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Neoliberalism and the Mapuche



By Chandler E. Miranda

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The Mapuche Indians are the largest indigenous group in Chile and they account for nearly ten percent of the country's total population.¹ The Mapuche have struggled with land usurpations since the end of the nineteenth century. The most difficult of these struggles came from neoliberal economic policies of the military dictatorship of Augusto Pinochet (1973-1990). This included Decree Law 2568 that dissolved Mapuche communal land and divided it up into individually held land titles.² With the return of democracy in 1990 the Mapuche had hope that Pinochet era policies would disappear. This hope was realized in 1993 with the Indigenous Law 19253.³ Even though this measure repealed harmful aspects of Decree 2568, the neoliberal ideas and policies undermining the law continued to be used by the Chilean government. Under the pretext of promoting civilization, the neoliberal legal framework allowed for usurpation of ancestral territory resulting in the destruction of entire communities and repression of any protest to industrial projects.

This paper will examine the continued use of neoliberal ideas that harm indigenous rights while promoting the forestry industry and industrial projects, such as the controversial Ralco hydroelectric project. It will also investigate the negative social and environmental impacts for the Mapuche. In addition it will examine the manipulation of Indigenous Law 19253 and its established organizations, which benefit the private economy rather than protecting indigenous rights, will also be examined.

¹ Tim Vandenaek, "Chile's Battleground of Culture vs. Profit", *Christian Science Monitor*, June 7, 2001, *Academic Search Premier*, EBSCO, accessed June 3, 2013.

² Biblioteca del Congreso Nacional de Chile, "Decreto ley 2568," *Ley Chile*, accessed June 3, 2013, Translated.

³ Biblioteca del Congreso Nacional de Chile, "*Ley 19253*," *Ley Chile*, accessed June 3, 2013, Translated.

The Chilean government's land ownership policies have been detrimental to Mapuche communities. Using examples of the Mapuche conquest, division of their lands, and the Ralco Dam Gerardo Azócar, and others, analyze these examples and make the argument that the state has a policy taking lands that are of economic interest.⁴ Chile's desire for economic gains allows the logging industry to trump Mapuche rights. By examining the history of how the logging industry grew in Chile, Diane Haughney shows that both the military dictatorship and the new democratic government have similar approaches in promoting logging over Mapuche communities. Haughney also addresses the legal plight Mapuche find themselves in with anti-terrorism legislation.⁵ These arguments show the pattern unfavorable land policies implemented against the Mapuche.

Anti-terrorism legislation is also used unjustly against the Mapuche. Noah Bialostozky uses the conflict between the Mapuche and logging companies to demonstrate the human rights violations the Mapuche face such as denial of due process, or equal protection under the law. Bialostozky's article also examines the tenacity in which the Chilean Supreme Court advocates for harsher punishments for ordinary crimes committed by Mapuche.⁶ This is a vital article because it demonstrates the extremes the Chilean government goes to in order to protect one of its major industries. That's what neoliberalism is all about. It defends the economy at all costs.

⁴ Gerardo Azócar, Rodrigo Sanhueza, Mauricio Aguayo, Hugo Romero, María D. Muñoz, "Conflicts for Control of Mapuche-Pehuenche land and natural resources in the Biobío highlands, Chile," *Journal of Latin American Geography* 4, no. 2 (2005).

⁵ Diane Haughney, "Sustainable Development or Sustained Conflict? Logging Companies, Neoliberal Policies and Mapuche Communities," in *Democracy in Chile The Legacy of September 11, 1971*, ed. Silvia Nagy-Zekmi and Fernando Ignacio Leiva (Brighton; Portland : Sussex Academic Press, 2005).

⁶ Noah Bialostozky, "The Misuse of Terrorism Prosecution In Chile: The Need for Discrete Consideration of Minority and Indigenous Group Treatment in Rule of Law Analyses," *Journal of International Human Rights* 6, no. 1 (2007).

The Mapuche continue to struggle with neoliberal policies of the dictatorship even after democracy returned to Chile. Alexandra Tomaselli argues that when it comes to Chile's economic benefit and Mapuche rights, the economy always wins. Her argument is supported by the analysis of the shortcomings of the 1993 Indigenous Law in regards to the Ralco Dam and the logging industries quarrel with Mapuche communities.⁷ This article is an important example of neoliberal policies twisting laws and people to promote economic development at the expense of the Mapuche.

The Mapuche

The Mapuche were the original inhabitants of the southern half of Chile. They were the only native inhabitants to successfully resist colonization by the Spanish Empire. Mapuche means "people of the land" (Mapu-land, che-people) and they are the 3rd largest indigenous population in Latin America.⁸ The Mapuche were both a sedentary and a nomadic people, and the actions for survival varied from hunting and gathering, herding, farming, and fishing.⁹ Mapuche society was structured around extended family and communities were lead by a chief or *Lonko*, the absolute authority in Mapuche society. Except in times of war, Mapuche communities were largely independent from one another.¹⁰ During wartime, a council of Lonkos would elect a single Lonko to the status of *Toqui* to lead the army.¹¹ Mapuche spirituality is greatly tied to the land because

⁷ Alexandra Tomaselli, "Natural Resources Claims, Land Conflicts and Self-Empowerment of Indigenous Movements in the Cono Sur- The Case of the Mapuche People in Chile," *International Journal on Minority & Group Rights* 19, no. 2 (March 2012) DOI 10.1163/157181112X639069.

⁸ Lorenzo Nesti, "The Mapuche-Pehuenche and the Ralco Dam on the Biobío River: The Challenge of Protecting Indigenous Land Rights," *International Journal on Minority & Group Rights* 9, no. 1 (2002): 2

⁹ *Ibid*, 2

¹⁰ Mario Sznajder, "Ethnodevelopment and Democratic Consolidation in Chile: The Mapuche Question" in *Contemporary Indigenous Movements in Latin America*, ed. by Erick D. Langer and Elena Muñoz, (Wilmington: Scholarly Resources Inc., 2003), 19; Nesti, 2

¹¹ Nesti, 2

their spiritual leaders, *Machi*, used plants and herbal remedies to cure illnesses. The Machi were also responsible for leading the community in ceremonies meant to strengthen the relationship between families by giving thanks to their ancestors. These ceremonies took place in special locations, called *Nguillantue*.¹² The concept of private property was unknown to the Mapuche, the community shared the land and resources under a common property system.¹³

When the Spanish arrived in 1541 they attempted, unsuccessfully, to conquer the Mapuche. This conflict was called the “Arauco Wars” and it was a bloody clash that lasted one hundred years.¹⁴ The war came to a close in 1641 with the Treaty of Quilín. The treaty guaranteed Mapuche political and territorial independence south of the Bío-Bío River.¹⁵ The Treaty of Quilín was upheld until Chile gained its independence from Spain in 1810, and the newly independent state became interested in the vast territory the Mapuche possessed. Chile had become a “land demanding agrarian society” and it somehow got the idea that the land south of the Bío-Bío River was unoccupied.¹⁶

After Chile received its independence from Spain it began a series of military confrontations to take over Mapuche land. This encroachment on their territory did not sit well with the Mapuche and armed conflict flared up again. Before the final confrontation Chile started a propaganda campaign favoring the conquest of the Mapuche, they were depicted as “cruel rather than brave, lazy, drunken, slothful, and idle” creating a

¹² Nesti, 3

¹³ Nesti, 4; Gerardo Azócar, Rodrigo Sanhueza, Mauricio Aguayo, Hugo Romero, María D. Muñoz, 68

¹⁴ Bernardo Berdichewsky, *The Araucanian Indian in Chile*, IWGIA Documents Series 3, (Copenhagen: IWGIA, 1975), 4.

¹⁵ Daniel Carter, “Chile’s Other History: Allende, Pinochet, and Redemocratisation in Mapuche Perspective,” *Studies In Ethnicity & Nationalism* 10, no. 1 (April 2010): 61, DOI 10.1111/j.1754-9469.2010.01070.x.

¹⁶ Gerardo Azócar, Rodrigo Sanhueza, Mauricio Aguayo, Hugo Romero, María D. Muñoz, 58.

stereotype that is still around in present times. The Mapuche were defeated by the Chilean military in the mid 1880's and were forced into reservations and community leaders such as the Lonkos lost their authority.

From 1884 to 1919 Mapuche ancestral territory was divided up between Mapuche communities and the non-Mapuche colonizers. On average Mapuche were give 17 acres per person, while non-Mapuche colonizers received an average of 1,235 acres.¹⁷ Many communities lost access to Nguillantue and community strengthening ceremonies declined. The reservations forced Mapuches to integrate with the larger agrarian system and were regularly taken advantage of by large fundos (large farming estates). Fundos exploited the best land owned by Mapuche communities by forced expropriations, or “legal tricks.”¹⁸ These acts of usurpation were made possible in 1927 when the government passed a series of laws allowing the division of Mapuche communities.¹⁹ This changed the traditional communal style of land holding to a system of “market-oriented private property,” which was intended to make purchase of individual plots from the indigenous easier.²⁰

A series of agrarian reforms from three administrations began in 1962. The first was under President Jorge Alessandri, and the second was under President Eduardo Frei Sr. Both these reforms were similar because each focused on the elites rather than the peasantry or the Mapuche.²¹ The third administration had the most impact on the Mapuche. Under President Salvador Allende's socialist reforms the Mapuche were given back land that was taken from them by large estates. The Mapuche communities could

¹⁷ Sznajder, 20-21.

¹⁸ Berdichevsky, 5.

¹⁹ Gerardo Azócar, Rodrigo Sanhueza, Mauricio Aguayo, Hugo Romero, María D. Muñoz, 60

²⁰ Ibid, 60.

²¹ Berdichevsky, 15-16.

now petition to have usurped land returned, and in some cases the government gave the communities more land than they asked for. Under Alessandri and Frei Sr almost 3,565 acres had been given back to Mapuche communities from 1960 to 1970. In the first two years of Allende's reforms 172,973 acres had been given back to Mapuche.²² Allende also passed a law, *ley 17729*, that established special protection of Mapuche lands as well as other improvements like access education, healthcare and entrance to political parties.²³ President Allende's reforms were a positive step for the Mapuche but they did not last. In 1973 a military coup d'etat put an end to and reversed the socialist reforms in favor of a neoliberal economic policies.

Neoliberalism

When the military government came to power in 1973 there were two factions competing for leadership. The first was a conservative Catholic group that wanted a political movement like Spain's Francisco Franco, the other was a conservative economic group that wanted neoliberal financial change.²⁴ The latter economic group eventually took over. Neoliberalism, as referred to in this paper, is a political-economic philosophy that emphasizes deregulation and privatization of business, capitalist free market expansion, and opposes governmental interference in economic affairs.²⁵ Privatization refers to public enterprises like "education, electricity, health care and social security, telecommunications and water services" being run by individuals or corporations for a profit.²⁶ By changing to a neoliberal model it was assumed that developing nations would

²² Berdichevsky, 23-24.

²³ Ibid, 26.

²⁴ John L. Rector, *The History of Chile* (Gordonville: Palgrave Macmillan, 2005), 186.

²⁵ Ashley Davis-Hamel, "Successful Neoliberalism?: State Policy, Poverty, and Inequality in Chile," *International Social Science Review* 87, no. ¾ (2012): 80.

²⁶ Ibid, 81.

develop quickly by “creating dynamic market competition making them more appealing to international trade, market efficiency would translate into greater economic growth and control inflation.”²⁷

Augusto Pinochet’s goal was to achieve economic growth and integrate Chile into the global market. This required attracting foreign investments and expanding the export sector.²⁸ Privatization of industrial sectors using the neoliberal model was the major component in reaching this goal. Large state-owned farms were privatized and divided among the people who worked on them so they could run the individual farms as businesses.²⁹ Because the government was emphasizing exports many of these farms stopped producing the traditional grains and beef, and instead focused on fruit for export.³⁰ The export boom became very profitable for farms large enough to mechanize and compete in the free market system, but many of the new small farms were unable to participate in the boom.³¹

This increase in profitability may have been the reasoning for dividing up Mapuche communal land. If the Mapuche could experience economic gains from exports like other farms they could also aid in Chile’s economic growth, as well as be integrated into larger Chilean society. However more often than not the Mapuche, like other small farmers were unable to mechanize their farms because of poor economic situations.³²

Pinochet enshrined neoliberal principles into the 1980 constitution by having it state the “role of government in economic development subordinate in relation to the

²⁷ Davis-Hamel, 80.

²⁸ Ibid, 81.

²⁹ Rector, 194.

³⁰ Ibid, 194.

³¹ Ibid, 194-195.

³² Elizabeth Parmelee, “Decreto Ley 2568 Sus Efectos E Implicancias,” Centro de Documentación Mapuche, accessed June 3, 2013, Translated.

private sector.”³³ This idea that economic development is more important than anything else now had the legal backing for future manipulation of the law and repression of social protests. Neoliberalism did stimulate growth and successfully introduced Chile into the global market. However, neoliberalism also changed Mapuche land ownership, customs and rights. Mapuche communal land enjoyed legal protection from sale or division prior to the military dictatorship. Under neoliberalism the government emphasized private property over communally owned land, so the government passed laws allowing for division into private property that better fit into the neoliberal model.

Decree Law 2568

Pinochet passed *Decreto ley 2568* (Decree Law) in 1979 and it effectively reversed the changes Salvador Allende’s administration had made. This law negatively impacted the Mapuche, despite the government’s proclamation that it was for their benefit. Almost a third of the land returned to the Mapuche was taken away and given back to the former owners.³⁴ The point of this, according to Joanna Crows’ book, was to promote highly capitalized, labor-intensive commercial farms.³⁵ The justification for this is that the Mapuche were not using their land to its fullest potential, and the former owners could contribute to economic growth for the country. The law also took away the special protection of indigenous land had making it easier to divide.

To get the communal land transformed into individual titles all that was required was a written request from a single resident of the property.³⁶ The intended goals of DL 2568, according to the military government, were first to end the ambiguity of inherited

³³ Davis-Hamel, 82-83.

³⁴ Joanna Crow, *The Mapuche in Modern Chile: A Cultural History* (Gainesville : University Press of Florida, 2013), 155.

³⁵ *Ibid*, 155.

³⁶ *Decreto ley 2568*, Article 10.

land in the case of someone's death.³⁷ The second goal was to help with individual economic development by dividing property and granting individual land titles.³⁸ The final supposed goal was to integrate the Mapuche into the larger Chilean society.³⁹ In his article "Ethnodevelopment and Democratic Consolidation in Chile: The Mapuche Question" Mario Sznajder suggests that the crushing poverty of the Mapuche "runs parallel to their integration into Chilean society."⁴⁰ These goals were not thought through very well because problems with each arose. DL 2568 states that once land has been divided, it cannot be divided any more.⁴¹ This caused problems with inheritance and the only ways to resolve it was for one heir to buy the others portion from them, or the other option was for everyone to share the land and live on it together.⁴² The reason the first solution was difficult and hardly used was the Mapuche's poor economic situation. The second option was usually the way things went, but it was like having communal land again without the legal protection. The second goal failed because even though the Mapuche had individual plots of land they could farm, they were incapable of competing in the free market system because they were so small.⁴³ Farmers who were unable to use something on their land to provide for themselves often sold their land and worked on someone else's farm.⁴⁴ The goal of integration failed as well because despite individual titles the Mapuche held on to their cultural beliefs of communal land.⁴⁵

³⁷ Elizabeth Parmelee.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Sznajder, 23.

⁴¹ *Decreto ley* 2568, Article 26

⁴² Parmelee.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

The benefit of individual titles was for the state rather than Mapuche. As mentioned above the Mapuche lost their legal identity and protection as a community and culture, but the state benefited because corporations could now acquire Mapuche land and grow Chile's economy.⁴⁶ Before DL 2568 Mapuche land sales had to be approved by the entire community because they all shared the land. After DL 2568 corporations could acquire Mapuche land one property at a time until it owned them all. DL 2568 did have provisions to halt the division of land such as a pending lawsuit that was dealing with the return of land, the reservation had already been divided by judicial judgment, and land could not be divided between occupants who were married.⁴⁷ Loopholes existed, such as if the lawsuit was not filed within 180 calendar days from when the law took effect, the division of the land could continue.⁴⁸ Another loophole allowed land divided between married people to be privatized, but both people were equal owners of it.⁴⁹ According to Elizabeth Parmelee's article, critics of DL 2568 say that communal property is a very important part of Mapuche culture and identity.⁵⁰ This division can be seen as an attempt to break down their culture in an attempt to integrate them into Chilean society. Even though communal land was a part of their culture, some communities wanted division of property. Rosa Isolde Reque Paillalef, an Ad-Mapu leader, recalls communities requesting division in because of interest in farming their own plots and ending conflicts with neighbors.⁵¹

⁴⁶ Haughney, 91.

⁴⁷ *Decreto ley* 2568, Article 12: a, b, c.

⁴⁸ *Ibid*, Article 13.

⁴⁹ *Ibid*. Article 18

⁵⁰ Parmelee.

⁵¹ Crow, 156. Ad-Mapu was a Mapuche organization that advocated for Mapuche rights, opposed, and defended those who opposed division of their communities.

The Mapuche would sometime lease their land to people from outside their community to make a little extra money. This became a problem when land was divided because DL 2568 was a “land-to-the-occupant” law, which means that land that was leased was lost in the division and the Mapuche had no more claim to it.⁵² Another case where this negatively impacted the Mapuche was if a community was being divided, only those who lived on the land got it. If someone moved to the city and was not present when land was divided the government didn’t give them any, even if they still had strong ties to the community.⁵³ With the return of democracy in 1990 the Mapuche had hoped that their rights would return as well.

Indigenous Law 19253

In 1989 the Mapuche started the path to regain legal recognition and protection. On December 1, 1989 the Mapuche and other indigenous organizations signed the *Acuerdo de Nueva Imperial*, or Nueva Imperial Agreement, with presidential candidate Patricio Aylwin to address indigenous demands. In exchange for support of Aylwin and his future Concertación administration, Aylwin promised to create legitimate channels and mechanisms for the indigenous to voice their demands and participate in the political process to help solve their problems.⁵⁴ Among the promises made by the agreement, was constitutional recognition as a people, including Mapuche social, cultural and economic rights.⁵⁵ Also proposed was the creation of a “National Development Corporation Indigenous and Ethno-National Fund.”⁵⁶ It would be a public entity and allow the

⁵² Crow, 156.

⁵³ Crow, 156; Parmelee; *Decreto ley* 2658, Article 29.

⁵⁴ El Centro de Políticas Públicas y Derechos Indígenas, “*Acuerdo de Nueva Imperial*,” Centro de Políticas Públicas, accessed May 10, 2013, Translated.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

participation of different indigenous people in the country to help direct “State Indian policy and to promote economic development, social and cultural development of the same.”⁵⁷ The final promise made by the agreement was the creation of a special commission for indigenous people to evaluate problems and proposals made by indigenous organizations.⁵⁸ The agreement concluded with Aylwin promising, if elected, his willingness “to push the legislative, administrative and economic policy necessary to implement plans and measures referred to in Cobierno Program of the Coalition for Indigenous Peoples.”⁵⁹ The Nueva Imperial Agreement was an important starting point for regaining recognition and protection of Mapuche rights.

President Aylwin made efforts to fulfill the promises of the Nueva Imperial Agreement during his presidency. The culmination of his efforts was the *ley Indígena* 19253 (Indigenous Law 19253) enacted on October 5 1993.⁶⁰ The Indigenous Law did meet many of the demands the Mapuche had made in the Nueva Imperial Agreement, but not all of them. The demand for constitutional recognition as a “people” was not met; instead the law recognized the “Mapuche, Aymara, Rapa Nui or Easter Island, Atacameña the community, Quechua, Collas and Diaguita the north, Kawashkar communities or Alacalufe and Yamana or Yagan of the southern channels” as indigenous ethnic groups of Chile.⁶¹ The reason the use of words like “peoples” and “ethnic groups” is important is because if defined by law as “peoples” a community’s cultural laws are validated. The term “ethnic groups” it still gave the government the power to pick and choose which traditional cultural laws were valid in the eyes of the Chilean legal system.

⁵⁷ *Acuerdo de Nueva Imperial*.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Tomaselli, 158.

⁶¹ *Ley 19253*, Translated.

A demand that was fulfilled as promised was the constitutional funds for water and land redistribution, and indigenous economic development.⁶² This was a way for the government to buy back land that was taken from the Mapuche and return it to them. The National Indigenous Development Corporation, CONADI, a public agency that looks after indigenous affairs and interests was created.⁶³ The CONADI National Council was also created with seventeen members, eight that are elected by indigenous communities.⁶⁴ Now the Mapuche had a legitimate governmental organization with representatives they chose, to advocate for their rights. Aside from enforcing the newly created law, CONADI had specific duties and responsibilities to the indigenous of Chile. Among these duties are advocating for Mapuche rights and interests; legal defense of Mapuche people and their communities; protection and preservation of Mapuche territory; recommending legal and administrative reforms to the President.⁶⁵ Sadly what the law says and what was actually done is not always the same thing. The inconsistency in the law will be discussed later in relation to the Ralco Dam.

Article 13 of Indigenous Law 19253 states that indigenous land cannot be sold, taxed, or traded in any way to non-indigenous people without the prior approval of CONADI.⁶⁶ This article restores the protective status of indigenous lands. This act is especially important because in theory, corporations interested in the natural resources on Mapuche land would not be able to acquire them. The Indigenous Law put an end to the subdivisions at the request of a single individual allowed by Decree Law 2568, requiring any division of land must be approved by the “absolute majority” of the people who own

⁶² *Ley 19253*, Article, 20-22.

⁶³ *Ibid*, Article 38-40; Tomaselli, 158.

⁶⁴ *Ibid*, Articles 41-44; Tomaselli, 158.

⁶⁵ *Ibid*, Article 39. For entire list of responsibilities see appendix.

⁶⁶ *Ibid*, Article, 13.

the land.⁶⁷ CONADI was one of the most important things that came from the law. The law established official legal protection for the Mapuche but its uses in regards to the forestry industry and the Ralco dam left a lot to be desired in Mapuche eyes.

Conflicts with Logging

The forestry industry is one of the greatest causes of conflict between Chile and the Mapuche. The *Concertación* government puts neoliberal priorities first rather than Mapuche rights. Keeping up with the neoliberal ideal of economic development the *Concertación* states that it has three goals for development,

1. the highest rate of growth possible;
2. equal opportunities and equitable development; and
3. protection of the environment.⁶⁸

Although in practice however, only goal number one seems to matter. The forestry industry is the third largest economic earner for Chile behind mining and export agriculture.⁶⁹ Since neoliberal policy places economic growth above anything else the government fiercely protects logging companies and their properties. Logging had been part of Chile's economic success since the 1970s, but after the military government took over the industry got even bigger. As part of Pinochet's agrarian-counter reform, Mapuche land was given to logging companies, and Pinochet also sold state land to companies to promote the growth of the industry.⁷⁰ As mentioned above some of the lands taken from Mapuche were given back to the former owners, but not all of them kept their land to farm themselves. Many of these estate owners sold their land to logging

⁶⁷ *Ley 19253*, Article 16-17.

⁶⁸ Haughney, 89.

⁶⁹ Carter, 72.

⁷⁰ Haughney, 89.

companies because farming wasn't as profitable.⁷¹ Another reason the logging industry grew so rapidly was that Pinochet gave companies government subsidies for creating tree plantations and tax exemptions to maintain them.⁷² This government handout is an interesting contradiction to the neoliberal model that advocates little government involvement in business. This is how the logging industry became so large and powerful.

Eucalyptuses and pine are the types of trees that are grown the plantations and are non-native species. Though the economic benefit of them being fast growing allows for greater production, the plantations have a negative impact on the Mapuche environmentally. The communities near plantations suffer from land and water pollution making it difficult to maintain their agricultural activities.⁷³ In addition the trees on the plantations consume much more water than native species, and because of this water tables dry up causing the loss of plants used by Mapuche communities for a variety of purposes.⁷⁴

Deregulation of the industry makes it very difficult for the democratic *Concertación* government to correct these problems.⁷⁵ The Mapuche claim that many plantations are on their ancestral territory and are continually frustrated that their demands are ignored. As a result of these frustrations, and the lack of government institutions willing to step in on their behalf the Mapuche have resorted to various forms of protest to bring attention to land conflicts. The typical response to the Mapuche claim to ancestral land by logging companies comes from Carlos Webber, head of the government's National Forest Corporation in 2001, when he said "It's not like the

⁷¹ Ibid, 91.

⁷² Ibid, 89.

⁷³ Carter, 72.

⁷⁴ Haughney, 90.

⁷⁵ Ibid, 90.

logging companies took land from the Mapuches.”⁷⁶ The reason Webber says this is because aside from lands bought from the government in the 1970s, they also acquired land from private owners.⁷⁷ The problem with his argument is that he doesn’t acknowledge that the land acquired from private holders may have originally belonged to the Mapuches and it was expropriated by the Pinochet dictatorship.

An organization formed in 1998 by the Mapuche nation to support communities involved in conflicts over land was Arauco Malleco Coordinating Group of Communities in Conflict (CAM). CAM consists of Mapuche activists, and has largely been the group carrying out the protests.⁷⁸ The protests range from traditional non-violent demonstrations such as marches, hunger strikes, and occupation of public buildings; to more forceful acts of road blocks, occupation of disputed land, cutting down trees, also setting things on fire like mansions, plantations, crops and machinery.⁷⁹ It is important to note that not all Mapuche are members of CAM, but CAM has been blamed for the most of the violent demonstrations. These more violent approaches have cause significant problems for the Mapuche. In an effort to protect their property logging companies and private landowners have created “anti-Mapuche self-defense groups” because they felt the government was not doing enough to stop Mapuche protests.⁸⁰ These private sector armies protect the land from Mapuche occupations and other protests and are a bad thing because they do not report to the government, only the companies who pay them, allowing the opportunity for unnecessary force and violence against the Mapuche.

⁷⁶ Vandenack.

⁷⁷ Ibid.

⁷⁸ Bialostozky, 82.

⁷⁹ Ibid, 82.

⁸⁰ Luis Campos Muñoz, “Chile’s Mapuche Not Yet “Pacified”,” *NACLA Report on the Americas* 37, no. 1 (July/August 2003): 34.

Because of deregulation, the *Concertación* government couldn't do anything even if it wanted to, but it does not advocate individuals taking justice into their own hands.⁸¹

CAM has admitted to violent actions in defense of their lands, but their violence is meant to stop encroachment, they aren't out to hurt or kill people.⁸² This increase in Mapuche activism has caused the government to construct two different views of the Mapuche. The first is the "authorized Indian" that participates in government programs and embraces integrationist policies.⁸³ The second is the "insurrectionary Indian," these individuals pursue recognition of ancestral rights and advocate the return of usurped lands. The "authorized" are rewarded for their compliance with the government, while the "insurrectionary" are punished for their demands and actions.⁸⁴ The government's reaction to the violent demonstrations has been to invoke Anti-Terrorism Act established during the Pinochet dictatorship.

Before 2001 the government had a difficult time convicting Mapuche under the criminal code with ordinary criminal charges for violent actions such as theft, arson, and land grabbing. It was difficult because of the "procedural protections for defendants." Because of low conviction rates and increased political and economic pressure, from logging companies, the government decided to adopt a modified version of the Anti-Terrorism Act after 2001.⁸⁵ This is a prime example of the *Concertación* government protecting its economic interests to the detriment of the Mapuche. The rights given to defendants by the Chilean law code were doing their job and protecting the Mapuche, so

⁸¹ Muñoz, 34.

⁸² Bialostozky, 82-83.

⁸³ Patricia Richards, "Of Indians and Terrorists: How the State and Local Elites Construct the Mapuche in Neoliberal Multicultural Chile," *Journal of Latin American Studies* 42, no. 1 (February 2010): 72, DOI: 10.1017/S0022216X10000052.

⁸⁴ *Ibid.*, 72.

⁸⁵ Bialostozky, 83.

the government changed the interpretations of the crimes to fit in a much harsher system with special proceedings. Over 200 Mapuche have been arrested for involvement in the conflict over land with logging companies.⁸⁶

Under the Anti-Terrorism Act the public prosecutor was allowed to conduct much longer criminal investigations in secret; defendants were detained before their trial for substantially longer periods of time, sometimes the detention was longer than the actual sentences served. “Faceless” witnesses gave testimony in court behind screens and with voice altering microphone to identity keep their identity a secret from the accused; and the “prosecutors had less restriction on searches for evidence than in a normal criminal case.”⁸⁷ The sentences in terrorism cases greatly increased, and people convicted are stripped of civil and political rights.⁸⁸ The only purpose these laws serve when it comes to Mapuche is to keep them from interfering with the logging industry and Chile’s economic development. The uses of the anti-terrorism legislation should not even apply to Mapuche crimes because all the crimes listed in the law, aside from arson, deal with “direct threat to human life, liberty, or physical integrity.”⁸⁹

None of the violent actions taken by Mapuche have been against people, only private property. Judges who refuse to classify Mapuche crimes against private property as terrorist actions are often replaced by the Chilean Supreme Court, and any decisions benefiting the Mapuche are overturned.⁹⁰ This sends the message that if an obstacle is in the way of what the government wants, it is removed. This message is reiterated with CONADI and the Ralco Dam project. Use of the anti-terrorism legislation has allowed

⁸⁶ Richards, 73.

⁸⁷ Ibid, 84 & 89.

⁸⁸ Ibid, 84.

⁸⁹ Ibid, 91.

⁹⁰ Ibid, 86.

the government to criminalize legitimate legal protests.⁹¹ Once a demonstration is labeled as terrorism the government is justified in suppressing it, and gives it negative social stigma.⁹² The use of the Anti-Terrorism Act by the democratic *Concertación* government is an example of the neoliberal framework that promotes economic development before anything else.

The Ralco Dam

Another flash point for conflict over land and rights was the Ralco Dam. The Ralco hydroelectric dam was the second of two dams built by Empresa Nacional de Electricidad (National Electric Enterprise) or ENDESA. The first dam, Pangué, was completed in 1996. Its construction began in 1990 under Patricio Aylwin's administration before the 1993 Indigenous Law and CONADI were around to evaluate its impact on the Mapuche. Ralco was constructed under the Eduardo Frei (1994-2000) and Ricardo Lagos (2000-2006) administrations. When construction of Ralco was announced in 1996 CONADI and CONAMA (The National Commission of the Environment) began investigations into the project.

CONADI found the dam to be in violation of the indigenous law, and CONAMA found ENDESA's environmental impact assessment unsatisfactory.⁹³ These two reports should have been enough to stop the dam from being constructed, but the government considered the project vital to Chile's continued economic development. As a result of the nation's growth the demand for electricity grew as well. Ralco would fill Chile's

⁹¹ Muñoz , 33.

⁹² Bialostozky, 92.

⁹³ Tomaselli, 167, CONAMA was created in 1994 by environmental law 19300. CONAMA's job was to evaluate environmental impacts of industrial projects like the Ralco dam. See Tomaselli, 167.

growing demand for electricity and so Frei publicly supported the project.⁹⁴ This support led to President Frei to dismiss anyone who opposed the dam's construction.

In 1997 Frei fired CONADI director Mauricio Huenchulaf, who happened to be of Mapuche decent, because he opposed the project.⁹⁵ Frei also put considerable political pressure on CONAMA officials to reverse their decision and approve the project.⁹⁶ This was a major blow to the legitimacy of the Indigenous Law because CONADI is responsible for enforcing all the provisions of the law. However when director Mauricio Huenchulaf tried, he was removed so that the project could continue. This is another example of how the government removes obstacles to its priorities. This was not the first time a CONADI director was fired for opposing the Ralco project. In 1998 director Domingo Namuncura fired for calling a block on Ralco construction because it violated the Indigenous Law, and was replaced by Rodrigo González, someone of non-indigenous origin.⁹⁷ González approved the project. The replacement of CONADI officials angered the Mapuche because by approving the project CONADI violated its duties as laid out in the Indigenous Law.⁹⁸ By being manipulated by the government for the benefit of ENDESA and its projects CONADI became a “puppet organization” advocating neoliberal economic policy over Mapuche rights.⁹⁹ Even though the research showed that construction was detrimental to the Mapuche and the action should be avoided, it

⁹⁴ Nesti, 12.

⁹⁵ Ibid, 12.

⁹⁶ David Carruthers, and Patricia Rodriguez. “Mapuche Protest, Environmental Conflict and Social Movement Linkage in Chile,” *Third World Quarterly* 30, 4 (2009): 747, DOI: 10.1080/01436590902867193.

⁹⁷ Nesti, 17.

⁹⁸ *Ley* 19253, Article 39, See Appendix.

⁹⁹ Muñoz, 35.

benefited Chile and economic development so Mapuche rights were sacrificed. This caused an increase of Mapuche protests such as land occupations.¹⁰⁰

In 1997 a report by Federation of Human Rights condemns the Ralco project for its negative impact on the environment; the disregard of article 13 of the Indigenous Law; and the proposed areas of relocation because they do not take into account the needs of the Mapuche communities have of the land.¹⁰¹ Its violates article 13 because Mapuche land cannot be sold to non-indigenous people or corporations with out approval from CONADI, but CONADI no longer looks out for Mapuche interests so approval is often given.¹⁰² Even though the Indigenous Law returned the protection of communal lands requiring the entire communities approval before land can be sold, this requirement was violated by ENDESA which approached individual families and offered them houses and electricity in resettlement locations to entice them to move.¹⁰³

The Ralco Dam negatively impacts the Mapuche because it will flood their land and interrupt their way of life. The communities in the flood zone occupy their territory seasonally to survive.¹⁰⁴ In the summer months the Mapuche communities in the flood zone live in the highlands up in the mountains. There they gather the staple of their diet of pine nuts.¹⁰⁵ During the winter they occupy the low lands because the mountains are covered in snow. Another reason for the seasonal occupations is the livestock circuit the Mapuche have. In the winter the livestock grazes in the lowlands, and in summer they

¹⁰⁰ Muñoz, 35.

¹⁰¹ Nesti, 14-15.

¹⁰² *Ley* 19253, Article 13.

¹⁰³ Nesti, 15.

¹⁰⁴ Gerardo Azócar, Rodrigo Sanhueza, Mauricio Aguayo, Hugo Romero, María D. Muñoz, 65.

¹⁰⁵ Nesti, 7.

graze higher in the mountains.¹⁰⁶ This is the way that the communities in the flood zone have survived for centuries. Which makes the proposed relocation programs of ENDESA difficult to accept. Relocation sites are remote, almost exclusively in the mountains, and would require the breaking up of communities.¹⁰⁷ The sites also limit the Mapuches ability to collect wood and pine nuts.

Aside from protests and demonstrations the Mapuche attempted to use the court to stop the Ralco project. Some Mapuche families resorted to legal action against the CONAMA decision and ENDESA. The grievances in the case all dealt with violations to the 1993 Indigenous law.¹⁰⁸ The court initially ruled in the Mapuche's favor on September 8 1999 and preliminary construction was stopped. However ENDESA filed an appeal and a court reversed the decision in October, allowing construction to resume. The Ministry of Internal Affairs "expressed the Government's disappointment with the decision of the judge."¹⁰⁹ This is another example of how neoliberal ideas influence the government to disregard Mapuche's legitimate legal claims. Other court cases against the dam's construction were stalled in court while construction was still going on until its completion in 2003.¹¹⁰ By 2004 the government had relocated ninety-one families (500-1000 people), but the conflict over land and rights still rages on.¹¹¹

The Mapuche are still the largest indigenous group in Chile. At almost ten percent of the entire population they still have not been constitutionally recognized.¹¹² Using the neoliberal legal framework established by Pinochet, the Chilean government overrides

¹⁰⁶ Gerardo Azócar, Rodrigo Sanhueza, Mauricio Aguayo, Hugo Romero, María D. Muñoz, 64.

¹⁰⁷ Ibid, 64; Nesti, 15.

¹⁰⁸ Nesti, 18.

¹⁰⁹ Ibid, 18.

¹¹⁰ Tomaselli, 167.

¹¹¹ Nesti, 11.

¹¹² Tomaselli, 157.

actual or perceived Mapuche threats to economic interests and development. Indigenous Law 19253 was supposed to be a tool for the Mapuche to use against neoliberal policies that were destroying communities, but experience shows it was a toothless law that is easily manipulated.

CONADI was responsible for defending Mapuche interests by enforcing law 19253 even if some branches of government had different priorities. Yet any CONADI official who tried to protect the Mapuche was replaced with someone who advocated neoliberal economic interests. The idea that the government's objective is to develop the economy first was reinforced by anti-terrorism laws levied against Mapuche protesters who impeded logging companies productivity. Changing simple crimes against property to terrorist acts sends a clear message that any threat to Chile's investments will be severely punished. Neoliberalism has proved beneficial to Chile economically, but at a high social cost of Mapuche rights. Democracy returned to Chile in 1990, but the Mapuche are still waiting for it to function equitably. Unfortunately their rights under democracy are little more than an improved version of Augusto Pinochet's dictatorship.

Appendix

For the readers convenience I have underlined specific duties CONADI failed to uphold in conflicts with the logging industry and the Ralco Dam.

a) To promote recognition and respect for indigenous groups, their communities and the individuals within them, and their participation in national life;

b) Promote indigenous cultures and languages and intercultural bilingual education systems in coordination with the Ministry of Education;

c) Encourage the participation and development of indigenous women, in coordination with the National Women's Service;

d) To assume, when prompted, the legal defense of indigenous people and their communities in conflicts over land and water, exercise the functions of conciliation and arbitration in accordance with the provisions of this Act;

e) Ensure the protection of indigenous lands through the mechanisms established by this law and to enable people and their communities and expanding access their lands and waters through the respective Fund;

f) Promote adequate exploitation of indigenous lands, ensuring its ecological balance, for economic and social development of its people through Indigenous Development Fund and, in special cases, seek a declaration of Indigenous Development Areas according to this Act;

g) Maintain a Register of Associations and Indigenous Communities and Indigenous Land Public Registry subject to the general law of Registration of Real Estate;

h) To act as arbitrator against disputes arising between members of some indigenous association, concerning the operation thereof, may establish warnings, fines and even the association reach its dissolution. In this case, act as starter without appellate;

i) Ensure the preservation and dissemination of archaeological, historical and cultural ethnicities and promote studies and research in this regard;

j) To recommend to the President of the Republic the legal and administrative reforms necessary to protect the rights of indigenous people, and

k) Perform all other functions under this Act.

In fulfilling its objectives, the Corporation may agree with the Regional Governments and Municipalities respective policy and the implementation of plans and projects for the development of people and communities.¹¹³

¹¹³ Biblioteca del Congreso Nacional de Chile, "Ley 19253," Ley Chile, accessed May 10, 2013, Article 39, Translated.

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