caso de la política reparatoria chilena como respuesta a los crímenes de lesa humanidad cometidos durante la dictadura cívico-militar de 1973-1990. Se defiende la necesidad de avanzar hacia un modelo no normativo de justicia que, además de satisfacer la demanda de justicia retributiva de una parte importante de las víctimas directas, también repare a las víctimas indirectas y actúe como medida de prevención, contribuyendo a reducir la segregación, las inequidades y la polarización social; en suma, una vía para avanzar hacia mayores cuotas de democracia, justicia social y una cultura de paz.

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Intoduction

In societies where massive violations of human rights (HR) have been committed, the need arises to resolve the problems derived from political violence and the abuses perpetrated, through a variety of processes and mechanisms, judicial or extrajudicial, integrated under the concept of Transitional Justice (TJ), whose aim is to hold accountable those responsible, to achieve justice and, ultimately, to achieve social reconciliation (United Nations, 2004). In this paper I will not use the term reconciliation, as I question whether it is legitimate to demand reconciliation from victims in any context, but especially in contexts of state terrorism, as was the case in Chile.

In Chile, as in the rest of the post-dictatorships in the Southern Cone, a paradigmatic model of JT was implemented whose pillars are truth, justice, reparation, the implementation of guarantees of non-repetition and memory (Salvioli, 2020). Indeed, this notion emerged from the very experience of post-dictatorship transitions in the region, especially in Argentina and Chile, taking shape in the various spaces of reflection where it was debated how to act in the face of the atrocities of the recent past (de Greiff, 2011a; Muñoz and Gómez, 2015; Ordoñez, 2020). In response to the questions of what to do with the actors involved (perpetrators and victims) and what tools to use from among those already existing in the field of international law, this model was set out in the United Nations Secretary-General's 2004 report on the rule of law and transitional justice in conflict and post-conflict societies (United Nations, 2004). However, this normative notion of JT, which has been progressively extended in recent decades in a generalised manner to other geographical and socio-political scenarios in transition, has been questioned. Indeed, Kathryn Sikkink, in analysing a series of individual international trials for crimes against humanity[2], appreciates not only its expansion, but also its contradictory effect, because, just as the word justice has a different meaning for each person, it is also difficult for trials to meet everyone's expectations; however, all victims want preventive action to be taken so that serious human rights violations are never repeated (Sikkink, 2013).

The questioning points to the fact that it is a model that has emerged in a very particular context, that it has been implemented in new transitional scenarios that are not necessarily aimed at a return to democracy, and – what is important to highlight here – that it is a model that is blind to dimensions of justice that transcend civil and political rights. Along these lines, following Nancy Fraser's (2008) distinction between normality and abnormality in the discourse on justice, these dichotomous categories have been

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[2] The word "lèse" is defined by the Royal Spanish Academy as an adjective referring to something that has received harm or offence; in this case, humanity. For its part, the crime against humanity is defined as a crime of particular gravity "that is committed as part of a widespread or systematic attack against a civilian population and with knowledge of that attack" (Diccionario panhispánico del español jurídico, 2023).

applied to the field of JT (Ordoñez, 2020): the normal discourse would allude to the pa-radigmatic model described, characterised by the protection of civil and political rights and the predominance of retributive justice; while the second, abnormal, would refer to the incorporation of economic and social issues, and where justice must also address measures aimed at social justice. This argues for a transformative – and prospective – notion of justice, with valuable restorative potential (Arbour, 2007; Uprimny-Yepes and Guzmán-Rodríguez, 2010; Laplante, 2014; Lambourne, 2014; Muñoz and Gómez, 2015; Ordóñez, 2020; Cubillos-Vega et al., 2022).

This paper is based on this second reading of the notion of justice. The aim is to analyse the dimension of "justice" that underlies the policy of reparation implemented in the Chilean context. To do so, it resorts to a strategy of documentary and bibliographic review, first delimiting what is understood by justice in the field of JT and, specifically, in the field of reparation policies for Human Rights violations that have been imple-mented in the country since the return to democracy in the 1990s. It argues the need to move towards a non-normative model of justice that, while satisfying the demand for retributive justice of an important part of the direct victims, also compensates indirect victims and acts as a measure of prevention or non-repetition, contributing to reduce segregation, inequalities and social polarisation, as a way to advance towards greater quotas of democracy, social justice and a culture of peace.

Outlining a notion of justice in the field of Transitional Justice

The definition of the concept of justice is complex and controversial, and since ancient times there have been endless debates about its nature and purpose. However, as it is not the purpose of this paper to analyse the concept of justice in its multiple theorisa-tions, I will focus only on those notions relevant to the field of JT. On the other hand, a theory of justice that is adequate to address the problem of JT and reparation measures for Human Rights violations is also a widely debated issue, and will largely depend on the specific context.

Studies relating to conceptions of justice in contexts where crimes against humanity have occurred are still scarce. A first approach was made by Carlos Nino (1996) who, based on the case of Argentina, reflected on the political, moral and legal limits of retroactive justice; this was especially relevant given the laws of Full Stop, Due Obe-

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dience and the orders not to investigate emanating from the amnesty processes. Years later, Jon Elster (2004) was a pioneer in theorising the JT, analysing from a historical perspective various forms of conflict and their influence in restricting/conditioning the justice decisions taken by states. In this sense, Elster (2004) presents a broad genealogy of the notion of JT, analysing its manifestations in contexts of violent conflict from the restorations of Athenian democracy in 411 and 403 BC onwards, although other legal scholars, such as Louise Arbour (2007) or Ruti Teitel (2003), locate its roots in the Nuremberg Trials. From the preliminary work we can find subsequent contributions by authors who, following Webber's (2012) distinction between retrospective justice (retroactive: oriented to the past) and prospective justice (oriented to the future, with a transformative purpose), defend one or the other. In this second, more prospective group, the importance of measures aimed at the non-repetition of HR violations and the necessary institutional and structural transformation of the devices and conditions that favoured violence has been increasingly considered (Lambourne, 2009; 2014; de Greiff, 2011b; Webber, 2012; Laplante, 2014; Grey, 2017; Cubillos-Vega et al., 2022).

Although it is difficult to define a conception of justice, it is worth mentioning three classic modalities that are related to JT (Cubillos-Vega et al., 2022):

1. **Retributive (criminal) justice:** focuses on perpetrators rather than victims; aims to prosecute perpetrators, restore the rule of law and reform security institutions and the justice system.

2. **Restorative justice:** focuses on the needs, especially of victims; it goes beyond reparation of harm, as it also seeks to re-establish the social bond broken by the crime (Laplante, 2014), hence the debates on reparation; its purpose is dialogue and peace, gathering the truth about the past, healing victims and rebuilding communities through reconciliation and collective memory.

3. **Distributive or social justice:** focused on society as a whole, given the nature of the crimes perpetrated that harm humanity as a whole, its aim is to resolve the economic, political and social injustices that may have generated the conflict and to define the foundations of a just and stable society. This approach would include massive, financial or symbolic reparations, affirmative action programmes, policies with a gender and HR focus, among others. As with the notion of justice, there is no room here to discuss what the best model of social justice might be, as this is also an unresolved debate and even characterising it would exceed the objective of this article.

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Social justice ultimately prevents penal and reparation mechanisms from ending up as an empty gesture, addressing the causes of violent conflicts and contributing to their non-repetition; hence it is one of the basic pillars for a notion of transformative justice. To do so will require reforming the basic social institutions that define how society distributes the fruits of social cooperation, i.e. the power and wealth generated by the state's work and exploitation of natural resources (Cubillos-Vega et al., 2022).

Wendy Lambourne (2009; 2014) proposes a model that expands the defining framework of TJ, integrating those dimensions that she identified in the discourses of human groups where genocide, crimes against humanity and/or war crimes occurred, throughout a vast empirical work developed between 1999 and 2006 in Cambodia, Rwanda, East Timor and Sierra Leone, which included victims and survivors, perpetrators and defendants, representatives of Transitional Justice bodies, international institutions and governmental and non-governmental organisations, as well as civil society in general. According to Lambourne, they would form a comprehensive approach to all aspects of justice in the field of TJ, including legal, psychosocial, socio-economic and political justice. According to the author, transformative justice, in addition to dealing with the past, also establishes conditions and structures to ensure justice in the present and future, creating a long-term vision and commitment and not just during a transitional period (Lambourne, 2014). Table 1 summarises the four dimensions of transformative justice proposed by Lambourne (2009; 2014).

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1. Legal justice: Promotes accountability for past violations. Incorporates both retributive and restorative elements.

2. Psychosocial justice or truth: Emphasises the importance of recognition. It distinguishes four aspects of truth: forensic or factual truth; personal or narrative truth; social or dialogic truth; and healing or restorative truth. All of these are important for understanding the needs of different people in a JT process, which may vary according to time and circumstances.

3. Socio-economic justice: It incorporates elements related to financial or material compensation, restitution or reparation for past violations or crimes (historical justice) and distributive justice in the future (prospective justice). The idea is to establish a sense of justice about what happened in the past and to ensure that structural violence (Galtung, 1969) is minimised in the future, in order to promote a culture of peace (sustainable peace, in the author's words).

4. Political justice: It includes institutional reform, the rule of law and respect for human rights, addressing socio-economic needs and avoiding the appearance of "winner-take-all" justice or a culture of impunity.

Table 1. Dimensions of transformative justice

Dimension/Justice	Focus	Modalities of justice	Types of measures
Legal	Accountability for the past.	Retributive and restorative.	Deprivation of liberty; pecuniary measures.
Psychosocial	Acknowledgement of the facts (the truth).	Restorative.	Truth commissions; memorials; education for the never again.
Socio-economic	Restitution, financial or material compensation and long-term social equity.	Restorative and distributive.	Collective compensation; health programmes; cash transfers; social security; education; housing; among others.
Policy	Democratisation, rule of law and human rights culture.	Restorative and distributive.	Institutional reform; new political constitution; human rights education.

Source: Lambourne (2009; 2014).

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Two substantial aspects of transformative justice proposals are, on the one hand, distribution (in terms of social justice) and, on the other hand, recognition. In line with Fraser (2008), attention must be paid to the recognition of the identities and experiences of marginalised or subordinated groups and not only to the distribution of resources and compensation. This implies that, in addition to providing material reparations and financial compensation to victims, their suffering and the damage inflicted on their identities should also be acknowledged. This would imply the recognition of their agency, prioritising their active participation in the process of justice and reparation; the cultural and symbolic recognition of Human Rights violations, so important to establish policies of human rights education, memory and never again; attending to plurality and intersectionality, considering how the experiences of violence and of justice itself are intertwined with identities; and the issue of equity and redistribution, in resources and power, so that reparations are fair and equitable. Another complementary perspective is that of decolonial theories (de Sousa Santos and Rodríguez-Garavito, 2009) that would allow us to understand the causes of conflicts and HR violations, better situating the needs and demands of victims, including subaltern subjects whose voices are often silenced; identify keys to adopt transformative JT measures, in accordance with the realities and experiences of non-European societies and the identity claims of certain marginalised groups; and orient policies to dismantle the power structures that perpetuate social, political, economic and cultural injustices over time.

What does "justice" require in reparations policies? Two models for analysis

The most widespread idea of reparation in the field of JT is that which arises from the legal field, specifically in international human rights law, referring to a series of measures that states can adopt to compensate victims (usually on an individual basis), which include restitution measures (returning the victim to the status quo), compensation (pecuniary measures), rehabilitation (legal, medical and social care), satisfaction and guarantees of non-repetition (material and symbolic measures). The recognition of the right to reparation was consolidated with the adoption by the UN General Assembly in 2005 of the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", which provide a legal framework largely based on jurisprudence derived from treaties and customary international law on the subject (United Nations, 2005).

In the following, I will review two proposals that are not mutually exclusive and that emerge as alternatives to this legal vision, and are appropriate for monitoring quality in the design and implementation of reparations policies.

The first proposal is formulated by Pablo de Greiff (2011b) who, without developing a critique of the legal approach, recognises that this has always been aimed at resolving individual cases because, in post-conflict scenarios, the state would be incapable of compensating the victims of massive violations on a case-by-case basis. According to de Greiff, the main obstacle to individual reparation lies in the inequality of access to justice and that, even once access to justice is gained, it is difficult to guarantee reparation with equitable results. Using the cases of Guatemala and Morocco as examples, de Greiff argues that wealthier, better educated and urban victims often have greater opportunities to obtain justice through litigation. He therefore argues for a more inclusive conception of reparations that is consistent with victims' demands for justice. A reparation programme aimed at an extensive and complex universe of victims must be conceived as a political project with broader objectives than mere compensation, hence incorporating the dimension of the collective (present in those massive and systematic cases of Human Rights violations), considering three axes or objectives of justice: recognition, civic trust and social solidarity (de Greiff, 2011b):

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a) Recognition: aims to restore people's status as citizens, which, in addition to recognising their agency, entails recognising the ways in which they are affected by environmental conditions and the actions of others; in short, that they deserve special treatment when their rights have been violated. In that sense, reparation in itself is already an act of recognition.

b) Civic trust: refers to the expectation that the behaviour of individuals and the actions of institutions are in accordance with shared norms and values; a mutual sense of commitment, a normative reciprocity between people belonging to the same political community.

c) Social solidarity: this would be the "interest in the interest of others" (de Greiff, 2011b, p. 430); extrapolated to the design of reparation policies, this interest must take into account both the structural discriminations of each context and the diverse interests of the victims, a question that is not easy to balance and which will place us in the dilemma between distribution and recognition (Fraser, 2008).

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De Greiff (2011b) encourages taking these objectives as fundamental to a long-term reparations programme, so that these programmes are interpreted by their recipients as contributing to their quality of life.

Although we can situate this proposal within transformative conceptions of justice, the author is reluctant to see reparations as a solution to structural problems of poverty and inequality. The main argument is usually formulated around the dilemma between distribution and recognition (Fraser, 2008): by focusing reparation policy on the distribution of basic services (think, for example, of the right to universal health care), it runs the risk of losing force as a reparation measure, as its content will be assumed as citizenship rights and not as the satisfaction of specific rights as victims (Uprimny-Yepes and Guzmán-Rodríguez, 2010; de Greiff, 2011b).

The second proposal is a forward-looking vision of JT that integrates the social justice dimension (referred to by the author as "socio-economic justice"). It is the Justice Continuum Model, developed by Lisa Laplante (2014), illustrated in Figure 1. This model is based on the idea that reparations work along a continuum of justice, moving from a narrower or restrictive notion of justice to a broader or comprehensive one. In order to trace the axis of this continuum, it selects four theories of justice: at the "narrow" end of the axis it places the idea of restorative justice, then, towards the middle, restorative justice, followed by civic justice, and finally, at the wider end, socio-economic justice.
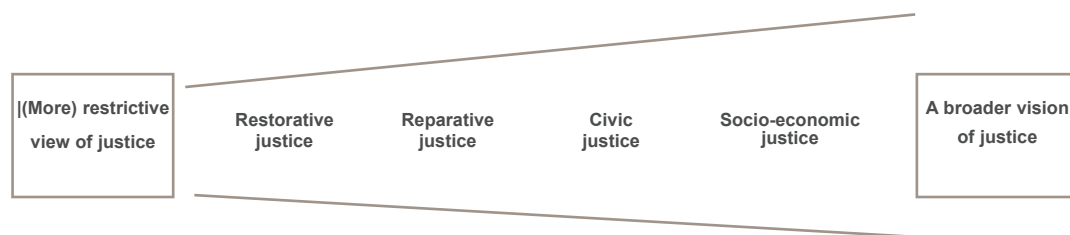
1. Reparative justice: this is the classic model of the JT field that operates through reparation measures, especially when restitution measures have not been possible (Laplante, 2014); it integrates compensation, rehabilitation, satisfaction and guarantees of non-repetition.

2. Restorative justice: as defined in the previous section.

3. Civic justice: aims to establish a civic culture, oriented towards conflict resolution through the promotion of a culture of rights, in a framework of equality and within a democratic state governed by the rule of law, favouring social participation. It aims at macro-reconciliation (as opposed to restorative justice, which aims at micro-reconciliation).

4. Socio-economic justice: seeks to redress historical or structural social and economic inequalities. It is understood that the causes of violent conflict often arise from deep-seated social and economic inequalities. Responding to structural problems not only repairs the harm suffered, but also prevents new cycles of violence (Laplante, 2014). It combines measures of compensation, restitution or reparation for crimes committed, with forward-looking measures of distributive justice – prospective justice.

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Table 1. Dimensions of transformative justice

| |(More) restrictive view of justice | Restorative justice | Reparative justice | Civic justice | Socio-economic justice | A broader vision of justice |

Source: Laplante (2014, p.68).

In her model of justice, Laplante (2014) argues that while an approach that encompasses the full range of justice objectives (the broad end) would be ideal, any reparations programme should have the minimum objective of not causing further harm to those it is intended to benefit.

The dimension of "fairness" in Chilean reparation policy (1990-2004)

The case of the Chilean JT policy is a paradigmatic case of the classical discursive construction, also typical of other Southern Cone experiences (Ordoñez, 2020). It sought to establish liberal democratic orders whose values contribute to legitimising market economies, especially in their neoliberal modality, insofar as they sustain a political project aimed at stabilising the predominant power relations on a global scale (Franzki and Olarte, 2013; Ordoñez, 2020).

In Chile, the term transition appeared for the first time in the dictator Pinochet's Chacarillas speech in July 1977, when he referred to the transition as an intermediate stage between recovery and institutional normality, of collaboration between civil society and the Armed Forces on the most contingent issues (García, 2011). In this context, there is no doubt that the transition that began in the 1990s was guided by Pinochet's project, in which the armed forces became the guardians of the institutionality created by the dictator in his 1980 Constitution, where the entire neoliberal policy was crystallised. To guarantee this vigilance, in January 1990 the scope of the 1978 amnesty law was extended (Decree Law 2191), adding the impediment to the Chamber of Deputies (formed in March 1990) to pronounce on acts committed before its formation, hindering the investigation of crimes committed under the dictatorship. A JT policy was thus established, characterised by the impossibility of investigating such crimes and their perpetrators, and the consequent impunity.

However, the incoming democratic government was also unable to ignore the commitments on truth and justice that were part of its programme, made with victims' groups and international human rights organisations, hence, as Antonia García (2011) points out, the focus of the political debate on truth and justice shifted towards a third element, reconciliation as a supreme value oriented towards peaceful national coexistence, whose responsibility no longer fell on the state, but on the attitudes of society as a whole. Given the limitations to establish the truth (and justice) in terms of judicial investigations, the only possibility was to create an alternative instance that would allow for the recognition of the facts and the official identification of the victims (Cubillos-Vega, 2021). In this scenario, the National Truth and Reconciliation Commission (CNVR) emerged in 1990 as the first extrajudicial JT measure aimed at establishing the truth and minimally repairing the damage caused. The report published by this commission (Rettig Report) prioritised truth over retributive justice. This has not excluded the filing

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of criminal complaints, although not as a policy from above, but by virtue of actions promoted by individuals and whose response is the responsibility of the judiciary (Collins, 2013). Faced with the limitations imposed by the amnesty law, the population began to open alternative legal avenues to respond to the justice needs of the families of disappeared victims (García, 2011).

The Rettig Report (National Truth and Reconciliation Commission, 1991) mentions the events of the past as the factor that divided Chilean society, addressing the national community as a whole, with no reference to the military or the victims as opposing actors, nor to the responsibility of the Pinochet regime for Human Rights violations. Also excluded from the narrative is any allusion to the causes of the conflict and why the grave abuses were committed, without delving into the historical, social and economic causes and conditions that led to the military coup and State terrorism.

The lack of will towards transformative justice is evident in the lack of an economic, social and political project; on the contrary, a sort of continuity with the Pinochet regime was generated, by accepting the annullability of the institutional framework, and that, in order to ensure governability, changes would have to be made "as far as possible". According to García, "in this context, acting 'as far as possible' means acting within the framework of the rules imposed by the military" (2011, p.132).

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The Rettig Report makes a series of recommendations on the justice measures that should be taken to repair the victims: recommendations for vindication and symbolic reparation, of a legal and administrative nature, for social welfare and relating to social welfare (education, health and housing), mainly in the form of scholarships, subsidies and affirmative action (National Commission for Truth and Reconciliation, 1991). This first reparatory measure set the tone for subsequent measures, which were exclusively reparative and aimed at reconciliation (Hourcade et al., 2018).

During the different democratic governments, numerous reparation policies were approved for the families of victims of disappearances, executions and torture, and for exiled and politically exonerated persons, among which the following stand out:

- The Programme for Reparation and Integral Assistance in Health and Human Rights (PRAIS). In general terms, an exhaustive analysis of the programme's design (Cubillos-Vega, 2023a) shows that it has been characterised as a targeted and sectoralised policy that lacks mechanisms aimed at collaborating with other public institutions, such as those of the judicial system (so necessary

to avoid re-victimisation in the courts). Over time, it has proven ineffective in addressing the re-victimisation of people in other dimensions: because of the aforementioned targeting, which requires proof of victim status (the logic of deserving), leaving those who could not be recognised by the Commissions without coverage; because many of the staff of the Public Health System are unaware of the programme, so they do not have the necessary sensitivity to interact with its users and respond to their needs; and because it addresses the social trauma suffered by victims in its psychological dimension (which acts at the individual level), making the success of the "treatment" depend on people's capacities for healing and adaptation (Cubillos-Vega, 2023a).

- The Mesa de Diálogo de Derechos Humanos formed in 1999 to determine the whereabouts of disappeared persons, although without interfering with the role of the courts (Cubillos-Vega, 2021). For the first time, the Armed Forces acknowledged the existence of disappeared persons, largely thanks to the political situation; let us remember that Pinochet was out of the game at the time, given his arrest in London in 1988, where he appeared before the House of Lords for his involvement in crimes of genocide, international terrorism, torture and disappearance of persons, which occurred during his dictatorship, and therefore the legitimacy of the military institution was strongly questioned. However, in a scenario in which satisfactory judicial results were being produced thanks to the efforts of private lawyers and human rights defenders, the Mesa was interpreted as a deviation from the objective of retributive justice (García, 2011).

- The National Commission on Political Prisoners and Torture (Valech), created in 2003, after Pinochet's arrest in London and the demands of international justice for his extradition. Its aim was to remedy the shortcomings of the Rettig Commission, clarifying the identity of those who suffered deprivation of liberty and torture for political reasons during the military dictatorship (later, in 2010, the Presidential Advisory Commission for the Classification of Disappeared Detainees, Political Executed and Victims of Prison, Politics and Torture – Valech II – was established to expand the work of the previous Rettig and Valech I Commissions, although no new reparation measures were established). The Valech I report, published in 2004, made reparation programmes (education grants, PRAIS) available to all those recognised therein; furthermore, other measures were suggested (National Commission on Political Prisoners and

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Torture, 2004): institutional (such as the creation of the National Human Rights Institute); symbolic and collective (policies of non-repetition and prevention or memory); and reparation, both in the economic (pensions) and legal spheres (the latter were not aimed at the perpetrators, but at restoring the public honour of those who were accused of crimes they had not committed and prosecuted without the minimum guarantees). In the Valech I Report, the Commission recognised around 30,000 victims (Comisión Nacional sobre Prisión Política y Tortura, 2004); while in the Valech II Report, the Commission recognised 30 disappeared and politically executed detainees and 9,795 victims of political imprisonment and torture (Comisión Asesora Presidencial para la Calificación de Detenidos Desaparecidos, Ejecutados Políticos y Víctimas de Prisión, Política y Tortura, 2011).

Some of these measures were developed in law 19.992 of 24 December, 2004, which also established the secrecy of the statements received by the Commission for 50 years. In the Commissions' reports, the people targeted by reparation policies were identified with those who suffered (themselves or their relatives) political detention, torture, exile, assassination or disappearances (direct victims), without considering the social and economic impact of this violence, which has had the main effect of increasing inequalities, social segregation and the vulnerability of new groups. Thus, the views of women, sexual dissidence, ethnic groups or marginalised social classes and, in general, minorities were systematically ignored, both in the creation and implementation of JT processes (Cárdenas, 2020).

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In the first period, the demands for justice of the relatives' and victims' groups were aimed at political decisions aimed at changing the institutional structure inherited from the dictatorship, which has been the main obstacle to justice – decisions that successive governments did not take. Given that in this scenario there was a breakdown of institutionality (de Greiff, 2011a), the objective of the JT's measures was to recover that interrupted institutionality. However, the decisions regarding political changes strengthened the socio-economic structure inherited from the dictatorship, as they were linked to transformations that led to the privatisation of common goods and the liberalisation of the market. As announced at the beginning of this section, these were responses linked to liberal democracy, but accompanied by economic measures characteristic of neoliberal capitalism (Arbour, 2007; Franzki and Olarte, 2013; Ordoñez, 2020).

By not recognising the causes that led to state terrorism, nor the violations of economic and social rights that occurred (for example, the dismantling of the social security system), responses aimed at recovering the social and economic model that was abruptly broken with the dictatorship were subsequently excluded; on the contrary, the model implemented has only increased inequalities and social polarisation.

Contrasting the concurrence of the classical conception of justice of the implemented model, with the notion of justice present in the discourse of those who have executed or received such a policy (Cubillos-Vega et al., 2022)[3], the widespread perception is that there has been no justice, in its "purest" sense as retributive justice, whose demand is given higher priority than restorative justice, because only once those responsible for committing HR violations are identified and punished for it, will it be possible to undertake an effectively comprehensive reparation process. Among the discourses that emerged, we can highlight (Cubillos-Vega et al., 2022):

-        Impunity emerges as a category of negative justice (injustice) that alludes not only to retributive justice, but also to reparative justice. In this second sense, impunity is perceived as the persistence of the dictatorship even in democracy and an example of the failure of the slogan of never again, which has not allowed for an adequate reparation process, as injustice sustains processes of chronification of the damage, making reparation insufficient and precarious.

-        Justice as recognition, which takes on two senses: the recognition of the harm as an act of justice (in a retrospective sense) and the recognition of the truth (in a prospective sense), which, when transmitted, contributes to society's repudiation of human rights violations and thus helps to prevent them.

-        Distributive justice, as a demand in the face of the inequalities and discrimination that are present in our society today and which are the product of the implementation, during the dictatorship, of a certain economic and social model.

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Final reflections: A conception of transformative justice as a step towards the Never Again in the perspective of the next decades or intergenerational perspectives

Fifty years after the coup d'état, and considering the political violence deployed since then, including the serious rights violations that occurred recently during the Social Outbreak, where the debate around Truth and Reparation Commissions had to be brought back into the public eye, there is an undeniable need to rethink reparation policy and advocate for truly transformative reparations as a way to ensure that such violations do not continue to be reproduced.

One of the main pending tasks of Chilean reparation policy is the necessary institutional reform capable of guaranteeing greater democratisation, social justice and peace. When JT policies are insufficient, inadequate or ineffective in meeting the demands of justice, they can hinder reparation and the integration of the groups that have been most affected, favouring social segregation, discrimination and exclusion. This, in turn, contributes to maintaining polarisation in society.

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Covering up social and political conflict with policies that do not affect the structural is a trap, as it will inevitably emerge in a violent way, as happened recently with the Social Outburst of 18 October, 2019. Since 2006, student movements have begun to openly question the current social order and more movements have joined the social protest, progressively beginning to occupy the public space and to make visible the massive social discontent with the political system and the economic model in place, so that the Social Outbreak came to crystallise this discourse, extending an explanation of inequality and the deep desire for social change (Cubillos-Vega et al., 2022).

In this scenario, law enforcement and security forces violently and systematically repressed demonstrators; in this context, the existence of torture centres was denounced, similar to those of the dictatorship era, where serious human rights violations were committed (Instituto Nacional de Derechos Humanos, 2019). Political violence in Chilean society has become naturalised. Political violence, including gender-based violence, in the form of abuse and sexual violence, is manifested in the acts, gestures and vocabulary of law enforcement and security officials (Carabineros) who exercise terrible police repression aimed at achieving, as in times of dictatorship, subordination, disciplining and punishing (physically and psychologically) through humiliation and control (Jamett, 2012; Cubillos-Vega, 2023b).

The review of relevant episodes of Human Rights violations in our recent history allows us to assess the ineffectiveness of the guarantees of non-repetition provided for in the post-dictatorship reparation policy, perhaps because not enough structural or institutional reforms have been initiated in this area, as promoted by transformative JT approaches.

The climate of violence and polarisation installed in post-conflict societies needs to be addressed with effective measures aimed at creating certain social conditions that allow not only for peace (Teitel, 2003), but also for a culture of peace; measures aimed at the direct victims of these violations, but also at society as a whole, which was also a victim of the direct and structural violence generated in these contexts (Galtung, 1969).

The demands for dignity of the Estallido Social have been a reflection of this structural violence and social polarisation which, with the return to democracy, were not duly addressed (Peñaloza, 2019), while the necessary constitutional and institutional reforms mentioned above were not carried out with the required depth. The Rettig and Valech Commissions also failed to examine the socio-economic causes of violence in terms of violations of economic, social and cultural rights. While structural inequality has been present since the formation of the Chilean state, as Cath Collins (2019) points out, the neoliberal model established during the dictatorship is the most obvious causal factor for the levels of inequality that the country is experiencing today. As we have seen throughout this paper, the economic and social dimensions of inequality and structural violence are often at the origin of violent conflicts and Human Rights violations; therefore, making these aspects invisible in reparation policies collides with the needs, expectations and demands of the victims, as well as with the goal of Never Again.

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