

Bringing Pinochet to justice

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Augusto Pinochet, retired army commander and former president-dictator of Chile, received an ironic and unwelcome birthday present this year while recuperating from back surgery in a London hospital. On November 25, the day Pinochet turned 83, the judicial committee of Britain's House of Lords ruled that he does not have absolute immunity from arrest for actions carried out while he was a head of state.

The decision was hailed by human rights activists, who saw it as a landmark assertion that systematic murder, torture and kidnapping are not legitimate functions of a head of state and do not merit the granting of immunity. The British court action was in response to an extradition request issued by Spanish "superjudge" Baltasar Garzón, who charged the general (and now "senator for life") with just such crimes, including the murder of a number of Spanish nationals in Chile during his 17-year reign, 1973-1990.

To Pinochet's delight, however, the law lords' decision was overturned December 17 because one of the judges failed to declare his association with Amnesty International, a plaintiff in the case against the general. The question of immunity will now be reconsidered by a new panel.

There are plausible arguments against Garzón's efforts to put Pinochet on trial. For example, some observers-not all of them supporters of Pinochet-contend that such efforts would not only violate Chile's national sovereignty, but could further polarize its people and jeopardize its fragile democracy. They maintain that Chile was able to make a transition to democracy only because the guilty were given amnesty. Frank McNeil, a former U.S. State Department official, writes (in a letter to the *New York Times*) that "Chile's reconciliation is more important than General Pinochet."

True, but is it an either/or situation? Many Chileans believe that authentic reconciliation cannot come about without some accountability on the part of Pinochet and his cohorts. Polls indicate that about two-thirds of the Chilean people think the general should be brought to trial, but they want a domestic setting for it-and their government has hinted at such a possibility. But only Chile's Supreme

Court could strip Pinochet of the perpetual immunity he provided for himself in the constitution he devised for the country, and that is highly unlikely.

Another argument advanced against trying Pinochet abroad is that it will encourage dictators to stay in power. Writes Charles Krauthammer in *Time*: "For any tyrant, the best protection from the kind of justice being visited upon Pinochet is to continue to tyrannize." (Krauthammer also says that Pinochet "gave up" power in 1990. But he conveniently fails to mention that the dictator was confident he would win the '89 plebiscite he engineered yet lost.) At base, Krauthammer's argument is speculative. It can be argued just as reasonably, if just as speculatively, that Pinochet's situation should lead tyrants to have second thoughts about, and perhaps deter them from, the use of torture and terrorism-especially if they have any desire to venture beyond their own country's borders.

There is also the risk (and so far the reality) that international law concerning crimes against humanity will be applied selectively and arbitrarily, and thus unfairly. Several other countries besides Spain are now seeking Pinochet's extradition, including France. Yet France allows Haiti's former dictator Jean-Claude ("Baby Doc") Duvalier to reside in a comfortable chateau on French soil, and Congo dictator Laurent Kabila recently visited Paris without hindrance. Both have appalling human rights records. These are perturbing incongruities-but should all dictators go free because some go free? Justice is never perfectly achieved, but that is hardly a reason to stop seeking justice.

The Chilean government attributes more than 3,000 murders and "disappearances" to the Pinochet regime; many investigators believe the actual numbers to be considerably higher. In any case, the numbers are sufficient to warrant Pinochet's prosecution. But Britain affords numerous avenues of appeal, so it seems doubtful that the aging general will ever be brought to trial, in Spain or elsewhere. It is possible, however, that he will never again see his homeland.

Were Pinochet to be tried, an international, rather than a Spanish, criminal court would be preferable. But although such a tribunal is in the making, it is not yet available. Last summer when 120 countries voted to set up such a court, the U.S. was the only democracy to oppose it. The U.S. has also been largely silent about the Pinochet case. Moreover, it has been reluctant to declassify and release pertinent Pinochet files requested by Spanish magistrates months before the general ended up in a London hospital. This lack of cooperation should not be surprising, however,

in view of the fact that the CIA aided and abetted the military coup in '73, and our government restored to the Pinochet regime aid it had withheld during leftist Salvador Allende's three years in power.

In Latin America, Pinochet has few defenders outside Chile. At a recent summit, the presidents of several Latin countries declared that international law should apply to "crimes of international transcendence." Much is yet to be done in the realm of international law; obstacles and complexities remain to be overcome. But accountability for large-scale crimes against humanity should not be confined within national boundaries, and carefully crafted international law, implemented as uniformly and fairly as possible-and with appropriate safeguards against capricious prosecutions-should be welcomed by all who value justice and the rule of law. Putting General Pinochet in the dock would be a sizable step in the right direction.