



From

Dictatorship To Democracy

By Professor Fred Galves

Illustration: John W. Chase

An American Witness to Political Reform and Legal Justice in Chile

In the summer of 1985, I was 23 years old and poised to enter my last year of law school. Instead of working for a law firm that summer, I decided to explore law and justice in a completely different context. I applied for a summer fellowship with the newly created Harvard Human Rights Program and was given funding to do legal human rights work with “La Vicaría de Soledad,” a legal/social agency of the Catholic Church located in Santiago, Chile. Enthusiastic but naïve, I had no idea what I was about to encounter under Chile’s military dictatorship, nor how that experience would be so meaningful to me years later.

In 1985, Chile was a dangerous place, under a very oppressive regime, and had been so ever since General Augusto Pinochet took power in a military coup in 1973. Accounts vary but thousands of political opponents of the regime were killed or went missing (“desaparecidos”) and countless others were taken into custody and tortured. Democracy was suspended as the military seized control of all political functions and dissent was simply not tolerated.

But there was still some meaningful if limited legal work that lawyers could do. At La Vicaría, the lawyers would file habeas corpus type writs on behalf of political prisoners. Of course, the judiciary really did not have the power to challenge the military taking someone into custody so these writs were often turned down. However, the families of the prisoners were thrilled with this legal work because the regime usually would not kill or torture anyone that it acknowledged was in its custody.

While working as a legal intern, I lived in a “población,” an extremely poor area located in the outskirts of Santiago. Most nights there was an 11:00 p.m. curfew for all citizens and I never really got used to having an M-16 machine gun pointed at me while a menacing soldier demanded my identification papers. The psychological effect on the people was severe. Often there were political protests, but these were very dangerous because they were illegal. Military police would shoot rubber bullets and tear gas at protesters, humiliate them by using large water canon trucks to shower them with sewer water, or round them up and throw them in jail. These acts made one think twice about protesting.

But the hunger for justice, reform and democracy was powerful and the Chileans demanding change were not your average protesters. They were angry businessmen crying out for economic and political reform, feisty grandmothers banging on pots and yearning for a return to democracy, and even young children, too politically aware and cynical for their tender years, shouting harsh slogans hoping for a better future. All would scurry in a mad fearful dash the moment the military showed up. I asked people about the freedom of speech and told them how much we in the U.S. valued that right. However, I was informed that there was freedom of speech in Chile too, it was just that the regime would declare a “state of emergency” whenever there was a protest. This would suspend constitutional rights until the “national security threat” was lifted – that is, until the protesters were disbanded and “order” was restored.

Beneath the surface was the deep psychological effect the oppression was having on the citizenry. People distrusted me at first because as a stranger I was suspected of being a police informant. Many people opposed the regime but because of double-digit unemployment, lack of access to education and >





Professor Fred Galves, second from left, with Chief Justice Marcos Libedinsky of the Supreme Court of Chile, Erin Hiley, '04, and Professor Jay Leach during the chief justice's recent visit to Sacramento.

no real economic options, they chose to pursue a career in the very military they despised. They often felt they were “sell outs,” but believed the military was the only real option they had. It divided families, especially when old women would pin photographs of their missing children on their tattered clothing hoping that someone who might have seen them could give them some information as to where they were, or at least let them know if they were even alive. Their heartache was colossal.

The state of affairs was very disturbing for me to witness, especially because I felt so frustrated and helpless. Even more disheartening, I knew that my own government in 1973 had supported this regime and even the military coup because the former Chilean president, Salvador Allende, although democratically elected, was a socialist. It was difficult for me to console the people with references to the spirit of the First Amendment and the due process protections of the U.S. Constitution because, given the U.S. role in backing the regime, there was a certain arrogance and hypocrisy associated with any such lecture from an American.

Toward the end of my stay, angrier and more cynical than ever, I ended up being arrested and thrown in jail myself for protesting. I was questioned by military police and was accused of being a “communist agitator.” I made up a fictitious story that I was merely a tourism student gathering information on Chilean skiing in the Andes and that I had returned to Santiago thinking I was merely attending a “parade” (the protest). I further asked if I should advise other American tourists not to come to Chile because they too might get arrested if they, like me, stumble on to another “parade.” The police called the U.S.

and luckily Harvard had the presence of mind to confirm my “I’m-just-a-tourism student” story. I was let go after a few hours but much shaken, wondering what might have happened to me had I not had my U.S. passport and perhaps a naïve enough look on my face to pass for a confused American tourism student in the wrong place at the wrong time. Perhaps the Chilean police never really believed my story; but, I was freed, with the very stern warning/threat not to interfere in the internal affairs of their country anymore.

I left Chile that summer broken in spirit, even managing to contract the mange (an ailment dogs get) because I had been living in such poor conditions. I had grown extremely cynical about the prospect for any political reform and future legal justice there. I was ashamed of the fact that my own government had any hand in supporting Pinochet’s regime. I wondered what unfortunate fate awaited the Chilean people. I got on the airplane very angry, dejected and feeling quite guilty that I could go back to a future much more hopeful than that of the people I had come to know. As I was leaving, a little boy tried to sell me some “chicklet” (gum) and asked me if I was afraid to get on the big airplane. It was all too ironic, his being concerned for me. I looked at him and wondered what possible future awaits him here? I am reminded now of his innocence when I look into my own two young sons’ faces. That little boy was the last thing I thought about while in Chile, and then I left for good, or so I thought.

I returned to the U.S., graduated from law school, then had a year-long clerkship, followed by six years as a litigator in a large firm, and have been teaching law school ever since. Chile for me seemed a lifetime ago. That is why it

was so amazing to me last year when Dean Elizabeth Rindskopf Parker started talking to me about her former connections in the State Department, some of whom were now in the U.S. Embassy in Chile. She went on to discuss her interest in the great political reforms and continued democratization that was taking place there. She informed me how the legal system was also reforming from an inquisitorial to a more open adversarial system where the government

truly could be challenged in a court of law, and how democracy and political reforms were actually working in Chile.

I was still quite cynical but as I took a closer look, I could not believe the amount of reform that had actually taken place. I was excited to reconnect with a country that I had written off as a brutal dictatorship supported, hypocritically,



General Augusto Pinochet

by the U.S. I could remember as if it were yesterday what I had experienced and witnessed while there as a young idealistic law student. Could it be true that time really can change everything, had the protesters and opposition that seemed so weak then actually turned the political tide in their favor?

Soon thereafter, a group of Chilean federal prosecutors and defenders came to Pacific McGeorge. In January and February of 2004, Professors Jay Leach, Joe Taylor and I conducted trial advocacy exercises with the Chilean attorneys while Professors Greg Weber and Ed Villmoare conducted negotiation exercises in an adversarial system. The Chilean attorneys were very eager to learn our system and apply it in their own emerging one. I was getting to discuss with Chilean attorneys the merits of the adversarial system and how to make opening statements, closing arguments and question witnesses in an open trial where the accused had the presumption of innocence, the right to an attorney and the expectation of an impartial judge. All of these features were radical departures from the old system.

In May of 2004, the dean, Professor Weber and I traveled to Chile to meet with the U.S. Embassy and the leaders of the federal prosecutors and defenders as well as various Chilean law schools, so we could arrange another training program. This time we would travel to Chile, and train other trainers, as well as a new group of prosecutors and defense attorneys from different regions of the country.

Last December, I returned from that training program and began to put it into perspective. It all has been so surreal for me. There I was in Chile, training government prosecutors and doing so in the national police academy headquarters. Little did they know that I had been thrown in jail years ago by their government. And the irony continued – I had vehemently criticized my own government for its past role in Chile, but now the U.S. Embassy and State Department were pushing for democratic reforms and the rule of law in Chile and financially supporting our legal educational reform work there. I had been told some 20 years earlier, “not to interfere with the internal affairs of [their] country anymore,” but this time I was being asked by them to help with their “internal affairs” and in a way that I never thought possible back then.

For the first time, I was really proud to be an American in Chile, proud to be sharing what was so good about our >

About the Author

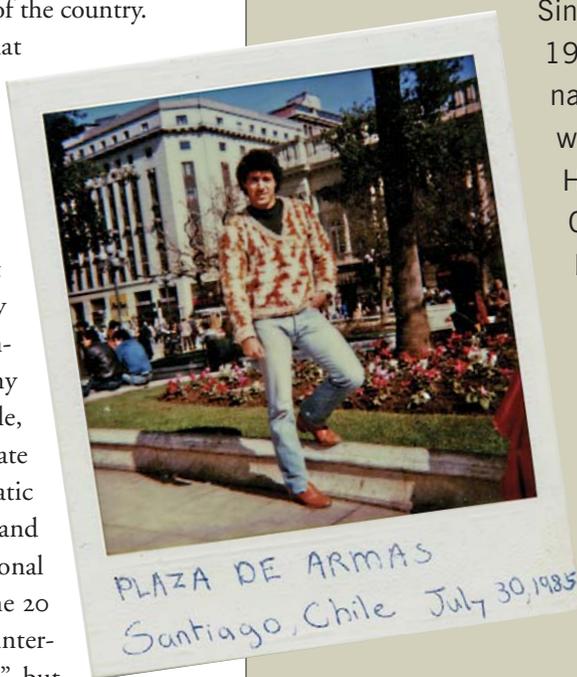


Professor Fred Galves has been a member of the Pacific McGeorge faculty since 1993. A noted proponent of technology in the classroom and the courtroom, he teaches all of his classes

using display technology. During the current academic year, he was a visiting professor of law at both University of Denver and Southwestern University, teaching Computer-Assisted Litigation and other subjects. Following graduation from the Harvard Law School, Galves served as a judicial clerk for Judge John L. Kane (U.S. District Court, District of Colorado). He practiced with the Denver law firm of Holland & Hart, specializing in complex commercial litigation and litigation against former directors and officers in failed banks and savings and loan associations.

Since coming to McGeorge in 1993, he has worked on national banking legislation with both the Senate and House Banking Committees. He has also been a visiting professor at the University of California at Davis School of Law and Fordham Law School. One of his articles, "Where the Not So Wild Things Are: Computers in the Courtroom, the Federal Rules of

Evidence, and the Need for Institutional Reform and More Judicial Acceptance," 13 Harv. J.L. & Tech. 161 (2000) was the first law review article with an accompanying CD-ROM with full-animation video footnotes.

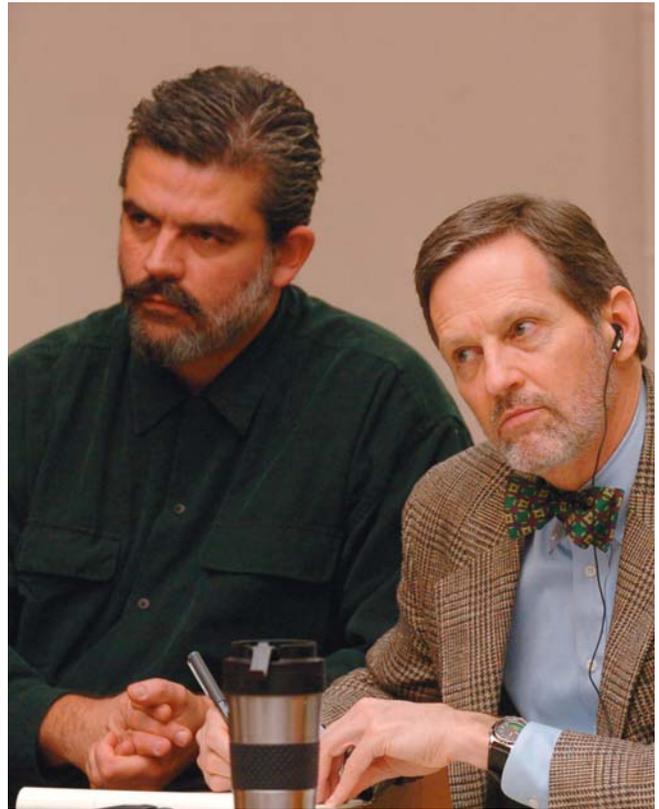


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It read:

‘General Augusto Pinochet Indicted.’

“...I just smiled, remembering Chile 20 years ago, and thought, what a different place this is today – perhaps there will be justice here, after all.”



Professor Jay Leach, right, works with a translator and earphone as Chilean prosecutors go through a trial advocacy training exercise.

country and our legal system with others eager to learn about it. I was representing to Chileans the promise of democracy, political reform and open, adversarial trials governed by the rule of law and due process. It was a far cry from representing a country bent on the Machiavellian maneuver of supporting a military dictator's ousting of a democratically elected president simply because the dictator's regime was staunchly anti-communist.

Most importantly of course, there has been a wonderful change in the country and in the mindset of its people. Considered an economic miracle in Latin America, Chile is a democracy again, and the people appear happier and freer, able to speak about politics without fear of government reprisals. Many social problems and political challenges remain, but at least now there exists something that so many Chileans were robbed of a generation ago – hope; the hope for a much better tomorrow.

Upon my return to the U.S., I was able to have dinner with the Chief Justice of the Supreme Court of Chile who was visiting Pacific McGeorge. He explained to us that the political and legal change in Chile was very real. During dinner I wondered how things might have been different for me had I known this man while I was sitting in a Chilean jail. Regardless, he was here now, learning and sharing with us.



A group of Chilean prosecutors listen during a trial advocacy training session in the Pacific McGeorge courtroom.

My most lasting image in all of this is the comparison between my departure from Chile nearly 20 years ago and my departure in December. After a rewarding but tiring training program with the Chilean prosecutors, I was excited to return home to see my wife and two sons. But as I left, there was no little boy trying to sell me “chicklet” at the airport, wondering whether I was afraid to get on the airplane. Instead, this time, as I looked out of the airplane window just before take-off, I wondered whatever happened to that little boy from so many years ago. He must be in his mid-20’s by now, I thought. Perhaps he is even in law school, studying to be a lawyer, or, perhaps not. But wherever he may be in Chile, today he has the right to vote for his leaders and he is free to express his political ideas without fear of being killed or tortured. If he is ever charged with a crime, he will be entitled to an open trial with an attorney committed to his defense, with an impartial judge presiding and with the presumption of innocence. So wherever that young man is today, and whatever he may now be doing, what a monumental change there has been within his relatively short lifetime.

As for me, the very day I left the country for home, I saw a headline splashed all over the newspapers in the airport, a headline that I thought I would never see in Chile. It read: “General Augusto Pinochet Indicted.” Could it be so? Pinochet indicted, in Chile, for human rights abuses

and crimes as a military dictator... I just smiled, remembering Chile 20 years ago, and thought, what a different place this is today perhaps there will be justice here, after all. Hooray for legal justice and political reform; for the power of democracy has changed an entire nation from an oppressive military dictatorship to a thriving, open democratic country governed by the rule of law.

