



**THE TRANSFORMATION OF THE CHILEAN ARMY:
BUILDING INSTITUTIONAL INTEGRITY AND
LEGITIMACY THROUGH THE DEMOCRATIZATION
PROCESS OF CHILE.**

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1. Introduction

Democracy is going through a deep crisis of legitimacy in different parts of the world. The crux of the problem is the lack of credibility in public institutions. Citizens blame politicians, as well as the economic and democratic system. Chile is not immune to this problem. Indeed, the recent scandals of corruption and lack of transparency in state institutions have further damaged public trust in governance institutions. Thus, although Chile's level of democracy rank very well among different countries in Latin America and the World¹, trust in democratic institutions is relatively low compared to ten years ago. At that time, the trust in Government was over 30 per cent, and presidential approval was nearly to 80 per cent, according to the poll conducted by the Center of Public Studies (CPS).²

During the 1970's and 1980's, Chile was under the government of a military dictatorship (or junta military) run by General Pinochet. After Pinochet, many challenges of democratic reconstruction arose during the subsequent democratic governments of the leading political coalition named *Concertación*. The issue of the role of Armed Forces in a democratic setting was also a point of tension within the democratization process. During the 1990s and the initial democratization period, the Aylwin administration was required to put in a substantial effort to rebuild public trust in democratic institutions, the social fabric and their role in Chilean society.

Due to the work of many social and political actors, public trust in institutions began to be rehabilitated. As a result of these democratization processes, at the beginning of the 1990s, the Chilean Army went through a crisis of legitimacy. This was due, primarily to the fact that the army, during the previous era of dictatorship, had played an important role in repressing political opponents for 17 years. During the 1990s, Chile slowly began to discuss how a

¹ Freedom House 2018 Report; The Economist infographics 2018

² CEP Survey, June 2017

future modern army should look and function within this new democratic context.

Thus, the process of institutional modernization in the Army began slowly with the democratization of Chile. However, the actual process of transformation started later. The primary objective was to recover the mission and legitimacy of the Chilean Army. In this sense, the governments of the *Concertación* and the high command of the Army were effective in reconstructing the purpose and legitimacy of the institution in the new democratic era. The adaptation of the Army to this new era was only possible by making a profound modernization and transformation. In this sense, the Army experienced its own democratization process.

Currently, and after all those efforts the Chilean Army is facing public scrutiny again. In the last four years, dozens of military officers and soldiers of different rank were accused of various acts of fraud and corruption. The most notorious case is known as the Army-fraud or Milico-Gate.

Integrity, transparency, and accountability in organizations are probably the most used concepts when talking about building trust and fighting corruption in liberal democracies. This case study addresses these issues in the context of the Chilean Army. This case study is novel in that there is almost no academic literature about institutional integrity, or levels of public trust in the Chilean Army. We are thus contributing to the literature on institutional integrity, while also developing recommendations on how to build trust within the security and defense sector. To do this, this case study utilizes Nikolas Kirby's theory of institutional integrity. We use Kirby's framework to evaluate the modernization and democratization process of the Chilean Army, and also as a device to explain how, despite significant reform processes, the Army was still embroiled in corruption scandals in the last four years.

This case study addresses this variation of integrity of the Chilean Army during the last two decades. It also describes the process of the successful improvement of integrity within this state institution. Specifically, it focuses on the transformation and modernization process of the Chilean Army during the beginning of the 21st century. It then analyzes the consequences of

insufficiently strengthening the robustness element of institutional integrity, during the modernization process of the Army. In particular, by not providing it with a robust and transparent public procurement system and control like the other institutions of the State, the Army was more vulnerable to acts of corruption than other public institutions.

Concerning the institutional integrity of the Army there is still scope for improvements. As we identify, some problems have yet to be fixed. Some of our recommendations are to increase transparency by modifying or eliminating the 'secret copper law.' We also recommend, subjecting the Army more substantively to the system of public procurement by terminating exceptions and increasing both internal and external civilian controls over the Army.

According to the public integrity framework, we observe some improvement in some elements conceptualized in the theory. In general, the transformation of the Army was successful. Indeed, the modernization and transformation led the Army to improve its institutional legitimacy. Additionally, it must be noted that during the early modernization phase, the managerial systems in fact strengthened the 'robustness' requirement of the Army. However, it is difficult to ascertain whether transformation of managerial systems alone was reflected in great overall trustworthiness of the institution. Thus, we argue that it was the change of purpose, mission and vision together that was crucial to achieving greater overall trustworthiness of the institution.

This document provides a series of conclusions and recommendations. First, in general, the transformation of the Army was successful in light of institutional integrity theory. There is some evidence in support of this conclusion: data illustrates that there was an increase in confidence in the Army *after* the reforms of 2002 and 2005. However, it must be noted that it is difficult to ascertain whether this is a truly accurate proxy measure for trustworthiness of an institution. Second, the Army is still vulnerable to acts of corruption. This is mainly because the robustness element is not satisfied without further oversight and a more transparent system of public procurement in place. Therefore, these are the key elements that explain the current cases of corruption and

possible futures instances if nothing changes in the coming years. Third, the Army is not doing what it can do best with its abilities because officials have spent the taxpayers' money on acts of corruption that the Army has not been able to control or sanction. Fourth, the Army, if it wishes to be worthy of public trust, must be accountable for the recent acts of corruption and take full institutional responsibility. Although the cases of corruption were carried out by officers and non-commissioned officers of the Army, these actions are affecting the integrity of the Chilean Army as a whole institution. Consequently, there is an institutional trust erosion as an effect that cannot be easily mitigated. Fifth, leadership is an important element in creating a shared institutional purpose, in order to strengthen public integrity in organizations. Sixth, and finally, proper sanctioning of high command, or public naming and shaming of high command must be permitted, when corruption scandals happen under their leadership.

This work is structured on the basis of four small chapters. First, the paper conceptualizes the framework of the Public Integrity Theory. The case of the Chilean Army will be analyzed in light of that conceptual matrix. Second, it will look at the current context providing a short review of the history of the Army and its main characteristics. Third, this paper will focus on making a critical assessment of integrity in the Chilean Army using the public integrity theory of Oxford in two different parts. First, the document starts by identifying the elements of the constitutional mandate, the vision and mission over the last 28 years. Then, we explain the process of modernization and transformation aiming to provide greater clarity about its bases during the return of democracy. Secondly, it will show how the reforms implemented in the early 2000s contributed to building integrity and legitimacy restoring citizens' trust in its Army. It also will show the actual problems of lack of a transparent system of public procurement and control, which affects the robustness of the army in the light of integrity theory. Finally, broad trends of public trust perceptions, post-reforms, will show how integrity and trust increased in the Army from the transformation during democracy. Also, this part it will look at its decline during the last years assessing the impact of the current corruption cases.

2. Conceptual Framework: Public Integrity

Integrity as a goal for better government is relatively new. Even so, during the last years this topic has been the political agenda in many international forums. However, as Robinson et al. argue, 'despite integrity being common parlance across a wide range of research, there is very little consensus [among scholars, policymakers, politicians, and international organizations] on what integrity actually is.'³ A novel approach to the problem of assessing public integrity can be found in the theory developed by Nikolas Kirby. In his paper, 'An Institution-first Conception of Public Integrity', Kirby analyzes competing theories and definitions of integrity, to construct a novel approach to the concept.

According to Kirby's definition, 'public institutional integrity is the robust disposition of a public institution to legitimately pursue to its legitimate purpose, to the best of its abilities, consistent with its commitments,'⁴ [across time and circumstance]. It has six major components: 1. purpose, 2. the legitimacy of purpose, 3. an institutional pursuit of purpose, 4. legitimacy of pursuit, 5. consistency with its commitments and finally, 6. robustness. Kirby's theory can be applied to different types of organizations, both public and private. Additionally, Kirby argues that fighting corruption is necessary but not sufficient to sustain institutional trust and legitimacy in the long-term. From this perspective, it is necessary to analyze the concept of 'public integrity' which has been extensively studied from the theoretical perspective of the public servant. Unpacking public officer integrity, Kirby states that it 'is the robust disposition of a public officer, in the course of her public duties, to pursue the integrity of her institution to the best of her abilities.'⁵ Under this conception, the officers are considered the *primary resource* through which an institution is to achieve integrity. Contrarily, in the old "officer-first" conception, officials (public servants) are considered as the main threat variable that must be monitored and controlled.

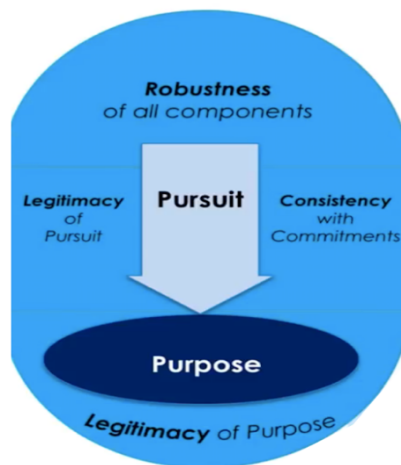
³ Robinson, Cadzow and Kirby 2018, p.17

⁴ Kirby 2018, p13

⁵ Kirby 2018, p31

According to this theory, in order to build a rational foundation for trust in institutions, different requirements are needed, as illustrated in the figure below. However, the key element rests on a normative and teleological basis: integrity may only be achieved through integritous action. Indeed, the strength of this theory is that it provides a teleological argument for organizations to be institutionally ‘worthy’ of public trust. Additionally, the inclusion of legitimacy as a cornerstone of public integrity ensures that it ‘satisfies the justifiability condition for any conception of integrity. By definition, legitimacy entails that an institution has both sufficient and necessary justification, in the form of a moral right, for its purpose and its pursuit.’⁶

Figure 1: Integrity Model⁷



We argue that the reader can use this theory as a toolkit for public policy to perform their own qualitative analysis for other cases.

2.1 Key Definitions

In this section we unpack the core components of Kirby's theory of public integrity, as well as offer key definitions of core concepts, such as 'institution.'

⁶ Kirby 2018, p18

⁷ Building Integrity Programme – BSG - Oxford

Institution (capable of having integrity): a narrow definition aims for a conception of being capable of agency. The agent must be capable of making commitments, have obligations and must be morally responsible for its actions.⁸

Public Institution: 'any institution that owes its legitimacy to pursuing some conception of the public good,' (for instance, it includes governmental institutions, non-governmental institutions, international organizations).⁹

2.3 Components of Public Integrity

Purpose: to have integrity every institution requires a clear and precise purpose ' (or, a set of purposes with clarity about how they are to be balanced against one another, either procedurally or substantively, [if problems arise]).'¹⁰ Furthermore, if there is no clear shared purpose, individual members would not be able to exercise discretion nor interpret rules in a coherent and consistent institutional manner.¹¹ In the short term the institution will overcome its problems and survive yet not in the long-term. Thus, there will be failures of institutional integrity necessary for long-term trustworthiness and legitimacy.

Legitimacy of Purpose: means a purpose that is consistent, coherent, reliable, virtuous and trustworthy.¹² In short, worthy of respect from citizens. However, if the purpose of an institution is not legitimate, even if it is clear and precise, then that institution lacks the necessary and sufficient requirement for integrity. Legitimacy is a moral concept. From a pragmatic and moral perspective, an institution has legitimacy when it has the "right to rule". It is set by the rule of law of a legitimate authority, or its official delegates. This implies that it can impose duties on citizens when obedience is required, but it also has limits to its authority established in the law. In this sense, a legitimate purpose exists even if people do not like the purpose. The important issue is conceptually

⁸ Kirby 2018, p5

⁹ Idem

¹⁰Kirby 2018, p14

¹¹Kirby 2018, p16. On the contrary, "a clear common purpose offers the only robust means to avoid or resolve these conflicts [of multiple agents, different rules, powers and resources] in a way that will make activities across the institution as a whole consistent; the actions of the institution as a whole coherent, and thus, if so motivated, trustworthy."

¹² Kirby 2018, p17

agreeing that the institution is permitted to have its purpose and have the legitimate right to act in a determinate way. Therefore, a legitimate purpose is a purpose that is consistent with such obedience, support and respect.¹³

Pursuit: It is the institutional capacity to seek its legitimate purpose to the best of its abilities, given the resources that it has. Additionally, it is possible that an entity never achieves its purpose, but its integrity lies in the constant search for it. The path of trying to find and achieve that purpose binds to the theory of responsibility. So an institution can be held responsible for the extent to which it pursues its purpose, to the best of its abilities.¹⁴

Legitimacy of pursuit: Integrity is linked to responsibility. In this sense, the motivation to pursue the purpose must be the morally correct one.¹⁵ Also, 'it is not sufficient that an institution does pursue its legitimate purpose, but it must do so for the right relevant motivating reason in order.' In order to be a virtue, the institution must do things in the right way and in no way distorted by the law or its own commitments.

Consistency with commitments: Public Institutions according to its nature make ex-ante and ex-post commitments to the public.¹⁶ For instance, to build a road, to deliver a new hospital, to keep citizens' data secure, to comply with certain internal processes. This means compliance with formal or informal rules and norms in the sense of being able to fulfil its basic duties. A public institution with integrity pursues its legitimate purpose, consistent with such commitments. Thus, in order to be consistent an institution that commits to do something it must do everything to deliver, except that the commitment turned out to be inadequate, not practicable or that it goes beyond their legitimate powers.

Robustness: The disposition [of a public institution to legitimately pursue its legitimate purpose, to the best of its abilities, consistent with its commitment] must also be robust in time and despite the circumstances.¹⁷ It must be strong to solve the present and future obstacles. It is no

¹³ Idem

¹⁴ Kirby 2018, p23

¹⁵ Kirby 2018, p24. Additionally, "trust does not go hand in hand with institutional performance regarding the purpose because in that case not many institutions would be trustworthy. What matters is the unconditional search for the purposes of the institution to the extent of its capabilities that justify its existence. Therefore, the public needs to be able to trust the institution to cohere to its legitimate purpose".

¹⁶ Kirby 2018, p25

¹⁷ Kirby 2018, p28

sufficient to had had historical coherence. Therefore, all the elements of the theory have to be necessary achieved previously even in difficult times in order to have integrity. Thud, they must be maintained even if there are no more resources available, if the government change, or if the political scenario is dynamic. This is the element that allows the institution to navigate under the storm. Therefore, 'without robustness of disposition, public institutional integrity could not be a true virtue, nor ground trustworthiness.'¹⁸

Having established the critical components of Kirby's conception of public integrity, we now turn to the case before applying this framework in an analysis of the Chilean Army. The following section offers a short background to the case study.

3. Funding the Chilean Army

One of the national myths in Chile, is the belief that the army is the most modern and disciplined in the Southern American region. 'Always victorious, never defeated' says its informal motto. This credence goes back to the creation and professionalization of the army as early as 1885. At that time, Chile hired the services of the German army officer Emil Körner to build a professional army after the victorious War of the Pacific against Perú and Bolivia.

According to scholar Frederick Nunn:

Chile 's victory in the War of the Pacific is simply the need for a modern, powerful fighting machine and for increased power. Körner molded one; and when he retired in 1910, he left behind the best-equipped land fighting force and the best-educated officer corps in Latin America¹⁹

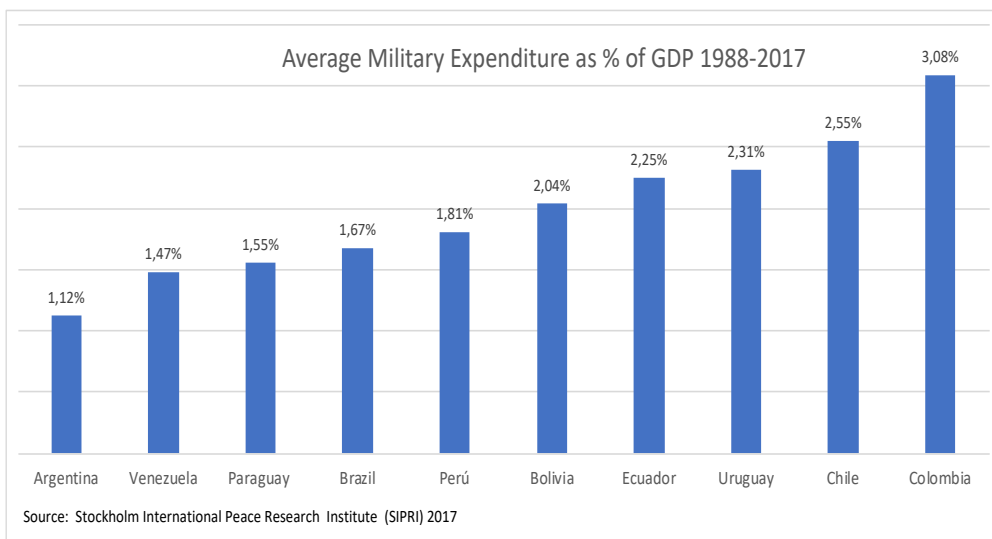
¹⁸ Kirby 2018, p28: "Few alternative conceptions have explicitly identified 'robustness' in general as a substantive condition of public integrity. However, it arises implicitly in attempts to incorporate more specific conditions like processes of public accountability, transparency, the minimisation of discretion, institutional competition, and so on" ..." However,...they are only important to integrity if and to the extent that they promote robustness. And, sometimes they will not"

¹⁹ Nunn 1970, p300

This sentiment is reinforced, from time to time, not only internally but also by foreign analysts. In 2008, Armen Kouyoumdjian at the SIPRI Stockholm International Peace Research Institute, argued that ‘Chile’s is the most modern and best-equipped army in Latin America.’²⁰

The Chilean Armed Forces have more than 120.000 military troops²¹. In fact, Chile has also one of the largest war budgets²² in the region per capita and as a percentage of GDP, as we can see in the figures below. By way of comparison, the military spending of Chile is only surpassed by Colombia, a country with constant expenditure in the war against guerrillas and drug trafficking. Moreover, Argentina, Chile’s immediate neighbor, spends one whole point less as a percentage of GDP on defense than Chile.

Figure 2: Average Military Expenditure in South America²³



In 2017, Chile’s military annual budget reached more than 5 billion dollars or around 2 per cent of the national GDP. In light of this, it is important to mention the special circumstances of its financing. The military budget comes from two

²⁰ The Economist. /2008/09/25/

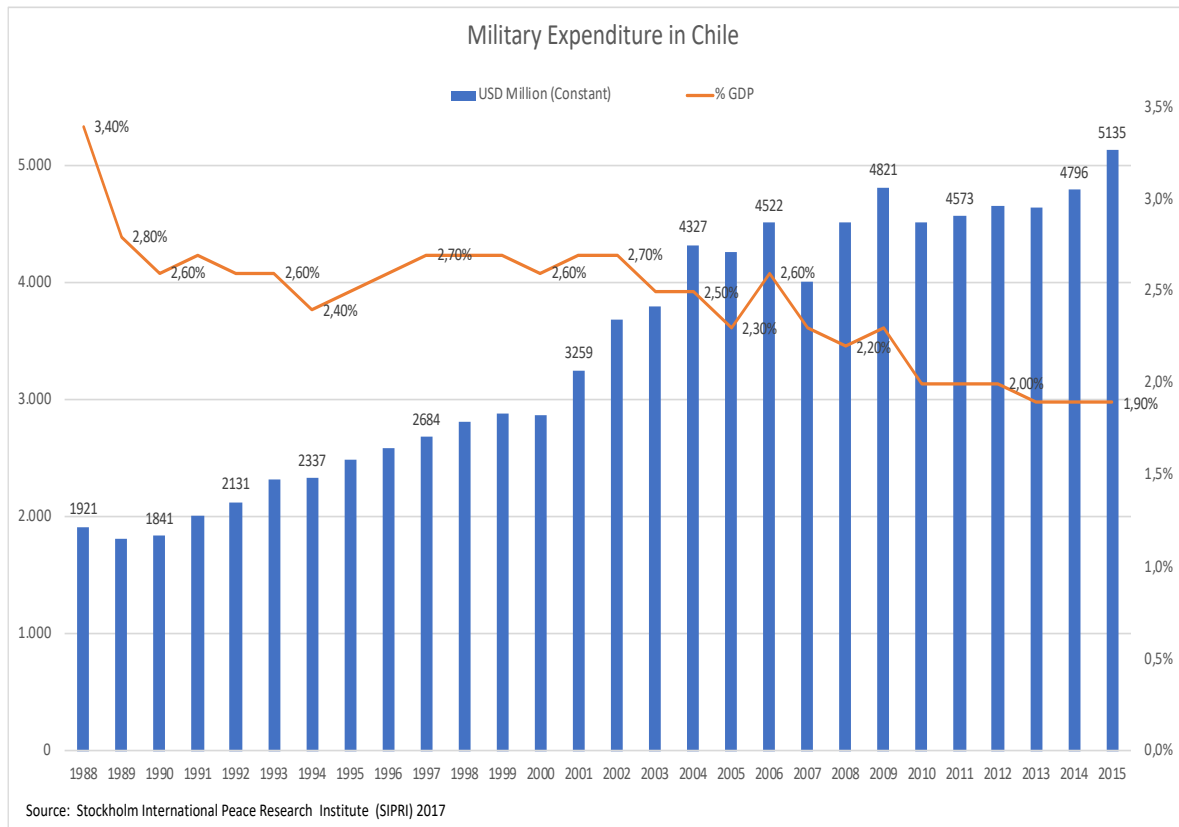
²¹ World Bank Data

²² Emol. /2018/05/03/

²³ SIPRI. Military Expenditure Database

sources: 1) the regular budget of the annual national budget law and, 2) through the law N°13.196, or better known as the Secret Copper Law (ley reservada del cobre). As we can see in the figure below, the budget in constant currency has been growing since 1988. The fundamental reason for this was the boom in the price of copper that accumulated billions of dollars in a special fund for military purchases called the 'FCE Strategic Contingency Fund.' However, as the GDP has grown, the total spending as a percentage of GDP has gradually declined over time.

Figure 3: Military Expenditure in Chile, 1988-2015²⁴



²⁴ SIPRI. Military Expenditure Database

4. Evaluating the Chilean Army through Public Integrity Theory

In the following pages, we critically assess the transformation of the Army using the lens of public integrity theory. The main objective here is to examine if the Chilean Army succeeded or not in its efforts at modernization and transformation. As we discussed earlier, the Army lacked a fundamental legitimacy of purpose during the military dictatorship. In light of this, its transformation sought to rebuild trust in order to recover the necessary legitimacy in the eyes of the Chilean people.

4.1 First Period (1990 to 2002)

The Constitution, Vision and Mission of the Chilean Army

Starting in 1990, the transition process to democracy took a long time. Democratization during the 1990s is known as the period of ‘democracy to the extent possible’²⁵ or ‘consensus democracy.’²⁶ These names derive from the fact that political reforms were hamstrung by the fact that normally during this period it was expected that any kind of institutional reform would require military consent plus ample consensus in the political right parties to be enacted. This had a ‘locking’ effect on meaningful reform, meaning that substantive reforms to the system were often somewhat limited in reality.

However, for many scholars the democratic transition²⁷ was a successful process. According to Carlos Huneeus, a well-known Chilean political scientist, ‘the success of democratization [between 1990-2005] is praised by politicians, senior officials international and analysts, this process has been described as

²⁵ Navia, 2010.

²⁶ Huneeus 2009; Godoy 1999.

²⁷ The end of the transition period is controversial among scholars and politicians. There are two different dates to mark its ends. One of those, was the departure of General Pinochet from the Army in 1998 to become designated Senator until 2002. The other date considered, is in 2005 when President Lagos substantially reformed the constitution of the 1980s. Additionally, in some sense, the year 1998 was the time for General Pinochet to leave the position of commander in chief, that was the express and tacit democratic agreement.

'model'.²⁸ He argues that one additional element to consider for the successful democratization was the extraordinary economic performance²⁹ during those 15 years. Institutional and political reforms, plus good economic performance, made the democratic transition possible.

Although Chile became a democracy officially on 11 March 1990 when President Aylwin took office, the constitution of the military government of 1980 remained unchanged until 2005. Therefore, it kept many privileges to the military at the beginning of the new democratic era in place. It was therefore not easy for the *Concertación* to politically administer that period. Indeed, as Juan Linz and Alfred Stepan argue 'politically, Chilean democracy began under more constrained constitutional circumstances that were the case in any of the Latin American or southern European countries.'³⁰

Regarding the mandate of the Armed Forces, the constitution also contained profoundly controversial and anti-democratic elements that were eventually eliminated in the 2005 constitutional reform. Among several controversial prerogatives of the Army, there were two institutional features of greater notoriety that caused fundamental tensions within the new democratic context.

The first element was that the constitution³¹ (in article 90) established that the mission of the Armed Forces was to be the guarantors of the institutional order

²⁸ Huneus 2005, p13 (own translation)

²⁹ Also: Linz and Stepan 1996, Position 3777

³⁰ Linz and Stepan 1996, Position 3872

³¹ It was written as follows: Article 90. The Forces dependent on the Ministry in charge of National Defense are constituted solely and exclusively by the Armed Forces and by the Forces of Order and Public Security. The Armed Forces are integrated only by the Army, the Navy and the Air Force, exist for the defense of the country, are essential for national security and guarantee the institutional order of the Republic.

of the Republic, among other functions. This issue was debated for years in national politics because most political sectors considered it improper for the army to have that role within a democracy. Over time during the 1990s these elements became increasingly untenable from a political and social point of view.

In the same vein, Nathaniel C. Nash from the New York Times noted in 1992 that

in allowing Chile to move from a military dictatorship to an elected government, the general [Pinochet] was sure to retain for the military, and thus for himself as commander in chief of the army, a good measure of authority. Every few months, he likes to demonstrate the point.³²

However, in our opinion, Pinochet's central concern was in maintaining his and his family's impunity. There were two examples of high political tension during the Government of President Aylwin that support this conjecture. First, in 1990, due to fraud allegations with bank checks relating to Pinochet's son, the army gathered in its bases and deployed war exercises for three days throughout the country in the so-called 'liaison exercises' or *ejercicios de enlace*.³³ Second, *el boinazo* in 1993, again due to further investigations for the fraud of his son, Pinochet gathered armed commandos (special forces) in the neighborhoods of the Presidential Palace de la Moneda.³⁴

The Forces of Order and Public Security are integrated only by Carabineros and Investigations, they constitute the public force and exist to give effectiveness to the right, to guarantee the public order and the internal public security, in the form that they determine their respective organic laws. Carabineros will also be integrated with the Armed Forces in the mission of guaranteeing the institutional order of the Republic.

The Armed Forces and Carabineros [The National Police], as armed bodies, are essentially obedient and non-deliberative. The dependent forces of the Ministry in charge of National Defense are also professionals, hierarchical and disciplined.

³² New York Times /1992/01/26/

³³ Villaroel, Gilberto, 'Los conflictos de la familia Pinochet,' BBC Mundo, 11 August, 2005. Access at: http://news.bbc.co.uk/hi/spanish/latin_america/newsid_4140000/4140804.stm

³⁴ *ibid.*

The second element was the existence of the National Security Council (COSENA).³⁵ In its original wording, the COSENA was not merely an advisory council to the President. In reality, it was a strong political power to the military because it could be self-convened by two of its members.³⁶ Furthermore, it gave them a constitutional tool to be able to accuse the President of notable 'abandonment of duties' to the National Congress or the Constitutional Court. For these reasons, it was considered one of the dictatorial enclaves of the constitution that were later eliminated.

This situation was socially and politically unsustainable. Therefore, these functions were essentially eliminated in the constitutional reform of President Lagos in 2005. The reform turned COSENA into a merely advisory body, to be summoned only by request of the President. Before the reform, the constitution of 1980 expressed these prerogatives in a very particular way. Specifically, by pointing out in Article 95 letter B, the possibility of the National Security Council

to make present to the President of the Republic, to the National Congress or to the Constitutional Court, his opinion regarding any fact, act or matter that, in his opinion, seriously threatens against the bases of institutionality or may compromise national security.³⁷

³⁵ The constitution in Chapter XI article 95 created it and in article 96 it indicated its functions.

³⁶ For example: the commanders-in-chief of the Armed Forces.

³⁷ Article 95. There will be a National Security Council, chaired by the President of the Republic and composed of the presidents of the Senate and the Supreme Court, by the Commanders in Chief of the Armed Forces, by the General Director of the Carabineros and by the Comptroller General of the Republic ...

The National Security Council may be convened by the President of the Republic or at the request of two of its members and shall require a quorum to hold the absolute majority of its members. Article 96. The functions of the National Security Council shall be...

b) To make present to the President of the Republic, to the National Congress or to the Constitutional Court, his opinion regarding any fact, act or matter that, in his opinion,

In practice, this prerogative gave the Chilean Army the freedom to undermine Presidential power, denouncing it to Congress or to the Constitutional Court.

These military prerogatives are illustrated in the paper and table below by Chilean political scientist, Claudio Fuentes.³⁸ In a similar vein, Linz and Stepan refer to these prerogatives as the *de jure* and the *de facto* limitations of the Chilean democratic government.³⁹ For instance, as can be seen in the table, a broad range of prerogatives can be found. These include: political and professional autonomies expressed in the unremovability of the Commanders in Chief, a minimum annual budget for the military plus war material acquisitions, a special pension system and autonomy to develop their military doctrine, and so on.

seriously threatens against the bases of institutionality or may compromise national security.

³⁸ Fuentes 2000, p118

³⁹ Linz and Stepan 1996

TABLE 1: Comparison of Military And Civilian Prerogatives 1990-2000⁴⁰

Areas	Military Prerogatives	Civilian Prerogatives
Political Autonomy:		
Officer promotion and removal	<p>Appoint Commanders in Chief for four years.</p> <p>Promote and remove officers</p>	Presidential right to veto officer's promotions
Military Budget	<p>Minimal annual budget</p> <p>Minimum budget for military equipment acquisitions</p>	Civilian considered the minimum as a maximum
Pension System	Special pension system (state pensions versus individual capitalization for civilians)	
Justice	Extensive autonomy over civilian courts	
Human Rights	Amnesty Law (1973-1978)	
Professional Autonomy:		
Programs	Autonomous development of military programs	<p>-President's final approval of military acquisitions</p> <p>-Administrative decrees necessary for approval</p>
Doctrine	Autonomous development of military doctrine	President's approval of National Defense Plans
Institutional Involvement:		

⁴⁰ Fuentes 2000, p118

General	Constitutional role of “guarantor of the institutionality”
Specific	COSENA advises President on national security issues (meetings called by any two members) -Appoint designated senators through COSENA

Source: Fuentes (2000), p.118

4.2 Critical Analysis of the First Period

To begin, the Chilean Army lacked a legitimate purpose. During this period, this was not only a theoretical problem regarding all those antidemocratic prerogatives, but also a practical problem of mistrust. In fact, the very constitutional origin of the Army's mandate lacked any legitimacy in this period. Additionally, General Pinochet and other high-ranking military officers occasionally used their power to pressure or dissuade democratic governments from acting in a certain way – for example, if the government sought to reform the military pension system. Nonetheless, the pressure was mostly felt in cases of human rights abuses, by not allowing the prosecution of militaries or family members of Pinochet.

Therefore, the Army did not improve its image in the eyes of Chilean citizens during the Pinochet years of the 1990s. Although there were some improvements internally, mostly by the modernisation process, there were no substantive institutional transformations. Moreover, while Pinochet remained as Commander-in-Chief, and in conjunction with the antidemocratic prerogatives of the constitution, created conditions for a persistent illegitimacy of purpose within the Army.

Further, because of these conditions, the Army also failed overall to satisfy the ‘legitimacy of pursuit’ requirement of public integrity. However, there were some improvements in the element of ‘pursuit’ – improvements in the modernization of the Army (such as the Alcazar Plan) led to gradual

improvement in legitimacy of pursuit. Overall however, the Chilean people did not trust the Army during those years.

Regarding Public Integrity theory, during this period, to some extent the Army did improve but not all the necessary or sufficient to be a transformed Army. Fundamentally, this is because the lack of legitimacy of the purpose has a cascading effect. In this sense, once the purpose is deemed not legitimate, all the other elements lose their validity. In the case of the Chilean Army, this caused a lack of the necessary conditions to be considered trustworthy by the citizenry. However, as we argued above, from the perspective of public integrity theory, some elements were achieved in a better way than others.

In the table below, we summarize the Chilean Army's modernization in this period according to Kirby's framework.

Table 2.

Purpose	Constitutional Mission: The Chilean Army exists for the defense of the country, are essential for national security and guarantee the institutional order of the Republic.
Legitimacy of Purpose	Lack of a correct institutional framework to seek its purpose (which it was illegitimate). Basically, the two prerogatives in the constitution. 1) The constitutional role of guarantor of the institutionality and 2) The political powers of the COSENA. Additionally, Pinochet was Commander in Chief until 1998, with an extra constitutional prerogative of being unremovable. Non-publicly defensible: the constitutional mandates nor Pinochet's de facto purpose of the institution by remaining there.
Pursuit	Improvements in the modernization of the Army. For instance, the Alcazar Plan. Elaboration of studies and future projects.
Legitimacy of Pursuit	Lack of legitimacy. Also, Pinochet demonstrated his power and that of the Army whenever they felt threatened. 1) Ejercicios de enlace. 2) El Boinazo. 3) Human right cases. No social permission to pursue its illegitimate purpose.
Consistent with its commitments	Lack of significant commitments while Pinochet was Commander in Chief. However, he started the process of modernisation of the Army in line with the Defense Strategy of the democratic civil government. Unable to fulfil the basic duty of the Army to protect all the citizens, not just political supporters.
Robustness	The Army broke its historical coherence of a subordinated Army (by making a military coup to the democratically elected President Allende and killing and disappearing thousands of political opponents). Vulnerable to a political changing environment (democratization of the country). Little institutional capacity to navigate under the storm. 1) Lack of any type of accountability (low transparency in internal processes, purchases, changes of officers, etc.). 2) The lack of internal and external control systems, and purchases of weapons with money from the secret cooper law. 3) Dependent on resources, minimum budget.

4.3 The Process of Modernization and Transformation into a New Army (2002-Present)

The transformation⁴¹ of the Chilean Army was originally initiated as a process of modernization. It was a several step process. The first stage began as a reflection in the years 1992-1993. Then, in 1994 the Alcazar Plan was established by General Pinochet. This was a master plan of the modernizing process starting in 1997, with the elaboration of studies and future projects.⁴² However, one of the first implementation processes of modernization commenced in 1998 with a reform of the Army's education system, as well as structural improvements, aimed at rationalizing existing units in the Army. This process responded to the need for change in a new democratic and external environment for Chile by the end of the 1990s.

This modernization process was completed for the most part by the end of 2001. Essentially, the Chilean army was equipped with complete units at the level of combat units (Battalions) and independent fundamentals (Companies) in terms of personnel, equipment and infrastructure. This process of modernization produced a substantive improvement in the operational management of the Army. In particular, this was evident in the processes of instruction, training, maintenance, administration and general operation of the units.⁴³.

Arguably, without Pinochet the transformation process would have been faster. However, his role in the early modernization phase cannot be ignored. Additionally, under his command, although many tense situations, the Army started slowly to subordinate itself to civil political power. However, it is since 1998 when Pinochet retired, and General Ricardo Izurieta took over as Commander-in-Chief of the Army, that military-civilian relations began to improve markedly.

⁴¹ Cheyre 2008

⁴² Monsalve Egaña 2004, p1

⁴³ Cheyre 2008

4.4 Critical Analysis of the Second Period (2002 to Present)

A New Constitution, a New Internal Mission and Vision

In the the this section we address the transformation of the Army. Since the relevant reforms made from 2002 by the commander in chief of the Army, General Juan Emilio Cheyre. He incorporated a new mission and vision for the Army seeking for social integration into the new democratic environment. Thus, in the *National Defense Book of 2010* the current vision and mission of the Army can already be seen.⁴⁴

PURPOSE. President Lagos used an important amount of his political capital in 2005 to reform the constitution of 1980. Different stakeholders resisted these changes, primarily the political right. However, after 15 years of democratic government it was time to rid the constitution of the last remnants of authoritarianism. Thus, Article 101 of the new Constitution of Chile states that

The Armed Forces dependent on the Ministry in charge of National Defense are constituted solely and exclusively by the Army, the Navy and the Air Force. They exist for the defense of the homeland and are essential for national security.⁴⁵

This new wording no longer incorporates the controversial issue of the Army being the guarantors of the institutional order of the Republic. This cemented in law the will of the people as being the guarantors of Chilean democracy, leaving the army the merely role of defense. Thus, although between the years 1991 and 2005 there were eight small constitutional reforms, none of them affected the army or its constitutional prerogatives. It was only in the 2005 President Lagos reform that the military was substantively affected by the reforms.

⁴⁴ Libro de la Defensa Nacional. Means of the Defense 2010, p246

⁴⁵ Also: ...the Armed Forces and the Police, as armed bodies, are essentially obedient and not deliberative. The dependent forces of the Ministries responsible for National Defense and Public Security are, in addition, professionals, hierarchical and disciplined.

A NEW VISION AND MISSION FOR A NEW ARMY

1. VISION OF THE ARMY: An Army for combat: Effective and efficient in deterrence, security and international cooperation and conflict; polyvalent, interoperable, updated and sustainable, with an adequate management capacity, with a functional action and *valued by the society it serves*.

2. MISSION: With the purpose of operationalizing the objectives of the national defense. The Army defines its mission in the following way:

The Army's *raison d'être* is to contribute in a fundamental way to preserve peace. Its primary mission is to guarantee national sovereignty, maintain territorial integrity and protect the population, institutions and vital resources of the country, against any threat or external aggression, as well as constitute an important tool of Chile's foreign policy⁴⁶

LEADERSHIP AND BUILDING TRUST: GENERAL CHEYRE AND 'NEVER AGAIN.'

The process of real transformation begins with the arrival in 2002 of General Juan Emilio Cheyre as a Commander in Chief. Cheyre initially developed a document called 'Command Concept of the Commander in Chief of the Army: Period 2002-2006.' This document was fundamental in initiating the paradigm shift within the Army.

Although the Chilean Army is deeply hierarchical, General Cheyre saw the opportunity to exercise his leadership over his authority as a Commander in Chief. In his paper of 2008, Cheyre pointed out that a process of this nature could not be carried out instructing the command, but it should be a reflexive process, collective and with a shared purpose. Therefore, the process of institutional transformation had to be strategically aligned in such a way that the full fulfilment of its mission and vision could be achieved.

⁴⁶ Libro de la Defensa Nacional. Means of the Defense 2010. p246 (own translation)

Historically, for the *Concertación* governments 'the legacy of human rights abuse was more difficult to handle given the continuing presence of Pinochet's judicial, military, and political power resources.'⁴⁷ However, in an unprecedented act, in 2004, General Cheyre assumed institutional responsibility for the human rights violations during military government rule. He also condemned those actions of the Army during that period, pointing out that they had no ethical justification whatsoever.

Further, in 2007, General Cheyre also said in a speech to the Organization of American States (OAS) that

democracy and the role of the Army, suffered a profound deterioration in Chile in 1973. This led us to the loss of democracy. It also, led the Armed Forces to act beyond from what is their role in the democratic context. That period corresponds to what I will call "exceptionality". This is because it is abnormal. Therefore, it is far from its natural function, that the armies fulfill the role of exercising political power.⁴⁸

For Cheyre, an army that does not respect the human rights of its own people is not conceivable. In a speech in 2004 he pointed out that

the Chilean Army took the hard, but irreversible decision to assume the responsibilities that as an institution has in all the punishable and morally unacceptable acts of the past. In addition, it has repeatedly **acknowledged the crimes committed by his direct dependents**; it has censored, publicly criticized and cooperated permanently with the courts of justice to, as far as possible, **contribute to truth and reconciliation**. Likewise, it has sympathized by the sufferings of the victims of these violations, recognizing that they received a treatment not according with the permanent and historical doctrine of the institution. Violations that it does not justify and in which the Army has done and will continue **to make concrete efforts so that they never repeat again**.⁴⁹

⁴⁷ Linz and Stepan. 1996. P3890.

⁴⁸ Cheyre OAS 2007

⁴⁹ Cheyre 2004, p2-3 NOTE: Recently, General Cheyre has been prosecuted and convicted for human rights violation during the dictatorship of General Pinochet. He was sentenced to 3 years and 1 day of probation for concealing 15 homicides in the Caravana de la Muerte case in 1973.

The Army participated in the disappearance and execution of 3,195 people, and the application of torture to at least another 28,000, in addition to the thousands of exiles.⁵⁰ The greatest contribution of Cheyre's recognition was the resulting cooperation of the Army in human rights cases and to acknowledge the military's role in these violations – something that had not been seen before. The Army's mandate was to search and deliver all the information they had in their files about the tortures and disappearances.

Additionally, Cheyre's army committed to participate in the dialogue initiative (*mesa de diálogo*) on human rights and respect the results of the National Commission on Political Prison and Torture.⁵¹ In 2004, one of the first sentences was handed down to an important former Brigadier Colonel Miguel Krassnoff, who was sentenced to more than 600 years in prison.

For General Cheyre, that period of military repression was not consistent with the history, tradition and permanent doctrine of the Army. In this sense, Cheyre recognized the lack of legitimacy of the Army during the dictatorship, and that the Army during this period, had turned away from its mission and historical vision. Clearly, he intended to rebuild trust and achieve citizen support by taking institutional responsibility.

LEGITIMACY OF PURPOSE.

As can be seen during the democratization period, the purpose defined in 2005 by the appropriate authorities, was legal, and in practice could be publicly defensible as something the institution has a right to pursue. However, it is after the constitutional reform that we can really talk about a legitimate purpose consistent with the law. The actions initiated under the reform and the re-democratization period marked the beginning of trust-building and public support for the Army as an institution.

⁵⁰ Torres 2015

⁵¹ Cheyre 2004, p3

The clarity of the new constitutional mission and vision of the Army allowed the organization to act consistently and coherently with the new democratic reforms. The primary objective of Cheyre at this time was to rehabilitate the public relationship between the Army and the Chilean people. For this reason, he strengthened the Army's concept of political non-compliance. As a result, the Army cannot and should not be a counterpart of any political party or a specific sector of society. In words of general Cheyre, 'the Army must belong to all Chileans, to whom it had to serve equally.'⁵²

Likewise, a public effort designed to distance the Army with former the military government and more specifically with the former General Pinochet. Cheyre had to be clear that the Army was not 'heir to a certain regime of government, since in a Rule of Law the Institution is subject to the political and regulatory authorities that regulate its actions and the clear sense that the institution owes the whole society.'⁵³

From Cheyre's texts it can be inferred that an essential element for the development of the transformation was the right balance between autonomy and subordination. In that sense, the democratic governments of the *Concertación* were intelligent enough to force a gradual and consensual process with all parties. Cheyre expressly pointed out that the improvement of military doctrine since 1990 aided this process.

In addition, he pointed out that the most relevant document of the transformation of the Command Concept was a consensus product with all of the High Command to create a shared purpose for the future. Additionally, there was a desire of the military to feel incorporated and respected in a new democratic society. In essence, an essential motivation was to rehabilitate the institution in the eyes of the public, in order to gain public acceptance, and therefore legitimacy.

⁵² Cheyre 2008, p6

⁵³ Cheyre 2008, p6

Cheyre's dream was that the Army be transformed into a respected institution, not because of the strength of its power but because of the legitimacy of its contribution to the construction of the modern and democratic Chilean State. In his vision, it was crucial that the Army and civil society worked together to achieve this goal. Something similar had been highlighted by President Aylwin in his inauguration speech in 1990 when he said 'we are all Chileans, civilians and the military' For the purpose of democratic reconstruction, this narrative was important. The idea was of national unity without making distinctions between the military and civil society.

PURSUIT.

For the military, this was not necessarily an easy task. The transformation had resistance and internal costs for Cheyre. During his tenure as commander-in-chief, the Pinochetism⁵⁴ inside the Army was still dominant. The challenge was to be perceived as an institution oriented to the service of civil society. In addition, it had to efficiently provide national security and defence. Without knowing it the Army was trying to do the best possible with the institutional framework that had until then. They already had complete freedom to develop new programs, they also had total autonomy to change their military doctrine. Thus, although perhaps not immediately clear, the Army was in fact trying to improve and provide its service using the best of its abilities.

Additionally, Cheyre tried to work in a traditional hierarchical structure, but in a much more 'horizontal' way. In that sense, what Cheyre wanted to achieve was cohesion, critical thinking, and to place greater emphasis in processes rather than in structures based on individual discretion. In his own words, 'a change is generated from an organization where the functionality lies in the authority, to one based on the processes'⁵⁵ In our estimation, the ultimate goal was regaining legitimacy with society and integrity in its vision and mission that

⁵⁴ The term Pinochetism: is used in this context as a way of expressing personal support for General Pinochet and not as an institutional defense of the military's role in the dictatorship.

⁵⁵ Cheyre, 2003.

would allow them to be once again the army of all Chileans. For all the reasons in the paragraphs above, the transformation was already done.

LEGITIMATE PURSUIT.

It was after the constitutional reform of 2005 and the articulation of a new mission and vision that a legitimate pursuit in compliance with the rule of law can really be seen. During this period the Army began its real integration with the national community. The Army had a specific role mandated by law that also needed to comply with the basic democratic values of a country with an army fully subordinated to the civil power. The Army was no longer the guarantor of the country's institutionality, so it can dedicate to protecting citizens in case of war or natural disasters. During the last 15 years, Chile has had several natural disasters that have required the intervention of the army. Unprecedentedly, during the earthquakes of 2010 and 2014, the government decreed a constitutional state of emergency providing the Army with ample powers to protect the affected areas. The Army in this way was able to fulfill its mandate to protect civilians after years of being a pariah institution in the eyes of the Chilean people.

CONSISTENCY WITH COMMITMENTS

According to the Economist in 2008,

The [Chilean] Army has tried hard to regain legitimacy over the past decade. It has seized on natural disasters, such as earthquakes, to play an active civil-defence role. It has used its field hospitals to take medical services to remote areas and help the national health service cut waiting lists.⁵⁶

This passage perfectly encapsulated the new scope of the Chilean Army, however this transformation was far from spontaneous. General Cheyre within

⁵⁶ The Economist /2008/09/25/

his reform plan, had already visualized certain activities as part of his strategy. In order to regain public trust, the Army had to be permanently involved as a new social actor. The Army would carve out role for itself as the protector of the citizenry against natural catastrophes, which are very common in Chile.

For Cheyre, it was essential to improve civil society's perception of the Army by working directly with the community and supporting compatriots in difficulties, for example in natural catastrophes. This started as implicit commitment from the 1990s and then it was made explicit under Cheyre. Indeed, during 2017 the Army also initiated its real internationalization by sending troops to Haiti⁵⁷ as a part of a U.N. Mission, which entailed allocating 200 million dollars, and a 13 year commitment . Additionally, the current expectations of citizens have been growing in that line. Thus, complying with this commitment consequently improves the public trust in the Chilean Army.

ROBUSTNESS.

Unfortunately however, for different reasons the army was not fully incorporated into the public procurement reform, as we will see in the next pages. Consequently, the Army is still very vulnerable to acts of corruption, if there are no corrective measures in this regard. In the long term, problems will continue to appear if the secret law of copper is not reformed. Additionally, more transparency, as well as internal and external controls are needed. The Army must be obliged to comply with the public procurement standards like the other state institutions. However, in order to achieve this goal some new legislation must be passed, and new modernization of internal managerial process must be incorporated. In that sense, it is necessary to take internal control measures that guarantee the proper functioning of the army purchases. Thus, the Army lacks the necessary tools to make transparent purchases. In this sense, the army does not have sufficient robustness to face current problems such as known cases of corruption, and less for future ones.

⁵⁷ Diario El Mercurio Online. Emol. 2017/03/09/

Before moving on to the development of this element, the summary table can be seen below with all the elements of the public integrity theory.

Table 3

Legitimacy of Purpose	<p>Mission and Vision consistent, coherent, reliable, virtuous and trustworthy</p> <p>After the 2005 constitutional reform: Limitations of power, the Army is fully subordinated to the civil political power. Also, Commander in Chief appointed by the President and removable.</p> <p>Publicly defensible limited purpose within a democracy.</p>
Pursuit	<p>Better governance and institutional capacity to seek its legitimate purpose to the best of its abilities.</p> <p>Management reform:</p> <p>Complete units at the level of combat units (Battalions) and independent fundamentals (Companies) in terms of personnel, equipment and infrastructure.</p> <p>Substantive improvement in the operational management of the army. Particularly, in the processes of instruction, training, maintenance, administration and general operation of the units.</p>
Legitimacy of Pursuit	<p>Consistent with the rule of law of Chile. Specific role by law that also comply with the basic democratic values of a country with this new army fully subordinated to the civil power.</p> <p>The Army is no longer the guarantor of the country's institutional integrity, so it can dedicate to protecting citizens in case of war or natural disasters.</p> <p>Several natural disasters required the intervention of the army. Also, U.N. Mission to Haiti.</p>
Consistent with its commitments	<p>Active civil-defence role: Institutional commitments on working as a peace corps actor, regional integration. Prepared to help civilians during natural disaster or any other circumstance under peace time. (protect the population)</p> <p>For instance, they have evacuated civilians due to eruptions of volcanoes, they have fought forest fires, they have administered areas of the country under constitutional exception regimes for earthquakes or alluvium.</p>
Robustness	<p>Strengths: Set of rules strong enough to solve the present and future obstacles due a new framework given by the constitutional reform, and the new mission and vision.</p> <p>Weakness: Lack of transparency and an effective system of public procurement and control. Need of reformation o repeal of the Secret Copper Law plus more internal and external controls.</p>

4.5 The Procurement System and Fraud in the Army

According to a survey by the Center of Public Studies (CEP)⁵⁸, public confidence in the institutions of the Armed Forces has diminished considerably during recent years. The main explanation for this is due to specific acts of corruption committed within the Chilean Army. Indeed, in the last four years, dozens of military officers (middle command levels) and soldiers (non-commissioned officers) of different hierarchies were accused of various acts of fraud and corruption for embezzlement from the funds appropriated under the 'Secret Copper Law.' To date, however, there have been no generals involved in these acts of fraud.⁵⁹

These military personnel planned and executed massive fraud, in collusion with regular civil suppliers; the case is known as the 'Army Fraud' or 'Milico-Gate.'⁶⁰ These acts were committed between 2010 and 2014. Its cost, estimated at more than \$10 million,⁶¹ and it occurred through the payment of invoices for work never performed by suppliers. In terms of the number of people involved, the real cost is not yet determined, but the Military Justice is currently prosecuting more than 20 individuals – some of them have been already convicted. Comparatively, in other countries, that amount of money might seem small, but for Chile, it is significant due to the relatively low number of such cases nationally. Furthermore, the greatest impact of this scandal was the

⁵⁸ In the CEP survey of July 2014, 51% of the respondents answered that they had a lot or enough confidence in the Armed Forces, a figure that decreased to 40% in the April 2017 survey.

⁵⁹ NOTE: However, the Military Justice and the Public Prosecutor's Office are investigating in other cases † the former commander in chief of the Army Juan Miguel Fuente-Alba, for the use of "reserved funds" and another series of irregular purchases and triangulation of money through the companies of the Defense (FAMAE, ASMAR and ENAER).

⁶⁰ [Diario La Tercera. 2018/31/08/, Diario online The Clinic. 2016/03/22/, Diario online The Clinic. 2015/09/08/](#)

⁶¹ [Diario El Dinamo Online. /2015/07/10/](#)

fact that fraud had been committed in one of the most trusted institutions by Chileans at that time.

HOW DID THIS FRAUD OCCUR IN THE ARMY?

In a democratic society, the management of public resources is supervised mainly by citizens and by the various bodies that the control system has defined. In Chile this is The Comptroller General of the Republic, the Parliament, the Judiciary and the internal controls of the Administration. Regarding National Defense, however, a degree of necessary confidentiality is sometimes required. This confidentiality over spending and procurement however, is often exaggerated. As the Investigative Committee of the Chamber of Deputies maintained,

because of the way of structuring decision making, plus the asymmetry of competences of the actors in the matter, and the lack of a control system and Efficient, systematic and safe supervision, that makes possible the execution of acts contrary to probity, as could be seen during the investigation of this Commission.⁶²

In our evaluation, one of the main conditions that facilitated the fraud was precisely this 'institutional vulnerability.' First, because of the existence of the reserve for the purchase of material and services with funds from the reserved 'law of copper,' so that it is exempted from the process through ChileCompra. Second, due to problems of internal and external army control mechanisms. The lack of a more transparent mechanism of purchases which limits the reserve only to those spaces that are necessarily confidential, only weakens it institutionally in the long term.

ChileCompra is the state agency that manages the electronic platform of the public procurement system of Chile. Thus, all the public procurement must come under this platform. However, due to the reasons stated in the previous

⁶² Reporte Comisión Especial Investigadora de la Cámara de Diputados de Chile. Report of the Special Investigative Commission 2016, p206

paragraph, part of the Army's purchases is not regulated by the public procurement law. In particular, those related to the acquisition of war materiel are excluded, which would be understandable, but it also includes the maintenance of those, including the repair of vehicles such as trucks and buses.

The fraud could be carried out, because (among other causes), the purchases were made with a reserved source of financing (resources of the copper law) and without resorting to the public procurement system. Purchases and delivery of non-existent services and equipment were simulated. First, false invoices were issued (without providing the service). Then, they were illegally charged to the funds of the reserved copper law. Subsequently, they falsified with the signatures of their superiors to attest that these services had been rendered. The direct treatments and the amounts paid were inscrutable by the citizens, and neither were they by the Comptroller General of the Republic. The National Congress was also excluded by the 'reservation of secrecy' provision of this law.

4.6 The Vulnerability of the Chilean Army Post Reform: Understanding the Failure of Robustness

Currently, Chile has a robust and transparent public procurement system for the purchase of goods and services by the State. On June 11, 2003, under the administration of President Lagos, the first Public Procurement Law was enacted (Nº. 19.886). This new legal framework established general contracting principles with basic rules of transparency creating a new public institution. In addition, it was necessary to develop a transactional technology platform to carry out procurement and contracting processes. The control and audit of purchases are monitored by the Comptroller General of the Republic.

This new regulation would apply to the Central Government and its public services, local governments, General Comptroller of the Republic, Public Ministry, National Congress, Central Bank, Armed Forces and Order and Public

Security, but not to public companies and the Judiciary.⁶³ Because of this, the problem arises that the Army is not fully obligated to comply with all these rules. Additionally, the law also establishes as a general rule that contracts that by legal provision or by their nature, are secret, reserved or confidential, will be excepted from scrutiny. Therefore, there are too many formal incentives to not comply with the spirit of the legislation.

In this regard, in addition to the Armed Forces (and the police), a special exception is added in Article 3 letter F of the law.⁶⁴ It states that the norm will not apply to contracts for war materiel and those that are held for the acquisition of certain assets. For instance, vehicles for military or police use, equipment and information systems of advanced technology. Also, elements or parts for the manufacture, maintenance, repair, improvement or arming of armaments.

Concerning spending, the Army budget comes from two different sources: 1) The annual budget law discussed in the National Congress 2) and the funds of the secret law of copper.⁶⁵ Regarding the former, budget revenues are used

⁶³ NOTE: The rule did not oblige to the Judiciary, but voluntarily it joined the use of the electronic procurement platform, as other public entities also did. The law also expressly excludes public companies created by law and those public bodies whose laws expressly state otherwise.

⁶⁴ Article 3 letter F of law 19.886: "Contracts that deal with war material; those celebrated by virtue of the laws numbers 7.144, 13.196 and their modifications; and, those that are celebrated for the acquisition of the following species by the Armed Forces or by the Forces of Order and Public Security: military or police vehicles, excluding vans, automobiles and buses; equipment and information systems of advanced and emerging technology, used exclusively for command, control, communications, computational and intelligence systems; elements or parts for the manufacture, integration, maintenance, repair, improvement or arming of armaments, their spare parts, fuels and lubricants. Likewise, contracts for goods and services necessary to prevent exceptional risks to national security or public security, qualified by supreme decree issued through the Ministry of National Defense on the proposal of the corresponding Commander in Chief or, where appropriate, of the General Director of Carabineros or of the Director of Investigations".

⁶⁵ The law N°13.196 or the Secret Law of Copper (Ley Reservada del Cobre) as it is popularly known was recently published for citizens' knowledge thanks to the investigative committee of the congress of fraud in the army. This law establishes that "10% of the income in foreign currency determined by the sale abroad of the copper production, including its by-products, of the National Copper Corporation of Chile and 10% of the value of the copper contributions abroad. that the Corporation carries out, must be deposited by the Central Bank of Chile in the currency of the United States of

for current expenses and are subject to the law of public purchases (salaries, goods and consumer services for regular operation, or social security benefits). Concerning the latter, it uses the funds that the secret law of copper grants to finance the maintenance of the strategic capabilities of the army and are not subject to the law of public purchases. Which is the purchase of military equipment and its associated maintenance such as weapons systems, computer systems, military vehicles, missiles, helicopters, and so on.

In our opinion here lies the highest probability of corruption weakness of the Army as a state institution. In fact, the General Comptroller of the Republic itself stated in the Investigative Commission that 'the opacity, coupled with the deficiencies of internal control, favours the appearance of corrupt behaviour.'⁶⁶ Moreover, for all the expenses associated with the budget of the *secret law of copper*, the Chilean Army is not obliged to use the system of purchases and public procurement. Therefore, army purchases have an opacity beyond reasonable military secrecy even for reasons of national security. This issue above in conjunction with the lack of institutional control facilitated this case of fraud.

Although the Armed Forces are incorporated into the public procurement system in their current expenditure of the annual budget law, in practice there are too many exceptions of the law of public procurement. The main reason is the prerogative to use for any purchase 'the quality of reserve' which makes the system extremely vulnerable. Additionally, it is important to notice that there are also certain expenses that are in a grey area like spare parts of

America, in the General Treasury of the Republic, in order that the Superior Council of National Defense fulfills the purposes of the law N^o7.144 ".

"Annually, a final liquidation of the performance of this law must be practiced and, if the total amount of the yield of 10% were less than one hundred and eighty million dollars (US \$ 180,000,000.00), which will be readjusted year after year to count of January 1, 1987, in the variation experienced by the Wholesale Price Index of the United States of America of the year prior to the respective readjustment, the difference shall be completed by the Treasury ".

NOTE: In this regard, it should be noted that this financing is not subject to discussion in Parliament.

⁶⁶ Reporte Comisión Especial Investigadora de la Cámara de Diputados de Chile. Report of the Special Investigative Commission 2016, p81

military vehicles that could fit perfectly into the rules of the *secret law of copper* or the budget law with a minimum administrative astuteness.

In our opinion, fraud could have been committed in any scenario because the fraud was carried out by falsifying purchases of repairing parts of vehicles and military tents. Thus, it could have also qualified for the exceptions that the law of purchases indicates for the Armed Forces. In that sense, the Army remains vulnerable to future similar cases until the *secret law of copper* is reformed or repealed and the exceptions to the procurement system of the Armed Forces are not revised.

On the whole, although fraud could have been committed even if a public procurement system were used, the transparency provided by this system would substantially increase the effectiveness of the control bodies, (including, indeed, the media). Therefore, the chances of corruption would decrease. Because of this, it is possible to carry out a major criticism of the *secret law of copper*. Thus, under this law, many goods and services of current use are being inadequately financed. This is due the fact that there is no argument to justify exceptions to the public procurement system.

5. Transformation Process: Supporting Evidence

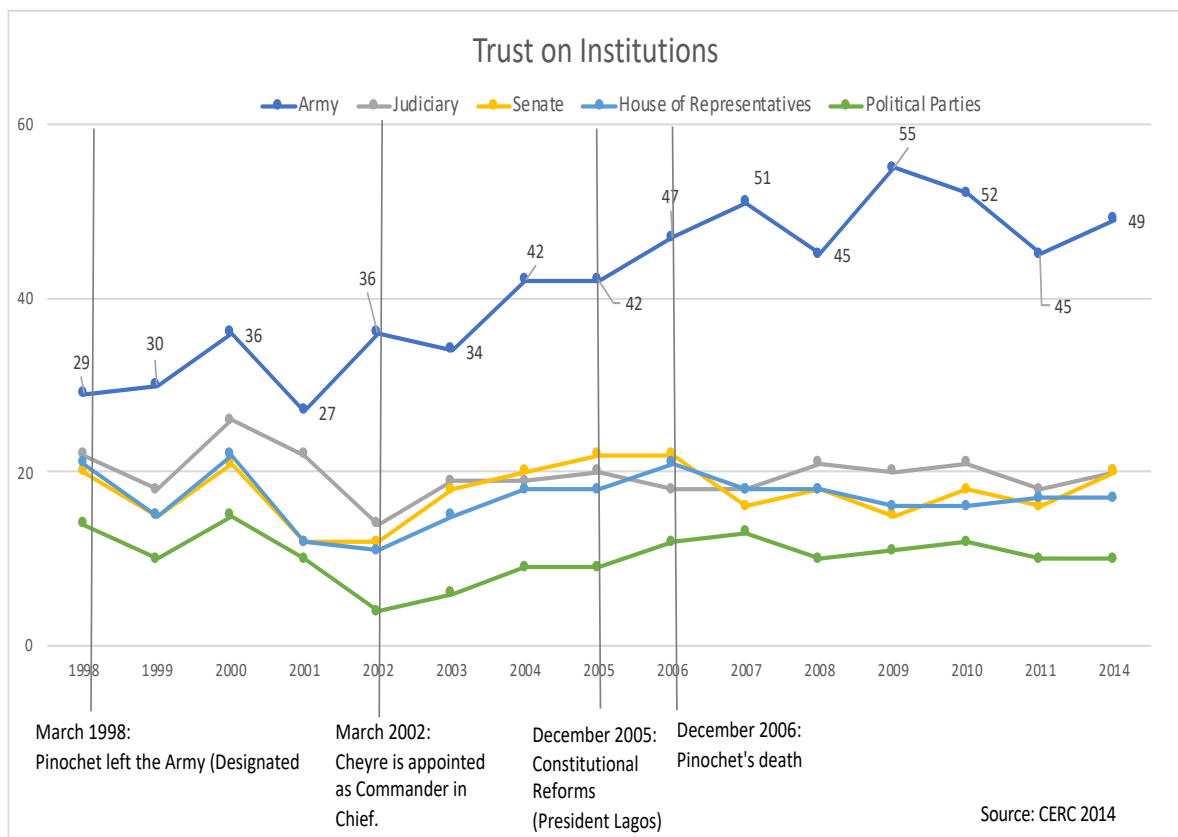
Revisiting Kirby's theory, it is worth remembering that under this model if all the elements of the theory are reached, people should have trust in the institution. In the case of the Chilean Army, that is exactly what we can see after looking at the data. There is strong evidence in relation to the results of these reforms, which have been promoted since the beginning of 2000. As we can see in the chart below, since 1998, confidence in the army begins to improve steadily.

In March of 1998, Pinochet leaves the position as Commander in Chief to assume the position of life Senator appointed by the constitution. At that time, the trust in the Army marks almost its lowest point with only 29 points, considering the next 20 years. However, it rises with the Commander-in-Chief's change of command.

The 2001, we see the beginning of the fall of confidence in the traditional political institutions like the Judicial Power, the Senate, the Camera of Representatives, and the Political Parties. There is no data for the Government or the President in this data series. What could also have been the Army's tendency for the next few years changes. In 2002, President Lagos appointed General Cheyre as Commander-in-Chief, and confidence in the Army goes from 27 per cent confidence to 36 per cent in a year.

From this point, the trend does not stop increasing, however the trend is not linear. However, it goes from 36 per cent in 2002 to 55 pre cent in 2009, its highest point. During that same period, the other political institutions mentioned above struggle to increase in public confidence. All of them remain close to the 20 percentage points of confidence. The worst evaluated are the political parties that are only around 10 per cent.

Figure 4: Confidence in Institutions - CERC



As it can be clearly observed in Figure 4, the Army detaches itself from the tendency of the other institutions. While causality cannot necessarily be

attributed between the transformation of the Army and the increased performance in public trust levels, the correlation between these reforms and the increase of confidence in the Army is indeed striking. As we will see later in this paper, together with the national police (Carabineros), the Army is one of the institutions that enjoy greater trust from the citizens today.

TRUST EVOLUTION IN INSTITUTIONS

Regarding the reconstruction of the evolution of trust in institutions, the information was taken from the think tanks the Center of Public Studies (CEP) and Center for Contemporary Reality Studies (CERC). These data have been used because they are the only organizations that took polls relatively more consistently during the years, in the question of trust in terms of frequency and methodology. Figure 5 shows us the perception of trust in different State institutions from 2008 to 2017. Basically, the jump in 2009 is due to the good management of the Asian Financial Crisis⁶⁷ in the Chile under President Bachelet and macroeconomic policymakers. The crisis had effects, but the impacts were weakened by the government's plan of fiscal stimulus of more than 4000 million dollars (or almost 2.8 per cent of GDP).⁶⁸

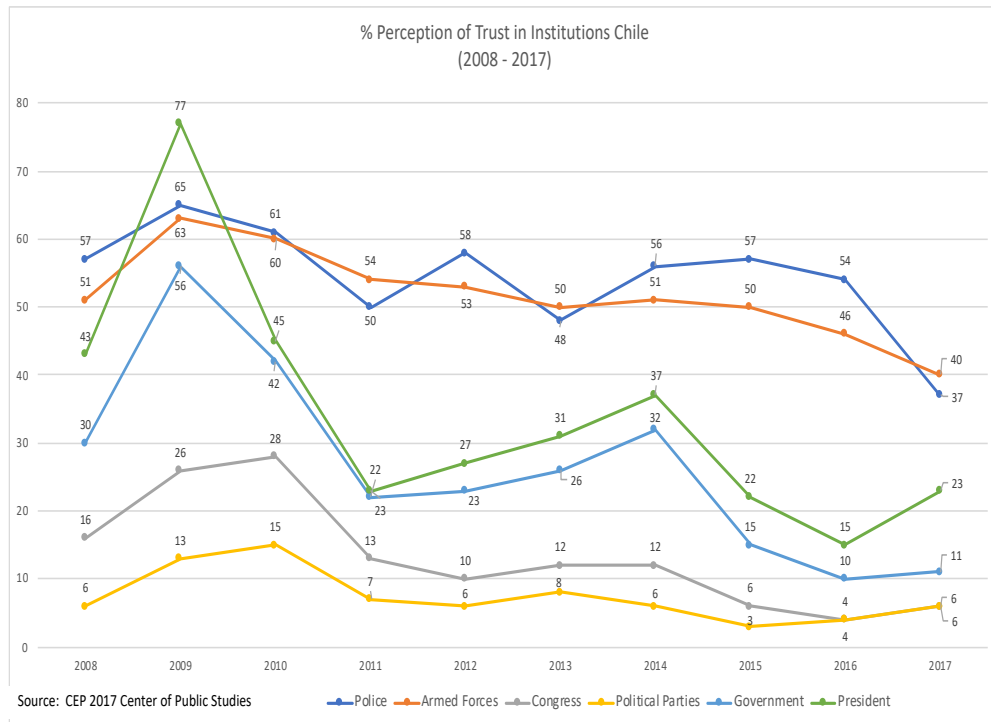
In the Figure 5, the trend of sustained decline in confidence in the political institutions since 2009. As an example, using only confidence in the President, after the peak in 2009 falls sharply from 73 per cent to 23 per cent for the year 2011. Level of public confidence then recovers again in 2014 with the start of the second Bachelet government up to 37 per cent, only to fall after knowledge of acts of corruption to 13 per cent. The Armed Forces and the Police remained fairly stable in confidence for the last 10 years until 2016. When their participation in acts of corruption was made public, confidence also fell to 40 per cent from 51 per cent in the period 2014-2017. The Police also fall

⁶⁷ Noticias Amcham Chile. /2009/03/01

⁶⁸ The percentage figure may seem small but for the size of the country and the economy was relevant and superior to that of many other countries even larger.

precipitously from 54 per cent to 37 percent, though only in the 2016-2017 period.

Figure 5: Perception of Confidence in Institutions - CEP



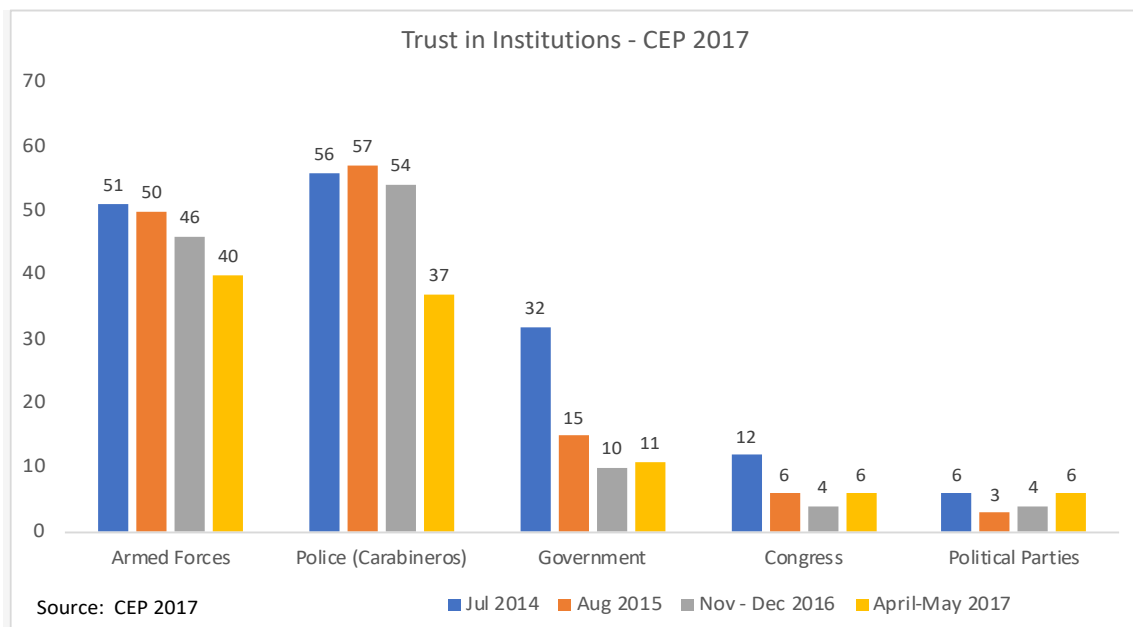
Is there light after the darkness? At least for some of the political institutions an improvement can be seen. Although in the Armed Forces and Police⁶⁹ we see a downward trend, the classic institutions such as the Congress, the political parties and the government sink below 10 per cent before we see a slight uptick in 2016. In our opinion, this improvement is related to the government's reaction to acts of corruption.

In light of this, this could be attributed to would be a positive public evaluation of the corrective measures taken by the government with its package of legal

⁶⁹ Also: Linz and Stepan noted that "In Chile, despite the fact that they were close to the Pinochet regime, the national police force (Carabineros) managed to survive with some of its professional image intact". 1996, Position 3950.

initiatives in the agenda for probity and transparency. This was an ambitious agenda that also forced the Congress and its parliamentarians to legislate on issues that directly affected them, that in another scenario (i.e. in *status quo* conditions absent scandal and crisis) they would not have accepted. It is this scandal that generates the opportunity to make a political reforms possible against substantive corruption.

Figure 6: Confidence in Institutions - CEP



The *Agenda for Transparency and Probity in Business and Politics* was designed to rebuild social trust after the aforementioned political scandals. This was the government's reaction to the scandal and the idea was to strengthen democratic coexistence and the capacity of democracy and its institutions to channel the aspirations of citizens. The agenda was led by the Ministry of Finance in conjunction with the Ministry of the Secretary General of the Presidency.

The agenda included various administrative measures and legislative initiatives that were part of the recommendations of the Engel Commission. Moreover, it contains proposals from a multitude of stakeholders; submissions came from think tanks, parliamentarians, political parties and other groups of

civil society. This was an ambitious agenda because it also affected the interests of parliamentarians. During 2015 and 2016, 14 administrative and 18 legislative measures⁷⁰ were approved, mainly affecting the Executive and its public function and the Congress. However, it is important to note that no measures were taken to remedy the specific issues of lack of transparency and control analysed in this paper related to the Armed Forces.

6. Final Observations

To conclude, we offer six observations and recommendations based upon the analysis presented above.

1) In general, the transformation of the Chilean Army, viewed through the lens of public integrity theory, was broadly successful in many of the core components of the theory. There is evidence that suggests that public confidence in the Army increased after the comprehensive reforms of 2002 and 2005. However, it is difficult to ascertain whether this measure of 'confidence' truly accurately captures public trustworthiness. Next, the Army succeeded in the transition from a state of illegitimacy to a state of institutional legitimacy. As we saw in this document, the Army under the constitution of the 1980s was not legitimate. On the contrary, only after the reforms, was the institutional legitimacy conferred to the Army, entirely because of the

⁷⁰ Among the most important legislative of 2015, the following stand out: (1) the constitutional autonomy of SERVEL and (2) its institutional strengthening, (3) the Law for the Strengthening of Democracy -which regulates the financing of politics and campaigns-, (4) the constitutional reform that establishes the loss of charge for those who do not comply with the spending electoral rules, (5) the new law of Probity in the Public Function, (6) the strengthening of transparency and private probity through the Securities Commission. Six other initiatives were approved during 2016; (1) the Law of Political Parties, (2) the law that sanctions and prevents conflicts of interest, (3) the law that increases penalties for corruption and bribery, (4) the law that prevents speculation with the change in land use, (5) the strengthening of Senior Public Management, (6) the obligation to have citizen training plans in all schools recognized by the State.

reconstruction of its purpose, mission, vision and the subordination of the Army to the civil power.

2) However, the Army is vulnerable to acts of corruption. This is because the robustness component of public integrity theory is not satisfied without a transparent system of public procurement and robust systems of control. Therefore, we argue that is the key element that explains the current cases of corruption, and possible future scandals if nothing changes in the coming years. Unfortunately, the Armed Forces in general were not the focus of these State reforms that have attempted to provide other public institutions with greater legitimacy through transparency and accountability. As we discussed above, the Army was subject to a profound institutional reform, however, it was never integrated into the other reforms that the State was developing in parallel in terms of probity and transparency.

3) The Army is not able to pursue its purpose to the best of its abilities because taxpayers' money has been wasted on acts of corruption that the Army has not been able to control. In our opinion, legitimacy is not for free. The Army must be proactive in investigating and sanctioning these acts with the maximum severity. Those responsible must be held accountable for their actions. The Army must do its best to sanction those who deviate from the purpose of the institution. Failure to do so increases the risk of becoming a morally empty institution and in which it is no longer worth social trustworthy.

4) Next, the Chilean Army as a whole, if it wishes to be worthy of public trust, has to be accountable for recent acts and to take full responsibility. Although the cases of corruption were carried out by officials and not by the institution itself, these actions are affecting the integrity of the entire Chilean Army as an institution. As a consequence of these actions, there has been an institutional erosion on trust. The individuals who are members of the institution are responsible for the fate of the organization as a whole, through their actions. They must take care of the problems generated by other members of the organization that can erode their long-term legitimacy. An Institution-first conception means that the first challenge we must solve is to equip institutions with the tools to achieve and maintain integrity. Integrity is a fundamental

moral value that must govern public institutions. In this sense, this theory does not take the legitimacy component as exogenously given. On the contrary, it demands responsibility and accountability from its members and the institution. It is morally demanding but it is the only way to assure that people behave correctly.

5) Leadership is vital in the creation of a shared purpose in order to strengthen public integrity within organizations. The ultimate goal is to create better public institutions, and the idea helps to achieve better services for people, better results, with more efficiency and effectiveness. It is fundamental to have a clear macro goal to mobilize people to this goal. Furthermore, the institutional and individual responsibility is the axis in which this quality is sustained, and individual actions of members are the arena in which this goal is achieved. This theory does not grant institutional legitimacy with impunity. It is only the accountability that allows to keep the institutional legitimacy based on trust in the long term.

6) Finally, in the case of the Chilean Army, the authors' believe that the High Command must be formally and legally sanctioned, and reproached politically and socially for not having addressed the problems of fraud and corruption as it was occurring. It is true that institutionally the Army is weak in terms of preventative and remedial mechanisms relating to corruption problems. However, that does not excuse the Command of their duties of care. They too are accountable to the justice, the society, and the political authorities. If the systems are not working properly, they must be changed and enhanced because the integrity of the institutions is in risk.

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