

## Book Review

– *Chile and the Inter-American Human Rights System*, by Karinna Fernández, Cristian Peña and Sebastián Smart, Institute of Latin American Studies, 2017.

This volume, edited by Karinna Fernández, Cristian Peña and Sebastián Smart, contains ten contributions presented at a conference held in May 2015 at the School of Advanced Study of the University of London. Written by a majority of human rights legal scholars, this book develops an interdisciplinary examination of important cases lately issued by the Inter-American Court of Human Rights (the Court) with a special focus on Chile. While the *Atala Riffo and daughters* case (2012) is addressed in detail, two other issues are equally assessed: the human rights challenges of truth commissions in the Latin-American context and current developments in the area of indigenous rights. Insightful reflections concerning the human rights challenges derived of Chile's excessive number of people under imprisonment are also to be found.

The book begins by focusing on the *Atala* case. The case is widely known: under the argument that the lesbian relationship of cohabitation of the complainant could have detrimental impact on her two daughters, Chile's Supreme Court reversed the complainant's right of legal custody. In the eyes of the authors this involved that Chile seconded a narrative of "heteronormativity": an abidance to traditionally assigned gender roles which become perpetually reinforced. The complainant was morally reprimanded for the *priority* she was judged to have given to her homosexual relationship to the detriment of her nurturer role as a mother. The authors assess the legal merits of the case, but they also enrich the book with significant contributions from the perspective of the theory of non-discrimination. One example is the contribution of Alberto Coddou. Departing from a "transformative" approach towards non-discrimination, Coddou highlights a number of challenges that the transition governments have remained insufficiently able to address. While the author remains cautious about the ability of non-discrimination to tackle problems of redistribution, he thinks that non-discrimination constitutes the most accessible step, with the tools at hand, to move towards participatory democracy in the

region. In this line, non-discrimination would have the potential of facilitating further struggles.

The human rights challenges of truth commissions are also addressed. When the region started to gradually return to democracy in the 1990s, truth commissions operated as a principal mechanism to address human rights violations. Chile's truth commissions led to two reports. One concerning human rights abuses resulting in death (the *Rettig* report) and another one focused on political imprisonment and torture (the *Valech* report). While many violations remained in impunity largely due to statutes of limitations – of which the Court's *Almonacid Arellano* is a case in point – a rather comprehensive program of human rights reparations was put in place in order to alleviate and improve the conditions of the victims and their next of kin. In this regard, the *García Lucero* case (2013) deals with an issue of tremendous complexity: the reparations of a victim in circumstances where the imposed sanction – exile – was not considered of enough gravity to be included among the investigated abuses. As due to the former the victim no longer resided in the country, the victim could not benefit from the reparation program.

Finally, the book focuses on the rights of indigenous peoples. Current challenges to these human rights are here addressed. Land and water grabbing dynamics remain prevalent in a region accustomed to privilege projects of large environmental impact, often at the expense of indigenous rights. The book concludes with the perceptive study of Rodrigo Céspedes, who looks at various challenges for these rights in the field of criminal legislation from a comparative perspective.

The book raises a number of reflections. Notwithstanding its limitations, Chile's truth commissions had the merit of facilitating and making possible the path towards peace in the 1990s. Any understanding of the role played by the Court in its first years – it is not sufficiently emphasized in the legal literature – requires paying greater attention to the larger picture of the legacies of the Cold War. The Cold War in Latin-America entailed the overthrowing of governments, extreme political repression, political assassinations, international financing of boycotts, training of death squads and *guerrilla* warfare. A crude balance of victims was left as a result. This reality mixes itself with the role played by conservative forces that exerted their power prior to this conflict. Mutually reinforcing one another, Chile's contemporary symbolic imaginary remains influenced by these links. This, perhaps, allows to better account for the fact that Chile decriminalized sodomy only in 1999, that it was one of the last countries to legalize divorce in 2004, and that it admitted, only in 2017, three very limited grounds for the practice of abortion (progressive forces had managed to regulate abortion on the basis of hygienist policies in the twentieth century, but the dictatorship reintroduced it as a crime in the 1980s). Such a state of affairs can be confusing for the observer that concentrates on Chile's disciplined abidance to the Court's judgments. Chile has indeed introduced significant amendments in its domestic legal system to make it compatible with

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the rulings of the Court. One such an example was the case of *The last temptation of Christ* (2001) where the Court ruled that Chile had to put an end to the practice of prior censorship. Chile responded by eliminating cinematographic censorship. On the other hand the consolidation of Chile's evangelical religious movement as a serious player for conservative politics is likely to remain a challenge to a human rights based agenda in the country.

The various contributions showcase the present human rights state of affairs in both Chile and the Americas. The stimulating discussions raised by this group of scholars emphasize contemporary difficulties of the Inter-American system, in particular the domestic systems' ability to implement the rulings of the Court in areas of heated political contestation.

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