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Rules of Law: The Pinochet Case

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Abstract. This article describes competing rules of law that are being unmasked during the ongoing legal odyssey of Augusto Pinochet.

The most common public discourse on the legal odyssey of Augusto Pinochet focuses on the need for an alleged perpetrator of massive human rights violations to be held accountable through legal adjudication. This "rule of law"--so the discourse goes--must take precedence over any other. But should this be the case?

How about the rule of law that there should be a rule of law? In other words, there should be a set of policies, programs, prescriptions, proscriptions, directives, and guidelines that should be followed--and followed in a particular way regardless of the people or personalities legally "in charge." The problem with this rule of law is that "followed in a particular way" can get followed in many particular ways by the same and by different "people in charge" for the same and for different situations. And all of this can occur when the "people in charge" perceive themselves to be hewing the line of the rule of law.

Being held accountable through legal adjudication can be perceived to mean what is acceptable in a particular case by formally constituted authority. What some other formally constituted authorities--e.g., the Republic of South Africa--have decided on is the implementation of a Truth Commission for all, some, or one of a number of alleged perpetrators. Often there are no other legal consequences for the alleged perpetrators who participate after these perpetrators have addressed the allegations and, as well, volunteered information on other misbehaviors beyond the allegations--if the formally constituted authority judges these data to be credible and comprehensive. More severe legal sanctions can be effected only if the alleged perpetrators can be shown to have omitted the truth, committed falsehoods, or refuse the jurisdiction of the truth commission. Yet, the establishment of such a commission has been only a small facet of the public discourse on Pinochet.

But if he couldn't participate in various legal adjudications because of germane medical problems? Relevant to this is the rule of law that a defendant facing a trial should be able to understand the charges, the implications of the charges, and be able to participate in the planning and effecting of a defense. Public discourse on the Pinochet odyssey has focused on whether Pinochet himself has the requisite abilities and motivations to be an appropriate defendant--regardless of the allegations against him. In contrast, the alternative of having others with these abilities represent him and speak about his alleged human rights violations has been given little attention. The possibility of no further legal sanctions for what was perceived by formally constituted authority as an accurate and comprehensive accounting might well elicit valuable data from Pinochet's representatives. Although some might object to this as a violation of Pinochet's "rights," one might also note other cases that are deemed acceptable in which the defendant has greater functional abilities than legal representatives.

In conclusion, the rule of law can be a stultifying abstraction that functions as a primary vehicle of false consciousness. On the other hand, rules of law can subvert false consciousness for human welfare. (See Bird, R.E. (1984). The rule of law in an instant society: Implications for law and psychology. American

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Psychologist, 39, 158-162; George, R.P. (1992). Free choice, practical reason, and fitness for the rule of law. In D. N. Robinson (Ed.). *Social discourse and moral judgment* (pp. 123-132). San Diego, CA, USA: Academic Press, Inc.; Homecoming for General Pinochet. (March 4, 2000). *The New York Times*, p. A30; Schatz, S. (1997). Psychoanalysis and normative reasoning: Rethinking the processes of internalization and identification as applied to the rule of law. *Psychoanalysis & Contemporary Thought*, 20, 371-416; Sharone, O. (1994). Freud and the rule of law. *Journal of Psychiatry & Law*, 22, 329-378; Szasz, T.S. (1968). Psychoanalysis and the rule of law. *Psychoanalytic Review*, 55, 248-258.) (Keywords: Pinochet, Rule of Law.)