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Using Archives Against Atrocity *The French Pinochet Moment*

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Dr Courtney Curran is an Australia-qualified lawyer with domestic and international practising experience in government and the private sector. Courtney has worked at multiple investigative and prosecutorial agencies in Australia and abroad and is presently engaged by the Australian Attorney-General's Department as a legal officer in the International Crime Cooperation Central Authority. This article draws upon analysis of empirical data gathered during Dr Curran's doctoral research, which was funded by the Faculty of Law, University of Galway.

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The Transitional Justice and Peace Building Research Cluster (TJPR)

The Transitional Justice and Peacebuilding research cluster promotes research, debate, and discussion about justice, law and peacebuilding in post-conflict and post-authoritarian countries.

The research cluster is an interdisciplinary and transdisciplinary space that brings together different fields of inquiry to critically analyse the complexities of justice after massive human rights violations. Societies in transition must take difficult ethical, legal, and political decisions to restore peace and stability, avoid relapsing into conflict and guarantee justice and accountability to victims and society.

For this reason, the research cluster aims to problematise the multiple conceptions of justice in post-conflict societies.

It incorporates critical perspectives that challenge the orthodox liberal theories of justice and build bridges with theories of justice from the Global South.

It brings together the fields of restorative justice, memory studies, archival studies, and reparative justice.

The cluster promotes empirical research that provides an in-depth analysis of case studies and a deeper understanding of how Transitional Justice is constructed and perceived by the communities and people that aim to benefit.

Current projects include case studies from Colombia, Liberia, and Central America.

Other research projects focus on the uses of human rights archives for developing transitional justice and transnational human rights cases.'



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Using Archives Against Atrocity

The French Pinochet Moment

Dr Courtney Curran

Summary of PhD Thesis

In overview, Dr Curran's doctoral research explores the intersectionality of transitional justice and archival studies by tracing transnational legal efforts to address atrocity crimes. This article explores the types of evidence used in cases of this kind and assesses how archival material was identified, explained to and relied upon by foreign adjudicators sitting in third countries. Courtney's work has been published by Routledge (see [here](#)) and the International Criminal Law Review (see [here](#)), she has written on multiple occasions for the Irish Centre for Human Rights (ICHR) blog (see [here](#)) and been interviewed for the Human Rights Podcast (see [here](#)), and she plans to publish her doctoral monograph as a book soon.

Introduction

The international criminal justice project, plagued by double standards and paralysed by politics, is collapsing. In response, litigation addressing atrocity crimes is playing out increasingly in domestic arenas. This means the commission of atrocity crimes is more frequently being investigated by local authorities and prosecutions thereof are conducted in national courts.¹ As a necessary corollary, evidence of atrocity, including from third countries, is being transferred cross-jurisdictionally and explained to and interpreted by foreign adjudicators far from the relevant sites of criminality.²

These are some of the conclusions drawn at the culmination of my doctoral research project, which explored three transnational legal cases addressing atrocity emanating from the 1970s and 1980s Latin American dictatorial period. The legal cases studied started domestically, the documents evidencing atrocity were also created domestically, and each traversed multiple country borders to bring gross human rights abusers to account in the face of persisting impunity in the implicated countries. My project thus builds bridges between archival studies and transitional justice (TJ) and highlights the critical importance of using a variety of archives

¹ Mark Berlin & Geoff Dancy (2017) 'The Difference Law Makes: Domestic Atrocity Laws and Human Rights Prosecutions'. *Law & Society Review*, 51(3), 533–566. Cambridge University Press & Assessment Stephen Macedo (Ed.). *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes Under International Law*. University of Pennsylvania Press, 2003.

² This conclusion is based on the author's unpublished PhD thesis, as outlined in chapters 5 and 6; Courtney Curran (2025). 'Tracing a Tyrant's Paper Trail: A Comparative Assessment of the Uses of Archives in Domestic Proceedings Addressing International Crimes', University of Galway Theses Repository, available at: <https://researchrepository.universityofgalway.ie/entities/publication/4a44922b-9a10-49d6-9e55-1d25f9626f41>.

from State and non-State repositories to strengthen domestic cases addressing international crimes as part of the ongoing TJ endeavour.

I presented some of these findings recently at the ICHR as part of the 'Transitional Justice Seminar Series' (see [here](#)) with a special focus on one of selected case studies from Chile, herein referred to as the *Alfonso Chanfreau case*. This article captures critical points made during that presentation and provides additional insights into the methodology I employed during my research, in the hope that this new mixed method can be applied to and further tested in other contexts.

Chile—A Fragile Transition Propels Justice Innovation

When countries transition from authoritarian rule toward a more democratic system of governance, the context is fragile and turbulent.³ Often, the outgoing leader still maintains a considerable degree of power, as was the case when former General Augusto Pinochet was finally ousted via democratic election following his 17-year reign in Chile as military dictator in the 70s and 80s. Ensuring he became Senator for Life before his exit from Chile's political leadership elite in 1990, the context was unstable and at high risk of backsliding, and there was an immediate necessity for his successor Patricio Aylwin to restore civic trust in government institutions.⁴ Truth commissions were used in the context of Chile to help that country come out of authoritarian rule, to learn and make official the truth about the state-sanctioned repression and the systematic nature of it, documentary archival evidence of which was later used to buttress legal proceedings in Chile and abroad.⁵ Near to a decade later in 1998, the international context had changed, offering opportune conditions for a domestic Spanish international arrest warrant to be issued and upheld by British courts, a moment that transformed international criminal law, morphing it from largely a theoretical, idealistic pursuit to a tangible legal strategy to employ against gross human rights abusers.⁶

³ O'Donnell, Guillermo, and Philippe C. Schmitter. 1986. 'Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies'. Baltimore: Johns Hopkins University Press; Linz, Juan J., and Alfred Stepan. (1996). 'Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe'. Baltimore: Johns Hopkins University Press.

⁴ Elizabeth Lira and Brian Loveman, 'Derechos Humanos en la Transición "Modelo": Chile 1988–1999', paper presented to the University of California, The Model Country for Democracy and Development?, San Diego, California, 10–12 December 1998, p. 7; David Pion-Berlin, 'The Pinochet Case and Human Rights Progress in Chile: Was Europe a Catalyst, Cause or Inconsequential?', *Journal of Latin American Studies* 36(3) (August, 2004), p. 499; Madeleine Davis, *The Pinochet Case* (London: Institute of Latin American Studies, 2000). pp. 17–22.

⁵ Anita Ferrara, *Assessing the Long-Term Impact of Truth Commissions: The Chilean Truth and Reconciliation Commission in Historical Perspective* (Routledge, Taylor & Francis Group 2015).

⁶ Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (University of Pennsylvania Press 2005); Madeleine Davis, *The Pinochet Case* (London: Institute of Latin American Studies, 2000), pp. 17–22; Human Rights Watch, *The Pinochet Precedent: How Victims Can Pursue Human Rights Criminals Abroad* (New York: Human Rights Watch, 2000), available at www.hrw.org/

This past and ongoing transitional process is known as **transitional justice**. TJ comprises processes used by societies confronting widespread human rights violations, which may include both judicial and non-judicial mechanisms, operationalised domestically and or internationally.⁷ It is here that the entry point of my doctoral analysis begins—at **the intersection of transitional justice and archives**—which is very new academic terrain.⁸ This underexplored area of scholarship requires urgent attention, given, amongst other things, the multiplicity of conflict contexts ongoing globally, the need to ensure a ‘sufficient quantity of quality evidence’ is available for truth and justice seeking efforts, and to confront the delegitimisation of current international institutions.⁹ My findings support the proposition that domestic proceedings addressing international crimes will help rebuild the decaying international criminal justice project however further academic inquiry is needed regarding the types of evidence used in these kinds of proceedings to ensure their viability.

But how might a third country’s investigative and prosecutorial agencies access and rely on foreign evidence? How do local police gather physical, and documentary evidence located abroad? What about identifying witnesses and enabling witnesses living abroad to give testimony? How might cultural and language requirements be worked into the intelligence gathering strategy? Critically, *why* would local authorities or third-party governments prioritise this kind of matter when there are other crimes to investigate against its own citizens committed in its own territory? And in any event, what laws might make it possible for proceedings to be brought if the alleged offender is not a citizen of the relevant country or present in its territory?

This is what French authorities faced when compiling a case against Pinochet and his cronies following Pinochet’s monumental arrest in London in October 1998.¹⁰ A vital factor in the context of Chile was that evidence of State-sanctioned repression—including eye-witness testimony, contemporaneous media reporting, court applications made during the repression, government cables, military meeting minutes and agenda lists, personal letters and military files—were scrupulously preserved during the conflict by human rights organisations and victim/survivor groups, most prominently by the Vicariate of Solidarity which was afforded a degree of autonomy even during the most brutal years of Pinochet’s rule (most likely due to

campaigns/chile-98/brochfln.htm; Richard J. Wilson, ‘Prosecuting Pinochet: International Crimes in Spanish Domestic Law’, *Human Rights Quarterly* 21(4) (1999).

⁷ Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd edn (New York: Routledge, 2011); José Zalaquett, *Procesos de Transición a la Democracia y Políticas de Derechos Humanos en América Latina* (Santiago, Chile: Centro de Derechos Humanos, Facultad de Derecho, Universidad de Chile, 1999), available at www.democraciacdh.uchile.cl/publicaciones.

⁸ Curran (n 2) chapter 5.

⁹ Nancy A Combs, *Fact-Finding without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions* (1st edn, Cambridge University Press 2010).

¹⁰ French Tribunal de grande instance (Paris) *Order of November 2, 1998 in the case of MM. Chanfreau, Claudet et Pesle*. Relatives of the victims made the initiating private complaint in Paris through their legal representatives days after Pinochet’s UK arrest.

its ecclesiastical nature).¹¹ Preserving and safeguarding this material created a vital repository of potential evidence that would later reinforce the Chilean National Truth and Reconciliation Commission (known as the Rettig Commission after its Chair) and subsequent truth commissions and other TJ mechanisms, including court cases as they began being litigated across the globe.¹²

The Alfonso Chanfreau Case—The French Pinochet Moment

The French Pinochet moment became synonymous with the Alfonso Chanfreau case, which was a reckoning of Pinochet era crimes in France litigated on the basis of expansive extraterritorial jurisdictional permissibility, in this case on the basis of the dual nationalities of four French Chilean victims who were made disappear by Pinochet's secret police, the *Dirección de Inteligencia Nacional* | the National Intelligence Directorate (DINA), and the transnational terror network, Operation Condor in the 1970s. In response to the repression inflicted by Pinochet's military junta—which involved enforced disappearances, extrajudicial killings, systematic torture, and cross-border terror operations, facilitated and committed by members of the State security apparatus against perceived dissidents—victims/survivors and their relatives demanded accountability elsewhere until such time that Chile was ready to officially learn the truth, and legal forms of justice were able to be served at home.¹³

Alfonso Chanfreau had been identified by DINA officials as an opponent of the regime, given his leadership role in the *Movimiento de Izquierda Revolucionaria* | Movement of the Revolutionary Left (MRI). Alfonso was captured by State forces from his home just before midnight on 30 July 1974, where he was with his wife Erika Hennings and their one-year-old daughter Natalia. The Alfonso Chanfreau case offers important insights from the cradle of TJ—Chile as part of the broader Latin American dictatorial cone—given its temporal distance (over five decades now) since the Chilean military junta was in power, this case originated from a transitional context and continued in a third-party country before it returned home, and it encountered myriad social legal phenomena that facilitated its continuation across borders.¹⁴

Research Methods

¹¹ Anita Ferrara, 'Archives and Transitional Justice in Chile: A Crucial Relationship' (2021) 22 Human Rights Review 253, 259; Vergara Low MP (2012) Los Archivos de los Desaparecidos en Chile Arch-e/revista Andalus de Archivos 5:225–238.

¹² Ferrara (n 5); Hau B, Lessa F, Rojas H (2019) Registration and documentation of state violence as judicial evidence in human rights trials. In: Bernasconi O (ed) Resistance to political violence in Latin America, documenting atrocity. Springer.

¹³ Ferrara (n 5); Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (1. ed, Norton 2011); Roht-Arriaza (n 6).

¹⁴ Curran (n 2).

Employing an overarching tracing methodology, I followed ‘archival remnants’ left behind by authoritarian leaders, which revealed that corpuses of archival material originally created to document State-sanctioned brutality were later used to hold former leaders to account for crimes engineered and committed against their own civilian polity.¹⁵ This method enabled the identification of four key ‘activation sites’ in the Alfonso Chanfreau case litigation narrative, wherein compendiums of archives, including those of human rights organisations, solidarity groups, government agencies, truth commissions and courts, were collated and presented to foreign audiences in diverse spaces over time.¹⁶

At a high level, my doctoral research revealed the following key findings in relation to the Alfonso Chanfreau case that are further detailed below:

- 1) four primary activation sites were identified from analysis of the data,
- 2) archival collections comprising a variety of archival types were used at each activation site, and
- 3) a number of facilitating factors were elucidated, these factors contributing to France becoming a ready site of accountability at the relevant time.

The findings listed above are discussed herein as they pertain to each of the key activation sites.

Firstly, legal proceedings seeking justice for Alfonso commenced in Chile after the first truth commission, the Rettig Commission, that completed its mandate in 1991. An originating application for protection, known as a habeas corpus case, was filed in Chilean courts with the assistance of the Vicariate of Solidarity, using a compilation of eye-witnesses testimony, media reporting, State records, and truth commission evidence.

The second activation site, the Spanish intervention, refers to the Spanish proceedings that culminated in the issuing of an international arrest warrant by judge Garzón for Pinochet himself. The Spanish prosecutor involved in that pivotal case was accredited by Garzón as the great architect behind initiating the Pinochet case in Spain who had waited around 40 years for the opportune time to seek justice for the former leader of Chile, Salvador Allende. Garces had been Allende’s closest adviser and was instructed by Allende himself moments before his death on the first day of Pinochet’s bloody military coup to tell the world the story of what had happened there. Garces forged an argument based then on the theoretical application of international criminal law in a domestic setting that due to the volume of material available was simply undeniable. Evidence from the *Terror Archives* in Paraguay and declassified US government documents compiled during the Spanish proceedings were essential to forging an erudite case against Chanfreau’s captors at the second activation site.

¹⁵ Francesca Lessa, ‘Remnants of Truth: The Role of Archives in Human Rights Trials for Operation Condor’ (2021) 56 Latin American Research Review 183.

¹⁶ Eric Ketelaar, ‘Tacit Narratives: The Meanings of Archives’ (2001) 1 Archival Science 131; Ferrara (n 11).

The third site, the French Pinochet moment, had arrived, amassing court files from overseas (as there were now domestic Pinochet related cases ongoing in Chile, Italy, the US, Germany and Spain), State files, truth commission records, and witness testimony that grounded trial proceedings *in absentia*. The following excerpt from my doctoral thesis provides an overview of factors that contributed to this litigation juncture operating as a key activation site:

*Multiple factors contributed to France becoming a ready site of accountability for atrocities committed in the Latin American cone in the 1990s and beyond. Beyond the existence of strong Leftist networks across Europe and Latin America, broader jurisdictional permissibilities were available in French legislation that allowed its courts to investigate crimes committed against French nationals, no matter the location of their commission. Its *partie civile* mechanism allows French victims or their relatives to activate an investigation through a private complaint, and in the event the accused fails to be arrested or appear for trial, the case may proceed in *absentia*. These legal system nuances, reserved to ensure accountability for the most egregious offending in the face of impunity, had fortuitously been enlivened in France before Pinochet's arrest in the United Kingdom (UK) in October 1998. Private complaints began being litigated in French courts to address international criminality deriving from Latin American military regimes, successfully grounded on passive personality jurisdiction, albeit with varying degrees of success.*

*As has been extensively reported and analysed, the arrest warrants for Pinochet issued by Judge Garzón in Spain and upheld by the UK catalysed a paradigmatic shift in the international legal arena—a phenomenon that became well-known as The Pinochet Effect—which operated as a thunderbolt to wake up the fatigued Chilean diaspora community in France. Days following the arrest of Pinochet in London, on 30 October 1998, magistrate Roger Le Loire opened a criminal investigation in relation to five French-Chilean nationals who had been made disappear in Chile and Argentina at the request of their families. The fate of four victims was uncovered during the French investigations, with the fifth case remaining unsolved. The remainder four cases proceeded on the bases of crimes codified in the French domestic Penal Code in force at the time of the alleged crimes that *prima facie* amounted to sequestration accompanied by torture.*

In 2010, after a two-week trial in Paris, the captors of Alfonso and the other three French Chileans were found guilty of kidnapping, torture and unlawful detention and were sentenced to imprisonment sentences ranging from 15 years to life. The convicted had all been leaders in Pinochet's security apparatus.¹⁷

As to **the fourth and final activation site**, the Alfonso Chanfreau case finally came to a close in Chilean courts in July 2024,¹⁸ representing how long it often takes for a transitional country to conduct legitimate accountability efforts after the close of a period of widespread

¹⁷ Curran (n 2) chapter 3.

¹⁸ Ruling for case role 1362-2013.

repression. These proceedings confirmed an earlier first-instance ruling and substantiated the sentences handed down. Although far shorter than those imposed by French courts, the Chilean final sentences nonetheless indicate Chile's ongoing reckoning with the legacy of its dictatorial past and the impact of third-country efforts on TJ processes in-country.¹⁹

By following a tyrant's paper trail, I learned how archives—be they birth certificates, death certificates, immigration records, government cables, (declassified) military files, legal judgments, hearing transcripts, witnesses statements, letters, personal photos, paintings, poems, newspaper clippings, leaflets—acquire new and or varied meanings when they are (re)interpreted by new audiences over time.²⁰ Strikingly, documentation of a regime's systematic policy of forcible detention, torture, disappearances and extrajudicial killings against opponents of the regime, including in other countries, were later successfully used as credible evidence of individual criminal liability, thereby operationalised against the very creators of the documents themselves.

Conclusions and Implications

In closing, understanding that **archival treasure troves** exist in State archives, held by human rights organisations and families, by courts and truth commissions *and* pre-empting the appropriate time and space to prime their activation, are essential facets of building strong, creative cases against former tyrants.²¹ Additionally, the availability of **private prosecutions**, including the tactful use of private complaints brought on behalf of the relatives of the disappeared by interested groups, ensures viable, alternative justice pathways for victims of atrocity. To do so, the collective expertise of practitioners from diverse settings and disciplines—including archivists, social scientists, lawyers and solidarity group delegates as guided by victims/survivors in-country and from diaspora communities—must be drawn upon and forged together to created that **multidisciplinary, transnational ecosystems of actors**; these coalitions have the capacity to spur on and endure incredibly lengthy transnational litigation, as well as the necessary expertise and networks to overcome complex legal and non-legal challenges that are routinely encountered throughout the lifecycle of a case of this kind.

¹⁹ Interview with Erika Hennings Cepeda, 'Fieldwork Interview' (25 January 2024); Curran (n. 2) chapter 3. Counter views are available, with some scholars arguing that justice was under-way in-country and that external factors, rather than domestic process, exerted the most significance on relevant Chilean human rights trials; Cath Collins, 'Grounding Global Justice: International Networks and Domestic Human Rights Accountability in Chile and El Salvador', *Journal of Latin American Studies* 38(4) (2006), pp. 711–738; Cath Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* (University Park, PA: Pennsylvania State University Press, 2010).

²⁰ Ulrike Lühe and Romain Ledauphin, 'From the Forerunners of Document Collection to the Trial of Klaus Barbie and beyond: The Transitional Justice Journey of the Izieu Telegram' (2021) 25 *The International Journal of Human Rights* 440.

²¹ Interview with Kate Doyle, 'Fieldwork Interview' (2 February 2023).

Additionally, while the **quantity** of potential evidence has ostensibly increased, including with the rise of digital evidence in human rights cases, ensuring **quality** evidence is captured, organised and effectively explained to adjudicators is imperative.²² Proving provenance, the authenticity and reliability of evidence and chain of custody, remain critical current and future issues. Citing Professor Sadat, ‘the future of international law is essentially domestic’, and I add that international and regional judicial mechanisms were *always* supposed to operate complementary to national efforts.²³ Focusing on strengthening domestic proceedings to address atrocity crimes is critical to maintaining the legitimacy and authority of the international criminal justice project, which is a central feature and finding of my research.

²² Sue McKemmish, Franklyn Upward and Barbara Reed, ‘Records Continuum Model’ | *Encyclopedia of Library and Information Sciences* (3. ed, Taylor & Francis 2010); Combs (n 9), Interview with Terry Karl, ‘Fieldwork Interview’ (25 April 2023).

²³ Professor Leila Sadat, virtual presentation ‘Current Challenges to International Justice: Lean in or Leave?’, Oxford Transitional Justice Research Seminars, University of Oxford (Oxford, 25 June 2019), available online at www.podcasts.ox.ac.uk/current-challenges-internationaljustice-lean-or-leave (accessed 3 February 2021), as cited in Courtney Martin, ‘Treaty-Based Regulation and Evidence-Extradition Agreements as Critical Tools in the Fight against International Criminal Wrongdoing’ (2021) 22 *International Criminal Law Review* 1168, 1187.