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2016

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The Rhetoric of Legal Crisis:
Lawyers and the Politics of Juridical Expertise in Chile (1830-1994)

by

Cristián Villalonga Torrijo

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Jurisprudence and Social Policy

in the

Graduate Division of the

University of California, Berkeley

Committee in charge:

Professor Malcolm M. Feeley (Chair)

Professor David Lieberman

Professor Marianne Constable

Spring 2016

Abstract

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Professor Malcolm M. Feeley (Chair)

By the mid-1960s, different groups of Chilean law graduates pervasively began to manifest malaise about the competition of other professions in public decision-making (e.g. sociologists and economists), and the unresponsiveness of legal institutions to new social needs. Socio-legal scholarship agrees, based on a preliminary reading of the historical sources and anecdotal evidence, that lawyers lost their quasi-monopoly on statecraft and were unable to resourcefully participate in the political arena during twentieth-century Latin America. However, such phenomena have not been analyzed systematically. Paying attention to Chilean elite lawyers, this dissertation tries to fill the aforesaid gap.

Builds upon Max Weber and Pierre Bourdieu's scholarship as theoretical scaffolding, this research examines the transformation of juridical expertise in the process of modernization and the different strategies employed by legal professionals to regain influence in public governance. Through qualitative and quantitative analysis, the first part of my dissertation studies how the legal profession lost political power along with the division of governmental labor and the bureaucratization of courts and the bar occurred in twentieth-century Chile. The second part, chapters 4 to 7, analyzes how different networks of lawyers mobilized after the erosion of their authority, employing a dual strategy of collective action to advance simultaneously their position inside the legal field and diverse political agendas during the Cold War years

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Acknowledgments

In my endeavor to study law, history and politics, I have accrued numerous professional and personal debts over the past years. I was fortunate to benefit from a splendid Dissertation Committee integrated by Malcolm Feeley (Chair), David Lieberman and Marianne Constable. There are not enough words to say thanks for their enormous help and intellectual encouragement during all my time here at the Jurisprudence and Social Policy Program. I have also benefited from valuable commentaries provided by Javier Couso, Lauren Edelman, Terence Halliday, Robert A. Kagan, Laurent Mayali, Matthew Mirow, Calvin Morrill, Rogelio Pérez-Perdomo, and Rachel Stern. Conferences at the Law and Society Association and the American Society for Legal History proved enormously inspiring as well.

In my country, I especially thank Carlos Frontaura, a great friend and mentor who has always provided support above and beyond the call of professorship. Also, I thank all who have helped me in my academic career at the Pontificia Universidad Católica de Chile School of Law, particularly, the Director of the Department of Legal Science, Gonzalo Rojas Sánchez, and the former Deans Arturo Yrarrázaval and Roberto Guerrero. I feel honored to have been invited to teach at my alma mater the years to come.

During my studies, I have received financial support from the Fulbright Program, the Chilean Commission for Science and Technology, the Pontificia Universidad Católica de Chile School of Law, the Tinker Foundation, the Graduate Division, the Center for Latin American Studies and the Jurisprudence and Social Policy Program at Berkeley.

Equally, I would like to thank the numerous colleagues and friends who have assisted me. Some have collaborated in editing different parts of this manuscript: Krzysztof Odyniec, Lonjino Lazcano, Sara Ludin, Jesse Rodenbiker, Anne Takefuji, and Lawrence Viles. Others have given me a hand by helping during my fieldwork in Chile or providing moral encouragement: Nicolas Pérez, Krostoffer Verbeken, Juan Agustín Castellón, Carlos Henríquez, Margarita Farías, Verónica Recabarren, Mayra Feddersen, Paco García de Vinuesa, Gabriela Vivanco, Vitorio Allende, Álvaro Lapetra, Juan Eduardo Ibáñez, *inter alia*.

At last, but not at least, I want to express my enormous gratitude to my family. I am lucky to have my wife Juhsett Maturana and our sons, Arturo and Antonio, who stood by me during all the time of this academic endeavor. My parents Antonio and Clara, and my siblings, have also been a constant source of support. I greatly appreciate the sacrifices all they made to back me. And for that I am eternally grateful.

Berkeley, May 13th, 2016.

Introduction:

The Structural Change of the Legal Profession and the Contest for the Power of Law

The majesty of the Law has been questioned in recent times, especially in academic and political environments. From different angles and ideologies, people speak about the current crisis of the legal system.

Jorge Precht, José Antonio Viera-Gallo: “¿Derecho a la revolución o revolución del Derecho?” [1969].¹

From the beginning of the republic in the early-nineteenth century until the 1920s, Chilean elite lawyers possessed privileged access to statecraft. Representing juridical science as a superior form of governance, they dominated the public arena during a period of aristocratic hegemony, simultaneously performing high-profile roles in Congress, courts, universities, and the emergent bar. By the mid-twentieth century, however, several social and political changes ended the regime in which lawyers used to thrive. The incorporation of new segments of the population into the economic system and the spread of left-leaning political parties generated massive demands for legal reforms in areas like property distribution and called into question fundamental aspects of traditional juridical expertise. Likewise, the advancement of the administrative state was associated with the rise of economists and sociologists who disputed lawyers' long-established control of governmental practice. Given that, several controversial writings and academic conferences began to speak about the crisis of the law in the mid-1960s, addressing the diminishing influence of lawyers and the unresponsiveness of legal institutions to new social needs.

A preliminary reading of the sources that describe the legal profession between the 1960s and the early 1990s suggests a displacement of lawyers from a preponderant political role throughout Latin America. Socio-legal scholarship agrees, based on anecdotal evidence, that lawyers lost their quasi-monopoly on statecraft by the mid-twentieth century.² Observing Brazil and Chile, for example, Yves Dezalay and Bryant Garth have pointed out that legal institutions became weakened by the mid-twentieth century, and that “the prestige of the judiciary and law professors [...] declined as they came increasingly to seem anachronistic and out of touch with the expertise necessary to promote economic progress.”³ Nevertheless, there have been not systematic analyses about how and why lawyers have lost power or the ways by which they faced the uncertainty, demands for

¹ Jorge Precht, José Antonio Viera-Gallo: “¿Derecho a la revolución o revolución del Derecho?” *Mensaje* N° 177. March-April. 1969. p. 78.

² Rogelio Pérez-Perdomo: *Latin American Lawyers. A Historical Introduction*. Stanford: Stanford University Press. 2006. pp. 117.

³ Yves Dezalay, Bryant Garth: *The Internationalization of Palace Wars. Lawyers, Economists, and the Contest to Transform Latin American States*. Chicago. Chicago University Press. 2002. p. 36.

responsive law, and professional competition that began to occur in the 1960s. By analyzing lawyers' mobilization toward the rhetoric of legal crisis, the dissertation tries to fill the aforementioned gap and to understand the contest for the transformation of juridical expertise within public governance.

The Chilean case offers an outstanding opportunity to go through this inquiry. Numerous scholarly works identify the country as a setting where law performed a critical role in nation-building.⁴ A preliminary reading of the historical sources indicates the complaints on the unresponsiveness of the legal system were very pervasive by the second half of the twentieth century as well. Additionally, the small size the country allows having a complete perspective of the actors in play.

This study builds upon Max Weber's account of the division of governmental labor and Pierre Bourdieu's insights on the juridical field to explore a two-part research question. First, how –if at all– did the legal elites lose power with the process of modernization of the Chilean society by the mid-twentieth century? Second, how did different groups of lawyers mobilize after the erosion of their authority between the 1960s and 1990? Each part of such a research question is addressed by a particular interpretive hypothesis.⁵

Lawyers in Public Governance: Dominance and Demise (Part I)

The dissertation asserts that Chilean elite lawyers performed central roles in state-building since the beginning of the republic until the first half of the twentieth century. Usually, they would have been brokers of the landed aristocracy, holding various simultaneous functions in the state and the legal system. Notwithstanding, a broad array of demands for change coming from new social groups (e.g. middle class, the urban poor and, later, rural workers) would have steadily pushed for the diversification of the governmental labor since the 1920s onwards. As a result, lawyers, as such legal professionals, would have lost power in the context of the rising administrative state and Cold War politics. Obviously, the previous thesis is an initial approach, which requires a more sophisticated re-elaboration.

This research relies upon on a significant body of scholarship that confirms that legal graduates constituted the core of the cadres that participated in the politics of state-building. Studies ranging from the sociology of law to legal history in Continental Europe and Latin-America agree about the relevance of lawyers in backing monarchs and early

⁴ See as example: Francisco José Moreno: *Legitimacy and Stability in Latin America: A Study of Chilean Political Culture*. New York: New York University Press. 1969. Nathalie Jammet: *La formation de la conscience nationale au Chile: le rôle de l'état*. Villeneuve-d' Ascq: Presses Universitaires du Septentrion. 2001. Bernardino Bravo Lira: *Por la Razón o la Fuerza. El Estado de Derecho en la Historia de Chile*. Santiago: Ediciones de la Universidad Católica de Chile. 1997.

⁵ To comprehend the dynamic of demise and competition in the legal profession, described along the entire dissertation, I have opted to focus my analysis on each aspect separately. This strategy not only matches the chronological account portrayed in each part of my research question. At the same time, it allows distinguishing between objective (structural demise and breakdown) and subjective elements (contending narratives of mobilization). By this way, I follow the structure of the debates on the idea of crisis in social sciences. Jürgen Habermas: "What Does a Crisis Mean Today? Legitimation Problems in Late Capitalism". *Social Research* No. 40, 1973: p. 643.

republics since the late middle ages onwards.⁶ Both Max Weber and Pierre Bourdieu's theoretical works have emphasized that they were crucial actors, providing legitimacy to the political regimes and carrying out key tasks in courts, the emerging bureaucracy, and diplomacy.⁷ In so doing, they would not only have toiled for the government but would have been able to moderate its power under the language of formal rationality and neutrality. Their insights are confirmed by empirically oriented historical analysis, such as Lauro Martines' study on lawyers in Renaissance Florence or Ernst Kantorowicz's research on the notaries and French Monarchy, which illustrate how their functions as clerks of political power were associated with the very origins of the legal profession.⁸

It is likely that lawyers had broadened their roles since the late eighteenth century on, especially since liberal revolutions pushed for the establishment of modern states. Several examples ranging from Brazil to Finland show the patrician groups that dominated politics chose law as a generalist training, and that the regimes themselves exerted a close control of the law school as a place of reproduction of the governmental corps.⁹ In modern states, lawyers used to be more than mere bureaucratic clerks of the political power. Also, some sections of the elite legal professions—frequently linked with landed aristocracy or businesspeople—became brokers in the parliament and partisan groups, mediating to forge a political compromise. In all those many-sided roles, law graduates held a privileged position in state-crafting.

Following the pattern already explained, law graduates appear as pivotal actors in Latin American politics as well, constituting one of the most common professional groups behind state-building. They comprised the marrow of the Spanish and Portuguese colonial administrations and were actively engaged in the pro-independent movements. Later in time, lawyers took part in the struggles to organize the new national states. Their tracks can be noticed in the aristocratic conflicts in Chile and Colombia, the protection of commercial interests during constitution-making in Argentina, and even in the advancement of authoritarian populist regimes (e.g. the *camarillas* in post-revolutionary México after 1917).¹⁰ However, most literature on Latin American lawyers has preferred other angles of

⁶ James A. Brundage: *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts*. Chicago: The University of Chicago Press. 2010. Rogelio Pérez-Perdomo: *Latin American Lawyers. A Historical Introduction*. Op. Cit.

⁷ Yves Dezalay, Mikael Rask Madsen: "The Force of Law and Lawyers. Pierre Bourdieu and the Reflexive Sociology of Law". *Annu. Rev. Law Soc. Sci.* 2012. 8. pp. 436-437. Max Weber: *Economy and Society. An outline of interpretive sociology*. Berkeley: University of California Press. 1978. pp. 775-776. 792-814. 875-876.

⁸ Lauro Martines: *Lawyers and Statecraft in Renaissance Florence*. Princeton: Princeton University Press. 1968. Ernst H. Kantorowicz: *The King's Two Bodies: A Study in Mediaeval Political Theology*. Princeton: Princeton University Press. 1957.

⁹ Esa Kontinen: "Professionalization as Status Adaptation: The Nobility, the Bureaucracy, and the Modernization of the Legal Profession in Finland." *Law & Social Inquiry*. Vol. 16 No 3. 1991. pp. 497-526. José Murilo de Carvalho: "Political Elite and State Building: The Case of Nineteenth-Century Brazil". *Comparative Studies in Society and History*. 24:3 (1982). pp. 378-399. Sergio Adorno: *Os apredizes do poder: O bacharelismo liberal na política brasileira*. Sao Paulo: Paz e Terra. 1988.

¹⁰ Rogelio Pérez-Perdomo: *Latin American Lawyers. A Historical Introduction*. Op. Cit. Victor Uribe-Uran: *Honorable Lives. Lawyers, Family and Politics in Colombia 1780-1850*. Pittsburgh: University of Pittsburgh Press. 2000. Jeremy Adelman: *Republic of Capital. Buenos Aires and the Legal Transformation of the Atlantic World*. Stanford: Stanford University Press. 2002. Larisa Adler Lomnitz, Rodrigo Salazar: Cultural Elements in the Practice of law in Mexico: Informal Networks in a Formal System." In Yves Dezalay, Bryant

analysis rather than legal politics. Instead, scholars have selected topics like sociological approaches to the segmentation of the legal profession or the changing place of lawyers in globalization.¹¹ When scholarly works have definitively explored the political role of lawyers, they have paid more attention to short-term periods or narrowed-tailored issues, such as the function of law school in reproducing political power.¹² Currently, there are not comprehensive and long-run analyses about the relations between the legal profession and public governance in a specific country of the region.

To study the said loss of power of elite lawyers, which constitutes the first part of my research question, I rely on Bourdieu's concept of field and Weber's view on the diversification of governmental labor in modern states. They are critical insights that serve as a guideline for the observation of the data and material sources. To be clear, I do not intend to test their propositions, but I employ these latter ones as theoretical stepping stones of my historical interpretation on the politics of the legal profession.

Trying to take a systematic look at the place of lawyers in public governance, this dissertation studies the structure of the legal and state fields in Chile, principally analyzing their upper sections. To put it in other words, it follows Pierre Bourdieu in organizing law and the state as social arenas. This is to say, settings structured as a network of agents and institutions that are positioned and compete for specific forms of power (e.g. intellectual capital, political influence), whose possession permits the access to profits that are at stake in the field (e.g. status, legitimacy, material gains).¹³

On one side, Bourdieu's idea of field allows understanding both law and state as spaces of struggles in which different actors compete to control a sphere of functions identified by them as properly "juridical" (legal field) or related to the exercise of public power (state field). For instance, the dissertation assumes that understand diverse sections of the legal profession compete to determine what proper juridical knowledge is, for the jurisdiction to resolve disputes and to produce legal norms. Meanwhile, their positions and accumulation of authority would allow access diverse profits: status in the bar or courts, credibility before potential clients, the control of lawmaking and adjudication, and so on. Something similar can be said about the state, where congressmen, judges, members of the cabinet of ministers, among other officials, are positioned and contest to govern society by the mean of public machinery (public governance).¹⁴ In this regard, the concept of field offers an enlightening perspective to see phenomena such as the accumulation of posts and intellectual capital, and the general hierarchy of legal professionals, without being always

G. Garth: *Global Prescriptions: The Production, Exportation, and Importation of a New Legal Orthodoxy*. Ann Arbor: The University of Michigan Press. 2002. pp. 209-248.

¹¹ For example, Yves Dezalay, Bryant Garth: *The Internationalization of Palace Wars. Lawyers, Economists, and the Contest to Transform Latin American States*. Op. Cit.

¹² Julio Gaitán Bohórquez: *Huestes del Estado. La formación universitaria de los juristas en los comienzos del estado colombiano*. Bogotá: Universidad de Rosario. 2002.

¹³ Fundamentally, Bourdieu defines the concept of field as a network of objective relations between agents and institutions, which is determined by their present and potential position in the structure of distribution of power. David Swartz: *Culture and Power: The Sociology of Pierre Bourdieu*. Chicago: The University of Chicago Press. 1997. p. 117.

¹⁴ Pierre Bourdieu: "The force of law: toward a sociology of the juridical field". *Hasting Law J.* 1987. 38. pp. 805-853. Pierre Bourdieu: *On the State. Lectures at the Collège de France. 1989-1992*. Cambridge, Mass: Polity. 2015. Yves Dezalay, Mikael Rask Madsen: "The Force of Law and Lawyers. Pierre Bourdieu and the Reflexive Sociology of Law". *Annu. Rev. Law Soc. Sci.* 2012. 8. pp.436-437. Remi Lenoir: "Pierre Bourdieu and the Law: An Intellectual and Personal Encounter". *Retfaerd*, No. 3/114. 2006. pp. 7-22.

attached to fixed occupational categories: attorney, congressmen, law professor, among others. Its broadness is particularly useful to explore a group whose members were characterized by their simultaneous and/ shifting positions over an extended period of time.

On the other side, the idea of field results helpful to comprehend the relations of lawyers to state politics. Although the boundaries of this concept are elusive, the idea of field points to imagine law as an open setting, that partially overlaps with other spaces, such as the economy, political parties, intellectual production, and so on. The open nature of the field explains the influx of extrinsic factors and provides a sound clarification to understand why social and economic groups could exert some degree of influence on this. Regarding the particular scope of this research, Bourdieu asserts that law and the state can be, to a large extent, mutually constitutive. Where lawyers performed a vital function in building the polity, the language of the law plays a significant role in framing the real and symbolic foundation of the state.¹⁵ The law provides legitimacy and sets the rules of the game to resolve conflicts in the allocation of resources. For that purpose, legal professionals use to appeal to neutrality, formalism and the universality of their conceptual apparatus.¹⁶ In so doing, law contributes to imagine the state, swaying the beliefs about the story, hierarchies, and margins inside the political community.¹⁷ Conversely, the state bestows a significant range of assets for lawyers, like appointments to positions where they can employ their expertise, social status, or access to networks, which can be invested in their own political and professional agendas. Hence, the concept of field serves as an enlightening metaphor to understand one of the central points of the first part of this dissertation: the somewhat overlapping functioning of law and the state, at least during the first century or so of the republic.

Re-elaborating the thesis that tries to answer the first research question, my dissertation suggests that, at least in part, lawyers perceived they lost power because their overlapping functions within the state and the legal field began a process of decoupling, which was characterized by a shrinking in the sphere of jurisdiction of legal expertise. Such as Dezalay and Garth have explained based on anecdotal evidence, the landed elite that dominated politics until the beginning of the twentieth century would have heavily relied upon juridical expertise to professionalize statesmanship. Over time, elite law graduates would have evolved from clerical functions to be real political brokers, guiding the process of nation-building. They simultaneously occupied several positions in courts, Congress, ministries, and law schools, revealing they constituted double agents for the state and the legal field alike. The label gentlemen politicians of law coined by Deazalay and Garth is illustrative of such overlapping roles.

This dissertation proposes that the process of modernization—characterized by competitive politics and a more complex set of social demands—implied a redefinition of the governmental practices and the ways by which the ruling groups professionalize statesmanship. During the mid-twentieth century, the Chilean polity shifted from an aristocratic rule controlled by the landed elite to a new kind of regime that needed to

¹⁵ Pierre Bourdieu: *On the State. Lectures at the Collège de France. 1989-1992*. Cambridge, UK: Polity. 2014. pp. 52-55. 264-277.

¹⁶ Pierre Bourdieu: “Habitus, code et codification”. *Actes de la recherche en sciences sociales*. Vol. 64. September, 1986. pp. 40-44.

¹⁷ Paul Kahn: *The Cultural Study of Law: Reconstructing Legal Scholarship*. Chicago: The University of Chicago Press. 1999. pp. 31-35.

arbitrate conflicts among a broad variety of social actors and to provide material welfare.¹⁸ Following Weber on modernization, my research shows that these changes provoked a division of governmental tasks and the bureaucratization of legal institutions, ending up with a high concentration of public offices built on aristocratic ties and generalist juridical knowledge.¹⁹ This meant a decoupling of the close relations between the state and the juridical field. The legal profession would have been gradually separated into new fields, such as the economy, electoral politics, and administrative management, which developed their own places of training and organization. At the same time, an increasing specialization occurred within juridical activity itself.²⁰ Both courts and the bar, for instance, became public bureaucratic institutions that were highly deferential to executive power due to their political and financial constraints. As a result of these processes of the division of governmental labor and bureaucratization, law graduates lost their privileged role in the state and became ill-equipped to face the new requirements of public governance.

The discourse of the legal crisis, quoted at the beginning of this introduction, would have echoed the phenomenon mentioned above. In the midst of the mounting conflict of the Cold War, when political polarizations got rid of pragmatic partisan practices and the social mood called into question the courses of economic development, lawyers perceived they were not resourceful enough to intervene using the traditional juridical knowledge anchored in mechanical jurisprudence. By contrast, they argued that they were unable to provide adequate direction for policy-making and that the legal system itself did not constitute a suitable setting to forge economic development and political compromise. Their position came out diminished in front of other professionals like economists and sociologists, and legal institutions looked unresponsive to the radical demands of social transformation. They would have resented their loss of power, and manifested their status anxiety.

The Fragmentation of the Legal Profession and a Dual Strategy of Mobilization (Part II)

The second part of my research question has to do with the collective action of different groups of lawyers, who resorted to the rhetoric of legal crisis as a narrative to coordinate their professionals and political agendas. This dissertation intends to show that one of the consequences of the demise of the legal profession, particularly in the context of the Cold War, was its political fragmentation and the breakdown of a relatively common legal culture. The historical sources reveal that four networks of lawyers emerged along with this process of fragmentation: a) a kind of legal realist movement (1964-1972), b) a Marxist cadre of lawyers during Salvador Allende's Popular Unity (1970-1973), c) a conservative network during Pinochet's military rule (1973-1990), and d) a group of

¹⁸ Julio Faúndez: *Democratization, Development and Legality. Chile: 1831-1973*. New York: Palgrave Macmillan. 2007.

¹⁹ Max Weber: *Economy and Society. An outline of interpretive sociology*. Berkeley: University of California Press. 1978. pp. 775-776. 1404. Terence C. Halliday: *Beyond Monopoly: Lawyers, State Crisis, and Professional Empowerment*. Chicago: The University of Chicago Press. 1987. pp. 25-26.164.

²⁰ Along the dissertation, I employ the concept sphere of jurisdiction to refer the functions and tasks that professions –in this case the legal profession–, claim for itself. Andrew Abbott: *The System of Professions: An Essay on the Division of Expert Labor*. Chicago. The University of Chicago Press. 1988. pp. 59-85.

dissident lawyers who confronted authoritarian politics (1978-1994). They all dealt with both the issue of their professional failure and the unresponsiveness of legal institutions, getting aligned with irreconcilable projects of political transformation.

Through my dissertation, I assert that these groups employed the rhetoric of legal crisis as a narrative to participate in the transformation of the state and the legal field alike. Far from a reshuffle structured along mere partisan preferences, the political fragmentation of the legal profession emerged as an intense conflict. On one side, lawyers developed contending modalities of law and programs of reform, which were aimed to regain authority in public governance and to better the general institutional capacity of law to intervene responsively in society. They tried to apply new methodologies to approach legal knowledge, planned to recast the role of judges, and drafted constitutions and broad areas of the legislation, among many other spheres in which they mobilized. On the other side, these programs of reform encompassed true enterprises to reframe the Republic, reviewing overarching assumptions like the separation of powers, distribution of rights, and the discourse of legitimacy of the state. It is not surprising to observe that these different versions of the rhetoric of the legal crisis would have had close links with the economic, cultural and political debates that emerged outside the boundaries of the juridical field.

In brief, my dissertation asserts that these networks of lawyers embraced a dual strategy of mobilization that advanced simultaneously their own position inside the legal field and the political agenda to which they subscribed. For example, reformist lawyers mainly linked with the Christian Democracy and the Radical Party would promote the model of lawyers as social engineers in the late 1960s, both to privilege their role in law schools and public agencies and to foster administrative planning and redistributive economic policies that they supported. In the same light, conservative lawyers and scholars that backed the military government would have tried to enhance their intellectual capital in a massive effort to re-codify legislation and to draft a new constitution, serving to the re-foundational spirit of the dictatorship. This strategy of mobilization implied the selective coupling of the professional and political interests of lawyers in institution building.

As expected, the model of a two-fold strategy of mobilization calls into question other explanatory hypotheses on the political behavior of the legal profession. To a large extent, this model constitutes a rebuttal against neo-Marxist approaches that portray lawyers as agents who only look to secure and consolidate their monopoly on juridical services to get material earnings, such as Abel and Magali Sarfatti Larson suggest.²¹ This also seems inconsistent with the literature on the legal complex proposed by Karpik, Halliday, and Feeley, who argue that, under some conditions, the legal profession supports the cause of political liberalism.²² Indeed, the theoretical foundations of the dual model of collective action seem linked to Bourdieu's scholarly tradition, as long as this emphasizes lawyers' investment into state politics as a way to advance their symbolic capital and their

²¹ Magali Sarfatti Larson: *The Rise of Professionalism: A Sociological Analysis*. Berkeley: The University of California Press. 1979. Richard L. Abel: "Comparative Sociology of Legal Professions" Richard L. Abel, Philip S.C. Lewis: *Lawyers in Society: Comparative Theories*. Berkeley: The University of California Press. 1989. pp. 80-153.

²² Lucien Karpik, Terence Halliday, Malcolm Feeley: "The Legal Complex and Struggles for Political Liberalism" In Lucien Karpik, Terence Halliday, Malcolm Feeley (eds.) *Fighting for Political Freedom. Comparative Studies of the Legal Complex and Political Liberalism*. Portland. Hart Publishing. 2007. pp. 1-42.

market for legal services, providing legitimacy for the polity as well.²³ Although such affinity is undeniable, I need to elucidate some aspects of my theoretical claim from a more narrowly tailored fashion.

Behind the pattern of mobilization offered by this research, there is a view of the political economy of lawyers' behavior, which assumes they chiefly act according to their structural position inside the juridical field. The idea of strategy offered by Bourdieu, as a relatively unconscious behavior that is consistent with an objective set of structural relations, precisely matches some of the main lines of my dissertation, providing the ground to understand how they compete for material and symbolic gains. However, I think that such insight is only a starting point to comprehend a behavioral trend, that not always is predictive and determinative. Despite the regularity in lawyers' strategies of mobilization, several examples of individuals outside the general trend illustrated the complexity of the behavioral pattern and their political preferences. In the end, the rhetoric of legal crisis as a narrative of mobilization shows the necessity to coordinate action and to articulate loose networks, reflecting an enterprise that requires at least some degree of agency.²⁴

Additionally, a further clarification of the scope of my research is also needed. First, I am not claiming the universality of this explanatory model. Instead, I am proposing a stepping stone of historical interpretation that eventually could be applied to other Latin American countries where law and state politics are enormously embedded. Other patterns can configure the place of lawyers under a different schema, such as when the bar and courts hold a higher degree of autonomy and can exert moral authority. Halliday's study on the role of the Chicago Bar Associations seems very persuasive, and clearly can serve as a model for analysis of the legal profession in different settings.²⁵ Something similar can be said about the legal complex scholarship, particularly regarding the Anglo-American experience and the British former colonies.²⁶ Second, this dissertation deals with a particular area of mobilization, fundamentally covering the architectonic politics of the legal field and the state, which is associated with the struggle for the distribution of areas of jurisdiction in public governance. So, I do not mainly address other topics like the behavior of low-ranking law graduates or cause lawyering, drawing my attention mostly to lawyers who present a clear interest in the general functioning of law and the state.

Sources, Research Strategy and Organization of the Work

Although this research deals with the central issues of the legal politics in Chile, it does not intend to be a comprehensive account of the legal history of the country. Instead, this comprises a historical interpretation on the role of lawyers in statecraft, constituting a

²³ I have followed a similar theoretical perspective than Dezalay and Garth, who, however, employ Bourdieu's ideas to study lawyers' place in globalization. See Yves Dezalay, Bryant Garth: *The Internationalization of Palace Wars. Lawyers, Economists, and the Contest to Transform Latin American States*. Op. Cit. And also their work: *Asian Legal Revivals. Lawyers in the Shadows of the Empire*. Chicago: The University of Chicago Press. 2010.

²⁴ For a critical survey on Bourdieu's theory on this aspect see: William H. Sewell, Jr.: "A Theory of Structure: Duality, Agency, and Transformation." *American Journal of Sociology*. Vol. 98, No. 1 1992. p. 21.

²⁵ Terence C. Halliday: *Beyond Monopoly: Lawyers, State Crises, and Professional Empowerment*. Op. Cit.

²⁶ See Note 22. See also Lucien Karpik, Terence Halliday, Malcolm Feeley: *Fates of Political Liberalism in the British Post-Colony. The Politics of the Legal Complex*. New York: Cambridge University Press. 2014.

sort of collective biography. As such, it directly addresses the inquiries posed in each part of my research question from the perspective of the law and society scholarship. This study looks to dialogue both with legal historians focused on Chile and Latin America and with social scientists oriented to the study of the legal profession and the functioning of the legal system. Naturally, its reading could be fruitful for a broader audience interested in law and governmental practice.

The dissertation relies upon a varied collection of material sources that has served as the foundation for my historical work. I have conducted archival research in different libraries in Santiago of Chile: The Congress National Library, the Supreme Court Library, the National Library, the National Archive, the National Archive for the Administration, the Chilean Bar Association Library and Archive, the Pontifical Universidad Católica Library, the University of Chile Law School, the Bellarmino Library, and the Museum of the Memory Library. These have provided about 2,000 primary sources composed of official records, the bar association's board meetings accounts, legislative projects, newspapers notes, law journals articles, speeches and so on. These have been complemented by an extensive review of biographical datasets of the Chilean political and legal elites, and the examination of secondary literature that has served to contextualize my historical narrative. Facing the volume of documentary materials, I have used techniques of data reduction to grasp the core information concerning my research. These included: 1) coding the biography of about 1,500 members of the Congress and the cabinet of ministers; 2) coding the biography of 120 members of the general board at the Chilean Bar Association (CHBA); 3) coding the biography of 745 justices at higher courts; and 4) a detailed content analysis of 200 material sources that expressly refer to the concept of legal crisis between the early 1960s and 1990. Also, I have also relied upon 30 lengthy semi-structured interviews conducted with lawyers and legal scholars who took part in the political and intellectual debates of the period under this scope.

As a study that attempts to constitute a collective biography of lawyers, with a particular focus on state politics, my dissertation selectively draws its attention to a particular kind of agent as the more basic unit of analysis. On the whole, I have employed Lucien Karpik's description of political lawyers, who are defined as elite attorneys or legal scholars who participate in the general functioning of the legal system, who show concern for the legal activity as an integral part of the political life and possess some degree of identification with the bar organization, legal practice or the law schools.²⁷ I have mostly left aside other segments of the legal professions, such as rank and file law graduates, advocates who have only been involved in specific practices of cause lawyering, and judges without relevant roles outside courts. To make this definition operative, I have selected the data on persons who received their professional degrees as lawyers, and that additionally meet at least one of the following categories: were part of the Board of the Chilean Bar Association, gave classes at the different law schools, acted in Congress, took part of the Fiscal Defense Council, occupied the posts of secretary or undersecretary in the Executive Branch, or participated in the different constitutional and legislative commissions organized by Chilean Governments. This basic unit of analysis has served as a threshold to explore the relations between the state and the juridical field.

²⁷ Lucien Karpik: "Political Lawyers." In Terence Halliday, Lucien Karpik, and Malcolm Feeley: *Fighting for Political Freedom*. Op. Cit. pp. 463-493.

As explained regarding the research question, this dissertation has been organized into two big sections that present particular rationales and methodological approaches. Overall, they possess a complementary nature, being articulated in Chapter 3 concerning on the rhetoric of legal crisis and breakdown of the legal profession. The first part of the research addresses the abovementioned dominance and demise of juridical expertise in public governance (Chaps. 1 and 2), drawings its attention to two periods: the decades of aristocratic politics that followed the first organization of the republic (1830-1920), and the emergence of the administrative state anchored in middle class partisan alliances (1932-1960). Following the traditional stream of law and society scholarship, the chapters are structured by explaining the social, political and economic conditions of each period, and then, to explore how these latter ones influenced the interaction between the legal field and the state. The analysis quantitatively and qualitatively explores the structural transformation of the legal profession and its role in the architecture of the state, guiding the first part of my process-tracing interpretive account. For that purpose, I have built an index to measure quantitatively lawyers' power inside the state and the legal field, attempting to address graphically the processes leading to dominance and demise.

Chapter 1 analyzes how a highly cohesive landed elite gradually collaborated in state building, heavily relying on juridical expertise as a way to professionalize statesmanship and employing law as a *locus* to forge a political compromise. This argues that, in such a process, law graduates evolved from being clerks of the colonial administration and the first centralized regimes, to be political brokers who employed juridical expertise to consolidate their position within the state apparatus. According to the sources, their role would have left an enduring legacy in the legal structures of the country and the symbolic representations of the republican life. After that, Chapter 2 studies the transformation of the legal profession along with the emergence of the administrative state, analyzing the period between the 1930s and early 1960s (*Estado de Compromiso*). By and large, Chapter 2 offers an in-depth exploration of the first thesis of my dissertation; this is to say, it asserts how a more stringent and assorted set of social demands in twentieth-century Chile, coming from the middle class and the urban poor, pushed for a rearrangement of the governmental practices. This transformation included the division of governmental labor and a dynamic of bureaucratization of courts and the organized bar. The last part of the chapter looks to explain how this rearrangement implied the shrinking in the sphere of professional jurisdiction of lawyers and an increasing unresponsiveness of legal institutions.

Next, Chapter 3 describes how elite lawyers perceived the shortcomings of their expertise and the legal system, which began to be identified by the label of a crisis of law. This proposes that the rhetoric of legal crisis ended up with an underlying unity of the legal profession, which used to lay on some elemental assumptions on subjects like the role of the judiciary and the separation of powers. For that purpose, the chapter resorts to a quantitative discursive analysis on the historical sources that dealt with the issue. So, this traces how the lawyers perceived that their narrow sphere of jurisdiction would have originated a sort of inability of the legal institutions to face the enormous demands for socioeconomic reforms of the mid-1960s properly. Beyond representing a kind of malaise, the final section of the chapter explains that this discourse set up an initial milestone in the steady process of political fragmentation of the lawyers.

The second part the research addresses the contest between diverse groups of lawyers aligned politically according to their positions in the juridical field. In concrete terms, this explores the aforesaid four networks that relied on the rhetoric of legal crisis to coordinate their strategies, which sometimes coexist in time. As expected, this part needs to face a different methodological challenge. To comprehend the networks' mobilization, each chapter studies a sequence of their collective action. Overall, this sequence can be traced according to the following pattern: a) political context; b) collective biography of the principal members of the network; c) discursive practices, and c) mobilization for legal reform. I start assuming that social and political context constitutes an input that influences the struggles for the rearrangement of the state and the legal field. This sets the incentives for mobilization and the main agenda with which lawyers need to deal. Following the context, determined segments of the legal profession are activated: low-level judges, traditional legal scholars, lawyers working in planning agencies, etc. For instance, the electoral victory of Marxist parties that needed to advance socialism by legal means would set in motion to left-leaning lawyers that occupied mid and low-level positions in the juridical field. This structure means that after introducing the political context, each chapter should present a basic account on the social, political and professional identity of the members of the network. A third step has to do with the discourse that they deployed to coordinate their collective action. The different versions of the rhetoric of legal crisis constitute the main expression of them, illustrating how lawyers reframed external demands into a narrative of mobilization. Lastly, I address the concrete efforts for reform that lawyers advanced in diverse areas: legal education, lawmaking, property rights, etc. Each one of the chapters that comprises part two follows the same basic structure.

In the conclusion, I intend to present my findings by assessing the evidence. In so doing, I will answer the research question on the structural transformation of the legal profession and its strategies of collective action, attempting to portray the big picture. In addition, I am going to provide some preliminary accounts on other similar examples at a comparative level. Finally, I provide some insights about what this research could offer to understand the process of construction of the legal authority.

Part I: Lawyers in Public Governance

Chapter 1

The Republic as a Juridical Construction

If the law, and obedience to the law, are so necessary, it can truly be said these constitute man's true homeland, and the source of all the good things that he can hope for in order to be happy. Certainly, the soil on which we were born is not our homeland, nor is the land where we have chosen spend our lives [...] Therefore, our true homeland is that rule of conduct indicated by the rights, obligations and functions that we have and we owe each other, it is that rule which establishes public and private order, which strengthens, secures and imparts all their vigor to the relationship that unites us, and informs that body of association of rational beings in which we find the only good, the only desirable things in our country. Therefore, that rule is our homeland, and that rule is the law, without which everything disappears.

(Andrés Bello: "Obediencia a las leyes," 1836)¹

Introduction:

On September 12th of 1915, under the stone columns erected at the Hall of the Justice Palace, an unusual meeting gathered some of the most powerful and influential personages of the local political landscape. The President of the Republic, Ramón Barros Luco, two secretaries, several Justices of the Supreme Court and the Appellate Court of the capital, plus some congressmen and diplomats congregated to accompany a small group of elite attorneys who, in such an act, celebrated the inaugural session of the recently established *Institute of Lawyers of Santiago*. With a pomp and ceremony habitually reserved for the most solemn republican rites, they met to celebrate the establishment of this association.² Indeed, considering that did not formally constitute a state agency, such an assembly represented an extraordinary deployment of civic symbolism and political power devoted to back a professional group.

Not only the guests of the referred meeting revealed the public connotation of lawyers in republican life, however. The speeches delivered on the occasion also provide an eloquent characterization about lawyers' role in state-crafting, making clear the audience agreed they occupied a preponderant role.³ The well-regarded practitioner Ismael Valdés Vergara, the president of the Institute, took the floor to address the audience by recapping the main assumptions about lawyers' activities. He pointed to their particular positions in state-building, collaborating through legislation, scholarship, adjudication and advocacy, which were understood as part of a unitary calling for Justice.

¹ Andrés Bello: *Selected Writing of Andrés Bello* (Translation Frances López-Morillas. Edition Iván Jaksic). New York: Oxford University Press. 1997. p. 263.

² *El Mercurio*. September 13th, 1915. p. 12.

³ *Ibid.*

Valdés endorsed a particular relation between lawyers and the construction of the nation and described their influence on whole the society. Subsequently, he asserted: “The task to reform legislation according to the new social necessities, grounded in essential foundations and the historical tradition, is reserved to the[ese] eminent citizens, who with their virtues and gifts proven during whole their lives, have conquered [...] the respect and trust of their fellow countrymen [...] Lawyering is the quotidian anvil on which the men of such standing are forged.”⁴

The bond between statesmanship and the legal profession—acting simultaneously at the bar, the bench, the universities and the political arena—seemed to be confirmed not only by the traditional statements of protocol, but also by the facts. Just as one of the speakers at the gathering described, a numerous genealogy of lawyers and legal scholars had left a deep mark in the country. Legislators like Andrés Bello, Mariano Egaña, and José Clemente Fabres, or magistrates and politicians such as Manuel Montt and José Victorino Lastarria, constituted a republican parthenon composed largely of legal professionals.⁵ For this reason, Valdés concluded, “our caste is a privileged group in Chile.”⁶ The Board of the Institute—then at the session—corroborates that account. Among its eighteen members there were present two further Presidents of the Republic (Pedro Aguirre Cerda and Juan Esteban Montero); the Chief Justice of the Supreme Court (José Gabriel Palma); a mayor of the capital (Ismael Valdés Vergara); three senators in office (plus five further ones); four representatives; twelve professors of law (including the outstanding legal scholars Luis Claro Solar and Raimundo del Río); and, seven future secretaries.⁷ Certainly, this conspicuous group—several of them concurrently working as practitioner attorneys—appeared as a vivid expression of the elite lawyers’ place in Chilean society.

For the men in the audience, nothing about this situation seemed particularly odd or a matter of chance. Rather, they viewed the law as the cornerstone to mold civil society, and independent justice, “the first sign of civilization.”⁸ They understood themselves as a liberal and learned profession highly oriented toward civic commitment, taking up a preponderant place in the public sphere. Hence, for instance, the lawyer and political orator Enrique Mac-Iver pointed out “it was the action of the men of law which have organized the government and administration of the new American nations.”⁹ For him, such a role seemed a self-evident truth:

That is natural and logic. No other profession trains as this for the government of the peoples. The knowledge of statutes and men, the intellectual culture, the habits of study and debate, the spirit of tolerance, a smart liberalism, the moderation in judgment, the prudence in action, the attachment to legality and the rejection of arbitrariness, all [these features] which emerge in the professional life, are not only needed conditions for the

⁴ *Sesión Inaugural. Instituto de Abogados de Santiago*. Santiago: Imprenta Cervantes. 1915. p. 10. Archive Chilean Bar Association, Santiago.

⁵ *Ibid.* pp.15-16.

⁶ *Ibid.* p.16.

⁷ *Ibid.* p.4. For biographical references, see Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Santiago: Ediciones Universidad Católica de Chile. 4 Vols. 1999-2003.

⁸ *Sesión Inaugural. Op. Cit.* p. 20

⁹ *Ibidem.*

management of public affairs, but also a guarantee of wise decision in such a high function.¹⁰

The scene just described illustrates, at least, three important aspects of Chilean politics until the first half of the twentieth century. First, elite lawyers—overwhelmingly coming from the patrician group—seemed to occupy a critical position in nation-building, acting as a kind of double agents of the state apparatus and the legal system (and frequently performing simultaneous tasks). Second, lawyers—and by dint of them, civic culture—tended to frame juridical expertise as a superior form of governance that must guide and restrain political action. They defined the law as an art that constituted the utmost training for statesmanship, implying that the construction of the social order was, beyond any other issue, a matter of legislative and judicial allocation. Finally, lawyers emphasized a glorious image of the legal system and their professional role, whose fortunes were united with the Republic's fate itself.

Resorting to published datasets about the Chile's ruling group, relevant juridical bibliography, and secondary literature, this chapter presents a brief historical outline of the role of the legal profession in nation building. By and large, this chapter asserts that lawyers evolved from being officials devoted to serve the central political power—during the colonial times and the first years of the republic—to become key institutional brokers of an aristocratic polity, matching what Dezalay and Garth's label under the denomination *gentlemen politicians of law*. In fact, historical sources indicate that a homogeneous elite heavily relied upon legal training as a vehicle to political socialization, depending on general juridical expertise to professionalize governmental tasks. Along this ruling group consolidated its power, well-bred law graduates acted as agents that employed law as a setting to adjust political compromise, favoring its coordinated action and collaboration.¹¹ Expectedly, they would portray the juridical architecture of the country as evidence of an auspicious labor, defining lawfulness as the locus of the official narrative. By this way, these invested in the construction of symbolic capital to enhance its double role as agents of the juridical system and the state.

The chapter draws its attention to the period from the 1830s—when the country reached a stable political regime—until about 1925, a turning point year that opened a brief period of turmoil and a new political cycle. First, I tackle the social conditions under which the country initiated the process of nation building, and in particular, the conformation of a cohesive elite that was able to reach and enduring political compromise. Second, the chapter presents a somewhat lengthy analysis on how this patrician ruling group relied upon juridical expertise to organize governmental labor, which constituted a crucial factor in the acquisitions of academic, relational and symbolic capital that was needed to enter into the state arena. Third, I turn to explain how lawyers transited from clerical functions to become pacemakers and institutional builders, being able to set and adapt the constitutional scaffolding of the country. Fourth, the chapter analyzes the ways these built the institutional capacity of the state to advance social ordering by legal means, promoting a market economy and their own models of sociability through legislative codification and the expansion of the judicial services.

¹⁰ Ibid. p. 9.

¹¹ Yves Dezalay, Bryant Garth: *The Internationalization of Palace Wars*. Op.Cit. pp. 18-22.

Finally, I present evidence on how elite lawyers delivered a laudatory outlook of legal institutions and their professional identity, explaining the practices and rhetorical representations like the inaugural session of the Institute of Lawyers of Santiago, described at the beginning of this introduction. This background comprises key pieces for understanding the roots of the Chilean legal culture and its link with the legal profession.

The Social Foundations of the Legal System: 1833-1925

As regarding other Latin American countries, the institutional origins of the Republic have roused acrid polemics in historiography. Accordingly, many stories about Chilean law can be offered. Several researchers have asserted the country as such is an expression of political modernity.¹² Such is the case of the traditionalist historian Mario Góngora, who has asserted that a particular civic culture inspired by the Enlightenment, which was embraced as a civilizing project imposed by the state, allowed the creation of Chile as a nation.¹³ From a different standpoint, conservative historians like Jaime Eyzaguirre and Bernardino Bravo Lira have proposed that an underlying social and institutional reality emerging since at least the sixteenth century has determined the physiognomy of the country. They have pointed out that the centralist control and strong executive institutions consolidated during Bourbon reforms, the adherence to the Spanish idea of the rule of law and the spread of racial blending have been critical aspects of the emergence of the nation, among others features.¹⁴ Still others, like Gabriel Salazar, offer an account from Marxism and an academic agenda on subaltern groups, focusing their analysis on popular and local resistance to central government and economic power.¹⁵ Needless to say, the present work does not intend to resolve those issues. Rather, this chapter begins from characteristics of Chile's nation-building that are commonly accepted by mainstream historiography, and that, as such, are critical to comprehend the place of the lawyers in state-crafting. They are (a) the consolidation of a homogeneous ruling group in charge of the state, and, (b) the intra-elite basic consensus about the meaning of the social order that was manifested through the legal institutions. These variables constituted the social foundations of the legal system during, at least, the first century of the republic or so.

First, the ruling group presented a high degree of cohesion and stability. There was a social continuity of the largest part of the governing elites that dominated public affairs. Independence achieved in 1818 was not a social transformation as the French

¹² Diverse historians, usually ranging from liberalism to positivism, draw their attention to the independence in 1818 as the turning point in organizing the country, underscoring the Republic as a construction of the landed aristocracy (e.g. Diego Barros Arana). Diego Barros Arana: *Historia Jeneral de la Independencia de Chile*. Santiago: Imprenta Chilena. 1854. *Un decenio en la Historia de Chile (1841-1851)*. Santiago: Imprenta y Litografía Barcelona. 1913.

¹³ Mario Góngora: *Estudio sobre la Noción de Estado en Chile durante los siglos XIX y XX*. Santiago: Ediciones La Ciudad. 1981. See also: Nathalie Jammet: *La formation de la conscience nationale au Chile: le rôle de l'état*. Op. Cit.

¹⁴ Jaime Eyzaguirre: *Historia de las Instituciones Jurídicas y Sociales de Chile*. Santiago: Editorial Universitaria. 2004. Bernardino Bravo Lira: *El Presidente en la Historia de Chile*. Santiago: Editorial Universitaria. 1986.

¹⁵ Gabriel Salazar: *Construcción del Estado en Chile (1830-1837). Democracia de los Pueblos, Militarismo Ciudadano, Golpismo Oligárquico*. Santiago: Editorial Sudamericana. 2006.

revolution, but merely a rupture with an old form of political legitimacy.¹⁶ In this light, Creole traditional elites constituted by a small set of family networks linked to land property and appreciated high royal offices assumed the top positions within the new regime. Historical research based on local sources and several travelers' testimonies assert that a group ranging from about 100 to 150 kinfolks—most of them descendant of Castilian conquerors, royal officials, or Basque businessmen—comprised a well-defined elite group established in the central valley of Chile (in a narrow extension of about 500 miles long). Unlike other Latin American regions, the Chilean upper class not only was pretty homogeneous but also was increasingly interwoven with middle-level administrative cadres at the end of the colonial period, especially due to marital arrangements.¹⁷ Such a small cluster of families also was able to incorporate successful incoming actors, like some immigrants at commerce and academics, to its social sphere of influence. In the Chilean case, the geographical proximity and the seasonal organization of agricultural labor also allowed the members of the elite could actively participate of politics, usually keeping rural estates and an urban residence at the capital's aristocratic downtown.¹⁸ This group has been acknowledged under different denominations. Hence, Andrés Bello—the most admired Latin American intellectual and jurist, who was naturalized in Chile since 1829—called them “the proprietors' class.”¹⁹ Similarly, the historian Alberto Edwards coined its most célèbre description, identified them under the name “*la fronda aristocrática*” (the aristocratic revolt), recalling its resemblance with the powerful French nobility that used to challenge the crown during the *Ancien Régime*.²⁰ In view of that, it would be impossible to understand the emergence of the Chilean state without considering that those in charge of policy-making were a relatively cohesive group, with strong ties and communalities.

Following a kind of path-dependence dynamic, the geography and the structure of the local elite would have facilitated the consolidation of the state-building, determining its early timing and relative success.²¹ Like other young Latin American republics, the country lacked religious dissent and manorial past to privatize public power, making the centralist government a feasible enterprise.²² Nevertheless, Chile additionally possessed one of the most homogeneous elites in the Spanish-speaking world, and the predominantly agricultural labor in rural estates was organized toward land tenancy agreements called *inquilinaje*, which allowed agrarian landowners did not rely on local military force to control economic production.²³ Likely, such factors were determinant

¹⁶ Arnold J. Bauer: *Chilean Rural Society from the Spanish Conquest to 1930*. Cambridge, UK: Cambridge University Press. 1975. pp. 18-19. Mary Lowenthal Felstiner: “Kinship Politics in the Chilean Independence Movement”. *The Hispanic American Historical Review*. Vol.56. No.1. (Feb., 1976) pp. 58-80.

¹⁷ Jacques Barbier: “Elites and Cadres in Bourbon Chile”. *The Hispanic American Historical Review*. Vol.52. No.3. (Aug., 1972) pp. 416-435.

¹⁸ Arnold J. Bauer: *Chilean Rural Society... Op. Cit.* pp. 27-35.

¹⁹ Mario Góngora: *Ensayo sobre la Noción de Estado en Chile... Op. Cit.* p. 45.

²⁰ Alberto Edwards: *La fronda aristocrática*. Santiago: Editorial Universitaria. 1984 [1928].

²¹ On the idea of path dependence, see Paul Pierson: *Politics in Time. History, Institutions and Social Analysis*. Princeton: Princeton University Press. 2008.

²² Claudio Véliz: *The Centralist Tradition in Latin America*. Princeton: Princeton University Press. 1980. pp. 22-28. 190-206.

²³ Markus Kurtz: *Latin America State Building in Comparative Perspective. Social Foundations of Institutional Order*. New York: Cambridge University Press. 2013. pp. 61-76. 83.

for its subsequent political development, particularly for the building of a central state and the later spread of a citizenship culture. Its main ideological disputes were not driven by regional rivalries between the center (conservatives) and periphery (liberals), like in Colombia.²⁴ At the same time, the country did not suffer from military caudillismo and the severe economic fragmentation of its provinces, as did Argentina or Brazil, which were characterized by competing regional elites holding opposite interests.²⁵ Finally, the country lacked the acute ethnic diversity and mass mobilization of Peru and Venezuela during the first half of the nineteenth century.²⁶ On the contrary, such as this chapter will explain in its next sections, Chile quickly handled divisive political queries such as secularization and the foundations of the political regime within the small ruling group characterized the supremacy of agrarian landlords located in the central valley, eschewing the gravest conflicts of other young Latin American republics. From the 1830s onwards, the legal system would have been established on a comparatively steady socio-political milieu.²⁷

As indicated, the traditional ruling group played a major role in the process of nation-building during the nineteenth century. After a brief period of anarchy following the end of the independence war (1818), most of the landowning elites, the clergy, and the army defeated liberal factions then in office, beginning the organization of an authoritarian and centralist Republic that was seen as the answer to the previous failures in instituting a constitutional order (1830). Initially, this regime was headed by military leaders, who were not traditional caudillos but members of the landed aristocracy. As such, they possessed valuable links inside that social group, grounding their power on its political support. They mirrored its agreement for stability built toward strong government and the institutionalization of the state. According to the political context evolved, almost the entire ruling group reached a new compromise to limit presidential power using the established institutional framework, as we will see (the 1860s). Consequently, the cohesive character of the elite and the rapid establishment of government provided a fertile environment where this leading group was able to cooperate to forge statehood. They, thereby, assured their own position in politics through the control on the electoral process, kept social ordering by the military and the

²⁴ Victor Uribe-Uran: *Honorable Lives. Lawyers, Family and Politics in Colombia 1780-1850*. Op. Cit. pp. 107-117.

²⁵ Jeremy Adelman: *Republic of Capital. Buenos Aires and the Legal Transformation of the Atlantic World*. Op.Cit.pp. 109-140. Tulio Halperín Donghi: *Revolución y Guerra. Formación de una Elite Dirigente en la Argentina Criolla*. Buenos Aires. Siglo XXI. 1994. Roderick Barman: *Brazil. The Forging of a Nation. 1758-1852*. Stanford: Stanford University Press. 1994.

²⁶ Patricia Marks: *Deconstructing Legitimacy. Viceroy, Merchants and the Military in Late Colonial Peru*. University Park: The Pennsylvania State University Press. 2009. Broke Larson: *Trials of Nation Making. Liberalism, Race and Ethnicity in the Andes 1810-1910*. New York. Cambridge University Press. 2004. pp. 141-201. Reuben Zahaler: *Ambitious Rebels. Remaking Honor, Law and Liberalism in Venezuela. 1780-1850*. Tucson: The University of Arizona Press. 2013.

²⁷ Simon Collier: *Chile. La Construcción de una República. 1830-1865*. Santiago: Ediciones Universidad Católica de Chile. 2005. pp. 171-172. New scholarship on early-nineteenth century Chile has highlighted the role performed by provincial groups and cities before the 1830s. However, these studies do not provide enough evidence to call into question the unitary or aristocratic character of the Chilean elite that ruled the country. For instance, see: Gabriel Salazar: *Construcción del Estado en Chile (1800-1837)*. Op. Cit. pp. 181-189. Cristóbal García-Huidobro: "Recención de Gabriel Salazar: Construcción del Estado en Chile (1800-1837)." *Historia*. 40. No 1. June 2007. pp.194-198.

judiciary, established public education and organized the civic architecture of the country.²⁸ Along with their debates, elite's members also open a public sphere in journals and newspapers in which they portrayed themselves as a top of an imagined community, promoting the idea of nation.²⁹ So, Chile's state building was highly determined both by the failed performance of the previous constitutional arrangements and by the strategic interests of whom had the power to sway new political institutions.

Second, from the 1830s, the leading group promptly embraced an explicit definition of a social order to be defended as a critical value in the Republic's life. Their discourse in newspapers, political speeches, and official documents continuously appealed to this idea. They framed the social order from different perspectives, but always as an expression of stasis and avoidances of chaos at all the levels of social life. One expression of this order was the strengthening of political authority to prevent the violent anarchy that had characterized the country in the 1820s. For instance, toward 1841, the Minister of Interior Ramón Luis Yrarrázaval alluded to public order as “the source from what emerge all social goods, which without we cannot wait for happiness and progress.”³⁰ A concrete manifestation of such an approach was the extended elite's support or acquiescence to the first semi-authoritarian governments between 1831 and 1861. Elite unsurprisingly saw its place in government and social hierarchy to be an element of stability which was worth to be conserved. For example, Diego Portales—an influential politician who was one of the most relevant ministers and architects of the authoritarian government toward 1830s—used to appeal to *el peso de la noche* (the weight of the night), to refer to the spread of passive obedience and respect for social hierarchy among most of Chile's inhabitants, which laid the foundations of social order and political institutions.³¹

Beyond the likely idiosyncratic origins of the idea of social order—which should be part of a different research—it is needed to indicate this was more than the assurance of the traditional society. In effect, this also should be understood as a particular reception of the Enlightenment, which attempted to organize all the aspects of society firmly through a top-down process controlled by the state, promoting civic happiness.³² For the ruling group, social stability portrayed the fight against barbarism, chaos and a perpetual state of war in early nineteenth century Chile. Hence, the emphasis in population's discipline constituted also part of a major civilizing project led by the elite. The effort for ordering was accompanied by initiatives for measurement and regulation at different realms, like the topographical delimitation of geographic boundaries, the first censuses, the foundation of public education, and the development of a new Spanish Grammar for

²⁸ Nathalie Jammet: *La formation de la conscience nationale au Chile: Op. Cit.* Mario Góngora: *Ensayo sobre la Noción de Estado...* Op. Cit. pp. 12-29.

²⁹ Benedict Anderson. *Imagined Communities. Reflections on the Origin and Spread of Nationalism.* London: Verso. 2006. pp.47-66. See, for example, the case of *El Ferrocarril*, a newspaper that was instrumental in the organization of the liberal groups. Julio Pinto: “Proyectos de la Elite Chilena Siglo XIX (1)”, *Alpha* No 26, 2008, pp. 167-189.

³⁰ Simon Collier: *Chile. La Construcción de un Republica. 1830-1865. Op. Cit.* pp. 173-174.

³¹ Alberto Edwards: *La fronda aristocrática.* Op Cit. pp. 58-59. Alfredo Jocelyn-Holt: *El Peso de la Noche. Nuestra Frágil Fortaleza Histórica.* Buenos Aires: Ariel. 1997. pp. 145-162.

³² Mario Góngora: *Ensayo sobre la Noción de Estado en Chile...* Op. Cit.

Latin American countries.³³ As the historian Ana María Stiven asserts, the Chilean elite was obsessed with an order that went beyond law and politics, shaping many cultural polemics that surrounded the entire process of nation building.³⁴

In the political realm, nonetheless, the adscription to such an ideal should not be interpreted as a monolithic faith or an obstacle to any transformation. By contrast, there were different accents. Since the middle of the nineteenth century, the elite's parties dissented about some issues related to the fundamentals and preconditions of the new republican stability. For instance, they had bitter debates about the limits of the presidential prerogatives and the role of the Catholic Church in public life, regarding civil marriage, civil records, and secular cemeteries. However, such differences did not affect the core of the order, which was ingrained in quotidian practices. Very few within the elite group were openly prone to put governance or social structures at risk. Instead, they resorted to negotiation, attempting to shift gradually to a new political consensus, for instance, from an authoritarian republic to a liberal regime, or from the ascendancy of Catholic morals to secularism. Dissent was clearly possible, but occupied a relatively marginal space in comparison to the vast background over which the members of the elite agreed.³⁵ The main political parties that emerged by the 1850s (e.g. Conservative, Liberal, National, and Radical), possessed substantial commonalities regarding key issues. Thus, a commitment to aristocratic politics, market economy, and the state's legal authority was clearly shared by all the members of governmental circles by the middle of the nineteenth century so far.³⁶

Indeed, law performed a critical function in this top-down construction of the Republic, reflecting some dynamics of this process of Chile's nation building. Legal education furnished the key setting where the members of the cohesive ruling group were socialized and it endowed them with a fitted training for state management. Also, legal intuitions constituted a setting to forge the elite's compromise, providing the tools to rationalize the searching for social order at its different versions. In this context, and such as the Bello pointed out at the epigraph of this chapter, law constituted the performative representation of the "true homeland", at least for upper-class lawyers within the rising polity.

The Birth of the Gentlemen Politicians of Law

Most of the political development of Chile in the period under examination could be described as an aristocratic polity dominated by what Dezalay and Garth call

³³ Legal scholars and elite lawyers were critical actors of these debates. Bello, the author of the civil code and a well-regarded student of the Spanish language, for example, argued that grammar rules were associated with other aspects of state-building and legal authority. For instance, he went on to say that linguistic ambiguities implied "serious obstacles for the diffusion of enlightenment, the enforcement of statutes, state administration, and for national unity." Andrés Bello, Rufino Cuervo: "Prólogo". *Gramática de la Lengua Castellana*. Buenos Aires: Sopena. 1954. p. 22. Ivan Jaksic: *Andrés Bello: Scholarship and Nation Building in Latin America*. New York: Cambridge University Press. 2001.

³⁴ Ana María Stiven: *La seducción de un orden: Las elites y la construcción de Chile en las polémicas culturales y políticas del siglo XIX*. Santiago: Ediciones Universidad Católica de Chile. 2000.

³⁵ Simon Collier: *Chile. La Construcción de una República*. *Op. Cit.* pp. 151-195.

³⁶ *Ibidem*. Julio Faúndez. *Democratization, Development and Legality. Chile 1831-1973*. New York. Plagrave MacMillian. 2007. p. 18.

gentlemen politicians of law. On the whole, this group was composed of members of the patrician class trained according to a generalist juridical expertise, which used to participate simultaneously at the bar, the bench, university education and the traditional forums of politics.³⁷ This functional unity would grant them a privileged professional position in state crafting, leading policy making and reproducing pre-existent social capital in the state and the legal field. Such an archetype of public men which operated from about 1830 until the first part of the twentieth demonstrates the close relation between aristocratic social structures and the functioning of the juridical system and government.

The model of gentlemen politicians of law gradually arose from the traditional role of lawyers as clerks of governmental activity. Following patterns of professional activity that were already present in medieval Europe and the Spanish Empire, well-to-do law graduates used to acquire learned expertise in universities, serving the central power in courts or other royal bureaus. There, they would invest their knowledge, relative autonomy and neutrality to grant legitimacy to the royal institutions that they served. Accordingly, law graduates would be rewarded through privileged access to public offices, accumulating honors and tasks. Historical evidence presented below indicates that the new possibilities of legal training and political action that arose in the nineteenth century would reinforce their double agency within the state and the legal field, partially transforming their relation to power. Along with the emergence of republican institutions, law graduates shifted from officials who served strong rulers to institutional architects and mediators oriented to adjust social conflict, becoming protagonists of the political consolidation of the aristocracy.

Since the end of colonial times, a rudimentary royal university, a superior college, and a forensic academy permitted some members of the landowning aristocracy to receive legal instruction in the country, bestowing social prestige and the entry to a tiny field for practice and to royal offices that organized the royal bureaucracy.³⁸ In this context, the Independence brought to law graduates a superb opportunity to apply juridical expertise and to participate actively in state building. Many of the framers who broke ties with Spain and participated in the first queries for the constitutional organization between 1810 and 1830 were lawyers trained in Chile. Such is the case of José Antonio Martínez Aldunate, Gaspar Marín, José Gregorio Argomedo, José Miguel Infante, Juan Egaña, and Juan de Dios Vial del Río, who received their degrees from the Royal University of San Felipe (1758-1820s).³⁹

Elites were very conscious about this intimate relationship between law and statehood. Portraying the ideals of the modernity, the Chilean government established the National Institute to provide general education in the perspective of the new regime.

³⁷ According to Dezalay and Garth, both Brazilian and Chilean ruling groups were characterized by the pattern of the gentlemen politicians of law, transforming legal institutions in a setting of elite's compromise. In this light, these countries contrast to places where military caudillos dominated the political arena, or where social and economic elite was excluded from governmental activity, such as Mexico after the Revolution of 1910. Yves Dezalay, Bryant Garth: *The Internationalization of Palace Wars*. *Op.Cit.* pp. 18-22.

³⁸ On the organization of the legal instruction during the colonial period, see: Javier González Echeñique: *Los Estudios Jurídicos y la Abogacía en el Reino de Chile*. Santiago: Facultad de Ciencias Jurídicas, Políticas y Sociales. Universidad Católica de Chile. 1954. pp. 101-185.

³⁹ *Ibid.* p. 78.

From 1819, this center slowly absorbed official legal instruction formerly furnished by the University of San Felipe, which gradually lost jurisdiction till it disappeared. Afterwards, other intuitions taught law (*Colegio de Santiago* and the *Liceo de Chile*), the National Institute high school and some private mentors—like Bello—becoming the only available sources of theoretical juridical education until the mid 1840s. Before that decade, legal education worked at a much-reduced capacity and under substantial uncertainties and constraints.⁴⁰ After establishing the University of Chile in 1842, the state gradually consolidated a centralized regime for legal education.⁴¹ The government founded a university section of the National Institute to impart specific juridical training—whose students were rigidly examined by the professors of the University of Chile School of Law for receiving their academic degree.⁴² It eliminated the forensic academy that constituted an additional setting to prepare practitioners.⁴³ By 1879, legal teaching, basic forensic groundwork, and examination were joined at the University.⁴⁴

Along with the consolidation of the University of Chile, superior legal education was slowly controlled by the new Republican state, which practically exerted a monopoly on the field until the 1890s. Even when initially poor and ill organized, the legal instruction was certified and coordinated at its critical stages by a unique public school. The state warily exerted tight control on the new spaces of legal education that were gradually opened. During the second half of the nineteenth century, new institutions began to impart juridical education at different levels, like the Liceo de Concepción (1865, later university in 1919), the Liceo de Valparaíso (1889), and the Catholic University (1889). These centers were established as a way to broaden the possibilities of studies for the provincial aristocracy outside the capital, or due to the dissatisfaction with the secularizing environment of the national university for conservative Catholic circles.⁴⁵ However, through the mandatory examination before the University of Chile School of Law, the state kept the surveillance over the law students of the new institutions up till 1953⁴⁶. Although such a control was common for all the higher education, it was at least odd for legal studies, which was a well-established academic discipline at the end of the nineteenth century. In fact, several law professors who taught at the new centers—such as at the Catholic University—were also professors at the

⁴⁰ For example, the intellectual José Joaquín de Mora associated a diminished position of the legal studies – in comparison to other areas of the new government– with the “decrepit” state of legislation. José Joaquín de Mora: *Curso de Derecho del Liceo de Chile*. Ayacucho: Imprenta del Pueblo. 1849 [1830]. p. 2. See also, Rogelio Pérez-Perdomo: *Latin American Lawyers*. Op. Cit. p.74.

⁴¹ For a descriptive account on lawyers’ rate of graduation, see Appendix 1.

⁴² Rogelio Pérez -Perdomo. *Latin American Lawyers*. Op. Cit. p. 74.

⁴³ Until 1850, law graduates had to do an internship in the Academy of Forensic Practice, which was established initially by the colonial government, as a preparatory training for the legal profession. Hernán Espinoza Quiroga. “La Academia de Práctica Forense”. *Anales de la Universidad de Chile*. No. 65-66. 1947. pp. 413-458.

⁴⁴ Bernardino Bravo Lira: “Estudios de Derecho y Cultura de Abogados en Chile. 1758-1998”. In. *Bernardino Bravo: El Juez entre el Derecho y la Ley, en el Mundo Hispánico*. Santiago: LexisNexis. 2006. pp. 591- 592.

⁴⁵ Ibid. p. 603. Ricardo Krebs Wilkens, et al: *Historia de la Pontificia Universidad Católica de Chile. 1888-1988*. Santiago: Ediciones Universidad Católica de Chile. 1994. Vol. 1. pp. 3-12.496. The University of Chile continued imparting courses of Canon Law as part of the mandatory curriculum up till the end of the nineteenth century.

⁴⁶ Bernardino Bravo Lira: “Estudios de Derecho y Cultura de Abogados”. *Op. Cit.* p. 603.

University of Chile as well, evidencing their academic competence. Indeed, considering the critical place of law for politics, examination not only generated a uniform tendency in juridical training, but it also constituted a way by which elites in charge of the state-controlled its reproduction, diversification, and geographical allotment.⁴⁷

Roughly about 1850, this centralized setting of legal education facilitated the action of the gentlemen political of law. This laid a common epistemological basis, and, through the training of small cohorts, shaped loyalties, interpersonal relations and a kind of spirit of corps among the governmental circles, as we will see. In contrast to the Chilean case, other neighboring countries where the political power was more fragmented used to establish several autonomous centers for legal education territorially distributed. In such situations (e.g. Colombia), the geographical allocation was critical reproducing regional factions.⁴⁸ By and large, the cohesive local elite and a unified locus of instruction for state-crafting favored a stable polity managed by lawyers-statesmen. Only monarchic Brazil—with a royal government relatively strong that controlled regional rivalries—exhibits a similar pattern of elite political inclusion and centralized training in law.⁴⁹

The content of legal studies awoke interesting disputes within the elite, revealing its critical role in politics. In the middle of the 1850s, the University of Chile harshly debated such an issue. Until that time, the curriculum had been oriented toward basic legal knowledge to deal with public affairs and legal practice (Natural Law, Roman Law, International Law, Universal Legislation and Forensic Clinic, taught on annual basis).⁵⁰ Nevertheless, different views about the curriculum appeared in the process of restructuring under the Dean Juan Francisco Meneses. Some law professors presented projects advocating for an academic perspective on legal studies, strengthening politics and/or legal philosophy as core (Lastarria, Fernández Concha). Others proposed an education to prepare lawyers for practice, especially in the private realm on topics like business and mining law (Meneses, García Reyes).⁵¹ The ultra-conservative Dean Meneses made a motion to eliminate the class of universal legislation —because its use of Bentham's textbook inculcated harmful ideas in the youth— and on political economy since it was unnecessary for legal practice.⁵² Andrés Bello, then the first president of the University, opposed to a professionalizing juridical instruction, asserting that “the program of studies of the University [...] not only looks for producing skillful jurists, but also men who are able to perform high offices in administration and legislature, shaping

⁴⁷ Sol Serrano: *Universidad y Nación. Op. Cit.* Santiago: Editorial Universitaria. 1994. p. 178. For a comparative view on political conflict about the control of legal education, see Uribe-Uran: *Honorable Lives. Lawyers, Family and Politics in Colombia 1780-1850. Op. Cit.* pp. 107-117.

⁴⁸ Julio Gaitán Bohórquez: *Huestes del Estado. La formación universitaria de los juristas en los comienzos del estado colombiano.* Op. Cit. pp. 52. 159-162. Víctor Uribe-Uran: *Honorable Lives. Lawyers, Family and Politics in Colombia 1780-1850. Op. Cit.*

⁴⁹ José Murilo de Carvalho: “Political Elite and State Building: The Case of Nineteenth-Century Brazil”. Op. Cit. pp. 378-399. See also, Roderick Barman and Jean Barman: “The role of the law graduates in the political elite of Imperial Brazil”. *Journal of Interamerican Studies and World Affairs.* 18. (1976). pp. 423-450.

⁵⁰ Rogelio Pérez-Perdomo. *Latin American Lawyers.* Op. Cit. p. 74.

⁵¹ Mario Baeza Marambio: *Historia de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile.* Santiago: Seminario de Derecho Público. Universidad de Chile. 1944. pp. 128-138.

⁵² Sol Serrano: *Universidad y Nación. Chile en el Siglo XIX.* Op. Cit. p.171.

public opinion.”⁵³ Successive reforms to the mandatory legal curriculum ultimately reached a midway between these two positions. Continuing with a trend that emerged at the beginning of the Republic; they relegated the study of Roman Law to an introductory function, since it was associated with the legacy of the Spanish period. At the same time, new subjects provided both critical knowledge for statesmanship (e.g. Natural Law, Political Economy, Constitutional Law) and courses to understand the new codes that progressively organized legislation and practice (Civil Code, Criminal Code, Commercial Code, Mining Code).⁵⁴

As for other Latin American countries, historiography agrees about the reasons why legal profession drew keen interest, explaining the struggles about its control. First, the law itself performed a critical symbolic role for the political imaginary, particularly during the process of state building. Law was the language of the polity, or in other words, an expression of the sovereign will, occupying a special place in the perspective of modern political legitimacy.⁵⁵ Such was a compelling argument for elites that were influenced by Enlightenment under diverse forms of a moderate political liberalism; understanding legislation was a clear evidence of progress.⁵⁶ For instance, in the wake of the independence war, public intellectuals naively thought that the mere statutes could assure social ordering, opening the path to public happiness.⁵⁷ Hence, lawyers and legal scholars, who were trained in juridical language and modern political concepts, enjoyed a privileged position to participate in the debates toward the institutional design of the new state.⁵⁸

Second, juridical knowledge provided the fittest epistemological canon for the management of public affairs. After independence, the new republics enacted political constitutions. However, the Spanish legislation remained in force, particularly in the private law issues and some areas of the governmental organization. Legal professionals were the only persons able to navigate within the disarray of colonial norms that regulated property, contracts, businesses and administration.⁵⁹ Even when legal books were accessible in libraries—and some scholars earned juridical expertise without finishing their formal training—the legal system was highly complex due to the Roman and Canon Law conceptual apparatus that lay behind the legislation and the hectic character of the Spanish norms. No other discipline delivered by local education at that time, like theology or humanities, could assume the challenge of state management.⁶⁰

⁵³ And Bello continued: “[...] not only strict legal science, but also political sciences are part of this university section”. Ibidem.

⁵⁴ Ibidem.

⁵⁵ Rogelio Pérez-Perdomo: *Latin American Lawyers. Op. Cit.* p. 67.

⁵⁶ Claudio Véliz: *The Centralist Tradition of Latin America. Op. Cit.* p. 146. Simon Collier: *Chile. La Construcción de una República. Op. Cit.* pp. 172.

⁵⁷ Juan Egaña’s oeuvre constitutes the most extreme example of an attempt to instill public virtue by legal means: “Proyecto de Código Moral de la República Chilena decretado por el soberano Congreso Constituyente” [1823]. Juan Egaña: *Colección de algunos escritos políticos, morales, poéticos y filosóficos de Juan Egaña*. Burdeos: Imprenta de la S.a.V.a. Lapalce y Baume. 1836.

⁵⁸ Sol Serrano: *Universidad y Nación. Op. Cit.* p. 177.

⁵⁹ Claudio Véliz: *The Centralist Tradition of Latin America. Op. Cit.* p. 147. 149-150.

⁶⁰ By the 1840s, the reproduction of juridical expertise was relatively easy of implementing through local resources. Unlike natural sciences or engineering, legal studies did not need to import massively expensive infrastructure or to attract European scholars. On the contrary, since the new grounds of the legal knowledge were determined by national legislation, Chilean law professors were reasonably accomplished

Therefore, lawyers trained in colonial centers and new universities did not face professional competition to participate in public affairs, and filled the most relevant posts.⁶¹

Third, beyond the juridical expertise itself, legal education provided other skills and advantages for political life. At the law school, young men participated in a considerable intellectual activity, publishing literary reviews and debating about social issues. That is especially relevant since elite lawyers were expected to guide public opinion through the press, and dabbling in humanities as well.⁶² In fact, during this period several outstanding public intellectuals were law graduates, including poets (e.g. Jacinto Chacón), historians (e.g. Gregorio Amunátegui, Benjamín Vicuña Mackenna, José Toribio Medina), and philosophers (e.g. Rafael Fernández Concha, Valentín Letelier).⁶³ Others lawyers founded or wrote in newspaper and journals, usually as a parallel activity to politics and legal advocacy.⁶⁴ Through the mentorship of their professors and the association with their small group of fellow classmates, law graduates met allies and adversaries of their further political careers.⁶⁵ Hence, the law school became the utmost setting of political apprenticeship by mid-nineteenth century.

Similar dynamics characterized the first years spent in the few small law firms in the country, which usually were organized as familiar offices. There, law graduates strengthened their personal and political loyalties, completing their juridical instruction. That process of apprenticeship in the legal practice became increasingly common at the turn of the twentieth century, being particularly critical for individuals with high-born ascendancy but without familiar wealth, or for the few outsiders coming from middle class. Such are the cases of Manuel Antonio Tocornal, Abdón Cifuentes and Eliodoro Yáñez, whose political careers became entangled with the networks built in legal

in organizing the diffusion of the juridical expertise at home. Some of the most brilliant members of the elite directly intervened organizing legal education, such as Andrés Bello (senator, rector of the University of Chile, and author of the civil code) and Mariano Egaña (politician and the first Dean of the Universidad de Chile, School of Law), to name only a pair. Mario Baeza Marambio: *Historia de la Facultad de Ciencias Jurídicas y Sociales...* Op. Cit. pp. 106-141.

⁶¹ Iñigo de la Maza. *Los abogados en Chile: desde el Estado al Mercado*. Informe de Investigación N° 10, Centro de Investigaciones Jurídicas. Facultad de Derecho, Universidad Diego Portales. 2002. pp. 6-7.

⁶² For the origins of this function in the colonial period, see Angel Rama: *The Lettered City*. Durham: Duke University Press. 1996. pp. 1-49.

⁶³ Virgilio Figueroa: *Diccionario Histórico, Biográfico y Bibliográfico de Chile 1800-1928*. Santiago: Balcells. 1928. *Diccionario Biográfico de Chile*. Santiago: Imprenta y Litografía Universo. 1936.

⁶⁴ A succinct review of their biographies reveals their role as founders, columnists, and editors of newspapers and journals: Manuel José Gandarillas, Andrés Bello, (*El Araucano*), Justo Donoso (*La Revista Católica*), Jacinto Chacón (*El Mercurio de Valparaíso*), Juan Castellón (*El Sur*, Concepción), Federico Errázuriz Zañartu (*La Asamblea Constituyente*), Álvaro Covarrubias (*La República*), Joaquín Walker Martínez (*El Constitucional*), Manuel Egidio Ballesteros (*La Estrella de Chile*), Ricardo Salas Edwards (*El Diario Ilustrado*), Ramón Sotomayor Valdés, Isidro Errázuriz, José Victorino Lastarria, Benjamín Vicuña Mackenna (*El Ferrocarril*), Rafael Fernández Concha, José Clemente Fabres, Zorobabel Rodríguez (*El Estandarte Católico*), Luis Enrique Concha (*El Heraldo*, Concepción), Manuel José Yrarrázaval, Joaquín Larraín Gandarillas, Abdón Cifuentes (*El Independiente*), and Eliodoro Yáñez (*La Nación*, *El Correo de Valdivia*). See, Raúl Silva Castro: *Prensa y Periodismo en Chile (1812-1956)*. Santiago: Ediciones de la Universidad de Chile. 1958.

⁶⁵ The evidence provides information of small annual cohorts. According to Sol Serrano, the total number of lawyers trained at the University of Chile between 1843 and 1879 is about 1,128 (although she indicates the number could be slightly larger since there are some gaps in the records). The estimated mean of students per annual cohort is about 31. Serrano Sol Serrano: *Universidad y Nación*. Op. Cit. 176.

practice.⁶⁶ All these processes of socialization and acquisition of networks and political skills allowed young lawyers to evolve into political active actors.

After the consolidation of the new regime of legal education, it is possible to observe how the described processes produced a true spirit of corps among some elite lawyers. In 1862, the law professor and politician Alejandro Reyes wrote: “in no other profession the sense of confraternity is better developed [...] We have been trained with identical studies, have been educated in the same lecture hall, the same spirit inspires us, and gathered in the same temple we are sacrificed before the same altar, even when we locked divided by the votes addressed to the justice.”⁶⁷ Although the first attempts to organize the bar failed about this time—perhaps due to the lack of competition—Reyes underscored their belonging to a common professional body. In his description, he resorts to several soft skills to define the virtues of lawyers, such as persuasiveness in representing contending rights, oratory, and a conciliatory mission, asserting the latter one constituted the most valuable service provided by them.⁶⁸ Many of the attributes of the legal profession highlighted by Reyes not only were useful for statesmanship, but also to forge elite compromise, which characterized a period of aristocratic politics in which elite lawyers thrived.

The legal career, largely, became a path to consolidate political and economic power. Successful lawyers were expected to be men of at least a comfortable living, and usually to appear at the top of the political life. Outside of the military and the priesthood, only the law provided professional honor, continuing a tendency originated in the colonial tradition. The legal profession, thus, enticed to young men at that time, even eclipsing areas like engineering or the natural sciences.⁶⁹ Nevertheless, the career initially was almost exclusively reserved for members of the elite. The requirement for admission to the Universidad de Chile School of Law included “belonging to a distinguished family” until well advanced into the nineteenth century.⁷⁰ In addition, the lengthy period of legal studies, the absence of a wide-spread lucrative practice before the boom of nitrate mining in the 1880s, and the low salaries of public posts were highly determinative for the social structure of lawyers.⁷¹ Till the end of the nineteenth century, at least, only

⁶⁶ Manuel Antonio Tocornal, worked in José Rodríguez Aldea’s law firm, Abdón Cifuentes litigated with Antonio Varas, and Eliodoro Yáñez was included in José Gabriel Palma Guzmán’s office. Sol Serrano: *Universidad y Nación. Op. Cit.* p. 174. Armando De Ramón: *Biografías de Chilenos, 1876-1973.* Op. Cit. Vol. I. p. 268. Vol. IV. p. 269-270.

⁶⁷ Alejandro Reyes: “Lo que es la noble profesión de abogado”. In, Luis Cisternas (comp.): *El Código Civil ante la Universidad.* Santiago: Imprenta Chilena. 1871. p. 13

⁶⁸ *Ibid.* pp. 9-18.

⁶⁹ Andrés Bello: “The Study of Jurisprudence” [1835]. In *Selected Writing of Andrés Bello.* Op. Cit. pp. 117-118. See also, Sol Serrano: *Universidad y Nación.* Op.Cit. p. 175.

⁷⁰ This social selection had old origins in the colonial regulations, which used to require pure blood to enter legal studies. In practice, this requirement meant that no Native or mestizo students were allowed at the law schools. Although such distinctions were against the republican spirit, the admission to legal education kept racial barriers of entry to the legal profession until late in the nineteenth century. Rogelio Pérez-Perdomo: *Latin American Lawyers.* Op. Cit. p. 83.

⁷¹ De la Maza provides enlightening insights about how the main law firms of the country were established at the turn of the twentieth century, performing a role as brokers between the investors and the state during the economic expansion associated with nitrate mining. Iñigo De la Maza. *Los abogados en Chile: desde el Estado al Mercado.* Op. Cit. p.14.

people of family fortune or relevant social networks could access the upper segments of the legal profession and make real the promise of law as a path to power.

Within these margins, there was no unique pattern for the social composition of the juridical elites that were in charge of the public affairs. To make clear this point, an analysis of the Senate of the Republic—the most relevant body in this period of aristocratic polity—constitutes an unbeatable window to explore the place of law graduates in the higher strata of the state power.⁷² From an in-depth analysis of the biography of 151 lawyers or jurists who participated in the Senate between 1834 and 1924, we can clearly distinguish four different sub-groups:⁷³

(a) In many cases, lawyers who were senators continued a familiar tradition in the legal profession, high politics and wealthy associated with the land property.⁷⁴ For example, such are the cases of the Vial Family (Agustín Vial Santelices, Manuel Camilo Vial Formas), the Yrarrázaval Family (José Miguel Yrarrázaval, Manuel José Yrarrázabal Larraín, Carlos Yrarrázaval Larraín), the Errázuriz Family (Fernando Errázuriz Aldunate, Federico Errázuriz Zañartu) the Concha Family (Melchor de Santiago Concha, Melchor Concha y Toro, and Juan Enrique Concha Subercaseaux), or the Ochagavía Family (Silvestre Ochagavía Errázuriz, and Silvestre Ochagavía Echaurren). Most times, they were part of Creole aristocratic families in the military, commerce, and local politics, always with profitable rural estates (Vial and Yrarrázaval). These kindred networks usually accessed the legal field later in the colonial period, converting their social status and economic capital into certified juridical expertise. In other cases, by contrast, we can find the descendants of a long line of magistrates initiated back to the sixteenth century, which performed high posts as justices of the Real Audiencia and who, lately, acquired rural land (the Concha family, the Errázuriz and the Ochagavía family).⁷⁵ For these examples, juridical expertise transmitted generation after generation, and performed a critical role in the training for public affairs. Nonetheless, at the first half of the nineteenth century, not only legal education, but also land and tradition constituted the immediate origin of their high concentration of political and economic power.⁷⁶

⁷² Gonzalo Vial Correa, Pablo Valderrama, David Vásquez: *Historia del Senado de Chile*. Santiago: Editorial Andrés Bello. 1995.

⁷³ The sample has been selected from all the senators who were at least one year as proprietors in their charge between 1834 and 1924. The small number of substitute senators has been excluded since they occupied a diminished place in the field of power. Nonetheless, preliminary analysis shows they do not alter the percentages or the general pattern proposed here. As data sources, I have employed: Luis Valencia Avaria: *Anales de La República*. Volumes I and II. Santiago: Editorial Andrés Bello. 1986. Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit. Virgilio Figueroa: *Diccionario Histórico, Biográfico y Bibliográfico de Chile 1800-1928*. Op. Cit. *Diccionario Biográfico de Chile*. Santiago: Imprenta y Litografía Universo. 1936. For the list of Senators, see Appendix 3.

⁷⁴ For an illustrative and well-documented study of this model of lawyer-statesman from an aristocratic family, see: Gonzalo Rojas Sánchez: *Manuel José Yrarrázaval Larraín. 1835-1896. Una vida entregada a Dios y la Patria*. Santiago: Ediciones Pontificia Universidad Católica de Chile. 2005.

⁷⁵ In the Ochagavía Family's case, the association with magistracy comes out on the mother's side (Errázuriz Aldunate). See, Julio Retamal Favereau et al.: *Familias Fundadoras de Chile*. Three Volumes. Santiago: Ediciones de la Universidad Católica de Chile. 2000-2003. Benjamín Vicuña Mackenna. *Los orígenes de las familias de chilenas*. Santiago: Imprenta de Guillermo Miranda. 1993. Jacques Barbier: "Elites and cadres in Bourbon Chile." Op. Cit. Op. Cit. pp. 431- 432.

⁷⁶ Arnold J. Bauer: *Chilean Rural Society...* Op. Cit. pp. 17. 27-50. Historiographic research has shown an important level of endogamy within the entire ruling group. For instance, the Errázuriz kinship provided

(b) We also can find significant numbers of lawyers coming from the minor gentry' strata, but whose families did not have count with considerable economic capital at the beginning of their careers. Among the members of this group with aristocratic ascendancy, we can find lawyers-statesmen like Manuel José Tocornal, Manuel Montt, José Victorino Lastarria, Luis Pereira Cotapos, Ramón Barros Luco, and Eliodoro Yáñez, among several others.⁷⁷ In these situations, the law provided an important way to increase social and political prestige, and, very exceptionally, to earn a considerable economic fortune. The cases of José Victorino Lastarria (1817-1888) and Manuel Montt (1809-1880) result very illustrative regarding this typology. Both were raised in impoverished minor aristocratic families near Santiago, faced extremely hard economic conditions during their youth and, thanks to their capacity and networks, received scholarships to study humanities and law in the capital (at the National Institute). Their thriving performances in legal studies facilitated their participation in the elites' circles, but in opposite groups. Lastarria would become one of the most prominent liberal public intellectuals of this period, professor of law in the cathedra of universal legislation, Senator, minister of finance, ambassador, and by long time justice at the Appellate Court and the Supreme Court.⁷⁸ On the nationalist side, Manuel Montt became a professor of law at the National Institute, landowner, representative, senator, secretary, and long-time Justice, Chief Justice of the Supreme Court and President of the Republic.⁷⁹

In extraordinary circumstances, the law provided a path to economic success. Such was the Manuel Antonio Tocornal's case, a member of a traditional conservative family of public officers, but without significant economic capital (1817-1867). Through legal practice in one of the few law firms of the 1840s, Tocornal began a prominent career as an advocate, winning lucrative cases on mining in Copiapó. These allowed Tocornal to become owner of some mineral deposits and rural estates, which reported significant profits. His success as lawyer and entrepreneur was blended with an outstanding career as politician and professor, occupying the position of Senator, Chancellor (*Rector*) of the Universidad de Chile and Dean of a short-lived Bar Association in the 1860s.⁸⁰ But his is not the only example. Among the people identified in this subgroup of senators, Eliodoro Yáñez (1860-1932) was one of the most prestigious

four Presidents of the Republic and 59 congressmen between 1831 and 1927. According to Marcella, from the 782 congressmen in the Senate and the Chamber of Deputies in the period 1834-1888, 599 presented important kinship connections: 98 set of brothers, 61 father/son sets, 57 uncle/nephew sets, 20 sets of cousins, 12 fathers in law/ son in law sets, and 32 sets of brothers in law. Naturally, this social composition was not reduced to lawyers, but a general pattern of political reproduction within the ruling group at this period. Gabriel Marcella: *The Structure of Politics in Nineteenth-Century Spanish America: The Chilean Oligarchy, 1833-1891*. PhD. Dissertation. Notre Dame University. 1973.

⁷⁷ Armando de Ramón: *Biografías de Chilenos, 1876-1973*. Op. Cit. Fernando Castillo Infante et al.: *Diccionario Histórico y Biográfico de Chile*. Santiago: Editorial Zig-Zag. 1996.

⁷⁸ Bernardo Subercaseaux: *Cultura y Sociedad Liberal en el Siglo XIX. Lastarria, ideología y literatura*. Santiago: Aconcagua. 1981. Luis Oyarzún: *El Pensamiento de Lastarria*. Santiago: Editorial Jurídica de Chile. 1953. Armando de Ramón: *Biografías de Chilenos, 1876-1973*. Op. Cit. Vol. III. pp. 28-30.

⁷⁹ Jovino Novoa: *Juicios de Prensa sobre Don Manuel Montt*. Santiago: Gutemberg. 1908. Cristóbal García-Huidobro: *Yo, Montt*. Santiago: Vergara. 2009. Armando De Ramón: *Biografías de Chilenos, 1876-1973*. Op. Cit. Vol. III. pp. 154-157.

⁸⁰ Sol Serrano: *Universidad y Nación*. Op. Cit. p. 174.

attorneys of his time, making an fortune invested in rural land and the press.⁸¹ In a similar way, although he was not oriented to litigation, Ramón Barros Luco (1835-1919) blended his political career with major lucrative posts as legal advisor and director at the Bank of Chile, the Corporation for Credit and Buildings, and the Mortgage Credit Found.⁸² Along the steady growth of nitrate mining, agricultural exportations, and legal practice, similar situations of professional economic success tended to recur at the turn of the twentieth century.

(c) In the third subgroup, the legal career helped an inter-generational transformation of new economic capital into political prestige and statesmanship, consolidating the incorporation of the rising commercial bourgeoisie in public affairs. Individuals whose families were profitably devoted to mining, banking or business—originally outside the legal field and government—could strengthen their political positions backed by juridical expertise. Comparatively, however, this group was less prone to take part in the higher strata of politics and the legal profession. Although the new bourgeoisie acted in politics, many of their members preferred other occupational paths, like engineering and commerce. Also, lawyers of this subgroup were more present in the Chamber of Deputies than in the Senate. Perhaps, they initially possessed a diminished position since the landed aristocracy managed most of the electoral system through the support of rural voters based in its agricultural estates.⁸³

The Matte family constituted the best illustration among these few cases. Domingo Matte Messía (1812-1893) was a thriving business person and founder of the Bank Matte and Company in Santiago, who additionally invested part of his profits in rural lands. His successful commercial activity was accompanied by several political positions as a national representative and senator in the middle of the nineteenth century. From his five male progeny, four studied law at the University of Chile, reaching high positions in practice, politics, and academics.⁸⁴ His son Claudio was a well-regarded educator, liberal representative and Chancellor of the University of Chile, being remembered as a generous philanthropist as well. The remaining three (Augusto, Eduardo, and Ricardo), blended private activities with a very active political participation, and all they were representatives, senators, and ministers. Additionally, his son Augusto was a successful banker, Eduardo had a lucrative practice as an attorney and bank businessman, and Ricardo became president of the Senate.⁸⁵ Indeed, the Matte Family is one of the clearest examples in which law performed a critical role in the transformation of new economic capital into consolidated statesmanship during this period.

⁸¹ Luis Palma Zúñiga: *Eliodoro Yáñez Ponce de León. Jurisconsulto, Político, Periodista*. Santiago: Editorial Andrés Bello. 1961. Armando De Ramón: *Biografías de Chilenos, 1876-1973*. Op. Cit. Vol. IV. pp. 289-291.

⁸² Francisco Javier Ovalle: *El Presidente de la República Ramón Barros Luco. Antecedentes de su elección*. Santiago: Imprenta Cervantes. 1916. Armando de Ramón: *Biografías de Chilenos, 1876-1973*. Op. Cit. Vol. I. pp. 157-158.

⁸³ Jean-Marie Balland, James A. Robinson “Land and Power: Theory and Evidence form Chile.” *American Economic Review*. 2008. Vol. 98. pp. 1737-1765.

⁸⁴ Fernando Castillo Infante et al.: *Diccionario Histórico y Biográfico de Chile*. Santiago: Editorial Zig-Zag. 1996. p. 308.

⁸⁵ Armando de Ramón: *Biografías de Chilenos, 1876-1973*. Op. Cit. Vol. 3. pp. 110-112.

d) Finally, the last sub-group includes outsiders coming from the local middle class (other liberal professions, medium-sized landowners, or employees) and European immigrants. For them, legal education meant access to political circles.⁸⁶ These lawyers moved upward in the social hierarchy and were usually absorbed by the ruling elites through matrimonial unions, land acquisitions, and related business. Outstanding politicians were members of this sub-group, like Abdón Cifuentes (son of provincial landowners), Jorge Huneeus Zegers (descendant of a German immigrant), Enrique Mac-Iver Rodríguez (son of a Scottish sailor), and Pedro Aguirre Cerda (descendant of medium-sized landowners).⁸⁷

Sometimes, this subgroup of lawyers was characterized by the support of familiar or social networks, which collaborated in his process of incorporation. Beyond any doubt, Arturo Alessandri Palma (1868-1950) is the best-known case.⁸⁸ As the grandson of an Italian immigrant arrived in the country in the 1820s on the paternal side, and a prestigious judge on the mother's side (José Gabriel Palma Villanueva), Alessandri illustrates a classic pattern of inclusion into the ruling group. Facing economic difficulties, his parents moved to a country estate in the southern region of Linares, where he was born. His family was able to send him to study in Santiago for high school and, over time, to buy a house there. Sharing his time working as staff at the National Library and the Congress Library, Arturo studied law at the University of Chile. He had an outstanding performance as a law student, participating actively in politics and the humanistic activity, writing tales, poems and juridical articles for journals. There, he also met some of the most relevant politicians of that time, who were his professors and classmates, like Zorobabel Rodríguez, Valentín Letelier, and Luis Orrego Luco. After graduating in 1893, he got married to a woman who was part of a traditional family and began an active practice as an attorney, initially resorting to his ancestry to get Italian businesspeople as clients. As a corollary of his process of incorporation, he forged political alliances with the liberal leader Fernando Lazcano, his father's acquaintance. He, thus, started a parliamentary career, being elected representative (deputy) seven times, secretary, and Senator between 1915 and 1920.⁸⁹ Finally, he was elected President of the Republic twice, and his progeny would become one of the most prominent families of Chilean politics and legal academia as we will see in the next chapter.

A deeper characterization of law graduates at the Senate provides evidence showing that lawyers as such usually did not become the ruling group at this period. Instead, grounded in social networks, prestige, and landed economic capital, elites employed legal training to professionalize their statesmanship. The historian Sol Serrano explains that from a total of 1,128 law graduates at the University of Chile between 1843 and 1879, 277 filled public offices, and only 91 reached the Parliament. Lawyers developed a broader range of activities than politics, like litigation, commerce, agriculture, and the judicial bureaucracy.⁹⁰ This demonstrates that the profession

⁸⁶ Sol Serrano: *Universidad y Nación. Op. Cit.* pp. 177.

⁸⁷ Armando de Ramón: *Biografías de Chilenos, 1876-1973. Op. Cit.* Vol. I. pp. 31. 268. Vol 2. p. 222. Vol. 3. p.70.

⁸⁸ See, Yves Dezalay, Bryant Garth: *The Internationalization of the Palace Wars. Op. Cit.* pp. 21-22.

⁸⁹ David Vásquez Vargas: "Notas biográficas sobre Arturo Alessandri Palma". In David Vásquez, Felipe Rivera (Eds): *Arturo Alessandri Palma y su época. Vida, Política y Sociedad.* Santiago: Biblioteca del Congreso Nacional. 2013. pp.13-58.

⁹⁰ Sol Serrano: *Universidad y Nación. Op. Cit.* p. 177.

possessed some degree of segmentation and that the higher stratum of the state was not the only and natural pathway after legal studies.⁹¹ A socioeconomic analysis of the Senate between 1834 and 1924 confirms Serrano's interpretation, indicating that the upper section of the political field was taken over by the elites, which relied upon legal education as a venue to certify statesmanship. From a sample of 292 individuals who filled the post of senator for more than one year, 151 were lawyers or legal scholars (i.e. Bello). From that number, 127 (84%) belonged to one of the three first subgroups already described, coming from the landed aristocracy (52%, $N = 79$), minor gentry (28%, $N = 42$) or high commercial bourgeoisie (4%, $N = 6$). Only 19 lawyers at the Senate (12%) can be identified originally as outsiders, who after marriage and political socialization were frequently absorbed by the ruling kinships (see Appendix 3).⁹² Thus, both the cases coming from the minor gentry and outsiders illustrate the limits of the social mobility and accumulation of economic and symbolic capital through the legal profession, which usually was conditioned by the social absorption of the law graduates into the already consolidated elite. A similar distributional pattern crossed all the main political parties of the period that were related to aristocratic forms sociability (Conservative, Liberal, Radical or National, without considering particular denominations).⁹³

Due to a tradition that lacked professional specialization in the state field, and the scarcity of law graduates at the first decades of the republican life, there was a strong concentration of functions within the higher strata of the legal elites. The analysis of the law graduates at the Senate shed light about how a relatively small number of upper-class lawyers simultaneously played several central roles in public governance and markets (See Appendix 3). First, there was a remarkable superposition between law graduates at politics and the judiciary, particularly before 1888, when the Congress definitively established the incompatibility between parliamentary posts and other public offices.⁹⁴ From the lawyers that joined the Senate, 56 (37%) performed some kind of judicial tasks during their lives, almost always for a long time, on a regular basis, and at the higher courts. Many outstanding justices were an important protagonist at the Senate, such as Manuel Camilo Vial, Miguel María Güemes, Melchor de Santiago Concha and Manuel Montt, among many others (such a multiplicity of roles was possible since the Congress habitually used to operate for about three and a half months per year).⁹⁵ Second, the legal elite in the Senate was also very active in the university (40%, $N = 60$), overwhelmingly

⁹¹ For comprehensive datasets of law graduates in this period, see: Salvador Valdés Morandé: *Abogados titulados en Chile durante el siglo XIX*. Santiago. Sin editorial. 1957. Guillermo de la Cuadra: "Abogados Antiguos: 1776-1876". *Boletín de la Academia Chilena de la Historia*. No. 46. 1947. p. 9-28. Ministerio de Justicia: *Lista Alfabética de Abogados Recibidos en Chile desde el 13 de diciembre de 1788 hasta el 22 de noviembre de 1899*. Santiago. Imprenta Nacional 1899.

⁹² The remaining percentage (4%, four cases), responds to individuals whose socio-economic background could not be determined.

⁹³ Regarding this point, the empirical data on the Senate does not show particular distinctions regarding traditional parties. In fact, the pattern already explained is distributed evenly, following the national trend. For an overall view about the party system, see: Germán Urzúa Valenzuela: *Los Partidos Políticos Chilenos. Las fuerzas políticas*. Santiago: Editorial Jurídica Ediar-Conosur 1988.

⁹⁴ The incompatibility between parliamentary posts and other high offices in the civic service was debated in the Congress, which enacted statutes about this issue before (1874, 1888) and a constitutional amendment in 1892. Ricardo Donoso: *Las Ideas Políticas en Chile*. México: Fondo de Cultura Económica. 1946. pp. 480-487.

⁹⁵ See sources note 97, below.

in legal education (34%, $N = 61$). In fact, several of the greatest legal scholars and jurists of the period are included in this sample of the ruling group, like Mariano Egaña, Andrés Bello, Justo Donoso, José Clemente Fabres, Alfredo Barros Errázuriz and Luis Claro Solar.⁹⁶ Third, 98 of the 151 lawyers at the Senate were secretaries, and almost all of them fulfilled other public offices during their lives (65%). Finally, from the alluded sample, 83 (55%) worked in legal practice as attorneys in litigation or corporate issues, mostly since the 1880s.⁹⁷ As a result, evidence indicates that legal elites carried out overlapping public functions and were integrated with the agrarian and mining-oriented economy as well.

Albeit the role of law as training for statesmanship seems striking at first glance, the percentage of lawyers at the Senate is not rare.⁹⁸ Neither is so it the lack of functional differentiation of the legal elites during this period. What seems particularly atypical, however, is the common social extraction and the centralized juridical instruction of the governmental cadres, which mirrors the underlying social homogeneity of the ruling group and the construction of a unitary polity.

The analysis of the occupational profile of the Senate's members (20-36 individuals per term) exhibits an interesting variation regarding law graduates' presence (*Figure 1.1*).⁹⁹ This reflects both the possibilities of acquiring legal expertise and how the political landscape shaped competition and opportunities in the contest to fill governmental offices.

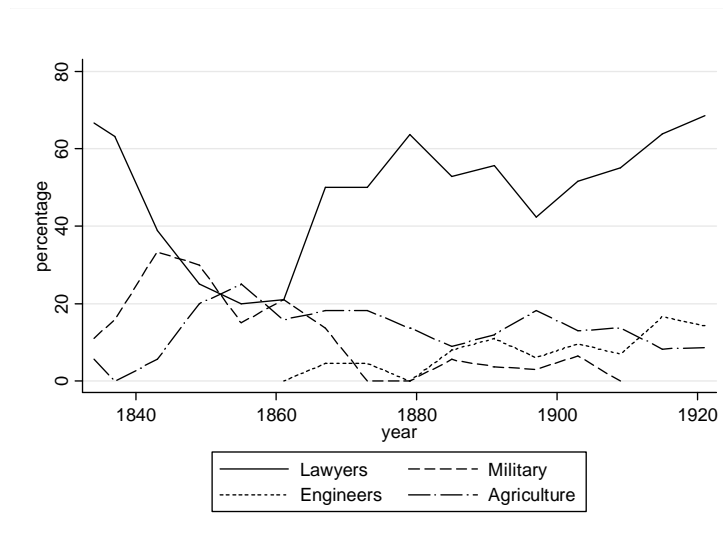
⁹⁶ For references see: Enrique Brahm: *Mariano Egaña: Derecho y Política en la fundación de la república conservadora*. Santiago: Centro de Estudios Bicentenario, 2007. Iván Jaksic: *Andrés Bello: Scholarship and Nation Building in Latin America*. Op. Cit. Valentín Magallanes: *Biografía del Ilmo. Señor Obispo de La Serena doctor D. Justo Donoso*. Santiago: Imprenta El Ferrocarril. 1871. José Clemente Fabres: *Obras Completas*. Tomo I. Santiago: Universidad Católica de Chile. 1908. pp. I-XIII. Colegio de Abogados de Chile: "Alfredo Barros Errázuriz", *Revista del Abogado*. No. 13. 1998. p. 48.

⁹⁷ Luis Valencia Avaria: *Anales de la República*. Op. Cit. Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit. Virgilio Figueroa: *Diccionario Histórico, Biográfico y Bibliográfico de Chile 1800-1928*. Op. Cit. *Diccionario Biográfico de Chile*. Santiago: Imprenta y Litografía Universo. 1936. See Annex III.

⁹⁸ See a comparative analysis in Marck C. Miller: *The High Priests of American Politics: The Role of Lawyers in American Political Institutions*. Nashville. University of Tennessee Press. 1995.

⁹⁹ On sources and methodology of selection, see Appendix 3.

Figure 1.1: Senate 1834-1924. An Occupational Profile



Sources: See Appendix 3.

Figure 1.1 shows two well-defined kinds of lawyers acting in politics during this period.¹⁰⁰ The first group is constituted by law graduates who received their degrees from the Royal University of San Felipe or, very exceptionally, other colonial educational centers in the final years of Spanish Government. Although this group tended to belong to landed aristocratic families, these members usually did not personally owe the largest rural estates, revealing a division of roles among the progeny of the upper-class families. They usually did not have affiliations in formally organized parties, even when dominated the political scene and drove the establishment of the early Republican institutions around the period 1834-1850. Several of them took part of the new judiciary that was consolidated since 1823, or participated in the debates about the new constitution of 1833, remaining in Congress afterward. On the whole, it is possible to identify this group with the traditional role of law graduates in politics, serving as officials who provide legitimacy and moderate-strong governments that centralized political power, laying the grounds of the first republican institutions.

The drop in lawyers' participation at the Senate during the 1840s and 1850s is associated with diverse factors. The independence wars and the political anarchy kept a low capacity for legal education until 1830, which in some period was even below the performance of the already poor colonial past. This constituted an obstacle for the renewal of the legal elite that remained from the old regime (with a small lag since the constitution required an age of 35 to enter in Senate and the practice demanded relevant

¹⁰⁰ The legal elite acting in politics was not only represented in the Senate. Upon examination of the representatives at the Chamber of Deputies, we can find a similar percentage of law graduates. Many of them only would reach the Chamber, despite their outstanding profiles. For instance, that is the case of Joaquín Larraín Gandarillas (Archbishop of Santiago and first Chancellor of the Catholic University), Ambrosio Montt (further Fiscal of the Supreme Court), and Jacinto Chacón (poet and intellectual). See Luis Valencia Avaria: *Anales de la República. Op. Cit.*

degrees of influence and accumulation of political capital).¹⁰¹ Furthermore, the Army, which was one of the main groups of support in the first years of the authoritarian republic, increased its participation due to its reputation and demobilization after their victory in the war against the Peruvian-Bolivian Confederation in the late 1830s. Likewise, lay people devoted to economic activities such as the booming agriculture associated with the exportation of wheat, filled an important space.

The second group of lawyers emerged at the Senate about the mid 1860s. Most of them were trained at the Universidad de Chile and, lately, since the end of the century, in Catholic University as well, living the process of political socialization already described. Unlike their predecessors, this new generation of law graduates increasingly worked as attorneys since 1880, alternating their political functions with a more dynamic legal practice. Moreover, many of them were actively involved in commerce as businesspeople or members of the boards of diverse corporations, investing their profits in the rural land by the turn of the century. After the establishment of the first organized political parties and the emergence of new forms of elite sociability—like the Club of the Reform—in the decade of 1840-1850, lawyers regained influence. As we will see in the next section, they thrived during the debates aimed to limit the presidential prerogatives, which constituted a critical opportunity to consolidate the political power of the aristocracy and to enhance their role as elite brokers.

Overall, the previous account underpins the initial interpretation about the social foundations of the Chilean legal system until 1925. A homogeneous elite initially organized toward the agricultural economy, relatively closed and characterized by endogamy, relayed upon juridical expertise to professionalize their political role. For that purpose, the law school, especially at the University of Chile, constituted the main setting of socialization, providing general legal knowledge and political skills that were used in practical statesmanship. Such a process not only allowed a common epistemological basis and the forging of a spirit of corps for an important section of the governing elite, but also furnished a narrow channel to incorporate formally some few new entrants. Regarding the organization of public governance, the initial scarcity of learned cadres and the size of the ruling group reinforced the lack of division of labor, which was characterized by the predominance of elite lawyers as double agents of the state and the legal field. However, historical sources point to a gradual change in their relation to political power. As the Chilean constitutional history shows, by the mid-nineteenth century, lawyers evolved from the traditional clerks who served the central authority to become mediators who shaped an aristocratic polity.

The Juridical Architecture of the Republican Regime: The Constitutional Organization

Along with the process of professionalization of statesmanship through legal training, a particular style of aristocratic governmental activity emerged. Although the geography and the societal structures of the country were determinant in producing a

¹⁰¹ Considering many of the lawyers who were senators from 1860 onward were representatives at the Chamber of Deputies during the period 1840-1850s, it is possible to discard variables of political exclusion. Additionally, the drop is coincidental with a similar trend in the composition of ministerial cabinets, as explained below.

well-established style of politics, this latter one was not a mere byproduct of the landscape. In fact, lawyers-statesmen, considered a key section of the leading group, were active agents in laying the basis of the new order, making a republican polity possible. In so doing, they were accomplished in building a legal system that constituted a critical setting for adjusting cooperation within the ruling group. Such an achievement would mean a stimulus to elites' engagement in lawmaking and state-crafting, representing an additional reason for the uncommon stability of the Chilean regime.

As it was pointed out at the beginning of this chapter, the constitutional order imposed in 1833 put an end to a violent era of anarchy, setting up a semi-authoritarian government that was supported by most of the landed elite, the Catholic Church, and the Army. After defeating liberal factions at the battleground in 1830, these forces prevailed to organize the unitary state afterward. Accordingly, the main section of the aristocracy initially backed rules headed by military leaders emerged among its social kinships, who attempted to materialize the compromise of the elite through the institutionalization of a strong central polity.¹⁰² Looking to advance to that goal, the incoming administration appointed a group of lawyers and justices to elaborate a constitutional project, convoking a convention to reform the previous liberal charter of 1828.¹⁰³ Following most of the ideas of its main drafter—Mariano Egaña—this project blended presidential and parliamentary elements.¹⁰⁴ Instead of attempting to build an ideal government, as the previous constitutional project had tried hitherto, they tried to consolidate a new political regime that was already in force.¹⁰⁵ As a result, the enacted constitution of 1833 furnished juridical powers that turned the president into an almost uncontested authority and the guarantor of the established order. However, those prerogatives were highly regulated, and the aristocracy was able to resort to different political spaces to smoothly limit presidential power.¹⁰⁶

During the first decades after its enactment, the constitution arranged a presidential period of five years, allowing one immediate reelection. In that context, the first presidents were several strong men who ruled for ten years each (two members of the military 1831-1851, and, later, two lawyers 1851-1871). Answering to its definition as “the Supreme Head of the Nation,” the Executive controlled most of the political

¹⁰² Diego Portales, the minister who coordinated the transition to an authoritarian republic, demobilized political factions. For instance, he repressed some liberal dissidents and dissolved his own partisan group (los estanqueros). At the same time, he got that José Joaquín Prieto, a former supporter of O'Higgins and a member of the provincial gentry of Concepción, was elected as president of the Republic. By those means, he was accomplished in taking possible rebels out of action. Alberto Edwards: *La Fronda Aristocrática*. Op. Cit. p. 39-42.

¹⁰³ The constituent convention selected a commission of seven members that finally drafted the new constitution. This commission was composed by some of the most important jurist and judges of the period: Mariano Egaña (1793-1846, Fiscal of the Supreme Court), Agustín Vial Santelices (1772-1833, Justice and Law Professor), Santiago Etchevers (1792-1852, Justice), Manuel José Gandarillas (1789-1842, former minister and director of the official newspaper), Gabriel José de Tocornal (1775-1841, Justice), Fernando Elizalde (? -1842, Justice), and Juan Francisco Meneses (1785-1860, Law Professor). All they not only orientated the constitutional debate, but also were active personages in politics and the legal profession alike. See. Ricardo Donoso: *Las Ideas Políticas en Chile*. Op. Cit. pp. 102-107.

¹⁰⁴ Enrique Brahm: *Mariano Egaña: Derecho y Política en la fundación de la república conservadora*. Op. Cit.

¹⁰⁵ Ricardo Donoso: *Las Ideas Políticas en Chile*. Op. Cit. pp. 114.

¹⁰⁶ Bernardino Bravo Lira: “La Constitución de 1833”. *Revista Chilena de Derecho*. Vol.10. 1983. pp. 317-329.

institutions. Given the bicameral Congress ordinarily worked for three and half months per year, and many of its members possessed positions in the civil service due to the lack of parliamentary incompatibilities, the President had a significant leverage over them.¹⁰⁷ In the same way, he could appoint his secretaries and the provincial intendants. Moreover, he counted on vital legislative powers, such as the ability to call to the Congress beyond ordinary time of functioning, or the absolute veto in the legislative process. At the same time, the president could not be impeached since he was not accountable but after the end of his term in office. Hence, the Executive was an almost absolute ruler, who in practice, could even informally choose most the members of Congress and his successor.¹⁰⁸

As expected in an authoritarian context, the judiciary occupied a moderately diminished position. Through an advisory Council of State whose members were named by the Executive within a constitutionally determined pool, the president indirectly controlled the appointments of judges, usually selected from among law graduates coming from the aristocracy or minor gentry. Tribunals did not overtly count on powers of constitutional review, which were given to the Congress. Likewise, although the charter granted courts with the prerogative to control the legality of the administration, the use of these faculties was constrained. Certainly, courts challenged the government sometimes. For example, they judicially regulated the compensation and procedures to know Spaniard's land takings during the independence wars, adjudicating proper compensations to be paid by the Chilean state. Additionally, in some noted cases, judges did not apply the highest sanctions regarding infractions to press laws.¹⁰⁹ However, judicial opinions used to be very deferential to the regime (e.g. restrictive interpretation of the writs of habeas corpus). To influence courts' performance, the Executive resorted to the policy of appointments or removed justices who were lenient in enforcing interior security laws.¹¹⁰ Overall, higher tribunals were not ultimately an effective political check on the Executive due to their institutional constraint.

On the same constitutional basis, the president possessed several powers to break opposition. Prior congressional approval, he held significant prerogatives during periods of constitutional exceptions and state of siege, which involved the partial suspension of citizens' political and civil rights.¹¹¹ These prerogatives were broadly used to assure public order and to repress internal dissidents, particularly during the war against Peru and Bolivia (1837-1840) and to confront some local rebellions that failed in challenging

¹⁰⁷ Additionally, during the period that Congress did not hold sessions, the constitution established a conservatory commission formed by seven senators, which was in charge of surveilling the enforcement of the constitution and the legality. Ricardo Donoso: *Las Ideas Políticas en Chile. Op. Cit.* p. 107.

¹⁰⁸ Bernardino Bravo Lira: "La Constitución de 1833". *Op. Cit.* pp. 323-324.

¹⁰⁹ Gabriel Boksang Hola: "Fundamentos jurisprudenciales de un protojuridicidad de los actos administrativos en Chile (1841-1859)." In Eduardo Soto Kloss (Ed.): *Administración y Derecho. Homenaje a los 125 años de la Facultad de Derecho de la Pontificia Universidad Católica de Chile*. Santiago: Legal-Publishing. 2014. pp. 35-60.

¹¹⁰ Lisa Hilbink: *Judges beyond Politics in Democracy and Dictatorship. Lessons form Chile*. New York: Cambridge. 2007. p. 51.

¹¹¹ In fact, during the first decades of authoritarian republic, these extraordinary powers were bestowed to the executive in several occasions (1833-34, 1836-37, 1837, 1838, 1851-53 and 1859-1861), and the state of siege was declared in 1840, 1846 and 1858. Bernardino Bravo Lira: "La Constitución de 1833". *Op. Cit.* pp. 323. 326.

executive authority (1851 and 1859).¹¹² By the same token, the constitution and the related statutes established strong restrictions over the press, imposing high fines, incarceration, and the banishment against who were condemned by offenses in this realm. Such were the cases of individuals who challenged accepted standards of public morality, like Francisco de Bilbao, or who published acrid criticism against the Executive, like the journalist Pedro Felix Vicuña.¹¹³

As a counterpart, the aristocracy possessed some rights to counterbalance presidential authority. First at all, they reserved for themselves the right to participate in the presidential and parliamentary elections, instituting an indirect electoral system whose body of voters was largely limited. Until 1874, the political citizenship was restricted to males, who were required of literacy, evidence of property and age. These requirements for selective suffrage were exclusively filled by only a few, such as landowners, businesspeople, professionals, some artisans and minor land proprietors. Not surprisingly, the government's elite supporters kept the right to qualify voter's proficiency.¹¹⁴ By this mean, they not only assured a place for themselves but also eschewed mass mobilization and electoral procedures based on acclamation, which were employed by caudillos and military leaders in neighboring countries. Second, the Congress, which constituted the preferred setting of political expression of the aristocracy, held the power to pass periodical legislation like taxes on land property, the annual budget, and the regulation of staff and resources for the military.¹¹⁵ Third, the Chamber of Deputies could impeach ministers, judges and other high civil service personnel, who would be judged by the Senate. Resorting to these and several other powers that limited presidential prerogatives, the aristocracy ensured that it would not be easily displaced by the executive's will.¹¹⁶

Despite the authoritarian character of many constitutional dispositions, the Executive usually did not act as a despot; it tended to rely on its supporting elite which was increasingly professionalized through legal studies. In fact, there are testimonies in which the president used to consult with the people of "judgment and entourage" to take decisions such as his succession.¹¹⁷ In addition, the Congress and the Council of State seemed to be more than postboxes, possessing some degree of independent opinion. The Congress, for instance, sometimes threatened the Executive with not passing annual legislation to force the inclusion of specific legislative projects as early as the 1840s.¹¹⁸ In fact, the aristocracy attempted to limit the Executive through zealous use of the congressional faculties, which implied the transition to a quasi-parliamentarian regime over time.¹¹⁹ The mainstream historiography about these years (1831-1871) presents an

¹¹² Julio Faúndez: *Democratization, Development and Legality. Op. Cit.* p. 19.

¹¹³ For Bilbao's case, who was condemned to a high fine for abuses to freedom of press, see Ana Maria Stiven: *La Seducción de un Orden. Op. Cit.* pp. 251-282. Regarding Pedro Félix Vicuña see, Virgilio Figueroa: *Diccionario Histórico, Biográfico y Bibliográfico de Chile 1800-1928.* Nendeln: Klaus-Thomson. Vol. 5. pp. 1040-1041.

¹¹⁴ Ricardo Donoso: *Las Ideas Políticas en Chile. Op. Cit.* pp. 390-397.

¹¹⁵ Bernardino Bravo Lira: "La Constitución de 1833". *Op. Cit.* pp. 324-325.

¹¹⁶ Julio Heise: *El Periodo Parlamentario. 1861-1925.* Santiago: Editorial Andrés Bello. 1974. p. 22.

¹¹⁷ That was the case, for example, of Manuel Bulnes' selection of Manuel Montt as official candidate to the Presidency of the Republic. Alberto Edwards. *La Fronda Aristocrática. Op. Cit.* p. 62.

¹¹⁸ Julio Heise: *El Periodo Parlamentario. 1861-1925.* Op. Cit. p. 29.

¹¹⁹ *Ibid.*

account of an aristocratic or oligarchic republic, not of an autocracy. In sum, an authoritarian Executive with almost monarchic powers exerted his power with the close collaboration of the supporting elite, whose influence was mostly manifested in the Senate.¹²⁰ There, the historian Ricardo Donoso asserts, operated “the men of tradition and legality, the stewards of the social order in force [...who were] attached to colonial customs and the legacy of the past”.¹²¹

In such a context, law graduates would steadily increase their relevance for aristocratic politics, even beyond the Congress. Quantitative data illustrates how lawyers-statesmen gradually dominated the public arena. By 1851, the Chief Justice of the Supreme Court, Manuel Montt, was voted President of the Republic, starting an almost uninterrupted list of lawyers who were regularly elected to head the Executive between that date and 1925.¹²² Lawyers also consolidated their position in the Cabinets of Ministers, as the following table shows:

Table 1.1:

Lawyers at the Cabinet of Ministers by presidential periods (1831-1881) (percentages between brackets).

	1831-41	1841-51	1851-61	1861-71	1871-76	1876-81	Mean
Law Graduates	(50)	(71)	(53)	(77)	(100)	(80)	(72)
a.- Graduated at the University of Chile	(0)	(50)	(29)	(59)	(100)	(75)	
b.- Experience in Courts or Academics	(30)	(50)	(35)	(64)	(73)	(55)	
Total Number of Secretaries (N)	10	14	17	22	11	20	

Note: The total number of ministers is counted for each government in the fields of Interior, War and Navy, Finance, Justice and Education, and Foreign Relations. There have been taken into account appointed secretaries, or subrogate and interim secretaries who were more than one year in their posts. Few of them performed the position of ministers in more than one government. Regarding the experience at courts or university, the observation of the data has been done on previous or concurrent posts considered according to specific years in the cabinet. *Sources and detailed tables:* Appendixes 4 and 5.

¹²⁰ Ricardo Donoso: *Las Ideas Políticas en Chile. Op. Cit.* Mario Góngora: *Ensayo sobre la Noción de Estado en Chile... Op. Cit.* Alberto Edwards: *La fronda aristocrática. Op. Cit.* This interpretation on those decades emerged about the end of the nineteenth century, constituting a revisionist account on the first testimonies written down by liberal intellectuals. See Simon Collier: “The Historiography of the Portalian period (1831-1891) in Chile”. *The Hispanic American Historical Review*. Vol. 57. No. 4. pp. 660-690.

¹²¹ Ricardo Donoso: *Las Ideas Políticas en Chile. Op. Cit.* p. 396.

¹²² The long list of lawyers who were elected to the Presidency of the Republic is composed by: Manuel Montt (1851-1861), José Joaquín Pérez Mascayano (1861-1871), Federico Errázuriz Zañartu (1871-1876), Anibal Pinto Garmendia (1876-1881), Domingo Santa María (1881-1886), José Manuel Balmaceda (1886-1891), Federico Errázuriz Echaurren (1896-1901), Germán Riesco (1901-1906), Pedro Montt (1906-1910), Ramón Barros Luco (1910-1915), Juan Luis Sanfuentes (1915-1920), and Arturo Alessandri Palma (1920-1925). The only exception is Jorge Montt (1891-1896), a militar who was elected president after the Civil War of 1891. Luis Valencia Avaria: *Anales de la República. Op. Cit.*

Coincidentally with the information about the Senate previously presented, *Table 1.1* indicates that elite lawyers displaced other groups, like the military, landowners without professional training and businesspeople, from the conduction of the state. These law graduates were trained in a relatively centralized system of juridical instruction organized by the University of Chile since the middle of the nineteenth century. To clarify the point, it is remarkable to observe that by Federico Errázuriz Zañartu's government (1871-1876), the President of the Republic and all the members of the cabinet were lawyers from the University of Chile. Finally, empirical information confirms the lack of functional diversification of the upper strata of the legal profession acting in politics. Upon closer examination of the ministers' profiles, we can notice that the governments used to select their cadres among lawyers who had previous or concurrent experience as justices and academics, or in other words, among those who had relevant certified expertise (See Appendix 3).

As a part of the ruling group, lawyers embodied a particular kind of aristocratic civic culture during the first decades of republican stability. That was clearly visible towards the 1860s onwards, inasmuch as law graduates changed their initial roles as clerks of political power and became mediators of the elite political disputes. In addition to the permanent searching for social order, governmental circles developed an ideal of public man molded upon a local conception of the English and French bourgeoisies. This implied, among other qualities, conciliatory character, deliberation, honesty, cult to honor, respect for authority, attachment to legality and tradition.¹²³ Such ideals and practices fit well with a particular understanding of the Enlightenment that was dominant at these years in the country, characterized by its emphasis on the role of wise citizens in paving the path to public happiness for their fellow countrymen. So, although elite lawyers looked at the rest of the population with disdain, they were able to recreate a political environment that was prone to further gentry's coordinated action and collaboration.¹²⁴ Besides the social composition of the ruling group and its professionalization through legal studies in a somewhat centralized structure, it is likely that such an aristocratic civic culture facilitated political compromise.

Perhaps, the most remarkable achievement of the gentlemen politicians of law was a gradual transition from the authoritarian regime to a liberal one, characterized by the Congressional supremacy. This process implied a new agreement on the presidential succession and the allotment of state power, which, in practice, remained in force until the political cycle finished in the 1920s. Inspired by the European liberal revolutions of the middle of the nineteenth century, some young intellectuals had begun actively advocating for a political reform aimed to reduce the Executive's supremacy by the late 1840s. This new spirit even reached part of the governmental circles that subtly addressed this issue.¹²⁵ A faction of the elite group promoted a revolt after losing the presidential election in 1851, to the incoming Manuel Montt, a Justice and politician who curbed the rebellion with an iron fist. After some years, in 1859, a second upheaval spread in several cities, which joined the emerging mining bourgeoisie of the North and liberal

¹²³ Julio Heise's work, which is the most reliable description about this period, provides a detailed and colorful account of an aristocratic-bourgeois spirit that dominated politics. Julio Heise: *El Periodo Parlamentario. Op. Cit.* pp. 176-190.

¹²⁴ *Ibid.* pp. 181-182.

¹²⁵ Alfredo Jocelyn-Holt: *El peso de la noche. Op. Cit.* p. 195.

intellectuals who were critical of the authoritarian regime. Although this was again suppressed by Montt, the rebellion pushed for the presidential election of José Joaquín Pérez, a moderated politician.¹²⁶ Despite receiving Montt's electoral backing, Pérez's government incorporated both liberals, who were trying to limit executive authority, and conservatives who had deserted from the former administration as a result of disagreements about the use of presidential prerogatives on the Catholic Church.¹²⁷ This Liberal-Conservative alliance unsuccessfully impeached Montt and other of his supporters who were at Supreme Court (1868), attempting to weaken his stance backed by the recently established National Party.¹²⁸ Finally, at the end of Pérez's rule, the alliance achieved a compromise with leaders of the opposition –particularly with the members of the Radical Party–, to reform the political system in the early 1870s.¹²⁹ Some sectors of the aristocracy interested in a more substantial share of political power, and conservative notables who intended to defend the Catholic Church against the interference of the Executive, thus began a major process of institutional transformation and political openness.¹³⁰

In the process of state restructuring, law played a major role. The most articulated pleas toward political liberalization appeared in brief treatises published by young lawyers, which covered their partisan aims under a juridical façade. José Victorino Lastarria's comments on the constitution, for example, asserted that the charter had lost the ability to maintain political stability, promoting the expansion of individual liberty to orientate constitutional debates.¹³¹ Others, such as Juan Manuel Carrasco Albano, advocated for the strengthening of local autonomy.¹³² Through legally minded discourse, dissidents framed their position toward the constitutional change, looking at the European countries or the previous liberal tradition as a basis for a new republican model.¹³³ Despite the increasing demand for a political reorganization within the ruling group, however, the dilemma to reform the constitution did not have an easy solution. Facing a rigid procedure of amendment and an empowered Executive, there were not alternative institutional venues to attempt political contestation outside the Congress, where the first projects of the amendment were discarded.¹³⁴ By the 1850s, the judicial authority mostly

¹²⁶ Alberto Edwards Vives: *El Gobierno de don Manuel Montt. 1851-1861*. Santiago: Editorial Nascimento. 1932.

¹²⁷ Francisco José Moreno: *Legitimacy and Stability in Latin America. Op. Cit.* pp. 126-127.

¹²⁸ Antonio Varas: *La Acusación Constitucional a la Corte Suprema*. Santiago: Imprenta El Ferrocarril. 1868.

¹²⁹ Alberto Edwards: *La Fronda Aristocrática. Op. Cit.* pp. 106-125.

¹³⁰ The role played by the landed elite in liberalizing politics is one of the elements to refute Barrington Moore's neo-Marxist historical interpretation applied to the Chilean case. See: J. Samuel Valenzuela: "Class Relation and Democratization. A Reassessment of Barrington Moore's Model". In Miguel Ángel Centeno, Fernando López Álves (eds): *The Other Mirror. Grand Theory through the lens of Latin America*. Princeton: Princeton University Press. 2001. pp. 240-286.

¹³¹ José Victorino Lastarria: *La Constitución Política de la República de Chile Comentada*. Valparaíso: Imprenta del Comercio. 1856.

¹³² Juan Manuel Carrasco Albano: *Comentarios a la Constitución Política de 1833*. Valparaíso: Imprenta y Librería de El Mercurio. 1858.

¹³³ Federico Errázuriz Zañartu: *Chile bajo el imperio de la Constitución de 1828*. Santiago: Imprenta Chilena. 1861. p.9

¹³⁴ In fact, the first projects of constitutional amendments were refused or not submitted to consideration by the President of the Republic. See as example: Melchor de Santiago Concha: *Proyecto de Reforma de la Constitución*. Santiago: Imprenta del Correo. 1860.

composed of governmental supporters did not offer a suitable arena to mobilize the opposition toward this issue. Courts even refused to exert any judicial review of statutes, offering a clear example of political passivity. In 1848, they declared that “no magistracy in charge of applying the laws possesses the prerogative to declare their unconstitutionality, and all the statutes enacted after the Fundamental Code imply the Supreme Judgment of the Lawmaker, without infringing this Code.”¹³⁵

The new generation of lawyers-statesmen that arrived in Congress about 1860 conducted the political turn within the formally instituted procedures, enacting constitutional amendments and legislation aimed to limit presidential power. Law graduates like Federico Errázuriz Zañartu, in the Liberal Party, and Manuel José Yrarrázaval, among the conservative cadres, became critical actors in framing this new compromise within the elite.¹³⁶ In concrete terms, the reforms were aimed to transform vital aspects of the political play. First, the Congress surpassed the rigid procedure to reform the constitution since 1870.¹³⁷ In a law-oriented debate, congressmen translated a very sharp political conflict into legal language. Through the persuasive intervention of several jurists who were in the Senate and the Chamber of Deputies, such as Ambrosio Montt, the Congress solved complex debates on the opportunity, the initiative and the procedure of the constitutional reform.¹³⁸ The Congress enacted amendments that reduced the Executive prerogatives like banning the immediate presidential re-election (1871), the incompatibility of parliamentary functions and other public offices, new limits to states of constitutional exception, direct voting for senators, regulating of political impeachment against officers and the lowering of the quorums to open parliamentary sessions. At the same time, Congress established the right of assembly, association, and the freedom of teaching (1874).¹³⁹ Besides strengthening the Congress, all these reforms liberalized civic life and, particularly, the competition within the elite, allowing recently established political parties to perform a more critical role.

Second, the Congress passed several statutes revising electoral practices and complementing the constitutional amendments. For example, it attempted to avoid presidential control of the electoral system, establishing procedures in which the aristocracy was in charge (via the Board of Major Tax Payers and a Reviewer Board of Electoral Records). Moreover, overcoming the consistent opposition coming from Liberal cadres that tried to keep voters selective, the Conservative Party got the support to eliminate the constitutional requirement of property to qualify as voter (by statutorily stating that knowing how to read and write was a proof of income)(1874).¹⁴⁰ Since the ballot was not secret, landed aristocrats could mobilize farmers who were clients or tenants dwelling in their lands, and who were the most important constituency in a rural

¹³⁵ Jorge Huneeus: *La Constitución ante el Congreso*. In *Obras Completas de don Jorge Huneeus*. Volume 2. Santiago: Imprenta Cervantes. 1890. p. 253.

¹³⁶ Ricardo Donoso: *Las Ideas Políticas en Chile*. *Op. Cit.* pp. 453-466.

¹³⁷ Although the most critical constitutional amendments were debated about 1870, other constitutional reforms were enacted afterwards, such as the incompatibility of parliamentary charges and other high positions in the civic service. See Ricardo Donoso: *Las Ideas Políticas en Chile*. *Op. Cit.* pp. 455-488.

¹³⁸ Ambrosio Montt: *Discursos y Escritos Políticos*. Santiago: Imprenta de El Mercurio. 1879. pp. 181-216.

¹³⁹ See Ricardo Donoso: *Las Ideas Políticas en Chile*. *Op. Cit.* pp. 455-488.

¹⁴⁰ J. Samuel Valenzuela: “Building Aspects of Democracy before Democracy: Electoral practices in Nineteenth-century Chile”. In, Eduardo Posada-Carbó (Ed.): *Elections before Democracy. The History of Elections in Europe and Latin America*. London: Palgrave-McMillan. 1996. pp. 223.257.

country.¹⁴¹ Later on, along with steady urbanization, this change implied the progressive incorporation of the electorate and the emergence of partisan movements that pretended to represent the new middle class during the following decades.¹⁴² Over time, during the preeminence of a Liberal-Radical alliance (1875-1891), this process of statutory reforms was extended to other areas, like political rights (e.g. reduced sanctions against offenses to press regulations).¹⁴³ Ultimately, a liberal polity emerged along this process of reform, reshaping the political and social landscape.

Indeed, the reorganization of politics was understood as a successful experience by the ruling groups, particularly among elite lawyers acting in politics. In fact, the most significant work on public law in nineteenth-century Chile, Jorge Huneeus's text *La Constitución ante el Congreso* [The Constitution before the Congress], precisely describes how law graduates reinterpreted and gradually reformed political institutions, relying on an argumentation grounded in jurisprudence, legal language, and political negotiation. This process of reorganization not only strengthened the standing of the lawyers that carried it out but also reinforced the legitimacy of the constitutional structure itself. By 1880, Huneeus—a liberal politician and Professor of Law—explained “absolutely nobody today in the Republic could assert that the fundamental charter should be reformed by encroaching the established norms for that purpose.”¹⁴⁴

Beyond the letter of the law, a new political equilibrium characterized the period from the 1870s on. Resorting to different reinterpretations of statutes and constitutional amendments, Congress dominated the executive, developing practices like the usual interpellation of the cabinet of ministers. As the 1880s elapsed, Congress extended the debate stating that the secretaries must count on its support to remain in charge, trying to challenge presidential authority in a matter that was not sufficiently clarified by the constitutional reform.¹⁴⁵ The gravest of these practices was the retention of periodic statutes (i.e. filibustering on the annual budget), used to push for the organization of new cabinets or to get control on the law-making agenda.¹⁴⁶ This was critical as leverage to negotiate the investment of new fiscal revenues coming from taxes on booming nitrates mining, especially in areas like public works and bureaucratic expansion. The Executive, headed by the President José Manuel Balmaceda (1886-1891), tried to resist this kind of practices, looking to strengthen presidential power and to control new public resources. Facing aristocratic opposition at Congress, Balmaceda extended the annual budget of the previous year without parliamentary approval. Accordingly, the Congress declared the President outside the constitutional order and began a rebellion with the support of the Navy. After a brief and bloody civil war, in 1891, the Congress finally reigned, evidencing the persistence of the aristocratic power along decades.¹⁴⁷

At the turn of the twentieth century, Chile thus became a quasi-parliamentary regime. This was featured by the permanent supremacy of Congress over presidential authority via parliamentary interpellation, censures to cabinets, the retention of periodic

¹⁴¹ René Millar Carvallo: *La Elección Presidencial de 1920. Tendencias y Prácticas Políticas en el Chile Parlamentario*. Santiago: Editorial Universitaria. 1982. p. 172.

¹⁴² J. Samuel Valenzuela: “Building Aspects of Democracy before Democracy”. *Op. Cit.*

¹⁴³ Ricardo Donoso: *Las Ideas Políticas en Chile*. *Op. Cit.*

¹⁴⁴ Jorge Huneeus: *La Constitución ante el Congreso*. *Op. Cit.* p. 55.

¹⁴⁵ Bernardino Bravo Lira: “La Constitución de 1833.” *Op. Cit.* p. 328.

¹⁴⁶ Julio Heise: *El Periodo Parlamentario. 1861-1925*. *Op. Cit.* pp. 285-287.

¹⁴⁷ Francisco José Moreno: *Legitimacy and Stability in Latin America*. *Op. Cit.* p. 137.

statutes and the underhanded partisan management of elections, among other means.¹⁴⁸ The aristocracy in the Congress and traditional political parties became uncontested powers, constraining the Executive under the menace of ministerial roulette and legislative obstructionism.¹⁴⁹ Likewise, the local elite fostered laissez-faire economic policies, only timidly addressing the new pressing issues of the urban poor since about 1910. As we will explore in the next chapter, this failure would contribute to a steady emergency of social discontent, which would finish this political cycle of patrician politics.

In sum, republican constitutional structures presented several merits from the perspective of the ruling elite, and favored lawyers-statesmen who took center stage. These constitutional structures achieved a remarkable degree of de-personalization of the power setting up a regular procedure to normalize succession, demilitarizing politics in a short time. The state confronted riots and excluded dissidents by using repression, which, nevertheless, facilitated the maintenance of public order. Additionally, landed aristocracy enjoyed significant advantages in controlling electoral competition to access to state power, being an obstacle to mass mobilization and *caudillos*. Finally, the ductility of the constitutional norms in being consecutively reformed through their internal procedures proves the state was able to adapt the rules of the political play to changing conditions.¹⁵⁰ Therefore, many law graduates not only assisted in decision-making as they use to do in the colonial past, but were able to create a stable polity where they could prevail as dominant actors, becoming mediators in intra-elite conflict.¹⁵¹

Although the political development of the period did not match the most rigorous democratic ideals, and the political violence arose sometimes, the achievements of the constitutional regime seem remarkable in the context of the nineteenth-century Latin America. The next table summarizes different variables in which the local polity was salient. Casting a comparative glance, Chile: (a) possessed a stable constitutional text, with a unique constitution for almost ninety years; (b) enjoyed a regular dynamic of political succession in the Executive and Legislative since 1831 (with an almost uninterrupted line vastly composed by lawyers-statesmen in the presidency since 1851); (c) did not suffer Latin American endemic militarism or *caudillismo*, with no longstanding autocracy drifting from formal juridical institutions; and, (d) was far less affected by coups and rebellions.¹⁵² These institutional accomplishments happened in a

¹⁴⁸ Julio Faúndez: *Democracy, Development and Legality. Op. Cit.* pp. 50-54.

¹⁴⁹ Historians have extensively debated about the causes of the ministerial roulette. For some authors, such as Julio Heise, this practice provided political balance, turning the president into the resort of the legislative agenda. Julio Heise: *El Régimen Parlamentario. Op. Cit.* pp. 285-300.

¹⁵⁰ Simon Collier: *Chile. La construcción de una república. Op. Cit.* pp. 172-173.

¹⁵¹ Rogelio Pérez-Perdomo: *Latin American Lawyers. Op. Cit.* p. 93.

¹⁵² The next table is an expanded and modified version of a similar chart developed by Alejandro San Francisco: “Una excepción honrosa de paz y estabilidad, orden y libertad”. La Autoimagen Política de Chile durante el siglo XIX”. In Alejandro San Francisco, Gabriel Cid: *Nación y Nacionalismos en Chile. Siglo XIX. Vol. I.* Santiago: Centro de Estudios Bicentenario. 2009. p. 69. For the present table, data was coded as follow: (a) For Constitutions, I have selected constitutions that were formally passed as new charts. Accordingly, I have left aside projects that did not get into force or mere constitutional amendments; (b) For elected executives concluding term, I have coded all presidents that were institutionally elected by the ballot and assemblies, who completed their term or passed away by natural causes while they were in office. When the same person headed the executive, each term has been taken into account. Provisory Executive has been considered when holders were more than ten months in office; (c) For relevant

critical moment of nation building in the postcolonial period. Thus, they were relevant to construct the auto-representation both of ruling groups and the elite legal profession.

autocracies I have selected executive authorities who enter into the government by nonregular institutions, or who, after their election, drifted constitutional procedures to remain in office. Due to the exceptional institutional character of Brazil and Mexican monarchies, these have not been counted as autocracies; and (d) For coups and rebellions, I have selected major military or violent actions aimed to overthrow the Executive or secession movements within each country. Sources: Tulio Halperín Donghi: *The Contemporary History of Latin America*. Durham: Duke University Press. 1993. Leslie Bethell: *Spanish America after Independence. 1820-1870*. Cambridge: Cambridge University Press. 1987. Dana Gardner Munro: *Latin American Republics. A History*. New York: Appleton, Century and Crofts. 1942. Peter Bakewell: *A History of Latin America*. Oxford: Blackwell. 1997. Helen Delpar (ed): *Encyclopedia of Latin America*. New York: MacGraw Hill. 1974. Jay Kinsbruner (Ed.). *Encyclopedia of Latin American History and Culture*. New York: Charles Scribner and Sons. 2008.

Table 1.2: Political Stability in Latin America (1830-1924): A Survey

Country	Constitutions (in force 1830-1924)	Elected Executive completing term (from total rules)	Relevant Autocracies (monarchies excluded)	Successful rebellions and coups	Failed rebellions and coups
Argentina	1826, 1853,	13 of 22	Rozas 1835-1852	1852,	1831, 1833, 1839-42, 1843 1859, 1860, 1867, 1874, 1880, 1890, 1893,
Bolivia	1826, 1831, 1834, 1839, 1843, 1851, 1861, 1868, 1871, 1878, 1880,	12 of 28	Santa Cruz 29-39; Belzu 1848-55; Melgarejo 1864-71; Daza 1876- 79.	1839, 1857, 1861, 1864, 1871, 1876, 1879, 1898, 1920,	1888, 1892
Brazil	1824, 1891,	9 of 14		1889, 1891,	1848, 1892, 1893, 1895,
<i>Chile</i>	<i>1828, 1833,</i>	<i>14 of 15</i>		<i>1829-30, 1891, 1924</i>	<i>1851, 1859</i>
Colombia	1821, 1832, 1843, 1853, 1858, 1861, 1863, 1886,	28 of 41	Bolívar, 1828-1830; Mosquera 1866-1867.	1854, 1900, 1903 (Panama)	1839, 1842, 1849, 1854, 1860-63, 1867, 1876, 1885, 1900-02
Ecuador	1830, 1835, 1843, 1845, 1851, 1852, 1861, 1869, 1878, 1884, 1897, 1906	10 of 34	Veintimilla 1875-1883; Alfaro 1905-1911	1845, 1859-60, 1876-1878, 1883, 1895,	1834, 1836-38, 1911, 1913- 1915, 1924,
Mexico	1824, 1835, 1843, 1847, 1857, 1917	13 of 46	Santa Anna 1841-44, 1853-55;	1830, 1832, 1834, 1836, 1841, 1845, 1853, 1855, 1864-67, 1876, 1910, 1913, 1914, 1915, 1917, 1920,	1838, 1857, 1858-60, 1867- 1872, 1923,
Peru	1828, 1834, 1839, 1856, 1860, 1867, 1920	10 of 40	Santa Cruz 1836-1837; Vivanco 1843-1844; Castilla 1855-57; Prado 1865-67; Leguía 1919-24.	1831, 1835, 1836, 1842, 1843, 1844, 1855, 1865, 1868, 1880, 1884-85, 1894-95, 1914, 1919	1834, 1841, 1854, 1856-58, 1872, 1877,
Uruguay	1830, 1918	12 of 24	Flores 1864-1868; Latorre 1876- 79; Cuestas 1898-99	1837, 1853, 1855, 1863-64, 1876, 1897,	1832-34, 1839-1851, 1858, 1870-72, 1886, 1898-99, 1903-4,
Venezuela	1830, 1857, 1858, 1864, 1874, 1881, 1891, 1893, 1901, 1909, 1914, 1922	12 of 30	Páez 1826-35; Guzmán 1870-77, 79-84, 86-87; Gómez 1908-35.	1858, 1860-63, 1867-68, 1870, 1879, 1892, 1899, 1908,	1831, 1835, 1848-49, 1888, 1898, 1902-03,

Law and the State's Institutional Capacity to Advance Social Ordering

Since the first decades of republican life elapsed, the process of nation building went beyond the constitutional architecture, becoming a true project to mold society and foster market economy. As a way of increasing the state's institutional capacity to carry out this goal, the ruling group strengthened the legislative authority and built a new normative system aimed to replace the old colonial statutes still in force. The government attempted to modernize legislation and to expand legal services, particularly through codification and the establishment of courts.¹⁵³ Such a top-down project of social reform by legal means constituted one of the most relevant arenas to make use of juridical expertise, embodying the heyday of the lawyer-statesman ideal.

As in all Latin America from the years of the independence on, several members of the Chilean elite began to discuss the ways to sort out the labyrinthine Hispanic legacy in law. However, the concrete projects and debates about this issue were only carried out after the consolidation of the authoritarian republic in the 1830s.¹⁵⁴ By 1841, the official legal report *Gaceta de Los Tribunales* opened its first number explaining: "When a nation is free of foreign enemies to fight, and there are not partisan divisions in its interior that disturb the tranquility, the Government must think about improving its institutions, reforming the abuses and shaping good mores. The natural order of the things make first ponders the laws, the judges and the ways by which the property and citizens' freedom are secured".¹⁵⁵ From this perspective, the chaotic character of the legislation and the obscurity with which judges adjudicated the cases presented before them, often without providing legal reasons, generated some repulsion within enlightened regime obsessed with social order and economic progress.¹⁵⁶ Outstanding jurists, such as Manuel Camilo Vial, Mariano Egaña and, above all of them, Andrés Bello, began to prepare legislative drafts to lay the foundations of a new legal system, privately or backed by the government.¹⁵⁷ Following them, elite lawyers would re-organize law toward a body of legislative codes in a process that only would be finished at the turn of the twentieth century.¹⁵⁸

Certainly, the most significant oeuvre in this process was the enactment of the civil code in 1855. This dealt with basic private relations of citizens which were said more important than political rights themselves, such as legal authority, personhood,

¹⁵³ Matthew Mirow: *Latin American Law. A History of Private Law and Institutions in Spanish America*. Austin: The University of Texas Press. 2004. pp. 102-106.

¹⁵⁴ Alejandro Guzmán Brito: *Andrés Bello Codificador. Historia de la Fijación y la Codificación del Derecho Civil Chileno*. Vol. I. Santiago: Ediciones de la Universidad de Chile. 1982. pp. 122-252.

¹⁵⁵ *Gaceta de los Tribunales y de la Instrucción Pública*. Santiago. No. 1. November 6th, 1841. p.1.

¹⁵⁶ Resorting to a congressional authorization to enact statutes during of a state siege, the Government passed several procedural norms to regulate judicial adjudication. These, enacted in 1837, are called the "Leyes Marianas," honoring their author, the jurist, and politician Mariano Egaña. The main of them mandated judges to provide the legal reasons of their sentences. This constitutes a milestone that began a slow path aimed to discipline judges under the central government's hand. María Angélica Figueroa: "La Codificación Civil Chilena y la Estructuración de un Sistema Jurídico Legalista". In, Instituto de Chile: *Homenaje a Andrés Bello*. Santiago. Editorial Jurídica de Chile. Editorial Andrés Bello. 1982. p. 384.

¹⁵⁷ Alejandro Guzmán Brito: *Andrés Bello Codificador*. Op. Cit. pp. 226-238.

¹⁵⁸ Bernardino Bravo Lira: "La Codificación en Chile (1811-1907) Dentro del marco de la codificación europea e hispanoamericana." *Revista de Estudios Histórico Jurídicos*. Vol. 12. 1987. pp. 51-109.

family, property, inheritance, and contracts¹⁵⁹. Written by Andrés Bello, the most eminent humanist and jurist of Latin America, the civil code chiefly blended French jurisprudence and the Spanish version of Roman Law (*Las Siete Partidas*). In this way, the text tried to conciliate tradition and modernity, constituting an original project that expressly intended to match the particular necessities of Chile at that epoch.¹⁶⁰ Despite Bello's undisputed authorship—he was the main drafter who worked for almost fifteen years in this task—the civil codification constituted a complex enterprise that involved an entire generation of lawyers-statesmen, including the President Manuel Montt. From 1831 to early 1850s, diverse parliamentary commissions debated the necessity and character of a civil code, and legal scholars published opinions and partial sections of legislative projects through the press.¹⁶¹ As the bill sent to the Congress shows, the enlightened legal elite saw in civil codification an opportunity to tightly adapt the chaotic law to “the living forms of social life.”¹⁶² Nonetheless, since this group was characterized by a particular zeal for institutional stability and order, the code also constituted a clear attempt to reshape quotidian social relations according to their cultural and economic preferences.¹⁶³

In the first place, the civil code reinforced the state's juridical authority through the preeminence of the statutory norms considered a formal “expression of the sovereign will.”¹⁶⁴ Following rationalist philosophy, this wiped out the legal force of customary law and doctrinal jurisprudence, which had dealt with complex social differences during the previous centuries. At the same time, the code denied any binding value to judicial precedents (*stare decisis*), limiting judges' adjudication via close formal rules of legal interpretation.¹⁶⁵ In so doing, the state bound judicial reasoning under Congress's authority as a way to promote legal certainty and courts' better performance.¹⁶⁶ Consequently, the code was determinant in shaping official legal culture characterized by juridical formalism and the worship to the legislation. Soon, local lawyers assumed that at least in theory, judges should mechanically apply abstract norms in statutes to concrete cases, working under the cannon of textual interpretation.¹⁶⁷ Clearly, such an approach echoed some aspects of Bello's original perspective on law, but it assumed an extreme view on it, impoverishing juridical reasoning in the next decades.¹⁶⁸ Toward 1889, the historian and legal scholar Miguel Luis Amunátegui Reyes explained: “it does not matter

¹⁵⁹ Matthew Mirow: *Latin American Law*. Op.Cit. p. 137.

¹⁶⁰ Alejandro Guzmán Brito: *Andrés Bello Codificador*. Op. Cit. pp. 391-431.

¹⁶¹ Pedro Lira Urquieta: *La Influencia de Bello y su Clasicismo en el Código Civil*. Santiago: Imprenta Walter Gnadt, 1933. pp. 31-35.

¹⁶² Andrés Bello: “Civil Code. Presentation of the Bill to the Congress” [1855]. In *Selected Writing of Andrés Bello*. Op. Cit. p. 270.

¹⁶³ Mauricio Tapia. *Código Civil. 1855-2005. Evolución y Perspectivas*. Santiago: Editorial Jurídica de Chile. 2005. p. 57.

¹⁶⁴ *Proyecto de Código Civil*. Santiago: Imprenta Nacional. 1855. p. 1.

¹⁶⁵ *Ibid.* pp. 1-3.

¹⁶⁶ Andrés Bello: “Civil Code. Presentation of the Bill to the Congress”. *Op. Cit.* p.285. Judicial decisions of the 1840s and the early 1850s indicate that judges enjoyed an important degree of flexibility in their reasoning until the very enactment of the civil code. Enrique Brahm: “¿Jurisprudencia Creativa? La Corte Suprema de Justicia, 1841-1860”. *Revista Chilena de Historia del Derecho*. No 16. 1990. pp. 555-566.

¹⁶⁷ Paulino Alfonso: *De la Interpretación de la Ley*. Santiago: Imprenta Cervantes. 1892.

¹⁶⁸ Andrés Bello: “Legislación” [1839]. In *Obras Completas de Andrés Bello*. Tomo IX. Santiago: Pedro G. Ramírez. 1885. p. 271.

if it is said [the law] is unjust, unfair or if it constitutes an absurd, since in any case it must be applied *sic scripta est* [as it is written].”¹⁶⁹

In the second place, the civil code fitted with a liberal economic paradigm embraced by the ruling group, which was spread by authors like the French Jean Gustave Courcelle-Seneuil, then professor of Political Economy at the Universidad de Chile School of Law.¹⁷⁰ The new body of civil legislation not only was aimed to achieve juridical certainty, but it also promoted the circulation of property, freedom of contract and formal equality, then seen as the engine for material progress.¹⁷¹ The code minutely regulated several aspects about tenure, burdens, and the transference of property, chiefly resorting to the model of rural land. To facilitate market economy, Bello’s oeuvre systematized the regulation of dominion, providing certainty and protecting vested rights.¹⁷² In this light, the code was coincidental to other statutes passed in the same direction during this period, such as the banning of land-entails (*mayorazgos*) that formerly kept vast rural estates in hands of one family member (usually through the rule of male primogeniture in inheritance).¹⁷³ Regarding contracts, the new legislation eliminate a broad set of restrictions to free will traditionally grounded in public morality, keeping only a couple of them related to the wrongful manifestation of consent. By the same token, invoking the ideal of legal equality, the text got rid of a myriad of juridical statutes present in Spanish legislation, such as the juridical privileges for Indians and the have-nots.¹⁷⁴

Finally, the civil code promoted specific forms of sociability, habitually portraying the traditional values and cultural practices embodied by the enlightened ruling elites and a rising middle class. In spite of the idea of legal egalitarianism that inspired its doctrinal basis at the economic realm, the code reinforced social hierarchies of the time. For instance, it privileged the matrimonial family, consolidating a complex typology of extramarital progeny originated in colonial law, with diminished or none familial rights.¹⁷⁵ Simultaneously, the code preserved the structure of patriarchal household, maintaining married woman under her husband’s civil coverture. Women would keep such a legal condition in the subsequent years, when the jurisdiction on marriage passed from the Catholic Church to the secular authorities.¹⁷⁶ Following Bello’s guide—who was particularly interested in the study and consolidation of the Spanish language—the code also favored the written culture although most of the population was

¹⁶⁹ Bernardino Bravo Lira: “Estudios de Derecho y Cultura de Abogados en Chile. 1758-1998”. Op. Cit. p. 596.

¹⁷⁰ See as example of Courcelle-Seneuil’s influence: Luis Vergara Donoso: *Observaciones al estudio de los principios del derecho del Sr. Courcelle-Seneuil*. Santiago: Imprenta El Estandarte. 1888.

¹⁷¹ Alejandro Guzmán Brito: *Andrés Bello Codificador*. Op. Cit. pp. 454-460.

¹⁷² Alejandro Guzmán Brito: *Andrés Bello Codificador*. Op. Cit. pp. 455.

¹⁷³ Ricardo Donoso: *Las Ideas Políticas en Chile*. Op. Cit. 166-169.

¹⁷⁴ The protection for minors and other persons in similar conditions to be restituted in all the acts and contracts subscribed by them (*restitutio in integrum*) constituted the most important contractual limitations abolished by the code. Andrés Bello: “Civil Code. Presentation of the Bill to the Congress”. In: *Selected Writing of Andrés Bello*. Op. Cit. p. 282.

¹⁷⁵ Also, Bello excluded from legal scope some practices that were well-spread within Chilean society by that time, such as the circulation of minors for labor and the extended family. Nara B. Milanich: *Children of Fate: Childhood, Class and the State in Chile. 185-1930*. Durham: Duke University Press. 2009.

¹⁷⁶ Hernán Corral Talciani: “La Familia en los 150 años del Código Civil Chileno”. *Revista Chilena de Derecho*. Vol. 32. No 3. 2005. p. 430.

illiterate (about 80% in the 1860s).¹⁷⁷ Thus, different rules barred testimonial proof of certain contracts, disposed written records to accredit tenure of land, and presumed the knowledge of legislation once it was published. These regulations constituted a watershed between citizens living according to legal institutions and who dwelled in an informal world. Likely, lawmakers knew about the high rate of illiteracy, but they estimated that the code's task was to establish a general law for citizens, not to deal with social marginality.¹⁷⁸

Although the preparatory works—and Bello himself—were very sparing about the ultimate reasons for its content, most elite lawyers conceded that the fundamentals of the civil code were more than a mere arrangement of juridical technique. In a kind of rudimentary understanding of rationalist legal philosophy, many of them tacitly agreed the code would have portrayed an enduring law that rose above politics. During the second half of the nineteenth century, there was a sort of consensus pointing out that rules in areas like freedom of contract and private property were necessary consequences of the moral character of some juridical values. For instance, in the cathedra of Legal Philosophy at the University section of the National Institute, the legal scholar Ramón Briceño presented law as a monumental normative system grounded in natural principles, whose general rules logically descended until shaping the concrete civil institutions in the code.¹⁷⁹ Briceño's book, one of the most popular texts in philosophy for juridical instruction in the 1870s, explained: 'Whatever is the form of government within a society; this always will recognize as fundamental laws of its political organization, these four laws [sic] that emanate from the great principle of sociability: security, freedom, equality and property. They are called laws of the civil society without which it can be thought the society exists, by the same way that for the physic world [...] are the natural laws of the matter [...]'¹⁸⁰ While that standpoint was wide spread, the final nature and the boundaries of this system were not issues of unanimous agreement, however.¹⁸¹

Bello's code was passed wholesale by the Congress, and got in force in 1857. It was highly-regarded by legal scholars in Latin America and Latin Europe as a fine piece of clarity, juridical technique, and judgment in crafting.¹⁸² By the year of its enactment, it was the first authentically original project of civil codification in Latin America that was not simply an adaptation of the French civil code of 1804. As such, it was also adopted entirely by Colombia, Ecuador, El Salvador, Honduras, Nicaragua, and Venezuela. It was also a substantial source for the codes of Argentina, Costa Rica, Mexico, Paraguay, and Uruguay.¹⁸³ After several reforms, it is today still in force, both in Chile and other countries. Unsurprisingly, the code initiated a trend of works devoted to comment

¹⁷⁷ According to the census of 1865, 1 of each 4.7 inhabitants who were more than seven years could read (21%). *Censo Jeneral de la Republica de Chile. Levantado el 19 de abril de 1865*. Santiago: Imprenta Nacional. 1866. p. 338.

¹⁷⁸ Alejandro Guzmán Brito: *Andrés Bello Codificador. Op. Cit.* pp. 465.

¹⁷⁹ Ramón Briceño: *Derecho Natural, o Filosofía del Derecho. Curso Compuesto para la enseñanza del ramo en la Sección Superior del Instituto Nacional*. Valparaíso: Imprenta del Mercurio de Tornero y Letelier. 1870.

¹⁸⁰ *Ibid.* p.180.

¹⁸¹ For an alternative to Briceño's view, grounded in Catholic doctrine, see: Rafael Fernández Concha. *Filosofía del Derecho o Derecho Natural*. 2 Vols. Santiago: Imprenta del Correo. 1877.

¹⁸² Raoul de la Gracerie: "Introduction". In *Code Civil Chilien*. Paris. Giard & E. Brière. 1896. p. 5.8-9.

¹⁸³ Matthew Mirow: *Latin American Law*. .Op. Cit. 137-140.

descriptively on its dispositions.¹⁸⁴ Later on, in the very end of the nineteenth century, a few legal scholars produced erudite legal commentaries imitating the great authors of the French Exegesis School, using European foreign doctrines to consolidate their scientific legitimacy.¹⁸⁵ The main of these works, Luis Claro Solar's *Explanations on the Chilean Civil Law* [1898], was broadly employed in other Latin American countries, where similar studies were published.¹⁸⁶ Nevertheless, it is likely the largest part of the elite, and rank-and-file lawyers were less prone to sophistication, keeping juridical reasoning within the margins of basic literal interpretation. Starting from a descriptive approach to the civil code provisions, legal culture seemingly lacked the delicateness of practical argumentation, appearing as rudimentary legalism.¹⁸⁷

As part of legal codification, other statutes completed the republican juridical restructuring. During a period of about forty years, the Congress enacted codes on commerce (1865), mining (1874), criminal matters (1874), organization of courts (1875), civil procedure (1902), and criminal procedure (1906).¹⁸⁸ By and large, they all strengthened the commitment to state's legal authority and free market economy prefigured in Bello's code. For instance, the regulation of judicial procedure reinforced legalism, establishing the writ of cassation (*recuso de casación*) which was aimed to correct lower courts' adjudication according to formalist criteria.¹⁸⁹ The commercial and mining codes laid the legal infrastructure of a dynamic internal market in which landed aristocracy, and the new businessmen interacted (particularly in the areas like mining, banking, and foreign commerce). So, for example, landowners could access to credit needed for an agriculture-oriented to exportation and, at the same time, raising bourgeoisie could invest their profits into the land property, moving upwards in status and social hierarchy.¹⁹⁰ By the 1880s, along the rise of the nitrates mining, elite lawyers

¹⁸⁴ Jacinto Chacón: *Exposición razonada y Estudio Comparativo del Código Civil Chileno*. Valparaíso: Imprenta el Mercurio. 1868. Miguel Elizalde: *Concordancias del Código Civil Chileno y el Código Civil Francés*. Santiago: Imprenta La Libertad. 1871. Vicente Sanfuentes: *El Código Civil de la Republica de Chile Anotado*. Santiago: Imprenta La Estrella de Chile. 1875.

¹⁸⁵ For a synthesis see, Ramón Domínguez Águila: "La influencia de la doctrina francesa en el Derecho Chileno". In *De la Codificación a la Descodificación*. Santiago: Facultad de Derecho. Universidad Diego Portales. 2005. pp. 61-80. Diego López Medina: "The Latin American and Caribbean legal tradition". In Mauro Bussaini, Ugo Mattei: *The Cambridge Companion to Comparative Law*. New York: Cambridge University Press. 2012. p. 354.

¹⁸⁶ Luis Claro Solar: *Explicaciones de Derecho Civil Chileno y Comparado*. Vol. 1. Santiago: Establecimiento Poligráfico Roma. 1898. Diego López Medina. *Teoría Impura del Derecho. La transformación jurídica latinoamericana*. Bogota: Universidad de los Andes. 2004. pp. 129-145. Regarding Ecuador see: Luis F. Borja: *Estudios sobre el Código Civil Chileno*. 6 Vols. Paris: A. Rogers y F. Chernoviz. 1901.

¹⁸⁷ Carlos Peña: "Hacia una caracterización del ethos legal: de nuevo sobre la cultura jurídica chilena". In Agustín Squella, et al. (eds.): *Evolución de la cultura jurídica chilena*. Santiago: Corporación de Promoción Universitaria, 1994. pp. 75-76.

¹⁸⁸ Bernardino Bravo Lira: "La Codificación en Chile (1811-1907) Dentro del marco de la codificación europea e hispanoamericana". *Revista de Estudios Histórico Jurídicos*. Op. Cit.

¹⁸⁹ Tomás Ramírez Frías: *El recurso de casación en el fondo y las cuestiones de hecho en los juicios*. Santiago: Imprenta Cervantes. 1904. pp.5-6.

¹⁹⁰ Arnold Bauer: *Chilean Rural Society*. Op. Cit. pp. 87-116.

became important agents in this interplay, establishing some small law firms to acts as brokers and advocates.¹⁹¹

Besides establishing statutory architecture, the gentlemen politicians of law were reasonably accomplished in expanding the judicial service and in spreading legal knowledge to the rest of society. The republican state slowly laid the foundations of the judiciary, which began to acquire a relatively definite shape along the strengthening of the central government. An elementary judicial structure composed by higher tribunals (the Supreme Court and three courts of appeal), few magistrates of district and lay local judges consolidated its functioning during the 1840s.¹⁹² In this, higher courts and lettered magistrates exerted surveillance on lay judges at bottom up, whose labor was usually featured by obscure territorial limits and “bad judicial performance.”¹⁹³ By 1875, a more systematic legislation would regulate the organization of tribunals, authorizing the Executive to found new law courts, among other subjects.¹⁹⁴ Accordingly, an important process of expansion of the judiciary would reach its peak by the Pacific War (1879-1884) and the following years, particularly when President Balmaceda’s administration set up one law tribunal in each territorial department (1888) and established three additional courts of appeal.¹⁹⁵ Although the growth of judicial services unquestionably implied a big step forward in terms of the state’s institutional capability to further social ordering, there is no comprehensive evidence about how this process of judicial expansion reshaped quotidian life of citizens through civil and criminal litigation.¹⁹⁶

By the same token, elite lawyers smoothly arranged their own means to disseminate juridical knowledge and to legitimate their professional role. As we will see in the next chapter, an increasing number of law students, trained in a new curriculum,

¹⁹¹ According to De la Maza, some of the first de facto law firm were established since 1880, remaining as successful and prestigious settings of legal practice. Such are the cases of law firms like Claro (1880), Arturo Alessandri’s office (1893), and Carey (1905). Iñigo De la Maza: *Los abogados en Chile: desde el Estado al mercado*. Op. Cit. pp. 14.

¹⁹² Both the Constitution of 1823 that established the Supreme Court of Justice and the first statutes on the judicial organization (1824) assumed that the legal procedure of the colonial period remained in force. Meanwhile, the Constitution of 1833, which briefly provided some guideline on the Judiciary, endorsed the principle of judicial independence and commanded the enactment of new statutes on courts’ organization. Until the mid-1870s, most legislation on this topic only dealt with particular aspects of the judicial procedure and structure, such as the criminal process (1826) and the way by which judges must justify their decisions (1836). Armando de Ramón. *Las Justicia Chilena entre 1875 y 1924*. Santiago: Universidad Diego Portales. 1989. pp. 12-13.

¹⁹³ Adjudication was dominated by lay justices at trial level, and a poorly detailed territorial competence of judges implied the necessity of resolving conflicts of jurisdiction and a permanent surveillance to rectify “bad judicial performance”. Pauline Bilot: “Construyendo un Esquema de la Administración de Justicia. Fuentes, Método y Resultados. Chile, Siglo XIX.” *Historia y Justicia*. No 1. 2013. pp. 1-27. Pauline Bilot: “Las causas por torcida administración de justicia: miradas letradas hacia prácticas legas en Chile: 1824-1875”. *SudHistoria*. No 5. July-December 2012. pp. 99-123.

¹⁹⁴ Manuel E. Ballesteros: *Ley de Organización i Atribución de los Tribunales de Chile*. 2 Vols. Santiago: Imprenta Nacional. 1890.

¹⁹⁵ Armando de Ramón. *Las Justicia Chilena entre 1875 y 1925*. Op. Cit. pp. 14-15.

¹⁹⁶ Perhaps, criminal punishment constitutes the only area in which there is some quantitative analysis about the transformation of judicial practice in Chile at this period. There is enlightening evidence about how new liberal legislative criteria, applied by lettered courts, influenced the expansion of some basic standard of due process (but keeping criminal punishment as a relevant tool of social discipline on subaltern population). Víctor Brangier: “Justicia Criminal en Chile, 1842-1906 ¿Debido Proceso o Contención Social?” *Sociedad & Equidad*. No 1. 2011. pp. 1-8.

raised the ratio of lawyers per inhabitants at the turn of the twentieth century and carried on the first attempts of the corporative organization.¹⁹⁷ Meanwhile, the legal elite would consolidate a kind of canon, founding some reports and journals where it descriptively commented on judicial decisions and published its works: the *Gaceta de Los Tribunales* (1841) *Revista de Derecho y Jurisprudencia* (1903). Furthermore, they dabbled in humanities or biographies to praise the builders of the legal system, which become models of for the subsequent generations of law graduates.¹⁹⁸ Finally, through handbooks devoted to spreading familiarity with statutes, it was able to feed a popular understanding of the official law, particularly among the literate population in urban areas. This transmission of the juridical knowledge, from lawyers to the lay public, would be a critical part of its function of social ordering, ingraining legislation in a country where statutes still are sold on the streets.¹⁹⁹

Ultimately, all these efforts to advance social ordering through law set up an interpretive community within the upper strata of lawyers. A particular legal culture emerged along with codification, the expansion of judicial services and the dissemination of juridical knowledge made a true *esprit de corps* among them. At the juridical realm, elite lawyers would develop a common epistemological basis portrayed by formalism and procedural consistency. In addition, at least until the turn of the twentieth century, the vast majority of them manifested preferences for the socioeconomic values embraced by legislation, which were related to aristocratic politics and market economy. Their ideals of order and stability, translated into legal institutions, were understood an integral part of the Republic.

Conclusion: Lauding Legal Mind

Since the middle of the nineteenth century, the ruling cadres used to describe a flourishing process of nation building. Through the press and official documents, they spoke about Chile as “a respectable exception of peace, stability, order and liberty [in Latin America].”²⁰⁰ Chile’s tranquility contrasted with the years of anarchy after the independence wars and also with the neighboring countries, seemingly plagued by autocracies and a weak enforcement of legal rules.²⁰¹ This self-representation reached its zenith at the end of the nineteenth century, particularly after a second military victory against Peru and Bolivia (1879-1884) and with the final territorial occupation of the Araucanía, in the 1880s. Such an account was extended and confirmed by numerous foreign testimonies of merchants, diplomats and some Argentinean intellectuals in exile, who presented a respectful view of local institutions. By the beginning of the twentieth

¹⁹⁷ Rogelio Pérez-Perdomo: *Latin American Lawyers. Op. Cit.* p. 86.

¹⁹⁸ Miguel Luis Amunátegui Reyes: *Don Andrés Bello y el Código Civil*. Santiago: Imprenta Cervantes. 1885. Alejandro Fuenzalida Grandón: *Lastarria i si tiempo (1817-1888). Su vida, obras e influencia en el desarrollo político e intelectual de Chile*. Santiago: Imprenta Barcelona. 1911.

¹⁹⁹ See as example: Ramón Chavarría Contardo: *Cartilla de Derecho Chileno para el uso de las Escuelas Primarias de Chile*. Santiago: Imprenta de F. A. Brockhaus. 1891. Amador Alcayaga, Eliodoro Flores: *Instrucción Cívica*. Santiago: Imprenta Minerva. 1917. Carlos Marín Vicuña: *Síntesis de Derecho Usual*. Santiago. Editorial Nacimiento. 1922.

²⁰⁰ Alejandro San Francisco: “‘Una excepción honrosa de paz y estabilidad, orden y libertad’. La Autoimagen Política de Chile durante el siglo XIX”. *Op. Cit.* p. 55.

²⁰¹ Simon Collier: *Chile. La Construcción de una República. Op. Cit.* pp. 197-201.

century, there was a widespread view among statesmen and foreign diplomats who recognized that “of all the Latin American states [Chile was] the one which best answers to the European and North American notions of a free constitutional commonwealth.”²⁰² Supported by the evidence, this auspicious picture of the nation building was much more than factual verification. Beyond the undeniable achievements of the Chilean State, as the historian Alejandro San Francisco has explained, the ruling group also deployed this account on Chile as a performative discourse to reinforce the international image of the country and its realization at internal level.²⁰³

Lawyer-statesmen, who were considered themselves key agents of the polity, assumed that triumphal depiction as their own. No without evidence, they alleged that legal institutions performed a critical role in the successful construction of the state and the nation. They offered legislative texts as the most immediate testimony. The well-regarded liberal legal scholar, Jorge Huneeus, for example, referred to public law as a setting where the elite can solve their differences. He underscored the state’s capability of adaptation, adding: “Whatever are the defects that it has, such as any human oeuvre, it should be recognized that under this constitution, our young Republic has prospered as no other among its sisters, reaching an eminent place among the most serious, the most learned and the best-organized nations. The Constitutional regime has so profoundly put down its roots in our soil that the rickety and weak plant of 1833 has become an entrenched and giant tree, whose branches give shelter to all the citizens who inhabit the fertile and enjoyable territory of Chile.”²⁰⁴ That celebratory view was even sometimes recognized by those who publicized acrid criticisms about the course of political development at the turn of the century. Hence, for instance, the lawyer and nationalist politician, Alberto Edwards Vives, characterized the constitution at the beginning of the twentieth century arguing that “On May, 25th of 1913, the Constitution of Chile will be eighty years old. It will be a beautiful anniversary for the Republic, since, during this extended period of time; its fundamental institutions have been something more than empty words on paper. The Charter of 1833, which has been consolidated by time and experience, is more than a piece of legislation; it is tradition, it is an integral part of our nationhood, a robust and immovable monument as the granitic mountains that protect our territory.”²⁰⁵

The triumphal praise of the constitution was also related to the complete institutional architecture. Actually, it was extended to all the centerpieces of the legal system, particularly the civil code. In 1898, Luis Claro Solar, an outstanding legal scholar, attorney and liberal senator, wrote in the introduction to his nine-volume commentary on civil law: “Indeed, the civil code means a real progress of the legislation. Considering the beautiful language, the accuracy, and clarity of its dispositions, the selection of its principles which are convenient for our sociability in different areas, its harmony, and coherence, few codes are similar, and none is superior. It has deserved to be received by Colombia, Ecuador, and other Latin American countries. And this

²⁰² Lord James Bryce: *South America. Observations and Impressions* [1912] Quoted by Simon Collier: “The Historiography of the Portalian period (1831-1891) in Chile”. *Op. Cit.* p.60.

²⁰³ Alejandro San Francisco: “‘Una excepción honrosa de paz y estabilidad, orden y libertad’. La Autoimagen Política de Chile durante el siglo XIX”. *Op. Cit.* pp. 55-85.

²⁰⁴ Jorge Huneeus: *La Constitución ante el Congreso*. *Op. Cit.* p. 55.

²⁰⁵ Alberto Edwards Vives: “La Constitución de 1833”. *Pacífico Magazine*. Vol. I. N° 5. May, 1913. p. 593.

reception is not by the triumph of weapons, as was the French code [...]”²⁰⁶ Scholars and lawyers reiterated these statements in handbooks and other academic works, which were used for legal education.²⁰⁷ Thus, the veneration of civil code—and the principles that this embraced—was reproduced. On the whole, legal elites posited several signs of synchrony between the legal system and the reality of the country, asserting the law constituted a building block for the republic’s life.

A complete picture of the legal politics at this period involves a complex set of issues beyond the scope of this research, such as the ways by which rural and the urban poor reacted about the established legal system. The account presented here only offers a way to comprehend the place of law and the legal profession for the cohesive ruling group that forged the image of the nation. For this group, the significance of the law went beyond a common professional expertise in statesmanship, or a civic architecture manifested through legislative texts. Over time, the law also became a very elementary conceptualization of a higher and enduring moral arrangement, that embraced legal ideals of certainty, procedural consistency and the substantive values embodied by the political practice itself (e.g. legal restraint of political power, juridical formalism, and protection of property). The discourse on the law as a superior form of governance matched the zeal for order and stability that obsessed ruling group, providing legitimacy to the concrete juridical organization as well. Lawfulness became a symbolic label to portray the elite’s political compromise, backing the juridical frameworks devoted to arbitrate political divergences and to mold society. The governmental elite raised this conception to an expression of the particular national character and the institutional capacity of the state.

As in Bello’s epigraph at the beginning of this chapter, so was for the ruling group, the law was the materialization of the Republic, the “true homeland” where unity and order were established. The expression “*Por la Razón o la Fuerza [del Derecho]*” (By the reason or the force [of the law]), included in the national badge about the 1840s, depicts how deep lawfulness became ingrained in the official narrative and its symbolic-culture.²⁰⁸ This expression, whose origins were in the Spanish tradition, illustrates one of the ways by which law provided a set of beliefs about the community and established a genealogy about the polity’s origins: a country that had embraced a the rule of law to lay down the foundations of state.²⁰⁹

Elite lawyers emerged as the builders of a republic understood as a juridical construction, in a subtle interplay between the upper strata of the state and the legal system. The rhetoric and ceremonial deployed at the Institute of Lawyers of Santiago (1915), quoted at the beginning of this chapter, sum up several decades of politics dominated by law graduates. As the Chairman of the said association pointed out:

²⁰⁶ Luis Claro Solar: *Explicaciones de Derecho Civil Chileno y Comparado* [1898-1927]. Tomo 1, Volumen 1. Santiago: Editorial Jurídica de Chile, 1992. p. 21.

²⁰⁷ José Clemente Fabres: *Instituciones de Derecho Civil Chileno*. Valparaíso: Imprenta del Universo de G. Helfmann. 1863. Jacinto Chacón: *Esposicion razonada i estudio comparativo del Código Civil Chileno*. Op. Cit. Arturo Alessandri Rodríguez, Manuel Somarriva Undurraga: *Curso de Derecho Civil, basado en las explicaciones de los profesores de la Universidad de Chile*. Edition by Antonio Vodanovic. Volume I. Santiago: Nascimento, 1945. Vicotorio Pescio: *Manual de Derecho Civil*. Tomo I. Santiago: Editorial Jurídica, 1961.

²⁰⁸ Bernardino Bravo Lira. *Por la razón o La Fuerza...* Op. Cit. p. 16.

²⁰⁹ For a perspective on the rule of law as a set of beliefs on community see, Paul Kahn: *The Cultural Study of Law*. Op. Cit. p. 36

The enlightenment of lawyers in all the areas of public administration, which undoubtedly is the broadest one can access in the national universities; the hunger of scholarship that this enlightenment awakes; [...] the experience acquired through the management of a variety of professional business; [...] place the lawyer at the first line of the social hierarchy, among the most skillful and well-trained elements to intervene in the management of the public affairs and the government of the nation. In the law firm, jurists and statesmen are trained[...]²¹⁰

Ultimately, elite lawyers appealed to statesmanship and a civic mission as the elements that defined the liberal legal profession. Beyond the confirmation of their role in state-crafting, such a claim constituted a way to enhance their authority and expertise in public affairs, consolidating a privileged place within the polity that they forged.

²¹⁰ *Sesión Inaugural. Instituto de Abogados de Santiago. Op. Cit. p. 9.*

Chapter 2

Reframing the Place of Law in Public Governance: Legal Elites and the Advancement of the Administrative State

Indeed, the Chilean legislation has grown enormously since 1920 [...] From that period, the social, administrative and tax legislation has hastily enlarged, and it is not possible to predict its decline [...] Its guiding criteria have been [...] the expansion of the State's functions and its administrative structures, the rising taxation and the purpose of a greater economic equality [...] To assess this transformation, we should consider that all the governments—whether right-leaning or left-leaning ones—have kept the path followed by the legislation from 1920 on. (Pedro Lira Urquieta: *El Código Civil y el Nuevo Derecho*, 1944).

Introduction:

Since the end of the nineteenth century, several social tensions began to emerge in Chile, provoking the first cracks in the aristocratic state that would end only with the beginning of a new political cycle by the early 1930s. By 1884, the physician and social thinker Augusto Orrego Luco described how poverty, high infant mortality, lack of housing and poor health conditions—among quite a few other matters—characterized the cities and slowly developed a “social question” that required urgent attention.¹ Public discontent and fiercely stifled revolts like the Valparaíso dockers’ walkout (1903) and the Santa Maria School’s slaughters (Iquique, 1907) gradually began to mirror the emergence of social conflict in cities and mining centers at the turn of the twentieth century. As a result, an increasing critique slowly came out throughout the entire political spectrum, from new left-leaning political movements, such as the Socialist Workers’ Party, to small factions of traditional groups, like the Radical, Liberal and Conservative cadres.² Accordingly, diverse politicians and intellectuals, including some few acute members of the aristocratic political elite, underscored their dissatisfaction with the promise of progress embodied by the liberal order. “It seems to me we are not a happy people,” pointed out the lawyer and statesman Enrique MacIver, who claimed that the country had more judges, fiscal incomes and schools than before, but that they had not been turned

¹ Augusto Orrego Luco: *La cuestión social*. Santiago: Imprenta Barcelona. 1884.

² There is a well-documented scholarship that describes the gradual emergence of the social question as a main issue of that time, influencing different political actors. See, as example, James Morris: *Elites, intellectuals and consensus. A study on the social question and the industrial relations system in Chile*. Ithaca: New York State School of Industrial and Labor Relations. Cornell University. 1966. Sergio Grez Toso: *De la regeneración del pueblo a la huelga general. génesis y evolución del movimiento popular en Chile. 1810-1910*. Santiago: Centro de Investigaciones Diego Barros Arana. 1998. Patricio Valdivieso: *Dignidad Humana y Justicia. La Historia de Chile, la Política Social y el Cristianismo. 1880-1920*. Santiago: Ediciones de la Universidad Católica de Chile. 2006.

into more justice or better levels of life.³ Such public concern progressively became a recurrent topic about 1910.⁴

Although the men of that time thought Chile's pitfalls were associated with deep causes, such as public morality, ethnic "decrepitude" or economic stagnation, the legal system built from the Independence onwards also became one of the targets of public disapproval.⁵ In popular literature and the press, some critiques were published, highlighting law's lack of awareness regarding the social question in the countryside and cities.⁶ "Our justice system is a putrid abscess that pollutes the air and makes the atmosphere unbreathable. It is harsh and inflexible for those who are on the bottom, soft and smiling with those at the top. Our justice system is rotten and must be cleaned out entirely [...]" the renowned poet Vicente Huidobro claimed in his *Patriotic Account* [Balance Patriótico], aimed to assess the first century of republican life.⁷

Meanwhile the pro-market civil code and the nineteenth-century legislation continued to herald the pride of most of the legal profession, this same kind of malaise came out among few legal scholars coming from middle class, who argued against the economic liberalism and individualistic approach to law. One of the main critics was Valentín Letelier, leader of the Radical Party, professor of administrative law and Chancellor at the University of Chile. Writing an article called *Los Pobres* [The Poor, 1896], he compared manual workers and the urban poor with the slaves of the slaves of the antiquity. So, he pointed out how modern juridical institutions reproduced the plebeian sign of Classic Roman Law, dissolving the legacy of patrician privileges and establishing an individualistic model of society that excluded low urban classes.⁸ However, his propositions stayed relatively marginal among law graduates and the ruling groups, at least by the beginning of the twentieth century.

As a result of social tensions and increasing dissatisfaction, the next decades would bring the breakdown of the aristocratic polity in which elite lawyers possessed a privileged access to state-crafting. Between 1924 and 1932, political turmoil and de-facto governments ended the former political cycle. During the subsequent decades, a new regime was established, being dominated by centrist middle-class politics and the electoral preponderance of urban population. This would be characterized by diverse pragmatic coalitions of parties aligned to organize democratic governments (*Estado de Compromiso*).⁹ At the programmatic level, the regime was supported by a wide social consensus built toward the advancement of the administrative state and its arbitration of

³ Enrique MacIver: *Discurso sobre la Crisis Moral de la República*. Santiago: Imprenta Moderna. 1900. pp. 5-6.

⁴ Cristián Gazmuri: *El Chile del Centenario, los ensayistas de la crisis*. Santiago: Instituto de Historia Pontificia Universidad Católica de Chile. 2001.

⁵ Ibid. pp. 17-20.

⁶ See, for example, Pedro Prado's realist novel *Un Juez Rural*, which presents a subtle criticism regarding the traditional molds of the formal legal system. Pedro Prado: *Un Juez Rural* Santiago: Editorial Nascimento. 1924.

⁷ Vicente Huidobro: "Balance Patriótico" [1925]. Quoted in Mario Góngora: *Ensayo sobre la Noción de Estado en Chile...* Op. Cit. pp. 116.

⁸ Valentín Letelier "Los Pobres". In *La Ley*. Órgano del Partido Radical. No 483. 1896. Reproduced in *Anales de la Universidad de Chile*. No 105. 1957. Op. Cit. pp.137-144.

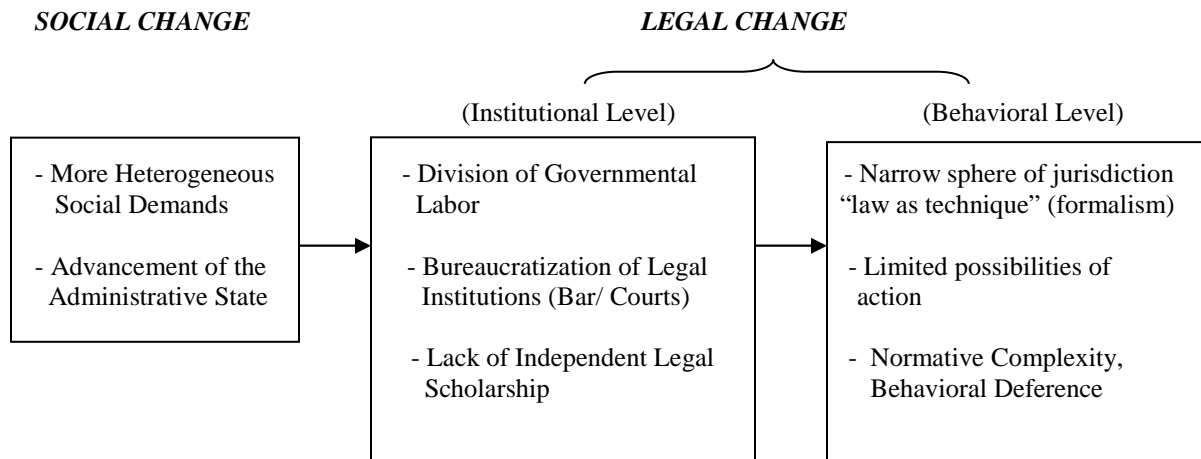
⁹ Timothy R. Scully: *Rethinking the Center: Party Politics in Nineteenth and Twentieth Century Chile*. Stanford: Stanford University Press. 1992. Arturo Valenzuela: *The Breakdown of Democratic Regimes: Chile*. Baltimore: The John Hopkins University Press. 1978. pp. 3-22.

conflicts among diverse groups of interests. Instead of the nineteenth-century laissez-faire, this regime attempted to build institutional capacity for social welfare, economic protectionism and the industrialization of the economy through public owned corporations.¹⁰ As expected, such a setting would challenge the place of law graduates in governmental practice.

This chapter explores in what way the legal profession was transformed by that sociopolitical change. Relying upon available datasets on the ruling cadres, archival materials at the Chilean Bar Association, and secondary literature, this chapter is concretely aimed to explain a) how the elite legal profession lived a deep process of social diversification and specialization in which it re-oriented its political role, impoverishing the networks between the state and the legal field; and b) how, due to an institutional dynamic of bureaucratization, legal institutions and expertise became relatively inconsequential in addressing some of the challenges of this period.

Figure 2.1.

The redefinition of law within public governance: An institutional dynamic.



As *Figure 2.1* illustrates, this chapter proposes that this new phase in the process of modernization—characterized by competitive politics and a more complex set of social demands—implied an arrangement of the governmental practices of gentlemen politicians of law. Borrowing from Max Weber, we could assert that the Chilean polity shifted from the control of a cohesive aristocratic elite with a common patrimonial ground to a new kind of regime that needed to arbitrate conflicts among more heterogeneous social actors and to provide material welfare. In brief, a new sociopolitical landscape pushed for a rearrangement of the juridical system and the place of lawyers in public affairs. While the elite resorted to broad legal training as a venue to professionalize statesmanship during the previous period, the new regime required the specialization of the legal profession

¹⁰ Alfredo Ibáñez Santa María: *Herido en el Ala. Estado, Oligarquías y Subdesarrollo. Chile 1924-1960*. Santiago: Universidad Andrés Bello. 2003.

and the differentiation between law and other disciplines, like electoral politics and economic regulation.¹¹

The already identified double agency of elite lawyers (state field/legal field), acquired a new physiognomy during the *Estado de Compromiso*. The previous unity of the elite legal profession that used to act simultaneously in different realms, bit by bit yielded to highly specialized politicians focused in partisan life, low profile in-house attorneys, politically passive judges, or other professions acting inside the public sphere. Hence, the elite legal profession progressively was transformed from a liberal and learned activity that carried a civic commitment to be formally incorporated into a lower stratum of the administrative state. To explore this process of decoupling of the state and the legal field, it is not enough to simply count the number of law graduates in Congress or the cabinets of ministers but to conduct an in-depth study of their profiles. For that purpose, this chapter relies on a quantitative analysis to measure their accumulation of posts and influence in each one of these spheres, tracing the evolution of the elite lawyers' authority in public governance.

Additionally, this chapter argues that due to the political conditions under which this process of division of governmental labor occurred, the legal profession lost its prior authority in public governance. Along the advancement of the administrative state and the strengthening of the Executive power, legal institutions—particularly the courts and the bar—became bureaucratic organizations characterized by a deferential behavior. Thus, in a kind of path dependence dynamic, they would reframe the law as a technique featured by an unsophisticated juridical formalism. Accordingly, elite lawyers who pretended to speak in the name of the legal science and rely upon generalist juridical expertise, were gradually deprived of their prestige and influence. Because of their narrow definition of their sphere of jurisdiction, their possibilities of action decreased as the time went by, and they were unable to participate fruitfully in public deliberation or to resort to the law as a setting of contestation. Given that, this chapter ultimately proposes that these transformations constituted the prelude of the debates about the legal crisis delivered from the 1960's onwards.

The chapter unfolds as follow. First, it presents an outline on the emergence of the administrative state, describing its origins and political features. Second, it offers a detailed analysis on how such a new regime is associated with the increasing division of governmental labor and bureaucratization of the legal institutions, ending up with the dominance of the gentlemen politicians of law. To explore this shift, the chapter draws its attention on the traditional forums of politics (Congress, cabinets, administrative agencies), the organized bar, and courts. Third, it turns to explain the steady behavioral deference of legal institutions, particularly in areas such as executive legislation, administrative accountability, and political repression. Finally, it describes how law graduates tried to react to their progressive loss of power, but reaching negligible results in its attempts to upgrade juridical expertise and to participate in public governance.

¹¹ Max Weber: *Economy and Society*. Op. Cit. pp. 775-776. 1404. Terence C. Halliday: *Beyond Monopoly: Lawyers, State Crisis, and Professional Empowerment*. Op. Cit. pp. 25-26.164.

The Social Foundations of the Legal System (1932 -1960)

Literature about the period between the 1930s and the early 1960s, which constitutes the main focus of this chapter, almost unanimously identifies these years as a new regime characterized by the political cooperation built toward the prevalence of emerging middle-class sectors and the advancement of the administrative state (*Estado de Compromiso*).¹² Although some of the foundations of the regime, such as the enactment of a new political constitution (1925), would appear before those years, only by the mid-1930s we can note the clear beginning of a new political cycle. From an analytical standpoint, we can see that the *Estado de Compromiso*—as such a state-centered political consensus—portrays both a continuity and a break with the former model of republican life. In the long term, comparative studies have shown that this was linked to a previous capacity of the Chilean central state in the Latin American context. As Mark Kurtz’s research has shown, by the beginning of the twentieth century, Chile possessed significant institutional strength in areas like tax collection, public education and war efforts.¹³ However, even when some elements of such an institutional capability could be traced well back in time, the most immediate antecedents of the new regime should be found at the emergence of the social question and the political turmoil that brought to an end to the previous aristocratic polity.¹⁴

Since the first years of the twentieth century, but particularly from about 1920, there were diverse efforts to deal with social conflict, such as the different drafts for a Labor Code written by liberal or conservative politicians inspired in Catholic social thought.¹⁵ The Executive, headed by the reformist liberal lawyer Arturo Alessandri, constituted one of the main proponents of this kind of projects of social reform in areas like mandatory education, labor law, and taxes.¹⁶ Nevertheless, the elite at the Congress

¹² Although the scholarship disagrees about the exact dates in which the regime began (1932 or 1938) and ended (1958 or 1964), it coincides in the description provided here for this period. See as example: Gonzalo Vial Correa: “Decadencia, Consensos y Unidad Nacional en 1973”. *Dimensión Histórica de Chile*. No. 1. 1984. pp. 140-162. Alfredo Ibáñez Santa María: *Herido en el Ala*. Op.Cit. Mario Góngora: *Ensayo sobre la Noción Estado de Chile durante los siglos XIX y XX*. Op. Cit. pp. 121-126. Tomás Moulian: “Desarrollo Político y Estado de Compromiso. Desajustes y Crisis Estatal en Chile”. *Estudios Cieplan*. No. 8 1982. pp. 105-158. Manuel Antonio Garretón: *El Proceso Político Chileno*. Santiago: Flacso. 1983. pp. 21-38. Julio Faúndez: *Democratization, Development and Legality*. Op. Cit. pp. 77-146.

¹³ Marcus Kurtz: *Latin American State Building in Comparative Perspective. Social Foundations of Institutional Order*. New York: Cambridge University Press. 2013. pp. 66-94.

¹⁴ *Ibid.* pp. 139-150.

¹⁵ The social legislation enacted during the previous period was scant and limited to some particular statutes passed at the very end of the parliamentarian regime: Law on Dominical Breaks (1907); Law N° 2.977 on Holidays Days (1915); Law N° 2.951 on Chairs for Employees and Oeuvres (1915); Law N° 3.170 on Labor Accidents (1916); and, Law on Infant Daycares for Women Workers (1919). See: Moisés Poblete Troncoso, Óscar Álvarez Andrews: *Legislación Social Obrera Chilena*. Santiago: Imprenta Santiago. 1924. Regarding the projects of labor code see: *Proyecto de Legislación Social del Trabajo presentado por los senadores conservadores y actualmente en discursos de don Juan Enrique Concha S.* Santiago: Imprenta Chile. 1921. For Alessandri’s governmental project, which was elaborated by Moisés Poblete Troncoso, see. *Boletín de la Oficina del Trabajo*. No. 17. 1921. For the parliamentarian debates on the Projects of Labor Code see Juan Carlos Yáñez Andrade: *La Intervención Social en Chile y el Nacimiento de la Sociedad Salarial. 1907-1932*. Santiago: RIL, 2008. pp. 236-244.

¹⁶ Rene Millar Carvacho: *La Elección Presidencial de 1920. Tendencias y Prácticas Políticas en el Chile Parlamentario*. Santiago: Editorial Universitaria. 1981. pp.138-140.

blocked several of these initiatives, generating great political frustration among working and middle classes.¹⁷ By September of 1924, a group of young military officers who supported some of Alessandri's projects exerted pressure on the Congress to pass labor legislation, and began the organization of a coup. Although Congress finally passed those bills, Alessandri did not answer the military call to dissolve the legislature. Instead, he went into a self-imposed exile of six months, leaving power to a military junta that finally dissolved the Congress.¹⁸ Despite he came back for a brief period to finish his term in 1925, promoting the enactment of a new constitution that strengthened the Executive authority, he finally resigned, facing the inability to exert control over the military.¹⁹ After a brief puppet government supported by the Army, the power was directly assumed by Colonel Carlos Ibáñez, former secretary of defense and the main rebellion leader (1927). Heading a government characterized by harsh political repression, Ibáñez initiated a deep process of national reorganization, attempting to deal with the social question through the enactment of a Labor Code (1931) and laying the foundations of the administrative state. Following some years of administrative success, political instability was aggravated by the economic collapse provoked by the sudden decrease in the demand for saltpeter—the most profitable activity of the country by the beginning of the twentieth century—and, afterward, by the Great Depression.²⁰ Ibáñez was overthrown by popular demonstrations in 1931, and the country began a new period of extreme political unsteadiness, in which several de-facto governments—including a brief socialist republic—ruled the country during the subsequent year.²¹ The described period of political instability only finished with the re-election of Alessandri to the presidency in 1932, beginning a new cycle of democratic normalcy.

Although one cannot properly speak about the *Estado de Compromiso* before the thirties, it is needed to clarify that the ascension of middle classes and the new cycle of institutional building was a gradual process. Both the political constitution and the establishment of many of the public agencies described in this chapter dated back to the mid-1920s. They would be consolidated after 1932, and become the core of a set of political practices that dominated a stable new regime in Chilean politics during almost three decades.²² For descriptive purposes, the *Estado Compromiso* could be explained taking into account three distinctive elements: (a) the preeminence of middle-class actors that led political competition, organizing alliances that answered to urban constituencies; (b) the substantive consensus about the policies of a welfare state, particularly on the

¹⁷ The causes of the parliamentarian obstructionism regarding social legislation are not intuitive, at least during the early-twentieth century. Lawmakers' filibusterism should not be identified as a mere strategy of contention politics but also as an expression of political behaviors associated with short-terms ballots in a context of competitive politics. Gertrude Matyoka Jaeger: "Obstructionism in the Chilean Senate: 1920-1924. A Study of Legislative Behavior." *Revista de Historia de América*. No 84. (Jul- Dec. 1977). pp. 111-134.

¹⁸ Mario Góngora: *Ensayo sobre la Noción de Estad en Chile...* Op.Cit. pp. 55-61.

¹⁹ The text was passed through a binding plebiscite with an abstention of about the 50% of the population. Likewise, the main political parties opposed due to a disagreement on the regulation of the presidential government and the procedure to approve the text. Once the democratic normalcy was reestablished in 1932, however, the Constitution was not called into question and enjoyed a broad political support. Julio Faúndez: *Democratization, Development and Legality*. Op. Cit. pp. 72-73.

²⁰ Mario Góngora: *Ensayo sobre la Noción de Estad en Chile*. Op. Cit. pp. 62- 87.

²¹ *Ibid.* pp. 97-112.

²² Julio Faúndez: *Democratization, Development and Legality*. Op. Cit. p. 73.

expansion of social services and the protection of national industry; and (c) the compromise about different institutional arrangements aimed to implement this new set of policy preferences, above all, the supremacy of presidential authority and the neutrality of the state as arbitrator of conflicts between diverse groups of interests.

First, the *Estado de Compromiso* was built on the predominance of middle-class politicians who answered to increasingly relevant urban constituencies (e.g. civil service officers, minor bourgeoisie, middle-level workers). Although taken as a whole the population grew at a slow pace until the 1960s, the steady urbanization of the country collaborated in the emergence of this new political regime, converting cities in important places of electoral competition and mobilization.²³ From 1932 to 1958, governments were organized by pragmatic alliances dominated by parties with strong urban support. The Executive and the Congress usually were controlled by parties that occupied the center of the political spectrum and interacted with other actors to the left and the right, in a perpetual process of bargaining aimed to satisfy partially constituencies' demands in areas like prices and salaries fixing. For instance, some factions of the leaning-right Liberal Party negotiated with the left and the radical cadres to bring Arturo Alessandri to the Presidency for a second time (1932-1938). Likewise, the Radical Party alternatively maneuvered between socialist-communist support (Popular Front) and the political right to reach the Presidency in three consecutive times. Thus, in a watershed election in 1938, the radical candidate Pedro Aguirre Cerda defeated the liberal businessman Gustavo Ross, promoting deeper social democratic welfare policies. Hereinafter, and for the next fifteen years, radical administrations became the cornerstone of a pragmatic regime dominated by middle-class sectors (1938-1952). Although less linked to traditional political practices, something similar could be said about a multi-class populist alliance formed by the leaning-right Agrarian Labor Party and the Popular Socialist Party, which successfully supported Carlos Ibáñez as a presidential candidate (1952-1958). Thus, the prevalence of this pragmatic political behavior generated a centrifugal dynamic that characterized all that period till the mid of the 1950s.²⁴

At the social level, however, the emergence of the new regime went beyond a smooth demographic shift influencing electoral competition. Through its initial institutional capacity, the administrative state was able to exert influence and to incorporate social groups to the state's apparatus. The policies regarding labor and business organizations make clear the point. The state exercised surveillance and limited labor unions, delaying and controlling their process of mobilization in comparison to other Latin American countries.²⁵ Legislation passed during the 1920s and 1930s required state licensing for workers' unions, and organized a system of bargain and settlement of labor conflict that was closely controlled by administrative and judicial authorities.²⁶ At

²³ Carlos Hurtado Ruiz-Tagle. *Concentración de Población y Desarrollo Económico. El Caso Chileno*. Santiago: Instituto de Economía. Universidad de Chile. 1966. pp. 79-124.

²⁴ Timothy R. Scully: *Rethinking the Center: Party Politics in Nineteenth and Twentieth Century Chile*. Op. Cit. pp. 89-135.

²⁵ David Collier, Ruth Berins Collier: *Shaping the Political Arena: Critical Junctures, the Labor Movement and Regime Dynamics in Latin America*. University of Notre Dame Press. 2002. pp. 8. 16-17.

²⁶ The Labor Code, enacted in 1931, was written after several statutes on industrial relations passed since 1924 onwards. The new labor legislation established several institutional tools to control labor unions, such as an administrative agency in charge of enforcing regulations on employment, a procedure of settlement for collective conflicts, and ad-hoc tribunals at trial and appellate level. For a complete view on this issue,

the same time, labor regulations distinguished between manual workers, private employees and state staff, fragmentating labor organization. Meanwhile, in a process of political negotiation leading to foster national industry, the state kept labor unionization outside agriculture in the countryside. In the late thirties, however, a national labor organization (Chilean Workers' Federation) publicly played a significant role supporting Pedro Aguirre Cerda's electoral candidacy, being rewarded with a seat in the National Development Corporation's board in 1940 (CORFO). After internal divisions, the labor movement remained relatively demobilized at a national scale.²⁷ Only in 1953, a more politically active workers' confederation would emerge (CUT, *Central Unica de Trabajadores*). This, dominated by socialist and communist cadres, became a critical piece in the political conflict from the end of the 1950s onwards.²⁸ Because of statutory regulations, the emergence of workers as important political agents was a state-controlled and gradual process during most of this period.

The new regime also was able to get business collaborated with state action. Most corporations were organized in autonomous and private federations created from the nineteenth century on. These associations constituted spaces where economic elite could socialize to advance business and to acquire information. Such were the cases of the National Society of Agriculture (SNA, 1838), the National Society for Industry (SOFOFA, 1884), and the National Society of Mining (SONAMI, 1883), among others. Nevertheless, since the years of political turmoil at the end of the 1920s, businessmen invested additional resources in their organizations as a way of counterbalance labor pressures and left-leaning reformist policies. In 1933, the most important business associations founded the Confederation of Industry and Commerce (CPC), which was aimed to coordinate the highest level of business politics to face a wave of projects of reforms. After a complex compromise to pass legislation on state industrial planning in 1939, business associations agreed to collaborate with this new set of economic policies. CPC obtained a seat on the board of the National Industry Corporation's (CORFO), such as labor union confederation did. From then on, the CPC exchanged their obstruction to state intervention for incorporation into the rising public bureaucracy.²⁹ In this way, CPC consented to regulatory surveillance but pushed for their participation and some degree of isolationism from explicit partisan control. Businesses were well represented in economic public agencies, developing a kind of cooperative capitalism in which they possessed privileged—but not determinant—access to policy making.³⁰ Since their representation in administrative agencies was enough to calm down their apprehension on reformist

see Hugo Frühling: *Law in Society: Social Transformation and the Crisis of Law in Chile 1830 – 1970*. Cambridge.: Unpublished S.J.D. Dissertation. Harvard Law School. 1984. pp. 112-158.

²⁷ Collier, Ruth Berins Collier: *Shaping the Political Arena: Critical Junctures, the Labor Movement and Regime Dynamics in Latin America*. Op. Cit. pp. 168-170. Marcus Kurtz: *Latin American State Building in Comparative Perspective*. Op. Cit. pp. 143-144.

²⁸ Disappointed by the politics of compromise, the Socialist Party, and other left-leaning groups chose a more radical style of political action since the early 1950s. This alternated electoral competition with intense mass mobilization, particularly within labor unions. Paul W. Drake: *Socialism and Populism in Chile. 1932-1952*. Urbana: University of Illinois Press. 1978.

²⁹ Ben Ross Schneider: *Business Politics and the State in Twentieth Century Latin America*. New York: Cambridge University Press. 2004. pp. 152-154.

³⁰ Marcelo Cavarozzi: *The Government and the Industrial Bourgeoisie in Chile. 1938-1964*. Ph.D. Dissertation. Political Science. University of California Berkeley. 1975. pp. 198-200.

politics of the late thirties, their mobilization remained relatively dormant for the next two decades, until a new dynamic of political turmoil began.³¹

In some sense, the incorporation and surveillance of labor and business politics reflected state ability to moderate social demands. Specialized politicians and administrative technocrats inside bureaucracy constituted dominant actors of the regime. Through public institutional capacity, they achieved the control and/or cooperation of diverse groups of interests, arbitrating conflicts on policy-making and public micro-management. Meanwhile, labor and business unions were able to integrate some of their representatives as brokers within the state machinery. Such a convergence was a key element of the centripetal political dynamic, which constituted a stable social foundation of the new regime until the late 1950s.

The broad agreement toward welfare policies constituted a second feature of the *Estado de Compromiso*. Along with the rise of a pragmatic style of government, there was a state centered consensus focused on two subjects: (a) the provision of public services as a guarantee of some basic socio-economic rights, and (b) the protection of the national industry and the state's entrepreneurial activity as a strategy of development. Although in the long-term, this compromise about state's goals can be clearly appreciated, it is needed to indicate that this was a gradual adjustment with diverse phases. At the same time, this consensus was detrimental for some social actors with less ability to exert political pressure, such as rural workers, whose labor was did not enjoy a full legal protection.³²

Since the enactment of the new constitution of 1925, the earlier phase of this political consensus was oriented toward expanding state services to satisfy socio-economic rights, which seemed the most urgent needs of the country at the beginning of this new political cycle. As a matter of fact, the new clearly meant a turn in the understanding of social rights and the state's role. In José Guillermo Guerra's words—one of its main drafters—the new text implied the assertion of the “principles of health socialism within the State, leaving behind the individualism of the constitution of 1833”.³³ For instance, its text went on to say that the state assured “the protection of labor, industry and the works of social welfare, especially regarding the healthy dwelling and economic conditions, in the way to provide to each citizen a minimal level of wellbeing according to his personal and familial necessities.”³⁴ Such a provision was understood as an foundational purpose of the polity, which slowly built institutional capacity to advance welfare policies.³⁵ So, after passing regulations on charities or semi-public entities in the 1920s and 1930s, the state instituted several administrative agencies

³¹ Ben Ross Schneider: *Business Politics and the State in Twentieth Century Latin America*. Op. Cit. p. 155.

³² Julio Faúndez: *Democratization, Development and Legality*. Op. Cit. pp. 88-94.

³³ José Guillermo Guerra: *La Constitución de 1925*. Santiago: Barcells.1929. p. 140.

³⁴ Art.10 number 14. *Constitución de la República de Chile. Promulgada el 18 de Septiembre de 1925*. Santiago: Editorial Universitaria. 1925. pp. 10-11.

³⁵ Although the new constitution established a procedure for judicial review (*recurso de inaplicabilidad por inconstitucionalidad*), the concrete manifestation of socio-economic rights was not materialized through judicial enforcement since courts were passive in this field. Lisa Hilbink: *Judges beyond Politics in Democracy and Dictatorship*. Op. Cit. p. 66.

in charge of directly providing social services in areas like health, public instruction, and housing.³⁶

To advance the expansion of the welfare state, the new regime gradually established significant burdens on private property and limited the freedom of contract.³⁷ Hence, inspired by new legal doctrines, the constitution of 1925 declared that private property must support the limitations required for “the maintenance and progress of the social order [...]”³⁸ Resorting to the quoted provision, the polity subtly dealt with issues such as the increasing taxation to afford the aforesaid bureaucratic expansion.³⁹ At the same time, in the logic of guaranteeing a minimal level of life, the state established agencies to control internal markets and to eschew scarcity of critical goods. The most important of these was the Commissariat of Subsistence and Prices (1932), which possessed critical powers of economic regulation, from price-fixing to expropriating industries in extreme cases.⁴⁰ By the same token, the Labor Code –enacted in 1931– consolidated the protection of urban workers through mandatory contractual clauses and by conferring legal status to labor unions and collective bargain.⁴¹

The second phase of the consensus on the *Estado de Compromiso* emerged around the protection and fostering of national industry. Since the end of the nineteenth century, but especially from the mid 1920s, the state created some publicly-owned companies in areas such as loan funds, air transportations, telegraphs, and railroads. After the Great Depression, political actors led by the Liberal businessman Gustavo Ross increasingly agreed on the necessity of deepening state’s role in economic coordination,

³⁶ For example, the new Health Ministry (1927) advanced from the coordination of small private and public health providers to directly assure public provision, organizing a complex state sanitary system that occupied important amounts of the national budget (1952). Germán Urzúa Valenzuela, Ana María García: *Diagnóstico de la Burocracia Chilena (1818-1969)*. Santiago: Editorial Jurídica. 1971. pp. 44-83. 118-119. José Pablo Arellano: *Políticas Sociales y Desarrollo. 1924-1984*. Santiago: CIEPLAN. 1988. p. 31.

³⁷ It is important to note that the new constitution not only established burdens on private property associated with the goals of the welfare regime. In fact, implicitly this also incorporate provisions that intended to lay the basis for the redistribution of the rural land, the new chart declared that: “the state shall further the convenient distribution of the property and the establishment of the familial property.” (Art. 10 No. 14.) *Constitución de la República de Chile*. Op. Cit. pp. 11. José Guillermo Guerra. *La Constitución de 1925*. Op. Cit. pp. 142.

³⁸ Art. 10. No. 10. *Constitución de la República de Chile*. Op. Cit. pp. 10. Regarding the broad definition of the limitations on the private property–featured by harsh debates within the drafter commission–the framers were influenced by sources such as the German Weimar Constitution of 1919 and Leon Duguit’s theory on the social function of property. Raúl Bertelsen: “El Derecho de Propiedad en la Constitución de 1925”. In Enrique Brahm García. *Propiedad sin Libertad. Chile 1925-1973. Aspectos relevantes de la legislación socializadora*. Santiago: Universidad de Los Andes. 1999. See pp. 39. 43.

³⁹ Unavoidably, the new role of the state implied an exponential growth of bureaucracy, from 32,000 employees in 1925 to a more of 118,000 in 1967. Germán Urzúa Valenzuela, Ana María García: *Diagnóstico de la Burocracia Chilena (1818-1969)*. Op. Cit. p. 75. From 1925 on, the state built a complex tax system to afford such public expenditure, increasingly levying on incomes and land property. Enrique Brahm García. *Propiedad sin Libertad. Chile 1925-1973*. Op. Cit. pp. 80. 100-101.

⁴⁰ In fact, the Commissariat was part of a more comprehensive legislation to control markets enacted during the brief Socialist Republic (DL 520). In the following decades, this agency would be identified by different names, expanding its powers and becoming a centerpiece in the structures of market control. Enrique Brahm García. *Propiedad sin Libertad. Chile 1925-1973*. Op. Cit. pp. 92-96. 100. 114.

⁴¹ Hugo Frühling: *Law in Society: Social Transformation and the Crisis of Law in Chile 1830 – 1970*. Op. Cit. pp. 133-145.

investing in areas like the downfallen nitrates mining.⁴² Regarding former policies as inadequate to achieve higher levels of economic growth, left-leaning parties and a growing public technocracy headed by local engineers looked to introduce a state agency for economic planning. Proposed by the radical President Pedro Aguirre Cerda, a project in this direction triggered serious resistance from liberal and conservative parties, which saw perils in the state's enlargement. After a political bargain in which the government gave up to its attempts to promote agricultural workers' unionization, however, the Congress barely passed the bill establishing the National Development Corporation (CORFO, 1939).⁴³ Such a negotiation represents the archetypical example of political compromise during these years and provides the label for the period.

The National Development Corporation became the cornerstone of the entrepreneurial state. This agency would articulate a complete strategy of industrialization and economic development. Relying on this, the state would create diverse autonomous public companies participating in fields like electrical energy, agricultural commerce, and the production of coal, iron, oil, wood, sugar, among other products.⁴⁴ Over time, the CORFO would not only be supported by left-wing parties and the new technocracy of engineers, but also by the new developmental economists at the ECLAC (U.N. Economic Commission for Latin America with its seat in Santiago), who proposed to deepen the process of planning and public intervention in the next decades.⁴⁵ Besides the National Development Corporation, the state encouraged national industry by establishing protectionist tariffs levied on foreign products. This policy not only privileged national private manufacturers in areas such as textile production and electrical appliances. These measures also constituted a strategy to industrialize by the substitution of importations, satisfying the demand for work and products of multiclass urban constituencies.⁴⁶ Over time, however, these mechanisms of market control impaired some economic areas, such as the internal agricultural market.⁴⁷

Finally, the *Estado de Compromiso* also implied an agreement about the allocation of political power and procedural democracy. As a means to answer the previous period of parliamentary politics and lack of response to social issues, the new constitution of 1925 strengthened presidential authority.⁴⁸ Ever since the Executive could exercise the prerogative to appoint cabinet members (dual office-holding with congressional posts was forbidden) and to nominate high justices within a pool proposed by the Supreme Court. Simultaneously, the constitution granted him an important degree of control on the law-making agenda. As co-legislator, the president acquired the

⁴² Joaquín Fernandois: *Abismo y Cimiento. Gustavo Ross y las relaciones entre Chile y Estados Unidos. (1932-1938)*. Santiago: Ediciones Universidad Católica de Chile. 1997.

⁴³ Patricio Silva: *In the Name of Reason. Technocrats and Politics in Chile*. University Park: The Pennsylvania State University Press. 2009. pp. 84-110.

⁴⁴ Adolfo Ibáñez Santa María: *Herido en el Ala. Estado, Oligarquías y Subdesarrollo. 1924-1960*. Op. Cit. pp. 190-220.

⁴⁵ Aníbal Pinto Santa Cruz: *Antecedentes Sobre el Desarrollo de la Economía Chilena. 1925-1952*. Santiago: Editorial del Pacífico. 1954. pp. 15-20. Aníbal Pinto Santa Cruz: *Chile. Un caso de desarrollo frustrado*. Santiago: Editorial Universitaria. 1958. pp. 120-125

⁴⁶ Eduardo Silva: "The Import-Substitution Model. Chile in Comparative Perspective." *Latin American Perspectives*. Vol. 34. No. 3. 2007. pp. 67-90.

⁴⁷ René Millar Carvacho, Joaquín Fernández Abara: "Políticas Agrarias en Chile: 1932-1958". *Boletín de la Academia Chilena de la Historia*. Year LXXIV, No 117, 2008. pp. 459-460.

⁴⁸ José Guillermo Guerra. *La Constitución de 1925*. Op. Cit. pp. 24-30.

exclusive initiative in areas involving public expenditure and the possibility of managing the timing of parliamentary debates. Additionally, in some periods of public turmoil, the parliament used to delegate its legislative powers to the President (decrees having force of law). As expected in a context where the public bureaucracy steadily grew, the Executive also got additional influence through the new administrative agencies, which issued regulatory norms on the economy and social services.⁴⁹ Conversely, the Congress lost its capacity to counterbalance adequately presidential authority. Ultimately, its powers were reduced to co-legislate, to the approval of the annual budget and to present constitutional impeachment against the president and other high officials.⁵⁰ In practice, however, the executive was not free of political control, and high partisan cadres kept an important degree of leverage by participating of cabinets and bureaucratic machinery, constituting the mallow of the pragmatic style of politics.⁵¹

Viewed from a *longue durée*, the institutional arrangements that set the rules of the political game asserted the neutrality of the state to adjudicate conflicts among diverse groups of interests. There was not a religious constitutional binder, as during the nineteenth century when the state and the Catholic Church were joined. Neither was there substantive agreement beyond social rights and some basic understanding on the state's prerogatives. Unlike other models of constitutional politics in mid-twentieth-century Latin America, like the Argentinean Constitution of 1949, Chile's lacked an explicit ideological commitment to specific social groups. This kind of neutrality facilitated political compromise and bargain, allowing competition and cooperation among very diverse political parties and interest groups.⁵² Only some attempts to ban the highly disciplined Communist Party, which would be forbidden during a couple of years at the beginning of the Cold War, altered the openness of the political system.⁵³

Unsurprisingly for the establishment of a new dominant regimen, law played an important role in reshaping institutional practices. Elite lawyers who were involved in governmental affairs were not passive actors of the *Estado de Compromiso*. Rather, they constituted a centerpiece during the initial steps of the new regime. Paradoxically, along the years, they would steadily diminish their place in the public sphere. An increasing dynamic of specialization, social diversification, and the bureaucratic re-orientation of the bar and the bench influenced their decline. In the same light, the new regime would develop new ways to legislate and to understand the juridical limits of the administrative state, narrowing the potential value of generalist legal expertise. Thus, the shift sociopolitical change carried a specific transformation of law, influencing the very constitution of the legal profession and its possibilities of action.

⁴⁹ Federico Gil: *The Political System of Chile*. Boston: Houghton Mifflin Company. 1966. pp. 84-106.

⁵⁰ *Ibid.* 106-122.

⁵¹ Bernardino Bravo Lira. *El Régimen de Gobierno y Los Partidos Políticos en Chile. 1924-1973*. Santiago: Editorial Jurídica. 1978. pp. 59-62.

⁵² Gonzalo Vial Correa: "Decadencia, Consensos y Unidad Nacional en 1973". *Op. Cit.* Miguel Orellana Benado: "Pluralismo, Escepticismo y Derechos Humanos." In Abraham Magendzo (ed.): *De miradas y mensajes a la educación en derechos humanos*. Lom. 2004. p. 69.

⁵³ Elizabeth Lira, Brian Loveman: *Poder Judicial y Conflicto Político. (Chile 1925-1964)*. Santiago: Lom Ediciones. 2014. pp 369-374. 432-440. Carlos Huneeus: *La Guerra Fría en Chile. González Videla y la Ley Maldita*. Santiago: Debate. 2009.

Losing Political Authority: The Transformation of the Legal Profession

As explained in the previous chapter, a particular archetype of public man, identified by scholarship as gentlemen politicians of law, dominated the public realm during the nineteenth century until the mid-1920s. They usually had social origins in the landed aristocracy or the associated minor gentry, lived a process of political socialization at the law school—where they acquired a generic juridical expertise—and simultaneously held high-profile roles in the state and legal fields. In some way, this model of lawyer-statesmen constituted the foremost manifestation of the close link between an aristocratic polity and the functioning of the legal system.⁵⁴ Certainly, the rise of the *Estado de Compromiso* did not end their predominance at once. Although during this new regime other professional groups—such as engineers—were more critical in many aspects related to the material development of the country, lawyers still actively played key roles in the decades of 1920s and 1940s.⁵⁵

At first glance, the biographical accounts of those in charge of public affairs provides insightful information about the place of elite lawyers during the first steps of the *Estado de Compromiso*. The only mention of the first presidents of the new regime, Arturo Alessandri Palma and Pedro Aguirre Cerda, whose life stories reflect the traditional path of the gentlemen politicians of law at the turn of the twentieth century, exemplifies a gradual transition. Something similar could be said about law graduates who dominated the few debates within the sub-commission that wrote the draft of the Constitution of 1925, dominating its most critical deliberations.⁵⁶ Additionally, elite lawyers keep a high rate of participation in Congress and Cabinets afterward.⁵⁷ In sum, even though law graduates lost the quasi-monopoly in statesmanship that they enjoyed until the 1920s, they could hardly be identified as irrelevant agents. Notwithstanding, a more careful use of the evidence and its timing shed light on why lawyers increasingly began to perceive that they were occupying a diminished position in the public realm by the middle of the twentieth century. By and large, empirical evidence shows that the legal profession suffered a structural transformation in at least three key areas: (a) their roles in the political arena; (b) the state reorientation of the bar; and, (c) the bureaucratization of the judiciary. These changes had profound consequences in the behavior of legal institutions, evidencing how a high concentration of power in lawyers' hands broke-up.

The Forums of Politics (A matter of profiles)

Indeed, law graduates were important agents during the years of the *Estado de Compromiso*. As *Figure 2.2* and *2.3* confirm, they possessed an important share in the Senate and the cabinet of ministers, only suffering minor fluctuations in their rate of

⁵⁴ Yves Dezalay and Bryant Garth: *The Internationalization of Palace Wars*. Op. Cit. pp. 18-20.

⁵⁵ Adolfo Ibáñez Santa María: *Herido en el Ala. Estado, Oligarquías y Subdesarrollo. 1924-1960*. Op. Cit. p.143. Iñigo de la Maza: *Los abogados en Chile. Desde el Estado al Mercado*. Op. Cit. pp. 12-16.

⁵⁶ Although people with different occupational backgrounds integrated the Commission, law graduated performed more numerous and substantial interventions in drafting the text. Among them, we can quote: Aruro Alessandri Palma, Fernando Alessandri, Domingo Amunátegui, Ernesto Barros Jarpa, José Maza Fernández, Ricardo Salas Edwards, Romualdo Silva Cortés, José Guillermo Guerra. Mario Bernaschina, Fernando Pinto: *Los Constituyentes de 1925*. Santiago: Universidad de Chile. 1945. pp. 283-295.

⁵⁷ See analysis at the next section.

participation. Preliminarily, *Figure 2.2* illustrates a drop in their presence at the Senate around the mid-forties, even when any other professional group could compete with them in parliamentary politics. In a similar way, *Figure 2.3*, shows that lawyers' presence in the cabinet of ministers abruptly decrease by the early 1950s. In effect, during the second government of Carlos Ibáñez—who acridly fought traditional politics—their participation dropped to 30%, to rise again to usual levels in the next period. At the same time, the analysis on the cabinet of ministers illustrates how engineers, who were almost absent in parliamentary politics, gained authority since the late fifties, particularly in specific areas (Public Works, Economy, Finance, Health). Undoubtedly, neither of these variations could explain by themselves why lawyers began to perceive that they had lost power in public governance.

Figure 2.2:
The Senate, 1925-1969. An Occupational Profile.

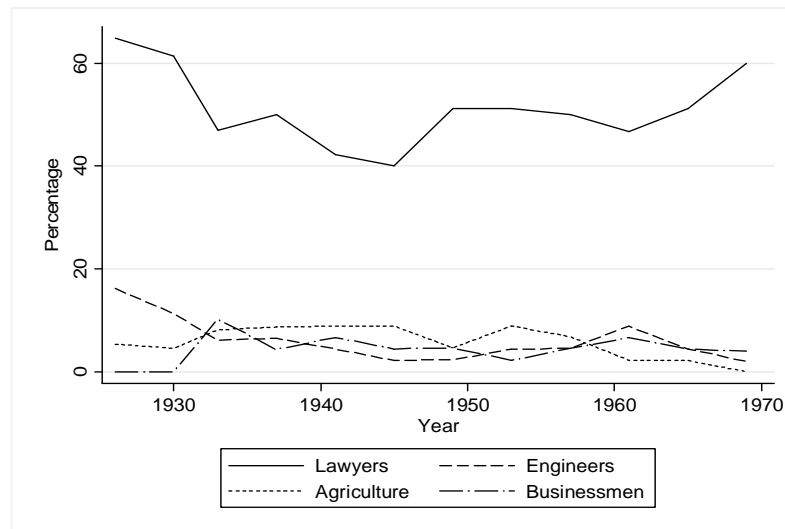
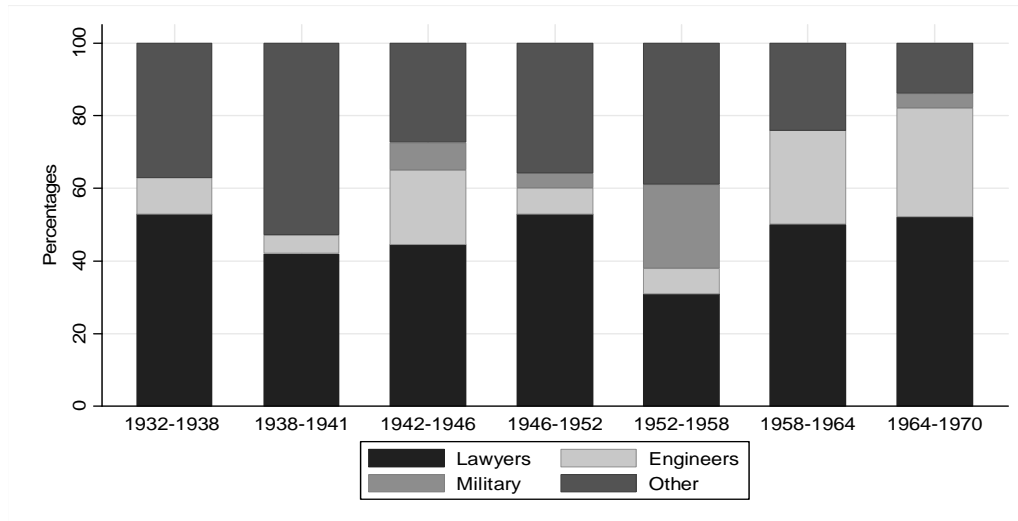


Figure 2.3:
 The Cabinet of Ministers, 1932-1970. An Occupational Profile (as percentage of
 the total number of members of the cabinet by presidential periods)

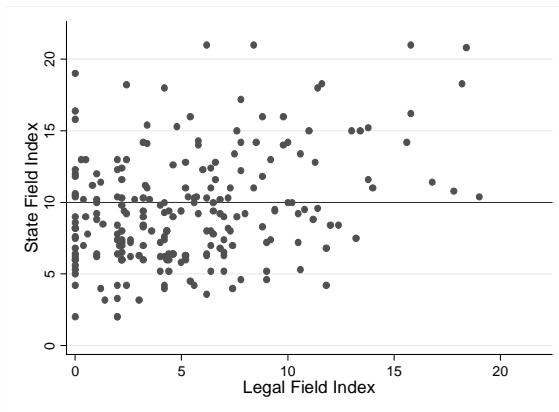


Sources Figures 2.1. and 2.2: Luis Valencia Avaria: *Anales de la República*. Op. Cit. Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit.

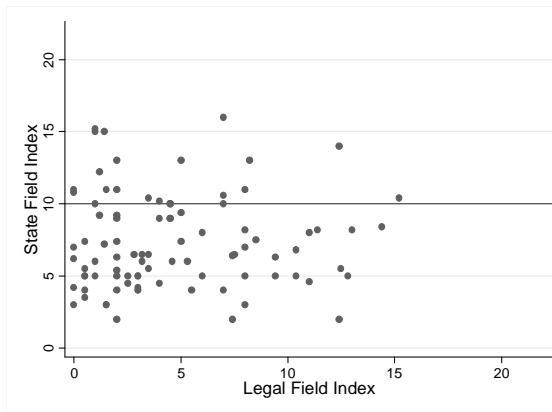
Nevertheless, if we analyze the profiles of the lawyers who took part in the Senate and the cabinets of ministers, we can unveil a more complex phenomenon. In fact, from the systematic study of their biographical accounts, we can infer that the rich interaction between the state and the legal fields slowly reached an end by the early fifties. Analyzing the complete population of law graduates acting in these settings, *Figure 2.4* illustrates how their stand in these fields evolved. By the elaboration of a particular quantitative indicator, each axis of the graphs cumulatively summarizes their life-long power positions, their experience, and their influence.⁵⁸ So, for instance, the *state field index* at the axis y assesses all the posts and opportunities of their participation in governmental structures (e.g. Presidency, the Chamber of Deputies, the Senate, Cabinets, diplomacy, bureaucracy, etc.). Likewise, the *legal field index* goes over their roles in the juridical system (e.g. judicial clerks, judgeship, the legal academy, legal literature, participation in the organization of the bar, legal practice, etc.). Through such a study of politically relevant lawyers ($N = 416$), a bivariate analysis sums up the concentration and density of the relations between the state and the legal fields in particular periods of normalcy: a regime of aristocratic polity (1831-1924), the years of the *Estado de Compromiso* (1932-1951), and the gradual end of the centripetal politics (1952-1970). In a long-term perspective, the historical sequence clearly illustrates the change in the profile of lawyers who participate in these traditional forums of governmental politics.

⁵⁸ For the methodology used to elaborate the indexes, and the datasets, see Appendixes 2, 3, 4, 6 and 7.

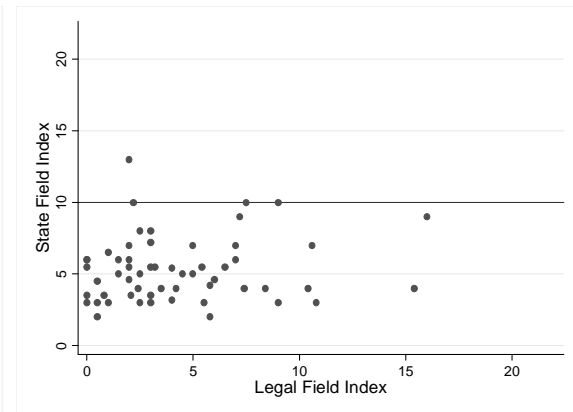
Figure 2.4: Mapping positions in the State and the Legal Field: Law Graduates' Profiles at the Cabinets of Ministers and the Senate.



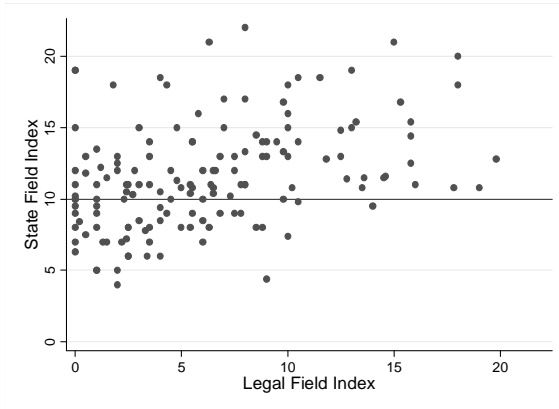
a.1. Cabinets 1831-1924 ($N = 224$)



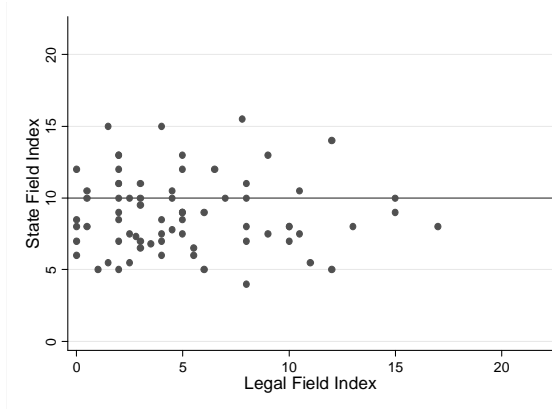
b.1. Cabinets 1932-1951 ($N = 84$)



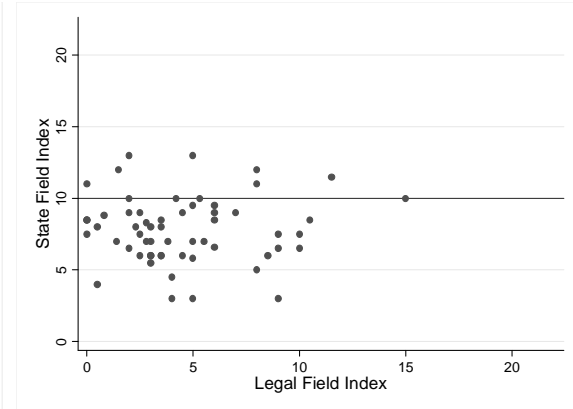
c.1. Cabinets 1952-1970 ($N = 56$)



a.2. Senate 1831-1924 ($N = 150$)



b.2. Senate 1932-1951 ($N = 72$)



c.2. Senate 1952-1973 ($N = 58$)

Note: For Sources, Datasets and Methodology, see appendixes 2, 3, 4, 6, and 7.

A detailed analysis of the evolution of these profiles seems unequivocal regarding the change in the relations between the state and the legal field. Before 1924, clearly there was a dense interaction, which was characterized by a massive and persistent participation of patrician law graduates at the highest levels of politics (a.1 and a.2). Usually, they were simultaneously engaged with properly juridical tasks. As has been explained in the previous chapter, several gentlemen politicians of law occupied key positions at higher courts until the end of the nineteenth century, when incompatibilities between political and judicial posts were established (e.g. Manuel Montt, José Victorino Lastarria, Álvaro Covarrubias Ortúzar, or Belisario Prats).⁵⁹ By the same token, many of them were highly committed to legal education in well consolidated juridical subjects (civil law, Roman law, procedure, commercial law). The most important jurists and legal scholars of the time were present in these political settings, particularly focused on legal codification, constitutional reform and the elaboration of the first commentaries to the codes and legal treaties (e.g. Andrés Bello, Mariano Egaña, José Clemente Fabres, Jorge Huneeus Zegers, Manuel Egidio Ballesteros, and Luis Claro Solar).⁶⁰ Equally, biographical accounts evidence extended legal practice fostered by the nitrates mining boom since 1880.⁶¹ Finally, elite attorneys also made an important contribution to the efforts aimed to organize the bar association in Santiago, Valparaiso and at the national level.⁶² Even when we also can observe in this sample the presence of lawyers with a lower political profile about the 1900s, or highly specialized politicians without relation to juridical activity, these latter ones do not alter the general pattern of a dual agency already explained.

Between 1932 and 1951, the main years of the *Estado de Compromiso*, we can observe an evolution in the profile of lawyers acting in politics (b.1 and b.2). In comparison to the previous period, these accumulated less state power (y-axis), a phenomenon probably associated with electoral competition, professional diversification and the rise of the pool of people possessing legal training. At the same time, additional quantitative information reveals more heterogeneous social origins, given that they increasingly began to belong to middle classes from the 1930s on.⁶³ Important changes can be appreciated regarding other elements of their profiles too.⁶⁴ Unless some few cases of who went to politics after their judicial retirement, they almost did not have experience in front of the bench. Certainly, a small number of them performed minor judicial tasks as clerks and as officials when young at very the beginning of their careers, or transitorily were integral lawyers at high courts collaborating in judicial panels (*abogado integrante*). However, as a matter of fact, judges were formally excluded from partisan politics since the late 1920s, and judicial tasks of any kind began to become a rarity

⁵⁹ Bernardino Bravo Lira. *Por mí habla el Derecho. Anales de la Judicatura Chilena*. Santiago: Editorial Jurídica. 2011.

⁶⁰ See Chapter 1.

⁶¹ The empirical data is coincidental with previous observations based on anecdotic evidence. See, Iñigo de la Maza: *Los abogados en Chile. Desde el Estado al Mercado*. Op. Cit. pp. 14-15.

⁶² See, as example, the profiles of the first Board of the Institute of Lawyers of Santiago. *Sesión Inaugural. Instituto de Abogados de Santiago*. [1915]. Op. Cit.

⁶³ For instance, the Senate was increasingly constituted by law graduated coming from middle classes since the mid-1930s on. See Appendix 8.

⁶⁴ See Appendixes 6 and 7.

among the studied profiles.⁶⁵ Likewise, the analyzed lawyers also reduced their participation in the legal academy and the production of legal literature. Among them, we can find interesting examples of scholarship in core juridical subjects, such as Alfredo Barros Errázuriz in civil law and Raimundo del Río in criminal law, and Fernando Alessandri Rodríguez in legal procedure.⁶⁶ At the same time, several of them produced research in subjects that habitually were considered secondary legal disciplines, like Miguel Cruchaga Tocornal in International Law or Julio Ruiz Burgeois in Mining Law.⁶⁷ Nevertheless, almost without exception, all these were law graduates who already were in activity by the end of the previous period.⁶⁸ Additionally, their works did not constitute the peak of legal literature. Following the same tendency, lawyers involved in traditional forums of politics gradually lost their presence on the boards of the national bar. After a critical role in establishing the Chilean Bar Association (1925), they steadily diminished their participation.⁶⁹ To sum up, these years reveal a completely new set of profiles, reflecting the progressive loss of density in the relations between the state and the legal field.

Finally, the last period under analysis, between 1952 and 1970, represents a further step in the decline of the gentlemen politicians of law (c.1 and c.2). Along with centrifugal politics and a subsequent emergence of social conflict, lawyers deepened their specialization and lost power. A more challenging set of social demands and the rise of new professional competitors pushed for this rearrangement. Casting a comparative glance, profiles both in the cabinets of ministers and at the Senate indicate that law graduates accumulated still less state power. Additionally, among those who were permanently committed to politics, chiefly at the Senate, we can observe moderate disengagement to juridical activity as well (unless a small legal practitioners). There is no significant judicial experience and their participation in legal scholarship seems unimportant.⁷⁰ Although some of these politically relevant lawyers such as Julio Philippi, Víctor García Gárcena, and Patricio Aylwin taught in traditional legal subjects, only the latter produced substantial contributions to legal literature at the very beginning of the fifties.⁷¹ As a counterpart, their engagements to academics were associated with secondary matters, evidencing an important migration to alternative areas like the political economy (e.g. Alberto Baltra, Humberto Enríquez Frodden, Carlos Altamirano).⁷² On the whole, contributions to legal literature seems poor, and it was mostly reduced to the social essay and minor works. Similarly, their relation to the organization of the bar was pretty weak until mid-sixties, when some lawyers who took

⁶⁵ See analysis on the judiciary below.

⁶⁶ See as example, Alfredo Barros Errázuriz: *Curso de Derecho Civil, según el programa aprobado por la Universidad del Estado*. Santiago: Editorial Nascimento. 1930-1932. Raimundo del Río: *Explicaciones de Derecho Penal*. Santiago: Editorial Nascimento. 1945. Fernando Alessandri Rodríguez: *Derecho Procesal*. Santiago: Editorial Universitaria. 1951.

⁶⁷ Miguel Cruchaga Tocornal: *Nociones de Derecho Internacional*. Madrid: Editorial Reus. 1923. Julio Ruiz Burgeois: *Lecciones Elementales de Derecho de Minería*. Santiago: Imprenta Universitaria. 1936.

⁶⁸ Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit. pp. Vol. 1. pp. 54. 155. 311. Vol. 4. pp. 27. 83.

⁶⁹ See the analysis on the Bar Organization in the next section.

⁷⁰ See Appendixes 6 and 7.

⁷¹ Patricio Aylwin: *El Juicio Arbitral*. Santiago: Editorial Jurídica de Chile. 1943.

⁷² Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit. pp. Vol. 1. pp. 66. 132. Vol. 2. p. 53.

part of the board integrated the cabinet of ministers.⁷³ The most noteworthy of them was Pedro Jesús Rodríguez, who passed from being the chief of the Chilean Bar Association to be Secretary of Justice in 1964. However, even in his case, we are quoting a very brief participation in the board, of no more than one year.⁷⁴

Undoubtedly, particular circumstances help to explain about this last period (1952-1970), principally the organization of the Executive authority. In fact, the three governments of this period rejected the traditional model of pragmatic politics in which elite lawyers had thrived. Colonel Carlos Ibáñez's rule (1952-1958) heavily relayed upon the military, and many lawyers who participated in his government came from minor bureaucratic cadres. Equally, Jorge Alessandri's administration (1958-1964) portrayed itself as a "managerial government", initially incorporating some lawyers with outstanding private practice who, by that time, did not possess substantial political experience. Only the progressive lack of support at the end of Alessandri's government would push for the incorporation of more politically skilled law graduates coming from the Radical Party.⁷⁵ Likewise, Eduardo Frei Montalva's rule (1964 -1970) would propose substantial structural transformations, such as the agrarian reform, following the advice of renowned technocrats coming from other fields, such as economy and sociology. These latter ones, portrayed by the economist Jorge Ahumada, provided the interpretive account on the process of modernization that would orientate his government. Albeit both experienced and young law graduates were incorporated into Frei's cabinet, historical sources show they explicitly resented a loss of influence facing a technocracy that guided decision making in settings like the Economic Committee, which was established to design and coordinate key public policies.⁷⁶ The contingent circumstances of each government speaks about the declining general value of juridical expertise in the state field, disclosing a deeper pattern.

The referred contribution and decline of the gentlemen politicians of law is also perceptible in the administrative agencies that structured the new regime. For instance, a sample of lawyers who acted at the Senate, the Cabinet of Ministers and the Board of the Chilean Bar Association in the period, selected in *Table 2.1*, shows that an important number of them took part in the council and the legal advisory department of public and semi-public corporations, usually during the period in which they were politically active.

⁷³ In fact, the only longstanding members of the board who actively participated of governmental cadres were Máximo Pacheco, Juan Hamilton Depassier. See Appendix 10.

⁷⁴ *Memoria Anual, 1963*. Archive. CHBA. Santiago.

⁷⁵ Adolfo Ibáñez Santa María. *Herido en el Ala*. Op. Cit. pp. 345. 364. Patricio Silva: *In the Name of Reason. Technocrats and Politics in Chile*. Op. Cit. p.108.

⁷⁶ Patricio Silva: *In the Name of Reason*. Op. Cit. pp. 122-127.

Table 2.1:

Politically relevant Lawyers within the Entrepreneurial State: 1930-1960 (a sample indicating alternative settings of political action).

Agency	Lawyer	Setting	Agency	Lawyer	Setting
<i>Nitrates Sales Co.</i> (*) (COVENSA, 1934)	Manuel Antonio Maira (n/a)	Bar	<i>Worker's Insurance Fund</i> (*) (Caja Seguro Obrero, 1924)	Pedro Lira Urquieta (c)	Bar
	Joaquin Yrarrázaval Larraín (c)	Ch./Sen.		Alberto Cabero Díaz (r)	Bar./Sen.
	Pedro Poklepovic Novillo (l)	Ch./Sen.	<i>Mortgage Credit Fund</i> (Caja Crédito Hipotecario 1855)	José Maza Fernández (l)	Secty./Sen.
	Alberto Baltra Cortés (r)	Sen.		Hernán Figueroa Anguita (r)	Ch./Sen.
	Guillermo Azócar Álvarez (s)	Sen./Secty.		Rafael A. Gumucio Vives (cd)	Sen.
	Héctor Arancibia Laso (r)	Sen.		Juan Antonio Ríos Morales (r)	Sen./Pdte.
	Pablo Ramírez Rodríguez (r)	Ch./Secty.		José R. Gutiérrez Alliende (c)	Bar/Ch.
Diego Lira Vergara (n/a)	Secty.	<i>National Airlines</i> (1932)	Pedro Optiz Velásquez (l)	Ch./Sen.	
<i>State Railroad</i> (1884)	Roberto Sánchez (l)		Sen.	Luis Quinteros Tricot (s)	Bar./Sen.
	Absalón Valencia Zavala (l)		Ch./Sen.	Raúl Juliet Gómez (r)	Ch./Sen.
	Luis R. Puga Monsalve (d)	Sen./Secty.	Hugo Miranda Ramírez (r)	Secty.	
	Arturo Ureta Echezarreta (c)	Bar./Sen.	<i>Mining Credit Fund</i> (Caja Crédito Minero, 1927)	Nicolás Marambio Montt (r)	Bar./Sen.
	Francisco Bulnes Correa (l)	Ch./Sen.		Juan Antonio Ríos Morales (r)	Sen./Pdte.
	Galvarino Palacios González (s)	Sen.	<i>Industrial Credit Institute</i> (1928)	José Maza Fernández (l)	Secty./Sen.
<i>National Development Co.</i> (CORFO, 1939)	Juan Antonio Ríos Morales (r)	Sen./Pdte.		Alfredo Egaña Pinto (n/a)	Bar
	Oswaldo Hiriart Corvalán (r)	Sen./Secty.	<i>Agrarian Credit Fund</i> , (Caja de Crédito Agrario, 1932)	Guillermo Portales Vicuña (l)	Sen.
	Marcial Mora Miranda (r)	Secty./Sen.		Luis A. Concha Rodríguez (r)	Sen.
	Raúl Ampuero Díaz (s)	Sen.		Eduardo Moore Montero (l)	Sen./Secty.
	Juan Bautista Rosetti (s)	Secty.		José Foncea Aedo (cd)	Ch./Sen.
<i>State Bank</i> (1953) (Banco del Estado)	Juan A. Coloma Mellado (c)	Ch./Sen.	José Urrejola Menchaca (c)	Ch./Sen.	
	Eduardo Alessandri Rodríguez (l)	Ch./Sen.	Ladislao Errázuriz Pereira (l)	Ch./Sen.	
<i>Public Employees Fund</i> (*) (1856)	Aniceto Rodríguez Arenas (s)	Ch./Sen.	<i>National Electrical Co.</i> (ENDESA, 1944)	Gustavo Rivera Baeza (l)	Ch./Sen.

Notes: Dataset elaborated by the author. Due to reasons of space, only a maximum of two alternative settings of political action have been selected. Abbreviations: Pdte.: President of the Republic; Sen.: Senator; Ch.: Chamber of Deputies; Secty.: Secretary; Bar: Member of the Board of the National Bar Association. Partisan Affiliations: (c): Conservative Party; (l) Liberal; (d) Democrat; (s) Socialist; (r) Radical; (cd) Christian Democrat; (n/a) Not Available. (*) For semi-public institutions or public-private partnership. Dates of the establishment of the aforesaid institutions are identified between brackets.

As the previous sample points out, politically committed law graduates initially performed significant tasks in the local version of the administrative state. In fact, they were instrumental as brokers with diverse groups of interests, and, as legal counsels, they collaborated in organizing or reframing legal structures, delimiting the agencies' spheres of jurisdiction to facilitate their business.⁷⁷ Their main achievement, perhaps, was that several of these corporations gradually gained autonomy from the bureaucratic controls of the central state (i.e. complete juridical scrutiny of the Comptroller of the Republic) while keeping an advantageous public legal status. For instance, Juan Antonio Ríos at the Mining Credit Fund, and Osvaldo Hiriart at the National Development Corporation (CORFO) would have played that central function as political brokers and legal counselors (*fiscales*).⁷⁸ During the next decades, however, these kinds of men would be replaced by specialized in-house lawyers with low political profiles, devoted to management of quotidian legal affairs.⁷⁹

The described phenomenon went beyond agencies related to the entrepreneurial state. In several bureaus oriented to economic decision-making and regulation, politically relevant law graduates were gradually substituted by specialized in-house lawyers or other emerging professions, such as engineers and economists coming from diverse social backgrounds. *Tables 2.2 and 2.3*, regarding the Chairs at the Central Bank and the Superintendence of Banks, illustrate such evolution in their profiles.

Table 2.2.
Occupational Profiles: Chairs at the Central Bank (est. 1925).

<i>Chairs Central Bank</i>	<i>Years</i>	<i>Profession</i>	<i>Profile or Previous Public Offices</i>	<i>Social origin</i>
Ismael Tocornal Tocornal	1925-1929	Lawyer	Secty. (Interior, Public Works), Deputy, Senator	l.elite
Emiliano Figueroa Larraín	1929-1931	Lawyer	President of the Republic, Secty. (Justice), Deputy	l.elite
Francisco Garcés Gana	1931-1932	Lawyer	Secty. (Finance, Justice, Foreign Affairs), Deputy	m.gentry
Armando Jaramillo V.	1932	Lawyer	Secty (Public Works, Foreign Affairs, Labor)	m.gentry
Guillermo Subercaseaux	1933-1938	Engineer	Secty. (Finance)	l.elite
Marcial Mora Miranda	1939-1940	Lawyer	Secty. (Finance), Ambassador, Post Dept.	outsider
Enrique Oyarzún M.	1940-1946	Lawyer	Secty. (Finance) Senator, Deputy	outsider
Manuel Trucco Franzani	1946-1953	Engineer	Secty. (Interior) Senator, Professor, Dean UCH.	outsider
Arturo Maschke Tornero	1953-1958	Lawyer	Business Lawyer, Secty. (Finance),	outsider
Eduardo Figueroa Geisse	1959-1962	Engineer	National Development Corporation CORFO	outsider
Luis Mackenna Shiell	1962-1964	Lawyer	In House Lawyer, Entrepreneur, Secty. (Finance)	m.gentry
Sergio Molina Silva	1964-1967	Economist	Dean Economy UCH. Secty.(Finance)	m.gentry
Carlos Massad Abud	1967-1970	Economist	Professor Economy UCH, Intl. Monetary Fund	outsider
Alfonso Inostroza C.	1970-1973	Economist	n/a	outsider
Carlos Matus Romo	1973	Engineer	E.C.L.A., U.N., State Iron Corporation	outsider

⁷⁷ They were an adequate complement for engineers and the material organization of the polity. Alfredo Ibáñez Santa María: *Herido en el Ala*. Op. Cit. pp. 143-144.

⁷⁸ After several controversies with the Comptroller of the Republic, the CORFO and other public corporations finally got their administrative autonomy by the Law No 10,343 (1952). Germán Urzúa, Ana María García: *Diagnóstico de la Burocracia Chilena*. Op. Cit. p. 211.

⁷⁹ For example, such are the cases of Raúl Obrecht at CORFO (ENDESA), or Javier Figueroa Puga at the National Oil Corporation (ENAP). *Ibidem*.

Table 2.3.

Occupational Profiles, Chairs at the Superintendence of Banks (est. 1925).

<i>Superintendent</i>	<i>Years</i>	<i>Profession</i>	<i>Profile or Previous Public Offices</i>	<i>Social origin</i>
Julio Philippi Bihl	1926 -1931	Lawyer	Bar. IL. Appeal. Court, Professor, Secty. (Finance)	m.gentry
J. Gabriel Palma R.	1931 -1941	Lawyer	Bar. IL. Supreme Court. Professor	m.gentry
Ramón Meza B.	1941 -1946	Lawyer	Justice Appeal. Court, Law Professor	outsider
Eugenio Puga Fisher	1946 -1958	Lawyer	Secty. (Justice), Law Professor	m.gentry
Miguel Ibáñez B.	1958 -1964	Lawyer	Business Lawyer (Financial Sector)	m.gentry
Raúl Varela Varela	1964 -1969	Lawyer	Business Lawyer, Chair National Bar. Professor.	outsider
Enrique Marshall S.	1969 -1970	Lawyer	Superintendence in-house Lawyer	m.gentry
Manuel Matamoros	1970 -1972	n/a	n/a	outsider
Héctor Behm Rosas	1972 -1973	Lawyer	Police Officer	outsider
Enrique Marshall S.	1973 -1974	Lawyer	Superintendence in-house Lawyer	m.gentry
Miguel Ibáñez B.	1974 -1981	Lawyer	Business Lawyer (Financial Sector)	m.gentry
Boris Blanco M.	1981 -1984	Lawyer	Business Lawyer (Financial Sector)	outsider
Francisco Ibáñez B.	1984	Accountant		m.gentry
Hernán Büchi Buc	1984 -1985	Economist	Advisor. Under Secretary.	outsider
Guillermo Ramírez	1985 -1990	Economist		outsider

Notes on tables 2.2 and 2.3: Abbreviations: Bar.: member of the Board of the National Bar Association; IL.: Integral Lawyer at High Courts; Secty.: Secretary; Individuals identified as Professors perform such task in the department related to the area of their profession unless otherwise is indicated. Denominations on social origins follow criteria proposed in Appendix 2. They are: l.elite: landed elite; m.gentry: minor gentry; and outsiders (middle class, commercial bourgeoisie). *Sources:* Camilo Carrasco: *Banco Central de Chile: 1925-1964. Una Historia Institucional*. Santiago: Banco Central. 2009. Luis Morand Valdivieso: *Apuntes Sobre la Fiscalización Bancaria en Chile*. Santiago: Superintendencia de Bancos e Instituciones Financieras. 2000.

Empirical information shows that something similar can be said about private associations participating in business politics, particularly in areas like manufactures and trade. By analyzing the boards of the Federation of the Chilean Industry (SOFOFA) and the National Federation of Agriculturalists (SNA), we can conclude that each organization exhibited a different evolution in the presence of juridical expertise. Data collected by sociologist Raúl Urzúa indicates that the rates of lawyers' participation in these settings evolved in a different way. So, while their involvement remained relatively constant in the SNA since the end of the nineteenth century, it significantly drop in the Federation of Chilean Industry during the next decades.⁸⁰ As for public agencies in the 1950s, it is probable that this phenomenon can be associated with an early stage of the professional competition with engineers and, later, with business managers trained in the new schools of commerce and economy (1930s). Maybe, it also echoes the professional preferences among members of the local industrial bourgeoisie, whose families would have preferred to attend engineering and commerce schools. In the same way, it is noteworthy that the presence of lawyers on the Boards of the SNA remained relatively high. Although further research is needed, both the link between the legal profession and the landed elite and the permanent menace of the agrarian reform in Latin American could have provided additional value to generalist juridical expertise in the SNA's case.

⁸⁰ Raúl Urzúa: "La profesión de abogado y el desarrollo". In Gonzalo Figueroa (Ed.): *Derecho y Sociedad*. Santiago: Corporación de Promoción Universitaria. 1978. p. 181.

Table 2.4:

Participation of lawyers in the boards of two business associations of the country:

	SOFOFA (Industry)	SNA (Agriculture)
<i>Until 1890</i>	32% (N = 20)	29% (N = 110)
<i>1910-1912</i>	25% (N = 24)	50% (N = 12)
<i>1920-1923</i>	18% (N = 22)	27% (N = 22)
<i>1930-1933</i>	9% (N = 22)	39% (N = 31)
<i>1940-1943</i>	6% (N = 32)	33% (N = 30)
<i>1950-1953</i>	9% (N = 23)	50% (N = 20)
<i>1960-1964</i>	14% (N = 36)	24% (N = 50)

Note: For additional details about sampling and selection of data on boards, see Raúl Urzúa: “La profesión de abogado y el desarrollo.” Op. Cit. p. 181.

All things considered, empirical evidence indicates that lawyers, and juridical expertise itself, began to lose influence in the traditional forums of politics. Even though it was part of long-term development, such a process became clearly noticeable since the early 1950s. Even when elite lawyers constituted critical actors in the initial establishment of the new regime, the emerging sociopolitical environment would push for a rearrangement in the professional hierarchies of the ruling group. Lawyers ceased to be privileged organic intellectuals or agents who were able to cover the main areas of the state micromanagement. Social diversification, a more complex set of political demands and the challenges of the material welfare needed more assorted and sophisticated forms of governmental practices. As the previous study of the lawyers’ profiles suggests that besides suffering the professional challenge coming from other sources of expertise (e.g. economists and social scientists), they suffered pressures for specialization and fragmentation of power. The functional unity of the gentlemen politician of law, who articulately acted at the state and the legal field, reached to end. Within the spheres of public power, the paths of law graduates were increasingly divided. Some of them became skilled politicians who needed additional investment in electoral competition and partisan life to access the regular spaces of public representation, neglecting juridical tasks. In a different way, the bureaucratic machinery offered an open field for lawyers with lower political profiles, who filled those posts reframing their province as a purely technical juridical expertise. Finally, some few successful practitioners and law professors access cabinets on the brief episodic basis. By mid-twentieth-century Chile, this transformation implied the decline of generalist juridical expertise in the traditional forums of policy making.

Governing the Bar: the bureaucratic re-orientation of lawyering

Along with the establishment of a new political regime, the rise of the administrative state brought on a deep transformation in the collective organization of the legal profession. In fact, specialization and the fragmentation of power were clearly

perceptible in the bar and the judiciary. By the stories of their bureaucratization, we can observe interesting examples of the functional subordination of the legal field to politics. Hence, beyond elite lawyers' personal profiles, historical sources point to a persistent institutional dynamic.

The establishment of the national bar association offer enlightening insights to comprehend the place of lawyers in the public realm. When elite lawyers did not perceive menaces to their monopoly on juridical services and access to decision-making, they were not prone to invest their resources in collective organization. In fact, their attempts to found a national bar association between 1862 and 1868 failed.⁸¹ Due to the lack of professional competition and a scant spread of legal practice, most elite lawyers considered their professional position was secure. Equally, consolidated stable governments, highly interviewed by the legal field, did not see a particular political incentive to regulate the bar. Thus, it is not unexpected that the most successful experiences of organization came out at a period of mounting political conflict and uncertainty at the end of the former regime. Since the first decade of the twentieth century, lawyers created local private associations aimed to coordinate their action. Cases such as the Valparaíso Bar Association (1901) and the Lawyers' Institute of Santiago (1915) represented new initiatives in his direction.⁸² The latter, whose establishment was described at the beginning of the previous chapter, constituted the main social gathering of the gentlemen politicians of law at that time, being organized by "the most prestigious professionals, the most eminent professors, and the highest member of the judicial magistracy."⁸³ So, in a context of increasing demands for legal reform and the reorganization of the state, elite lawyers pursued the creation of a national organization aimed to advance their professional interest in the public sphere and to regulate compulsorily legal practice.⁸⁴

Resorting to their networks in governmental circles, an important group of lawyers who were original members of the CHBA Board began to pursue a strategy of bargain and coordination with the administrative state by the mid-1920s.⁸⁵ Notable law graduates like Carlos Estévez (law professor and deputy), Oscar Dávila (former minister), Arturo Alessandri Rodríguez (Dean of the University of Chile School of Law and President of the Republic's son), and Arturo Ureta Echazarreta (Senator and Dean of the Catholic University School of Law) would be instrumental in this task. In doing so, they participated of the *Estado de Compromiso* and its quotidian arbitration among diverse groups of interests. Hence, after a negotiation with the Executive and Congress, elite lawyers founded the Chilean Bar Association, which was established by an official

⁸¹ For the bylaws of the first bar association, and the members of its boards between 1862 and 1868, see: Fanny Pardo Valencia: *Ética y Derecho de la Abogacía en Chile*. Santiago: Editorial Jurídica de Chile. 1969. pp. 439-444.

⁸² *Estatuto Colegio de Abogados de Valparaíso*. Valparaíso, Imprenta Gillet. 1901. *Acta de Fundación, Estatutos y Personalidad Jurídica del Instituto de Abogados de Santiago*. Santiago, Imprenta Diener. 1915.

⁸³ José Maza Fernández: "Exposición de motivos del D.L. que crea el Colegio de Abogados". *Memoria del Colegio de Abogados*. 1950. p. 83.

⁸⁴ The establishment of the bar association was only the beginning of an organizational wave of new professional corporations, which also would reach other professions in the following decades.

⁸⁵ Lucas Sierra, Pablo Fuenzalida: "Tan Lejos tan cerca: La Profesión Legal y el Estado en Chile." In, Fernando Atria et al. *Una vida en la Universidad de Chile. Celebrando al Profesor Antonio Bascuñan Valdés*. Santiago: Legal Publishing, Thomson –Reuters. 2014. pp. 423-424.

statute that set its bylaw in 1925 (*Colegio de Abogados de Chile*, from now on, CHBA according to its English abbreviation).⁸⁶ Diverse statutory norms issued in 1928 and 1935 converted the bar association into a quasi-administrative bureau with a public law status.⁸⁷ These regulations, that would operate until 1981, were critical in determining lawyers' sphere of jurisdiction, and provided important advantages for the bar organization. Likewise, the successful process of bargaining allowed several members of the first generation of its board, composed mostly by an alliance of conservative and liberal lawyers, remained in charge of it for almost 25 years, almost until the end of the political cycle.⁸⁸

Certainly, during its first decades, the emerging CHBA needed to answer to important organizational challenges. The bargain of its structure and its members' status was determined both by the growth of the profession and by the political reorganization of the state.⁸⁹ The regulation of the bar not only constitutes an illustrative example about the impact of social transformation on law but also about how the state and the legal field are mutually interwoven. Basically, following the usual direction on the sociology of the profession, we could analyze the role of the bar in three key areas: control and defense on lawyers' sphere of jurisdiction, such as keeping the monopoly on juridical services; protection of professional and social status; and the collaboration with the general functioning of the legal system attempting to gain spaces of institutional influence.⁹⁰

First, the most elemental and evident function of the CHBA was to keep lawyers' monopoly and control on the offer juridical services. As a public entity, its bylaws required law graduates' compulsory enrollment to perform properly professional services and to represent litigants before courts.⁹¹ Regarding the maintenance of the professional monopoly, its foundational documents present some clues about the necessity of surveillance of the illegal practice provided by lay people (*tinterillos*), a phenomenon maybe linked to growing demands for access to justice and an important number of individuals with unfinished legal studies.⁹² Accordingly, the association not only enforced the exclusive province of the legal profession but also got the Congress to pass

⁸⁶ D.L. No. 406. March, 19th, 1925. In, *Recopilación de Decretos Leyes dictados en 1925*. Tomo XIII. Santiago: Secretaría del Consejo de Estado. 1925. pp. 240-243.

⁸⁷ Ley No. 4.409 September, 11th, 1928. See: Biblioteca del Congreso Nacional: *Historia de la Ley no 4.409: Crea el Colegio de Abogados y fija las disposiciones por las que debe regirse*. Santiago: 1928; and, "Reglamento del Colegio de Abogados de Chile". Decree No. 1450, April, 15th, 1935. Secretary of Justice. *Boletín de Leyes y Decretos de Gobierno*. Libro CVI. Santiago, 1935. pp. 781-807.

⁸⁸ By this period, the board of the CHBA was composed by 18 lawyers, who were elected for a term of four years by all the members of the association. However, the elections were conducted each two years to replace partialities of ten and eight members of the board. Art. 7. Ley No 4409, already quoted. To observe the long leadership exerted for the builders of the organized bar see Appendix 10.

⁸⁹ See Adriana Preusser Taylor: *De la profesión del abogado y su legislación*. Valparaíso: Imprenta Universo. 1927. Iñigo del Maza: *Los Abogados en Chile, desde el Estado al Mercado*. Op. Cit. p. 15.

⁹⁰ Richard L. Abel. "Lawyers in the Civil Law World". In Richard L. Abel, Philip C.S. Lewis: *Lawyers in Society: The Civil Law World*. University of California Press. Los Angeles, 1988. pp. 1-53. For the legal description of their attributions, see Art. 12 and 13 Ley No 4409, already quoted.

⁹¹ Initially, this enrollment was complemented by an examination before a committee integrated by the Bar Association, the Appellate, and the Supreme Courts. Lucas Sierra, Pablo Fuenzalida: "Tan Lejos tan cerca..." *Op. Cit.* p. 427.

⁹² On an estimate of lawyers' population and *tinterillos*, see: Rogelio Pérez-Perdomo: *Latin American Lawyers*. Op. Cit. pp. 87-88. Steve Lowenstein: *Lawyers, Legal Education and Development. An Examination of the Process of Reform in Chile*. New York, International Legal Center. 1970. pp 46-48.

important legislation for that purpose. Following CHBA's vigorous political pressures, the Congress agreed a statute stiffening the punishment against the illegal practice and requiring Chilean nationality for admission to the bar, eschewing the competence of foreign attorneys (1941).⁹³ Besides surveilling entry into legal practice, the corporation was very active in expanding lawyers' jurisdiction. Facing their initial inability to act on behalf of clients before some administrative agencies (e.g. the migratory department of the Minister of Interior and the conciliatory panels of labor arbitration in collective negotiations), annual reports show that the CHBA was active in lobbying to get lawyers' access administrative agencies as brokers, which was vital in the new milieu. By the same token, legislation granted CHBA the prerogative to regulate the legal practice, fix fees and exert a close control on attorneys through norms that were recognized by courts and other public administrative agencies.⁹⁴ Hence, in 1949, the CHBA issued a Code of Ethics that systematically covered the different aspects of the professional life, establishing a disciplinary procedure and sanctions that could even imply the cancellation of the professional license.⁹⁵

In a second key role, the CHBA was committed to protecting lawyer's professional and social status. For example, at the political realm, the board of the bar resorted to its networks to defend elite lawyers who were jailed and confined by the government during the years of political instability in the early thirties, and to protect those who were included in international blacklists of cooperation with the Axis during the World War II. Furthermore, the CHBA permanently supported attorneys against courts' disciplinary sanctions.⁹⁶ About the protection of their social status, the CHBA established a fund to support its members and their families (1934) and, in the early 1940s, lawyers were integrated into the retirement plan for public employees, obtaining advantageous conditions. In a context where law graduates began an exponential growth and social diversification, many law graduates did not have significant access to previous patrimonial capital to make their living, and these last structures of protection became critical to keep the social status of the profession.⁹⁷

Finally, the CHBA collaborated with the general functioning of the legal system, both to fulfill its civic commitment and to broaden its sphere of influence. Since its beginning, the corporation carried out important tasks of surveillance on the performance of the judiciary, sometimes getting public attention. In fact, its annual reports registered numerous visits to courts, several complaints about delay in judicial procedures, and the proposal of integral lawyers who were appointed to judicial panels (*pro-tempore judges*).⁹⁸ Such a sort of activity was deepened over time, when legislation gave to the

⁹³ Carlos Estévez Gazmuri: *Manual del Abogado*. Santiago: Editorial Jurídica de Chile, 1950. Op. Cit. p. 55. Lucas Sierra, Pablo Fuenzalida: "Tan Lejos tan cerca: La Profesión Legal y el Estado en Chile." *Op. Cit.* pp. 426-427.

⁹⁴ Carlos Estévez Gazmuri: *Manual del Abogado*. Op. Cit. pp. 50-51.

⁹⁵ For a complete version of the text, and its more relevant precedents grounded on it, see: Fanny Pardo Valencia: *Ética y Derecho de la Abogacía en Chile*. Op. Cit.

⁹⁶ Carlos Estévez Gazmuri: *Manual del Abogado*. Op. Cit. 36-38

⁹⁷ Ley No 7,124 (1941), and Ley No 7,871 (1944). Quoted by Lucas Sierra, Pablo Fuenzalida: "Tan Lejos tan cerca..." *Op. Cit.* pp. 428-429. See also, "Ley No 10.627 (October, 9th, 1952). Ley que incluye en el régimen de previsión de la Caja Nacional de Empleados Públicos y Periodistas a los abogados." In Fanny Pardo. *Ética y Derecho de la Abogacía en Chile*. Op. Cit. p. 473.

⁹⁸ Carlos Estévez Gazmuri: *Manual del Abogado*. Op. Cit. pp.33. 36-38.

CHBA the right to participate, with the Supreme Court, in the evaluation of judges and justices (1971).⁹⁹ Equally, in 1932, the corporation created a service of judicial assistance, granting access to courts for the urban poor. After a while, this would become a complete agency aimed to assure the access to justice, which was present in all over the country.¹⁰⁰ Likewise, as we will refer at the end of this chapter, the CHBA and the University of Chile School of Law organized a group of outstanding law professors and practitioners to collaborate with the legislative process (Institute of Legislative Studies, 1939). These would intervene in several of the most relevant statutes during about two decades, but limited their real contributions to “technical” matters that did not challenge the interests of the new regime.¹⁰¹ All those public functions justified an increasing public investment in the CHBA.¹⁰² The state would grant it tax exemptions, some physical infrastructure and would afford the public function that the corporation rendered, such as the program of judicial assistance. Thus, by mid-1960s, the state provided a substantive part of CHBA’s budget.¹⁰³

Indeed, the first members of the CHBA Board used their prestige and networks to coordinate the bar and the rising regime, relying upon its quasi-administrative status to perform each of its functions as a professional organization. However, the institutional position of the CHBA was not the mere result of the effectiveness of its board’s politicking, since this also reflects a profound transformation in the lawyers’ occupational pattern. Along with the expansion of legal education in this period—a phenomenon characterized by the incorporation of the middle class—law graduates increasingly joined the bureaucracy. Although mostly as rank and file lawyers, they massively filled the posts that the public machinery opened during the *Estado de Compromiso*.¹⁰⁴ Meanwhile, due to low economic growth in this period, the private legal practice remained a relatively modest activity, except for the few could access to foreign capital. All the private law firms were family organized or very small in size, and their dockets had few cases. Advocacy often constituted a part-time activity supplemented by positions in civic service and other corporations. Furthermore, beyond litigation before courts, the lawyers’ business got gradually involved with a complex set of administrative regulations.¹⁰⁵ As a counterpart, the governmental structure hired some of the more competent and selected cadres of the legal profession. For example, the State Defense Council (CDE, 1895), the public agency in charge of the judicial representation of the central bureaucratic apparatus, became one of the most prestigious settings of legal practice. There, several noteworthy practitioners and jurists of the time met to direct high-level judicial strategies on behalf of the state, litigating in major cases (e.g. Pedro Lira Urquieta, Eduardo Novoa

⁹⁹ Lucas Sierra, Pablo Fuenzalida: “Tan Lejos tan cerca: La Profesión Legal y el Estado en Chile.” *Op. Cit.* p. 429.

¹⁰⁰ Carlos Estévez Gazmuri: *Manual del Abogado*. *Op. Cit.* pp. 29-30.

¹⁰¹ *Ibid.* *Op. Cit.* pp. 33-36.

¹⁰² The CHBA also maintained several initiatives to foster juridical science as well, such as the *Revista de Derecho y Jurisprudencia*, the most important law review of the country. *Ibid.* pp. 60-61.

¹⁰³ Lucas Sierra, Pablo Fuenzalida: “Tan Lejos tan cerca: La Profesión Legal y el Estado en Chile.” *Op. Cit.* p. 429.

¹⁰⁴ Steve Lowenstein: *Lawyers, Legal Education and Development*. *Op. Cit.* pp. 36-40. Raúl Urzúa: “Sociedad y Sistema Legal: El Papel del Abogado”. *Cuadernos de la Realidad Nacional*. No. 11, January 1972. pp. 104-116.

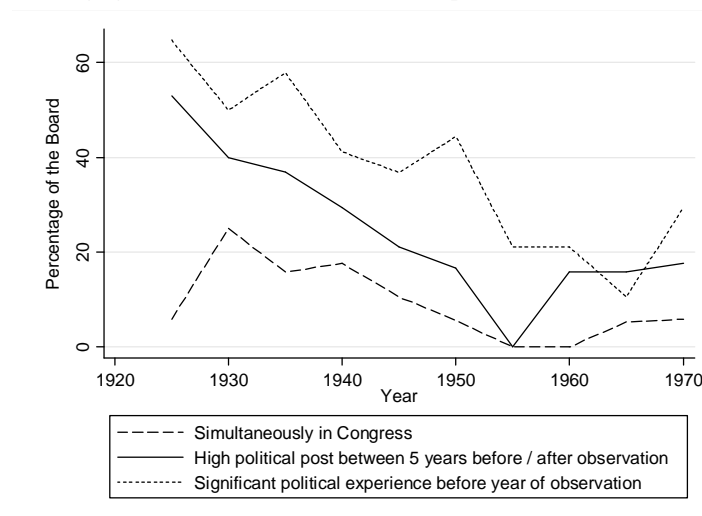
¹⁰⁵ Iñigo De la Maza: *Los abogados en Chile: desde el Estado al mercado*. *Op. Cit.* pp. 14-15.

Monreal, Lorenzo de la Maza, Guillermo Pumpin, etc.).¹⁰⁶ Therefore, although it could seem atypical from a comparative perspective, the physiognomy of CHBA not was weird in a context where public administration grew to constitute a central space of lawyers' life. Ultimately, the overlapped structures of the bar and the state, and their daily cooperation, only echoed a broad change in the activity of the legal profession.

Despite the coordination of the administrative state and of the legal system, the leading members of the bar were deeply affected by the fragmentation of governmental power. Empirical evidence indicates that they progressively disengaged from active political responsibilities, even when about 70% of them possessed partisan identities.¹⁰⁷ Based in the analysis of the biographical accounts of the members of the CHBA boards, the next figure shows their engagement with politics decreased over time, reaching its lowest point by the mid-1950s and the early 1960s.¹⁰⁸

Figure 2.5:

*CHBA's General Board:
Engagement in Governmental Responsibilities (N = 104)*



Sources: *CHBA Annual Reports 1926-1970*. CHBA Library. Additional Sources see Appendix 10. Note: Estimated of high political posts and significant previous political experience are calculated considering positions in Congress, the Cabinet of Ministers (secretary or undersecretary), and as head of the public agency and ambassador.

¹⁰⁶ After its establishment, in 1895, some important lawyers-politicians were part of the CDE (called Council of Fiscal Defense until the 1950s). Such are the cases of Pedro Aguirre Cerda and Juan Esteban Montero, who reached the Presidency of the Republic. Over time, its members would have more politically passive profiles. Gonzalo Vial Correa: *Consejo de Defensa del Estado: 100 años de historia*. Santiago: Consejo de Defensa del Estado. 1995.

¹⁰⁷ According to Couso, the CHBA lacked professional autonomy and the elections of its board were organized along party lines. Javier Couso: "When the Political Complex takes the lead: The Configuration of the Moderate State in Chile" In Lucien Karpik, Terence Holliday, Malcom Feeley (eds.) *Fighting for Political Freedom. Comparative Studies of the Legal Complex and Political Liberalism*. Hart Publishing, Portland. 2007. p. 328. A careful use of the evidence –exhibited in Appendix 10–, confirms Couso's apprehension. Although the members of the board gradually occupied less notorious political responsibilities, they kept strong partisan identities.

¹⁰⁸ See also a comparison of profiles at Appendix 10 c.

Although lawyers carried out a successful process of negotiation of its sphere of jurisdiction and status, the organization of the CHBA illustrates how they gradually lost political authority, occupying a secondary place in the new regime. Through its quasi-administrative standing, the CHBA heavily relied upon the state to perform its professional tasks. So, the bar organization lived under too heavy constraints to decisively influence the process of policy making.¹⁰⁹ At the same time, although its board possessed lower political responsibilities, its members kept strong partisan identities. Therefore, its autonomy was conditioned by the struggles at the political arena, hampering its ability to take definite stances. In the end, the CHBA plainly exemplifies the new position of the legal profession in the sphere of power, and shows how, from the institutional point of view, lawyers' collective organization was shaped by the advancement of the administrative state.

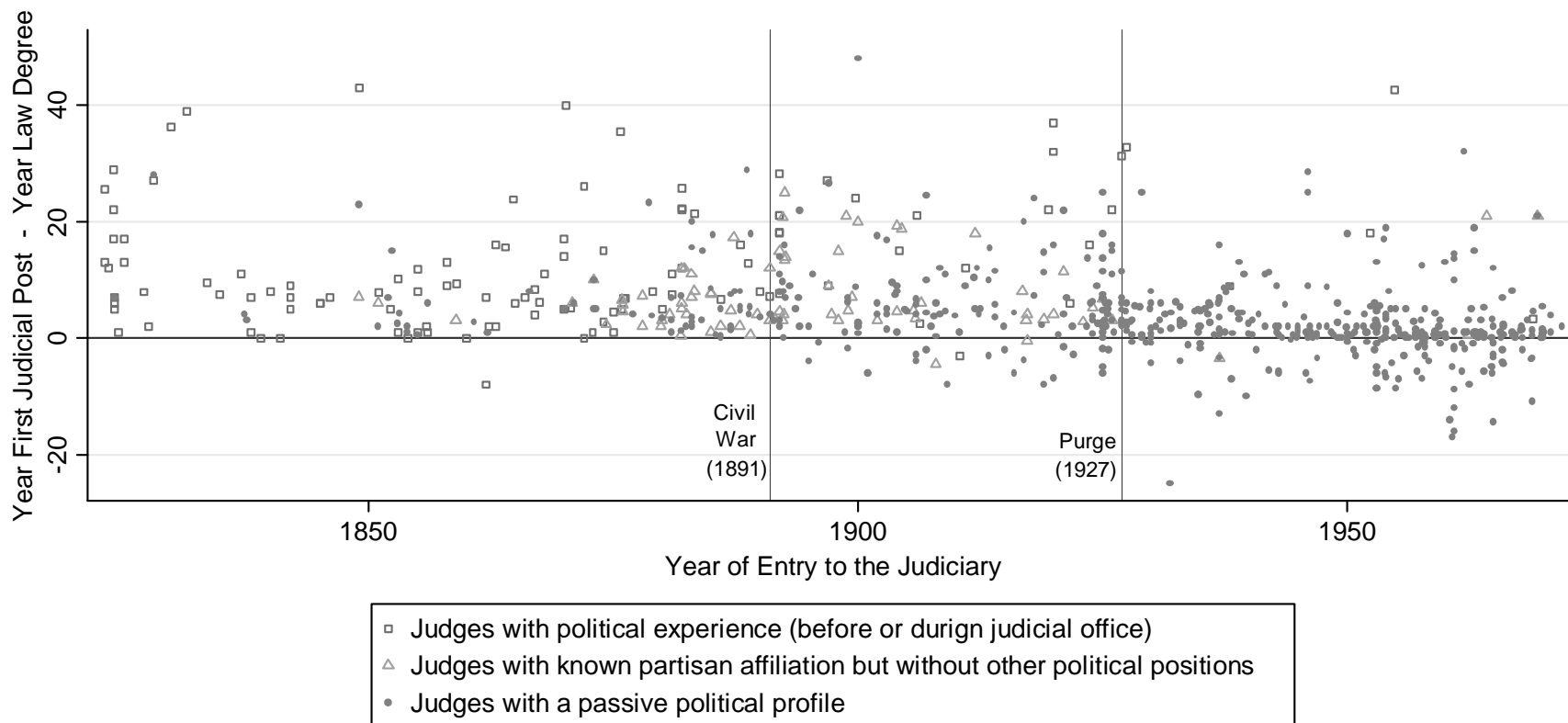
Restraining Judicial Authority

Besides the bar, the transformation of the judiciary also constitutes a good example of how relations between politics and law were reframed during the first half of the twentieth century. A sociopolitical analysis of higher courts clearly illustrates how the initial unity of the bench, the bar and high politics, which characterized the construction of the republic, reached an end. After years of increasing petty politics and corruption at the turn of the twentieth century, courts were purged and harassed by the mid-1920s, precisely during the same years in which the foundations of the administrative state were laid. The judiciary was transformed into a bureaucratic body characterized by organizational inertia and political passivity. It is not surprising, then, that courts would become one of the targets of future debates about the legal crisis.

To understand the transformation of the judiciary, one needs to explore justices' sociopolitical profiles, particularly of those in the higher courts. These provide insights into judges' professional experience and their place in the upper sphere of governmental power. For analytical purposes, *Figure 2.6* offers a historical approach to capture the relations of justices to professional experience and political activity. Regarding the first variable, judges' relation to legal practice and civic service is depicted by axis y, which offers the difference between the year judges entered the judiciary and the year they received their professional degree as lawyer authorized to act before courts. So, axis y shows how many years of experience each of them had before joining the judiciary at any level of its structure. It also shows who began performing minor judicial tasks even before receiving the law degree. Political activity is illustrated by different symbol style. Timing is represented by axis x. This historical sequence results in a helpful portrait to explain briefly the evolution of the judicial organization during almost 150 years (1823-1970), with a particular focus on the origins of the *Estado de Compromiso*.

¹⁰⁹ This passivity is confirmed by the deferential behavior of the bar, and the merely "technical" role of the Institute of Legislative Studies established by the CHBA in 1939. Both situations are commented below.

Figure 2.6. Political Profiles at the Judiciary (1823-1970)



Sources: Bernardino Bravo Lira: *Anales de la Judicatura Chilena. Durante cuatro siglos por mí habla el Derecho*. Santiago: Corte Suprema de Justicia. Editorial Jurídica de Chile. 2011. Note: The graph illustrates the total number of justices who entered to the judiciary between 1823 and 1970, reaching positions at higher courts along their careers (Appellate Courts and the Supreme Court) ($N = 745$). To analyze their political experience, the data considers their positions at the Congress, Ministers (Secretary and Undersecretary), and territorial divisions (Governors and Mayors). To determine their year of entry, the data reflects exclusively proper judicial responsibilities (such as judicial clerk, secretary, trial judge, *fiscal*, court reporter and justices). Accordingly, the positions of fiscal attorney (*procurador fiscal*) and minors' defenders (*Defensor de Menores*) have not been taken into account

As explained in the previous chapter, by the mid-nineteenth century, Chile possessed an elementary judicial organization that in its higher ranks was composed by a Supreme Court and three courts of appeal. At functional level, the judiciary seemingly occupied a weaker position in public governance. Judges were appointed by the Executive, did not count on powers of constitutional review, and rarely controlled the legality of the administrative performance. At the same time, from the enactment of the civil code, in 1855, they were compelled to apply statutes according to strict rules of textual interpretation.¹¹⁰ From the sociopolitical point of view, however, empirical evidence shows an important involvement of judges in other governmental tasks. *Figure 3.6* indicates that many judges who joined the judiciary in the early part of this period were engaged in important political posts at the Congress, the cabinet of ministers and territorial administration. A deeper study of their profiles reveals three kind of patterns among them: skillful politicians and law professors who were appointed to the bench; judges who moved ranks up and were called to take other political responsibilities; or justices who participated in competitive politics after their retirement. By the mid-nineteenth century, then, we can find several notable gentlemen politicians of law within the judiciary, like Manuel Montt (long time justice at the Supreme Court and President of the Republic).¹¹¹ The prevalence of such patterns continued after the enactment of the Law of Organization of the Tribunals (1875), which provided the first systematic regulation of the judiciary.¹¹² This preceded expansion of the number of courts in the next decade and the incorporation of a new cadre of experienced politicians or practitioners to the bench, like José Victorino Lastarria (patriarch of the Chilean Liberalism), Ambrosio Montt and Manuel Egidio Ballesteros.¹¹³ Following the general trend of the period, this new generation of judges generally belonged to minor gentry and was educated at the National Institute and at the University of Chile School of Law. Living under the ethos of elite politics, they were respected figures in the public sphere, continuing a long tradition of high social esteem of judges.

The transformation of the judiciary since the 1880s onwards is critical to understanding judges' role during the twentieth century, the main matter of this chapter. By that period, the Executive and the Parliament struggled about the organization of government and their prerogatives. This conflict was associated with the gradual control of presidential authority by Congress in the earlier decades. So, trying to limit the high concentration of presidential power at the judicial realm, the Congress passed legislation that reinforced the principle of separation of powers, establishing incompatibilities between political posts and judicial tasks (1888). Although this legislation was only

¹¹⁰ See Chapter 1.

¹¹¹ Other remarkable cases, among many, are Mariano Egaña, José Clemente Fabres and Belisario Prats. Bernardino Bravo Lira: *Anales de la Judicatura Chilena*. Op. Cit. pp. 588. 623. 1108. Their biographical accounts show they were mostly part of the minor aristocracy, with few members coming from the landed elite.

¹¹² *Lei de Organización i Atribuciones del Tribunales*. Santiago: Imprenta de la República. 1875.

¹¹³ Resorting to the Law of 1875, the Executive established new courts in the years of the Pacific War (1879-1884) and during José Manuel Balmaceda's rule (1886-1891), creating three new courts of appeal and one trial court in each department. Such as *Figure 2.6* shows, an important number of judges were incorporated about 1875, with the issue of the new legislation. Additionally, a small group of lawyers who performed judicial tasks during the military occupation of Peru and in territories annexed in the Pacific War were incorporated about the early 1880s.

gradually enforced, the ban against judges' dual office holding was a reality about the turn of the century, along with the consolidation of a quasi-parliamentarian regime (1891-1925).¹¹⁴

After the triumph of the Congress in the civil war of 1891, the victorious groups initiated a purge of the courts, and the new government expelled about the 80% of the members of the judiciary in the subsequent years.¹¹⁵ So, a younger group of lawyers would renew the former judiciary, dominating judicial structures for about three decades. Due to a ban on dual office-holding, justices did not usually perform other political responsibilities. Nevertheless, as *Figure 2.6* shows, they continued interacting within the political game built toward the Congress, taking part of partisan groups and participating in their conventions. In effect, Armando de Ramon's empirical study on the judiciary in these decades has shown that political affiliation to right-leaning political parties (Liberal and Conservative) definitively influenced some justices affiliated to these latter ones moved up ranks.¹¹⁶ At the same time, his study detected a significant level of political favoritism and leniency toward misbehavior. Certainly, there were many remarkable judges who were known for their competence in this period. As a general rule, however, many historical testimonies point to an environment of dishonesty, corruption and a petty politics of judicial appointments. For instance, an editorial of *Revista Chilena*, a popular journal of the early twentieth century, asserted: "[...] here and there we cannot find rightful justice, here and there the judge's arbitrary will prevails over the letter of law, here and there triumph and prevail different interests other than the Justice's".¹¹⁷ At last, the judiciary lost its prestige, a clear symptom of the decline of the aristocratic polity by the first two decades of the twentieth century.¹¹⁸

According to increasing contempt on courts that dominated the public mood, the emergence new regime carried out serious attempts to reform the judicial organization. Through the new constitution of 1925, lawmakers agreed on a dual strategy on the judiciary.¹¹⁹ First, the new constitutional text attempted to insulate courts from political pressures, regulating the process of appointment and laying the foundations to restructure the judiciary as a bureaucratic career. In fact, the constitution granted the Supreme Court the prerogative to select a list of nominees to its own ranks and to the appellate level, which were appointed by the Executive considering their seniority within the judicial service. A similar system was established regarding appointments to trial tribunals. Such constitutional provisions coincided with a small reform to the judicial offices in the end of 1925, which deepened a process of governmental specialization and the divisive line between the judiciary and electoral politics.¹²⁰ Second, the new constitution granted the Supreme Court the power judicial review to decide the constitutionality of legislative acts, with binding effects to the particular case in which the sentence was issued

¹¹⁴ *Figure 2.6* indicates that still some lawyers with relevant political experience will join the judiciary during the next decades, and some judges will be elected to the Congress after their retirement, but they would be a tiny minority.

¹¹⁵ Accordingly, several well-renowned justices were expelled, such as Manuel Egidio Ballesteros. Armando de Ramón: *La Justicia Chilena entre 1875 y 1924*. Op. Cit. pp. 37-40.

¹¹⁶ *Ibid.* p. 51.

¹¹⁷ Quoted by de Ramón, see *Ibid.* p. 34.

¹¹⁸ See, for example, José Guillermo Guerra: *La Constitución de 1925*. Op. Cit. pp. 452-454.

¹¹⁹ Hugo Frühling: "Poder Judicial y Política en Chile." *El Ferrocarril*. No. 7. November. 1986. p. 6.

¹²⁰ *DL. No. 501*, August 26th, 1925.

(*inaplicabilidad por inconstitucionalidad*). Since judges in office at that time possessed liberal or conservative preferences, scholarship considers that the framers of the new constitution resorted to these reforms as counterbalance against increasing social demands and left-leaning political mobilization in the end of the former regime. Considering the moderate or right wing preferences of the drafters of the new constitution, Lisa Hilbink identifies this institutional design as a strategy of hegemonic preservation in a context of high uncertainty.¹²¹

Contingent politics was also determinative for the performance of courts during the further *Estado de Compromiso*. In the wake of violent turmoil and political repression that follows Arturo Alessandri's resignation, the new government attempted a deep restructuration and a purge of the judiciary in 1927. Along with similar processes inside other public agencies, Emiliano Figueroa and, later, Colonel Carlos Ibáñez's rules would try to eliminate former judicial involvement in partisan activism.¹²² In a report written by the Secretary of Justice of the period, he asserted that "the intervention of the political parties and parliamentarian groups [...in the process of judicial appointments...], has carried an ill-fated breath, a look of bandits for the judiciary," which would have been characterized by delays, political favoritism and moral impurity.¹²³ Accordingly, the Executive would attempt to remove corrupt or politically adverse judges from the bench, but employing illegal procedures provoked the division of the members of the Supreme Court. On the one hand, a pro-government group led by Ricardo Anguita met the Secretary of Justice and wrote down a list of who should be expelled from judicial offices. Following this, the government decreed the removal of five appellate justices and three judges at trials courts (and began the study of further discharges as well). On the other hand, a group led by the Chief Justice Javier Angel Figueroa Larraín opposed the previous decree, protesting against the extraordinary and illegal procedure.¹²⁴ Answering to such judicial resistance, Colonel Ibáñez, then minister of interior, exiled the Chief Justice and asked for the resignation of other four justices at the Supreme Court who had taken part for Figueroa.¹²⁵ Nobody among the bar or the bench mobilized in their favor, and the President of the Republic himself, brother of the Chief Justice, resigned overshadowed by Ibáñez power. Later on, the government would appoint Ricardo Anguita as Chief Justice of the Supreme Court. He would lead the process of housecleaning and bureaucratization of courts, but without implementing other substantive reforms to judicial structures.

After the return of the democratic regime, in 1932, the new groups in power bore a grudge against the judiciary. Some deputies presented an impeachment against the members of the Supreme Court still in office, arguing they did not keep the integrity of the judges during the years of turmoil and authoritarian rule (1933). This failed since the commission in charge of studying the impeachment concluded that the Chamber did not

¹²¹ Lisa Hilbink: *Judges beyond Politics in Democracy and Dictatorship*. Op. Cit. p. 58.

¹²² Julio Faúndez: *Democratization, Development and Legality*. Op. Cit. p. 129.

¹²³ Quoted by Armando de Ramón: *La Justicia Chilena entre 1875 y 1924*. Op. Cit. p. 53.

¹²⁴ Javier Angel Figueroa Larraín was a renowned liberal politician and presidential candidate in 1915. In 1920, he was appointed to the Supreme Court, and, in 1925, he was named Chief Justice by his brother, the President of the Republic Emiliano Figueroa Larraín (who headed a puppet government backed by the Army between late 1925 and 1927). Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit. Vol. 2. p. 98.

¹²⁵ Carlos Vicuña Fuentes. *La Tiranía en Chile* [1928]. Santiago: Lom. 2002. pp.497-498.

have competence to know the facts that grounded the accusation.¹²⁶ Nevertheless, the impeachment meant a clear indication of the new place of courts within governmental sphere. Later on, justices were excluded from public ceremonies until mid-1950s, abandoning their place in republican rituals.¹²⁷ Additionally, as a part of a new kind of political priorities, scant judicial resources remained about a 1% of the national budget in this period. And this financial situation implied the judiciary keep low salaries and a deficient physical infrastructure.¹²⁸ All this confirmed courts' loss of prestige and authority, signaling its persistent political weaknesses.

On the whole, both the constitutional reform and the conflict about courts at the beginning of the new political cycle explain their situation during the next decades. Institutional design aimed to insulate tribunals against partisan pressures, limited powers to oversee lawmaking, and political weaknesses were the legacy of the late 1920s and early 1930s. Therefore, by the action of the political elite and by their own strategic behavior, courts became bureaucratic organizations that permanently appealed to their non-political nature.

First, a deep process of bureaucratization can be observed in courts after the late 1920s. The judicial system increasingly became a close hierarchical organization, where higher courts could exert control over judges' discipline. By an internal process of qualification that determined how judges could move ranks, and by expanding the scope of complaint procedures to know trial judges' decisions by disciplinary expediency (*recurso de queja*), higher courts re-built judicial practice.¹²⁹ Following the same spirit, partisan politics was forbidden among judges. Only limited hours as university professor were allowed to mitigate low salaries provided by a declining judicial budget.¹³⁰ These legal structures and practices were strengthened over time, but not only by court themselves. Concurrently, and without a determinant intervention of judges, the Congress passed a new systematic legislation on the judiciary in 1943 (*Código Orgánico de Tribunales*). This kept the hierarchical logic and political passivity of tribunals, consolidating their institutional shift.

The bureaucratic trend can be observed in the sociopolitical profiles of who joined the judiciary from late 1920s onwards. *Figure 2.6* shows that, on average, less experienced and politically passive individuals took part of the bench. Even, empirical evidence shows an important and increasing number of people entering the judiciary well

¹²⁶ For a detailed account on the impeachment procedure, its parliamentarian debates and the answer of the Supreme Court, see Elizabeth Lira and Brian Loveman: *Poder Judicial y Conflictos Políticos (Chile 1925-1958)*. Op. Cit. pp. 149-160. See also, Cámara de Diputados: *Boletín de Sesiones Ordinarias*. 27 de Junio de 1933. pp. 930 – 975.

¹²⁷ Bernardino Bravo Lira: *Anales de la Judicatura Chilena*. Op. Cit. p. 63.

¹²⁸ Some authors speak about a decreasing judicial budget since 1933, from a 2% of the national budget to a 1% in the 1950s. Bernardino Bravo Lira. “La Corte Suprema de Chile” In *El Juez entre el Derecho y la Ley, en el Mundo Hispánico*.” Op. Cit. p. 637. However, empirical data shows the relative importance of the judicial expenditure began to decrease since the end of the nineteenth century. As a matter of fact, the judicial budget was about a 0.8% of the national amount during some years before 1925, remaining within a similar range afterwards. See Markos J. Mamalakis: *Historical Statistics of Chile. Government Services and Public Sector*. Vol. 6. Westport: Greenwood. 1989. p. 346.

¹²⁹ By the 1960s, the Supreme Court began to know more complaint procedures than writs of cassation, its main business according to its institutional design. See Bernardino Bravo Lira: “La Judicatura Chilena en el Siglo XX”. In Bernardino Bravo Lira: *El Juez entre el Derecho y la Ley*. Op. Cit. p. 567.

¹³⁰ Art. 261. *Código Orgánico de Tribunales*.

before they received their law degree, always starting as minor officials at the tribunals. We can find few of them who had minor political responsibilities before they held their judicial post. Likewise, some lawyers with legal experience took part as judges in courts, both as a way to make their living in a context of increasing offer of law graduates, or as part of judicial policies to incorporate some qualified attorneys (i.e. in the mid fifties when Gregorio Schepeler was Chief Justice).¹³¹ These few exceptions did not alter the dominant pattern, however. Probably, the lack of influence in decision making that characterized a very mechanical view of judicial tasks, low salaries and the limitation of other professional venues, as attorneys or politicians, could be the causes of a diminishing importance for judgeship among law graduates. Additionally, it is important to note that young judges usually came from an emerging middle class, possessing a lower social background in comparison to their colleagues in office before the 1920s.¹³² This reflects an underlying change regarding the social groups on which the functioning of the legal system was anchored.

The new sociopolitical profiles of who entered the judiciary had enormous consequences for courts' institutional dynamics. An early entry implied that new judges were submitted to a longer process of socialization within the judiciary, being exposed to hierarchy, discipline and the civic service values (e.g. to limit any social activity that could affect their preferences in adjudication). At the same time, their early entry lessened their possibilities to choose other professional paths, usually associated with lawyers' ability in litigation and with the capture of clients. That was aggravated by their lower social background, the increasing offer of law graduates and the impoverishing of their social and political networks. For judges who joined courts from the 1930s on, the cost of the disciplinary sanctions became extremely high since their professional alternatives were limited. All this would result in the gradual reinforcement of the bureaucratic structures, generating an organizational inertia and increasing the power of higher courts through a top down control.

A second manifestation of courts' organizational turn was the construction of a rigorous discourse focused on their apolitical nature. This constituted an institutional rhetoric, explicitly stated by the Chief Justice of the Supreme Court in his annual speech on the situation of the judiciary. Indeed, statutory order had established courts' blind enforcement of the letter of law since mid nineteenth century. The previous chapter explained how, after the enactment of the civil code (1855), judges became the servants of legislation, and were expected to apply formalistic standards of interpretation even when those could seem unfair. However, all those previous rules and practices arose in a context where judges were closely integrated into the ruling groups, occupying relevant positions in Congress, Ministries and political parties. In such positions, they could leave their functional tasks behind, actively participating of lawmaking and political

¹³¹ There are very few cases of judges who participated in electoral politics after beginning their judicial careers. Pedro Enrique Alfonso is the most remarkable case. A former judicial clerk and trial judge, Alfonso entered to electoral politics as deputy and minister and was a candidate for the Presidency in the 1950s. Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit. Vol.1. p. 57.

¹³² Due to lack of information, it is not possible to present a complete perspective on judges' social background. However, estimate data points out that most lawyers who joined the judiciary would have been part of the middle class, with few or almost none members of the landed elite and minor gentry. Appendix 11 illustrates judges' probable social background.

compromise. From the late 1920s, by contrast, the judiciary was radically separated from partisan life by a new organizational design.¹³³ Through the reassertion of its apolitical role, anchored in the principle of separation powers, the judiciary conceptualized its new institutional position in this after the 1920s.

The discourse on judges' non-political status would go beyond underpinning courts' non-partisan character, and had three specific purposes. First, this doctrine would be functional to defend courts' sphere of jurisdiction facing the advancement of the administrative state. For example, when the government established special labor tribunals under the coverage of the Minister of Social Welfare (1933), the Supreme Court successfully protested. This latter argued that the new tribunals should be submitted to the disciplinary and judicial control of the Supreme Court. If they remained under the Executive authority, the Chief Justice claimed, their sentences would "mainly obey to political and administrative considerations."¹³⁴ Implicitly, the Supreme Court proposed that courts' apolitical nature provided a better institutional position to adjudicate with proper juridical bases, particularly on issues considered part of private law. Second, the courts resorted to their supposedly non-political character to recover the control of their own business, particularly the process of judicial appointments (even when, as has been pointed out, the Supreme Court had important leverage on this). Accordingly, the Chief Justice explained in 1942 that due to the system of selection, "magistrates and judicial officials who intend to move up ranks [...] resort to external [political] influences."¹³⁵ Given that, the Chief Justice proposed that the process of appointments should be an exclusive prerogative of the judiciary, even excluding the role of the Executive in selecting Supreme Court nominees for the higher offices. This demand constituted one of the central judicial requests in this period. Finally, the discourse of the non-political nature of courts was associated with judicial independence. Since the Supreme Court already had suffered the consequences of their institutional weaknesses, judges resorted to this discourse to duck on conflictive legal issues.¹³⁶ Eschewing the menace of political harassment, they argued continuously that courts were not lawmakers. Hence, as we will analyse below, a radical understanding of its apolitical role would lay the foundations to keep a deferential attitude toward the Executive during the next decades.

Indeed, their new institutional practices and discourses, courts mirrored, better than any other setting, the specialization of the legal profession and its submission to politics. Their centrality within the legal field allows observing how deep such a transformation operated. As expected, this change not only related to institutional structures and discourses, but also to the behavior of legal institutions.

The Structural Transformation of the Legal Profession (a nutshell)

By now, we have analyzed the structural change of the legal profession and its links to the public sphere in three different realms (the traditional forums of politics, the bar, and the bench). The previous description illustrates the gradual decline of the gentlemen politician of law as an archetype that dominated state-crafting until the mid-

¹³³ Lisa Hilbink: *Judges beyond Politics in Democracy and Dictatorship*. Op. Cit. p. 71.

¹³⁴ Hugo Frühling: "Poder Judicial y Política en Chile." Op. Cit. p. 15.

¹³⁵ Ibid. p. 13.

¹³⁶ Lisa Hilbink: *Judges beyond Politics in Democracy and Dictatorship*. Op. Cit. pp. 71-72.

twentieth century. Before analyzing the consequences of this shift at the level of law in action, it is convenient to recapitulate to observe the big picture.

As explained at the beginning of this chapter, the emergence the *Estado de Compromiso* constituted a new foundation of the law, by which different social groups entered to the contest for the control of the state (i.e. predominance of the middle class). This broke the dominion of the cohesive elite which anchored the functioning of the legal system. Previous aristocratic social networks could not continue operating to cement the close unity between the legal field and the state. Between 1932 and the mid-1950s, the ground of juridical the system was provided by the centripetal political dynamic and its capacity to manage a more complex set of social and economic demands, answering to broad urban constituencies. This political process, which has its origins at the turn of the twentieth century, would have very concrete manifestation on the elite legal profession.

The first consequence of the new regime was the increasing social diversification of law graduates. Through the expansion of university studies in general, and of legal training in particular, middle class would steadily participate in lawmaking, the bar, and the judiciary. Lawyers acting in the traditional forums of politics, for example, would belonged to the middle class since mid-1930s.¹³⁷ Something similar can be said about the judiciary. From the early 1930s, almost all the entrants to judicial service came from the middle class, beside some judges from minor gentry groups.¹³⁸ The organization of the bar was the only institution with prevalence of landed elite and minor gentry. But even there, we find an increasing social heterogeneity.

The specialization of the legal profession and the fragmentation of its political power was the second consequence of the new regime. A more complex and varied set of social demands meant the division of governmental tasks. A Weberian approach suggests that process of specialization implied the separation of law from other disciplines, and also an allotment of functions within the legal system itself. Juridical expertise was indeed gradually separated from new fields, such as the economy, electoral politics, and public administration. At the same time, as the previous analysis shows, divisions between lawmaking, the bar, and the bench increased. During the middle of the nineteenth century, the legal profession acted in a unified manner dominating the upper strata of the public sphere. Gentlemen politicians of law performed various simultaneous roles in the state and the legal field. By the 1950s, however, we found a very different pattern. Overall, profiles reveal the emergence and predominance of four ideal types of law graduates: a) highly specialized politicians focused on partisan life and electoral competition, who became increasingly disengaged from the core of the legal field unless in small practice as attorneys; b) low-profile bureaucratic lawyers taking part in cabinets for a brief time, or in administrative agencies for longer; c) justices who were completely absent from political life, and usually, without significant experience at the bar; and, d) law professors and outstanding practitioners that habitually took part of the bar organization, but whose entry into politics was sporadic and episodic. This account, which does not include the great array of lower positions of a socially segmented profession, clearly depicts the transformation of lawyers in politics.

All these structural transformations resulted in a rearrangement of the link between the law and the state. If during the nineteenth century the juridical field and the

¹³⁷ See Appendix 7.

¹³⁸ See Appendix 11.

state were mutually united and embedded, the new regime implied a different set of relations. Certainly, state crafting continued to be a legally minded activity, characterized by juridical concepts and frameworks. Notwithstanding, the legal field came to gradually occupy a subordinate place in the new regime. The judiciary, for example, became composed of politically passive individuals, who appealed to a literal interpretation of statutes and renounced lawmaking. At the same time, the bar organization depended upon the state to perform its professional goals, occupying a quasi-public status. These institutional dynamics of bureaucratization portray a shift in the position of lawyers, who, as such, stood at a lower stratum within the administrative state than they had in the nineteenth century.

Echoing Political Power: Executive Authority, Legislative Chaos and Deferential Legal Institutions

Beyond the structural change of the legal profession, the advancement of the administrative state exerted a deep influence in the construction of legal order and in the behavior of institutions. On one hand, the new cycle of centripetal politics was characterized by the predominance of the Executive authority and bargaining between the state and different interest groups, producing a highly complex legal system. Due to its constraints, on the other hand, legal institutions were deferential to the other branches of the political power. The judiciary was docile before the administration, exhibiting only a very marginal capacity to oversee its performance. This kept their voice to defend its corporative interests and restrained the most drastic faculties of the administrative state regarding property rights. By and large, however, courts remained politically irrelevant actors, and did not influenced critical decision making or constitute a setting of political contestation.

Since the tumultuous years at the genesis of the *Estado de Compromiso* (1925-1932), the legal order was characterized by a new style of lawmaking. Like other comparative experiences in which the administrative state rose, the locus of the normative production would be given by the Executive authority and bureaucracy.¹³⁹ As a way to build capacity of a welfare state and to solve increasing social demands, numerous executive decrees and administrative regulations were enacted. For instance, different de facto governments in 1925 and in 1932 issued critical legislation without parliamentary authorization (decree laws). These organized matters like banking, insurance, a system of control of prices and the establishment of several public agencies.¹⁴⁰ At the same time, resorting to the ample legislative functions bestowed to him by the Constitution, the President asked for congressional authorization to legislate in general subjects, which were granted at periods of some political unsteadiness (decrees having force of law). Again, some of these decrees covered very significant subjects,

¹³⁹ See as example, Edward L. Rubin: "Law and Legislation in the Administrative State". *Columbia Law Review*. Vol. 89. 1989. No.3. pp.369-426.

¹⁴⁰ Secretaria Consejo de Estado: *Recopilación de decretos leyes*. Tomo XIII. Santiago: Consejo de Estado. 1925. Contraloría General de la República: *Recopilación de los decretos-leyes dictados en 1932*. Santiago: Editorial Nascimento, 1933.

such as the enactment of the labor and sanitary codes (1931).¹⁴¹ At last, the legislative prerogatives of the Congress remained reduced in scope, and highly dependable of the collaboration with the Executive authority, which held a preeminent position in lawmaking even during the decades of democratic normalcy.¹⁴²

A glance on the normative output of these decades shows a true legislative chaos. This disarray was characterized by executive norms regulating broad matters, a copious body of administrative provisions, and many particular legislative statutes that were overshadowed in importance. At the beginning of the political cycle, de facto governments enacted 242 decree laws in 1925 and 669 in 1932, most of which remained valid afterwards. Additionally, between 1927 and 1960, presidential authority issued 1,290 decrees having force of law enacted previous parliamentary delegation. As explained, several of them regulated key matters. Equally, the Congress passed 13,962 statutes between 1925 and 1973, usually regarding particular individuals or singular groups.¹⁴³ Many of these norms lacked a proper juridical technique. For example, the Congress habitually passed numerous statutes with contradictory and obscure terms. Perhaps, the most curious normative phenomenon in this direction was the usually labeled miscellaneous statutes. Through this, parliamentary bargain included multiple and disconnected matters within the same piece of legislation. Thus, a statute could include assorted subjects such as taxation on land property, regulation of alcoholic beverages, public investment for potable water, customs, etc.¹⁴⁴ That kind of statutes not only constituted a true challenge for lawyers' work but, as we will see in the next chapter, began to have a deep impact on their own representation of the legal system.

Inasmuch as the state arbitrated social conflict between different interest groups, the new legislation reproduced power structures inside Chile at this time. For instance, labor law rigidly separated employees and blue collar workers, providing advantageous conditions for the former ones. In the meanwhile, the agricultural workforce was not allowed to unionize, impaired by rural location and dependence on land owners. Likewise, the welfare system was structured into more than thirty funds whose benefits reflected the ability of their members to exert political pressure on policymaking and to access to public subsidies.¹⁴⁵

¹⁴¹ Although the Congress's ability to give over its legislative powers on the Executive were dubious, it is noteworthy to indicate that this delegation operated in several periods, even beyond real situations of public turmoil (i.e. 1927, 1930, 1931, 1942, 1943, 1953 and 1960). Ibid. p. 101.

¹⁴² Federico Gil: *The Political System of Chile*. Op. Cit. p. 117.

¹⁴³ In fact, only about the 8.67% of the statutes enacted by the Congress possessed a general scope. Hugo Tagle: "Origen y Generalidad de la Ley Chilena bajo el Imperio de la Constitución de 1925". In, *Derecho y Justicia. Terceras Jornadas Chilenas de Derecho Natural*. Facultad de Derecho. Universidad Católica de Chile. 1977. pp. 375-389.

¹⁴⁴ Gonzalo Rojas Sánchez: "Notas sobre el Positivismo Legal en Chile durante el siglo XX". *Finis Terrae*. Año 1, No1. 1993. p. 39.

¹⁴⁵ As a matter of fact, the correlation between the political power and the advantageous conditions of the welfare system seems striking. Congressmen, who best embodied the privileged access to policy-making, could retire after 15 years in office, receiving a readjusted full salary. Bank employees and journalists, organized in powerful guilds, could retire after 25 years of work, affording its pension mostly with their contributions. Military personnel and Public Employees enjoyed substantial social benefits for them and their families, with a usual age of retirement of 30 years in service (receiving a full salary which was afforded by the state in about 25 %). Private Employees (white collar workers), could retire after 35 years of labor, receiving a pension whose amount was equal to the average of the last sixty months in their employment. Laborers (blue collar urban workers) may retire at the age of 65, receiving only the 50% of

The new legislation of the administrative state challenged the systematic character of nineteenth-century law, calling into question its statutory order and its compromise with market economy. Chile followed a pattern of legal development similar to other countries of the civil law tradition. In the first place, the numerous norms enacted in these decades broke the systematic approach by which lawyers and legal scholars used to conceptualize juridical order. The idea of a common general law, organized toward the civil code, was overcome by an increasing normative dispersion (de-codification). Instead, the advancement of the administrative state brought a juridical disarray and, additionally, the emergence of diverse legal regimes for interest groups, with their own basic norms, legal principles and language (e.g. labor law, agrarian law, urban regulation, etc).¹⁴⁶ In the second place, the new legislation also meant what legal scholars have identified as a process of socialization of law. While the civil code remained structured according to the principles of private property, legal equality and freedom of contract, the new legislation tended to embody a different set of policy preferences built on the idea of social justice.¹⁴⁷ So, this latter one altered contractual agreements and established numerous burdens on private property, intending to promote economic and social protection of specific groups.¹⁴⁸ Nothing about that seemed odd, since such a normative phenomenon finally expressed a new political cycle, which had emerged as an answer to the flaws of the previous socioeconomic order.

In the long-dureé, the judiciary remained deferential regarding the advancement of the administrative state and its normative output, enforcing its key policy preferences. So, courts almost did not challenge governments, eschewing to jeopardize their low political capital. For instance, they recognized the new statutes that laid the foundations of the administrative state even when those had a de facto origin, and almost did not exert control over public agencies (unless a basic protection of property rights). Actually, legal institutions in general, this is to say, including the bar, were useful to the *Estado de Comporomiso*, remaining as passive actors before some of the repressive measures imposed against dissidents as well.

One of the clearest examples of the deferential character of courts is given by their approval of the decrees law (legislation passed by the facto government), which regulated vital matters like the establishment of some public agencies. Between 1925 and 1932, a time of turmoil and authoritarian politics, the Supreme Court developed a consistent jurisprudence declaring that these norms enjoyed of legal force. For that purpose, they provided several juridical grounds to reach their decisions. They asserted, for instance, that by the time of their enactment, there no was Congress to produce

their average salary during the last sixty months. Federico Gil: *The Political System of Chile*. Op. Cit. pp. 180-182.

¹⁴⁶ Natalino Irti: *L'età della decodificazione*. Milano: Giuffrè. 1979. Alejandro Guzmán Brito: "Codificación, Descodificación, Recodificación." *Revista de Derecho y Jurisprudencia y Gaceta de los Tribunales*. 90, No 2. 1993. pp. 39-62.

¹⁴⁷ In Chile, the process of socialization of law was not focused on the reform to the civil code. Unlike other countries, such as Mexico, the civil code was not an object of reforms aimed to modify its liberal economic orientation. See, for example, José Ramón Narváez Hernández: "El código privado-social, influencia de Francesco Consentini en el Código Civil Mexicano de 1928". *Anuario Mexicano de Historia del Derecho*. Vol. XVI, 2004. pp. 201-226. Mauricio Tapia: *Código Civil: 1855-205. Evolución y Perspectivas*. Op. Cit.

¹⁴⁸ See as example the comprehensive study of Enrique Brahm: *Propiedad sin Libertad. Chile 1925-1973*. Op. Cit.

legislation under regular procedures, or that the judiciary did not have authority to declare the nullity of the acts issued by other political powers.¹⁴⁹

However, judicial decisions deferring to executive norms would need a deep accommodation after the return of the democratic regime in 1932.¹⁵⁰ The new authorities attempted to repeal the decrees law, harshly complaining against courts' doctrines on this subject. For that purpose, they appointed different commissions that dealt with the legislation enacted during the previous authoritarian governments. As soon as political turmoil ended, in 1932, the Vice-President Abraham Oyanedel convoked a commission to study the status of the decrees law, which was integrated by outstanding jurists like Luis Claro Solar and Arturo Alessandri Rodríguez. This commission concluded that the decrees "lost their legal value immediately after de-facto government concluded", and criticized the judicial approval of them.¹⁵¹ In 1933, after democratic normalcy was completely reestablished, President Alessandri called a second commission, which assumed a more pragmatic stance. Invoking the constitutional text that asserted the strict legality of public competencies, the second report concluded that "they did not have other force than what was bestowed by International Law to the norms enacted by an occupying army in times of war".¹⁵² Nevertheless, the commission concluded that the decrees that had not been confirmed by posterior democratic legislation could be voided by simple administrative resolutions of the Executive authority.¹⁵³ Facing this reaction, the judiciary would adjust its doctrine, asserting that some decrees law were validated through their amendment by new legislative acts, and recognizing, additionally, that the executive authority's had the capacity to nullify them by presidential decision.¹⁵⁴ Those judicial opinions, thus, subtly asserted that the President had the prerogative to select what decrees-law would be favorable for the furtherance of his own agenda. At last, judicial doctrine constituted an implicit political commitment to the preeminence of the Executive in the legislative arena, which was complemented by an ample judicial recognition of the delegation of legislative powers from the Congress to the President afterwards (decrees having force of law).

The lack of effective judicial control on public agencies constitutes a second example of the deferential behavior of courts. Resorting to the constitutional disposition that ordered the establishment of special administrative tribunals, which never were created, and to its own non-political nature, the judiciary ducked on many controversial

¹⁴⁹ During the impeachment against the Supreme Court, in 1933, the Justices refused to have incurred in an infringement to their constitutional duties. They explained their previous approval of the decrees laws in the following terms: "If all the legal, economic, financial and political structure of the state; if all the social legislation that matches the desires of the popular class rest on the basis of these decrees, which have been directly or indirectly ratified by the Legislative, it would be vain to pretend the Justices of the Supreme Court could face the responsibility to sink the country in the chaos [by declaring the illegality of the said decrees]." Supreme Court's communication. June 3rd, 1933. Quoted by Bernardino Bravo Lira: *Anales de la Judicatura Chilena*. Op. Cit. Vol. 1. p. 62.

¹⁵⁰ Francisco Cumplido, Hugo Frühling: "Problemas Jurídico-Políticos de la Transición a la Democracia en Chile: 1924-1932." *Estudios Sociales*. 21 (1979). pp. 103-109.

¹⁵¹ Ibid. pp. 99-100.

¹⁵² Ibid. pp. 100-101.

¹⁵³ Ibid. p. 103.

¹⁵⁴ At the same time, trying to reconcile the new regime with the previous juridical opinions, courts developed a consistent jurisprudence to restrict the effects of nullifications, limiting their consequences only after their invalidation was enacted. Ibid. p. 109

issues and reduced its ability to oversee the legality of the administrative performance. Unusually through judicial review, courts only would have asserted minor limits to administration, particularly via protection of property rights in cases of expropriation. Notwithstanding, their sentences in any case challenged cores aspects of the regime. This attitude was aggravated since central government usually failed to fulfill its own internal checks of legality.

To deny their jurisdiction to control public agencies, the judiciary usually asserted that the constitution mandated the creation of special courts, which would be in charge of knowing the acts of the administrative and political authorities if jurisdiction “has not been entrusted by the constitution or the law to any other tribunal.”¹⁵⁵ This provision—written by the renowned law professor and Senator Fernando Alessandri Rodríguez—provided for the creation of a special and autonomous body of tribunals aimed to oversee public agencies, and followed the example of other civil law countries such as France and Italy.¹⁵⁶ However, the political elites in charge of the regime were reluctant to establish the new judicial body. Despite several legislative drafts on administrative tribunals written by legal scholars claimed were necessary, and despite congressional approval of an organic law on the organization of the judiciary in 1943, the aforementioned courts never were established.¹⁵⁷ Only very specific issues, such as tax complaints, were controlled by the judiciary via appeals filed against public agencies’ decisions.¹⁵⁸ As Julio Faúndez’s study has pointed out, constitutional provision did not directly preclude judicial control on administration. Indeed, judges ducked on administrative cases stating that the ordinary judiciary did not have jurisdiction unless express legislation granted it, as courts certainly did. Nevertheless, they also could resort to other alternative interpretations of law, grounded in the organic code of tribunals. This last legislation bestowed jurisdiction over any cause that was not conferred to other specific tribunals to the ordinary courts. In the end, however, the judiciary preferred to decline its jurisdiction over public agencies, resorting to the constitutional provision.¹⁵⁹

That was not the only juridical ground used by courts to eschew administrative control. Courts also developed a consistent jurisprudential doctrine about acts of authority since the 1940s. This applied a special legal status to the acts of administration that implied an assertion of public power (and that did not consist in a mere commercial intercourse indirectly associated with official functions). By this expedient, courts refused to assess the legality of administrative performance when officials exercised public prerogatives, asserting that such acts were invested by public power outside the scope of judicial competence (e.g. requisitions, control of prices, etc).¹⁶⁰ By the same token, they

¹⁵⁵ Julio Faúndez: *Democracy, Development and Legality*. Op. Cit. p. 141.

¹⁵⁶ Rolando Pantoja Bauzá: “El autor del artículo 87 de la Constitución Política de 1925.” *Revista de Derecho Público*. No 1. 1963. pp. 15-18.

¹⁵⁷ Although the political resistance to administrative control seems the most plausible explanation of this lack of legislation, it is important to note that that is not the only reason provided by literature. For some authors, the cause of the delay in the enactment of the administrative courts is related to the scholarly disagreement about the nature and scope of them. Rolando Pantoja Bauzá: “La inexplicable ausencia de una justicia administrativa en el Estado de Chile.” *Revista de Derecho. Consejo de Defensa del Estado*. No 13. 2005. pp. 27-69.

¹⁵⁸ Guillermo Varas Conteras: *Derecho Administrativo. Nociones Generales*. Santiago. Editorial Nascimento. 1940. pp. 370-392.

¹⁵⁹ Julio Faúndez: *Democracy, Development and Legality*. Op. Cit. p. 141.

¹⁶⁰ *Ibid.* pp. 141-143.

used a similar expedient to deny the patrimonial responsibility of the state when its official committed offenses, wrongful decisions or misbehaviors, claiming that such acts were mere acts of management (*gestión*) that did not involve the lawful manifestation of public power.¹⁶¹ So, both the complaints against the illegality of administrative acts whose competence was not bestowed on special courts and pleas for the patrimonial responsibility of the state were excluded of the judicial oversight. By the late sixties, the previous doctrines were well established, and law professors and lawyers took them for granted, even when its legal merits could have been contested.¹⁶²

As an exception, judges did argue that courts could know legislative or administrative acts that directly affected citizens' property, particularly in cases of expropriation. Employing its faculties of judicial review, the Supreme Court curtailed administrative acts that retroactively established burdens on private property, regulated the qualification of the public benefit of expropriations, and standardizing the payment of compensations, for example.¹⁶³ Despite this jurisprudential trend, if public agencies did not directly expropriate goods, courts applied the traditional doctrine of lack of competence to nullify administrative acts. For instance, when the abovementioned Commissariat of Subsistence and Prices began to intervene in lease contracts to face the scarcity of urban housing in the 1940s, courts initially tried restricting its acts. Arguing that the Commissariat bylaws did not expressly authorize it to intervene in a realm, courts denied the Commissariat's power to seize houses to avoid tenants' evictions.¹⁶⁴ However, in a well know case on this issue (*Montero v. Commissariat*, 1944), the Supreme Court ultimately held that courts could not invalidate administrative acts due to the habitual doctrine of lack of competence. At the same time, the Court asserted that judges could eventually adjudicate such issues without discussing the legality of the administrative acts, but resorting to the provisions that regulated the lease contract, in case the litigants initially would have been asked so.¹⁶⁵ The spread of these doctrines of lack of competence, and their ambiguity, needs further empirical research for clarification. Thus, in cases other than expropriation, judicial control on administration was seriously limited by a broader pattern of deferential behavior.¹⁶⁶

¹⁶¹ This argument was employed previous judicial sentences that, between 1938 and 1980, began to deny state's responsibility regarding the acts of its agents. See, for example "Rettig con Fisco" (1941), "Aqueveque con Fisco" (1944), and "Castagneto con Fisco" (1944). Quoted by Pedro Pierry Arrau: "Transformaciones del Derecho Administrativo en el Siglo XX." *Revista de Derecho de la Universidad Católica de Valparaíso*. No. 23. 2002. pp. 385.

¹⁶² For an isolated dissent on the accepted doctrine, see: Eduardo Soto-Kloss: "La competencia contencioso-administrativa de los tribunales ordinarios de justicia." *Revista Chilena de Derecho*. Vol. I. 1974. pp. 350-359.

¹⁶³ Raúl Bertelsen: "El Derecho de Propiedad en la Constitución de 1925." *Op. Cit.* pp. 59-66.

¹⁶⁴ This was a common practice of the Commissariat to deal with housing speculation, particularly when tenants resisted rent increases above the maximum amount allowed by law. Hugo Fröling: *Law in Society: Social Transformation and the Crisis of Law in Chile 1830 – 1970*. *Op. Cit.* pp. 177-186.

¹⁶⁵ Julio Faúndez: *Democracy, Development and Legality*. *Op. Cit.* p. 145.

¹⁶⁶ Lisa Hilbink refers to a kind of "conservative judicial activism," by which courts had been hostile toward social justice. *Judges beyond Politics...* *Op. Cit.* pp. 63-70. However, a more careful use the evidence sheds a light of a more complex phenomenon that could not be identified as an activist behavior. Regarding socio-economic issues, there is not a systematic analysis of evidence to conclude so. In fact, outside direct expropriation, courts were very limited in attempting to control administration via property rights and freedom of contract. Additionally, the judicial stance likely was part of the policy preferences of the political regime. Although there were left-leaning policies in the lease contract, fixed prices of products,

The shortcomings of judicial control on administration were aggravated because the central government usually broke their own internal checks. In fact, the Executive usually failed to fulfill with the regular control exerted by the Comptroller General (*Contraloría General de la República*), an office established in 1927 to assess the legality of acts which involved public expenditure. To break such control, the government resorted to several strategies. For instance, it used to enact presidential decrees with the signature of all the members of the cabinet of ministers, precluding any possible objection of the Comptroller (*decree of insistence*).¹⁶⁷ Due to such practices, and its own political constraints related to its appointment by the Executive, this office played a deferential role till 1945, when Comptroller Agustín Vigorena was impeached and removed because of his obsequious behavior. Pushed by the regime's own necessity for surveillance, the impeachment against Vigorena would constitute leverage for a more rigorous check on legal forms afterwards.¹⁶⁸ However, some areas remained completely exempted from the control of administrative legality. Since the 1940s onwards, political elites would exempt several public corporations and agencies from the Comptroller's sphere of jurisdiction, such as the acts of the National Development Corporation (CORFO) and its related companies. Instead, political elites would use other ways of overseeing them, as the inclusion of parliamentarians in their boards. Ultimately, a complete para-legal structure of agencies, corporations and semi-public funds was exempted of the administrative control of legality, constituting one of the main features of the *Estado de Compromiso*.¹⁶⁹

Considering their institutional weakness, courts and the comptroller followed a strategy to ameliorate their political risk. Like any organizations, legal institutions are not usually prone to give up their spheres of authority, unless they have a relevant incentive to do so.¹⁷⁰ When the Executive and Congress considered that the comptroller or courts were blocking state action, they simply responded by a decree of insistence or enacted a new statute. For example, facing the resistance of courts in regard of state intervention on lease contracts in the 1940s, the Congress finally passed a law restating rent limits and conferring some rights to tenants, who could stay in their dwellings after landlords

and other measures of market control, the political elite was still highly involved with small property and urban commerce and needed some basic regulation in the process of advancement of the administrative state. As part of the dominant political agents, the urban bourgeoisie and middle classes were very active in bargaining to resolve social conflict during the *Estado de Compromiso*, and were also interested in setting limits to state regulation. Regarding civil and political rights, courts supported the government in repressing dissidents, as we will see, but this attitude was related to a general pattern of deferential behavior. By now, the supposedly "conservative activism of courts" remained an overstatement that misunderstands the nature of the political regime.

¹⁶⁷ Even, the Executive used to anticipate an eventual Comptroller's refusal sending two copies of the decree, one with his signature, and a second one containing the signature of all the members of the cabinet. Enrique Silva Cimma: *Tratado de Derecho Administrativo Chileno y Comparado*. Santiago: Editorial Jurídica de Chile. 1954. Vol. 1. p. 231.

¹⁶⁸ Julio Faúndez: *Democracy, Development and Legality*. Op. Cit. pp. 142-144.

¹⁶⁹ See note 81.

¹⁷⁰ Courts already had struggled with the Executive to submit labor judges under the control of the Supreme Court (1933). But in that latter case, however, courts were dealing with an issue that they considered related to the adjudication of private conflicts, and whose enforcement presented several alternatives venues.

notified them of the end the lease.¹⁷¹ Obviously, courts surveillance on expropriations and the impeachment of the comptroller in 1945 demonstrate that political elite needed at least a basic system of control. Thus, a basic conception of property rights that was compatible with the advancement of the administrative state, and a minimal level of internal legality of central public agencies—supervised by the own bureaucracy—seemed to have been among the policy preferences of the regime.

Finally, the deferential behavior of courts was exemplified by their passivity vis-à-vis the political repression of radical dissidents. Although the *Estado de Compromiso* was characterized by relatively peaceful years, a review of the period between 1933 and 1958 shows several episodes of political violence. During these decades the government fiercely repressed workers' riots, an upheaval of the Nazi movement which ended in a massacre (1938), and several conspiracies preparing military coups. The control on more extreme dissidents became a critical issue for the regime, which enacted two Laws of Internal State Security during this period (1937 and 1958).¹⁷² Facing such incidents, the President asked for congressional declaration of states of exception several times (e.g. state of siege). These allowed him to restrict constitutional rights, for instance, by issuing orders of detention authorizing the search of homes, and censoring the press.¹⁷³ Extensive literature on the period, particularly Loveman and Lira, and Hilbink, underscores that courts rarely challenged governmental prerogatives in this realm, if at all. By deciding on judicial reviews and writs of habeas corpus, courts renounced almost any possibility of control, alluding to the principle of separation of powers. They usually interpreted the law by supporting presidential prerogatives and reducing the scope of citizens' rights.¹⁷⁴ In this behavior, courts were seconded by the organized bar (CHBA). In fact, after reviewing the annual reports and sessions of the CHBA we can observe that this latter did not mobilize on civil and political rights till up early seventies. Except for the protection of some prominent elite lawyers during the political turmoil of the late 1920s, and the claim against international back lists of attorneys in 1943, the bar remained politically passive.¹⁷⁵

The Law of Protection of the Democracy (1948), aimed to ban the Communist Party at the very beginning of the Cold War, may constitute the best example on the behavior of courts and the bar on the political crush of dissidents. Since 1937, the Communist Party had been forbidden by the Law of Internal State Security, but such a ban had failed since communist cadres were able to participate of the electoral arena under different denominations.¹⁷⁶ After taking part of the governmental alliance that

¹⁷¹ Hugo Frühling: *Law in Society: Social Transformation and the Crisis of Law in Chile 1830 – 1970*. Op. Cit. pp. 185-188.

¹⁷² Law No. 6,026 (1937) and Law No 12,927 (1958).

¹⁷³ For a very well documented and detailed account, see: Elizabeth Lira, Brian Loveman: *Poder Judicial y Conflictos Políticos (Chile: 1925-1958)*. Op. Cit.

¹⁷⁴ Ibidem. Lisa Hilbink: *Judges beyond Politics in Democracy and Dictatorship*. Op. Cit. pp. 67-70.

¹⁷⁵ *Annual Reports*. Chilean Bar Association. Santiago. See also, Carlos Estévez Gazmuri: *Manual del Abogado*. Op. Cit. 36-38.

¹⁷⁶ In 1937, the Communist Party was eliminated from the electoral records when the officer in charge of these applied the Law of Interior State Security, which forbade communist associations. Since that year onwards, the Communist Party operated in the electoral arena under other denominations such as Democratic National Party (1937) and Progressive National Party (1941). Communist candidates participated of the ballot and, once they were elected, they recognized their political affiliation, claiming the enjoyed parliamentary immunities. By this loophole, which was broadly tolerated, they continued

supported the President Gabriel Gonzalez Videla in 1946, a law declared that the Communist Party and “[...] any other entity [...] that pursues the establishment in the republic of a regime opposed to democracy [...]” were completely forbidden, laying down stiff sanctions.¹⁷⁷ In addition to its participation in labor strikes, it is likely that communists’ strong links to Moscow had been the cause of international pressures for this banning, as in other Latin American countries.¹⁷⁸ Keeping to its usual doctrinal line on separation of powers, courts endorsed the law, and refused the writs for judicial review and for habeas corpus fil against it.¹⁷⁹ Even the Supreme Court issued a statement after the Law of Protection of the Democracy was passed, asserting that it did not alter the democratic regime.¹⁸⁰ The CHBA, by that time still under the control of a group of conservative and liberal lawyers, also remained passive on this matter. So, the members of the Communist Party were excluded from governmental posts and electoral records until the law was repealed in 1958, and many of them were jailed.

In sum, the legal order built during the *Estado de Compromiso* deeply echoed the relations of power inside the new regime. The preeminence of the Executive in normative production, the legislation as mirror of an increasingly complex dynamic of political bargain, and the deferential behavior of legal institutions illustrate how intertwined were the legal field and the fates of the political game. Clearly, the normative output and the deference of courts would have been critical for the new regime. They allowed a fluid process of arbitration between diverse groups of interest and the relatively uncontested enforcement of its policy preferences. At the same time, they would have provided additional benefits, such as a lax control on administration and juridical means to exclude radical dissidents. However, this dynamic intensified the appeal to legal formalism and the bureaucratic character of the bench and the bar. This would have hindered the role of the legal profession, affecting its ability to adapt institutions and to bear on law as a setting of contestation. Finally, the legal field would heavily depend upon the political process, performing a very limited role. Those shortcomings would be increasingly notorious over time, when polarization emerged and politics was not able to arbitrate social conflict anymore.

Juridical Expertise at Crossroad (Exit and Voice)

Since early in the twentieth century, elite legal profession perceived the increasing shortcomings of the juridical system and how ill-equipped it was for state-crafting. As has been explained, the emergence of more complex and heterogeneous social demands pushed for reform of the liberal economic order and devalued generalist juridical expertise. Facing such a challenge, the legal profession provided various answers, which gradually deepened the specialization of governmental tasks. Considering that the functioning of the legal field was anchored in a social network with division of functions

participating in elections. Elizabeth Lira, Brian Loveman: *Poder Judicial y Conflictos Políticos (Chile: 1925-1958)*. Op. Cit. pp 369-374. 432-440.

¹⁷⁷ Art. 1 No 5). Law No. 8,987 (1948).

¹⁷⁸ Carlos Huneeus: *La Guerra Fría en Chile. González Videla y la Ley Maldita*. Op. Cit.

¹⁷⁹ Lisa Hilbink: *Judges beyond Politics in Democracy and Dictatorship*. Op. Cit. pp. 69-70.

¹⁸⁰ . Elizabeth Lira, Brian Loveman: *Poder Judicial y Conflictos Políticos (Chile: 1925-1958)*. Op. Cit. p. 500.

and a delimited sphere of jurisdiction, we can analogize this process of rearrangement to the decline of an organization. Following the conceptual framework developed by the path-breaking work of Albert O. Hirschman, we can summarize these mechanisms of response under two different labels: exit and voice.¹⁸¹

Exit constituted the first mechanism used by lawyers—and by the political elite itself—to answer to the increasing dissatisfaction of legal expertise as a way to professionalize statesmanship. Through different venues, law graduates looked for new qualified knowledge outside the juridical dogmatism of the nineteenth-century model of law, or disengaged directly from the legal field. By the turn of the twentieth century, some legal scholars had begun searching of a new training for governmental cadres. The figure of Valentín Letelier, referred at the beginning of this chapter, maybe represents the earliest example in this direction. Attempting to increase state's capacity, he envisioned sorting out the curriculum of the School of Law. To organize the enlarged and disciplined bureaucracy that was needed for a stronger state, he proposed that the law school should offer a particular training separated from regular juridical studies, intending to instruct administrative officials (a Bachelor in Administration and Political Sciences)¹⁸². Facing opposition to this plan, Letelier planned that law students oriented to governmental activity should be trained in political sciences, finances, social theory and administration—among other subjects—to acquire the knowledge needed to perform public functions. Some of his planned curricular reforms were implemented in a new program of legal education in 1902 and remained, with some minor adaptations, in force till up the 1960s.¹⁸³ This would not be the only attempt to further non-juridical expertise inside the University of Chile School of Law, however. Following the spirit of Letelier's project, a semiautonomous institute of public administration was established in 1954. Headed by relevant law professors like Enrique Silva Cimma, Jorge Guzmán Dinator and Ricardo Lagos Escobar, the center was organized to collaborate with the law school and to cultivate public management and political sciences.¹⁸⁴

The emergence of the field of economics may be the best example of how lawyers participated in the searching for new professional competencies.¹⁸⁵ Established in 1934, the School of Commerce and Industrial Economy at the University of Chile was initially headed by Pedro Aguirre Cerda, a gentlemen politician of law who was highly committed to the legal field, and who would later be elected to the Presidency of the Republic. While, the academic program of the school was originally chaired by Alberto Baltra, who by the early-1930s, was a recent law graduate with strong interest in this new science.¹⁸⁶

¹⁸¹ Albert O. Hirschman: *Exit, Voice and Loyalty. Responses to Decline in Firms, Organizations and States*. Cambridge: Harvard University Press. 1970.

¹⁸² In 1909, Letelier also planned a program to train minor judicial officials. In doing so, he was not alone, since other scholars—such as Domingo Amunátegui Solar—, already had pointed out to the establishment of similar programs for diplomats and governmental officials. Mario Baeza Marambio: *Historia de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. Op. Cit. pp. 181-183.

¹⁸³ Rogelio Pérez-Perdomo. *Latin American Lawyers*. Op. Cit. p. 78.

¹⁸⁴ *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. Vol I. Enero 1952-Dic. 1954. No. 1-3. pp. 229-232.

¹⁸⁵ Before the 1920s, the only available training in economics was provided by introductory courses at the Law School and the School of Engineering.

¹⁸⁶ Finally, Baltra became Minister of Economy (1947) and a critical figure in the consolidation of the economic field in Latin America as first President of the ECLAC (U.N. Economic Commission for Latin

Cerda and Baltra would be instrumental in the organization of this academic center, stamping their personal seal in its orientation toward traditional political economy.¹⁸⁷ Likewise, the School of Economy at the Catholic University of Chile, although established as a commerce school in 1924, would be headed and transformed by Julio Chaná, a business lawyer, law professor and former superintendent of insurances and securities. Between 1954 and 1964, while he was pro-tempore judges at the Supreme Court (*abogado integrante*), Chaná reorganized the school and signed an academic agreement with the University of Chicago. This allowed a complete new generation of Chilean students from the school attended Chicago to be trained in neoclassical economic theory and to go back to the Catholic University to reproduce their acquired expertise. Later on, they would be critical in transforming the state during the seventies, being branded as the Chicago Boys.¹⁸⁸

The examples above illustrate how law graduates were heavily involved in the organization of new academic fields critically related to public affairs, initially following their traditional generalist knowledge to participate as amateurs in different subjects. The emergence of these academic fields also obeyed a more general process of diversification and diffusion. With the rising of the *Estado de Compromiso*, important segments of the middle class accessed higher education, even when by 1952, this latter still covered only the 2.6% of young population.¹⁸⁹ In this process of expansion, legal education increased the number of students in its cohorts but declined in comparison to the total number of students in higher education. For example, while law students represented 40% at the University of Chile in 1901, they fell to less than 15% of the total number of students in that center in 1951.¹⁹⁰ This process became still more dramatic over time. While law students were 11% of the total enrollees in higher education by 1961, they were only 4.6% in 1969.¹⁹¹ Naturally, such a dynamic would push for more assorted venues of training, both for general population and the ruling groups. From the middle of the twentieth century, many students – including law graduates– migrated to disciplines like economy, sociology and political sciences.¹⁹² With an increasing number of engineers, some of these new professionals formed the new technocratic and political cadres that contributed in critical areas of public decision-making. This shift implied that the law

America, established in Santiago in 1948). Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit. Vol.1. pp. 132-134.

¹⁸⁷ Fernando Campos Harriet: *Desarrollo Educativo 1810-1960*. Santiago: Editorial Andrés Bello. 1960. pp. 184-185. Coming from middle class extraction and ascribing to the Radical Party, both Aguirre Cerda and Baltra portrayed the dominant groups of the new regime.

¹⁸⁸ Ricardo Krebs et al.: *Historia de la Pontificia Universidad Católica de Chile*. Op. Cit. Tomo I. pp. 531-534.

¹⁸⁹ Percentage calculated on university students in the population between 20 and 24 years. See Markos Mamalakis: *Historical Statistics of Chile. Demography and Labor Force*. Vol. 2. Op. Cit. p. 158.

¹⁹⁰ See Iñigo De la Maza: *Los abogados en Chile...* Op. Cit. p. 12. In 1938, law students represented the 24.4% of all the students in higher education. See Markos Mamalakis: *Historical Statistics of Chile. Demography and Labor Force*. Vol. 2. Op. Cit. p. 147. In 1965, law students were less than an 8% of all the university students, see Rogelio Pérez-Perdomo: *Latin American Lawyers*. Op. Cit. p. 105.

¹⁹¹ Raúl Urzúa: “La profesión de abogado y el desarrollo: antecedentes para un estudio.” Op. Cit. p. 196.

¹⁹² That is the case of renowned politicians and technocrats that thrived since the 1950s on, who emigrated from law at the end of this period: Anibal Pinto Santa Cruz, Felipe Herrera Lane, Ricardo Lagos Escobar (Economy), José Joaquín Brunner (Sociology), Carlos Hunneus, Genaro Arriagada and Angel Flisfisch (Political Sciences).

school had lost its monopoly as the setting to forge political loyalties and networks that were useful to participate in the governmental sphere, and consequently, that law graduates had lost some of their advantage to entry into politics.¹⁹³

Beyond the academic realm, other ways of exit from juridical expertise would emerge. In fact, the account of lawyers' role in the traditional forums of politics, described at the first part of this chapter, reflects a similar sort of response.¹⁹⁴ Electoral competition and the organization of more sophisticated political parties implied that law graduates gradually gave up properly juridical tasks since the 1940s, and payed more attention to partisan mobilization. The analyzed evidence summarized in the *Figure 2.4* indicates that this tendency was particularly acute after the end of the 1950s, when pragmatic parliamentary parties (Radical, Conservative, Liberal) lost influence before other groups based on mass mobilization, strong ideological commitments and discipline (Communist, Socialist and the Christian Democratic parties).¹⁹⁵ From the perspective of law graduates who opted for politics as full time occupation, then, this was a way out from law that exemplifies a progressive disengagement between the legal field and the upper stratum of the governmental sphere.

The voice of complaint constituted a different kind of mechanism used by law graduates to answer to the shortcomings of the legal order and juridical expertise. From the end of the former regime, and initially at a marginal level, some legal scholars challenged the individualist nature of legislation and its descriptive approach to juridical texts. Those complaints never overshadowed the place of the civil code and traditional legal training within lawyers' internal culture, but became clearly visible over time. In fact, albeit these criticisms would increase in some decades, such as in the late 1930s, most law graduates opted to remain within the field, particularly considering lawyering conserved its vocational appealing, social prestige and offered opportunities to earn at least moderate profits. Therefore, in many cases, their voice of complaint was associated with their loyalty to law, guiding some timid paths to legal reform.

As in the cases of the exit, the first examples of voice came out at the turn of the twentieth century. By that time, different politicians and professors of law, such as Valentín Letelier and Alejandro Alvarez at the University of Chile, and Francisco de Borja Echeverría and Juan Enrique Concha at the Catholic University, advocated for a less individualistic orientation of the legal system.¹⁹⁶ Alvarez, a well known professor of International and Comparative Law, for instance, promoted a new model of legality that, following public opinion, would recognize the advancement of the administrative state, the structures for workers' protection and several limitations on contracts and property.

¹⁹³ Iñigo De la Maza: *Los abogados en Chile...* Op. Cit. p. 16-19.

¹⁹⁴ When they were in academics, politically active law graduates tended to prefer non traditional juridical matters (e.g. political economy).

¹⁹⁵ For an enlightening analysis about the differences between parliamentary and non-parliamentary political parties, see Bernardino Bravo Lira: *Régimen de Gobierno y Partidos Políticos en Chile*. Op. Cit. pp. 55-143. After analyzing lawyers in the Senate between 1951 and 1970, it is possible to conclude that there is not significant difference in their rate of participation within these two types of parties.

¹⁹⁶ However, it is important to note they followed different orientations. Francisco de Borja Echeverría and Juan Enrique Concha were inspired by Catholic social doctrine, and, at the level of their academic contribution, they developed their reflection within the Cathedra of Social Economy. Meanwhile, Valentín Letelier and Alejandro Alvarez belonged to the middle class, and followed a more politically oriented stance, attempting a general approach inspired by epistemological positivism.

These principles would comprise a new direction of law toward solidarity, he asserted, arguing that “the juridical relations should not be regulated according to the individual benefit, but following the collectivity’s interest.”¹⁹⁷ By the same token, law students increasingly began to pay attention to labor law and the social question during the first decades of the century. Although initially their works did not influence lawmaking, several of them would become critical actors in the construction of the welfare state afterwards. Hence, once acting in politics, they were successful in reframing some of those issues, as labor relations, setting a political-legislative program of response by the late 1920s.¹⁹⁸

Some of those who advocated for a new model of law also pursued a renewal of legal education. Letelier and Alvarez were very active in proposing a more systematic approach focused on the inductive discovery of the juridical principles and the social motifs behind legal rules.¹⁹⁹ In fact, they influenced the abovementioned curricular change at the University of Chile School of Law in 1902, which tried to balance a more systematic analysis of the legal texts with basic knowledge of social sciences.²⁰⁰ However, this methodological turn was not neutral, and it was implicitly tied to their attempt to end the commitment of law to the laissez-faire spirit.²⁰¹ Due to its deep implications, the reform needed to overcome resistance in political and academic circles, since some professors were reluctant to apply this new approach. Accordingly, Letelier’s disciples still pushed for deepening these curricular changes in the following decades. So, Juan Antonio Iribarren, a young law graduate and further Dean at the Law School stated in 1913: “Beyond the codes! That should be the motto of the education at our school”, adding “the reform to the legal studies must affect, forcedly, two main aspects: the very

¹⁹⁷ Alejandro Álvarez: “De la Necesidad de una Nueva Concepción de Derecho. Memoria de Incorporación como miembro de la Facultad de Leyes.” *Anales de la Universidad de Chile*. 1920. p. 194. This claim only repeated what Letelier and Alvarez themselves already were arguing since the end of the nineteenth century, when their first writings in this direction came out. Valentín Letelier. “Los Pobres.” Op. Cit. Alejandro Álvarez: *La Nueva Tendencia en el Estudio del Derecho Civil según la Pedagogía Moderna*. Santiago: Imprenta Moderna. 1900

¹⁹⁸ See for example, the degree thesis of Arturo Alessandri Palma, Juan Enrique Concha, Malaquías Concha, Manuel Rivas Vicuña, Jorge Errázuriz, Jorge Gustavo Silva, Moisés Poblete, Robinson Hermansen, Jorge Neut, Elena Caffarena, and Eduardo Frei Montalva. See, Juan Carlos Yáñez Andrade: *La intervención social en Chile...* Op. Cit. 95-101.

¹⁹⁹ After describing the regulation of massive consumption and workers’ protection in European countries, Alvarez pointed out that “there are some factors in modern society that possess an irresistible force, [...] and that demand an actualization of the civil legislation according to the new social necessities”. See Alejandro Álvarez: *La Nueva Tendencia en el Estudio del Derecho Civil según la Pedagogía Moderna*. Op. Cit. p. 6.

²⁰⁰ Mario Baeza Marambio: *Historia de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. Op. Cit. pp. 193-199.

²⁰¹ Ibid. p. 19. See also, Robinson Harmensen: *El problema social y la enseñanza del Derecho*. Santiago: Imprenta Barcelona. 1907. That approach was echoed by some law graduates, for whom the reform should transform the Law School into a center to study social reality, attempting to guide legislation. The young lawyer Augusto Millán Iriarte, for example, argued in 1905 that the shortcomings of legislation were caused by lawmakers’ ignorance of social reality. Consequently, he proposed that the Law School should turn into “a center of study where our scholars knowledgeable of the most recent advances in social, political and legal sciences could become real lawmakers.” Augusto Millán Iriarte: *Nuestra legislación y nuestra raza*. [1905] Imprenta Chile. 1914. p. 63. Quoted by Juan Carlos Yáñez Andrade: *La intervención social en Chile...* Op. Cit. p. 96.

object that is studied [law], and the way by which this is taught.”²⁰² By the mid-1920s and 1930s, minor curricular adjustments tried to improve Letelier’s program. Basic training in social sciences became part of a preparatory instruction, but remaining without connection to dogmatic legal studies and practice. Ultimately, positive knowledge did not become the higher inductive understanding of legal institutions, as Letelier and Alvarez had envisioned. Indeed, some law professors developed more analytic ways to study legal texts during the next decades, going beyond the mere literal commentary following the order of the codes. Nevertheless, lawyers’ activity stayed attached to the traditional exegetic description and mechanical reasoning.²⁰³

Grievances about the shortcomings of the legal system increased among some prominent scholars and elite lawyers, particularly between the mid 1930s and the early 1940s, when newer legislation clearly had begun to transform professional activity. In general, there was a shared diagnosis about the emergence of a different type of legality, whose boundaries and implications still were not so clear. Pedro Lira Urquieta—a conservative lawyer and Law Professor at the Catholic University and the University of Chile—for instance, already described a true “crisis of law” in 1934, asserting that the very pillars of the juridical order were called into question by violence and the recent reforms.²⁰⁴ Lira Urquieta, accordingly, began a comprehensive study of the ways by which the old civil law was partially amended by the new statutes, featuring a sort of hybrid legal regime without a clear orientation. Collecting his lectures, he published the first general work to describe this phenomenon in 1944: *El Código Civil y el Nuevo Derecho* [The Civil Code and the New Law].²⁰⁵ In this, he claimed that it was the role of “true jurist” to provide solid notions about the state, society, and human nature, which—after collaboration with lawmakers—should serve as guide for the further development of legislation.²⁰⁶

Following a similar perspective, several elite lawyers aimed their grumbles against the conceptual apparatus that lay behind some legal institutions (e.g. freedom of contract, radical understanding of private property rights, formal equality, etc). Although delivered outside the traditional forums of politics, their criticisms undoubtedly mirrored the policy preferences of the regime. For example, Arturo Alessandri Rodríguez—Dean of the University of Chile School of Law, and, perhaps, the most representative and influential legal scholar by mid twentieth century—appealed for regulations on contracts in 1940 in these terms:

The law is a social science, and, therefore, it is changing and evolving. Only dead legislations remain in a steady condition. Along [social] necessities are transformed, the institutions must be transformed as well. [...] For new contracting parties, [we need] new forms of contractual agreements. Or do you pretend that the men of the twentieth century will continue under the legal principles applied by the Roman praetor? The

²⁰² Ibid. p. 202.

²⁰³ Rogelio Pérez-Perdomo: *Latin American Lawyers*. Op. Cit. p. 78.

²⁰⁴ Pedro Lira Urquieta: “La Crisis del Derecho.” [1934] In Pedro Lira Urquieta. *Temas Universitarios*. Santiago: Editorial Nascimento. 1945. pp. 81-96.

²⁰⁵ Pedro Lira Urquieta: *El Código Civil y el Nuevo Derecho*. Santiago: Editorial Nascimento. 1944.

²⁰⁶ Ibid p.p. 10-11.

progress of industry and science should be followed by an equivalent progress in Law.²⁰⁷

Starting from this kind of complaints, diverse attempts of academic renewal rose within law schools. Some few law graduates resorted to the innovative tendencies of French legal thought to modernize juridical institutions, adopting open views on subjects like the binding character of contracts, the moral personhood of associations and eventual property rights.²⁰⁸ By the same token, the University of Chile School of Law established a seminar specially devoted to comparative civil legislation in 1935, fostering a more sophisticated revision of the private law. Nevertheless, academics did not decisively influence lawyering or judicial opinions, and most of these works usually continued proposing descriptive approaches. A basic juridical formalism, featured by a narrow and underdeveloped dogmatic, still constituted the predominant paradigm.²⁰⁹ Overall, the legal scholarship was not robust and depended upon a body of prestigious practicing lawyers who give classes at the law school as adjunct or contingent instructors. Accordingly, the bulk of them was very cautious in their criticisms of judicial opinions, avoiding jeopardizing their legal practice before the bench.²¹⁰ The inertia of the legal culture—reinforced by literalism and the passiveness of courts—remained in force.

Recognizing that legal scholarship by itself exerted a very limited influence, elite lawyers readdressed their efforts to the law-making arena. Under the initiative of Arturo Alessandri Rodríguez, the CHBA and the University of Chile School of Law established a network of outstanding professors and practitioners to collaborate with the legislative process, and to provide quality advice to the Executive and the Congress (Institute of Legislative Studies, 1939). Since its beginning, the Institute possessed an ambiguous nature. On one side, its members continuously pointed out that they looked to contribute through “technical” juridical expertise, without dealing with substantive political deliberation. On the other side, however, its foundational documents included very policy-oriented functions, such as “to foster the improvement of the legislation to match the social and economic necessities of the country.”²¹¹ Likewise, some of the subscribers signed its bylaws on behalf of entrepreneurial associations like the National Society of Mining and the National Federation of Industry, or on behalf of public regulatory agencies like the Superintendence of Bankruptcy and the Superintendence of Corporations and Securities, which took part of the Institute as organizations.²¹² Indeed, some of the founder lawyers projected the Institute as a major setting of political

²⁰⁷ Arturo Alessandri Rodríguez: “El contrato dirigido.” In Arturo Alessandri Rodríguez et al.: *Las Actuales Orientaciones del Derecho. Conferencias pronunciadas por Catedráticos de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. Santiago: Editorial Nascimento. 1942. p. 20.

²⁰⁸ See for example, Lorenzo de la Maza: *Teoría de la imprevisión (en relación con el derecho chileno)*. Santiago: Imprenta de Chile. 1933. Julio Philippi: “Del Derecho Individualista a un Derecho Humano.” *Estudios* No 94. 1940. pp. 62-66. Rubén Galecio Gómez: *Ensayo sobre una teoría de los derechos eventuales*. Santiago: Editorial Nascimento. 1942.

²⁰⁹ Carlos Peña: “Hacia una caracterización del ethos legal: de nuevo sobre la cultura jurídica chilena”. Op. Cit. pp. 75-76.

²¹⁰ Javier Couso: “When the Political Complex takes the Lead.” Op. Cit. p. 331.

²¹¹ “Estatutos del Instituto de Estudios Legislativos” [1939]. In *Disposiciones Reglamentarias de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. Santiago: Editorial Andrés Bello, 1973. Art. 2 letter b. p. 198.

²¹² *Ibid.* pp 198-205.

compromise through its drafts of legal reform. During the peak of its activity, by late forties, about 115 lawyers would be actively engaged in this network.²¹³

In spite of its ambitious purpose, the role of the Institute of Legislative Studies was pretty limited. Although this partnership intervened in several statutes during about two decades, its contribution was focused on secondary topics that did not challenge the interests of the new regime. In effect, the Institute collaborated in drafting several projects that became law after being passed almost without modifications by the Congress and the President. These comprised numerous subjects like adoption, alimony rights, the classification of children, deferred payments and the regulation on sharing buildings.²¹⁴ Nevertheless, when the Institute attempted to deal with some critical aspects of the regime—for example, the aforementioned administrative courts—its drafts were not passed or even considered for parliamentary deliberation.

Both the experiences of exit and voice illustrate how lawyers responded to their diminishing influence in public governance throughout the first half of the twentieth century. Exit plainly shows that law graduates' fostered different kinds of expertise to address governmental tasks and that many of them disengaged from the legal field. At the same time, the voices of complaint illustrate both their timid mobilization for legal reform and how they failed to shake the traditional inertia of courts or to influence the fates of legislative process beyond minor legal issues after the 1930s. Along with these responses, juridical expertise would be continually redefined as a “technical knowledge”, whose particular province was increasingly separated from decision-making. In the end, exit and voice not only portray the gradual emergence of the division of labor in state-crafting but the very limits of the traditional model of law within the public sphere.

Toward 1960: An Open Epilog

The period between 1952 and 1964 would offer new challenges for lawyers. If prior to mid 1950s the social foundation of the legal system was laid by the *Estado de Compomsio* and a centripetal political dynamic, the next two decades would be characterized by escalating conflict and the gradual end of the former cycle. New pressing social issues required public attention and the Cold War pushed to an increasing dynamic of polarization. Expectedly, all these phenomena demanded intervention of the legal profession, even when this already held a diminished institutional capacity.

From about 1952, the regime dominated by middle-class sectors began to collapse. The 1950s and the early 1960s were characterized by economic inflation originated in public subsidies, the first pitfalls of the policies of industrialization, low economic growth, and the paltry conditions of the urban poor.²¹⁵ As a matter of fact, state arbitration and micromanagement were not enough to deal with these new issues, and all these hurdles slowly ended with the pragmatic politics dominated by long-established political parties (Radical, Liberal, Conservative, and some factions of Socialists). A populist alliance took office during Carlos Ibáñez's second rule (1952-1958), heralding a new discourse against traditional politics, but being unable to improve economic

²¹³ *Boletín Instituto de Estudios Legislativos*. Año VII. No 4. 1949. pp. 54-55.

²¹⁴ Carlos Estévez. *Manual del Abogado*. Op. Cit. pp. 35-36.

²¹⁵ Adolfo Ibáñez Santa María: *Herido en el Ala*. Op. Cit. pp. 345-364.

performance. The next rule formed by liberal and conservative parties tried to carry technocratic policies in the next years (Jorge Alessandri's rule, 1958-1964), but lost the government after finishing their term. These latter parties suffered a significant decrease of its political representation to about 8% in 1965, and were dissolved to found the National Party.²¹⁶ As we will see in the next chapters, diverse left-leaning movements took office later, attempting to further an agenda organized towards radical structural changes. Since 1952, and during the next two decades, no political group could consolidate its policies and electoral support, being defeated in every next election under winds of deep social dissatisfaction.

Although several strategies were carried out to deal with social conflict between 1955 and 1964, they only would increase political unsteadiness and the anxiety for new reforms. First, the attempts to control monetary inflation by increasing the value of some products and services, like public transportation, provoked protests among population of big cities since the end of 1940s, producing several events of political turmoil that only ended after the declaration of the state of siege.²¹⁷ In this economic scenario, the welfare state failed in negotiating prices and salaries, originating an escalating number of labor strikes.²¹⁸ Second, the enactment of different statutes on parties and elections tried to enhance the competitiveness of a political system previously featured by its informality and fragmentation, but, ultimately, they hampered the previous cycle of pragmatic governments. In fact, the introduction of the secret ballot weakened the basis of electoral support of long-established parties, particularly of the Conservative candidates.²¹⁹ Equally, the regulation of electoral pacts—which were limited to national level—favored ascending movements that began to dominate the political arena by that time, namely: the Socialist Party unified in 1957, the Christian Democracy founded the same year, and the Communist Party, back to the legality in 1958.²²⁰ Following well-defined ideological positions, they harshly struggled to conquest electoral support and developed comprehensive programs of structural changes, competing within labor unions, student groups and other associations.²²¹ Finally, under the Alliance for the Progress' pressure, Jorge Alessandri's Government enacted a basic program of agrarian reform originally focused on underutilized lands (1962). This was the first effort to deal with the stagnation of agricultural production, but, at the same time, levered the dynamic of political polarization regarding the place of property rights in socioeconomic development.²²²

By the early 1960s, a new cycle of centrifugal politics already had begun, replacing the former *Estado de Compromiso*. As discussed in the next chapters, the country would be increasingly divided between those who favored deep structural reforms and hoisted the flags of radical changes (e.g. Frei "Revolution in Liberty,"

²¹⁶ Arturo Valenzuela: *The Breakdown of Democratic Regimes. Chile*. Op. Cit. pp. 3-21.

²¹⁷ See for example, the rebellion of the Chaucha (1949), and the battle of Santiago (1957). Elizabeth Lira, Brian Loveman: *Poder Judicial y Conflictos Políticos (Chile: 1925-1958)*. Op. Cit. pp. 539. 661.

²¹⁸ Hugo Friling: *Law in Society: Social Transformation and the Crisis of Law in Chile 1830 – 1970*. Op. Cit. pp. 145-156.

²¹⁹ Jean-Marie Baland; James A. Robinson: "Land and Power: Theory and Evidence form Chile". Op. Cit.

²²⁰ Ricardo Gamboa Valenzuela: "Reformando reglas electorales: La cédula única y los pactos lectorales en Chile (1958-1964)." *Revista de Ciencia Política*. Vol 31. No. 2, 2011. pp. 159-186.

²²¹ Timothy Scully: *Rethinking the Center...* Op. Cit. pp. 136-169.

²²² Ibidem. José Garrido et al. (ed): *Historia de la Reforma Agraria en Chile*. Santiago: Editorial Universitaria. 1988. pp. 80-100.

between 1964 and 1970, or Allende “Chilean Way to Socialism between 1970 and 1973), and those who attempted to stop them. Ideological divisions crossed the entire Chilean society. Both urban and rural constituencies were highly mobilized by electoral competition, and violence would emerge as a part of Cold War politics.

In this period of mounting social conflict, it is highly probably that political game had demanded the collaboration of the legal field. From the perspective of the ruling groups, law habitually had played a critical role in reshaping political and economic divergences (e.g. the constitutional reform in the 1870s). So far, the new milieu offered important opportunities for institutional design and to foster cooperation. However, when politics was unable of arbitrating social conflict, and polarization emerged in the middle of the 1950s, the legal profession did not initially play a significant role. As a matter of fact, the most critical attempts of corporative collaboration from the legal field were usually neglected at the political arena. For example, the CHBA and some law schools organized diverse seminars to deal with monetary inflation during 1954 and 1957.²²³ Appealing to the very “essence of the legal profession,” it is to say, to their traditional role in assisting politics—, lawyers proposed to lower the readjustments of salaries under the increase of the cost of life, trying to reach a compromise.²²⁴ Nevertheless, this and other of their proposals would not be heard by lawmakers, who foresaw the enormous political price of carrying them out. Ultimately, the last resort to resolve escalating conflict did not seem to be a province of juridical expertise. Why?

As this chapter explained, elite lawyers saw a gradual decrease in their possibilities of action, both to influence policy making and to use the juridical system as a setting of contestation. Politics and the legal field were increasingly disengaged as law graduates who participated in the former realm did not perform relevant juridical roles, and, instead, invested most of their efforts in partisan life and electoral competition. Additionally, the ruling groups diversified their professional competencies and law graduates lost their quasi-monopoly over state-crafting. Such a dynamic became visible all over the twentieth century when the central focus of statesmanship passed from the construction of the institutional order to the problems of economic and social development. Outside of the traditional forums of politics, lawyers’ prospects did not look better. The organized bar (CHBA) depended upon its administrative status to fulfill its professional tasks, and courts followed the courses of bureaucratic inertia. Indeed, due to their political and financial constraints, they were featured by an unsophisticated positivism and deferential behavior. Through such an institutional dynamic, the legal profession reframed its sphere of jurisdiction by a narrow scope and was less able to intervene in contested issues. Elite lawyers did not have so much to offer in public deliberation beyond the textual reading of statutes, did not have enough authority to break up the gridlock on key aspects of the legal system (e.g. their failed legislation on administrative tribunals) or to speak up on non-strictly legal topics (e.g. monetary inflation). In the early 1960s, elite lawyers began to suffer massively status anxiety and to perceive the inefficacy of the law, or as many of them claimed, that those were times of legal crisis.

²²³ See as example, *El Derecho ante la Inflación. Primer Congreso de Abogados Chilenos, 27 al 31 de octubre de 1954*. Santiago: Editorial Jurídica. 1955.

²²⁴ Raúl Varela: “Discurso Congreso Nacional de Abogados” [1957]. In *Revista de Derecho*. Universidad de Concepción. No 101. Año XXV. pp. 381-392.

Chapter 3

The Rhetoric of Legal Crisis and the Breakdown of the Legal Profession

We were told that the Chilean legal system was antiquated, out of touch with contemporary reality and inadequate in a developing Chile [...] We heard that message from deans, professors and student leaders in the law faculties, prominent members of the bar, judges, academicians outside the law faculties, and public officials. We encountered few dissenters.” (John H. Merryman: “Law and Development Memoirs I: The Chile Law Project”).¹

Introduction

Along with the consolidation of republican life and the emergence of the administrative state, Chilean elite lawyers set some implicit assumptions about law, juridical methods and their role that determined their sphere of jurisdiction as a professional group. Overall, they can be traced back to the enactment of the civil code and bureaucratization of legal institutions, matching a radical and unsophisticated understanding of the positivist jurisprudence that was dominant in continental Europe by the early twentieth century. First, they proposed that law was eminently constituted by legislation passed by political power as depositary of the sovereign will. Theoretically, this consisted of a gapless normative system comprised of the basic codes and the new statutes approved by Congress and the Executive without another requirement than the prescribed constitutional formalities (i.e. trust in juridical rationality and the procedural concept of justice). Second, lawyers and judges must mechanically apply legislation, which was interpreted according to a strict canon of textual interpretation. Hence, Law School was expected to provide descriptive knowledge on statutes in a non-critical way. In the same light, courts endorsed an institutional ideology that completely separated judicial activity from politics. They did not perform any substantial task in public decision-making, even curtailing their possibilities of constitutional review of statutes and judicial control of the administration. Neither broad constitutional principles nor supra-legislative values had any impact on the quotidian process of legal reasoning or judicial adjudication.² Finally, elite lawyers used to underpin their successful role in the construction of the republic, which would have been characterized by an unwavering respect for the state legality.

By the first half of the twentieth century, the previous assumptions about the legal system were almost unanimously shared by elite lawyers and judges coming from the entire political spectrum. This is to say, they were accepted not only by liberal, conservative and radical party law graduates who dominated the key posts in the bar

¹ John Henry Merryman: “Law and Development Memoirs I: The Chile Law Program.” *The American Journal of Comparative Law*. Vol. 48. No. 3. (Summer 2000). p. 481.

² See Chapter 2.

association and law schools but also by those who had more extreme political positions. Although clearly many of them had deep underlying differences on the ideological plane—ranging from Marxism to Traditionalism—these only remained at an intellectual level, without reaching the legal practice.³ It is not surprising that Communist lawyers could publish very standard descriptive works on legislation, or that conservative law professors used to teach law following a very positivistic style, both absolutely disconnected from their philosophical backgrounds.⁴ As explained in the previous chapters, these assumptions have been functional for diverse purposes. During the late nineteenth century, these allowed that the political elite—usually professionalized through legal studies—could reinforce the state institutional capacity, facilitating its political action and cooperation. By the mid-twentieth century, such an approach to the law also resulted in functionally maintaining a narrow sphere of professional jurisdiction that isolated lawyers and judges from the most intense pressures of political conflict. At the same time, it seemed neutral enough to facilitate the reigning pragmatic compromise of the welfare state, grounded in a limited version of the principles of the market economy and a complex set of public regulations oriented to social corporatism.

Considering the nature and scope of the assumptions described previously, we could assert that elite lawyers gradually constituted a group that resembled a kind of interpretive community.⁵ Being highly determined by institutional constraints, such as the lack of an independent legal academia, the public legal status of the organized bar and the political weakness of courts, the upper legal profession employed legislation—and particularly the civil code—to assert its adherence to formalist criteria of juridical validity and their distribution of roles in governmental practice. These assumptions, especially heralded by lawyers who used to participate in politics, courts and university life, were the spinal marrow of their legal culture broadly understood as the expectations, values and attitudes toward juridical institutions before the 1960s.⁶

Despite the strength and spread of this kind of interpretive community, all the historical sources point to its mounting malaise by the mid-1960s. Although they successfully established a bar association and increased their placement in the public bureaucracy, the elite legal profession had seen its possibilities of action in public governance reduced by the mid-twentieth century. Steadily, they had begun to observe how legal expertise was gradually separated from public decision making, in a long process of specialization in which law graduates acting in politics neglected juridical tasks and other professions—like economists and social scientists—have begun to critically

³ Interview Andrés Cuneo.

⁴ See for example the article of the communist lawyer Sergio Insunza Barrios: “Como escoger y utilizar las fuentes jurídicas.” *Revista de Derecho y Jurisprudencia*. No1. Tomo CXIII, 1966. pp. 97-120. On the conservative side, see for instance: Abraham Kiverstein: *Síntesis de Derecho Civil. Basados en apuntes tomados en clases del Profesor Hugo Rosende Subiabre*. Santiago. 1955.

⁵ I prefer to use the concept of interpretive community (IC) rather than “epistemic community” (EC). In so doing, I consider the centrality of the text in lawyers’ imaginary and the lack of a discursive endogenous dynamic to determine the relation change/continuity. Therefore, this dissertation remains within the borders of historical institutionalism. See, Vivien A. Schmidt: “Taking ideas and discourse seriously. Explaining change through discursive institutionalism as the fourth new institutionalism.” *European Political Science Review*. Vol. 2 No. 1. March 2010. pp. 1-25.

⁶ Lawrence M. Friedman: *The Legal System. A social Science Perspective*. New York: Russell Sage Foundation. p. 194.

intervene in public affairs. Additionally, they progressively perceived that they were unable to resort to law as a place of contestation and political compromise, particularly as a result of the increasing bureaucratic inertia of the legal institutions and the stifling juridical formalism. All those concerns began to be understood as a crisis that affected the entire legal system.

There is nothing better than an outside observer to clarify the point. In 1966, John Henry Merryman and John Howard visited Chile answering a letter sent by the Dean of the University of Chile Law School, Eugenio Velasco Letelier, who invited them asking for support in different efforts to improve legal education and scholarship.⁷ Merryman recalls in the passage quoted in the epigraph, that they found that almost the entire legal profession felt dissatisfaction by those years, claiming that juridical institutions presented significant shortcomings and that they were ill-equipped to decisively face the new challenges of socio-economic development.⁸ By and large, a deep feeling of distress was wide spread, and that dissatisfaction nurtured their awareness about the necessity of legal reform, becoming a burning topic.

By analyzing the rhetoric of legal crisis, the present chapter explores: a) how different elite lawyers portrayed the inadequacy of the legal system and their own limited possibilities of action in addressing a new sociopolitical milieu of the 1960s; and b) how this rhetoric implied a break in the profession as a sort of interpretive community. For that purpose, this chapter relies upon a body of about two hundred historical sources, composed of articles, speeches at conferences, newspaper letters and interviews. Additionally, different datasets on the Chilean ruling groups have been used to characterize the main participants in these debates.

First, this chapter proposes that elite lawyers resorted to this rhetoric to describe a supposed unresponsiveness of legal institutions and the demise of juridical expertise in public governance. To be clear, I am not arguing here that lawyers can control the political process or guide socioeconomic development, as the protagonists of this chapter seemed to think. I just explore how they constructed this narrative that was aimed to call into question their waning role, trying to respond the ambitious developmental programs of modernization and the political conflict of the Cold War years.

Second, I argue that such an inquiry meant a break in the elite legal profession as an interpretive community that shared criteria of legal authority, methods, and distributions of roles within the state, initiating an increasing dynamic of political and professional fragmentation. As a matter of fact, the different projects of reform that followed this rhetoric did more than mask the struggle to arrange professional hierarchies and the production of the juridical knowledge to expand lawyers' possibilities of action. Due to the historical role of lawyers in the construction of the state, the different groups which resorted to this discourse were—by and large—ideologically aligned, mirroring the fates of contingent politics. This would become evident in the four movements of lawyers studied in the next chapters: a kind of legal realist trend (1964 -1975), a Marxist group of

⁷ The story is well-known in socio-legal scholarship. Like similar experiences in the region, they came in the name of the Alliance for the Progress promoting a kind of subtle project of intellectual colonialism, attempting to export the American model of juridical education. James Gardner: *Legal Imperialism. American Lawyers and Foreign Aid in Latin America*. Madison: The University of Wisconsin Press. 1980. pp. 126-128.

⁸ See Note 1 above.

them during Salvador Allende's Popular Unity (1970-1973), a network of pro-authoritarian lawyers during Pinochet's military dictatorship (1973-1990), and a dissident group in the opposition (1978-1994).

The chapter proceeds in two parts. The first section provides an outline of the emergence of the rhetoric of legal crisis by the mid-1960s, examining in detail the ways by which these debates challenged some of the central assumptions of local legal culture, like the harmonious character of the legislative system. The second section explores the debates from an analytical standpoint, paying attention to the break of lawyers as an interpretative community and their extreme political fragmentation. Some concluding remarks are offered at the end of the chapter.

The Legal Crisis: Appraising Legal Authority in times of Social Change

As elsewhere in Latin America, Chile in the 1960s was characterized by a mounting anxiety about socio-economic underdevelopment and political mobilization. As it was explained at the end of the prior chapter, since the early 1950s, the Chilean welfare regime began a gradual process of decay, starting a dynamic of economic stagnation and increasing social turmoil.⁹ In addition, diverse demographic and cultural transformations—like the growing urbanization and the emergence of anti-establishment youth culture—shaped an atmosphere dominated by high expectations of social change. By the 1960s, these were translated into broad demands for economic and social restructuring (e.g. land reform, deeper political participation, renewed university structures, among others). At the political level, this mood also facilitated the advancement of parties that proposed comprehensive and ideologically totalizing programs of social modernization (i.e. Socialist and Christian Democratic parties), which began to dominate the electoral competition by this time.¹⁰ Thus, these years became a euphoric period “facing the prospect to attend and to contribute to the birth of a new world.”¹¹

In this context, 1964 was a year of inflection in the political landscape, bringing the promise of change closer. After a tough electoral campaign, the Christian Democrat Eduardo Frei Montalva was elected President of the Republic, defeating to the Socialist leader Salvador Allende. Although representing different ideological projects, both candidates upheld structural transformations aimed to distribute power and property, overcoming the social and economic predicament that the country faced at the time. Both of them promoted true “revolutionary” policies in areas like agrarian reform, the nationalization of copper mining, and the expansion of social services, among others. By the same token, both embodied an increasing electoral competition for the support of new actors who were taking part in politics during the preceding decade (e.g. the first unions

⁹ See Chapter 2.

¹⁰ On the description of these political programs, labeled by Chilean historiography as “planificaciones globales” [comprehensive social projects], see: Mario Góngora: *Ensayo sobre la Noción de Estado en Chile durante los Siglos XIX y XX*. Op. Cit. pp. 130-143.

¹¹ Sofia Correa, et al. *Historia del Siglo XX Chileno: Balance Paradojal*. Santiago: Editorial Sudamericana, 2001. p 230.

of agricultural workers and the new urban poor who had begun to dwell in the margins of cities).¹²

Frei's "revolution in liberty" seemed to represent the spirit of the times, promising to open a new age of deeper democratization, social mobility, and economic development. Likewise, this appeared the only way to stop the advancement of the socialist and communist alliance, which almost reached the presidency in 1958, when it lost the election by a tiny margin. As a matter of fact, the conservative and liberal parties—which were suffering a profound decline—gave their electoral support to Frei as the only way to stop socialist victory, even when he did not make them any concession in his program.¹³ As an alternative to socialism, he additionally counted on the sympathy of the American Government and the Alliance for the Progress, which saw in him an option to compete with the Cuban socialist model.¹⁴ By then, the fate of Chilean democracy appeared to be closely intermingled with Cold War politics.

At the level of substantive policies, Frei's government was deeply committed to a structuralist approach to public policy, being heavily swayed by economists such as Jorge Ahumada from the ECLA and the sociologist priest Roger Vekemans.¹⁵ Pointing to chronic problems of stagnation and poverty, the Democratic Christian cadres asserted that the country lived an "integral crisis" that involved all its economic and social structures.¹⁶ As a result, Frei's program addressed such challenges by an ambitious plan to modernize Chilean society completely, which was based on the redistribution of property and social empowerment. In the economic sphere, he proposed an extensive policy of agrarian reform, the partial nationalization of copper mining and a progressive tax reform on wealth. In the societal realm, he upheld grassroots organizations and the expansion of housing and educational services. For Christian Democrats, such policies comprised the first steps of a long journey to development, pursuing a new model of society whose setting was at the middle ground between socialism and capitalism.¹⁷

Although the expansion of state agencies offered important areas of professional activity for lawyers, Frei's rule meant a further step in the demise of juridical expertise in public governance. First, he significantly relied upon an ascending technocracy of economists and social scientists both to design his program and to centralize the process

¹² Julio Faúndez: *Democratization, Development and Legality. Chile, 1831-1973*. Op. Cit. p. 174. Paul E. Sigmund: *The Overthrow of Allende and the Politics of Chile, 1964-1976*. Pittsburgh: The University of Pittsburgh Press. 1977. pp. 30-32.

¹³ The Right wing parties took their decision after the victory of the socialist candidate in a by-election to replace a representative who passed away in 1964. Some of their members, however, endorsed their support to the Radical Party candidate, Julio Neumann, who attracted the anticlerical votes. Paul E. Sigmund: *The Overthrow of Allende...* Op.Cit. pp. 29-30.

¹⁴ Ibid. p. 34.

¹⁵ Jorge Ahumada: *En Vez de la Miseria*. Santiago: Editorial del Pacífico. 1958. Roger Vekmans: *Doctrina, Ideología y Política*. Santiago: Universidad Católica de Chile. Centro Interdisciplinario de Desarrollo Urbano. 1964.

¹⁶ See parallel argumentation in Ahumada's idea of crisis and Eduard Frei's approach. Jorge Ahumada: *La Crisis Integral de Chile*. Santiago: Editorial Universitaria 1966. Eduardo Frei Montalva: "Perspectivas y Riesgos en la Construcción de una Nueva Sociedad." Lecture at the Catholic University of Chile, March, 30th 1970. In Hernán Godoy Urzúa: *Estructura Social de Chile*. Santiago: Editorial Universitaria. 1971. pp. 547-561.

¹⁷ Partido Demócrata Cristiano: *Un Programa y un Gobierno*. Santiago: Editorial Universitaria. 1967.

of economic and social planning.¹⁸ They chiefly worked in the new National Bureau of Planning (ODEPLAN) and the Economic Committee, serving as a counterbalance to the pressure coming from partisan and popular demands. There, they used their authority to frame the new economic program, becoming organic intellectuals and key public officials.¹⁹ At the same time, the new technocracy was very instrumental in the design and implementation of the redistributive measures such as land reform (e.g. through the Corporation for Land Reform, and the National Institute for Agrarian Development), and in guiding the process of popular organization. Such an influence, particularly at the level of economic decision making, was hardly resented by traditional political cadres composed mostly of lawyers.²⁰

Second, the economic and social reforms proposed by Frei also called into question traditional aspects of juridical knowledge.²¹ For example, the project on land reform and the new types of farmers' cooperative organization involved a different view on property rights and associations, which did not fit well into standard legal molds.²² Something similar can be said about the ideals behind the projects of popular mobilization and strengthening of Executive authority, which, in its most radical views, implied a veiled criticism of the long-established formal democracy.²³ So, lawyers' expertise appeared out of touch regarding the process reforms, giving the impression of being too attached to the social status quo. At the same time, there was not a clear path to conciliate those projects within the margins of the traditional legal cannon. Resorting to formalism as a ground for their sphere of professional jurisdiction, elite lawyers had little to offer in public deliberation, accentuating the awareness of juridical inefficacy that had come out at least in the previous decade (the 1950s).

Framing a Narrative to Express Professional Malaise

Following the emergence of a new socio-political context, the first writings that mildly began to manifest the mood of frustration among elite Chilean lawyers appeared in the late 1950s. As in other Latin American countries and Europe, some law professors referred the shortcomings of law and some alleged attacks against legal expertise.²⁴ However, this kind of dissatisfaction would only become acute starting in the last months of 1964, when they began to address this issue insistently. That year, Eduardo Novoa Monreal, a well-reputed professor of Criminal Law at the University of Chile and an attorney at the State Defense Council, published the article entitled "*La Crisis del*

¹⁸ Steven Lowenstein: *Lawyers, Legal Education and Development. An Examination of the Process of Reform in Chile*. Op. Cit. p. 64.

¹⁹ Patricio Silva: *In The Name of Reason. Technocrats and Politics in Chile*. Op. Cit. pp. 114. 124.

²⁰ Ibid. pp.122. 128.129.

²¹ Interview, Antonio Bascuñán Valdés.

²² Interview, Francisco Cumplido Cereceda.

²³ See as example. Jaime Castillo Velasco, Francisco Cumplido Cereceda, et al. *El Poder Político en una Sociedad de Participación*. Santiago. Editorial del Pacífico – Instituto de Estudios Políticos. 1973.

²⁴ See as example: Pedro Lira Urquieta: *De la Necesidad de Refundir y Modernizar Nuestra Legislación*. Santiago: Imprenta Chile. 1957. Raúl Varela Varela: "Discurso en el Acto de Investidura de Abogados." *Revista de Derecho y Jurisprudencia*. Tomo LVIII, January -April 1961, No 1-2. pp. 1-5. Jorge Guzmán Dinator (ed.): *Nueva Sociedad, Vieja Constitución*. Santiago: Orbe. 1964.

Sistema Legal Chileno” [The Crisis of the Chilean Legal System].²⁵ Basically, he pointed out that existing juridical institutions were outdated since they were designed to regulate an old model of society. As a left-leaning advocate, he affirmed that social life had overcome pro-market legal principles and exegetic methodology. Even when the welfare state had carried out some minor reforms in legislation, these did not adequately respond to social change, because of their inorganic character and meagerness. In the end, he asserted, the Chilean legal system was “a snarled mess of norms, without a systematic order.”²⁶

In spite of its focus on law, Novoa’s article was published in *Mensaje*, a journal of the Society of Jesus with widespread diffusion among political elites. Considering the strength of the piece, this constituted a real catalyst. Other lawyers published several letters and editorials in the most influential newspapers, adding new angles of analysis, such as the passive role of the judges who only applied statutes and the rigid methods of legal interpretation.²⁷ Soon after the publication of Novoa’s article, the University of Chile Law School –at that time, the most important in the country–, convoked for a conference devoted to questioning the idea of legal crisis in August of 1965.²⁸ For that purpose, the summons calling to the seminar was introduced by a quotation from the Italian scholar Piero Calamandrei, which was indicative of the tenor of the event: “These are times of legality; when the judge must apply a law that disregards social consciousness. Then, the judge becomes steward of the law and its critic; he is led to compare between these two terms, increasingly distant ones, and to consider the dilemma of fair law, vacillating between being loyal to the formal survival of old statutes, and being attracted by a new justice: these are transitional periods in which legality is in peril.”²⁹ The meeting included some of the most outstanding professors of law and members of the bar, like Eugenio Velasco Letelier (Dean of the hosting school), Enrique Silva Cimma (Comptroller of the Republic), Alejandro Silva Bascuñán (Head of the

²⁵ Eduardo Novoa Monreal: “La crisis del sistema legal chileno”. *Mensaje* No 134, November 1964. pp 559-566. For a detailed account on Eduardo Novoa’s scholarship and his role in local politics, see Cristián Villalonga: *Revolución y Ley. La teoría crítica del Derecho en Eduardo Novoa Monreal*. Santiago: Globo Editores. 2008.

²⁶ Eduardo Novoa Monreal: “La crisis del sistema legal chileno”. *Mensaje* No 134, Op. Cit. p. 559.

²⁷ “Estatutos Jurídicos Funcionales y Reformas Estructurales.” *El Mercurio*, November 7th, 1964. p.3. Octavio Maira: “La Crisis del Sistema Legal Chileno”, *El Mercurio*, November 20th, 1964. p.3. H.O.S.: “La Crisis de Nuestro Sistema Legal” *El Mercurio*, November 23th, 1964. p.3. Sergio Baeza Pinto: ¿Crisis del Sistema Legal Chileno? *El Mercurio*, November 30th, 1964. p.3. Bernardo Gesche Muller: “Deficiencias del Sistema Legal Chileno.” *El Mercurio*, December, 3rd, 1964. p.3. Pablo Rodríguez Grez: “Sobre la Crisis del Sistema Legal Chileno.” *La Nación*. December, 28th, 1964. p. 4. Pablo Rodríguez Grez: “Leyes Funcionales y Reforma de la Carta Fundamental.” *El Mercurio*, March 24th, 1965. p.3.

²⁸ Previously to this Second Seminar at University of Chile, there was a first one about a related topic: Law and Mass Society, which show us the increasing interest in the process of social change and law. See Seminario de Derecho Privado, Universidad de Chile: *Primeras Jornadas Sociales (Estado – Derecho-Sociedad de Masas)*. Santiago. 1964. The second conference was organized by the Dean of the University of Chile School of law, Eugenio Velasco Letelier and Octavio Maira, Chair of the Department of Private Law. Universidad de Chile. Facultad de Ciencias Jurídicas y Sociales: *Segundas Jornadas Sociales. La crisis del sistema legal chileno*. Santiago: Editorial Universitaria, 1965.

²⁹ Universidad de Chile. Facultad de Ciencias Jurídicas y Sociales: *Segundas Jornadas Sociales*. Cover page.

Chile's Bar Association), Pablo Rodríguez Grez (legal scholar and elite lawyer), and Novoa Monreal himself.³⁰

During the conferences, the intense use of the idea of legal crisis reflected a new understanding of the legal system. All agreed that Chilean law was outdated, constituting an expression of academic delay and an obstacle to socio-economic development. Nevertheless, regarding the institutional re-arrangement destined to surmount such a situation, there was not a definitive answer. On one hand, Eduardo Novoa Monreal, representing the left-leaning perspective, argued that all legislation, methods, and legal values should be changed. In brief, he went on to say that the process of socialization of the country, by which new sectors of the population were incorporated, required a complete restructuring of legal institutions and their re-orientation according to the necessities of public interest. On the other hand, Pablo Rodríguez Grez, on behalf of nationalist right wing, pointed out the legal system only needed the ordering of the juridical norms toward functional areas, overcoming the chaotic condition of the legislation.³¹ Although with different standpoints, other lecturers and authors who faced this problem took similar stances, framing the issue as a political dilemma or merely a matter of legislative ordering. Considering the promises of change carried out by Frei's government, these different readings can be explained by the political context of the moment and the identity of the participants. So, a complete reconstruction of the legal system incorporating new public values, as Novoa purposed, or the Rodríguez's "technical" reorganization were not neutral positions.

Later on, the idea of legal crisis continued its spread. In fact, the professors who gave the aforesaid lectures at the University of Chile wrote longer reflections on the issue, which reached broad circulation. In 1965, Novoa published a new edition of his work on the legal crisis in the *Revista de Derecho y Jurisprudencia*, the most important and traditional law journal among judges and lawyers.³² Additionally, between 1965 and 1973, he published more than fifteen articles regarding this issue and the renovation of the legal system.³³ In the same light, Rodríguez Grez made public a detailed study on Chilean legislation, proposing some lines for its reorganization: *De la Relatividad Jurídica: Crisis del Sistema Legal y Estatutos Jurídicos Funcionales* [On Legal Relativity: Crisis of the Legal System and Functional Legal Statutes].³⁴ Similar works were published by authors like Eugenio Velasco Letelier, Dean of the University of Chile

³⁰ See Appendix 13.

³¹ Universidad de Chile. Facultad de Ciencias Jurídicas y Sociales: *Segundas Jornadas Sociales. La crisis del sistema legal chileno*. Op. Cit.

³² Eduardo Novoa Monreal: "La crisis del sistema legal chileno" *Revista de Derecho y Jurisprudencia*. 62, December, 1965. pp. 227-243.

³³ For instante, see: Eduardo Novoa Monreal: *¿Qué queda del Derecho Natural? (reflexiones de un jurista cristiano)*. Buenos Aires: Ediciones Depalma – Benavides López. 1967. "La Renovación del Derecho". *Revista de Derecho y Ciencias Sociales*. Year 36 No 143-144. 1968. pp. 3-28. "Hacia un Nuevo Derecho". *Mensaje*. No 173. 1968. pp. 485-491. "Derecho, Justicia y Violencia". *Mensaje* No 174, 1968. pp. 568-572. "Revolución y Derecho". *Mensaje*. No 178 (1969) pp. 156-164. "Progrès humain et Droit Pénal". *Revue de Science Crimenelle et Droit Pénale Comparé*. XXV. No 2. Centre Francais de Droit Comparé. 1970. pp. 267-288.

³⁴ Pablo Rodríguez Grez: *De la relatividad jurídica (Crisis del sistema legal y estatutos jurídicos funcionales)*. Santiago: Editorial Jurídica, 1965.

Law School.³⁵ Slowly, quite a lot of other participants took part in this debate. In fact, more than fifty leading lawyers and legal scholars directly or indirectly addressed the idea of the legal crisis through articles, letters to the newspaper, speeches and so on, which constitutes a considerable number considering a tiny elite legal profession. Moreover, several conferences on similar topics were organized at the CHBA, political institutions, and other law schools, reflecting the mounting status anxiety within the juridical field.³⁶

Casting a broad glance on such sources, we can conclude this rhetoric meant a radical critique of some basic assumptions about the functioning of the legal system. They were concentrated on three levels: (i) legislation, (ii) methods, and (iii) the role of lawyers and law in socio-economic development.

Chaotic Legislation

The rhetoric of legal crisis implied a sharp criticism regarding statutory order, flouting the dominant representations of law that previously reigned among lawyers and governmental circles. As it was extensively explained in Chapter 1, the reverence for legislation—in particular for the civil code written by Andrés Bello—was one of the core values of the entire legal profession. For instance, besides its commitment to pro-market economy and juridical formalism, the civil code used to be understood as an almost perfect oeuvre particularly tailored for the necessities of the country. Thus, various professors characterized this text resorting to the same images used to describe Napoleon’s civil code by the French Exegesis School: “grounds of the social and liberal order”, “legal monument”, and so on.³⁷ The piecemeal reforms introduced by the welfare state initially did not alter the general allure of the civil code as an axis inside the statutory system, which would only be called into question along a major critique to legal institutions at this time.³⁸

By 1964, a growing agreement emerged among elite lawyers and legal scholars, who began to accept the shortcomings of the civil code openly.³⁹ This crack in the former consensus is well depicted by Novoa’s words: “The civil code needs to be re-written, not only to be modified or reformed. It requires an extensive restructuring if we want to live with our eyes open to reality. It is necessary to end our fascination with the civil code and the civil law [...] For the citizens, the code is too old, it is inefficient, and it does not fulfill the goals for which it was enacted. For the jurists, on the contrary, it continues to

³⁵ Eugenio Velasco Letelier: *El Derecho y los cambios sociales*. Valparaíso: Universidad de Chile, Escuela de Derecho de Valparaíso, 1967.

³⁶ The CHBA organized a cycle of conferences reviewing the diverse role of lawyers within the new context, which were published in the *Revista de Derecho y Jurisprudencia* during the years 1965, 1966 and 1967. Also, it organized a national conference on this issue in 1969, in the city of Concepción. Additionally, among others, see *Visión Comunitaria del Derecho*. Santiago: Instituto de Estudios Políticos. 1966. Adolfo Gelsi: “Proceso y época del cambio”. *Revista de Derecho y Jurisprudencia*. LXIV No 8. (1967). pp. 190-203.

³⁷ Mauricio Tapia: *Código Civil 1855-2005*. Op. Cit pp. 47-49.

³⁸ Before 1964, the efforts to amend the civil legislation did not affect the reverence for the code. See as example: Pedro Lira Urquieta: *El Código Civil y el Nuevo Derecho*. 1944. Op. Cit.

³⁹ Before this year, there are few reflections on the issue. Remarkable among them: Pedro Lira Urquieta: *De la Necesidad de Refundir y Modernizar Nuestra Legislación*. 1957. Op. Cit.

be the archetype of fundamental legislation.”⁴⁰ However, it would be a mistake to interpret these words as a mere political standpoint. In general, the perception of an outdated civil code was almost unanimous. Even conservative and right-leaning professors of law pointed out the disengagement between a legal text enacted to regulate a rural country, and a new urban reality defined as a mass society. For instance, the young law professor Crescente Donoso explained in 1967: “[...] there have elapsed more than one hundred years from the enactment of the civil code, since of the institutions it regulates, some have fallen into disuse, and other ones need to be modified; meanwhile, we appreciate this does not incorporate new legal forms raised and developed in the field of special legislation, and that by its very nature must be included in the general law”.⁴¹

Accordingly, the need for a profound reform of the civil code began to gain support among influential law professors of the period like Eugenio Velasco Letelier, Bernardo Gesche Muller, and Guillermo Pumpin Belloni.⁴² Although it was still a controversial project by this time, a complete recodification of civil law began to be part of the plans proposed by jurists such as Fernando Fueyo.⁴³ The largest part of them agreed the text should incorporate new legal theories that had been crucial to the civil law at least, during the last century: the abuse of the law, the relativity of vested rights, moral damages, pre-contractual responsibility, or some degree of flexibility concerning the binding effect of the contracts. In the same light, many voices argued that the civil code—the central axis of law—should deal with the real issues of the average man, such as the rent of apartments, urbanization of land, new technologies in transport, contracts of adhesion, etc.⁴⁴ Thus, the old civil code’s allure within the legal profession was apparently broken.

Beside the previous critiques on the Bello’s oeuvre, the image of the legislation was on the whole pessimistic. As in many countries of the civil law tradition, the vast amount of legislative norms had become a constant characteristic of the Chilean statutory system along the *Estado de Compromiso*. Since judges did not have interpretive leeway in adjudication, the Congress and executive agencies would have responded to social pressures and partial political bargains through a myriad of statutes and administrative norms. Legislation enacted by the Congress lost its generality and became particular rules. According to Professor Eugenio Velasco Letelier, the Congress issued more than 12,000 statutes between 1925 and 1965. Of these, only 850 could be considered as general legislative pieces.⁴⁵ On the contrary, norms enacted without congressional deliberation (e.g. during the facto governments of the early 1930s or by administrative

⁴⁰ Eduardo Novoa: “La crisis del sistema legal chileno”. *Revista de Derecho y Jurisprudencia*. Op. Cit. p. 239.

⁴¹ Crescente Donoso Letelier: *Nuestra Crisis Jurídica. Algunas observaciones sobre la inadecuación de las formas jurídicas a la realidad actual*. Santiago: Facultad de Ciencias Económicas. Universidad de Chile. 1964. p. 13.

⁴² See: Eugenio Velasco Letelier: “La crisis del sistema legal chileno” In his *El Derecho y los cambios sociales*. Op. Cit. pp.22-28. Bernardo Gesche Müller: “Deficiencias del Sistema Legal Chileno.” Op. Cit. Guillermo Pumpin Belloni: “Conferencias ¿Qué queda del Derecho Civil?” *Boletín del Instituto de Docencia e Investigaciones Jurídicas*. No. 9. 1971. p. 15-16.

⁴³ Fernando Fueyo Laneri: “Reformas a Nuestro Código Civil bajo la inspiración de Bello.” *Mapocho*. Tomo IV. 1965. No. 3. Vol. 12. pp. 84-89.

⁴⁴ See notes 41, 42, 43 and 44.

⁴⁵ Eugenio Velasco Letelier: “Crisis del Sistema legal chileno”. In his work, *El Derecho y los Cambios Sociales*. p. 35.

agencies) regulated critical matters like banking, insurance, and housing. Thus, general statutes had lost their nature, being surpassed by the Executive's activity.⁴⁶

Notwithstanding, the problem of the legislation was not only a matter of quantity. Any descriptive account of the legal system of the time used to allude to a real chaos in legislation, which was deeply related to the dynamic of the social conflict. For instance, Alejandro Silva Bascañán—Head of the Bar Association—continuously referred to the crisis of the legality in his speeches of this period, explaining:

Nowadays, modifications to the legislation are passed at a speed that sometimes is not convenient to find better legal grounds, but that it is imposed by the force of [...] sectors of the population who feel themselves forgotten, and who demand from the legal system the tools to facilitate the rapid realization of a long waited social promotion [...] Considering the fast changes, we can understand there is not time to incorporate them into systematic legal compilations, and that the legislative will, even in the most critical areas, is expressed by partial legislative pieces, without unity, characterized by transitory rules, far from the codified order that formerly structured most of the legal reality.⁴⁷

By the mid-1960s, a consensus emerged regarding the disarray, obscurity and contradiction within the legal system. This broke the image of a coherent and highly developed legislation attuned with the most sophisticated juridical science of the age, which had prevailed during the previous decades. First, the significant amount of particular statutes and administrative norms did not present any systematic organization.⁴⁸ Portraying the previous characterization, Novoa asserted most of the legal system was constituted by “numerous statutes, enacted without order, without coherence, without a plan, which are dispersed, unconnected, elaborated almost entirely[...] without any legal technique, hurriedly passed by the Congress due to the circumstances, and to satisfy pressing collective necessities.”⁴⁹ Facing such disarray, the presumption of the general knowledge of the law by the population seemed unreasonable. Even lawyers could get lost in such a normative tangle.⁵⁰

Second, there was obscurity in the content of many particular norms. Sometimes, they were unintelligible, omitted to modify related rules, or only referred to so many different statutes that any understanding required almost a philological activity. For example, Eugenio Velasco Letelier presents a statute that contained more than 120 unrelated subjects: public salaries, municipalities, rent taxes, modifications to the labor

⁴⁶ For previous analysis in this perspective, see: Jorge Tapia: *La Técnica Legislativa*. Santiago: Editorial Jurídica de Chile. 1960. p. 53-54.

⁴⁷ And he continues by adding: “It is interesting to note how in this dispersion [...] we can observe a tendency to the unification of law, by which old classifications lost applicability, even, what from Ulpian's times divided public and private law.” Alejandro Silva Bascañán. “Enseñaza del Derecho”. In his work *El Abogado. Un Servidor de la Justicia*. Santiago: Editorial Jurídica de Chile. 2011. p. 252.

⁴⁸ For example, see quoted works published by Pablo Rodríguez Grez, Eduardo Novoa Monreal, and Eugenio Velasco Letelier. See also: Bernardino Bravo Lira. “La Positivización del Derecho”. *Revista de Derecho y Jurisprudencia*. Tomo LXII. 1965. pp. 16-37. Pedro Lira Urquieta: “En Defensa del Derecho”. *Anales de la Facultad de Ciencias Jurídicas y Sociales. Universidad de Chile*. VII, No 7. 1967. p. 114.

⁴⁹ Eduardo Novoa Monreal: “La crisis del sistema leal chileno”, *Revista de Derecho y Jurisprudencia*. p. 230.

⁵⁰ *Ibid.* p. 239. Crescente Donoso: *Nuestra Crisis Jurídica...* Op. Cit. p. 8.

code, the tax code, and the interpretation of more than fifteen different statutes, etc. (i.e. miscellaneous legislation).⁵¹ The complex process of the political bargain and the urgency to solve social necessities implied that lawmaking would have become increasingly defective.⁵² Neither Congress nor the Executive had enough tools to legislate in that context, such as sufficient juridical advisory and reference indexes, producing norms that lacked legislative technique.⁵³

Third, legal scholars agreed there was an important contradiction in legislation. “[There is] an internal dislocation of the Chilean legal system caused by the different philosophical direction of the statutes enacted during the past century—manifested in the traditional codes of individualist orientation—[...] and the numerous, complicated, chaotic and inorganic legislation passed during the last forty years [...] which responds to an] evident socialist and interventionist trend”, explained Eugenio Velasco Letelier.⁵⁴ Thus, for example, while the civil code established the principles of economic liberalism, the new social legislation disregarded formal equality, absolute private property, and freedom of contract, provoking an implicit tension throughout of the entire juridical system.⁵⁵

Indeed, the normative phenomena described above were not exclusive to Chile, being extensively referred to by scholarly literature. The legislative disarray and the emergence of different legal regimes for groups of interest had been a persistent trend in almost all the countries of the civil law tradition (de-codification).⁵⁶ Likewise, the new courses of legislation—which intended to promote state intervention and regulate the market economy—constituted a phenomenon held in tension in many contemporary legal systems (socialization of law).⁵⁷ Without claiming any comparative inference, however, we can observe that such a normative chaos had a significant impact in the country, particularly regarding the previous assumptions of its legal culture. At last, Chilean lawyers had reframed their sphere of jurisdiction naively assuming they only should apply statutes to concrete cases. They possessed a supposedly technical knowledge directly anchored to legislation and, consequently, statutory disarray affected the very basis of their professional practice and symbolic imaginary.

The problem is in the method (interpretation, legal education, and courts)

Beyond a statutory system that seemed chaotic, the debates on the crisis also referred to an explicit dissatisfaction regarding other aspects of law, particularly on the

⁵¹ Eugenio Velasco Letelier. “La crisis del sistema legal chileno,” Op. Cit. pp. 35-37. Jorge Tapia: *La Técnica Legislativa*. Op. Cit. pp. 41-44. Gonzalo Rojas Sánchez: “Notas sobre el positivismo legal en Chile” *Finnis Terrae*. No. 1, 1993. pp. 38-41.

⁵² Enrique Silva Cimma: “Primera Conferencia.” In Jorge Fuenzalida Pereyra (Ed.): *Un siglo de Estudios Jurídicos en Concepción 1865-1965*. Concepción: Facultad de Ciencias Jurídicas. Universidad de Concepción. 1965. p. 119.

⁵³ Francisco Orrego Vicuña: “La Relación entre Derecho y Desarrollo: El Caso de Chile”. *Anales de la Facultad de Ciencias Jurídicas y Sociales*. Universidad de Chile. No. 10. 1970. p. 185.

⁵⁴ Eugenio Velasco Letelier: “La crisis del sistema legal chileno.” Op. Cit. p. 17.

⁵⁵ Pablo Rodríguez Grez: *De la relatividad jurídica...* Op. Cit. pp. 18-21.

⁵⁶ Eduardo García Enterría: *Justicia y seguridad en un mundo de leyes desbocadas*. Madrid: Civitas, 2001. Giovanni Tarello: *Cultura Jurídica y Política del Derecho*. México: Fondo de Cultura Económica, 1995. p. 313. Natalino Irti: *L'età della decodificazione*. Op. Cit. Alejandro Guzmán Brito: “Codificación, Descodificación, Recodificación.” *Op. Cit.*

⁵⁷ See as example: Lois Josserand: “Le contrat dirigé”. *Dalloz* 1933. Chr. 89.

formalistic legal culture. Accordingly, diverse practices that were previously dominant among lawyers—textual hermeneutics, dogmatic study of legislation in law schools and supposedly mechanical adjudication by courts—were harshly questioned. Such aspects are crucial to understand how elite lawyers framed a narrative to explain their limited possibilities of action in public governance.

Due to its centrality in defining juridical practices, the legal interpretation was one of the primary targets of these debates. Until then, the literal reading of statutes—established by the civil code—had constituted a widespread approach, even guiding constitutional hermeneutics.⁵⁸ By the mid-1960s, this appeared to be one of the pivotal causes of the unresponsiveness of the law. Bernardo Gesche Müller, professor of law at the University of Concepción, explained that, in most cases, the application of textual hermeneutics implied a resolution of current conflicts resorting to criteria fixed about one century ago. Accordingly, this would have been one of the main reasons for the rising dissatisfaction with the legal system: “It is evident that, due to this interpretative method, the law acquires a static disposition and loses its regulatory function of the social order that should apply hereinafter [...] So, a divorce has emerged between the content of the law and the necessities that should be solved through its application.”⁵⁹

In view of that, some of the scholars involved in these academic debates, as Gesche himself, underpinned the necessity to renovate legal hermeneutics. For instance, the professor of private law, Fernando Fueyo, stated: “The delay suffered by the current legislative system can be palliated—now—restoring scientific methods to the interpretation of statutes, and giving up the French way of the Exegesis School.”⁶⁰ In this sense, Fueyo proposed to use the Free Scientific Research trend, developed by François Géný, as an alternative model that is open to considering equity, particularly when there are obscurities, contradictions, and normative gaps. This proposition went beyond mere methodological consequences. As a matter of fact, it questioned a utopian comprehension of the law present among many local lawyers and scholars who understood the law as a “perfect” and gapless system of legislation. Hence, Fueyo asserted this turn would mean accepting, as Géný had argued, that the positive law is an incomplete and imperfect part of legal activity: “the legislation is not the law, but only its more important source in our system; for that reason, statutes do not limit what the law is, and could never solve all infinite conflicts arising from the real life.”⁶¹

However, the exegetic interpretation which began to be called into question had not emerged ex nihilo. A culture of legal formalism was indeed related to a particular approach to juridical knowledge whose roots can be found at least back to the nineteenth century.⁶² In fact, the upper segment of the legal profession—generally composed of elite lawyers who were law professors and by high courts judges—used to comprehend law mostly as statutory provisions created by a top-down process of deliberation, which only

⁵⁸ Jorge Tapia Valdés: *Hermenéutica Constitucional. La Interpretación de la Constitución en Sudamérica*. Santiago: Editorial Jurídica de Chile. 1973. pp. 129-131.

⁵⁹ Bernardo Gesche Müller: “Deficiencias del Sistema legal chileno” Op. Cit. p. 3.

⁶⁰ Fernando Fueyo: “El problema está en el método”. *Revista de Derecho Privado*. Vol. 1 No 4. 1966. p. 22.

⁶¹ Ibid. p. 22-23.

⁶² See, for instance: Paulino Alfonso: *De la Interpretación de la Ley*. 1892. Op. Cit.

was reproduced in universities and mechanically applied by courts.⁶³ As it was extensively explained in the previous chapter, this perspective on the law would have been an essential piece to legitimate deferential behavior and bureaucratic inertia of legal institutions during the emergence of the welfare state (1920s-1940s). For many elite lawyers, the overcoming of the legal crisis implied the transformation of this mindset that supported the narrow sphere of jurisdiction of legal professionals. As Francisco Cumplido, a professor of constitutional law explained by the mid-1960s, to overcome the legal crisis, “it is not enough with the transformation of the positive legislation, it is crucial to change the mentality of who are going to apply the law.”⁶⁴ Therefore, it is not surprising that legal education and courts had become central topics of those debates.

Law schools not only constituted the primary setting where the discussions on the legal crisis arose, but also one of the principal targets of criticism and the subsequent projects of reform. Since the establishment of legal studies in the nineteenth century, these were centered on memorizing juridical texts in a very dogmatic manner. The law student, usually an undergraduate whose first connection to university education was at the law schools, was expected to study legal disciplines in a non-critical way. Pedagogy was dominated by the descriptive explanation of the positive legislation. By this time, the five law school of the country conserved traditional curricula and pedagogical methods, whose physiognomy was mostly determined by the turn of the twentieth century. In this, Civil Law and Procedure courses occupied the central stage, being accompanied by other subjects emerged along the enactment of new legislative codes: Constitutional Law, Criminal Law, Commercial Law, Labor Law and so on. In the meanwhile, some classes of social sciences, such as Economy, History and Politics, remained disconnected to legal practice.⁶⁵

During the 1960s, this model of legal education was harshly resented by some law professors and scholars, who saw in it one of the immediate causes of the crisis.⁶⁶ Following a similar dissatisfaction with legal training that was already present in other Latin American countries, Chilean lawyers pointed to the relation between the professional profile of legal education and the delay of law.⁶⁷ For example, Guillermo Pumpin, Dean of the Catholic University of Chile School of Law explained: “Until now, as a heavy legacy of the nineteenth-century heritage, the final goal of the law school has been to provide the information about the legislation in force and the skills to apply it to concrete cases. So far, the licentiate in law comes out directly oriented to the professional service. Thus, his critical thinking [...] diminishes because the efficacy of his services is related to his ability to manage the legal system in benefit of the interests that he

⁶³ Carlos Peña: “Hacia una caracterización del ethos legal: de nuevo sobre la cultura jurídica chilena”. *Op. Cit.* pp. 69-71. 75-79.

⁶⁴ Francisco Cumplido: *Visión Comunitaria del Derecho*. *Op. Cit.* p. 45.

⁶⁵ Until the early 1980s, there were only 5 law schools in the country at the University of Chile in Santiago and Valparaíso, at the Catholic University of Chile in Santiago, the Catholic University of Valparaíso, and the University of Concepción. Iñigo de la Maza: *Los Abogados en Chile. Desde el Estado al Mercado*. *Op. Cit.* pp. 14.17.

⁶⁶ Gonzalo Figueroa Yáñez: “Hacia una Nueva Concepción de los Estudios de Derecho.” *Boletín del Instituto de Docencia e Investigaciones Jurídicas*. No. 24. 1974. p. 89.

⁶⁷ James A. Gardner: *Legal Imperialism...* *Op. Cit.* pp. 56-57.

represents”.⁶⁸ Such a model was reinforced by the very constitution of the law faculty, usually assigned to teach a couple of hours per week, and who, many times, were expected to transmit the secret of their success.⁶⁹ Besides their commitment to social status quo, the critiques also claimed that the passive pedagogical model did not stimulate any legal change. On the contrary, it encouraged the reproduction of partial legal knowledge, characterized by the lack of “comparison and systematization of ideas.”⁷⁰

According to relevant professors of the period—such as the Dean of the University of Chile School of Law Eugenio Velasco Letelier—the lack of critical thinking and old pedagogical molds were not the only deficiencies undermining legal education. By contrast, the law school also possessed a delayed curriculum. In the first place, Velasco Letelier went on to say that legal education should be refocused on the new emerging issues of the administrative state, abandoning its traditional emphasis on private matters. He explained: “the legal practice has suffered, in the last years, changes due to the increasing intervention of the state in all range of activities, even in which were formerly [...] part of the exclusive private domain. [...] This has been manifested in the increasing relevance and amount of matters that belongs to Public Law and the judicial activity.”⁷¹ In the second place, he also stressed the insufficiency of the training in social sciences, like sociology and psychology. Although not the central responsibility of the law school—Velasco Letelier argued—new courses on these matters would have been fundamental to comprehend recent changes and to become modern lawyers.⁷²

In the same light, the sharp critique was also aimed at legal scholarship. For instance, Alfredo Etcheberry explains that, in this respect, the study of law is considerably inferior that of other academic subjects: “legal education has been oriented to train lawyers, not jurists; to train a professional, not of a scientist. This has neglected the scholarship and teaching of the philosophical grounds of law; losing the unitary view of the discipline.”⁷³ Even when research had been conducted—the critics pointed out—this would have remained underachieving. “Legal scholarship has been focused, until now, on the erudite compilation of what former treatise writers have done, usually, as a mere product of their theoretical reflections. The result has been the complete disconnection between those studies and the reality that the country should face” argued Guillermo Pumpin.⁷⁴ Therefore, all those critiques concluded that a profound transformation of the curriculum, pedagogical methods and scholarship was needed, proposing the organization of major reforms at the law school.

⁶⁸ Guillermo Pumpin: “Programación Futura de los Estudios de Derecho.” *El Mercurio*. November 17th, 1970. p. 3.

⁶⁹ Alfredo Etcheberry: “Reflexiones sobre la Enseñanza del Derecho”. *Cuadernos de la Realidad Nacional*. No 15. December 1972. p. 112. Certainly, although law faculty could get prestige from their academic labor, they could not devote enough time to teaching and research. On the other side, this model of legal education, financed through a small budget, allowed that government supported other sections of the university instead of law schools.

⁷⁰ *Ibid.* p. 113.

⁷¹ “Entrevista al Nuevo Decano Eugenio Velasco Letelier.” *Revista de Derecho Público*. No. 4. 1965. p. 126.

⁷² *Ibidem.*

⁷³ Alfredo Etcheberry: “Reflexiones sobre la Enseñanza del Derecho”. *Op. Cit.* p. 112.

⁷⁴ Guillermo Pumpin: “Programación Futura de los Estudios de Derecho.” *Op. Cit.* p. 3.

Finally, the critical view of legal activity was also extended to the judiciary. Seemingly, the same dynamic that had allowed the judiciary to eschew political conflict during the first years of the *Estado de Compromiso* would have carried out its lack of responsiveness and institutional weakness. To a degree, bureaucratic, hierarchical and politically isolated courts were seen as an important actor in a failed legal system. The well-known article titled “The judge in the crisis”—a lecture delivered at the Bar Association of Santiago in 1966 by appellate court judge and University of Chile professor of law, Rubén Galecio—is significantly illustrative of this view. In the article, Galecio argues that even when judges constitute a kind of symbol of the Republican life, they possessed a precarious situation. He pointed out that the population perceived judges as individuals committed to the social order, whose job is poorly paid and intellectually diminished in comparison to other legal professionals, who many times occupied a lower social position than their parents, with a weaker authority in relation to other public powers, confined to apply legislation which sometimes is unfair and outdated.⁷⁵ Constituting one of the few testimonies coming from a member of the judiciary, Galecio’s article depicted how judges began to perceive their weak position and the limitations of their institutional role. Part of this depressing description would be shared by lawyers outside courts, who, however, sometimes took tougher stances.⁷⁶

Beyond Galecio’s analysis on the situation of judges—whose portrayal is corroborated by their socio-economic profiles presented in the previous chapter—the main criticisms of the judiciary were related to the unresponsiveness of courts and their political behavior. They were seen as inefficient organs at the edge of collapsing. Excessive attachment to formal rules on evidence (even over material truth), long procedures, delays, abuse of procedural norms by litigants, lack of access to justice for poor people, overloaded dockets, and other obstacles would have been the characteristic of their bad performance.⁷⁷ This perception of courts was widely acknowledged, being labeled as an actual “crisis of the judicial function.”⁷⁸ The right-leaning legal scholar, Crescente Donoso, illustratively explained this standpoint in reference to the annual conference headed by the Chief Justice of Supreme Court to inform the state of the judiciary in 1964: “In this environment of slow attitudes, of columns and architectural details, Justice imposes its majesty but hides its inefficacy, because in any of such traditional ceremonies has been recognized with severity that the solution of the problem implies the complete breakdown of the Chilean judicial system.”⁷⁹

Since the early 1960s, that perception on a weak bench increased, and judges began to face such criticism. Through the annual speeches, the Chief Justice of the Supreme Court insistently advocated for some improvements in the judicial organization.

⁷⁵ Rubén Galecio: “El juez en la crisis”. *Revista de Derecho y Jurisprudencia*. LXIII, No 5, 1966. pp. 127-130.

⁷⁶ Fernando Fueyo Laneri: “La desmedrada situación económica en que se mantiene sostenidamente a los miembros de la judicatura nacional”. *Revista de Derecho Privado*. Year II, No. 7. 1967. pp.187-189. Hernán Jiménez Serrano; Gustavo González Parada: “Aspectos de la Actividad Profesional en su Vinculación con la Magistratura.” Report to the 6th National Congress, CHBA. Concepción. *Revista de Derecho y Ciencias Sociales*. No 150. 1969. pp. 75-76.

⁷⁷ Crescente Donoso: *Nuestra crisis jurídica...* Op. Cit. pp. 41-45.

⁷⁸ Oscar Santelices Smith, “¿Crisis del sistema judicial chileno?”, *Mensaje* No 174, 1968. Alejandro Silva Bascañán: ¿Crisis en la Justicia? *El Mercurio*. November 11th, 1970. p. 3.

⁷⁹ Crescente Donoso, *Nuestra crisis jurídica...* Op. Cit. p. 31.

Most of them were framed as economic or managerial reforms, like the establishment of more tribunals, a bigger share of the public budget, better wages, its financial autonomy and the creation of a judicial school.⁸⁰ These claims become particularly acute by 1968, when a big fire destroyed the old colonial building where trial courts of Santiago worked, evidencing the fragility of the material infrastructure of the judiciary and its scarcity of resources. In framing the problems as an economic issue, the Supreme Court avoided proposing a general crisis of law, which would have affected their bureaucratic organization and criteria of legitimacy. By contrast, they continued assuring that political power—in their view, the Congress and the Executive—had the key to overcoming their predicament, particularly providing more financial support and amending legislation. “The shortcomings of the justice, I have said so before [...] can be resolved by the lawmakers through enacting proper statutes,” explained the Chief Justice Ramiro Mendez Brañas in 1971, insisting on this approach.⁸¹

Notwithstanding, not only was the Supreme Court active in this concern within the judiciary, but starting in 1967, judges—mainly from lower ranks—began to mobilize themselves to improve their professional status and infrastructure. The next year, they established a National Association of Magistrates, whose most immediate goal was to get an increase in their wages.⁸² In November of 1969, the judge Sergio Dunlop headed a six days-strike, negotiating directly with the Executive and getting a moderate increase in their salaries. During the walk out, the Supreme Court issued a pronouncement accusing that the strike was usurping its privative function to act institutionally on behalf of the judiciary. Afterward, the National Association of Magistrates unsuccessfully attempted to expand its demands on the judges’ evaluation system, confirming a dormant internal conflict regarding the excessive hierarchical control exerted by higher courts.⁸³

A supposedly politically biased behavior constituted the second source of disapproval on the judicial function. These kinds of criticisms usually came from the extremes of the political spectrum. From the far right, for example, Pablo Rodríguez accused that the Supreme Court many times improperly changed statutory provisions through judicial rulings and attempted to interpret the social mood (*supremazos*). Thus, he asserted: “we should amend the name Court of Justice at the frontispiece of the Tribunals’ Palace by changing it to Courts’ Justice.”⁸⁴ Those words, however, seemed mild beside the harsh attack on courts coming from the far left. As it is going to be extensively explained in chapter 6, left-leaning lawyers, such as Eduardo Novoa, crudely claimed that judges applied a class justice and that were highly committed to social and economic status quo. Consequently, Novoa pointed out, a broad reform was needed to establish more efficient and people oriented tribunals, arising a staunch answer from the Supreme Court.⁸⁵ Those debates reached its peak during the presidential campaign of 1970, which brought Salvador Allende’s Popular Unity to the government.

⁸⁰ Enrique Navarro Beltrán: “La Judicatura analizada por los Presidentes de la Corte Suprema”. *Estudios Públicos*. No. 54. Fall 1994. pp. 242-297.

⁸¹ *Ibid.* p. 254.

⁸² Eduardo Novoa: “La reforma del poder judicial”. *Mensaje*. No 185. December 1969. p. 600.

⁸³ Lisa Hilbink: *Judges beyond Politics...* Op. Cit. p. 96.

⁸⁴ Pablo Rodríguez, *De la relatividad jurídica...* Op. Cit. p. 15. Sergio Baeza “¿Crisis del Derecho?” Op. Cit. p.3

⁸⁵ Eduardo Novoa: “¿Justicia de clase?” *Mensaje*, No 187, 1970. p. 117.

In sum, besides a critical appraisal of legislation, historical sources reveal that this rhetoric involved other key aspects of the legal culture, in particular, the methods of juridical work and their institutional infrastructure. However, the aforesaid criticisms aimed against hermeneutics, the law school and courts seem more than isolated complaints. On the contrary, they addressed the core of the lawyers' sphere of professional jurisdiction. Mechanical textual interpretation—which could be identified with a very primitive version of the legal dogmatic—corresponded to how lawyers had defined the boundaries of juridical expertise during the previous decades. In the same light, meanwhile, passive law schools portrayed the reproduction of such a model of legal knowledge, the inefficacy and lack of recourses of the judiciary mirrored the institutional weaknesses that featured courts as a bureaucratic organization. Therefore, considering the generality of these concerns on the functioning of the legal system, it is not surprising to observe that a condemnatory judgment also had been extended to the law and lawyers' professional role.

Law and lawyers before the challenges of socioeconomic underdevelopment

A general critique of law as discipline constituted one of the most interesting expressions of the rhetoric of legal crisis. As we have seen, public opinion turned to support the necessity of state-sponsored structural changes aimed to achieve socioeconomic development. Before this challenge, all testimonies point that law seemed too attached to the status quo and that it would have been hard to transform its orientation.⁸⁶ In fact, the multiple complaints previously described finally cast doubts on the very place of legal expertise in the solution of societal issues. Antonio Bascuñán Valdés—professor of law at the University of Chile at that time—recalls: “From the enactment of relevant legislation during Frei’s government (e.g. land reform, nationalization of copper, educational and labor reorganization, spread of birth control, inter alia), lawyers began to observe there was a tension or disagreement between the social behaviors and the legal provisions. For many, the problem was that the legal system (lawmakers and the judiciary) was not able to respond to social demands and, for the conservative stance, that the law was being perverted to transform society.”⁸⁷

By and large, the negative appraisal was focused on the dysfunctional role that formal legal institutions and that lawyers played in the path to socioeconomic development. Although involving different concerns and theoretical implications, both issues were seen as closely related topics, being presented as the same conceptual unity during several conferences of the period.⁸⁸ For example, Luciano Tomassini—a law graduate who worked in the Ministry of Land during Frei’s government and that by the early 1970s became a well-known specialist in international relations—illustratively addressed this point:

⁸⁶ Yves Dezalay, Bryant Garth: *The Internationalization of Palace Wars...* Op. Cit. p. 36.

⁸⁷ Antonio Bascuñán Valdés: Interview. 8, 22. 2014

⁸⁸ See conference: “La crisis del derecho y de la profesión de abogado” [1970]. *Boletín de Docencia e Investigación Jurídica*. No. 10. 1972. pp. 38-68. See also: Eduardo Novoa Monreal: *The crisis of the law and the legal profession: an address*. New York: International Legal Center. 1972.

It is interesting to note the null role of law and lawyers in the process [of development] in Latin American countries, which possessed well-established legalist societies. Many initiatives aimed to advance economic and social changes have not been translated into reality since we lack adequate juridical tools, or we have found confusing and archaic statutory provisions. Something similar can be said about the legal profession, which as such, is increasingly absent from the efforts to advance toward development.⁸⁹

In the first place, the general concerns about law relate to the asynchrony between legal institutions and the new process of modernization. Since the late 1950s, structuralist social sciences dominated the academic scene, pointing out that the process of development had followed an asymmetric pace. Acting as public intellectuals, sociologists, economists and political scientists overwhelmingly agreed that while areas like the democratic mobilization would have advanced toward a new pattern, economic life and law remained attached to a rather pre-modern institutional arrangement, intensifying social conflict.⁹⁰ Lawyers were heavily swayed by that approach, relying on a basic understanding of the idea of development to broadly speculate about the relation between law and social change.⁹¹ In so doing, they attempted to provide a general account of the inadequacy of juridical institutions, imitating the style of social sciences.⁹² Such cavitations, however, resorted to a more abstract than empirical approach, and usually did not substantively affect their activity as attorneys and scholars, which often continued along the traditional positivistic reasoning.⁹³

On the whole, they almost all went on to say that the key aspects of the legal system, like the civil code, were built to serve an old model of a rural society organized for agricultural production, which has been completely overcome. The nineteenth-century liberalism that inspired codification only accomplished the protection of individuals, seeming unfeasible in a more complex and socially interdependent country.⁹⁴ The same kind of apprehensions were manifested in regard to the political constitution, which—such

⁸⁹ Luciano Tomassini: “Derecho y cambio social en América Latina”. *Revista de Derecho Económico*. No 37-38 (1972) p. 30.

⁹⁰ See on this point, Lucas Sierra: “Law, social change and lawyers in Chile: From the shrillness of the 60s to the silence of today.” Paper. SELA Conference. Yale Law School. 2002. p. 6. Sierra identifies Gino Germani’s work on modernization of the late 1960s as the main example of this approach. However, it is important to note that the idea of the asynchronous development was very spread in Chilean academia at least one decade before, since the end of the 1950s. See as example: Aníbal Pinto Santa Cruz: *Chile un caso de desarrollo frustrado*. Santiago. Editorial Universitaria. 1959. Jorge Ahumada: *En Vez de la Miseria*, (1958). Op. Cit. Osvaldo Sunkel: “Cambio Social y frustración en Chile.” (1965) In Hernán Urzúa: *Estructura Social de Chile* Op. Cit. pp. 522–536. Gonzalo Arroyo: “La Violencia Institucionalizada en América Latina.” *Mensaje*. No. 174. 1968. pp. 534-544. Raúl Urzúa: “Sociedad y Sistema Legal: el papel del abogado.” *Cuadernos de la Realidad Nacional*. No 11. 1972. pp. 104-115.

⁹¹ According to Sierra, social scientists presented the idea of development intertwined with the concept of modernization. Lucas Sierra: “Law, social change and lawyers in Chile...” Op. Cit. p. 3.

⁹² See, for instance, Rubén Oyarzún: “Cambio Económico-social y Cambio Jurídico.” *Revista de Derecho Económico*. No. 29-30. October 1969 – March 1970. pp. 9-14. Luciano Tomassini: “Derecho y cambio social en América Latina”. Op. Cit. See also Tomassini’s letter: “Obsolescencia y Actualidad del Derecho.” *El Mercurio*. January, 6th, 1970. p. 3.

⁹³ Interview Alejandro Guzmán Brito.

⁹⁴ Crescente Donoso Letelier: *Nuestra Crisis Jurídica. Algunas observaciones sobre la inadecuación de las formas jurídicas a la realidad actual*. Op. Cit. p. 14.

as it will be studied in the next chapter—appeared inefficient to organize lawmaking and to facilitate a growing demand for political participation.⁹⁵ Although they recognize the welfare state carried out some legal reforms, they were seen as insufficient solutions to the juridical delay. The criticisms of legislation and legal methods extensively presented in the previous pages clearly show a consensus at this point. “The legal norms are not able to satisfy the necessities of the social group anymore. And what is more serious, they are turned—this is very acute in Chile—into a factor that obstructs the development [...]” wrote the Dean Velasco Letelier in 1965.⁹⁶

According to the historical sources, the rhetoric of the legal crisis spotlighted at the troubled emergence of what they called a mass society as the primary cause of the said asynchrony. This phenomenon obsessed lawyers and other scholars since the early 1960s, like Eduardo Novoa and Jorge Millas, who usually would set some of their writings on law starting from a dramatic description of this process.⁹⁷ Increasing urbanization, social inclusion of peasants and the extension of social services had engendered a mass society that would have been radically different from the nineteenth-century Chile that saw the enactment of the liberal codes. Its emergence would have been accelerated by technological change in areas such as transportation and communication, which had modified the customs and the geographical allotment that characterized the old rural country.⁹⁸

According to their standpoint, the rise of mass society implied a deep conflict that characterized the whole the process of modernization. Quoting the French jurist George Ripert, whose analysis of the legal evolution as a contest between conservative and reformist forces was well known by the mid-twentieth century, Chilean lawyers asserted that the legal crisis echoed an underlying social clash. Thus, they interpreted that the dislocation of the statutory system fractured between the old-fashioned liberal codes and the new social statutes only mirrored how those forces had contended at the political realm during the previous decades. This diagnosis was shared even by right-leaning advocates who admitted that reformist groups had prevailed and claimed to consolidate the process of transformation. “Nowadays, these forces—stimulated by the technologic revolution and endowed with the power of the large social mass in the democratic regime—are undoubtedly stronger than the conservative ones [...]” wrote the lawyer and nationalist leader Pablo Rodríguez Grez, calling for the adaptation of law.⁹⁹

Overall, who were involved in this rhetoric went on to say that the emergence of the mass society should imply a qualitative redefinition of the role of the state, the public interest and individual rights. As we will observe in the next section, several of them promoted a broad revision of juridical institutions like the intangibility of contracts and property rights, or claimed a reorientation of the codes and legal scholarship towards the quotidian problems of the population (e.g. urban housing leasing, consumer protection). Facing such a challenge, the participants in these debates agreed that legal institutions

⁹⁵ See, for instance, Francisco Cumplido: “Constitución de 1925: hoy, crisis de las instituciones políticas chilenas”. *Cuadernos de la Realidad Nacional*. No 5, 1970. p. 30

⁹⁶ Eugenio Velasco Letelier: “La crisis del sistema legal chileno”. *Op Cit.* p. 16.

⁹⁷ See, for example, Jorge Millas: “Derecho y Sociedad de Masas” [1960]. *Atenea*. Universidad de Concepción. 1974. No 429. pp. 70-89.

⁹⁸ Hugo Rosende: “Conferencia.” In, Jorge Fuenzalida Pereyra (Ed.): *Un siglo de Estudios Jurídicos en Concepción 1865-1965*. *Op. Cit.* p.145.

⁹⁹ Pablo Rodríguez Grez: *De la Relatividad Jurídica...* *Op. Cit.* pp. 16-17.

had been powerless to channel this new dominance of mass society. So, lawyers coming from the entire political spectrum argued that the central portion of the juridical mindset remained attached to the former status quo, without properly attending the necessities of the day, and, many times, constituting a real obstacle. “There was a deterioration of the nation’s ability to use the law as an instrument of development [...]” concluded the conservative legal scholar Francisco Orrego Vicuña, attempting to describe that broad consensus.¹⁰⁰

In the second place, historical sources indicate that, by the mid-1960, there was a general concern regarding the place of legal professionals in the process of social modernization. This not only was associated with the increasing difficulties in the placement of lawyers, who were beginning to observe the massive access to law school and the devaluation of the law degree.¹⁰¹ More precisely, they were related to their declining social status and their diminishing position in public governance. For instance, recounting the labor of lawyers in government agencies and law firms, Guillermo Pumpin, Dean of the Catholic University School of Law, explained: “It is curious how at the beginning of the [twentieth] century lawyers were always placed at the top rank of social prestige, but now they are at the middle ground or even below. The primacy of the engineer, the physician, the physiologist, the sociologist, the economist over the lawyer is overwhelming. The appreciation that the public opinion has of the role of lawyers is declining [...] I think this is our own fault. We, the lawyers, have a kind of inertia that guides our professional behavior, at least in Chile.”¹⁰²

Such as Pumpin recalls, the participants of these debates considered the inefficacy of generalist legal expertise was translated into a lower status of the profession. The image of lawyers as architects of the social order, which dominated since the end the nineteenth century up till about the 1940s, was replaced by the legal technician, a professional who does not make the political decisions, but only implements them.¹⁰³ In effect, they almost unanimously accepted that traditional lawyers lack the skills to act as policy makers and coordinators of the institutional building for development.¹⁰⁴ By contrast, they assert that other professions, particularly full-time politicians and the new technocracy of social scientists, had taken over the tasks of the administrative state.¹⁰⁵ Even so, in its most extreme and odd versions, some of those criticisms affirmed the law

¹⁰⁰ Francisco Orrego Vicuña: “La Relación entre Derecho y Desarrollo: El Caso de Chile”. Op. Cit. 160.

¹⁰¹ Guillermo Pumpin: “El problema del abogado en Chile. Formación y Ejercicio Profesional. *Boletín de Docencia e Investigación Jurídica*. No. 10. 1972. pp. 8-10.

¹⁰² *Ibid.* p. 10-11.

¹⁰³ “The time in which the jurists were who most influenced the government of people is gone. Nowadays, the government is exerted by men of different origin: economists who can offer welfare, [...] men of pragmatic criteria willing to face the difficulties in the path towards development [...]. They have been who have carried out the social and political transformation, dragging behind the juridical structures, which have been reformed imperfectly as a mere consequence.” wrote Novoa in 1968. Eduardo Novoa Monreal: “La Renovación del Derecho.” *Op. Cit.* pp. 5-6.

¹⁰⁴ Steven Lowenstein: *Lawyers, Legal Education and Development. An Examination of the Process of Reform in Chile*. Op. Cit. pp. 66- 77.

¹⁰⁵ Francisco Orrego Vicuña: “La relación entre Derecho y Desarrollo. El caso de Chile”. *Op. Cit.* p. 158. “Conferencia” Hugo Rosende. In Jorge Fuenzalida Pereyra (Ed.): *Un siglo de Estudios Jurídicos en Concepción 1865-1965....* Op. Cit. p. 140. For a view of an outer observer, see Seteven Lowenstein *Lawyers, Legal Education and Development*. Op. Cit. pp. 62-64.

could be replaced by modern social management in a remote future, reflecting the complete demise of the discipline.¹⁰⁶

To some degree, the legal crisis was seen more precisely as a crisis of the juridical expertise in public governance. At last, the delay of legal institutions and their supposed inability to echo the process of social change would have been closely related to the role of lawyers and legal scholars.¹⁰⁷ Although some of the symptoms of the crisis, such as chaotic legislation, respond to a contested process of social modernization that went well beyond the legal realm, lawyers understood that they had failed to resourcefully act within the new context. In this light, Eduardo Novoa—perhaps the most representative speaker on this issue—explained regarding the aforementioned deficiencies of the legal system: “If we want to judge this phenomenon fairly, it cannot be attributed to the rulers without juridical science. One of the main factors has been the persistent inability of the most experienced jurists to carry out a critical appraisal to the old legal order in which they live and were trained, their erroneous zeal to turn the law into a scientific body that it is self-sufficient and that can live disconnected from social reality, and in their static respect for the individualist law [...]”¹⁰⁸

The systematic analysis of the writings on the legal crisis evidences that they explained the failure of lawyers resorting to two main lines, which sometimes were presented jointly (see appendix 13). For some—particularly for those who came from the far left—the inability of lawyers was associated with their commitment to the current social structures (class bias).¹⁰⁹ Due to the political connotation, however, such an approach was usually limited to the most committed left-leaning law graduates. A second explanation, shared by most participants even at the far left, an emphasis that the shortcomings of law were related to the very definition of their own expertise (featured by an excessive legal formalism). This is to say, they pointed to the same “inertia” anchored in the positivistic legal approach to social problems that was alluded by Pumpin, which resembled the narrow sphere of jurisdiction of the legal profession that was described in the previous chapter.

In the end, scholars and elite lawyers presented a convincing account of the predicaments of law before the challenges of socioeconomic development by the time. In this, they enhanced their role by assuming their own failure, and implicitly foresaw an unbeatable opportunity of self-redemption. Explaining the context of the crisis, the Head of the Bar Association, Alejandro Silva Bascuñán, argued in 1969 “the great lawyers’ task consists in the application of the legal rules according to the reality of social life [...] and, at the same time, in making a tenacious effort—using the established procedures—to replace the rules that have become an anachronism due to the circumstances.”¹¹⁰

¹⁰⁶ Although a rarity, such kind of statements provoked usual rebuttals assuring that legal expertise and institutions always would be needed. Alejandro Silva Bascuñán: “La crisis del derecho y de la profesión de abogado” *Boletín de Docencia e Investigación Jurídica*. No 10, 1972. p. 55. See also: Hugo Rosende: “Conferencia” In Jorge Fuenzalida Pereyra (Ed.): *Un siglo de Estudios Jurídicos en Concepción 1865-1965*. Op. Cit. p. 149.

¹⁰⁷ See also, Raúl Urzúa: “La Profesión de Abogado y el Desarrollo”. *Boletín del Instituto de Docencia e Investigación Jurídica*. No 9, 1971. pp. 34-75.

¹⁰⁸ Eduardo Novoa: “La Renovación del Derecho”. Op. Cit. p. 6.

¹⁰⁹ Eduardo Novoa “La crisis del derecho y de la profesión de abogado”. Op. Cit. p. 45.

¹¹⁰ Alejandro Silva Bascuñán: “En la hora de los cambios”. In *El Abogado, un servidor de la Justicia*. Op. Cit. p. 308

Reflecting the new dominant spirit among lawyers, his words clearly portray how they observe the rearrangement of the legal field as an open path to foster social change and to recover professional influence. Hence, the rhetoric of legal crisis appeared as a persuasive diagnosis of their context, and as a sound narrative to articulate different programs of reform.

Analyzing Professional Malaise: The Rupture of an Interpretive Community

Indeed, it would be hard to encompass all the analyzed historical sources—composed of almost two hundred books, articles, and speeches—in the space of a few pages. To tell the truth, such a wide-ranging description has left out some points tangentially included within these debates, such as the place of informal law, the distinction between public and private realms, or the reference to the constitutional affairs, which will be alluded in the next chapters to keep the clarity of the exposition. However, the previous account accurately portrays the substantial core and the spirit of this rhetoric. The systematic review of the historical sources of the period 1960-1973 sheds additional light. So, their timing, the identity of their authors, their topics and the related projects of legal reform show a close association between this rhetoric and the course of contingent politics, evidencing that this was more than a mere intellectual distress.

In relation to the timing of its spread, the materials sources confirm that the rhetoric of legal crisis coincides with the ultimate downfall of the welfare regime and its political arrangement by the mid-1960s (*Estado de Compromiso*). This emerged at the beginning of a political cycle featured by the harsh competition for the transformation of the state during the Cold War years and the political dominance of comprehensive projects of social modernization through structural changes.¹¹¹ In fact, all the phenomena described by the idea of legal crisis came out well before the mid-sixties (e.g. normative chaos and lack of judicial responsiveness). Some writings addressing similar malaise on the situation of the law school even appeared in the immediately preceding years at Latin American level.¹¹² Nevertheless, they were not presented as a unique phenomenon. Only from 1964, the year of Frei's election, we can note an increasing concern about the issue framed as an articulated narrative on the situation of law and legal expertise. So, for instance, while in 1963 only one article directly addressed the idea of a legal crisis, 16 works did so in 1965 and 15 in 1966 (a significant amount considering the few regular publications interested in legal materials in the country and the small professional and intellectual sphere). The number of writings remained moderately high at the time, reaching two peaks, the period 1965-1966 and the period 1970-1973 (see Appendix 12). This is to say; its impressive spread concurs with the coming of the structural reforms in 1964 (the beginning of the Christian Democrat Government), and the years of the Popular Unity, which were characterized by an acute conflict about the transformation of the economic and political apparatus.¹¹³ Due to the establishment of the military dictatorship,

¹¹¹ Mario Góngora: *Ensayo sobre la Noción de Estado en Chile durante los Siglos XIX y XX*. Op. Cit. pp. 130-143.

¹¹² James Gardner: *Legal Imperialism...* Op. Cit. p. 56.

¹¹³ Antonio Bascañán Valdés: Interview. 8, 22. 2014

in September of 1973, these debates would diminish their visibility due to the restricted political environment, at least, in the terms in which they were originally presented.

Regarding the identity of the agents who intervened in the debates between 1964 and 1973, the sources also reveal interesting data. From their systematic analysis, it has been possible to identify 57 active Chilean lawyers and legal scholars who initially participated in this polemic chiefly through academic articles, speeches at conferences or brief books (see Appendix 13). This sample does not include several philosophers, public officials or social scientists who publicized materials mirroring a similar mood on legal institutions, or many other lawyers who were actively involved in associated legal reforms but who did not make public relevant opinions overlooking the general situation of law. Although the prestige and relevance of the members of the sample vary—including several young law graduates—the evidence shows that these debates were dominated by some of the most respected law professors and members of the bar at the time, who usually were the most active spokesmen on the issue.¹¹⁴ As a matter of fact, the list incorporates two Heads of the Bar Association (CHBA), a Comptroller of the Republic and Chief Justice of the Constitutional Court established in 1970, five deans of the law schools of the country, four ministers of justice, an undersecretary of justice, two Chairs of the State Defense Council, and several high-ranking governmental officials (all positions considered for the period 1964-1973). Almost all of them were professors of law, revealing the centrality of the law school as space to rethink the possibilities of legal expertise. At the same time, it is interesting to note the lack of participation of the high courts, which usually were reluctant to speak out on this issue, maybe, to protect their adherence to juridical formalism that cemented their bureaucratic and non-political organizational culture. In fact, only four members of the judiciary appear in our sample. In other words, these debates were led by the key members of the legal field, but not judges. Within this group, no generational pattern or relation to a specific academic subject was detected. Although it is noteworthy to say that this was mostly composed of outsiders coming from the middle and lower classes (61%, n = 35).¹¹⁵

An analysis of the identity of the lawyers included in the sample also points that most of them were highly committed to politics, usually with clear partisan identities, but that, at the same time, they hardly participated in the first line as candidates in electoral competition (e.g. to the Congress). Although they come from the entire political spectrum, their distribution was uneven over time. Most of them, who usually very active on this issue, originated from the center: the Christian Democracy (n = 15) and the Radical Party (n = 7). Except for Eduardo Novoa Monreal—maybe the principal speaker on the topic—left-leaning lawyers did not actively participate until about 1969, when the debate turned to a more politically charged language (n = 13). In contrast, right-leaning lawyers initially joined to these discussions through a juridical oriented stance, but after the first year of the socialist government in 1970, they opted to silence the critiques against

¹¹⁴ Like Alejandro Silva Bascuñán, Enrique Silva Cimma, Eduardo Novoa Monreal, Francisco Cumplido, Eugenio Velasco Letelier, among others.

¹¹⁵ According to the data, 7% were related to the landed elite, 26% to the minor gentry and 61% were outsiders (see Appendix 13). This information does not depart from the increasing heterogeneity of the Chilean elite, represented, for example, in the Senate (See Chapter 3).

the legal system (n = 12). All this reaffirms the close links of these debates to contingent politics and the conflict on the transformation of the state.¹¹⁶

The analysis of the lawyers within the sample also reveals that many of them—particularly the younger and the most academically active ones—possessed strong links to international academic forums where a similar malaise on legal expertise was emerging. So, several participated in the different conferences on legal education organized in Latin America by the late 1950s and the early 1960s (e.g. Silva Cimma, Fueyo, Rodríguez, Velasco, and Lira Urquieta).¹¹⁷ Others were active collaborators in the international project to draft a Model Penal Code for Latin America (i.e. Novoa and Schweitzer). An important number had graduated studies in Europe (e.g. Maira Lamas, Juan Bustos or Orrego Vicuña), or later, some legal training in the United States (e.g. Figueroa and Cuneo). Put in brief, we can assert that due to their positions within the bar and academia more than a few members of the sample had fluid links to European and Latin America legal circles were different manifestations of disquiet on the law was expressed (e.g. Silva Bascuñán, Fueyo, Silva Cimma, Novoa).¹¹⁸ These kind of links explain, for example, the influence of the debates on the legal crisis delivered in Padua (It.) in 1953 and translated into the Spanish by 1962 (e.g. Calamendrei, Ripert, Carnelutti, inter alia), which were extensively quoted by Chilean scholars even though such conferences did not address precisely the problematic of law and development.¹¹⁹

On the key rhetorical elements, a systematic analysis of the participants and the main emphasis and proposal of their writings confirm that this was a complex and relatively coherent narrative (see Appendix 14). As explained, the idea of a legal crisis went well beyond the mere reaction against competing for authority in governmental affairs. Although they clearly resented the new protagonist role of economists and other social scientists in the transformation of the administrative state and planning, only the 25% of them emphasize this point in their writings. By contrast, they tended to highlight other aspects with much more insistence, such as asynchrony between legal institutions and social change (72%) and the excessive juridical formalism (51%). This is roughly

¹¹⁶ See Table A.12. Appendix 12.

¹¹⁷ *Anales de la Facultad de Ciencias Jurídicas y Sociales*. Universidad de Chile. Vol. 4. 1964-1965. No. 4. James Gardner. *Legal Imperialism...* Op. Cit. pp. 56- 57.

¹¹⁸ See Appendix 13.

¹¹⁹ The idea of legal crisis constituted a sort of transplant from Italian and French Academy. In fact, this idea was taken from some conferences on the topic delivered at the University of Padua in 1953, and published in Spanish at the end of 1961, in Buenos Aires. In these lectures, some of the most outstanding jurists of the age exposed different opinions about the legal crisis: Francesco Carnelutti, Piero Calamandrei, George Ripert, Giuseppe Capograssi, Adolfo Ravà, Arturo Jemolo, Giorgio Balladore-Pallieri, and Giacomo Delitala. Since the speakers, particularly Carnelutti, Calamandrei, and Ripert, were well-known legal scholars and public intellectuals, the conferences became an essential reference for the civil law tradition. See: Giorgio Balladore Pallieri, Piero Calamandrei, Giuseppe Capograssi, et al.: *La crisi del diritto*. Padua: Cedam, 1953. See Spanish translation: *La Crisis del Derecho*. Buenos Aires: Ediciones Jurídicas Europa-América, 1961. However, we can affirm the idea of the legal crisis was not functionally equivalent in different legal cultures. On the contrary, while this was used in continental Europe to analyze the legal challenges of the welfare state, promoting constitutional entrenchment of conservative values, in Chile, this was a catalyst to speak about the delay of the legal system and its relation to economic underdevelopment. Indeed, despite the parallels, there was a process of transformation and adaptation of the foreign legal discourse at the local level. In this light, we can emphasize the academic reception of this debate was more telluric and radical because Chilean jurists, resorting to this topic, questioned the entire legal order.

coincidental with other empirical data, such as the surveys of Chilean lawyers conducted by Steve Lowenstein and Ana Maria Pinto by the end of the 1960s. This latter study reveals that 34% of the active lawyers identified bureaucratization as the least satisfactory aspect of legal practice, outnumbering other areas like the “lack of respect shown by the judiciary and administration” (10%), or the “lack of prestige in the eyes of the public” (6%).¹²⁰ Although the complaints of the elite lawyers involved in this rhetoric represent a limited portion of the highly segmented legal profession, and the scope of the Lowenstein-Pinto study tempers the conclusions from that data, the sources show a coincidence of the identified causes of professional malaise among active members of the legal field.

By and large, lawyers’ primary concern was related to the inability of traditional legal expertise and institutions in addressing the challenges of socio-economic underdevelopment (e.g. bureaucratization, legal formalism and their associated delay and chaos). Such a dominant core was shared by elite lawyers coming from all the political orientations, without significant variations regarding employment, juridical subject or age. Moreover, the only relevant difference in the discourse was given by the left-leaning lawyers who additionally began to underscore the idea of class bias and bourgeoisie identity of legal institutions since the end of 1968.

Likewise, the data indicates that although some topics occupied an important amount of the debates, such as the situation of the statutory order and the legal education, these critiques pointed to a more general approach. Inasmuch as almost every piece of the juridical machinery was called into question, this rhetoric set up a new ground for the symbolic perspective of the elite lawyers who were linked to public affairs. Hence, as *Table 3.1* illustrates, this discourse meant a radical turn regarding the laudatory standpoint on a law that prevailed since the nineteenth century.

¹²⁰ Steven Lowenstein: *Lawyers, Legal Education and Development. An Examination of the Process of Reform in Chile*. Op. Cit. p. 259, question 23.

Table 3.1: The New Symbolic Representations of Law: A turn inside the interpretive community.

Symbolic Field	<i>Old interpretive community</i>	<i>Rhetoric of Legal Crisis</i>
<i>Civil code</i>	Legislative monument and summit of the juridical science	It has been surpassed by new legal theories and social necessities.
<i>Legislation</i>	Harmonious system built on basic legal principles	Chaotic and uncoordinated legislation
<i>Constitution (*)</i>	Elite imposition and minor reforms (consensus)	Constitution needs deeper reforms.
<i>Legal Academia</i>	Highly developed. Similar to France. Superior to other Latin American countries.	Academic delay, legal education is uncritical. The necessity of new juridical methods.
<i>Judges and legal interpretation</i>	Stewards of the law, textual and formalistic approach is guarantee of fidelity to the rule of law	The judicial system is too rigid and inefficient (and, for the left, legal interpretation is ideologically biased).
<i>Social archetypes and Law</i>	Society constituted by individuals (Private Law regulates non-political life).	Mass society (Social Law and Public Law are predominant). Blurred boundaries between legal realms.
<i>Legal functions inside social field</i>	Channel to the economic progress and social order.	The law is inefficient. It is one of the causes of social underdevelopment.
<i>Legal profession (lawyers)</i>	Architects of society, the profession of the leading elite.	Subordinated and bureaucratic profession.

(*) References on the constitutional aspects of the legal crisis will be analyzed in the next chapters.

Alongside the emergence of new symbolic representations for elite lawyers, the systematic analysis of the data confirms that the rhetoric of legal crisis served as a narrative for several projects of reform by which they attempted to expand the possibilities of legal expertise in public affairs. It was relatively common that, along with addressing the idea of legal, the speakers used to propose different initiatives to overcome their predicament. Even when some political proposals were included, like the reorganization of the bureaucracy and a growing control of the state in the economy, most of these were focused on the reconstruction of the legal field itself. Hence, the reform of legal education, the development of a more flexible juridical hermeneutic and the reorganization of the statutory system outstand as the more spread by the time. To some degree, all of them started from the doubts cast on the traditional assumptions of the legal profession as an interpretive community.

In spite of the centrality of the situation of law within these debates, the different perspectives on reform were highly influenced by political stances of the period 1964-1973. Initially, right-leaning lawyers tended to frame their proposals as technical solutions. Even when they recognized that the shortcomings of law were associated with profound causes, like the political conflict about the role of the state, their suggestions usually were limited to reformulations of juridical knowledge and the restructuring of

statutes. Some of them, like Pedro Lira, highlighted earlier efforts for improving outdated and chaotic statutes, saying that the country needed only similar initiatives, such as some improvements to the civil code.¹²¹ In the same light, Pablo Rodríguez Grez—who later would become the leader of the far-right movement Fatherland and Freedom—proposed to reorganize the new laws through the establishment of functional fields and statutes that explicitly stated their goals as a hermeneutic orientation.¹²² Others, such as the young legal scholar Francisco Orrego Vicuña, took a pragmatic stance and said that a significant part of the legal crisis could be overcome through juridical specialization and the establishment of structures of support to lawmaking (e.g. organs of legislative advisory, law journals, specialized lawyers' associations), which would allow the increasing participation of the legal profession in the process of development.¹²³

The second approach to juridical transformation was associated with the political center (Christian Democracy and Radical Party) and some non-partisan lawyers who proposed to advance a reformist agenda of socioeconomic change by legal means. Due to the favorable political context provided by Eduardo Frei's government, this standpoint clearly dominated the debates on the legal crisis before 1970. However, the members of this group significantly varies regarding the emphasis of their writings. Most of them stressed the necessity of a gradual advancement through judicial decision and legal scholarship. Among those who adhered to this kind of proposal we can find lawyers and scholars like Eugenio Velasco Letelier, Bernardo Geshe, Andrés Cuneo, and, in general, all who actively advocated for transforming legal academia toward a new model of empirical scholarship closed to social sciences and to train lawyers as social engineers. Within this trend, we also can find lawyers who paid attention to the possibilities opened by a more flexible and imaginative use of the traditional legal expertise in the solution of societal problems. A good example is Fernando Fueyo Lanieri—Director of the Seminar of Private Law at the University of Chile between 1965 and 1969—who proposed the elaboration of a new civil code and the re-conceptualization of ordinary legal institutions like the occupation of unused lands, compulsory building on empty urban estates, and societies of mixed economy as legal tools to advance to state planning and intervention.¹²⁴ On the other hand, elaborating a relatively more drastic stance, a small number of Christian Democrat lawyers—such as Jaime Castillo Velasco and Francisco Cumplido—asserted the political reorganization of the country aimed to support the emergence of the “communitarian socialism.”¹²⁵

Finally, a more radical view on legal reform was proposed by left-leaning lawyers aligned toward a Marxist standpoint. For them, the rearrangement of the legal field itself seems a minor issue, and legal reforms were considered relevant only since they

¹²¹ Pedro Lira: “En Defensa del Derecho”. Op. Cit.

¹²² This opinion was dominant at the Seminar of Private Law at the University of Chile, particularly before 1966. However, the association of this view with politics remained obscure. In fact, according to Rodríguez Grez, a reordering of legislation only could be carried out by a centralized and strong government, which could go beyond political factions and interest groups. Pablo Rodríguez Grez: *De la relatividad jurídica...* Op. Cit. pp. 31-33.

¹²³ Francisco Orrego Vicuña. “La Relación entre Derecho y Desarrollo. El Caso de Chile”, Op. Cit. pp. 162-163. 239.

¹²⁴ Fernando Fueyo Lanieri: “La propiedad y las soluciones que el Derecho ofrece al orden social”. *Revista de Derecho Privado*. No2, 1. 1966. pp. 3-24.

¹²⁵ Instituto de Estudios Políticos: *Seminario Visión Comunitaria del Derecho*. Op. Cit. 1966.

facilitated the advancement of social and economic forces that supported the emergence of a socialist regime. Although some of them shared the necessity of a more progressive juridical education and scholarship, their main proposals and action was related to a complete restructuring of the Chilean state through measures like the establishment of popular tribunals, the nationalization of the economy, and a new constitution (e.g. José Antonio Viera-Gallo, Jorge Rodríguez Elizondo). Both for their comprehensive articulation and uniqueness, Eduardo Novoa's proposals certainly stand out among leftist lawyers. In fact, he suggested a theoretically sound restructuring of law toward the primacy of collective interest, whose most concrete manifestation was the establishment of the duties of citizens following the model of some Eastern-European constitutions, the increasing collectivization of property rights, and the growing attention to street-level concerns. At the same time, he advocated for some political reforms aimed to consolidate the role of lawyers in the construction of the new socialist regime. So, for example, Novoa proposed the establishment of a kind of Attorney General's office, and, in his more radical views, he suggests a process of lawmaking dominated by legal experts that would relegate the Congress to the general approval of the legislative bills.¹²⁶ As we will see, those proposals will locate Novoa as one of the protagonists of the period 1970-1973, as a principal legal advisor of President Salvador Allende, strategist for the expropriation of industries, and drafter of the constitutional reform to nationalize copper, among other relevant tasks.¹²⁷

Over time, these different trends became true, and relatively coherent, programs of legal reform and political action. In fact, the second part of this dissertation proposes that different groups of lawyers intended to reorganize the legal field along with the contest for the transformation of the state at the end of the Cold War (1964-1990). Although with a common conceptual core given by the initial criticism against the unresponsiveness of legal institutions, each one of these groups promoted divergent juridical agendas. All of them tried to overcome a diagnosis of legal crisis—read under different perspectives—being usually led by lawyers who participated in the described debates or by ones who possessed strong linkages to the original participants. The next chapters are aimed to describe them extensively.

Conclusion: The Three Breakdowns of the Legal Profession

The rhetoric of legal crisis meant a great turn regarding the understanding of legal institutions for most elite lawyers, becoming predominant within the field since about 1965. Undoubtedly, as several interviewees asserted, it portrayed the mood among them, which went well beyond the documentary sources used to elaborate this chapter. It is even possible to argue that this discourse transcended the porous limit of the law, being taken by other actors who interacted with the legal system at that time, such as bureaucratic officials, politicians, and social activists.¹²⁸ Nonetheless, it is methodologically hard to determine if such a latter phenomenon should be comprehended

¹²⁶ Ibid. p. 34.

¹²⁷ Cristián Villalonga: *Revolución y Ley: La teoría crítica del Derecho de Eduardo Novoa Monreal*. Op. Cit.

¹²⁸ See as example, Gonzalo Arroyo: "Violencia institucionalizada en América Latina". *Mensaje*. No 174. 1968. pp. 534-538.

as an influence coming from the legal profession to other social groups—particularly looking at the role of the law schools as a place of recruitment for bureaucracy, academia, corporations and politics—or if this merely implied the coordination of previous perceptions of the legal system within general population and other actors, such as social scientists.

Despite the increasing predominance of this rhetoric, there were important sections of the legal profession who remained attached to the traditional perspective that was described at the beginning of this chapter. Remarkably, facing the increasing malaise among lawyers, justices of high courts reinforced their support to positivistic reasoning and a procedural concept of justice as evidence of their fidelity to the rule of law. For example, it is noteworthy that only a couple of months after the aforesaid conferences on the legal crisis at the University of Chile (one of the peaks of these debates in 1965), the Supreme Court resorted to the commemoration of the one hundred years from Andrés Bello's death to re-assert its traditional stance. There, Justice José María Eyzaguirre was in charge of recounting Bello's contribution to the process of nation-building, underpinning his involvement in the establishment of the legal institutions that were being called into question in those days.¹²⁹ In the same light, the Chief Justice Pedro Silva Fernández praised the merits of the civil code to assert that Bello's spirit was alive, highlighting the implicit wisdom within the rules on juridical hermeneutics and the prominent role that he bestowed upon the judiciary.¹³⁰ Thus, Silva Fernández laid the ground to refuse the supposed delay of legal institutions, pointing out that: “[...] the tribunals have contributed to strengthening Bello's imposing work. Through jurisprudence that—without departing from the text of the code—has followed the progress and improvements of law in its continual evolution, [courts] have made justice according to the modern socio-economic ideals as far as equity allows [...]”¹³¹ From a different angle, it is likely that an important number of rank and file law graduates who entered into the low level of the public bureaucracy and private litigation remained relatively unshaken by this rhetoric, especially when the state and the domestic market kept a good rate of job placement.

For most relevant elite lawyers at the bar organization (CHBA), the law schools and high politics, however, the rhetoric of legal crisis constituted a new conceptual perspective to observe juridical institutions and their own role in public affairs. In brief, this implied a threefold breakdown of the legal profession as an interpretative community, at least, such as it was described in the introduction of this chapter. In the first place, that rhetoric meant a conscious acknowledgment of the limitations of legal expertise in public governance. Many of the described phenomena—such as the legislative chaos, the unresponsiveness of judicial decisions and the delay of legal academia—were real shortcomings of law, not merely subjective claims. But as it was explained, they were not conceptualized as a unique process before the mid-1960s. Hence, by the meaning of this rhetoric, elite lawyers framed a narrative to explain their *failure* to act resourcefully within the new context, and particularly their unresponsiveness regarding the process of socioeconomic modernization that unfolded during this period.

¹²⁹ José María Eyzaguirre: “Andrés Bello y el sentido jurídico de la nación chilena.” *Mapocho*. Tomo IV. 1965. No. 3. Vol. 12. pp. 70-82.

¹³⁰ Pedro Silva Fernández: “Homenaje de la Corte Suprema a Andrés Bello.” *Ibid.* pp. 111- 113.

¹³¹ *Ibid.* p. 113.

In the second place, this discourse apparently involved a break with the traditional assumptions that previously cemented the legal profession. The idea of crisis as a failure of the juridical expertise implied a direct criticism against its narrow sphere of jurisdiction that was gradually consolidated by the end of the nineteenth century until the downfall of the welfare regime. By the mid-1960s, such denunciation had concrete targets, like the legalist concept of law, the exegetic juridical method and the unsatisfactory performance of lawmakers, law schools, and courts. Therefore, this indicated a *departure* from the well-established ethos that had previously prevailed among lawyers.

Finally, this rhetoric signifies a break in the elite legal profession as a relatively unitary interpretive community. In fact, while traditional juridical formalism used to serve as a common conceptual core for law graduates—even beyond their political identities—the different approaches to the crisis entailed an increasing *division* among them. This was expressed not only regarding those who remained attached to juridical classicism, such as high courts and rank-and-file lawyers, but also in respect of who assumed the new stance. As a matter of fact, the diverse programs of legal reform that were sustained by this rhetoric from the mid-1960s on were strongly aligned to the political contest to transform the state, constituting critical aspects of this competition. Therefore, it is not surprising that they had followed very different orientations in attempting to reconstruct both the legal field and civic life in the republic. After 1964, Chilean legal culture would not be the same.

Part II: The Fragmentation of the Legal Profession

Chapter 4

A New Law for a New Society: Rethinking Legal Authority to Manage Social Change (1964 – 1974)

After the examination of the Chilean reality, it is fair to ask ourselves if the political authority can, by the mean of law, change our social structures.

(Francisco Cumplido: *Constitution of 1925: Today, crisis of the Chilean political institutions*. 1970)¹

Introduction

The previous chapter has argued that the rhetoric of legal crisis constituted a turning point in Chilean legal culture, broking the traditional unity of the elite legal profession as an interpretive community agglutinated around a radical understanding of juridical formalism and separation of powers. Facing steady social change and the political rising of comprehensive programs to reform economic structures, elite lawyers denounced the unresponsiveness of law to the undergoing process of modernization. In doing so, they cast doubts on several aspects of the legal system like the statutory order, legal education and the performance of courts. From then on, several politically aligned movements of lawyers emerged to renew legal institutions and juridical expertise in the midst of the acute struggle to transform the state during the Cold War years. The purpose of the next pages is to explore the first of them.

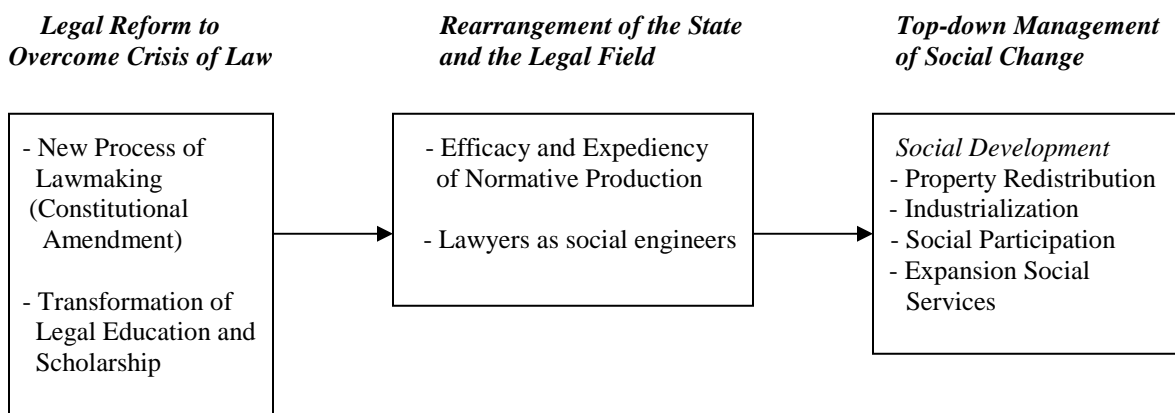
The thesis of this chapter asserts that a pro-reform network of elite lawyers, wich was aligned around the center-left political spectrum (Christian Democracy and the Radical Party), dominated the most relevant projects of legal transformation of the late 1960s. This network was composed of law graduates who participated at a high level in legal academia, planning agencies and the bar organization, who supported the socio-economic structural changes of the period. Swayed by the context of Frei's revolution in liberty and the rising importance of social sciences in the public sphere, they were heavily involved in the discourse of legal crisis already described, resorting to this as narrative to attempt a rearrangement of the state and the juridical fields. As a matter of fact, such an underlying approach was clearly noticeable among law graduates who were behind a) the different projects of constitutional reform by this time (in 1964-65, 1967 and 1969-70); and b) the efforts to renovate legal education and scholarship. Although these projects comprised different groups of lawyers and settings of activity, this chapter argues that they were parts of a widespread enterprise of juridical and political renewal, which shared logics and the prevalence of actors who occupied common professional and political positions.

The following pages shed light on how this network adhered to a perspective that resembles the law and development approach.² Despite that those lawyers' acridly

¹ Francisco Cumplido: "Constitución Política de 1925: Hoy, crisis de las instituciones políticas chilenas." *Cuadernos de la Realidad Nacional*. No 5. September, 1970. p. 39.

denounced the asynchrony of legal institutions, they paradoxically trusted in the possibilities of law—and the state—to conduct social change. Such as *Figure 4.1* illustrates, most of them attempted to rearrange lawmaking and juridical expertise as the first step aimed at advancing desired socioeconomic policies that were supposedly attuned with the new epoch. Relying on the efficacy of the legal instruments to manage a top-down process of modernization, these lawyers ultimately expected to enhance social equality, to foster a democratic regime in resolving social conflict and improving the regulation of the mixed economy. By this way, they proposed to transform the upper section of the legal profession into agents who would be able to participate in decision-making and policy implementation, and whose place within the public realm should be re-legitimated by their contribution to the process of development.

Figure 4.1. Legal Paths to Development



To understand this network, the chapter traces the aforesaid processes of legal reform identifying their main agents. Accordingly, this inquiry intends to show that the referred projects were under the dominance of lawyers whose action was shaped by two convergent goals: a) to expand law’s institutional capacity and lawyers’ possibilities of action in public the sphere, particularly at the law school and administrative agencies, and, b) the use of these renovated legal means to directly foster policies of redistribution of property and social modernization. Such a convergence of goals explains both their commitment to reorganize public law and their attempts to transform lawyers into social engineers, differentiating such a network from the other emerging groups of lawyers that will begin to emerge along with the debates of the legal crisis by 1970: the right-leaning conservative law graduates who were reluctant—or at least skeptical—about the true curses of the mass society, and the Marxist lawyers who mobilized during Allende’s government.

Finally, I also provide some insights into the limitations of this reformist juridical approach; at least, such as that emerged in Chile by the late 1960s and the early 1970s. Despite this adherence to the law as a tool for social change and a constraint to state

² See as example: David Trubek: “Toward a Social Theory of Law. An Essay on the Study of Law and Development.” *Yale Law Journal*. Vol. 82. No 1. 1972. pp. 1-50. Lawrence M. Friedman: “Legal Culture and Social Development.” *Law & Society Review*. Vol. 4. No 1. 1969. pp. 29-44.

power alike, this network was unable to perform an enduring role. Beyond the violent political turmoil and the rising of competing legal movements within the Popular Unity (1970-1973) and the military dictatorship (1973-1990), this chapter presents some notes about the inability of this network of lawyers to mediate in social conflict and to assert effective normative prescriptions.

This chapter starts analyzing the identities of this reformist network of elite lawyers, and their shared approach to the role of law in social change. Next, it provides a detailed account of two concrete cases of reform to rearrange both the state and the juridical field. First, it explores how lawyers, highly committed to politics, resorted to the rhetoric of the legal crisis to amend the constitution, principally reorganizing the process of lawmaking. Second, the chapter then discusses how the different efforts to renew legal education and scholarship were crossed by a widespread goal to transform lawyers into social engineers. In the concluding remarks, the chapter examines the limitations and the short life of this legal network.

The Emergence of a Reformist Legal Network

The pro-reform legal network emerged during different attempts to turn the law into an effective tool to manage the steady process of social change of mid-twentieth century Chile, usually as a way to support the program of structural transformations carried by Frei's rule. After reviewing the profiles of the lawyers engaged in these experiences, we can conclude that this network answered to the convergence of their position in the legal field – overwhelmingly as law professors and members of administrative agencies– and their policy preferences that look to contribute to the project of developmental modernization. To study this network, I have selected the main participants of two experiences of collective action: a) the projects of constitutional amendment carried out during Frei's government, aimed to upgrade the process of lawmaking (1964 and 1969), and b) the reform of legal education and scholarship between 1964 and 1975. Both of them portray their convergence at the level of their profiles and discursive representations of law.

Shared Profiles: Reformist Dominance

Indeed, the processes of reform described in this chapter represent different agents and settings of collective action. As pointed, they should be comprehended as experiences of mobilization under the dominance of those who shared similar political preferences and structural positions in the legal field. A systematic study of the identity of those who took part in the abovementioned reforms, collected in appendixes 15 and 16, confirms such a take. For analytical purposes, *Table 4.1* summarizes the data on the profiles which lead these two processes, trying to illustrate the point.

Table 4.1. *The Reformist Legal Network (1964-1975) (n =24)*

	S	Party	P	Previous	Professorship	C. Project 1964	C. Project 1969	UCH	O. School,	ILR
<i>Eugenio Velasco L.</i>	1	RP	*	diplomat	Civil			Dean, 1966, 1970		
<i>Francisco Cumplido</i>	4	DC		AA	Constitutional	Exec. Committee	informant to Congress	Chair Comm. 1970		
<i>Pedro J. Rodríguez</i>	2	DC	**	CHBA	Civil	M. of Justice, 1964	Exec. Committee			
<i>Enrique Silva Cimma</i>	2	RP	*	Comptroller	Administrative		informant to Congress	1966, i. Dean 1969		
<i>Andrés Cuneo</i>	4				Theory, Civil				UC Sect.	Chair
<i>Dario Benavente</i>	2	RP	*		Procedure			Dean 1964,		
<i>Alejandro Silva B.</i>	2	DC	*	CHBA	Constitutional	Exec. Committee	informant to Congress		UC Council	
<i>Patricio Aylwin</i>	4	DC	*	Senate	Administrative	as Senator	as Senator			
<i>Alfredo Etcheberry</i>	2	DC	*		Criminal			1970	UC V-Provost	
<i>Jaime Castillo V.</i>	1	DC		Min. Land	Philosophy		M. of Justice, 1966-69			
<i>Guillermo Pumpin</i>	4		**	AA	Civil				Dean UC	
<i>Enrique Evans</i>	1	DC	*		Constitutional	U. Sect. Justice	informant to Congress		UC Council	
<i>Gonzalo Figueroa Y.</i>	2	RP			Civil					Director
<i>Manuel Sanhueza</i>	4	RP	*		Constitutional				Dean UCON	
<i>Gustavo Lagos</i>	4	DC		FLACSO			M. of Justice, 1969-70			
<i>José Luis Cea</i>	1				Constitutional		Exec. Committee		UC Sect.	
<i>Máximo Pacheco</i>	2	DC			Theory			1966, Dean 1972		
<i>Jorge Tapia Valdés</i>	4	RP		AA	Constitutional					Director
<i>Bernardo Gesche M.</i>	4				International				UCON	Member
<i>Eugenio Cornejo</i>	2		**	AA	Commerce				Dean UCV	
<i>Enrique Cury</i>	2	DC	*		Criminal				UC - UCV	Member
<i>Ramón Domínguez A.</i>	2		**		Civil				UCON	Member
<i>Jorge Ovalle Q.</i>	2	RP			Constitutional		informant to Congress	1970		
<i>Italo Paolinelli</i>	4				Economy				Dean, UV.	Member

SOURCES: Data Collected by the Author on information c.1970. *ABBREVIATIONS:* S: *Social Extraction*, 1: landed elite, 2: Minor Gentry, 4: Outsider; *Party:* DC: Christian Democracy, RP: Radical Party; P: * *Practice*, ** Big Law; *Previous:* Experience, AA: Adm. Agency, Min. Minister of Cabinet; FLACSO: Latin American School of Social Sciences; CHBA: Head Chilean Bar Association; *Professorship:* According to Main Academic Interest; *C. Project.* Project of Constitutional Reform; *UCH* Reform University of Chile Law School; Reform in other Schools: UC Catholic University; UCV: Catholic University of Valparaiso; UV: University of Valparaiso; UCON: University of Concepcion, ILR: Institute of Legal Research; i: interim. *Cursive:* Rhetoric of legal crisis.

A careful analysis of their partisan affiliations, roles, and professional profiles corroborated that the main participants presented several commonalities that are hard to overlook: they were related to the center of the political spectrum (supporting socio-economic restructuring), were heavily engaged with legal academia and administrative agencies, and adhered to the rhetoric of legal crisis. Other factors, as their social extraction, remain a relatively minor factor since they comprised a rather heterogeneous social group. Something similar can be said about their fields of specialization.

In the first place, the data corroborates that who led these processes of reforms were associated with the center of the political spectrum. This is to say, they were members of the Christian Democratic (CD) and Radical parties (RP), and, exceptionally, non-affiliated lawyers with analogous stances. This phenomenon is perceptible beyond the design of the constitutional amendments within Frei's government, where obviously its cadres were Christian Democrat lawyers. For instance, the 55% of all the law professors involved in the debates of the Velasco Reform of 1966 were members of the above-mentioned parties, outnumbering the partisanship of any other group. Something similar can be said about the reform of 1970 in the University of Chile, in which an alliance of Christian Democrats and Radical Party law professors led the process (e.g. Eugenio Velasco, Francisco Cumplido, Alfredo Etcheberry, Enrique Silva Cimma) (See Appendix 15). Such political identity constituted more than a mere affiliation, and, undeniably, it should be interpreted as a degree of sympathy for the socioeconomic transformations carried out during the late sixties.³

In the second place, it is noteworthy that most of the members of this network employed their authority as law professors to participate in the public sphere. In fact, their link to professorship was not translated into a claim of drastic juridical autonomy or detachment regarding public affairs. By contrast, a broad review of their biographies reveals that they were highly engaged in the political debates of their time as congressmen and members of the cabinet, or took part of the critical posts within the machinery of the administrative state. In the years they participated in the process of reform, only a few of them spoke of the strictly private legal practice or isolated academic labor.⁴

Finally, we can notice that a substantial proportion of them were associated with the rhetoric of the legal crisis. About 70% of whom were behind the reforms of the law school at the University of Chile, both in 1966 and 1970, explicitly adhere to that discourse through their writings, and it is likely that some others implicitly shared that standpoint (see Appendix 15). Although less in number, several of the professors leading the reform to the other law schools and at the Institute of Teaching and Legal Research, such as Guillermo Pumpin and Andrés Cuneo at the Catholic University in Santiago, were well-known spokesmen on the issue as well. A similar phenomenon can be observed regarding the drafters behind constitutional amendments of the late 1960s. All this went on to confirm the critical place of the rhetoric of legal crisis as narrative for professional mobilization.⁵

Considering its broadness, the previous account needs further clarification, particularly regarding the partisan links. In fact, the picture of reformist lawyers

³ See Appendix 15.

⁴ Ibid.

⁵ Ibid.

associated with the center of the political spectrum should be read from the perspective of the dominance and path-dependence dynamic (this is especially necessary for the reform of legal education). Certainly, there were lawyers related to the right and the left political extremes, such as Pablo Rodríguez Grez and Eduardo Novoa Monreal, who participated in the reorganization of the law school. Nevertheless, they did not guide the processes of reform and were finally outnumbered by Christian Democrats and the members of the Radical Party (e.g. Eugenio Velasco, Enrique Silva Cimma, Alfredo Etcheberry, Francisco Cumplido, Máximo Pacheco). These latter participants exercised control of the process, occupying the most critical roles and broking any opposition in the debates.⁶ A similar case regarding the Institute of Legal Teaching and Research can be observed in 1969, when its head—the Social-Christian Andrés Cuneo—was seconded by Gonzalo Figueroa and Jorge Tapia, two members of the Radical Party. Other actors who joined the reforms lately in time, such as Guillermo Pumpin—the Dean at the Catholic University School of Law—participated in this institutional transformation when it was already set in motion, following a kind of path-dependence trend. In any case, several of these latecomers did not perfectly match the previous characterization as the members of the reformist parties who had been heavily swayed by the rhetoric of legal crisis, and worked closely with scholars and lawyers of different political tendencies. Therefore, as the data of the Appendixes 15 and 16 shows, the characterization of this network must not be understood from the perspective of perfect ideal types, but from a kind of dominant and path-dependent dynamic.

Approaches to Law and Development

A systematic reading of the sources indicates that the commonalities that have been described consisted of similar political views and structural positions within the administrative state and the legal profession. They explain the convergence of the main members of this network, which was expressed through their efforts to expand the institutional capacity of law and lawyers on one side, and the prevalent support to the socio-economic transformations on the other. Over time, this convergence was translated into an emerging professional ideology that resembled the law and development approach, which can be summarized by the use of the idea of social development as a discourse of legitimacy and an explicit instrumental approach to legal institutions.

Clearly, most lawyers engaged in this network agreed to the concept of social development as a critical factor in determining the fitness of the juridical system. As explained in the previous chapter, a substantial amount of the rhetoric of legal crisis was related to the assertion of an asynchronous law, which would not have been able to respond to the challenges faced by the rising mass society. Reflecting on juridical unresponsiveness, lawyers intuitively debated about the social basis of the legal system, relying on an evolutionary view. That standpoint highlighted a sort of necessary pattern of progress in which there were higher social stages that emerged from a lower one, preserving its achievements. Such perspective meant that there was a specific kind of law

⁶ It is noteworthy how Máximo Pacheco, the Dean at the University of Chile School of Law in 1972, saw his term as the continuity of the reform initiated by Velasco. *Anales Facultad de Ciencias Jurídicas y Sociales*. No. 14. 1972.

and legal institutions to each stage of social advancement. For instance, Jorge Guzmán Dinator, a law professor and member of the Radical Party, explained in 1966: “It is evident that to each stage of social evolution corresponds a parallel phase in the declaration of rights. Moreover, it is clear that in this new period, which is featured by the access of the social mass to the power, corresponds a declaration of rights which does not match the [liberal] classic one, since this latter belongs to a prior phase that has been socially overcome [...]”⁷ This statement, asserted by Guzmán Dinator during his report to the parliamentary debates to reform property rights in 1966, does not constitute an isolated expression, but the general view within this network of lawyers that can be found in multiple other sources.⁸

Without hesitation, we can assert that such a stance resembles some elements of the Weberian approach to legal evolution, which was widespread in the law and development movement by the late 1960s.⁹ Nevertheless, due to the influence of other intellectual trends—such as structuralism in social sciences—this would have a particular physiognomy. Chilean lawyers would identify coded law as an expression of the “traditional” rural society, even when in Weber’s scholarship this matched a model of formal rationality. So, instead of the Weberian view of the modern legal system, they would usually be appealing to a concrete version of law serving state planning and the socialization of legal institutions as the highest stage of development at that time. Moreover, this approach was frequently mixed with other influences, like a progressive analysis of Catholic natural law open to accept the adaptation of juridical principles according to social advancement.¹⁰ As Guzmán Dinator’s words illustrate, this account of legal evolution would be presented as an “evident” and uncontested ideal of juridical legitimacy that did not require further analysis. In sum, all these variations asserted that the Western world in general, and Chile in particular, were following a particular direction toward mass society, and that law must follow that path.

The second element of these reform-oriented lawyers’ approach was constituted by their faith in the purposive role of law as an effective tool to advance particular policies of economic redistribution and governance. They shared a keen trust in the ability of the state to mold social relations by mean of the production and enforcement of legal rules. In this light, these would usually underpin this instrumental view as a distinctive element of their program of reforms. The words of Gustavo Lagos—the last Minister of Justice of the Frei’s administration in 1969—result very enlightening about this point: “[...], the Law, in a society that goes through revolutionary change by legal means, does not appear as a super-structure plainly derived from economy and society, as Marx believed, but as an instrument forged by the Legislative and the Executive powers

⁷ Quoted by: Enrique Evans de la Cuadra: *Estatuto Constitucional del Derecho de Propiedad en Chile*. Op. Cit. p. 58.

⁸ For example, see: Francisco Cumplido: “Constitución de 1925: hoy, crisis de las instituciones políticas chilenas”. Op. Cit. Gustavo Lagos: “Discurso, Sexto Congreso Nacional Colegio de Abogados de Chile.” *Revista de Derecho y Ciencias Sociales*. No 150. 1969. pp. 36-41. Eugenio Velasco Letelier. “La crisis del sistema legal chileno”, Op. Cit. Enrique Silva Cimma: “Panorama y Perspectivas de la Crisis Institucional Chilena.” Op. Cit.

⁹ See Note 2.

¹⁰ See as example: Jaime Castillo Velasco: “Síntesis” in *Visión Comunitaria del Derecho*. Op. Cit. pp. 1-10. See also from a more left-leaning perspective.: Eduardo Novoa Monreal: *¿Qué queda del Derecho Natural? (Reflexiones de un Jurista cristiano)*. Buenos Aires. Depalma. 1967.

to induce the change of the economic infrastructure by the command of law.”¹¹ In part, such a claim started from a well-established perception of the institutional capacity of the state along with the process of national building in nineteenth century Chile. This also relied upon the legacy of the positivistic jurisprudence that considered formal law an organized force of the state. Finally, that claim emerged as the coupling of legal expertise with the new developmental theories delivered by social scientists, who promoted state planning and the enlargement of administrative agencies. As a matter of fact, it is that trust in the possibilities of law as an instrument of governance that ultimately explains their efforts to address the shortcomings of the legal system as the first step in advancing structural policies of modernization.¹²

However, these lawyers’ faith in the juridical means cannot solely be explained on their adherence to the rule-of-law principles. In fact, this also corresponded to the promotion of a professional model that fitted well with the very position that most of the members of this network occupied within the legal field and the state. Material sources point that, among many of them, there was the intention to regain influence in decision making by integrating law graduates into the sphere of the public technocracy. The lawyer as a member of the high-level planning agency constituted the archetype of the professional ideal that matched that instrumental character of law. Remarkable opinions of some of the heads of the abovementioned process of reforms, like Francisco Cumplido and Eugenio Velasco Letelier, pointed in this direction. According to their view, lawyers must be not only men of broad culture and fine legal competences to act in courts and other areas of practice, but also professionals who should be able to participate in policy design and implementation, working alongside with social scientists. In this light, Cumplido underscored how the jurists’ generalist expertise should perform critical roles by describing the normative reality and serving as institution builders during the process of policy design.¹³ Hence, the very redefinition of the lawyers’ place within the administrative state made up the core of the struggle to reorganize the legal field.

In the end, all these processes of reform implicitly constituted a strategy to recreate the symbolic power of law. For the main members of this network, the law would continue serving the state, facilitating the advancement of governmental guidelines (legitimacy by state agency). At the same time, they proposed that the legal elite would perform both technical roles grounded in the use of juridical rules, and generalist tasks in policymaking (legitimacy by dual expertise). In so doing, they would reconnect the law with the necessities of the modern mass society, advancing social change (legitimacy by social progress and effectiveness). On the whole, the evidence indicates that for this network, the fates of social transformation were indissolubly united to their very capacity to recreate the symbolic power of juridical expertise and institutions.

¹¹ Gustavo Lagos: “Discurso, Sexto Congreso Nacional Colegio de Abogados de Chile.” *Op Cit.* p. 37.

¹² “We do not conceive this task only as the simple adaptation of the law to the changes by the only fact that these latter ones happen, but essentially as the searching for justice [...]” Máximo Pacheco: “Discurso.” *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile.* No. 14. 1972. pp. 223-224.

¹³ Francisco Cumplido: “El jurista en el Estado Contemporáneo.” *Revista de Derecho Público.* No 15. 1974. pp. 27-29. *Revista de Derecho Público:* “Entrevista al Nuevo Decano Eugenio Velasco Letelier.” *Op. Cit.*

Reorganizing Lawmaking, Advancing Structural Transformations

Certainly, public law did not occupy the central stage in the debates on the legal crisis, which preferred to pay more attention to other issues like the inadequacy of the statutory order and juridical expertise.¹⁴ However, that does not mean that this realm was irrelevant in this rhetoric. By contrast, I argue that the narrative constituted a significant guideline for the processes of constitutional amendment of the mid and late 1960s. This link results particularly evident in the projects of reform aimed to adjust the process of lawmaking during Frei's government in 1964-1965 and in 1968-1970, precisely at the most alid periods of debate about this topic.¹⁵

During the first half of the twentieth century, constitutional law used to occupy a marginal place within juridical practice, being considered a mere expression of partisan politics resolving its own affairs. This perception was confirmed by the deferential behavior of courts, which were reluctant to assert their competences of judicial review and to exert control over public administration.¹⁶ However, by the mid-1950s, the incapacity of the political process in setting the most urgent issues of the time—like monetary inflation and the increasing demands of the diverse groups of interest—generated additional tensions on the constitutional machinery. As a result, the political mood would begin to speak insistently about the necessity of reforming some aspects of democratic deliberation; for instance, by granting more legislative attributions to the Executive.¹⁷ Even, a civic movement organized by right-leaning lawyers came out by 1963, asking for “restructuring the constitution according to the necessities of the current hour.”¹⁸ This movement finished with a project of constitutional amendment sent by President Jorge Alessandri at the very end of his term, which was not studied by the Congress after he left his office (1964).¹⁹ Such a diagnosis coincided with legal scholars and elite lawyers that denounced the legal crisis by the mid-1960s, asserting that chaotic legislation manifested a defective process of lawmaking and that political institutions were ill-equipped to resolve social conflict. As a core element of this discourse, they went on to say that Chilean public law was asynchronous, since the country had a new kind of

¹⁴ Interview Andrés Cuneo.

¹⁵ See Appendix 15.

¹⁶ See Chapter 3. pp. 167-173. See also Lisa Hilbink: *Judges beyond Politics in Democracy and Dictatorship. Lessons from Chile*. Op. Cit. pp. 63-72.

¹⁷ All the presidents of the decades of the 1950s and 1960s advanced claims in this direction. Remarkable are the opinions of the president Carlos Ibañez (1952-1958) and Jorge Alessandri's (1958-1964) about this issue. Julio Faúndez: *Democratization, Development and Legality. Chile, 1831-1973*. Op. Cit. pp. 105-109.

¹⁸ The movement intended re-electing Jorge Alessandri as president, and, although it failed in its goals, it constituted the first concrete attempt to specify a relatively comprehensive constitutional reform. “Reforma Constitucional.” *El Mercurio*. October, 13th 1963. p. 57. Among the signers we can find several lawyers and legal scholars: Jorge Barceló Pinto, Oscar Dávila Izquierdo (Former Head CHBA), Sergio de Ferrari, Arturo Foitaine Aldunate, Guillermo Elton, Jaime Eyzaguirre, Hugo Gálvez Gajardo (former Secretary of Labor), Alejandro Lira Lira, and Manuel Montt Balmaceda.

¹⁹ Jorge Alessandri introduced a proposal of constitutional amendment strengthening the Executive power at the very end of his term. That reform did not include the possibility of re-election, as his supporters asked. The draft did not advance in Congress after Frei's entered into office since this latter privileged his own project of constitutional reform. Sergio Carrasco Delgado: *Alessandri: Su Pensamiento Constitucional*. Santiago: Editorial Andrés Bello. 1987. pp. 81-97.

mass society but an old model of constitution anchored in nineteenth-century liberalism.²⁰ In this light, the demand for institutional change at the political level and the diagnosis of elite lawyers in the juridical field converged, determining the courses of the constitutional reform.

As soon as Frei was elected President of the Republic in September of 1964, he convoked a group of lawyers and law professors to work in a comprehensive constitutional change. This group was comprised by Pedro Rodríguez (further Minister of Justice), Eugenio Evans (further undersecretary), Patricio Aylwin (Senator), Francisco Cumplido, Alejandro Silva Bascuñán (further Head of the Bar Association), and Eugenio Ballesteros (Representative).²¹ Some of them had already begun to denounce the delay of Chilean public law, and since the last months of 1964, would be increasingly involved with the rhetoric of legal crisis. Once Frei entered into office, they produced a draft of constitutional amendment that was sent to the Chamber of Deputies by the end of the year.²² “The country has got aware about the urgency to adequate our institutional and legal regime according to the circumstances of our time [...]” expressed the rationale to send the bill, reflecting an underlying approach that mirrored the general idea of updating an asynchronous law.²³

In concrete terms, the project addressed some of the main complaints about public law described during these years.²⁴ First, this directly proposed to get rid of statutory disarray and defective lawmaking. Accordingly, it projected to reorganize legislative process to speed up the parliamentary debates and also granted to the Executive with the exclusive initiative in legislative projects that involved fiscal expenditure or that were related to socio-economic matters. In this way, the bill looked to end legislative slowness and chaotic statutes produced by parliamentary bargain (e.g. miscellaneous legislation). Likewise, the project allowed the Congress delegated to the Executive the power to issue decrees having the force of law in specific subjects, regulating a common practice of Chilean politics. Second, the bill allowed the Executive to call a plebiscite in case of disagreement with the Congress, appealing to an upgraded model of democratic participation to resolve political conflict. Third, it reoriented the constitution by asserting socio-economic rights (e.g. unionization, access to juridical assistance, education, among others), one of the claims of diverse progressive jurists.²⁵ The amendment to expand the social function of property, particularly by allowing to defer the payment of compensations in cases of expropriation, was the most important proposal in this last realm. Finally, the bill contemplated other constitutional changes, such as the administrative decentralization.²⁶

²⁰ See as example, the Conferences New Society Old Constitution in December of 1963, sponsored by the Congress for the Freedom of Expression. Jorge Guzmán Dinator (ed.) *Nueva Sociedad, Vieja Constitución*. Santiago: Orbe. 1964.

²¹ Within this working group, the economist Francisco Antonio Pinto was the only member who was not a lawyer. Eugenio Evans de la Cuadra. *Estatuto Constitucional del Derecho de Propiedad en Chile*. Santiago, Editorial Jurídica. 1967. pp. 31-32.

²² *Boletín Cámara de Diputados*. Sesión 5th, December 1st, 1964. pp. 280- 291.

²³ *Ibid.* p. 280.

²⁴ For example, see the works of Jorge Tapia Valdés, Iván Auger, Carlos Cruz-Coke, Rolando Pantoja and Francisco Cumplido in Escuela de Derecho Universidad de Chile: *Examen Crítico de los Proyectos de Reforma Constitucional*. Santiago, 1965.

²⁵ See for example, Eduardo Novoa: “La crisis del sistema legal chileno”. *Op. Cit.*

²⁶ For other changes see *Boletín Cámara de Diputados*. Sesión 5th, December 1st, 1964. pp. 280-291.

Although the project of reform did not propose a new charter, it is undeniable that this meant a new constitutional order.²⁷ Both its tenor and its timing confirm that the bill was aimed to serve as a threshold to advancement in the path to the socioeconomic transformations that Frei's government prepared for the next years (e.g. his educational and housing plans, a kind of copper nationalization, the land reform). Nevertheless, since the government had a minority in the Senate, the bill stayed at a deadlock.²⁸ Therefore, Frei's administration opted to further concretize public policies of structural change, even when, in doing so, it would confirm the shortcomings of the lawmaking process.

Indeed, among the different socio-economic transformations that were carried out by Frei's rule, the land reform outstands by its profound consequences in Chilean politics and its sway in the perception of the legal institutions by the time. Facing a deficient agricultural production and the necessity to provide food for a growing—and politically relevant—urban population, the government initiated an ambitious program to redistribute estates in hands of great landowners. In this way, Frei followed the suggestion of the Alliance for Progress and the new technocracy of social scientists, which pointed out to agrarian structures as one of the main factors of social and economic underdevelopment. In particular, the Executive looked to reorganize agricultural production by deepening the mild land reform started during Alessandri's term (1962), which was focused on unused lands. Thus, Frei projected to expropriate all rural estates above 80 irrigated hectares, distributing land among small farmers organized in rural cooperatives. The payment of the compensation would be deferred to partial amounts allocated annually for 30 years.²⁹ However, in the furtherance of this plan, the government experienced various difficulties, accentuating the frustration among its cadres.

In the first place, Frei needed to overcome the gridlock at the Congress. The members of the National Party, which joined the former Liberal and the Conservative fellows, actively opposed the land reform since it impaired their electoral base and contravened their traditional commitment to protect private property rights. They tried to stop the bill in exchange for their support to the plan on partial nationalization of copper, which was critical for the industrial reorganization planned by Frei.³⁰ In doing so, the National Party repeated a similar strategy employed by the Chilean right to halt the project on agricultural workers' unionization in the late 1930s, but this time with failed results. Instead of reaching an agreement with the right that previously had supported his presidential election, Frei bargained with the left-wing parties to simultaneously advance in the two policies in play (copper and land redistribution). For that purpose, the Executive reactivated the amendment on property rights that was included in the project of constitutional reform of 1964, which was finally passed by the Congress in early

²⁷ The message introduced to the Congress directly assessed the possibility of a new constitution, such as many other countries after 1945, but finally opted for the constitutional continuity. Ibid. p. 280.

²⁸ This was one of the main points in the debates of the parliamentary election of March 1965. Guillermo Piedrabuena Richard: *La Reforma Constitucional. Historia de la Ley 17.284, sus principales alcances y posición de los partidos políticos*. Santiago: Encina, 1970. pp. 56-57.

²⁹ Additionally, the cooperative of farmers counted on the technical and commercial support of the public administration, which was highly committed to this policy. On Frei's project of land reform see: José Garrido R. et al (ed.) *Historia de la Reforma Agraria en Chile*. Santiago: Editorial Universitaria. 1988. pp. 93-130.

³⁰ Robert R. Kaufman: *The Politics of Land Reform in Chile, 1950-1970. Public Policy, Political Institutions and Social Change*. Cambridge: Harvard University Press. 1972. pp. 166-176.

1967.³¹ The amendment declared that the law could reserve the property of natural resources and relevant means of production to the state. By means of such a new constitutional guideline, the Government could partially nationalize the copper industry in hand of American corporations, signing agreements with these latter ones in which the Chilean State acquired a considerable share and the option of buying the remnant.³² At the same time, the constitutional amendment on property rights allowed the congressional passing of the agrarian reform in 1967, permitting to expropriate land in the abovementioned conditions.³³

In the second place, the agrarian reform faced multiples obstacles for its implementation. The slowness of the legislative process allowed that some landowners divided their estates attempting to eschew expropriations, and that others tried to modify their valuations. Looking to avoid so, the government got involved in a frantic enactment of 32 decrees to regulate the process between 1968 and 1970, but with somewhat limited legal results.³⁴ Likewise, the increasing political mobilization among rural tenets, which were organized by leftist parties, was translated into a violent conflict of land occupation in the countryside. Finally, the establishment of agrarian courts to resolve disputes and the regulation on farmers' cooperatives seemed unable to stabilize rural life and to improve agricultural production.³⁵

For law graduates in governmental agencies, the difficulties in the advancement of Frei's program went on to confirm that law was out of touch with the undergoing dynamic of socioeconomic transformation.³⁶ Such a perception became especially persistent among elite lawyers who participated in land reform, such as Patricio Aylwin and Jaime Castillo Velasco.³⁷ But, among them, Francisco Cumplido best portrays this process of increasing dissatisfaction. As a young Christian Democrat and professor of constitutional law at the University of Chile, Cumplido rapidly got involved in the project of amendment in 1964, participating in its drafting. The very same year, he entered as an advisor to the Minister of Land and Colonization, headed by Jaime Castillo Velasco in 1965, another left winger of his party. In that function, Cumplido actively intervened as an informant to the parliamentary debates on land reform, attacking the traditional concept of property rights and accusing that the coded statutes did "not match social

³¹ For a complete overview of the process of lawmaking, see Evans de la Cuadra. *Estatuto Constitucional del Derecho de Propiedad en Chile*. Op. Cit. 108-391.

³² For a summary on the debates about copper nationalization and its consequences in the late 1960s, see: Cristian Villalonga Torrijo: "Eduardo Novoa y el Proceso de Nacionalización del Cobre en Chile. 1970-1973. La argumentación jurídica sobre la estatización de los medios de producción." *Bicentenario. Revista de Historia de Chile y América*. Vol. 7, No 1. 2008. pp. 143-150.

³³ Pedro Moral López: *Temas Jurídicos de la Reforma Agraria y el Desarrollo*. Santiago. ICIRA. 1968. p. 36. In the end, the landowners were affected by different means other than the mere expropriation. First, the compensation was fixed according to the tax value, which usually was lower than the market price. Second, the payment of compensation was deferred to until 30 years, and depending upon the situations, never there was payment of more than a 10% in cash at the moment of the taking. Third, the interest rate for the deferred payment was of a 3% annual, much lower than the interest on the financial market. Arturo Fontaine Aldunate: *Tierra y Poder. Reforma Agraria en Chile (1964-1973)*. Santiago: Zig-Zag. 1999. p. 85.

³⁴ ICIRA: *Reforma Agraria Chilena, 1965-1970*. Santiago: Corporación de Reforma Agraria. 1970. p. 21.

³⁵ Arturo Fontaine Aldunate: *Tierra y Poder. Reforma Agraria en Chile (1964-1973)*. Op. Cit. pp. 95-131.

³⁶ Interview Antonio Bascuñán. See also p. 262.

³⁷ Arturo Fontaine Aldunate: *Tierra y Poder. Op. Cit.* p. 80.

advancements.”³⁸ Starting from his personal experience in implementing this policy, he described the unresponsiveness of the legal system, pointing to the slow and defective process of lawmaking, the inadequacy of political institutions to effectively express popular will, and the restrictive judicial interpretation of the new socio-economic measures.³⁹ “The presidents include into their programs deep social changes; they introduce the bills of constitutional and legislative reforms but these latter are not passed or take so much time to be approved. Progressive statutes have been enacted, like labor laws and the agrarian reform, but their enforcement is slow or their interpretation is distorted by courts,” he would explain.⁴⁰ Joint to Castillo Velasco, Cumplido participated in debates on the situation of law about 1966 onwards, slowly framing the narrative of legal crisis among Christian Democrats lawyers.⁴¹ For instance, explaining the obstacles for land reform, he asserted: “who are the responsible of this? In the end, [it is] the crisis of an institutional system that must be modified. The Law does not perform its role as an instrument of social change; by contrast, it becomes an obstacle to the process. [We] must create a new ideal of law that set the social conflict of our time or that serves as a natural channel to overcome it.”⁴² Ultimately, Cumplido appealed to such perception of law to mobilize legal change in the period of 1969-1970, participating in the efforts to renovate juridical training at the University of Chile School of Law and in the new debates to reform the constitution.⁴³

The evolution of Cumplido’s views on the legal crisis were far from constituting a mere anecdote by the late 1960s. Several elite lawyers who observed the difficulties in advancing policies of structural change began to express discontent regarding the institutional capacity of public law. A summary review of the literature written by the main scholars on the subject revealed a kind of dissatisfaction and an agreement on the necessity to renovate some sections of the constitution, above all the process of lawmaking.⁴⁴ Remarkably, professors like Enrique Silva Cimma and Alejandro Silva Bascañán (the former Comptroller and the Head of the CHBA respectively) were pretty explicit regarding an ongoing legal crisis, pointing out both to the procedures of democratic deliberation and juridical formalism as its major causes.⁴⁵ This mood was increasingly spread toward 1967, when inflation, turmoil and the conflict between the

³⁸ Quoted by: Enrique Brahm. *Propiedad sin Libertad*. Op. Cit. p. 199.

³⁹ See, for example, his illustrative description of the legislative gaps with particular reference to the land reform. Francisco Cumplido: “El legislador.” *Revista de Derecho Público*. No. 11. 1970. pp. 5-17.

⁴⁰ Francisco Cumplido: “Constitución de 1925: hoy, crisis de las instituciones políticas chilenas”. Op. Cit. p. 30.

⁴¹ *Seminario Visión Comunitaria del Derecho*. 1966. Op. Cit.

⁴² Francisco Cumplido: “La aceleración de los tramites legislativos.” In Eduardo Frei, Gustavo Lagos, et al. *La Reforma Constitucional de 1970*. Santiago: Editorial Jurídica de Chile. 1970. p. 159.

⁴³ Interview Francisco Cumplido.

⁴⁴ For example, such are the cases of Enrique Evans de la Cuadra, Enrique Silva Cimma, Jorge Guzmán Dinator, and Alejandro Silva Bascañán. Enrique Evans de la Cuadra: *Chile, hacia una constitución contemporánea. Tres reformas constitucionales*. Santiago. Editorial Jurídica de Chile. 1973. Enrique Silva Cimma: “Panorama y Perspectivas de la Crisis Institucional Chilena.” In AAVV: *Homenaje a Enrique Sayaguez-Laso*. Madrid. 1969. Tomo IV. pp. 523-551. Jorge Guzmán Dinator: *Nueva Sociedad Vieja Constitución*. Op. Cit. Alejandro Silva Bascañán: “Intervention” in In Jorge Guzmán Dinator: *Nueva Sociedad Vieja Constitución*. Op. Cit. pp. 221-226.

⁴⁵ Enrique Silva Cimma: “Panorama y Perspectivas de la Crisis Institucional Chilena.” Op. Cit. Alejandro Silva Bascañán: “La crisis del derecho y de la profesión de abogado” *Boletín de Docencia e Investigación Jurídica*. Op. Cit.

Executive and Congress became acute. It does not result surprising that the Christian Democrat government attempted a new project of constitutional amendment at the end of its term.⁴⁶

By mid-1968, Jaime Castillo Velasco was appointed Minister of Justice, beginning to organize a working group to draft a second project of constitutional reform. As expected, he relied on people who took part in the failed project of 1964, such as Pedro Rodríguez and Patricio Aylwin. However, unlike the previous draft, they eschewed a comprehensive amendment and mostly focused on reforming the lawmaking process, where the most pressing issues were observed.⁴⁷ This bill was finished by the end of the year and introduced into Congress to be studied throughout 1969. There, its debates and reports were dominated by reformist lawyers who asserted the necessity to rationalize the statutory order and to upgrade political participation.⁴⁸ All the evidence reveals this was a flagship project through which the government assured that it was possible to continue the process of structural socioeconomic transformation by legal means.⁴⁹ Both the introduction of the bill and its promulgation in 1970 constituted true public events. In them, Frei himself—who also was a former lawyer and law professor—claimed that “the Law should express and facilitate social change.”⁵⁰

In its content, the enacted amendment chiefly echoed some concerns delivered by the rhetoric of legal crisis at the province of public law. First, the reform overtly attempted to lay the institutional capacity to resolve political conflict. This established a narrow-tailored constitutional court to decide discrepancies between the Executive and Congress on the process of lawmaking (without public action).⁵¹ By the same token, it granted to the Executive with the power to convoke a plebiscite in case of disagreement with Congress on subjects related to constitutional reform. In an environment of increasing political uncertainty, it is likely that Frei had foreseen these measures to strengthen the role of his party for the next years. On one side, these worked as a political insurance facing an eventual socialist or right-leaning rule, since they provided the tools to contest governmental action in a scenario where the Christian Democracy would be at the opposition. On the other side, before an eventual second Christian Democratic administration, these provisions could break the permanent legislative gridlock, which

⁴⁶ In the wake of the enactment of the reform to the property rights (January 1967), the Congress denied Frei's request to travel to the United States. Finally, Frei took the decision to re-activate the constitutional reform in February of 1968, but the Minister of Justice, William Thayer, only worked on a memorandum to assess the previous project of amendment. The most important legacy of the conflict of powers was the section of the new bill that granted the Executive the power to dissolve the Congress once in his term, which was finally not passed. Guillermo Piedrabuena Richard: *La Reforma Constitucional*. Op. Cit. p. 57.

⁴⁷ Besides some norms related to the electoral enfranchisement of illiterate people above 18 years old, the main lines of the project were oriented to upgrade the process of lawmaking and to resolve political conflict. Ibid. 62-69.

⁴⁸ See Appendix 16.

⁴⁹ Enrique Evans de la Cuadra: *Chile, hacia una constitución contemporánea*. Op. Cit. p. 18. For example, both the speeches to introduce the Project to the Congress and for its late enactment were broadcasted on television. And in the mid-1970, the Government published a book honoring the reform, were Cumplido, Evans, and Silva Bascuñán participated. Eduardo Frei et al.: *La Reforma Constitucional de 1970*. Op. Cit.

⁵⁰ Eduardo Frei Montalva: “Discurso del presidente Frei sobre las Reformas Constitucionales.” In Guillermo Piedrabuena Richards: *La Reforma Constitucional*. Op. Cit. p. 143

⁵¹ This tribunal began its functions in 1971, being chaired by the Radical Party lawyer and former Comptroller, Enrique Silva Cimma. Enrique Silva Cimma: *El Tribunal Constitucional de Chile (1971-1973)*. Caracas: Editorial Jurídica Venezolana. 1977.

became persistent in a context of steady polarization. In any of these circumstances, Frei could advantageously use their position at the center of the political spectrum to negotiate within the new institutional space.⁵²

Second, the amendment also looked to improve lawmaking by speeding up Congressional debates and avoiding statutory chaos. This banned the introduction of unconnected matters during parliamentary deliberation, and, additionally, empowered congressional legislative commissions to pass particular sections of the bills. Likewise, it granted to the Executive with the exclusive initiative in all the legislative projects that involved fiscal expenditure, for instance, to establish new administrative agencies and to bestow economic benefits.⁵³ Moreover, as a counterbalance, it regulated the congressional delegation of legislative powers on the President of the Republic, limiting the matters in which these were allowed (decrees having force of law).⁵⁴ As for the project of 1964, the amendment attempted to finish with miscellaneous statutes and the sluggish bargain of lawmaking, regulating executive legislation as well. For that reason, the lawyers who were behind the project considered this tackled some of the core manifestation of the legal crisis, which were closely connected to the fates of the democratic regime.⁵⁵

The historical sources, however, reveal that reformist lawyers at the Christian Democratic Party possessed a more comprehensive program to transform law and the state. For instance, the second proposal of constitutional reform (1968-69) comprised other sections that finally were not passed by the Congress, but that reflected their ultimate spirit. The main of them was a provision authorizing a “Program Law” by which the President could present his socio-economic plan to Congress during the first six months in office, asking for the delegation of legislative powers to issue decrees having force of law on these subjects. Several other proposals pointed in similar directions emerged during the parliamentary debates, like the establishment of a Socio-Economic Council composed of employers and workers as an advice-giving body, the introduction of a unicameral Congress, and the Executive’s power to dissolve the Congress once in his term. Still other measures were usually underscored by them in academic settings as part of an urgent revision of an asynchronous law, such as the substantive expansions of socio-economic rights.⁵⁶

⁵² It would be hard to qualify these reforms as a mere measure of political insurance regarding Ginsburg’s approach. Tom Ginsburg: *Judicial Review in New Democracies. Constitutional Courts in Asian Cases*. New York: Cambridge University Press. 2003. On one hand, Frei’s support was indeed declining at the end of his government, and he could have attempted a hegemonic preservation of reformist sectors (considering among them members of the Radical Party). On the other hand, however, historical sources also indicate that Frei thought that Radomiro Tomic, the Christian Democrat candidate in the presidential election of 1970, could win (Interview Francisco Cumplido). This ambivalence on the continuity in office could explain the introduction of the plebiscite to break the parliamentary gridlock as a part of a kind of dual strategy.

⁵³ Francisco Cumplido: “La aceleración de los trámites legislativos.” Op. Cit. Francisco Cumplido: “La especificación de la ley.” In Eduardo Frei et al. *La Reforma Constitucional de 1970*. Op. Cit. pp. 179-197.

⁵⁴ Enrique Evans: “La delegación de facultades legislativas.” In Eduardo Frei et al. *La Reforma Constitucional de 1970*. Op. Cit. pp. 109-155.

⁵⁵ Gustavo Lagos: “Tres temas centrales de la reforma constitucional.” In Eduardo Frei et al. *La Reforma Constitucional de 1970*. Op. Cit. pp. 53-55.

⁵⁶ Eugenio Evans de la Cuadra: “Reformas Constitucionales.” *Cuadernos de Economía*. Vol. 7. No 22. 1970. pp. 48-55. Guillermo Piedrabuena Richards: *La Reforma Constitucional*. Op. Cit. pp. 63-69.

Although the necessity to adequate lawmaking was a widespread agreement among reformist lawyers close to center-left political spectrum, this had a special flavor for fellows of the Christian Democratic Party. Undoubtedly, they agreed that the aforesaid reforms were on the path to overcome the traditional liberalism of the Chilean public law, and that their different efforts were transforming this latter in an “efficient tool of social change.”⁵⁷ But the empowerment of the Executive authority in the legislative process and the revision of property rights were only a part of their program, constituting only the first step to advance towards a more ample reconfiguration of the republican life.⁵⁸ By 1970, several of them, like Jaime Castillo Velasco, Enrique Evans and Francisco Cumplido, became intellectually engaged in a collective project to promote a new constitution and to establish a socialist state of communities (*Estado Socialista de Comunidades*).⁵⁹ This regime not only would imply the conception of a new model of man, mixed-economy, and the conservation of democratic liberty alike.⁶⁰ Additionally, it looked to achieve such a goal by rearticulating completely the normative production of the state and society.

On one hand, their program of reform attempted to reorganize formal lawmaking, reinforcing its effectiveness and expediency to produce Basic State Legislation aimed to lay the great juridical guidelines. For that purpose, they suggested the establishment of a new Congress divided in a democratically elected National Chamber with efficient legislative powers, and an Economic-Social Council integrated by workers, professionals, and intellectuals, mainly instituted as a consultative body to determine the broad strategies of developmental planning. Furthermore, the Executive would continue with the legislative powers granted by the last constitutional reform, and the state agencies would count on extensive prerogatives to determine and enforce administrative regulations.⁶¹ On the other hand, all society would be organized around small communities having authority to issue particular norms. Local power would be expressed through municipalities, neighboring functional assemblies and referendums. Functional organizations composed of businesses, students and professional groups would be granted with broad self-regulatory competencies as well. So far, these measures were not only thought of as a mean to reorganize the spheres of action of state and society. Besides

⁵⁷ Enrique Evans de la Cuadra: *Chile, hacia una constitución contemporánea*. Op. Cit. p. 18.

⁵⁸ In this perspective, the legal scholar Francisco Cumplido explained: “Most of the Chileans have conceptions that are very different than the Constitution of 1925. Despite such a majority, the constitution has not been substantially reformed [...] If we told the Constitution of 1925 has been amended seven times, anyone would immediately think such an idea is a fantasy.” Francisco Cumplido: “Constitución de 1925: hoy, crisis de las instituciones políticas chilenas”. Op. Cit. p. 30

⁵⁹ Enrique Evans de la Cuadra: “Poder Normativo y su Control en una Sociedad de Participación.” In Jaime Castillo Velasco, Francisco Cumplido, Enrique Evans, et al.: *El Poder Político en una Sociedad de Participación*. Santiago: Editorial del Pacífico. 1973. pp. 52. 55.

⁶⁰ An analysis of such regime exceeds the scope of this study. For a more detailed view on the political reforms proposed by communitarian socialism in Chile, see Francisco Cumplido: “Memorandum para un Ensayo sobre las Instituciones Políticas Fundamentales en el Socialismo Comunitario.” *Revista de Derecho Público*. No. 13. 1972. pp. 49-60. Jaime Castillo Velasco: “Instituciones Políticas de la Sociedad de Participación.” In Jaime Castillo Velasco, Francisco Cumplido, Enrique Evans, et al.: *El Poder Político en una Sociedad de Participación*. Op. Cit. pp. 27-48.

⁶¹ Enrique Evans de la Cuadra: “Poder Normativo y su Control en una Sociedad de Participación.” Op. Cit. p. 49-55. Francisco Cumplido: “Memorandum para un Ensayo sobre las Instituciones Políticas Fundamentales en el Socialismo Comunitario.” Op. Cit. pp. 58-60.

an expansive protection of political and socio-economic rights, those organizations were expected to serve as a channel of participation and a check on state power, being understood as a centerpiece to keep democracy and a Social Rule of Law alive.⁶²

All in all, the courses of these reforms to public law in the late 1960s portray the very spirit of this network of lawyers. Facing the difficulties of the Frei's program to move forward, they gradually framed a particular reading about the legal crisis of the time. It is remarkable to observe that in the midst of an increasing dissatisfaction regarding statutory delay and chaos, neither reformist lawyers nor Frei's government advanced through concrete projects of legislative reordering or rationalization. Its main efforts were not addressed to re-codification or even to the enactment of basic laws, a topic that only emerged among them in 1970.⁶³ They did not intend to modify other substantives areas of the juridical field, even when there were some minor initiatives in this direction.⁶⁴ Instead, reformist lawyers inside the government furthered a program to empower the executive authority, granting it with the control of the legislative process, disciplining lawmaking and trying to lay the institutional capacity to resolve social conflict.⁶⁵ As they explicitly recognized, the ultimate goal of their efforts attempted to turn law into an effective tool to pursue socio-economic transformation. Over time, some of them—particularly the left-wingers of the Christian Democratic Party—advanced to intellectually imagine a new communitarian-socialist regime by re-conceptualizing normative production. Therefore, all the evidence indicates those reforms to public law had an instrumental, and even a performative character.

Regenerating Juridical Knowledge: The Renewal of Legal Education and Scholarship (1966-1974)

As described in previous chapters, the rhetoric of legal crisis involved a caustic critique to the juridical mindset, and, particularly, regarding the narrow sphere of jurisdiction of legal professionals (i.e. unsophisticated approach to juridical dogmatic and behavioral deference).⁶⁶ In concrete terms, this criticism was directed against the encyclopedic and positivist style of legal education and the descriptive approach to juridical research. It is not surprising that the rhetoric of legal crisis had come out at law schools, where such an approach found one of its main settings of diffusion. Accordingly,

⁶² Enrique Evans de la Cuadra: "Poder Normativo y su Control en una Sociedad de Participación." Op. Cit. pp. 61-65. Francisco Cumplido: "Memorándum para un Ensayo sobre las Instituciones Políticas Fundamentales en el Socialismo Comunitario." Op. Cit. pp. 55-58.

⁶³ Several reflections on the legal crisis proposed the enactment of basic statutes to reorganize legislation around functional topics. These should serve to orientate interpretation and to delimitate the realm of administrative regulation. So, it is not surprising that, initially, they had been considered a conservative idea aimed to restrict the scope of public policy. That perception changed only toward the late 1960s. See, for example, Pablo Rodríguez Grez's idea of functional statutes and Jorge Tapia's proposal of basic laws. Pablo Rodríguez Grez: *De la Relatividad Jurídica. Crisis del Sistema Legal y Estatutos Jurídicos Funcionales*. (1965) Op. Cit. Jorge Tapia Valdés: "Leyes de Bases y Nuevas Categorías." *Revista de Derecho Público*. No. 11. 1970. pp. 27-50.

⁶⁴ Some of the scholars worked in the first serious attempt to radically change criminal procedure since the 1930s, but their effort got a deadlock and was marginal in the political context. See, Rubén Galecio Gómez: *Proyecto de Modificación al Código de Procedimiento Penal*. Santiago: s.e. 1968.

⁶⁵ Gustavo Lagos: "Discurso, Sexto Congreso Nacional Colegio de Abogados de Chile." Op. Cit. p. 37.

⁶⁶ See Chapter 2.

reformist lawyers looked to reframe the definition, reproduction, and advancement of juridical knowledge. In this section I pay attention to two collective projects that ultimately intended to broaden lawyers' possibilities of action: a) the reform of legal education, and b) the emergence of a new legal scholarship.

Training Social Engineers: The Law School at Stake

From the late 1950s until the mid-1960s, Latin American law professors organized different conferences devoted to improve legal education. Initially, they did not have a significant impact on Chilean law schools, which only would be transformed in the context of the political mobilization of the mid-1960s.⁶⁷ The first projects to extensively renew legal education began with the establishment of a Teaching Commission of professors and students at the University of Chile School of Law by mid 1964. This is to say, precisely just some months before the election of the Christian Democrat presidential candidate Eduardo Frei Montalva and the publishing of the first article on the legal crisis.⁶⁸ Alongside the increasing malaise on the juridical system and the movements to reorganize the university structures from 1967 afterward, the projects to reform legal education were spread to the other four law schools in the country and became more comprehensive and radical.

Since its beginning, the abovementioned Teaching Commission at the University of Chile School of Law was dominated by professors who were committed to the rhetoric of legal crisis, like Eugenio Velasco Letelier, Enrique Silva Cimma, Avelino León Hurtado, Miguel Schweitzer Spitzky, Máximo Pacheco and Pablo Rodríguez Grez.⁶⁹ Their influence was clearly perceptible in the records of their meetings, particularly in their agreement about a *Statement on the Foundations of Legal Education* in late 1964. This shows that they quickly converged toward the goal to transform juridical expertise into a "factor of progress" by generating a legal consciousness of social change among law graduates.⁷⁰

The commission was leveraged by the election of Eugenio Velasco Letelier as Dean in April 1965.⁷¹ A long time professor of Civil Law, director of the Teaching Section of the Law School, former Vice-President of the University of Chile and member of the Radical Party who had held diplomatic positions, Velasco seemed to possess the

⁶⁷ James A. Gardner: *Legal Imperialism. American Lawyers and Foreign Aid in Latin America*. Op. Cit. p. 57.

⁶⁸ Roberto Mayorga: *La Reforma a los Estudios Jurídicos de 1966*. Santiago: Editorial Jurídica de Chile. 1970. pp. 11-12.

⁶⁹ Ibid. p. 12.

⁷⁰ Considering that the commission had a seat at the Teaching Section of the Law School, its main focus was the rearrangement of curriculum and the methodological aspects of legal instruction. So, the reform was not focused on other departments such as research, extension and the school of public administration. Ibid. pp. 15. 18-19.

⁷¹ In his election, Velasco defeated to the prior Dean, Dario Benavente, a member of the old school, and Alvaro Bunster, the General Secretary of the University of Chile and a well-reputed scholar of criminal law. *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. No. 4. (1964-1965). pp. 129.ff.

academic and political skills needed to head the process of reorganization.⁷² As soon as he was elected, Velasco manifested the necessity of a deep reform to the methods and curriculum of the law school, appealing to the vertiginous social change that must be channeled through legal norms to avoid a serious disruption of national life.⁷³ Over time, Dean Velasco became one of the main spokesmen of the rhetoric of the legal crisis, participating in conferences and publishing a collection of works on the topic.⁷⁴ In conformity with the program to reform the law school, Velasco underscored that law had fell short within the new context, but that a renewed juridical expertise was still critical in the process of development: “All the desires of change in economic, social and cultural realms should be translated into legal norms. [...] It is there where the role of the jurist, who should write the definite solution, namely, the legal prescription, becomes relevant.”⁷⁵

By early 1966, the modification of the curriculum and pedagogical methods of the law school was already in force, constituting the first large reorganization to legal education since the turn of the twentieth century. Due to the influx of the Dean, this would be known as “the Velasco Reform.” Although clearly it is considered a milestone of the period, it is important to note that its effects were limited. First, the reform kept the traditional model of expositive cathedra given by consolidated law professors during mornings. These were only complemented by more active “practical” classes focused on the jurisprudential application of legal norms, usually in charge of younger lecturers during afternoons.⁷⁶ Second, the new curriculum did not have a significant impact, becoming only a little more than a restructuring. This introduced a basic cycle (e.g. Introduction to Law, Legal Theory, Sociology, Economy, and Politics), a reduced historical cycle (i.e. Roman Law and Legal History), a basic cycle on law covering the main legal subjects in a relatively encyclopedic way, and some elective classes.⁷⁷ Far from changing the legal mindset of law graduates, as originally purposed, the Velasco Reform presented scant results. The learning of social sciences still continued disengaged from juridical knowledge, and most legal courses continued being mandatory, under an expositive style and organized through a rather positivistic content. In the end, the Law School remained dominated by practicing lawyers who gave classes on an hourly basis, and who were still attached to former dogmatic.

In their efforts to advance the reform, Velasco asked for assistance from the Ford Foundation and the International Legal Center in New York, which were associated with the Alliance for Progress. As in similar experiences implemented in the region, the Anglo-American legal tradition –particularly the legal realism– seemed to offer a feasible

⁷² Máximo Pacheco: “Discurso de Homenaje a Eugenio Velasco Letelier.” *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. No. 14. (1972). p. 225.

⁷³ *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. No. 4. (1964-1965). pp. 129ff.

⁷⁴ Eugenio Velasco Letelier. “La crisis del sistema legal chileno”, Op. Cit.

⁷⁵ *Revista de Derecho Público*: “Entrevista al Nuevo Decano Eugenio Velasco Letelier.” *Op. Cit.* No. 4. 1965. p. 127.

⁷⁶ Gonzalo Figueroa Yáñez: “Investigación y Enseñanza del Derecho Agrario. Enseñanza en las Facultades de Derecho.” In *Simposio Interamericano de Derecho Agrario*. Instituto Interamericano de Ciencias Agrícolas. Lima. 1974. p. 5.

⁷⁷ Steven Lowenstein: *Lawyers, Legal Education and Development. An Examination of the Process of Reform in Chile*. Op. Cit. pp. 150-151.

path to transform elite lawyers into social engineers who actively participate in public deliberation, one of the ultimate goals of the reform.⁷⁸ In early 1966, John Howard and John Henry Merryman, acting as representatives of the Ford Foundation, traveled to Chile to learn about the process of reform. Considering that both Velasco and the goals of the Foundation coincided, they began negotiating an agenda for aid aimed at improving legal education and scholarship: the Chile Law Program. Initially, the plan proposed by Velasco was ambitious, including—among other matters—the training and hiring of younger law professors, the establishment of a program of doctorate in law, the creation of diverse centers of legal research, and the construction of a new building for the law library. After further consideration to clarify the scope of a Ford Foundation grant, the object of the legal aid was mostly limited to the instruction of young law professors in new teaching methodologies and to coordinate the collaboration among Chilean law schools in the administration of research recourses (i.e legal materials, journals, books).⁷⁹ The training of the young legal scholars—who attended a designed seminar on methodology at Stanford and, afterwards, spent one year of study at different top law schools in the U.S.—constituted the most critical of these measures. Extended from 1967 to 1969, this program incorporated the law schools at the University of Concepción, the Catholic University of Valparaiso, and, later, the other law schools in the country. In the end, a complete new cadre of young legal scholars who were frequently committed to the law and development approach would be trained under this initiative, like Gonzalo Figueroa Yañez, Julio Tapia Valdés, and Andrés Cuneo Machiavelo.⁸⁰

Despite the modest scope of Velasco's reform, this instigated deep conflicts and debates about legal education. There was resistance among many low-income students, who carried out a brief strike in 1966, when they realized that the establishment of a full-time legal education curtailed their ability to simultaneously work.⁸¹ Likewise, some conservative law professors manifested their complaints against the decreasing relevance of legal history and Roman Law. Such was the Manuel Salvat Monguillot's case, a well-reputed legal scholar who boldly affirmed the necessity of the humanist culture of legal history as a threshold to overcome the legal crisis caused by the abuse of positivistic jurisprudence.⁸² Nonetheless, the most caustic attacks against Velasco emerged from the far-left groups that struggled to control the process of university reorganization.

By 1967, different movements, initially led by students, attempted to build a new university that changed its supposed isolationism in regard to the problems of social transformation. A more complex and exponential demand for higher education and the rising of an anti-establishment youth culture collaborated in setting an environment highly polarized around political stances.⁸³ At the University of Chile, the Catholic University of Valparaiso and Santiago, violent student strikes would lead to the

⁷⁸ Rogelio Pérez-Perdomo: *Latin American Lawyers. A Historical Introduction*. Op. Cit. p. 120.

⁷⁹ John Henry Merryman: "Law and Development Memoirs I: The Chile Law Program." Op. Cit. pp. 484-485. James A. Gardner: *Legal Imperialism...* Op. Cit. pp. 126-145.

⁸⁰ John Henry Merryman: "Law and Development Memoirs I: The Chile Law Program." Op. Cit. pp. 487-490.

⁸¹ James A. Gardner: *Legal Imperialism...* Op. Cit. pp. p. 135.

⁸² Manuel Salvat Monguillot: "Necesidad de la Perspectiva Histórica en los Estudios de Derecho." *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. No 7. 1967. pp. 1-28.

⁸³ Carlos Huneeus: *La Reforma Universitaria en Chile. Veinte años después*. Santiago: Corporación de Promoción Universitaria. 1988. pp. 7-51.

overthrow of different provosts and to the organization of a participatory model of university governance in tune with external political mobilization. By and large, Marxist groups and the left wingers of the Christian Democratic Party would harshly compete to gain control of the academic halls, being opposed by some conservative groups that intended to protect the university from the political strife, like the right-leaning Gremial movement. This conflict would have greatly affect the outcome of legal education reform in Chile.

The reorganization of the University of Chile was marked by a relentless clash between the President (*Rector*) and some groups of Communist and other leftist movements of students and faculty who intended to change the structures of university governance (by including students and administrative staff in it).⁸⁴ Unsurprisingly, this struggle had a direct impact on the Law School, since Velasco supported the President who finally renounced to his post after the student strike. During 1968, important groups of left-leaning faculty, mostly coming from the department of public administration that was under the purview of the Law School, questioned Velasco's direction. To reaffirm his authority, he convoked a plebiscite that won by a moderate margin in July of 1968. However, the new Provost and the Federation of Students achieved the establishment of a new commission of faculty and students to reform the School of Law, whose work started in the following months.⁸⁵ In this context, the challenge to the authority of Velasco would continue. Velasco was re-elected Dean in May of 1969 with the support of the Radical Party, Christian Democrats and right-leaning law professors, defeating the far-left candidate Ricardo Lagos. However, Velasco's new term underwent under permanent conflict, and, in the practice, he was replaced by interim deans between 1970 and the early 1972.⁸⁶

Again, the new commission to reform legal education was dominated by professors highly committed to the rhetoric of legal crisis, such as Eugenio Velasco, Eduardo Novoa Monreal, Alfredo Etcheberry, and Francisco Cumplido (this latter one, initially acting as Chair of the commission).⁸⁷ During its meetings, two competing lines emerged: a minority Marxist trend represented mostly by Eduardo Novoa Monreal and Ricardo Lagos, and a more moderated tendency, represented by Christian Democrats and Radical Party law professors. On the leftist tack, Novoa proposed to transform the law school according to a new model of socialist society. This would be oriented toward instructing men of critical calling, willing to denounce the vices of the social and legal

⁸⁴ *Anales de la Universidad de Chile*. No. 148. oct-dec. 1968. pp. 1-499.

⁸⁵ *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. Vol. 8 No 8. 1968. Carlos Huneeus: *La Reforma Universitaria en Chile*. Op. Cit. p. 98.

⁸⁶ After the plebiscite of 1968 and an attempt to censure him in early 1969, Velasco was reelected Dean in May of 1969, defeating the left-leaning professor Ricardo Lagos Escobar. Due to the political conflict, Velasco resigned in December of 1969. However, his resignation did not get into force since the members of the Council of Law Professors asked him to remain in his post. Finally, Velasco was not active as Dean in 1970 and 1971, since this position was, in practice, performed by interim deans Rafael Lasalvia and Rubén Oyarzún. Only in 1972, Máximo Pacheco was elected as a new Dean. *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. No 11. 1970 and No 12. 1971. Carlos Huneeus: *La Reforma Universitaria en Chile*. Op. Cit. p. 105.

⁸⁷ *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. Vol. 8 No 8. 1968.

organization, who were available to build an alternative socialist legality.⁸⁸ This platform was closely related to the joint candidacy of Novoa and Lagos to be Provost and General Secretary of the University of Chile in 1969, which Novoa lost by a small margin in front of the Christian Democrat Edgardo Boeninger. In fact, their posture at the Commission to reform the Law School matched the stances that they assumed during the months prior to their candidacy at university level, when Novoa publicly pointed to the Velasco reform as an example of mild approach that should be avoided.⁸⁹ Nevertheless, as in the rest of the university, the moderate positions led by the Christian Democracy would prevail.

By 1970, the University of Chile Law School agreed on a new program to renew legal education that would respond to the dominance of the reformist groups, which declared that “the modernization of the legal system and its adaptation to the historical moment depends on the [lawyers’] capacities, public spirit and advanced ideological stances.”⁹⁰ Although less drastic than the posture of Novoa and the far-left, this attempted to transform juridical expertise into an instrument of social change, altering important aspects of the curriculum, methodology and organization of the faculty. First, this established a flexible curriculum composed of semester courses, in which only very basic legal subjects were mandatory. Although this put an end to the encyclopedic orientation of legal instruction and stressed the importance of new fields as Agrarian Law, the 1970 reform did not mean a turn regarding the predominance of private juridical matters as the center of the curriculum.⁹¹ Second, it proposed a new pedagogical model of active classes, integrating law in books and law in action. By this way, they intended to transform the relation of the students to juridical knowledge, which would not be considered a pre-elaborated truth anymore. Third, the school of law attempted to foster scholarship by replacing the degree exam with a research thesis.⁹² Finally, the reform also implied an effort of complete restructuring of the law school by its reorganization toward disciplinary departments and the hiring of some full-time professors.⁹³

Although the 1970 reform seemed particularly attuned to the context, it faced serious hindrances. Besides the weakened authority of the Dean Velasco, and the necessity of interim deans to replace him, these years would be characterized by a political hiper-mobilization of the students, principally since the beginning of Allende’s socialist government in late 1970. In fact, the school lived under the permanent threat of strikes and student walk-outs, particularly resisting the incorporation of the school into

⁸⁸ Eduardo Novoa Monreal: “Bases para la Reforma en el Área de las Ciencias Jurídicas.” [1969] In Eduardo Novoa Monreal: *Una crítica al derecho tradicional. Obras Escogidas*. Santiago: Centro de Estudios Políticos Latinoamericanos Simón Bolívar. 1993. pp. 401-406.

⁸⁹ Eduardo Novoa Monreal: “Destino y Finalidad de la Universidad” In Eduardo Novoa Monreal: *Una crítica al derecho tradicional*. Op. Cit. pp. 392-400. See also “Eduardo Novoa Monreal” *Anales de la Universidad de Chile*. No. 150. Abril-Junio. 1969. pp. 120-144

⁹⁰ Eugenio Velasco: “Tareas de la Facultad de Derecho.” *El Mercurio*. November 18th, 1970. p. 3.

⁹¹ One of the tangential points of these debates was the blurring of the conventional categories which used to divide public and private law. By this time, reformist legal scholars proposed the emergence of social law, as a new juridical category built toward the public regulation of private interest and protectionism (e.g. Labor Law, Agrarian Law, Economic Law, etc.). Despite the relevance of these debates to illustrate the struggle to rearrange legal categories and the juridical field itself, it is noteworthy there was not a radical departure from the prevalence of the traditional core built around civil law.

⁹² This latter goal is reflected by the replacement of the degree exam by the defense of a research thesis.

⁹³ Gonzalo Figueroa Yañez: “Investigación y Enseñaza del Derecho Agrario.” *Op. Cit.* pp. 3-4.

the school of social sciences, which was dominated by the left-wing parties.⁹⁴ At the same time, some conservative professors, such as Jorge Hübner, began to oppose the political use of the law school, warning that the promotion of social changes should not be associated with a particular kind of partisan position.⁹⁵ Even though Máximo Pacheco—a Christian Democrat law professor committed to the juridical renewal—was elected new dean in 1972, the implementation of the reform was revisited and advanced at a slow pace until September of 1973.⁹⁶

The reforms of 1966 and 1970 at the University of Chile had a significant impact on the rest of the legal academia. These awoke a kind of isomorphic trend by which the other law schools in the provinces tried to implement similar measures (at the University of Concepcion, the Catholic University of Valparaíso and the branch of the University of Chile in this latter city).⁹⁷ Due to the political environment of the late 1960s, they were especially explicit regarding their vows for social transformation. A superficial review of their debates reveals that they also tried to depart from the traditional approach to juridical knowledge and to train a new kind of law graduate, who should be instilled with public commitment and critical spirit. This new approach echoed the emergence of the new man [*el hombre nuevo*] as an archetype of a citizen for a mass society that was proclaimed in the progressive political forums. For instance, the professor Ramón Domínguez Águila explained this turn at the University of Concepción School of Law: “Facing a strict curriculum, completely mandatory, whose content was only designated to show what law is, this is to say, to explain the law as an already elaborated truth, as something that the law student should take, learn and give in the final exam, there has emerged the initiative of adapting [...] such curriculum to the perspective of the ideal man of law, that is the goal desired by this school, what I define as a critical man of law.”⁹⁸ The similar expression of transforming lawyers into critics of the legal order and agents of social change can be traced to the reform of legal education at the Valparaíso branch of the University of Chile, where the dean Italo Paolinelli advanced similar reforms to legal instruction. So, Paolinelli explained that “We intend to break the idea that the men of law, due to traditional training, have been absent of the current social, economic and political processes [...] what has been reflected in a passivity that many times has been an obstacle to the development of our societies.”⁹⁹

At the Catholic University in Santiago, however, the reform of legal education followed a different path. Since 1964, the law school assumed the necessity to strengthen its research, a more comprehensive model of instruction and the collaboration with the lawmaking process, but without initially taking any substantive measures in this

⁹⁴ Interview Luis Ortiz Quiroga.

⁹⁵ Jorge Hübner: “La enseñanza del Derecho ante los cambios sociales.” *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. No. 12. 1971.

⁹⁶ *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. No. 14. 1972.

⁹⁷ Manuel Sanhueza, Eduardo Cornejo and Italo Paolinelli respectively. John Henry Merryman: “Law and Development Memoirs I: The Chile Law Program.” *Op. Cit.* p. 482.

⁹⁸ Raúl Lecaros: *Evaluación de la Reforma Curricular de la Carrera de Derecho en la Universidad Católica de Chile*. Santiago: Facultad de Derecho. Universidad Católica de Chile. 1975. p. 3.

⁹⁹ Italo Paolinelli: “La reforma a la enseñanza en la carrera de derecho de la Universidad de Chile de Valparaíso.” In, *Conferencias sobre la Enseñanza del Derecho y Desarrollo*. Santiago: Editorial Andrés Bello. 1971. p. 108.

direction.¹⁰⁰ Due to the debates on the social calling of the university that emerged after the Second Vatican Council, the law school initiated a process of reform characterized by a compromise between conservative and reformist faculty. On one side, conservative law professors were aware of an ongoing legal crisis and the necessity for reorganizing the law school. Nevertheless, many of them resented the relinquishment of the former provost Alfredo Silva Santiago, who quit due to the pressures of a violent student strike and the lobby of the government in 1967.¹⁰¹ As a result, they were cautious about the reform of legal education and the possibility of a partisan manipulation of the law school.¹⁰² On the other side, some reformist lawyers at the council were identified with Christian Democratic Party, and counted on the support of the new university administration, particularly on the Vice-Provost of the University Alfredo Etcheberry, a law professor highly committed to the idea of legal renewal.¹⁰³

Under the instance of Dean Guillermo Pumpin, a program of reform was jointly drafted by two young scholars with a strictly academic focus by that time: José Luis Cea and Andrés Cuneo, in charge of the new curriculum and methodology respectively.¹⁰⁴ Relying on their proposal, the Academic Council reached an agreement for a reform inside of the school during the period 1969-1970, which was structured toward the commitment to legal change and the enduring values of natural law endorsed by the Catholic tradition. For example, the statements aimed to lay the grounds of the reform asserts: “The Law understood as social norm, alive, and in permanent evolution, will never be in crisis; but, however, there is a crisis of Law conceived only as a set of written, axiomatic, immutable and formal rules [...] Consequently, we must recognize that the Law’s preeminence in a context of social changes depends upon [...] its mutable character to rule society, since it arises from this latter one, assuring the primacy of permanent ethical values according to the time’s requirements.”¹⁰⁵ Accordingly, the Council also issued a statement about its catholicity and its adherence to the natural law as the base for all the legal system, excluding the faculty who refused to adhere that approach.¹⁰⁶

Considering its philosophical and religious commitment, the reform of the Catholic University Law School presented a moderated orientation. However, the concrete changes that this reform implemented shows that it was still influenced by the model of reorganization of the University of Chile. For example, the law school incorporated a relatively flexible curriculum, a class on introduction to the law that followed the inductive model of legal realism, and reorganized the faculty through departments. At the same time, the school tried to support empirical or innovative

¹⁰⁰ Ricardo Krebs, et al.: *Historia de la Pontificia Universidad Católica de Chile. 1888-1988*. Santiago: Ediciones de la Universidad Católica de Chile. 1994. Vol. I. pp. 496-499.

¹⁰¹ Alejandro San Francisco Reyes: *La Toma de la Universidad Católica de Chile (Agosto 1967)*. Santiago. Globo Editores. 2007.

¹⁰² Jaime del Valle: “Sobre la Reforma de la Enseñanza del Derecho”. In pp. *Conferencias sobre la Enseñanza del Derecho y Desarrollo*. Op. Cit. 1971. 152-158.

¹⁰³ Alfredo Etcheberry: “Reflexiones sobre la Enseñanza del Derecho”. *Op. Cit.*

¹⁰⁴ Interview Andrés Cuneo. See also Guillermo Pumpin: “La Programación Futura de los Estudios de Derecho.” In *El Mercurio*. November, 17th, 1970. p. 3.

¹⁰⁵ Raúl Lecaros: *Reforma a la Escuela de Derecho Universidad Católica. 1969-1970*. Op. Cit. pp. 2-3.

¹⁰⁶ See the exclusion of the young professor, José Antonio Viera-Gallo. Ricardo Krebs, et al.: *Historia de la Pontificia Universidad Católica de Chile. 1888-1988*. Vol. II. pp. 884-885. 1028.

research by hiring professors and establishing a new law journal. Finally, it created an ambitious clinical program of legal assistance for the poor that was initially headed by the Christian Democrat law professor Luis Bates.¹⁰⁷ Since the mid-1970s, the new right-leaning Dean Jaime del Valle, administrated the school being supported by a majority of conservative faculty. This would continue the implementation of the reform, although his Dean was somewhat skeptical of the methodological turn.¹⁰⁸

Beyond Legal Norms: The New Legal Scholarship

The emergence of a new legal scholarship constitutes a second large-scale strategy to broaden the possibilities of action of juridical expertise, which usually was closely connected to the reform of the law school. By this time, there were some outstanding individual efforts to go beyond the traditional legal dogmatic by employing flexible juridical interpretation. For example, such are the cases of Bernardo Gesche's empirical and dogmatic works on contractual binding rules to deal with monetary inflation and on the natal rights of children born out of the wedlock.¹⁰⁹ This is also the case of Fernando Fueyo's studies on civil law resorting to Free Scientific Research.¹¹⁰ Likewise, the University of Concepcion established a small program in empirical legal studies among students, headed by Gesche himself. Moreover, the Catholic University of Santiago organized a Department of Research particularly sensitive to the new social context, corporations, and legal procedure.¹¹¹

Indeed, the Institute of Teaching and Legal Research [*Instituto de Docencia e Investigación Jurídica*] constituted the most relevant collective effort to renew scholarship and legal methodology at this time. Financed by the Ford Foundation, the Institute was established as an independent corporation by a group of young law professors trained in the abovementioned Chile Law Program in 1969, attempting to re-create a new model of juridical expertise that they called "critical legal realism" [*realismo jurídico crítico*].¹¹² According to its founding documents, its organizers shared the malaise regarding the situation of the juridical knowledge and, at the same time, relied on the possibilities of legal tools, particularly legislation, to conduct individual behavior according to the ordinations of the public policies. In other words, they strongly

¹⁰⁷ Gonzalo Figueroa Yañez: "Investigación y Enseñanza del Derecho Agrario." *Op. Cit.* pp. 4-6. Pablo Alonso, Maria Rosa Larraín, Roberto Saldías: Evaluación de la Asistencia Legal. *Un Análisis cuantitativo (Julio 1970-Agosto 1975)*. Santiago, DEPAL. 1976.

¹⁰⁸ In the election of the Dean in 1973, Del Valle competed with Andrés Cuneo, a decided promoter of the new legal methodology. See on the former's viewpoint regarding the reform: Jaime del Valle: "Sobre la Reforma de la Enseñanza del Derecho". *Op. Cit.*

¹⁰⁹ Bernardo Gesche: *Jurisprudencia Dinámica. La inflación monetaria y otros problemas en el Derecho*. Santiago: Editorial Jurídica de Chile. 1971. Bernardo Gesche (ed): *Investigación de la Paternidad Ilegítima*. Concepción: Instituto de Ciencias Jurídicas y Sociales de la Universidad de Concepción. 1967.

¹¹⁰ See as example: Fernando Fueyo Lanieri: "La propiedad y las soluciones que el Derecho ofrece al orden social", and "El problema esta en el método." *Op. Cit.*

¹¹¹ Refael Cañas Lastarria, Edmundo Fuenzalida, Luis Herrera: "Programa del Curso sobre Investigación Jurídica en la Escuela de Derecho de la Universidad Católica de Chile." *Boletín de Investigación y Docencia Jurídica*. 1974. No 22. pp. 175-190.

¹¹² "Convención Escuela de Derecho de la Universidad de Chile." "Fundación del Instituto de Docencia e Investigación Jurídica." (May 24th, 1969). *Boletín de Investigación y Docencia Jurídica*. No. 1. 1970. pp. 4-6. 24.

agreed with the idea of legal crisis and the necessity to renovate legal authority to handle social change.¹¹³ By this mean, its main leaders intended to establish a true intellectual stronghold to face traditional faculty, even regarding Deans Velasco and Pumpin, whom they still considered as being within the old school. Although its organizers—Gonzalo Figueroa and Andrés Cuneo—used to take politically-moderate stances, the Institute used to gather about 150 young law professors covering the entire political spectrum, from the nationalist Carlos Cruz-Coke to the further Allende’s Minister of Justice, Jorge Tapia. To avoid political conflict, the Institute did not get involved in highly divisive issues of constitutional law, like the debates on expropriations, and asserted that the methodological improvements of the juridical expertise were not attached to any political regime in particular.

In concrete terms, the Institute attempted to renovate the legal methodology, to foster empirical research and to build a platform to influence lawmaking. First, a significant amount of its work consisted of reproducing the seminar on methodology that the founders attended at Stanford. For that purpose, they published materials and organized different workshops and international conferences from the perspective of law and development assistance. Many of its members, such as Andrés Cuneo, believed that the casuist pragmatism of the Anglo-American tradition matched the Classic Roman Law, which was characterized by its scientific character and a great fecundity in adapting legal institutions to social context.¹¹⁴ So, they attempted to reconnect their acquired intellectual capital with the civil law tradition and to enhance the promise of the juridical scholarship in the process of legal transformation. Second, the Institute supported innovative interdisciplinary scholarship. In fact, since they considered the study of law involved the behaviors associated with legal rules, the Institute provided financial assistance and some basic training in socio-legal research. As a matter of fact, the few empirical legal studies of this period were produced by members of the Institute, like Edmundo Feunzalida’s works on litigation rates and social change, and Antonio Bascuñán’s analysis of minors’ penal responsibility.¹¹⁵ Finally, the Institute also aspired to influence the process of lawmaking, elaborating some reports on divorce laws and technological transferences.¹¹⁶ Although this last activity should have constituted the most relevant contribution of the new scholarship of the legislative process, its result was very limited. In the context of Cold War politics, the close contact of the Institute with American academia and the financial support of the Ford Foundation impaired its possibilities to intervene as a neutral actor in the public sphere.

¹¹³ Bernardo Gesche, Hernán Fuenzalida, Feliz Lagreze: “Derecho Dogmático, Derecho en Acción”. *Boletín de Investigación y Docencia Jurídica* 1971. No 6. p. 69-80. See also: Bernardo Gesche: Las investigaciones jurídico-dogmáticas y la investigación jurídica empírica en los procesos de transformación económica y social.” *Boletín de Investigación y Docencia Jurídica*. 1971. No9. pp. 1-6.

¹¹⁴ Interview Andrés Cuneo.

¹¹⁵ Edmundo Fuenzalida Faivovich: *Fluctuaciones de la demanda por justicia en función del cambio social*. Santiago: IDIJUR. 1973. Edmundo Fuenzalida Faivovich: *Fluctuaciones de la demanda por justicia en función del cambio social. Segunda parte. Región IV. Valparaíso y Aconcagua*. Santiago: IDIJUR. 1974. Antonio Bascuñán: *La responsabilidad penal del menor*. Santiago: IDIJUR. 1974.

¹¹⁶ Instituto de Docencia e Investigación Jurídica: *El Divorcio. Informe elaborado a petición del Ministerio de Justicia acerca de la conveniencia y contenido de una futura ley de divorcio vincular*. Santiago. 1973. Pedro Roffe: “El sistema de patentes y el desarrollo tecnológico.” *Boletín de Investigación y Docencia Jurídica*. 1974. No 25. pp. 6-70.

By and large, all the different efforts to renew legal education and scholarship were related to the dissatisfaction about the lawyers' narrow sphere of jurisdiction. However, it would be a mistake to only pay attention to the mere redefinition of professional capabilities. Behind the battles for transforming lawyers into social engineers, there was an effort to completely reframe the juridical knowledge and the symbolic power of law. Such as the constitutional reform to the lawmaking process, this endeavor can only be understood as an effort to manage social change by legal means.

Concluding Remarks: A New Law for a New Society?

Overall, the catchphrase “a new law for a new society”—incorporated in the title of this chapter—seems illustrative in summarizing the mobilization of this network of lawyers by the late 1960s and early 1970s. Though, this should be read from two different perspectives. At the outset, this points out the lawyers' awareness of the necessity for adequate legal institutions according to a new social milieu. In other words, this echoed the evolutionary idea of legitimacy by which those lawyers condemned an unresponsive legal system. At the same time, this catchphrase simultaneously exemplifies their view on the promise of law to serve as a mean of governance on mass society, and an effective instrument for a top-down process of modernization guided by the state. Both readings are condensed into this version of the rhetoric of legal crisis, and both inspired the attempt to reform the legal field as the first step in fostering politically oriented social change.

Despite its undeniable appeal, this reformist network of lawyers would decay as the years elapsed. After reaching its climax in the period between 1968 and late 1971, they were severely impaired by the dynamic of political polarization, being affected by the increasing political conflict. Both the Christian Democracy and the Radical Party, with which most of the members of this network were identified, became deeply divided between right and left wingers. For instance, several of the Christian Democrat lawyers who were previously involved in reforming lawmaking became gradually aligned against the expropriation of industries carried out by Allende's Popular Unity.¹¹⁷ The reform of the legal education and scholarship did not have a better destiny. Since mid-1971, the University of Chile School of Law lived under continuous student mobilization, without performing normal academic activities. Moreover, the reform became deadlocked even when its new Dean, Máximo Pacheco, was committed to the process. Meanwhile, the Catholic University School of Law, in Santiago, became controlled by more conservative professors who viewed the reform of legal education with some degree of skepticism. Other settings, such as the Institute of Legal Teaching and Research, could survive in a hostile environment that distrusted their links to American aid, but at the cost of limiting the scope of its labor.

The perspectives did not improve after Allende was overthrown by a military Junta headed by General Augusto Pinochet in September of 1973. Facing authoritarian politics, reformist lawyers initially took part in different bands. Some of them, like Alejandro Silva Bascuñán and Enrique Evans, integrated the commission to draft a new constitution convoked by the military rule. Others, such as Jaime Castillo, Francisco

¹¹⁷ Paul E. Sigmund: *The Overthrow of Allende and the Politics of Chile, 1964-1976*. Op. Cit. pp.

Cumplido, and Eugenio Velasco Letelier, assuming the defense of the victims of human rights abuses and democratic advocacy, quickly passed to the opposition. Nevertheless, all of them would become disappointed by the instrumentalist perspective of law, particularly after the legal strategy of expropriation employed by Allende's Government. Accordingly, from their new trench, they relied upon the traditional formal legality trying to redress the abuses of state power, both against private property and human rights.¹¹⁸

Although this network continued operating after late 1973, it had a weak impact, progressively disappearing over time. The Institute of Legal Teaching and Research, for example, exhibited very limited results in transforming Chilean legal academia, and finally lost its access to American financial assistance in 1975, finishing its activities the very same year.¹¹⁹ At the law schools, the newly appointed military authorities and some right-leaning law professors increasingly pushed for a new restructuration, removing the deans who were not prone to follow a conservative agenda. As I will extensively describe in Chapter 6, the new university authorities began a process of assessing the reform of legal education, coming back to a traditional dogmatic approach by 1976. By the same time, several reformist lawyers and social scientists who were active at the law school during the late 1960s were purged, particularly in the University of Chile and the University of Concepción (e.g. Cuneo, Cumplido, and Máximo Pacheco). Those who stayed behind were demoted to secondary roles or simply opted to silence controversial matters.¹²⁰

At last, the decay of this network was not the mere product of the chaos and military repression, however. Indeed, its failure reproduced some difficulties that similar movements—like the law and development scholarship in the US—faced during the 1970s.¹²¹ Besides the political hindrances originated in its link to the Christian Democracy and the Radical Party, this network was unable to advance in its institutionalization. Chilean reform-oriented lawyers could not define a clear methodology or the ways to arrive at normative claims. At the same time, the political context harshly challenged the conceptual framework that they employed as a narrative of mobilization. Once most of them got involved in the struggle against Allende's expropriation or the violation of human rights in the dictatorship, their debates on the instrumental character of law got progressively out of place. Their agenda turned from the strengthening of law as mean of governance to the struggle against different kinds of abuses committed by state agents, demanding a conceptual re-arrangement toward the limitation of public power. This happened at a very early stage of its process of institutionalization.

Therefore, by the mid 1970s, it is likely that this network had not enough time to consolidate its influence in attempting to establish a new legal paradigm, and remained at a seminal stage. The reform to the law school continued as a structural and methodological affair, without deeply revisiting the content of juridical principles. Few law professors actually assumed a new approach anchored in legal realism, and even in

¹¹⁸ James A. Gardner: *Legal Imperialism...* Op. Cit. pp. 186-189.

¹¹⁹ Interview Andrés Cuneo. Also, John Henry Merryman: John Henry Merryman: "Law and Development Memoirs I: The Chile Law Program." Op. Cit. p. 491.

¹²⁰ See Pedro Pierry's testimony. In Mateo Gallardo Silva: *Intima Complacencia. Los Juristas en Chile y El Golpe Militar*. Santiago: El Periodista. 2003.

¹²¹ David Trubek; Mark Galanter: "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States." *Wisconsin Law Review*. 1974. pp. 1062-1102.

such cases, their contribution proposing normative prescriptions was scant.¹²² Most of them usually stayed within the margins of theoretical exploration on law and social change in a grandiloquent style, without systematically dialoguing with the mainstream of social sciences.¹²³ With some remarkable exceptions, few scholars produced consequential socio-legal research; which usually was not related to the most controversial issues like economic conflict and social marginality.¹²⁴ The excessively abstract theoretical reflection, or the secondary character of most of their writings, generated the sense of a misguided inquiry, particularly considering how the social conflict unfolds.¹²⁵ Hence, their labor became irrelevant or unable to influence substantive decision-making from an idiom other than plain politics, frustrating the expectations that those law graduates had about their participation in the public sphere.

¹²² Steven Lowenstein: *Lawyers, Legal Education and Development. An Examination of the Process of Reform in Chile*. Op. Cit. p.147.

¹²³ See as example, Máximo Pacheco: *Seminar on Law and Development in Chile*. Los Angeles: University of California. Los Angeles. School of Law. 1977.

¹²⁴ Few works constituted remarkable exceptions to that rule, such as Bernardo Gesche's studies on illegitimacy and monetary inflation, which have been already quoted above.

¹²⁵ James A. Gardner: *Legal Imperialism...* Op. Cit. p. 185. Carlos Peña: "Hacia una caracterización del ethos legal: de nuevo sobre la cultura jurídica chilena". *Op. Cit.* p. 55.

Chapter 5

Legal Path to Socialism? Juridical Instruments to Mobilize Popular Power (1970-1973)

[...] After the popular forces reached enough strength to conquest the executive power by the mean of the ballot, there appeared the conditions for the most audacious endeavor of the last fifty years: to change the firearm by the statues and the guerrilla by the man of law.

(Jorge Tapia Valdés: *Institucionalidad, Legalidad y Transición al Socialismo*. Speech at the University of Concepcion School of Law, August 28, 1972.)¹

Introduction:

In September of 1970, Salvador Allende was elected to the presidency of the republic as the candidate of the Popular Unity (hereinafter, the UP), a heterogeneous coalition of left-wing parties dominated by the Socialist and Communist cadres.² Basically, his program was aimed to begin the road to a socialist regime through a substantial number of expropriations and state planning.³ Accordingly, the UP constituted an alternative project of development other than the Social-Christian revolution in liberty and the conservative groups, which had been consolidated by successive elections since the mid-sixties. This assumed a Marxist-inspired theoretical ground and an aggressive discourse against traditional structures, reformist policies and the influence of foreign capital in Chile. At the international level, it got increasingly aligned to the Cuban model of society whose ideal was spread through Latin America by that time, albeit to be reached through democratic means. As his ultimate goal, Allende promised to advance toward a true socialist republic by way of the rule of law, assuring that the flexibility of the institutional structures would serve as a threshold to opening a new epoch in Chile.

However, the UP's victory was not free of difficulties. On one hand, Allende had a precarious situation within his coalition since the most radical elements of the Socialist Party—who proclaimed the legitimacy of all the ways of struggle—distrusted him.⁴

¹ Jorge Tapia Valdés. "Institucionalidad, Legalidad y Transición al Socialismo." *Acto de Conmemoración 107º Aniversario de la Fundación de la Facultad de Derecho*. August 28, 1972. Concepción: Escuela de Derecho. Universidad de Concepción. 1972. p. 15.

² The UP was composed of the following parties, which agreed about a common presidential candidacy by late 1969: The Socialist Party, the Communist Party, the Movement of Unitary Popular Action (MAPU), the Social Democratic Party, the Independent Popular Action (API) and some factions of the Radical Party. Later, the Radical Left Party and the Christian Left would join the alliance. Paul E. Sigmund: *The Overthrow of Allende and the Politics of Chile, 1964-1976*. Pittsburgh: The University of Pittsburgh Press. 1977. pp. 88-91.

³ *Programa Básico de la Unidad Popular. Candidatura Presidencial de Salvador Allende*. Santiago, w/e. 1970.

⁴ See the Socialist Party's statement at the Congress of Chillan in November of 1967, in which it proclaimed its aim to build a revolutionary state and the inevitability of an armed confrontation. Reproduced in Julio César Jobet: *El Partido Socialista de Chile*. Santiago, Ediciones Prensa Latinoamericana. 1971. pp. 130-133.

Although Allende would become increasingly ambivalent regarding democracy at the end of the 1960s, he awoke the lack of confidence of many of the members of his own Socialist Party and other radical leftist groups that explicitly preferred direct action.⁵ His precarious situation was evident at all the negotiations leading to his candidacy of the UP in 1969, principally considering he had lost three previous bids for the presidency. On the other hand, Allende and the UP also occupied a weak position in the broad political scenario. He was only elected with little more than a third of the national constituency (36%) and needed ratification by the Congress, where the members of the UP only had the 26% of the Chamber of Deputies and the Senate. Allende's Marxist approach in the context of the Cold War generated an important degree of hostility among right-leaning sectors. In fact, there were serious attempts to stop his ratification, including the assassination of the Commander in Chief of the Army General René Schneider as a way to wreck havoc and to dent his position. Only the bargain with the Christian Democratic Party to pass a constitutional reform reinforcing basic political rights allowed his election by the Congress. He entered into office in the early November of 1970.⁶

By the beginning of the UP's rule, Allende faced a significant obstacle to furthering his agenda of structural transformation. His coalition did not have a congressional majority to advance expropriations necessary to control the economy, which constituted the first step to undermining the bourgeois power according to the Marxist interpretation. Neither had he counted on an eventual compromise to carry a deep reform to the state structures. In this light, a possible negotiation with the Christian Democracy only promised limited success for the perspective of establishing a socialist regime. In addition, many of his supporters claimed the necessity of going beyond mere reformist policies, putting their faith in the possibilities of the democratic regime at stake. Facing that predicament, the UP urgently needed to define a strategy for political action. Some members anticipated the introduction of a constitutional amendment to nationalize important areas of the economy and to establish a unicameral parliament, which after being rejected by the Congress would be submitted to a plebiscite. But, at last, such a proposal was rejected since it would have accelerated the formation of an oppositional bloc against the Executive.⁷ In the end, some sectors of the coalition, represented by the Minister of Economy, Pedro Vuskovic, imposed their opinion in order to advance by a slow process of nationalization of the means of production, gradual legal reforms, and the improvement of the level of life. In this way, they aspired to alter "the correlation of forces" within political conflict and to get a larger share in the next parliamentary elections in March of 1973, changing the political institutions relying upon its own rules.⁸ "A pacific evolution from the old society to a new one can be conceived where the popular forces attain all the power, where according to the constitution, it can be done whatever is desired at the moment there have the majority of the nation behind them,"

⁵ Gonzalo Vial: *Salvador Allende, el fracaso de una ilusión*. Santiago: Centro de Estudios Bicentenario, 2005.

⁶ Paul E. Sigmund: *The Overthrow of Allende and the Politics of Chile*. Op. Cit. pp. 106-123.

⁷ Joan Garcés: *Allende y la Experiencia Chilena, Las Armas de la Política*. Barcelona, Ariel. 1976. pp. 220-221.

⁸ Vuskovic planned to achieve such goal by the spread of social services, the control of prices and the expansion of salaries financed by the emission of money. Julio Faúndez: *Marxism and Democracy in Chile. From 1932 to the Fall of Allende*. New Heaven: Yale University Press. 1988. pp. 202-203.

Allende asserted during his inaugural speech at the National Stadium, quoting Engels to clarify how his strategy was rooted in the writings of the classic socialist thinkers.⁹

This chapter mainly proposes that, to a large extent, the strategy of the UP was carried out by a network of left-leaning lawyers who usually occupied peripheral and low-profile roles within the legal field. Subsequently, I imply that they constituted a plain example of the progressive political and structural fragmentation of the legal profession and its incidence in politics. Obviously, several other actors participated in the building of a socialist regime, such as experienced congressmen, social scientists, and urban workers. However, it is noteworthy to observe that this network of lawyers coordinated the strategy of nationalization of the economy and developed the first effort to imagine a new socialist legality, occupying a significant place. In particular, experiences like the use of loopholes to intervene and to expropriate industries or the draft for a new constitution exemplifies their relevance to the broader scheme to transform the Chilean state.

Besides its relatively marginal position within the legal field, this network of left-leaning lawyers developed a particular interpretation of the rhetoric of legal crisis. This blended the aforesaid narrative on the asynchronous law with the Marxist-inspired idea of class bias and the downfall of the capitalist system. Starting from that approach, they delivered an explicitly instrumental view that was both opposed to the values of legal autonomy and the reformist spirit prevailing at the center of the political spectrum. For them, their tactic of mobilization echoed both their peripheral position and an underlying critical legal theory that rudimentarily joined the reading of the early Marx and Hans Kelsen's positivist jurisprudence.¹⁰ Before a legal system in crisis, which was featured by chaos and class struggle, the use of legal formalism or the attempt to gradually establish class oriented institutions appear as a coherent strategy of regime transformation and rearrangement of the legal field alike.

Also, this chapter confirms that conflict characterized the emergence of the different groups of lawyers that followed the debates of the legal crisis in the early 1970s. While Marxist lawyers tried to advance to socialism by juridical means, most members of the legal profession claimed in the name of the autonomy of law. All the evidence indicates that the use of the strategy of legal loopholes to nationalize industries generated an increasing opposition of other sections of the juridical field that perceived that the principles of the rule of law came into play (such as higher courts, the Comptroller of the Republic and the bar). The formation of such an oppositional bloc, through an intense process of legal conflict, would be critical to determine the fates of the UP and the first years of the dictatorship that followed the coup of d'état in September of 1973.

The sections of this chapter provide a general overview of the mobilization of this network of lawyers, and, in particular, about how they operated from the perspective of a Marxist reading of the rhetoric of the legal crisis. In concrete terms, they proceed as follows. First, I offer a description of the lawyers who were behind the different projects

⁹ Salvador Allende: *Primer Discurso Político del Presidente Dr. Salvador Allende*. Santiago: Ministerio de Relaciones Exteriores. 1970. p. 13.

¹⁰ For a complete overview on the jurisprudence behind the mix between Kelsen's positivism and Neo-Marxism, in the writings of the most influential legal scholar of the UP: Cristián Villalonga: *Revolución y Ley: La teoría crítica del Derecho en Eduardo Novoa Monreal*. Santiago: Globo Editoriales. 2008.

of economic nationalization and legal reform advanced by the UP. By and large, the section emphasizes their peripheral role within the legal field and their particular version of the rhetoric of legal crisis as narrative. Second, I present a brief synopsis on the different legal strategies advanced by them: a) the efforts to bring private corporations into state ownership by the use of legal loopholes, surmounting the predictable opposition of the Congress; and b) the diverse programs of reform, particularly in regard to how those were expected to contribute to a socialist legality. Third, the chapter explains the ways by which the instrumental use of law derived in an increasing antagonism with courts, the Comptroller of the Republic, and the bar formed an oppositional bloc. Finally, some concluding notes address the characterization of this network and how their strategy of legal mobilization failed in the midst of the intensification of the political conflict.

The Emergence of a Socialist Legal Network

Such as explained above, the chapter proposes that, to a great extent, the strategy pursued by the UP relied upon several Marxist and other similarly inspired left-leaning lawyers who coordinated the legal aspects of the governmental action. With different partisan identities and settings of mobilization, those can be studied as a network that acted toward the purpose to build a socialist regime during Salvador Allende's rule. On the whole, they usually occupied analogous structural positions at the margins of the state and the legal field and, at the same time, formulated a version of the rhetoric of legal crisis anchored in the Marxist theory. Those commonalities allow understanding their approach to juridical expertise and coordinated action.

To speak of a network of lawyers, however, requires some preliminary clarifications about the method of selection. In this section, I do not refer to the many law graduates who only worked in partisan or parliamentarian functions by that time, such as the senators Aniceto Rodríguez, Carlos Altamirano, or Volodia Teitelboim among others. Neither, do I point to lawyers trained as social scientists that performed some particular tasks from an expertise other than law (e.g. Ricardo Lagos, Felipe Herrera, and Jorge Arrate).¹¹ I do not refer to rank and file law graduates either. By contrast, I intend to explore those lawyers whose discourse and action were highly engaged in the juridical field itself (e.g. law school, state litigation, juridical advisory inside administrative agencies), and who possessed key roles advancing the legal strategy of the UP in three areas: a) nationalization of economy; b) constructing a socialist legality, and c) the conflict on separation of powers between the Executive and other state divisions (e.g. the Congress). Following the previous characterization, *Table 5.1* summarizes the data systematically collected from the material sources, identifying the most relevant of them.

The evidence shows that these lawyers were somewhat organized toward three groups focused on each of the areas of action mentioned above. The first stripe followed the legal strategy to expropriate industries led by the Chief of the State Defense Council (CDE) Eduardo Novoa Monreal, acting mainly in different economic agencies such as

¹¹ Among the law graduates who developed some tasks of collaboration with the UP, there was a handful of them had emigrated to social sciences. Besides the case of Lagos, Herrera, and Arrate, specializing in economy, we can find a substantial number of them trained in political science and sociology, such as the Spaniard Joan Garcés (personal Allende's advisor), Carlos Fortín Cabezas, the German Norbert Lechner, and the Argentinian Sergio Bagú (at FLACSO).

the National Development Corporation (CORFO). The second group of law graduates and low-rank judges led by the Undersecretary of Justice José Antonio Viera-Gallo were in charge of advancing the reform to the judicial system, particularly in issues like the project of neighboring courts and the service of legal aid. Emerged in the last part of the Allende's government, a third group linked to the presidency coordinated the aspects related to the conflict on separation of powers and to prepare the draft for a constitutional project for a workers' republic. To understand the legal politics of the UP necessarily implies studying systematically who they were, what they thought about law and what were their paths of mobilization.

Table 5.1. The Left-Leaning Legal Network at the UP (main participants) (n= 24)

	S	Party	P	Before UP (c.1968)	Governmental Post (1970-1973)	Academic Post	Subject	Areas
Lisandro Cruz Ponce	4	Socialist	*	Municipal Judge Puente Alto	Minister of Justice (1970-1972)			c
<i>Manuel Sanhueza</i>	2	Radical	*	Practitioner	Minister of Justice (1972)	Prof. UCON Law	Constitutional	c
Jorge Tapia Valdés	4	Radical Left		Staff at the Senate	Minister of Justice (1972)	Prof. UCH Law	Constitutional	c, d, e
Sergio Insunza B.	2	Communist	*	Practitioner	Minister of Justice (1972-1973)			c, d
José A. Viera Gallo	1	MAPU		Judicial Staff	Undersecretary of Justice	CEREN-UC	Politics	c, d, e
<i>Juan Bustos R.</i>	4	Socialist	*	Area Secretary Socialist Pty.	Advisor Ministry of Interior	Prof. UCH Law	Criminal	c, d
Sergio Politoff	4	Communist	**	Practitioner	Advisor Ministry of Interior	Prof. UCH Law	Criminal	c, d
Eduardo Novoa M.	2	N/A	**	Lawyer CDE. Practitioner	Chief State Defense Council	Prof. UCH Law	Criminal	a, b, c, e
<i>Hugo Pereira Anabalón</i>	2	N/A	*	Clerk Comptroller Office	Board State Defense Council	Prof. UCH Law	Procedure	a
<i>José Rodríguez E.</i>	2	Communist		Clerk Comptroller Office	Advisor Nat. Dev. Corp.	Prof. UCH Law	Intern. Relations	a, e
Eduardo Jara Miranda	4	Radical	*	Practitioner	Advisor Nat. Dev. Corp.	Prof. UCH Law	Administrative	a
Raúl Espinoza Fuentes	4	Socialist	*	Clerk Comptroller Office	Advisor Nat. Copper Corp.	Prof. UCH Law	Procedure	a, b, e
Waldo Fortín Cabezas	4	Socialist			Advisor Nat. Copper Corp.	Prof. UCH Law	Constitutional	b, c
Armando Uribe Arce	1	N/A		Diplomatic clerk	Ambassador, legal advisor	Prof. UCH Law	Mining	b, 0
Iván Auger Labarca	2	Socialist		Staff at the Senate		Fellow UCH Law	Public Law	c
<i>Álvaro Bunster</i>	2	N/A	*	Secretary UCH. Practitioner	Ambassador to the UK	Prof. UCH Law	Criminal	0
Aida Figueroa Yávar	2	Communist	*	Practitioner	Chair Labor Agency	Prof. UCH Law	Labor	0
<u>Graciela Álvarez Rojas</u>	4	Communist	*	Labor Lawyer (workers)	Legal Advisor. Central Bank			0
<i>Óscar Álvarez</i>	4	N/A		J. Appellate Ct. La Serena	Commission Ministry of Justice			c, e
<i>Alonso de la Fuente</i>	2	N/A		J. Appellate Ct. Talca	Commission Ministry of Justice			c, e
<i>Armando Arancibia</i>	4	N/A		J. Appellate Ct. Valparaiso	Commission Ministry of Justice			c, e
Alicia Rivera Herrera	4	N/A		Secretary Labor Ct.	Commission Ministry of Justice			c
Raúl Gutiérrez	4	N/A		Clerk Appellate Ct. Santiago	Commission Ministry of Justice			c
Guillermo Herrera	4	N/A		Trial Judge	Commission Ministry of Justice			c

Sources: Dataset elaborated by the author. Abbreviations: S: Social Extraction: 1: Landed Elite; 2: Minor Gentry; 4: Outsiders. P, Legal Practice: * Small Law Firm Practitioner. ** Big Law or relevant Practitioner before 1970. Academic: UCH: University of Chile; UCON: University of Concepcion. CEREN-UC: Center for the Study of Contemporary Reality, Catholic University. Areas of Activity: a: Confiscation of Industries; b: Nationalization of Cooper; c: Constitutional /Legal Reform; d: Conflict of Powers, Executive / Judiciary-Comptroller; e: Overview of Law (published writings); and 0: Other. *Cursive*: committed to the rhetoric of legal crisis. *Bold Cursive*: Highly committed to that rhetoric.

Lawyers at the margins

Several distinctive features provide an overlook of the socio-political identities and the professional positions of the lawyers under the scope. As almost any other group studied in this dissertation, they represent a rather heterogeneous social ascendency. A careful analysis of the sample shown in *Table 5.1* indicates that even though there were almost no participants from the landowners' families, there was a kind of balance between those with relatively high social roots (landed elite 8%, minor gentry 37.5%) and outsiders frequently coming from the middle class (54%).¹² Accordingly, we should inquire in other elements of their identity to determine their distinctive features. I suggest that this network emerged as a convergence of law graduates with a high degree of engagement with the socialist project advanced by the UP—usually expressed through partisan affiliations—who tended to occupy secondary places within the juridical field before 1970. The data show that they occupied low-profile positions within the bar and the courts. Likely, these were associated with both their middle-class social extraction and their policy preferences. For example, it is noteworthy to observe that Allende's first Minister of Justice, Lisandro Cruz, was a lawyer specializing in municipal issues with some political experience as minister and deputy in the early 1950s; and that the undersecretary of justice, José Antonio Viera-Gallo, was a young former judicial clerk and lecturer. However, their situation did not constitute isolated examples, reflecting a broader pattern.¹³ The data reflect not only the particularities of the group of lawyers but also the weaknesses of the links between the main parties of the UP and the higher segments of the legal profession.

First, they used to have a secondary position in practice, and several of them were rank and file lawyers in public agencies, such as the Comptroller's office and the legislature. Moreover, they did not have any relevant participation on the boards of the Chilean Bar Association (CHBA), where the most prominent practitioners used to congregate.¹⁴ Among them, only a few exceptions of well-reputed practitioners and already consolidated scholars escape that characterization. By the same token, the judges who were appointed to an ad-hoc commission to collaborate with the Ministry of Justice were outside the main power structures of the judicial bureaucracy, working in the provinces or relatively subaltern positions. They initially participated in the Association of Magistrates established in 1968, but lost the board elections and gradually would be relegated to a marginal place inside this once the political conflict arose, relinquishing the union by early 1972 to establish a parallel federation that incorporated all the workers of the judicial staff.¹⁵

¹² For a detailed description on the definition of social extraction, see Appendix 3.

¹³ Armando de Ramón: *Biografías de Chilenos, 1876-1973*. Op. Cit. Vol.1. p. 316. Interview José Antonio Viera-Gallo.

¹⁴ See members of the CHBA's General Board at Appendix A. 10.

¹⁵ Eduardo Novoa: "La Reforma del Poder Judicial." *Mensaje* No. 185. December 1969. pp. 600-605. Marta Harnecker Victor Vaccaro. "La Justicia es Necesariamente Clasista. Entrevista a Óscar Álvarez." *Chile-Hoy*. No. 36. February. 1973. p. 29. Interview to Alicia Rivera Herrera. In Marcos Gallardo Silva: *Intima Complacencia. Los Juristas en Chile y el Golpe Militar de 1973*. Santiago: El Periodista. 2003. p. 125.

Second, they also occupied a diminished situation inside the law school. Several of them were young professors and scholars, particularly in the University of Chile, where they tended to teach in areas like Criminal and Constitutional Law. Among them, we can notice a group linked to Professor Álvaro Bunster, who attracted a group of young lecturers on criminal law around him. Nevertheless, the evidence indicates that these left-leaning lawyers were displaced by the reform-oriented legal network described in the previous chapter, which gained the control of the agenda on the restructuring of legal education in the late 1960s.¹⁶ Manuel Sanhueza, a former Dean at the University of Concepcion law school, was the only of them who had held a directive post in the law school. But he was not a prominent scholar or practitioner and served in the government only between January and April of 1972.¹⁷ In sum, almost all of them occupied relatively secondary positions in courts, the bar, and the legal academia.

Perhaps, the sole real exception to the previous picture is provided by Eduardo Novoa Monreal, a Social-Christian lawyer who evolved towards Marxist stances during this period. Professor of Criminal Law and Legal Theory at the University of Chile, Novoa was a well-reputed advocate both in private practice and the State of Defense Council (CDE), assuming notorious cases like the extradition of the Nazi leader Walter Rauff. He was a member of the board of the bar association for a brief time in the early 1950s, Chair of the Institute of Criminal Law, member of the Institute of Chile (the most prestigious academy in the country), candidate for Provost of the University of Chile in 1970 and one of drafters of the project for a Model Criminal Code for Latin America. A prolific scholar, Novoa published several works on political and juridical matters, becoming an outstanding polemist and public intellectual by the late 1960's. In fact, he was the most influential spokesperson of the rhetoric of legal crisis at this period, delivering such discourse on diverse professional and academic forums. Considering his biography, it is not surprising to observe that Novoa became a pivotal actor of the Allende's years.¹⁸

On the whole, however, the parties of the UP did not have significant cadres acting inside the legal field before the beginning of Allende's term, and most of its politicians and social scientists used to look at the law with disdain, pointing to a mere manifestation of bourgeois fetishism and domination. Only a faction of the Radical Party that adhered to the coalition were high-profile lawyers, but their electoral weaknesses and reformist spirit relegated them to a noticeable secondary role.¹⁹ So, once Allende entered into office, the government filled many positions resorting to pro-workers' lawyers, young legal scholars, and clerks committed to the building of socialism. Many times, they were completely out of touch with the required skills, such as Graciela Álvares's case illustrates. A Communist lawyer devoted to the representation of urban workers, her expertise was mostly related to labor law and the process of unionization, shaping strong links to the Workers' Unitary Federation (CUT). In late 1970, she assumed a position as a legal advisor to the state-owned company of Laboratories and then to the Social Security

¹⁶ As explained in the previous chapter, Eugenio Velasco and the reformist network that dominated the reform to the law school at the University of Chile and other places largely disputing its predominance against Marxist legal scholars.

¹⁷ Armando de Ramón: *Biografías de Chilenos, 1876-1973*. Op. Cit. Vol.3.

¹⁸ Eduardo Novoa Monreal: *Una Crítica al Derecho Tradicional. Obras Escogidas*. Op. Cit. Cristián Villalonga: *Revolución y Ley: La teoría crítica del Derecho en Eduardo Novoa Monreal*. Op. Cit.

¹⁹ Among them, we can find Jorge Tapia Valdés, Manuel Sanhueza, René Abeliuk and Alberto Baltra.

Institute, knowing about regulatory issues. By 1972, she would be appointed as a legal counsel to the Central Bank, the organism in charge of monetary emission, state assets and foreign investment, whose jurisdiction covered some of the most complex legal and financial functions. Years later, she would recognize that she had only begun to get familiar with those topics when she started her later appointment.²⁰ Other times, the scarcity of qualified juridical expertise meant that the same person occupied several simultaneous positions within public agencies and nationalized corporations. Due to the circumstances, those lawyers moved from the margins of the legal field to the central stage of state power, bearing critical aspects of the strategy to advance toward a socialist regime.

Class Justice and the Legal Crisis as Threshold for Regime Transformation

The second aspect of this network of lawyers was a relatively common and articulated discourse on legal institutions. Such as the reformist group analyzed in the previous chapter, they underpinned the evolutionary criteria of legitimacy and an instrumental use of the law. Nevertheless, in this case, left-leaning legal professionals blended the rhetoric of the legal crisis with basic approaches to Marxism, producing a narrative that acquired its own physiognomy since about 1968 onwards. Thus, although with a less refined reading of Marxist theory than leftist social scientists, several of these lawyers would have gradually developed a kind of critical legal outlook that instilled their strategy of mobilization.²¹

For this network, the narrative of legal crisis serves as a key founding point. They undoubtedly agreed on the idea of asynchronous law and a dysfunctional juridical expertise explained in chapter 4, and, it is noteworthy to observe that Eduard Novoa Monreal was the first and most relevant spokesperson of this rhetoric. Other members of this network, like José Antonio Viera-Gallo, José Rodríguez Elizondo, and Jorge Tapia, insistently linked this discourse to the far left as well.²² In so doing, those lawyers adhered to an evolutionary criterion of legitimacy, such as the reformist law graduates at the center of the political spectrum did. This is to say, they endorsed the idea of a necessary process of advancement by which society achieves higher stages over time, asserting that legal institutions must follow the emergence of the mass society. Nevertheless, their interpretation was swayed by a Marxist hook that associated the asynchronous law with the decline of the capitalist system, proposing that social progress lead to a new collectivist mold. “Lenin asserts in his writings [...] that the socialism constitutes a superior stage of the human development, and it presupposes that this society has already transited through previous phases, the last of them before that

²⁰ Marcos Gallardo Silva: *Intima Complacencia*. Op. Cit. pp. 61-62.

²¹ See as comparison, Norbert Lechner: “Contra la Ilusión del Estado Social de Derecho.” *Cuadernos de la Realidad Nacional*. No. 10. December 1971. pp.130-160. “La Problemática Actual del Estado y el Derecho en Chile.” *Cuadernos de la Realidad Nacional*. No. 15. December 1972. pp. 15-58

²² See José Antonio Viera-Gallo: “Derecho y Socialismo.” *Conferencias sobre Enseñanza del Derecho y Desarrollo*. Op. Cit. pp. 138-145. Jorge Tapia Valdés: “Leyes de Bases y Nuevas Categorías.” Op. Cit. José Rodríguez Elizondo: “Chile, la Revolución y la Ley.” *Principios*. No. 143. 1972. Juan Bustos: “Ponencia. Crisis del Sistema Jurídico Actual en los Valores y en las Instituciones.” In, Instituto de Estudios Políticos: *Visión Comunitaria del Derecho*. Op. Cit. pp. 35-39.

superior stage is the bourgeois-democratic republic,” explained the law professor at the University of Chile Raúl Espinoza by 1968.²³ In this light, that evolutionary view set the ground to understand the origins of the legal crisis. For instance, addressing the asynchrony of legal institutions from the perspective of class contradictions, José Antonio Viera-Gallo made clear the point asserting: “What is the reason for this contradiction between the legal system and the reality? The legal system has consolidated a historic project of capitalist domination, and the social reality has become increasingly antagonistic to such a project [...]”²⁴ This Marxist stance was broadly shared within this network, even among some of the appellate justices who worked as advisory body inside the Ministry of Justice, providing a coherent account of the place of law within the dynamic of social transformation.²⁵

According to their point of view, there were several aspects of the legal institutions that constituted an obstacle to the process of social change, laying the seeds of the legal crisis. Juridical institutions were understood as a normative superstructure aimed to organize coactively society, and whose ground was oriented by the predominant interest of capitalistic production.²⁶ As a result, several features of the law would evidence both its class bias and its regressive function in maintaining the status quo. First, they stressed the role of law in masking the real relations of economic power by the means of pompous phraseology. Resembling Marx’s notion of false consciousness, they asserted that many legal concepts expressed by the statutory provision and jurisprudence only looked to protect the bourgeois values by creating the appearance of fairness and permanency.²⁷ Some of their writings, especially Novoa’s work *¿Qué Queda del Derecho Natural?* [What does it remain of Natural Law?], harshly criticized the theoretical foundations of ius-naturalism and its role in consolidating the capitalist forces under the cloak of immutable principles.²⁸ From a different angle, others authors within this stripe denounced how long-established juridical formalism finally covered the political and economic implication of law, inasmuch as current legal structures were aimed to protect vested rights.²⁹ Consequently, they would go on to say that one of the main tasks of the progressive lawyers and scholars was to unveil the supposed fetishism and to discover the underlying class struggle behind the law.³⁰

²³ Raúl Espinoza. “Derecho y Marxismo.” *Revista de Derecho Público*. No. 9. 1968. p. 273.

²⁴ José Antonio Viera-Gallo: “Derecho y Socialismo.” *Mensaje*. No 200. July 1971. p. 282. See also Eduardo Novoa Monreal: “Hacia una Nueva Conceptualización Jurídica.” *Cuadernos de la Realidad Nacional*. No. 15. December, 1972. p. 203.

²⁵ For a Marxist interpretation of social and legal process among justices, see Armando Arancibia: “Realidad del Derecho.” In Luis Felipe Ribeiro et al.: *Sobre la Justicia en Chile*. Valparaíso: Centro de Estudios de la Realidad Nacional - Ediciones Universitarias de Valparaíso. 1973. pp. 59-76. Due to the traditional reluctance of judges in taking part of active politics by this period, his testimony represents a rarity that illustrates a dormant political conflict inside the judicial bureaucracy.

²⁶ José Antonio Viera-Gallo, Jorge Precht: “Derecho a la revolución o revolución del Derecho.” [1969] *Op. Cit.* p. 80

²⁷ *Ibid.*

²⁸ Eduardo Novoa Monreal: *¿Qué queda del Derecho Natural?* [1967]. *Op. Cit.*

²⁹ José Rodríguez Elizondo’s critique on Hans Kelsen’s positivistic jurisprudence represents an important theoretical inquiry in this direction. José Rodríguez Elizondo. “La trampa del purismo en el Derecho.” *Revista de Derecho Público*. Nos 5/6. 1966. pp. 36-41.

³⁰ José Antonio Viera-Gallo, Jorge Precht: “Derecho a la revolución o revolución del Derecho.” [1969] *Op. Cit.* p. 79. José Rodríguez Elizondo: “Democracia Fetichista y Oligarquía Subrepticia.” *Revista de Derecho Público*. No. 3. 1965. pp 77-78. Eduardo Novoa Monreal: “Bases para la reforma en el area de las ciencias

Second, they pointed out that the ideological commitment of law shaped the professional hierarchy of lawyers and jurists, hindering the possibilities to advance towards socialism.³¹ Describing their view about the higher segments of lawyering, Raúl Espinoza stated that “the most prominent and prosperous men of law are devoted to representing the interest of the bourgeoisie, the private interest of the big business corporations. It could not be different in a system grounded in the private property of the means of production.”³² The same point used to be underpinned regarding jurists and legal scholarship. The members of this network all asserted that commercial law, civil law, and other similar subjects represent the most sophisticated areas of legal knowledge, in contrast to other disciplines like labor law, which were theoretically neglected. The former would concentrate the most prestigious law professors, constituting the centerpiece of legal training at the law school. Behind its sophistication and preeminence, they went on to say that an ideological stance would be hidden, since only the dominant class was interested in the complexities of trusteeship, usufructs and commercial contractual agreements that featured the most intricate issues of private law. Meanwhile, the problems of consumer protection, urban labor, or social security remained ignored by the juridical scholarship, reinforcing the subaltern place of lower and middle classes.³³ Obviously, their portrayal of the professional and scholastic hierarchy not only constituted a mere empirical observation, but also a self-description of their own place in the legal field and the political process.

Third, their explanation of the class bias within the legal system drove to a conflict with higher courts. As a corollary of their interpretation of law, left-leaning lawyers addressed their blame on the role of the judiciary. Their condemnation transcended the broad criticism against judicial delays and the lack of access that were frequent since the mid-1960s onwards, becoming a direct attack against the supposedly conservative ideological commitments of the justices. In the late 1967, socialist congressmen, advised by their legal advisors such as Juan Bustos, introduced a constitutional impeachment against all the Justices of the Supreme Court.³⁴ Originally motivated by a sentence issued in a case on the apology of violence against the socialist senator Carlos Altamirano, the impeachment was broadened to address several judicial decisions on internal security, labor law and the deference on executive legislation, among other matters. In doing so, the socialist congressmen claimed a supposedly judicial mischief, and finally claimed that the Supreme Court applied a biased justice against the poor, constituting “a stumbling block to the social, economic and political

jurídicas.” In Eduardo Novoa Monreal: *Una Crítica al Derecho Tradicional. Obras Escogidas*. Op. Cit. pp. 401-406.

³¹ To whom Novoa called “the highest priest of the official law.” Eduardo Novoa Monreal: “El difícil camino de la legalidad.” *Revista de la Universidad Técnica del Estado*. No. 7. March, 1972. pp. 9-11.

³² Raúl Espinoza: “Derecho y Marxismo.” Op. Cit. p. 273. It is noteworthy they asserted that point even when the administrative state gathered some of the most competent and prestigious advocates and private lawyering was structured toward small family law firms. Their point perhaps reveals an increasing professional segmentation by the mid-1960s.

³³ Eduardo Novoa Monreal: “La crisis del sistema legal chileno.” Op. Cit. See also his: “Hacia un Nuevo Derecho.” *Mensaje* No.173. October. 1968. pp. 488-489.

³⁴ Aniceto Rodríguez Arenas: “Acusación Constitucional del Partido Socialista de Chile en contra de la Corte Suprema.” *Diario de Sesiones del Senado*. Sesión No 12. October 24th, 1967. pp. 410-446.

advance of the people as a result of its regressive interpretation of law.”³⁵ Although the impeachment was refused by the Chamber of Deputies, an open struggle between the left-leaning lawyers and the higher courts was already set.³⁶ The conflict reached one of its peaks during the presidential campaign of 1970 when Eduardo Novoa published a widespread article accusing the judges of applying a class justice.³⁷ After studying about 40 cases of different matters, ranging from labor law to taxes and constitutional rights, Novoa concluded that the justices would have left out its traditional exegetic approach, innovating in favor of powerful litigants. He would finally assert: “Such power, particularly the Supreme Court, is a staunch supporter of the social, economic and political current status, and condemn those who struggle to bring social change. To be part of the judiciary, it is required to adhere to traditionalist principles and social conformism.”³⁸ In response, the Chief of the Supreme Court, Ramiro Méndez Brañas, would directly answer the point during his annual speech, resorting to their traditional pledge to legality as the ground of the rule of law.³⁹ Inasmuch as political and economic conflict increased over time, left-leaning lawyers and politicians would continue delivering their critique against higher courts, particularly regarding the project of neighboring tribunals and the debates on nationalization of industries⁴⁰

By and large, they interpreted the quandary of the legal system as determined by how the class struggle unfolded. For them, chronic underdevelopment, monetary inflation, and the increasing social conflict would evidence the weariness of the capitalist system, reflecting its twilight. When possible, the bourgeoisie would have tried to bargain with other social forces to secure individualist values, producing chaotic statutory

³⁵ *Ibíd.* p. 413. For a complete account on the facts and the process of impeachment, see: Andrés Amunátegui Echeverría. “El protagonismo político del poder judicial entre los años 1965 y 1973.” *Revista de Derecho Pontificia Universidad Católica de Valparaíso*. No XXXVI. 2011. pp. 635-644. See also Jaime Faivovich: “La Justicia Enjuiciada.” *Punto Final*. No 41. November 1967. pp. 4-5.

³⁶ The Supreme Court answered the charges asserting its “privative jurisdictional functions” and that “before courts, there were only poor and rich of arguments and principles of justice.” *Oficio Corte Suprema. Sesiones Extraordinarias de la Cámara de Diputados*. No 16. November 14, 1967. pp. 1452-1473. For the parliamentarian report and debates related to the impeachment see: *Sesiones Extraordinarias de la Cámara de Diputados*. Nos 16 and 17. November 14, 1967. pp.1426-1446. 1516-1552. 1562-1608.

³⁷ Eduardo Novoa: “¿Justicia de clase?” *Mensaje*, No 187, 1970. pp. 108-117.

³⁸ *Ibíd.* p. 117.

³⁹ “Now, it is an axiom that law must evolve with real social changes, but the renovation of legal intuitions should be carried through statutes. It is not possible to admit a direct or indirect violation of legality, since without law there is no justice among men, and without justice there is no freedom, which is the supreme value of collective life...” Ramiro Méndez Brañas. “Discurso de inauguración del año judicial de 1970”. *El Mercurio*, March 2nd, 1970. p. 30. Novoa would respond, and more radical elements of the Popular Unity claimed the necessity to reform the judiciary, even by bringing justices to the firewall. See Cristián Villalonga, *Revolución y Ley...* Op. Cit. pp. 101-102.

⁴⁰ In August of 1970, it was established a Committee for the Defense of Human Rights headed by the Union leader Clotario Blest and some lawyers such as Arturo Yussef Durán and Jorin Pilowsky Roffe. They counted on the support of the Department of Public Administration of the School of Law at the University of Chile, and also Eduardo Novoa Monreal. The members of the committee sent a letter to the Supreme Court protesting against different cases in which the police would have batter leftist militants during Frei’s term, trying to put in evidence the judicial bias. Jaime Faivovich: “No Se hará Justicia.” *Punto Final*. No. 109. July 1970. pp. 6-8. *Punto Final*. No. 110 August 1970. p. 5. and No 112. August 1970. p. 25. In January of 1971, another wave of criticisms against the judiciary emerged as response to the absolution of Senator Raúl Morales Adiazola, who was alleged to participate in the plot to murder General Schneider. Jaime Faivovich: “La suprema: guarida de la sedición.” *Punto Final*. No. 122 January 1971. p.4.

provisions.⁴¹ Other times, they would have employed law to repress dissidents and popular forces.⁴² Therefore, these left-leaning lawyers asserted that transformation of the socioeconomic infrastructure would erode the legitimacy of juridical institutions and its ability to conduct social process, triggering a legal crisis. Overall, the main upholders of this interpretation affirmed that this critical juncture constituted an opportunity for regime transformation. For example, José Antonio Viera-Gallo and Jorge Precht, two young law graduates and left-leaning scholars, eloquently addressed that point by 1969, explaining:

Once the supporting ground of the dominant classes was undermined, because they were unable to guide the country to national project of development, these became parasite groups. Then, the class struggle rise into the social life and the formal law is turned into an instrument of oppression. Throughout the society, there is expanded a consciousness about the arbitrariness of power, and the beginning of an authentic revolution is laid.⁴³

As the corollary, several members of this network explicitly proposed an instrumental use of the law to advance in the midst of that milieu. In effect, the most theoretically knowledgeable among them were influenced by the Italian thinker Umberto Cerroni, who rediscovered young Marx's writings to suggest that law performed an important role as an ordering social device. Novoa, Viera-Gallo, and Rodríguez Elizondo knew his writings and gradually followed a similar neo-Marxist approach, departing from scientific materialism and the traditional disdain for the law.⁴⁴ Over time, several of the lawyers inside this network began to blend the interpretation of young Marx with Hans Kelsen's positivistic jurisprudence. In so doing, they claimed that the law would not only be conceived as a top-down command to favor bourgeoisie, but also, it was a set of principles and formal techniques that can be employed with an opposite sign. From their perspective, the neutrality of legal formalism offered the openings to further the socialist agenda, at least in some of its first steps to regime transformation.⁴⁵ Novoa directly made the issue clear in the following terms:

⁴¹ Eduardo Novoa Monreal. "Renovación del Derecho." Op. Cit.

⁴² Eduardo Novoa Monreal. "Derecho justicia y violencia." *Mensaje*. No 174. November 1968 Pp. 568-572. José Rodríguez Elizondo: "Violencia institucional." *Revista de la Universidad Técnica del Estado*. No 4. 1970. pp. 77-80.

⁴³ Jorge Precht - José Antonio Viera Gallo: "¿Derecho a la Revolución o Revolución del Derecho?" *Mensaje*. No 177. 1969. p. 80.

⁴⁴ In particular, Chilean lawyers knew Neo-Marxist readings, which followed Lois Althouser's work. Usually, this re-elaboration would be known through Umberto Cerroni's oeuvre, an Italian legal philosopher who, later, would take part of the alternative use of law movement. Umberto Cerroni: *Marx y el Derecho Moderno*. Buenos Aires: Jorge Álvarez Editor. 1965. See: Cristian Villalonga: *Revolución y Ley*. Op. Cit. pp. 167-177. José Antonio Viera-Gallo: "Derecho y Socialismo." Op. Cit. p. 284.

⁴⁵ "The law is a science that possesses some principles, methods, and techniques that can be employed both in an individualistic order and a socialist one." Raúl Espinoza: "Derecho y Marxismo." p. 273. See also Raúl Espinoza: "Legalidad y Revolución." *Revista de la Universidad Técnica del Estado*. No. 6. December 1971. pp. 37-43. Jorge Tapia Valdés. "Institucionalidad, Legalidad y Transición al Socialismo." Op. Cit. pp. 20. 28. José Rodríguez Elizondo: "Hacia la conquista del Derecho Popular." *Cuadernos de la Realidad Nacional*. No 15 1972. pp. 191-202.

We do not postulate that the law can be a key agent of social transformation or a revolutionary weapon. But we think that is a mistake of Marxism [...] this lack of attention to this instrument of social organization –we think it is not more than that–. The Law is valuable to implant a socialist society and to channel it toward a new phase, far away in the future, of a society without a state and without law.⁴⁶

Although all of them concluded that the final target of their mobilization was the construction of a true socialist regime, they were not clear about the characteristics of this later one. In fact, their writings about this point were obscure or naïve. On one hand, some of them, like Raúl Espinoza and José Antonio Viera-Gallo, supported expressly a proletariat dictatorship, which was understood as the control of political power by the working class during the transition to a socialist society.⁴⁷ On the other hand, they asserted that such a political dominance would not mean the abolition of citizens' rights or control of the arbitrariness, trusting in the possibilities of the juridical institutions to channel the limits of public power.⁴⁸ In any case, their goal to completely transform Chilean society according to a Marxist mold was shared by all the members of this group, who looked to renew completely economic and legal institutions. Armando Arancibia, an appellate justice who was committed in the commission of reform at the Ministry of Justice, illustratively addressed that “to conceive a socialist state under the bourgeois legality it would be like play a chess match with the rules of the dice game.”⁴⁹ Reviewing the historical sources of the period, it is not surprising to find that many of them were invigorated by their admiration for Soviet, Cuban and Eastern-European legal system, especially in areas like criminal law, state property, and political duties.⁵⁰ Neither is it unexpected to observe that they would distinguish themselves in front of reformist lawyers at the center of the political spectrum, whose debates on legal methodology were seen as a way to elude social conflict or a clear manifestation of bourgeois developmental positions.⁵¹

⁴⁶ Eduardo Novoa: “Hacia una Nueva Conceptualización Jurídica.” Op. Cit. p. 204.

⁴⁷ José Antonio Viera Gallo: “El Segundo Camino Hacia el Socialismo: Aspectos Institucionales.” *Cuadernos de la Realidad Nacional*. No 15. 1972. pp. 152 -173. Raúl Espinoza: “Derecho y Marxismo.” Op. Cit.

⁴⁸ Raúl Espinoza: “Derecho y Marxismo.” Op. Cit. pp. 279-193.

⁴⁹ Armando Arancibia: “Realidad del Derecho.” Op. Cit. p. 62.

⁵⁰ See: Aida Figueroa Yávar: “El Régimen de Propiedad en la Unión de Repúblicas Socialistas Soviéticas.” *Revista de Derecho Público*. No. 3. 1965. pp. 27-39. No. 4. 1965. pp. 11-21. Nos. 5/6, 1966. pp.18-36 Sergio Politoff: “El Nuevo Código Penal de la República Democrática Alemana.” *Separata Revista de Ciencias Penales*, Tomo XXIX, 1970. Jerdi Jodlowzky (translation): “Principios de Procedimiento Civil Polaco.” *Revista de Derecho. Universidad de Concepción*. No. 135. 1966. pp. 3-27. V.K. Poutchinshi (translation) “Principios de Procedimiento Civil en la URSS y en las Repúblicas Federadas.” *Revista de Derecho. Universidad de Concepción*. No. 144. 1968. pp. 54-65. Eugene Husar (translation): “Las Modificaciones introducidas en el procedimiento penal en la República Socialista Checoslovaca.” *Revista de Derecho. Universidad de Concepción*. No. 151-152. 1969. pp. 13-28. Borislac Blagojevic (translation): “Introducción a los derechos socialistas.” *Revista de Derecho. Universidad de Concepción*. No. 155. 1971. pp. 13-28. Francisco Fernández: “Los Tribunales Populares en Cuba Socialista.” *Revista de Derecho Público*. No. 11. 1970. pp. 317-323.

⁵¹ Interview José Antonio Viera Gallo. Interview Hugo Frühling. Eduardo Novoa Monreal: “Carta de respuesta a la invitación para incorporarse al Instituto de Investigación y Docencia Jurídica.” In. Eduardo Novoa: *Una Crítica al Derecho Tradicional*. Op. Cit. pp. 412-413.

Indeed, the Marxist reading of the legal crisis condensed several concerns, such as their views on social evolution, class justice, and the prospects for legal instrumentalism, seeming especially attuned to the moment the UP lived at that time. As we will review next, both the process of nationalization of the economy through administrative regulations and the efforts to produce a new legality would be attuned to this rhetoric. In the end, this offered a sound narrative for left-leaning lawyers who moved from the margins of the legal system to participate in the contest to transform the state.

Expropriating Industries through Legal Loopholes: Creating Popular Power.

One of the main targets of this network of lawyers was to advance in the process of nationalization of the economy, which was seen as a key piece to weaken the bourgeoisie and to mobilize workers in the building of socialism.⁵² For that purpose, they acted inside different administrative agencies and relied upon the instrumental version of law anchored in positivist jurisprudence. The objective of this section is to provide a general overview about how they used the opportunity brought by the elements of the legal crisis—such as the chaotic legislation and the excessive formalism of legal institutions—to advance their agenda of regime transformation. Thus, this section does not intend to present a detailed account of the process or a dogmatic analysis of legal provisions employed in this direction, a task that I have already done in other publications outside of the present dissertation.⁵³

In late 1970, Eduardo Novoa became the most influential legal advisor of Salvador Allende, appointed as Head of the State Defense Council (CDE in Spanish), the agency in charge of representing the state interest in litigation. In that position, Novoa designed the strategy to incorporate industries to the state property, following the general scenario explained at the beginning of this chapter. Novoa counted on his long experience in analyzing the contradiction and chaos of the statutory order, arguing that the lack of a clear orientation of this one allowed a progressive reading of some norms that were favorable to the advancement of a socialist regime.⁵⁴ By the end of the year, he conceived a tactic to nationalize the economy, bypassing congressional deliberation, as the parties of the Popular Unity had agreed. Novoa concluded that an old executive decree law that granted the Executive with the power to require, intervene, and expropriate business in cases of scarcity could serve as a touchstone of this process (DL 520 of 1932). Additionally, he imaginatively asserted that the National Development Corporation's power to buy stocks could be employed to acquire foreign companies, banks, and big industrial complexes. Considering the general scope of this strategy, and the tortuous nature of Novoa's interpretation, all the different provisions employed for these purposes would be popularly known as legal loopholes [*resquicios legales*].⁵⁵

⁵² Norbert Lechner, Victor Farias: "Por la socialización de la Producción para una Nueva Institucionalidad." *Cuadernos de la Realidad Nacional*. No 11. 1972. pp. 199-209.

⁵³ Cristian Villalonga: *Revolución y ley: La teoría crítica del Derecho en Eduardo Novoa Monreal*. Op. Cit.

⁵⁴ Eduardo Novoa: "Carta sobre Resquicios Legales." *El Mercurio*. October 4th, 1972. p. 3.

⁵⁵ Eduardo Novoa Monreal: "Vías legales para avanzar al socialismo." *Revista de Derecho Económico*. No 33-34. October, 1971. pp. 27-40. See also his: *Los Resquicios Legales. Un Ejercicio de Lógica Jurídica*. Santiago. BAT. 1992. pp. 49-59.

Naturally, Novoa did not act alone in advancing this plan. He designed the tactic to employ juridical instrumentalism in the middle of statutory disarray, and strongly supported favorable reports inside the board of the State Defense Council. However, several other left-leaning law graduates performed critical roles. In particular, some of the lawyers of the Directorate of Industry and Commerce (DIRINCO) and the National Development Corporation (CORFO) actively participated in the judicial defense of these procedures, and later, in the coordination of the industries incorporated into state ownership. The main of these was a group led within the CORFO by José Rodríguez-Elizondo, one of the main polemicists on the idea of legal crisis and class justice. There, he was appointed as Chief of the Legal Department, and then as Vice-President of the Corporation. Additionally, other lawyers of the agency played significant functions such as Eduardo Jara Miranda (chief legal counsel who actively involved in the bank nationalization), Angel Castro and Héctor Pavez Lazo (these two latter ones in charge of the judicial defense jointly with some attorneys of DIRINCO).⁵⁶ Although non-left lawyers were also at these agencies by this time, the group identified above assumed the most important tasks to support the strategy of economic nationalization. Their coordinated action was facilitated since both CORFO and DIRINCO were under the same dependency of the Ministry of Economy headed by Pedro Vuskovic.

The central path to nationalize the economy was to acquire the control of private business by extraordinary means provided by the DL 520, issued during a socialist de-facto rule in 1932. This provision established a complete system of economic surveillance originally designated to serve in situations of shortage and public calamity, establishing a special public agency for that purpose. Along the decades, this had evolved to be complemented by powers of price-fixing and to requisite, intervene and expropriate industries in specific cases of strikes and lack of production of some basic supplies. Additionally, the strategies were used by previous governments to oversee the economy, but nobody thought they could be employed for a general strategy to bring industries into state property. Even though Congress would not pass legislation to nationalize industries, Novoa knew that these powers were in force and that the courts, the Comptroller, and other administrative agencies would not refuse their validity within the margins of legal formalism.

In order to use the said provisions; this strategy needs the approval of several institutions. The usual procedure needed that the Directorate of Industry and Commerce (DIRINCO) to usher an order of requisition; intervention or expropriation, which later must be supported by a favorable report of the State Defense Council and the Ministry of Economy. Since the DIRINCO and the Ministry were in hands of supporters of the Popular Unity, the door was controlled by the board of the State Defense Council (CDE), which was composed of eighteen prestigious lawyers appointed by the last government and who usually possessed different political views.⁵⁷ Since the Council depicted itself as a technical-juridical agency, the boards concurred in that the norms were valid, only reviewing the motivating facts described by DIRINCO. Afterward, the Comptroller of the

⁵⁶ Carlos Monreal Blanco (studies department), Fernando Abraham Valenzuela Rivera (secretary of the legal office) also were other lawyers of this group. See Interview Héctor Pavez Lazo. In Manuel Salazar Salvo. *La Lista del Schindler Chileno. Empresario, comunista, clandestino*. Santiago. Lom. 2014. At DIRINCO, we can find a different cluster of lawyers working in litigation, like Carlos Herrera.

⁵⁷ Cristián Villalonga: *Revolución y Ley*. Op. Cit. p. 121.

Republic passed the executive decree that finally used to be published in the official newspaper.

In concrete terms, the DL 520 provided different paths towards economic nationalization. First, it established powers to expropriate industries in two cases a) when an establishment was in recess, and b) when those failed to fulfill the production of supplies in the quantities and qualities ordered by the executive authority.⁵⁸ Second, the decree also authorized the Executive to appoint a special master (*interventor*) and to size establishments that elaborated basic supplies when these latter ones paralyzed their labors, accumulated stocks for black-markets or failed to fulfill with production quotes. Despite their temporally juridical nature, the intervention and requisition implied that the state assumed the administration of the private businesses, and were said to be the first step to incorporate definitively them into state ownership.⁵⁹

Besides the specific legal paths used by the UP for economic nationalization through the DL. 520, the systematic analysis of the cases evidences an ample array of situations in which this mean was used. In some of them, particularly at the beginning of Allende's term, the decree was employed to expropriate and request a handful of industries that began to decapitalize their investments and reduced their activities as a result of the political uncertainty. The expropriation of the fabric manufacture Bellavista Tomé, in December of 1970, is best known of them. Located in the surrounding area of Concepción, Bellavista Tomé was one of the most important pieces of an industrial cluster of corporations devoted to the production of fabrics in the region. By the end of 1970, his owner had drawn significant amounts of money, pushing the industry to stop its production, insolvency and a situation of bankruptcy. Given that, the government ushered the first decree to expropriate industries in this period, taking control on the establishment, merchandise, and businesses. The authorities recognized this was part of a major plan to nationalize great industrial monopolies, following the UP program, but delayed the publication of the norms that it was employing to advance the taking for several weeks, awakening the complaints and concerns of the business groups and the opposition.⁶⁰ Over time, this model of nationalization would be employed in a handful of other similar situations along the UP' years.

The most common path to nationalize industries, however, was related to regulatory asphyxia and pro-government unions mobilization. Since early, the UP set some target industries that intended to incorporate into state ownership by the mean of expropriation, intervention, or requisition.⁶¹ To fulfill such a goal, it usually fixed quotes of production that were higher than what the industries can produce according to their

⁵⁸ Eduardo Novoa Monreal: "Vías legales para avanzar al socialismo." Op. Cit. See also: José Rodríguez Elizondo, Joaquín Silva Latorre: "Procedimientos Expropiatorios en el Decreto-Ley No 520 de 1932." *Revista de Derecho Público*. No. 12. 1971. pp. 97-115.

⁵⁹ In the case of expropriations, the compensations were not paid immediately, waiting for a further judicial procedure to determine the amount. Meanwhile, the cases of interventions and requisitions did not provide any compensation to the owners at all, since the state did not get the property of the establishment, even when the measures did not have a set deadline. Mergers were not allowed. Eduardo Novoa Monreal: *Los Resquicios Legales*. Op. Cit. pp. 49-59. Cristian Villalonga: *Revolución y Ley...* Op. Cit. pp. 121-135.

⁶⁰ Eduardo Novoa Monreal: *Los Resquicios Legales*. Op. Cit. pp. 62-66. Enrique Brahm. *Propiedad Sin Libertad: Chile 1925-1973. Aspectos relevantes de la legislación socializadora*. Santiago: Universidad de Los Andes. pp. 239-240.

⁶¹ Enrique Brahm. *Propiedad Sin Libertad: Chile 1925-1973...* Op. Cit. pp. 232-33.

size, whose fulfillment authorized further requisitions and interventions. In several cases –such as in the expropriation of the fabric industry Hilandería Andina in October of 1972–the State of Defense Council concluded that the quotes of production imposed by the government were impossible to be fulfilled in consideration to the size of the establishment (albeit it did so after the order of requisition was already enforced). In other situations, like for Hirmas Industries took in September of 1971, the selling price set by DIRINCO were simply below the costs of production.⁶²

In the same light, an increasing number of strikes frequently implied the extended standstill of labors, motivating requisitions and interventions as well. Frequently, the workers' unions that were controlled by adherents to the Popular Unity parties used to act in coordination with DIRINCO and the Ministry of Economy. It was not uncommon that the Minister or other higher officials publicly indicated that the industries of a productive area or some establishments should be incorporated into the social property area. After that, the unions mobilized their members in a strike to accelerate the procedure, asking for the early intervention or requisition of the industry. Then, the government used to requisition the production, and some days later, took the control of the complete establishment. Such is the case of the Metal-Mechanic Industry CIMET, Monarch, Cement Melon, Fanaloza and a long etcetera.⁶³ Other times, however, the pressures for nationalization came from bottom up. For instance, this is the situation of the Yarur Textile industry, one of the largest cotton mills of the Santiago that was requested in April of 1971, after its workers carried out a walkout and demanded to take the control of the industry to free themselves of “the capitalistic yoke.”⁶⁴ These seizures were the hallmark of left unions during this period, which attempted to create a popular power at the social basis. It is not surprising, then, that labor strikes and the employment of the DL 520 became the most common path to bring industries into state ownership during the UP's rule. Nevertheless, it is fair to say that it also got out of control and that the administrative agencies finally could not oversee several of those seizures or to coordinate their production. Although the original target of this policy were the great textile, iron and manufacture industries –accused to represent monopolies–, empirical evidence indicates that scarcity and worker's mobilization carried out their spread to other minor business, such as bakeries, candy shops, furniture stores, newspapers publishers, and the like.⁶⁵

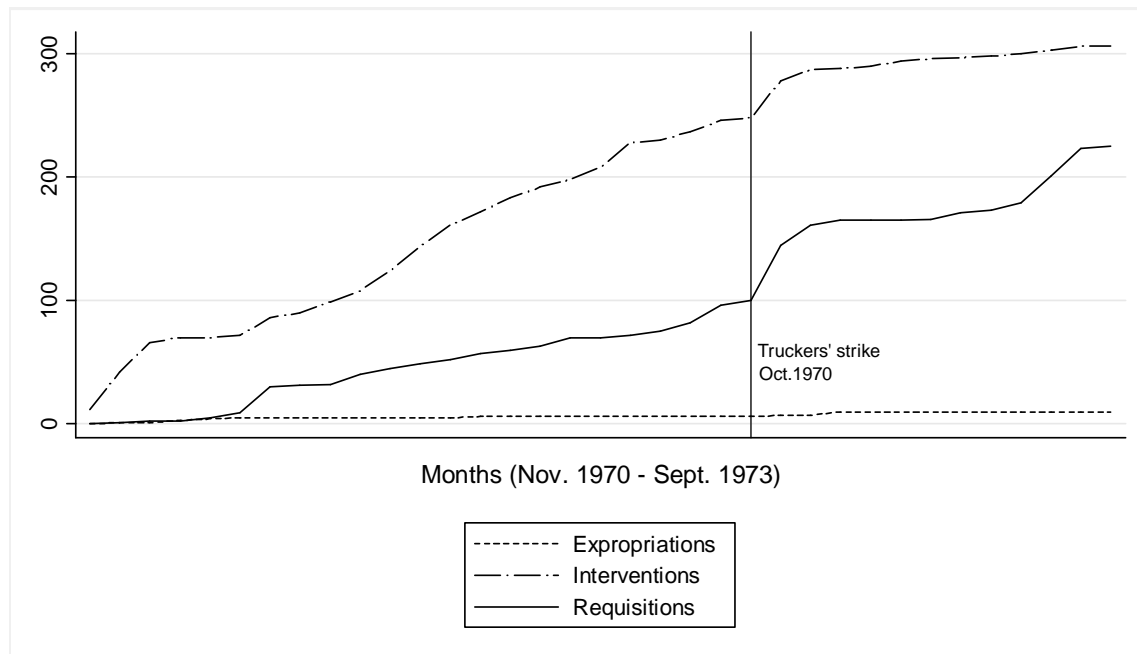
⁶² Gonzalo Vial. *Consejo de Defensa del Estado. 100 Años de Historia*. Santiago, w/e. p.83

⁶³ Cristián Villalonga: *Revolución y Ley...* p. 130.

⁶⁴ Peter Winn: *Weavers of Revolution: The Yarur's Workers and the Chile's Road to Socialism*. New York: Oxford University Press. 1986.

⁶⁵ Stefan De Vylder: *Allende's Chile. The Political Economy of the Rise and Fall of the Unidad Popular*. New York: Cambridge University Press. 1976. pp. 142-144.

Figure 5.1. Takings by mean of D.L. 520 of 1932 (per number of trading posts)



NOTE: Takings minus devolutions calculated by month. SOURCES: Instituto de Economía. Universidad de Chile: *La Economía Chilena en 1972*. Santiago, 1973. *Diario El Mercurio*. *Diario Oficial*.

Figure 5.1 shows how the aggregate level of this kind of measures against commercial or industrial establishments increased since late 1970 until the overthrow of Allende in September of 1973. Although their number steadily rose, the evidence indicates that they also followed the fates of the political process. For example, the number of these measures substantively increased during the movements against Allende, like the truck strike of October of 1972 and the failed putsch of June of 1973. The data also indicates that intervention and requisitions clearly outnumbered expropriations, even when the former ones were less formalized procedures that only constituted a nationalization in the facts.⁶⁶ As we will see at the end of this chapter, a minor number of these measures would be reversed along the sharp conflict with other actors in the legal field, such as courts and the Comptroller.

A different path to nationalize economy, other than the aforesaid DL 520, was provided by the buying power of the National Development Corporation (CORFO in Spanish). Initially purposed as an agency of planning and developmental promotion, this had the faculty to acquire stocks of private industries, covering all the possible areas of production. Following the strategy designed by Novoa, and supported at the CORFO by José Rodríguez Elizondo and Eduardo Jara Miranda, the government employed such a faculty mainly to buy stocks of banks, mineral deposits and the establishment of foreign industries like Bethlehem Steel, RCA Victor, and ITT. By December of 1970, Allende

⁶⁶ A careful review of the data reveals that the UP formally expropriate only 10 industries during its term. *Diario Oficial* November 1970- September 1973.

announced that the government would expropriate banks and 91 priority corporations, but temporarily, the CORFO would be available to buy their stocks directly to the stakeholders as a way to speed up the process.⁶⁷ Furthermore, the government accentuated the regulation on the industries that would be expropriated and withdrew the state savings from the private banks. In quite a few occasions, it also bought stocks of companies that already were intervened or requested.⁶⁸ Along the months, the strategy meant that the state acquired the control of about the 90% of banks and that numerous key industries were incorporated into state ownership, like the Iron Pacific Corporation (CAP), the Chilean Mining and Chemistry Corporation (SOQUIMICH), the South American Shipping Company (CSV), publishers (e.g. Zig-Zag) coal deposits and gas distributors. At last, the law of expropriation that was promised by Allende at the beginning of his government was not introduced to Congress.⁶⁹

The Executive also employed other means to advance substantively in the constitution of a larger state or mix property of the means of production, which largely exceed the scope of this chapter: the advancement of land reform and the nationalization of copper mining. Due to the increasing peasant's mobilization, the government accelerated the process of land reform through expropriations, intervening about 30 agrarian cooperatives as well. By September of 1973, the UP had expropriated about 6 million hectares, more than doubling up the amount of terrain incorporated to the land reform during Frei's rule. Very frequently, this advancement of the land reform was associated with agricultural workers' seizures of land that were confirmed by following administrative resolutions that employed the legislation passed during Frei's rule before 1970.⁷⁰ By the same token, in July of 1971, the Congress amended the constitution to nationalize outright the large copper mines in hands of American Corporations. These latter ones did not receive compensations, which were subtracted from excessive earnings that would have made in the prior years. Again, Novoa would perform a critical role, being the main drafter of the project of constitutional amendment and head of the litigation team that represented the Chilean state against American corporations' lawsuits at the international level.⁷¹ Both land reform and copper mining takings during Allende's years heavily relied upon extra-legal action or directly on the political process, and were not chiefly related to the process of juridical mobilization analyzed through this chapter.

The nationalization of industries was the ferment for a policy to renew industrial relations. Many establishments that were expropriated, bought, requested and intervened re-organized their system of production towards labor management. As a matter of fact, President Allende and the Central Workers' Union (CUT) signed an agreement to organize this issue in December of 1970, trying to set specific protocols to structure their

⁶⁷ For that purpose, the Executive disposed a line of credited bestowed to the CORFO through the Central Bank and a buying mandate to the State Bank. See Eduardo Jara Miranda: "La Nacionalización de la Banca." *Cuadernos de la Realidad Nacional*. No 15. 1972. pp. 278- 289.

⁶⁸ Instituto de Economía. Universidad de Chile: *La Economía Chilena en 1972*. pp. 127-131.

⁶⁹ Cristián Villalonga: *Revolución y Ley...* pp. 137-139.

⁷⁰ Stefan De Vylder: *Allende's Chile. The Political Economy of the Rise and Fall of the Unidad Popular*. Op. Cit. pp. 179-185.

⁷¹ For an overview of the process, see: Cristián Villalonga: "Eduardo Novoa Monreal y el Proceso de Nacionalización del Cobre en Chile 1970-1973: la Argumentación Jurídica sobre la Estatización de los Medios de Producción." *Bicentenario. Revista de Historia de Chile y América*. Vol. 7 N° 1 2008. pp. 143-178.

participatory role, and Allende sent a legislative bill on the same topic in July of 1972.⁷² Moreover, the CORFO wanted to coordinate their production by the mean of planning. However, even though the government and CUT attempted to oversee workers' role, they were unable to control their process of mobilization and production, which gradually got aligned to the efforts to create a popular power at the grassroots, as we will see below.⁷³ Obviously, each of these processes of economic nationalization and industrial restructuring exceeds the goals of this chapter, but their indispensable reference helps to comprehend the broadness and scope of the UP's policies.

By late 1971, Allende boasted the achievements in advancing the formation of a state property area, recognizing that the policy of loopholes presented an undeniable success.⁷⁴ Indeed, the nationalization of the economy through the DL 520 and the CORFO buying power had a special place in this strategy. José Antonio Viera-Gallo interpreted such a first success addressing: "the contradiction of the bourgeois legality, which is originated in the tug of war of the class struggle, has allowed the advancement of several significant structural changes employing such legality, resorting to their frameworks and principles."⁷⁵ At last, for left-leaning lawyers, these means embodied the possibilities of juridical instrumentalism in the midst of statutory disarray and positivistic legal mindset, opening the gates to advance toward a socialist regime.⁷⁶

Producing a New Legality

Besides the efforts to transform the economy, the UP proposed important modifications to the legal institutions as a way to directly advance to a new model of the state. In the early 1971, the Ministry of Justice set a document with the basic guidelines for an ambitious program of legal and constitutional reforms. This argued that these not only started from the analysis of the inadequacy of law to social needs—an idea that resembles the core of the rhetoric of the legal crisis—but also considering that this was constituted by "structures serving a system of exploitation."⁷⁷ The program comprised subjects like the radical transformation of the political architecture of the country, the modification of the labor procedure, the restructuring of the judicial and penitentiary organization, the establishment of a service of legal aid, and the change in the criminal

⁷² Presidencia de la República – Central Única de Trabajadores: "Normas para la participación de trabajadores en el área social y mixta." In Víctor Farías (ed.): *La izquierda chilena (1969-1973). Documentos para el estudio de su línea estratégica*. Berlin: Wissenschaftlicher Verlag Berlin; Santiago: Centro des Estudios Públicos, 2000. Vol. 2. pp. 822-836. "Proyecto de Ley sobre la participación de los trabajadores en el área social y mixta." Ibid. Vol. 4. pp. 2668-2670.

⁷³ Juan G. Espinoza, Andrew Zimbalist: *Democracia Económica. La participación de los trabajadores en la industria chilena. 1970-1973*. Mexico: Fondo de Cultura Económica. 1984.

⁷⁴ Salvador Allende: "Discurso celebración primer año de gobierno." November 4th, 1971. Víctor Farías (ed.): *La izquierda chilena (1969-1973)*. Op. Cit. Vol. 2. pp. 1128.

⁷⁵ José Antonio Viera Gallo: "Problemática Institucional en la Vía Chilena." In Lelio Basso et al.: *Transición al Socialismo y Experiencia Chilena*. Santiago: Centro de Estudios Socioeconómicos. Centro de Estudios de la Realidad Nacional. 1972. p. 81.

⁷⁶ Eduardo Jara Miranda: "La Nacionalización Bancaria." Op, cit. p. 280. Raúl Espinza Fuentes: "La Contraloría General y el Proceso de Cambios." *Revista de la Universidad Técnica del Estado*. No. 8. 1972. pp. 21-23.

⁷⁷ Ministerio de Justicia: "Líneas Básicas de la Política Jurídica de la UP." In Víctor Farías (ed.): *La izquierda chilena (1969-1973)*. Op. Cit. Vol. 2. p. 639.

and family law, among several others. Additionally, it promised to employ new methods of social sciences to direct its analysis.⁷⁸ All these proposals made an attempt to build a new legality that overcomes the capitalistic relations of power.

The main promoters of legal reform were organized by the Ministry of Justice. Its several heads during the UP's government—and especially the undersecretary José Antonio Viera-Gallo—led the coordination to renovate the juridical field. The main collaborators in such a task were the above-mentioned group of mid-level judges that were incorporated into an ad-hoc commission at the Ministry. These initially counted with the authorization of the Supreme Court and openly began to promote their views in favor of a socialist turn inside the Association of Magistrates by the late 1970.⁷⁹ Some of them possessed strong left-leaning inclinations, like Armando Arancibia, Alicia Herrera, and Óscar Álvarez.⁸⁰ Others, such as the justice Alonso de la Fuente, approached from a more traditional perspective on the crisis of the judiciary and looked for a more moderated standpoint.⁸¹ Although initially the Ministry attempted an overall transformation, such as the said guidelines asserted, the commission was focused on the restructuring of the judicial apparatus. Other subjects, like the critical analysis of the criminal legislation and the project of unicameral Congress, were in charge of supporting law professors or other lawyers at the governmental circles.

In concrete terms, the UP attempted to produce a new legality chiefly in three areas: access to judicial services, popular empowerment in quotidian dispute resolution, and a new political architecture. Firstly, the commission focused its work on several projects that tried to overcome the poor's institutional barriers to access to justice, one of the targets of the criticism against the legal system—and particularly on courts—. For instance, the UP pressed the Supreme Court to order that lower-rank judges hold sessions of dispute resolution in working neighborhoods by late 1971 (*Audiencias Populares*). Accordingly, some judges organized such sessions to resolve small grievances without the assistance of lawyers, but their caseload was small. Moreover, since they lacked institutional resources and were expected to keep normal functions in their previous seats, judges' participation was negligible.⁸² In a different realm, the Ministry elaborated a project to create a public service of legal aid by the end of 1972 (*Servicio Jurídico Nacional*), trying to end up with the subsidies given to Chilean Bar Association and reducing the influence of this latter one in the organization of the service.⁸³ In the same light, it proposed a major reorganization of the labor courts, intending to establish more

⁷⁸ Ibid.

⁷⁹ According to one of the members of the group, were the judges themselves who approached to Allende in the days after the presidential election, offering to work for the renewal to the judiciary. They would be known in the courts halls as the committee of the UP. Alicia Herrera Rivera. "Interview." In Marcos Gallardo Silva: *Intima Complacencia*. Op. Cit. pp.

⁸⁰ Armando Arancibia: "Realidad del Derecho." In Luis Felipe Ribeiro et al: *Sobre la Justicia en Chile*. Op. Cit. pp. 59-76. Marta Harnecker, Victor Vaccaro. "La Justicia es Necesariamente Clasista. Entrevista a Óscar Álvarez." Op. Cit. Alicia Herrera Rivera. "Interview." Op. Cit.

⁸¹ Alonso de la Fuente: "Hacia un enfoque autocrítico de la justicia." In Luis Felipe Ribeiro et al: *Sobre la Justicia en Chile*. Op. Cit. pp. 77-95.

⁸² Jack Spence: *Search for Justice: Neighborhood Court in Allende's Chile*. Boulder Co: Westview 1979. pp. 62-101.

⁸³ In fact, within the ten-members' board that was proposed to administer the service, only one belonged to the CHBA, and three to the Worker's Unique Federation (CUT). *Boletín Cámara de Diputados: Legislatura Extraordinaria*. October 18th, 1972.

tribunals and to give faculties to the juridically trained staff to speed up the procedure (secretaries).⁸⁴ Indeed, these were not the only projects encouraging the poor to resolve their conflicts by legal means. As a matter of fact, the Ministry also supported the study of substantive changes to family law (e.g. divorce) and criminal legislation, two areas in which the relations of the popular groups to the formal institutions seemed more problematic, being labeled as repressive structures by the left.⁸⁵ At last, the UP observed that the barriers to the access to justice were not only related to the entry into the courtroom but also with the ideological commitments expressed in the content of statutes.

Second, the UP proposed a project to create neighborhood courts at bottom up, which were said to establish a new model of lay participatory adjudication and an opportunity for workers' political learning alike. Perhaps, this constituted one of the most salient projects carried out by the UP and best portrays its perspective on law. Although the bill collected the opinion of an assorted group of jurists, this finally reflected the approach of the Undersecretary José Antonio Viera-Gallo, the judges committed to UP and some law professors who worked on the project, like Juan Bustos, Sergio Politoff, and Jorge Tapia.⁸⁶ Beside its eventual impact on access to justice, this constituted a true program of juridical empowerment of popular sectors and a direct attack against the supposedly biased judicial structure of courts, attempting to break its bourgeois sign.⁸⁷ In the guideline for legal reform issued by the Ministry of Justice in January of 1971—the same days in which the project of neighboring court was introduced to the Congress—the government made clear the point regarding popular justice asserting that: “the huge mayoralty of the population has been supporting a process of marginalization as a product of a class society; therefore, the solution to such situation does not lie in its adaptation to this social system, but in its active preparation for the building of other type of society [...] the popular justice will be organized according to that idea.”⁸⁸ Hence, the UP's program initially did not focus their efforts in expanding the resources of traditional courts, but mostly tried to advance toward a parallel paradigm, at least at the local level.⁸⁹

On the whole, the proposal intended the establishment of lay collegial courts in neighborhoods along the country, with broad competence to know petty issues. These represented a kind of expertise other than the traditional juridical knowledge, which was associated with new expressions communitarian local life. The message to introduce the bill to the Chamber of Deputies explained that “the law usually requires that judges must be lawyers because of the complex norms that they apply. If there is not, there is not a

⁸⁴ The main author of the Project was Alicia Herrera. Cámara de Diputados. *Boletín de Sesiones. Legislatura Extraordinaria*. Sesión 18^a. February 2nd 1971. p. 988. See also Reform to the Tribunals Organic Code. *Ley No 17.590*, December 31th 1971, which augmented the number of appeal judges and facilitated judges' surrogacy.

⁸⁵ During Jorge Tapia's term as Minister of Justice, the government required several studies to advance the reform of these areas: Instituto de Docencia e Investigación Jurídica: *El Divorcio. Informe elaborado a petición del Ministerio de Justicia acerca de la conveniencia y contenido de una futura ley de divorcio vincular*. Op.Cit. Sergio Politoff, Jorge Mera, Juan Bustos: “Derecho Penal y Derechos Humanos.” *Cuadernos de la Realidad Nacional*. No 15. 1972. pp. 291-297.

⁸⁶ Cámara de Diputados. *Boletín de Sesiones. Legislatura Extraordinaria*. Sesión 18^a. February 2nd 1971. p. 974.

⁸⁷ Jack Spence: *Search for Justice: Neighborhood Court in Allende's Chile*. Op. Cit. p. 218. Alonso de la Fuente: “Hacia un enfoque autocrítico de la justicia.” Op. Cit. p. 70.

⁸⁸ Ministerio de Justicia: “Líneas Básicas de la Política Jurídica de la UP.” Op. Cit. p. 641.

⁸⁹ Norbert Lechner: “Principio de Legalidad y Participación Popular.” Op. Cit.

reason for that requirement. The neighborhood courts will apply simple rules whose understanding does not require deep studies, but chiefly the knowledge of the human reality in which these rules are applied. The neighbors of the district are who best hold the knowledge of such a reality.”⁹⁰ Accordingly, the bill proposed a court composed of three literate lay judges whose function was incompatible with a high post in the state and political parties (two elected through the mean of the ballot by the neighbors of the district, and one to be appointed by the Executive).⁹¹ The power to determine their territorial distribution and the appointment of the Chief of the Court were bestowed to the Executive.⁹² Although the bill expressly indicated that these courts did not have authority to know criminal matters or other subjects under other tribunals, its sphere of competence was drafted in vague terms, comprising all the breaks to the social, economic, and legal order of the neighborhood.⁹³

Considering their structure, the proposed courts did not seem particularly odd regarding similar experiences of lay neighborhood justice. At first, it had counted on the support of the Association of Magistrates, with the only reservation that this latter one recommended the appointment of legally trained judges when it was possible.⁹⁴ However, the UP’s project awoke a harsh resistance within the Supreme Court, most of the legal academia and the political opposition. Due to the dormant political conflict, these latter ones suspected of the Executive’s leverage to establish the courts’ boundaries and the lack of legal training of the judges. These were seen as a true attack on the independent judicial role and a path to use trials for left partisan mobilization.⁹⁵ In particular, Christian Democracy presented a staunch block against the project, considering the project meant a further step of the UP to compete for the constituency of the urban poor.⁹⁶ The conservative press pungently criticized the bill as well, comparing it with the experiences of popular justice in Cuba and Eastern European countries.⁹⁷ As a result, the UP withdrew the bill only two months after its introduction to Congress, in March of 1971. Notwithstanding, the idea remained in the halls of the Ministry of Justice. The judges of the commission of reforms traveled around the country attempting to get the support of trial judges. In the meanwhile, the Ministry would ask for different studies to assess the support of neighboring courts among the population.⁹⁸

Third, besides its focus on the access to justice and workers’ empowerment in dispute resolution, the UP also paid attention to the possibilities to change the constitutional machinery. There were two experiences in this direction: a) a proposal of an amendment that answered to the political necessities of the moment (November of

⁹⁰ Cámara de Diputados. *Boletín de Sesiones. Legislatura Extraordinaria*. Sesión 18^a. February 2nd 1971. p. 973.

⁹¹ Art. 5. *Ibid.* p. 978.

⁹² Art. 1. *Ibid.* pp. 977-978.

⁹³ Art. 25. *Ibid.* pp. 981-982.

⁹⁴ Interview José Antonio Viera-Gallo.

⁹⁵ Ramiro Méndez Brañas: “Discurso del Presidente de la Corte Suprema de Justicia.” In Andrés Echeverría, Luis Frei: *1970-1973. La Lucha por la Juridicidad*. Santiago. Editorial del Pacifico. pp. 189-198.

⁹⁶ Partido Demócrata Cristiano: “Posición frente al Proyecto de Ley que crea Tribunales Populares.” *Ibid.* pp. 185-188.

⁹⁷ *El Mercurio*, January 25th. 1971. p. 3.

⁹⁸ Rosemond Cheetham: *Pobladores: del Legalismo a la Justicia Popular*. Santiago. Centro de Desarrollo Urbano y Regional. Universidad Católica de Chile. 1972.

1971); and b) a draft of Constitutional Foundations for a Popular Republic, which was aimed to consolidate the path to a socialist regime (August 1972). Although two different groups elaborated them, both projects agreed on the shortcomings of the legal institutions and the necessity of a general reorientation of law.

The commission of legal reforms at the Ministry drafted a project of a constitutional amendment that was sent to the Congress in November of 1971. The main topic was the establishment of a Unicameral Congress to replace the Senate and the Chamber of Deputies. By this mean, they tried to speed up the legislative process and to reshape the manifestation of the popular will as a unique body. This also limited to six years the appointment to Supreme Court, keeping its comprehensive program to restructure the judiciary to a further opportunity.⁹⁹ Finally, the project tried to expand the state ownerships of the means of production by establishing three economic areas (social, mixed and private) and intended to set up the constitutional rights to health, housing, and labor stability.¹⁰⁰ All the evidence indicates that the aforesaid provisions responded to political contingency of the UP at that time. For instance, the project of Unicameral Chamber and the limitation of the justices' term constituted both a threshold for regime transformation and an institutional threat to the Congress and courts, attempting to break the gridlock of their increasing oppositional politics. The reorganization of the three areas of the economy were planned to compete with a similar—but narrower—project previously introduced by the Christian Democracy, and the expansion of socioeconomic rights was coherent with the UP's attempt to increase its urban workers' support. Expectedly, the study committees at the Chamber of Deputies recommended rejecting the project, and the government lost its interest in advancing its debates, foreseeing an eventual parliamentary refusal.

With a different goal in mind, President Allende called for a special commission to draft the Constitutional Foundations for a Popular State by July of 1972, just when the conflict with the opposition began to reach a boil. Along laying the basis a new political architecture of the country, the draft intended to serve as a platform for the next parliamentary election of March of 1973, in which government and opposition would contend to define the future of the Chilean way to socialism.¹⁰¹ The Commission was composed of a small group of lawyers at the government, evenly appointed to hear all the voices within the UP: Jorge Tapia (Minister of Justice and Chair of the Commission), Joan Garcés (presidential advisor), Eduardo Novoa Monreal (Chair of the CDE), Sergio Inzunza (Communist, Minister of the Presidency), Waldo Fortín (Socialist Party) and Luis Maira (representative, Christian Left). Tapia and Garcés performed a coordinating role and a link to the presidency, although the members of the commission worked in a rather informal and poorly organized style by distributing the diverse matter among them.¹⁰² Depending upon the subject, they also occasionally heard the opinion of other

⁹⁹ Alicia Herrera Rivera. "Interview." Op. Cit.

¹⁰⁰ Cámara de Diputados. *Boletín de Sesiones. Legislatura Extraordinaria*. Sesión 13ª. November 16th, 1971. pp. 941-954.

¹⁰¹ Joan Garcés: "La Elecciones de Marzo de 1973 y las definición de Clase del Poder Político del Estado." In Joan Garcés: *El Estado y los Problemas Tácticos del Gobierno de Allende*. Buenos Aires, Siglo XXI. 1973. Pp. 187-200. For a concise view on the constitutional program of left-leaning lawyers, see also: Eduardo Novoa Monreal: "Hacia un Nuevo Derecho." *Cuadernos de la Realidad Nacional*. No 15. 1972. pp. 203-222.

¹⁰² Interview Waldo Fortín.

left-leaning lawyers organized in several sub-commissions (i.e. Aida Figueroa on Labor Law, Raúl Espinoza on Administrative Agencies and Hugo Pereira Anabalón on Courts).¹⁰³

The draft on the Foundations for a Constitutional Project was lost until the early 1990s.¹⁰⁴ Although it is not here the place to conduct a detailed analysis of the long text, their known provisions illustrated the direction that the UP intended to instill into the republican life.¹⁰⁵ The Project reoriented Chilean state following a Marxist perspective, looking to advance towards development “as a consequence of the common dominion of the natural resources and essential means of production, and of the end of the exploitation of the men by men.”¹⁰⁶ Besides maintaining classical liberties and expanding the catalog of new rights like the equality within wedlock and the workers’ participation in politics and economic life, the draft incorporated the notion of public duties and the preeminence of collective interest, following Novoa’s suggestion. For instance, it prescribed the obligation to work and to participate in the social activities according to the legal mandates, to protect public property, and to considerate “in all his acts” the interest of the society to which he belongs.¹⁰⁷ Regarding the allocation of power, it transformed the bicameral legislature in a Chamber of Deputies as reviewer body that could be dissolved by the Executive once per term, and an organic Chamber of Workers aimed to be the main origin of the legislative will.¹⁰⁸ On economic organization, the text granted the state with the conduction of productive activity through planning, describing the private business as mere collaborators of national production.¹⁰⁹ Obviously, there are several other matters that constituted interesting institutional innovations, but they cannot be detailed here.¹¹⁰

Also, a general reorientation of the state goals, the project considered a broad rearrangement of the legal field, reflecting several of the themes of the rhetoric of legal crisis. This result is not surprising, particularly considering that the Chair of the Commission (Jorge Tapia) and the most prominent law professor involved in the debates (Novoa), were highly committed to that discourse. The text directly addressed the surmounting of chaotic legislation arguing that “The current legislative system, so profuse of norms, confusing, contradictory and anachronistic, will be replaced by a new one, which is going to be characterized by its simplicity, clarity, systematization and adaptation capacity [...]”¹¹¹ At the same time, it intended a complete interpretive turn in

¹⁰³ José Cayuela: “La Segunda Constiución de Chile.” *Chile Hoy*. No 13. September 1972. p. 7

¹⁰⁴ “Bases para la Reforma a la Constitución Política del Estado.” In Salvador Allende: *Un Estado Democrático y Soberano. Mi propuesta a los Chilenos*. Santiago: Centro de Estudios Políticos Simón Bolívar y Fundación Salvador Allende. 1993.

¹⁰⁵ Joan Garcés: “La Elecciones de Marzo de 1973 y las definición de Clase del Poder Político del Estado.” Op. Cit. pp. 194-200.

¹⁰⁶ “Bases para la Reforma a la Constiución Política del Estado.” Op. Cit. p. 10.

¹⁰⁷ Ibid. p. 11.

¹⁰⁸ Ibid. pp. 17-19.

¹⁰⁹ Ibid. p. 26.

¹¹⁰ For example, we can quote the inclusion of the workers’ federation in the power structure of the state, the native peoples’ rights to non-discrimination, a complete administrative re-organization –which considered broad space to organic workers’ participation–, the purpose to enact a Family Code and to establish a service of legal aid, inter alia. Ibid.

¹¹¹ Ibid p. 28. See also, Eduardo Novoa Monreal: *Una Crítica al Derecho Tradicional. Obras Escogidas*. Op. Cit. p. 364.

judicial adjudication, establishing that “the judge is sovereign in applying the hermeneutic rules that, according to his consciousness and scientific and social knowledge, are the fittest for his calling for justice.”¹¹² Other provisions were clearly aimed to improve law’s institutional capacity in overseeing governmental labor, for instance, by granting the constitutional court with the power of ex-post judicial review (*inaplicabilidad por inconstitucionalidad*), the establishment of administrative tribunals, and the organization of a General Attorney (*Procurador General*) to protect state interest.¹¹³ Innovation on the ordinary judiciary was mostly limited to the said neighboring courts, albeit the draft considered that the Justices at the Supreme Court would be reduced their term in office until they turned 65 years, and prescribed that one of its members was expected to be a lawyer from outer the judiciary.¹¹⁴ Overall, the text attacked some of the main manifestations of the legal crisis, such as the statutory disarray and the excessive legal formalism, trying to better the possibilities of legal mobilization as well.

By September of 1972, Allende sent the draft to the parties of the UP, which tended to remain silent regarding its content. Only the National Workers Union (CUT) and the smallest parties in the coalition (e.g. the Movement of Unitary Popular Action and the Christian Left), explicitly manifested their agreement. The text was not extensively debated neither within the political committee of the UP and none in the public sphere.¹¹⁵ It is likely that this attitude echoed a disagreement about the strategic line and some specific topics, like on the Chamber of Workers. However, with some variations, several provisions were literally incorporated into the document that served as a platform for the parliamentary election of 1973.¹¹⁶ Calling to build a new institutional order for a Popular State, the document maintained the general condemn against the legal system, explaining that “it is needed that the constitution and the laws meet the necessities of the social transformations of the day. By this way, the constitution will not be a mere formality, but it will effectively reflect the interests of the working class [...]”¹¹⁷ Despite its contribution to clarify the promised new model of state, the parliamentary campaign will be absorbed by the steady polarization and conflict of powers between the Congress and the Executive, relegating the comprehensive institutional transformation to a second place.

Legal Opposition, Radicalization, and Conflict

After the first year since his election, Allende seemed optimistic enough to celebrate the UP’s achievements in advancing to socialism. Congress had passed the nationalization of copper mining and the gradual incorporation of industries into state

¹¹² “Bases para la Reforma a la Constitución Política del Estado.” Op. Cit. p. 31. In the same sense, see Jorge Tapia’s work: *Hermenéutica Constitucional. La Interpretación de la Constitución en Sudamérica*. Santiago. Editorial Jurídica de Chile. 1973.

¹¹³ “Bases para la Reforma a la Constitución Política del Estado.” Op. Cit. p. 28.

¹¹⁴ *Ibid.* pp. 28-31.

¹¹⁵ Joan Garcés: *Allende y la Experiencia Chilena. Las Armas de la Política*. Barcelona. Ariel. 1976. pp. 249-250.

¹¹⁶ Unidad Popular. *Plataforma Elección Parlamentaria Marzo 1973*. Santiago, Quimantú. 1973. In Biblioteca Nacional de Chile. pp. 43-60.

¹¹⁷ “Bases para la Reforma a la Constitución Política del Estado.” Op. Cit. p. 44.

property proceeded at a good step. The economy growth and the inflationary pressures still did not harm his public support. In effect, the UP reached an outstanding share in the last municipal election in April of 1971, reaching about the 50% of the ballots. However, by the end of the year, some signs indicated a political shift. Strikes and takings of industries and estates started to get more aggressive and out of governmental control. Political violence had begun to erupt by acts of terrorism like the assassination of the former Frei's Minister of Interior –Edmundo Pérez Zuchovic–; a crime committed by left radicals that alienated the Christian Democracy. Additionally, in November of 1971, a Fidel Castro's visit to Chile tensioned the political environment inasmuch as the Cuban leader challenged the possibilities of continuing a true revolutionary road by legal means. Simultaneously, the first acts of right-wing sabotage and protest began to emerge, and the inflationary pressures of the economy started to get translated into an incipient scarcity and black market. Since then, the political milieu commenced being featured by an increasing political polarization.¹¹⁸

In the context already explained, legal institutions became gradually reluctant to the socialist policies carried by Allende. Until about September 1971, they had maintained a pattern of deferential behavior, adhering to the traditional legal formalism and lack of effective control of governmental activity. Although the higher judiciary disagreed to the project of neighboring courts debated at the beginning of Allende's rule—and its sympathies certainly did not endorse support to the UP—judges had not been an obstacle to the process of nationalization of industries and other sorts of collaboration with the Executive.¹¹⁹ In the same light, the Comptroller only started to object timidly some requisitions and interventions by May of 1971, but without posing a direct challenge to the government's economic policy.¹²⁰ Meanwhile, the Defense of the State Council (CDE) provided favorable reports to expropriations, requisitions, and interventions, and the Board of the Chilean Bar Association (CHBA) kept relatively amicable relations to the Executive, being granted with the power to participate in the evaluation of the justices.¹²¹ Nevertheless, their deferential behavior would end after the first year of socialist government.

Alongside the intensification of the political conflict, legal institutions would progressively assume a more oppositional role. By mid-1971, the Comptroller already denied the authorization of some decrees of expropriation and requisition (*toma de razón*), contesting the legality of those measures by reviewing their fundamentals. In a handful of cases, like in the cases of Hilandería Andina and Lanera Austral in May of 1971, the Comptroller pointed out the quotes of production, whose break provided the legal ground of the requisitions, were higher than the capacity of the industries according to their size.¹²² As an answer, the UP insisted on its decrees through the signature of all

¹¹⁸ Nathaniel Davis: *The Last Two Years of Salvador Allende*. Ithaca. Cornell University Press. 1985. pp. 33-53.

¹¹⁹ See supra Note 15 on the commission of judges at the Minister of Justice and Note 81 on *audiencias populares*.

¹²⁰ See Figure 5.2. below.

¹²¹ Reform to the Tribunals' Organic Code. *Ley No 17.590*, December 31th 1971, art. 2. No 26 and 27. See also the meetings of the CHBA's board and the ministers of justice. *Acta Sesiones Consejo Colegio de Abogados*. Manuel Sanhueza (session March, 6th, 1972) and Jorge Tapia (session April 17th, 1972).

¹²² Raúl Espinoza: "La Contraloría General y el Proceso de Cambios." *Revista de la Universidad Técnica del Estado*. No.8 June. 1972. pp. 15-35.

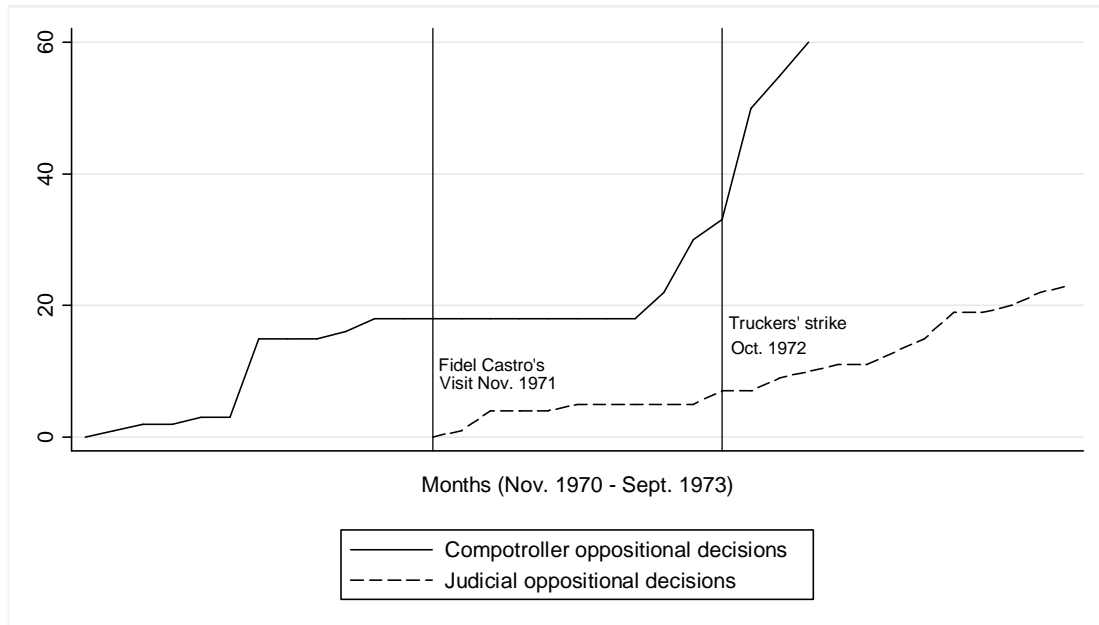
its ministers, bypassing the Comptroller's denial (*decreto de insistencia*).¹²³ By the same token, in the early months of 1972, courts began to know about some cases of requisitions, interventions and informal seizures of estates carried by leftist groups. In doing so, judges changed the traditional precedents that asserted that the judiciary could not review governmental decisions. For example, regarding requisitions and interventions ordered by DIRINCO, the law established that the affected could present a writ of appeal before a commerce tribunal specially constituted in the administrative seat for this effect. Challenging its own precedents, the Supreme Court ushered some sentences arguing that it can revoke the decisions of that tribunal by the expedient of disciplinary writs (*recurso de queja*), ordering the return of the establishments.¹²⁴ Simultaneously, some judges began to consider that the workers' occupation of industries could not serve as the basis for requisitions and interventions, since they constituted a case of usurpation, a kind of criminal offense that was not fit to serve as the basis for governmental activity. For instance, such is the case of judicial decisions that involved industries like Manufactures of Copper (MADECO), the Textile Rayon Said and Fisheries Llanquihue, among others that were revoked by the judiciary by that last expedient.¹²⁵ Figure 5.2 shows how the oppositional reaction of the Comptroller and courts progressed over time, particularly in some conflictive periods, like the opposition strike of October of 1972 and before September of 1973.

¹²³ Unlikely previous decades in which such decrees were also employed, this time, they appeared as a broad tactic of governmental action. Daniel Schweitzer: "Sobre Decretos de Insistencia." *El Mercurio*, May 8th, 1973. pp. 3 - 4.

¹²⁴ Raúl Espinoza: "La Requisición de los monopolios textiles y un fallo de la Corte Suprema" *Revista de la Universidad Técnica del Estado*. No.7 April 1972. pp. 93-99. Something similar can be said about the Supreme Court's sentence that habilitated to the Antitrust Commission to know about the nationalization of banks. Eduardo Jara Miranda: "La Nacionalización Bancaria." *Op. Cit.* pp. 282-287.

¹²⁵ Sergio Micco: *Unidad Popular, Resquicios Legales y Quiebre del Sistema Jurídico-Institucional Chileno*. Tesis. Universidad de Concepcion. 1987. pp. 199-202.

Table 5.2. Legal Institutions' Reaction to UP's takings through the DL 520. (by aggregate number of decisions)



SOURCE: Instituto de Economía. Universidad de Chile: *La Economía Chilena en 1972*. Santiago. 1973. Diario *El Mercurio*.

Political actors mobilized along with the response of legal institutions. The UP insistently commenced to cast doubts its legal strategy, and several of left-leaning lawyers bitterly criticized the decisions of the Comptroller and Courts, questioning their grounds and recalling how law usually had served as a bourgeois instrument to sustain capitalist order.¹²⁶ In March of 1972, Novoa adverted about the difficulties of the legal path, especially attending that it was chaotic and had been modeled by conservative judges and jurists.¹²⁷ As a counterpart, lawyers who were leaning to Christian Democracy or right wing political parties mobilized their forces to criticize openly the politics of legal loopholes, both regarding the use of the DL 520 and the decrees of insistence to bypass the Comptroller's decisions.¹²⁸ For some of these latter ones, such as the law

¹²⁶ See as example: Raúl Espinoza: "La Requisición de los monopolios textiles y un fallo de la Corte Suprema." Op. Cit. Raúl Espinoza: "La Contraloría General y el Proceso de Cambios." Op. Cit. José Antonio Viera Gallo: "Problemática Institucional en la Vía Chilena." Op. Cit.

¹²⁷ Eduardo Novoa Monreal: "El difícil camino de la legalidad." Op. Cit.

¹²⁸ See Juan Carlos Dörr and Alejandro Silva Bascuñán's opinions. *El Mercurio*. October 14th, 1971. p. 3. Eduardo Soto-Kloss: "Sobre la legalidad de las Requisiciones de Industrias." *Revista de Derecho Público*. No. 13. 1972. pp. 61-80. Patricio Aylwin: "Gobierno actúa con absoluto menosprecio de las normas jurídicas." *La Tercera*. April 17th, 1973. In Luis Echeverría et al. *La Lucha Por la Juridicidad*. Op. Cit. Vol. 1. p. 297. Jorge López Santa María: "Algunos aspectos de la situación del Derecho en el Chile de hoy. Intervención en el Senado Académico de la Universidad Católica de Valparaíso." June, 28th 1973. In Universidad Católica de Valparaíso: *Estudios Jurídicos sobre la Realidad Actual*. Valparaíso. 1973. pp. 1-14. Edmundo Eluchans Malherbe: "Recursos legales de los afectados respecto de la resolución que dispone la requisición de un establecimiento industrial o comercial." *Estudios Jurídicos* Vol. 1 No. 1. 1972. pp. 48-64.

professor Julio Philippi, the UP's abuse of legal formalism had gradually become a general menace to the principles of the rule of law.¹²⁹ As a consequence, the juridical field did not seem a place of authoritative resolution of social conflict anymore, as elite lawyers were usually prone to praise. By contrast, along with the dispute on legal technicalities, this steadily began to resemble a setting of open struggle. "[...] This legality, as it was the only weapon to the disposition of the gladiators, it is disputed by who want to use it as a sword and who hidden behind it as a shield," explained the Minister of Justice Jorge Tapia by August of 1972, illustrating such a quarrel.¹³⁰

Before the increasing economic and political difficulties, like the mounting monetary inflation, the process of polarization increased by mid-1972 onwards, being characterized by a dynamic of violence and permanent turmoil. By that time, the DIRINCO began to organize neighboring commands to fight black markets and to manage food rationing (JAP). Moreover, some shantytowns, like *Nueva La Habana*, developed true experiences of self-management and popular justice that were completely at the margins of formal apparatus.¹³¹ Likewise, workers started to organize industrial belts (*cordones industriales*) to advance in the nationalization of factories and to coordinate production.¹³² Several times these implied a true headache for Allende's government, since some of their leaders got aligned with far-left sectors that were prone to radicalize the process of economic nationalization.¹³³ Under the political influence of these latter ones, industrial belt promoted strikes and began to assume the shortcomings of the bourgeois institutions and the necessity of completely transform the state and society.¹³⁴ Although some of these political manifestations—like the meeting of an Assembly of the People in Concepcion during July of 1972—ended up challenging the initial strategy of the UP parties, the government remained, at least, open to them. And even several of its supporters showed enthusiastic to advance to socialism through

¹²⁹ Julio Philippi Izquierdo: "Reflexiones sobre el bien común, justicia, derecho y el formalismo legal." In Pablo Barahona (ed.): *Visión Crítica de Chile*. Santiago, Editorial Portada. 1972. pp. 23-35.

¹³⁰ Jorge Tapia Valdés. "Institucionalidad, Legalidad y Transición al Socialismo." Op. Cit. p. 15.

¹³¹ For Nueva La Habana's case, organized by the Left Revolutionary Movement (MIR), see Jorge Fiori: "Campamento Nueva La Habana: Estudio de una Experiencia de Autoadministración de Justicia." *Revista EURE*, Vol. 3 No. 7. 1973. pp. 83-101. For other cases see: Oscar Cuellar et al: "Experiencias de Justicia Popular en Poblaciones." *Cuadernos de la Realidad Nacional*. No. 8. 1971. pp. 153-172.

¹³² These overlapped the managerial efforts at the CORFO, and the attempts of the UP to direct workers' action. By the mid-1973, there were about 31 of those organizations, 12 of them around Santiago. Sandra Castillo Soto: "Sociabilidad y Organización Política Popular: Cordón Industrial Cerillos-Maipú (Santiago, 1972)." *Cuadernos de Historia* No. 32. 2010. pp. 99-121.

¹³³ particularly within the Socialist Party, the Popular Action Unitary Movement (MAPU) and the Left Revolutionary Movement (MIR)

¹³⁴ In so doing, they repudiated courts, the parliament and the comptroller, calling for the instauration of a popular assembly. Sandra Castillo Soto: "Sociabilidad y Organización Política Popular..." *Op. Cit.* pp. 119. See as example, Cristina Cordero; Eder Sader; Mónica Threlfall: *Consejo Comunal de Trabajadores y Cordón Cerillos-Maipú, 1972. Balances y Perspectivas de un Embrión del Poder Popular*. Santiago: CIDU. Universidad Católica de Chile. Documento de Trabajo No. 67. 1973. Frank Gaudichaud: *Poder Popular y Cordones Industriales. Testimonios sobre el Movimiento Popular Urbano 1970-1973*. Santiago: Lom –Centro de Estudios Barros Arana. 2004.

grassroots mobilization, as long as they would constitute the genesis of a new expression of public power from bottom up.¹³⁵

At the right, political polarization was translated into several attacks aimed to the end or at least severely limit the action the UP's rule, which, as a counterpart, would try to overcome the stalemate by incorporating high offices of the military to the cabinet of ministers. The National Party and the Christian Democracy successfully impeached diverse ministers and other high-rank officials since the end of 1971, and acted to halt the stock acquisition of the Paper Company that provided supplies to the press.¹³⁶ At the same time, they mobilized through several general stoppages that paralyzed the country, like the truckers' strike in October of 1972, which elapsed during almost one month. More than a few students, commercial and professional groups joined those manifestations, and lawyers of the Chilean Bar Association (CHBA) and the State Defense Council were among them. Furthermore, the far right got organized through a semi-fascist nationalistic movement called *Patria and Libertad* [Fatherland and Freedom], headed by the law professor Pablo Rodríguez Grez, one of the participants in the debates of the legal crisis in the mid-1960s. This last group conspired to overthrow Allende in 1972 and 1973.¹³⁷

Before such a scenario, the conflict between the UP and the other sections of the state and the legal field was intensified, and the Ministry of Interior commissioned the professors of criminal law Sergio Politoff and Juan Bustos to deal with this contest by elaborating the official position of the government.¹³⁸ The Executive and the General Comptroller acridly clashed during the first semester of 1973, when several public statements of one and another debated on the ability to halt the nationalization of industries and to issue the decrees of insistence.¹³⁹ In the same light, the Judiciary also started to charge against the politics of loopholes as well. The Supreme Court began to show an increasing defiance and discomfort for the UP and continued issuing new sentences that repealed requisitions and interventions.¹⁴⁰ From the opposite sidewalk, alienated UP's supporters occupied the surroundings of the Tribunals' Palace for a couple of hours in July of 1972 claiming a biased justice, and attacked some few trial courts in the provinces, even taking over several of them.¹⁴¹ Before the complaints expressed by

¹³⁵ See as example: Norbert Lechner: "Principio de Legalidad y Participación Popular." Op. Cit. Julio Silva Solar: "Notas sobre la transición a una nueva sociedad." *Revista de la Universidad Técnica del Estado*. No. 13-14. June 1973. pp. 41-54.

¹³⁶ For a view of the processes of impeachments from the perspective of the UP's government, see Joan Garcés: *Revolución, Congreso y Constitución. El Caso Tohá*. Santiago, Editorial Quimantú. 1972.

¹³⁷ Nathaniel Davis: *The Last Two Years of Salvador Allende*. Op. Cit. pp. 79-148.

¹³⁸ José Luis Guzmán Dalbora: "Estudio Necrológico: Sergio Politoff Lifschitz o la perseverancia creadora de una vida migrante." *Revista de Estudios de la Justicia*. No. 12. 2010. p. 26. Interview José Antonio Viera-Gallo.

¹³⁹ See communications in Andrés Echeverría, Luis Frei: *1970-1973. La Lucha por la Juridicidad*. Op. Cit. pp. 293-312.

¹⁴⁰ Even, the judiciary regulated the filling of disciplinary writs (*recurso de queja*), one of the most important legal mean to contest the UP's takings on private property, as a way to facilitate this procedure. Corte Suprema: "Auto acordado sobre tramitación y fallo de los recursos de queja." November 6th, 1972. Published in *Diario Oficial*, December 1st, 1972. p. 4751.

¹⁴¹ "Oficio enviado por el Presidente de la Corte Suprema al Presidente de la Republica en Relación a los Hechos de la Plaza Montt Varas." In Andrés Echeverría, Luis Frei: *1970-1973. La Lucha por la Juridicidad*. Op. Cit. pp. 209-210. There were also several temporary takings of trial courts, particularly in rural areas such as Peumo and Melipilla.

the judiciary, the Minister of Justice adverted that those acts responded to the lack of social consciousness and oppositional attitude of various judges.¹⁴² The government, as a reply, also stopped providing public force to carry adverse judicial decisions, ushering direct instructions to its officials and the police to refer them to the discretion of the administrative authority to avoid affecting public order.¹⁴³

By the first semester of 1973, the conflict between the Executive and the Supreme Court reached its peak. The Judiciary initiated disciplinary processes against the judges that took part of the ad-hoc commission of legal reform at the Ministry of Justice, particularly against those who openly manifested left political stances, like the appellate justice Óscar Álvarez.¹⁴⁴ Subtly, the Chief Justice, Enrique Urrutia Manzano began to condemn the Marxist approaches to law, which were described as part of a trend in legal thought that despised the principles of the rule of law.¹⁴⁵ Furthermore, through several communications published by the press, the Supreme Court reported to the Executive about several incidents in which the police and the administrative authority did not enforce unfavorable judicial decrees, implying a serious break of the rule of law.¹⁴⁶ The government's denial to enforce a judicial order to return the newspaper *La Mañana de Talca* to its owners in late 1972, after being seized by leftist workers, remained one of the most well known examples quoted by the Supreme Court at this time.¹⁴⁷ In June of 1973, President Allende publicly answered claiming against a biased administration of justice that was unresponsive to the process of political transformation, and that supposedly employed tortuous juridical interpretations to curtail the UP's economic policies.¹⁴⁸ The Supreme Court would come back on the topic again, but the Executive would return its letter without any formal response.¹⁴⁹

The General Board of the Chilean Bar Association (CHBA) also became involved in the political conflict, assuming an oppositional attitude. They did not only join the general strikes against the government by late 1972, but they took a pivotal role.¹⁵⁰ The Chief of the CHBA, the Christian Democrat Alejandro Silva Bascuñán, became one of the most visible vocal critics against the UP as head of the federation of professional groups. Not unexpectedly, the CHBA held up the Comptroller and the Supreme Court, taking their side in the conflict with the Executive. Additionally, the organized bar carried some actions that cast doubts on the Chief Executive's role, like an

¹⁴² Jorge Tapia: "Oficio de Respuesta dirigido a la Corte Suprema." In *Ibid.* p. 213.

¹⁴³ Andrés Echeverría, Luis Frei: *1970-1973. La Lucha por la Juridicidad.* Op. Cit. Vol. 3. p. 154.

¹⁴⁴ Alicia Herrera Rivera. "Interview." Op. Cit. Óscar Álvarez: "La Justicia es necesariamente clasista." Op. Cit. pp. 29 and 32.

¹⁴⁵ Enrique Urrutia Manzano: "Misión Actual de la Facultad de Derecho. Clase Magistral." [Speech, April 4th, 1973] *Revista de Derecho y Jurisprudencia.* Tomo LXX. 1973. pp. 26-41.

¹⁴⁶ See Supreme Court's Statements in Colegio de Abogados: *Antecedentes Histórico Jurídicos. Años 1972-1973.* Santiago: Editorial Jurídica de Chile. 1982. pp. 72-77.

¹⁴⁷ Enrique Brahm. *Propiedad Sin Libertad: Chile 1925-1973...* Op. Cit. p. 242.

¹⁴⁸ Letter (oficio) June 12th, 1973. in Colegio de Abogados: *Antecedentes Histórico Jurídicos.* Op. Cit. pp. 94-105.

¹⁴⁹ Letter (oficio) No 2123, June 25th, 1973. *Ibid.* pp. 106-123.

¹⁵⁰ As a counterpart, the Executive would try to modify the procedure of election of the CHBA's Board, intending to introduce a non-majoritarian system that dispersed its policy preferences, and thereby, obstructing its ability of political mobilization. Cámara de Diputados. *Boletín Legislatura Extraordinaria.* Sesión 10^a. October 24th, 1972. See also: Alejandro Silva Bascuñán: *El Abogado, un Servidor de la Justicia.* Op. Cit.

pronouncement in solidarity to the opposition to Allende, (e.g. the miners' strike of El Teniente, June 1973), and the call for a more stringent control of weapons.¹⁵¹ Finally, in the late August of 1973, the CHBA elaborated a study recommending the congressional impeachment against President Allende, who, according to their standpoint, would have been unable to maintain the UP's rule within the margins of legality.¹⁵²

Finally, the Congress neither was absent of this conflict centered in the very definition of political authority in lawmaking. In the parliamentary election of March of 1973, the Christian Democracy and the National Party had not reached enough seats to remove Allende. However, they conserved sufficient congressmen to challenge UP policies through minor issues related to the impeachment of ministers, budgetary matters, and the legislative process.¹⁵³ The main conflict arose about the enactment of a constitutional amendment to organize the property of means of production in three areas: public, mixed and private. In October of 1971, two different bills were introduced in this direction, which competed to determine the future of the Chilean way to socialism. A more restrictive draft was submitted by the Christian Democrats, Senators Jorge Hamilton and Renán Fuentealba, which proposed a narrower sphere of state property and the option of temporarily bestowing the management of some public activities to private business. On the other side, a more extensive project was introduced by government in the same month, which joined to the proposal of a unicameral Congress.¹⁵⁴ After a long process of debates, the Hamilton-Fuentealba bill was passed by Congress in mid-1972. This was vetoed by Allende, who intended to eliminate its restrictive provisions, but his decision was later refused by both chambers, enabling the project to be enacted. The Executive filled a requirement to the Constitutional Tribunal in May of 1973, which finally resolved, which did not have jurisdiction to know the conflict.¹⁵⁵ Next, Allende attempted to promulgate partially the bill without including the contested provisions in which he disagreed. This time, the Comptroller decreed that a partial promulgation of the text was not possible. Despite this, Allende remained reluctant to enact the amendment, eschewing to alienate his harder-line supporters.¹⁵⁶

In late August of 1973, the Chamber of Deputies passed a pronouncement declaring that the government had permanently contravened the rule of law. To argue such a conclusion, they acridly censured the policy of legal loopholes as a strategy to deprive the Congress of its attributions. At the same time, the statement recalled the Executive's recent conflicts with the comptroller and courts, and underpinned that its refusal to enact the entire constitutional amendment on the three areas of the economy which embodied a new infringement. The Chamber pointed that the constitutional order

¹⁵¹ *Memoria Colegio de Abogados*. 1973. pp. 18-27

¹⁵² Written by the board's members Manuel Daniel, Luis Ribalta and Sergio Baeza. *Ibid.* pp. 24-27. On September 7th of 1973, other lawyers would also publish a report in the same direction (Guillermo Bruna, Gustavo Cuevas Farren, Jorge Guzmán Dinator and Jorge Ovalle). *Colegio de Abogados: Antecedentes Histórico Jurídicos. Op. Cit.* pp. 162-172.

¹⁵³ Nathaniel Davis: *The Last Two Years of Salvador Allende*. *Op. Cit.* pp. 140-144.

¹⁵⁴ José Antonio Viera-Gallo: "Sobre la legislación que define las tres áreas de la economía." *Cuadernos de la Realidad Nacional*. No. 11, January. 1972. pp. 193-198.

¹⁵⁵ The Chilean Constitutional Court of the period was aimed to resolve conflicts on separations of powers in lawmaking. However, it was integrated mostly by judges socialized in the bureaucratic culture of regular courts, who reproduced their stances of political passivity. Enrique Silva Cimma: *El Tribunal Constitucional de Chile. 1971-1973*. Caracas: Editorial Jurídica de Venezuela. pp. 114-154.

¹⁵⁶ Andrés Echeverría, Luis Frei: 1970-1973. *La Lucha por la Juridicidad*. *Op. Cit.* Vol. 3. pp. 7-79.

was broken, calling for its reestablishment and communicating its declaration to the government and military forces.¹⁵⁷ Allende answered by affirming the Chamber deliberately “destroyed the democracy and supported to whom deliberately look for a civil war.”¹⁵⁸ The congressional statement finally would constitute one of the pivotal pieces to call into question Allende’s government and to legitimize the coup of d’état that overthrew it in September of 1973.

Concluding Remarks

Indeed, the previous account illustrates how, due to a particular political context, the UP significantly relied upon a broad network of left-leaning lawyers to advance its attempt to build a socialist regime, which featured a rising conflict in the allocation and limits of the legal authority. Underneath such a plain story, however, I think we also can understand the escalating process of fragmentation of the legal profession, and how this was coupled to the battles to redefine public governance.

Firstly, the portrayal of this network of lawyers confirms they shared common marginal positions in the legal field and similar political preferences, echoing the aforementioned fragmentation. The evidence clearly shows that the UP almost did not count on well-reputed practitioners and consolidated scholars that were available to use their legal authority to intervene in the mounting political conflict. Unless the case of Eduardo Novoa, and maybe some few others, the UP’s legal cadres belonged to lower strata of the legal field and the state before being positioned inside the government during 1970. Almost all they occupied low profile functions inside administrative agencies and practice, were junior scholars, or lower and mid-level judges. Considering all derived to Marxist stances, we can conclude that their profiles also reflected the gradual political division inside the legal profession as well. Unlikely the decades before the 1960s when the legal profession possessed a kind of common understanding of the legal order, the partisan approach was translated into an articulated discourse on legal institutions that served as an interpretive framework to massively mobilize law.¹⁵⁹ It is hard to provide an empirically conclusive opinion on the point, but they associated their political preferences with their lower place within the juridical field as long as they considered the higher ranks law professors, justices, and practitioners would have frequently served to capitalist structures.¹⁶⁰ Thus, their identity would provide additional confirmation about how political and professional segmentations are interwoven.

Secondly, their role in the struggle for economic reorganization and legal reform also contributes to comprehend lawyers’ mobilization in the new context after the 1960s. Naturally, it results clear that the UP chose the policy of loopholes and the gradual production of a socialist legality as a requirement of the circumstances, especially inasmuch as the parliamentarian threshold appeared closed.¹⁶¹ In a less obvious fashion, nevertheless, we can observe that this path was also coherent with the left-leaning

¹⁵⁷ Colegio de Abogados: *Antecedentes Histórico Jurídicos*. Op. Cit. pp. 143-148.

¹⁵⁸ Ibid. pp. 148-152.

¹⁵⁹ See Table 5.1.

¹⁶⁰ Raúl Espinoza: “Derecho y Marxismo.” Op. Cit. p. 273. Eduardo Novoa Monreal: “La crisis del sistema legal chileno.” Op. Cit. See also his: “Hacia un Nuevo Derecho.” Op. Cit. 488-489.

¹⁶¹ Cristián Villalonga: *Revolución y Ley...* Op. Cit. pp. 104-106. 117-119.

lawyers' professional interests. Initially, the policy of legal loopholes contributed to enhancing their role, above all considering the traditional distrust of the left wing parties on juridical expertise. It is remarkable to notice that by those years, leftist lawyers like Raúl Espinoza, Jorge Tapia, and Eduardo Novoa, insistently claimed that even when the law could not determine a revolutionary process, it would be a mistake to ignore legal tools to conquest the power and to organize a socialist regime. Such as the Minister Jorge Tapia voiced in the speech quoted in the epigraph to this chapter, the Chilean revolution meant "to change the firearm by the statues and the guerrilla by the man of law."¹⁶² After all, even the lower rank members of this network asserted lawyers were key agents in the first organization of the new socialist regime.¹⁶³ It is also significant to observe that the most theoretically sophisticated of them articulated such a claim with neo-Marxist philosophical positions that endorsed the ordering capacity of law and the possibilities of juridical instrumentalism.¹⁶⁴

From a different angle, we also can arrive at similar conclusions after reviewing the projects of constitutional and legal reform that have been described in this chapter. By their populist spirit, some of these projects—like which dealt with neighborhood courts—could be confusing as evidence about the promotion of legal expertise. But a general overlook points to a different direction. Several of the ideas advanced by the Ministry of Justice could have had a huge impact broadening their professional sphere if they would have been implemented, like the state service of legal aid and the speeding up of the labor procedure. Others, like the promise of restructuring of the judicial organization, also bettered the mid and low-level judges' prospects to move up ranks and to free themselves from the rigid judicial discipline.¹⁶⁵ But mostly, the building of a socialist state and the renewal of the statutory order themselves offered an unparalleled opportunity for those lawyers. To take an example, the Project of Popular Constitution of 1972 heavily encouraged the law and lawyers' institutional capacity, promising to surmount the narrow sphere of jurisdiction and unresponsive legal formalism that was insistently denounced. Some of its foreseen provisions, like the establishment of a kind of Ombudsman Office (*Procuraduría General*), the long-time promised administrative tribunals, the flexible legal hermeneutic of courts, and the new design of the ex-post judicial review clearly make the point. In the same constitutional project, the very process of economic nationalization and enlargement of the administrative state offered huge opportunities for professional development for left-leaning lawyers mostly coming from lower and middle class, who usually did not have links with the private economic capital but advantageous partisan connections.¹⁶⁶

How much this mobilization corresponded to a real commitment to the rule of law, how much responded to professional interest, how much to naiveté or even cynicism? It is hard to say. But in contrast to what happened in revolutionary Cuba, the Chilean way to socialism was not characterized by a harsh reaction against lawyers and juridical expertise themselves, but by a clash with the traditional legal elite and its

¹⁶² Jorge Tapia Valdés. "Institucionalidad, Legalidad y Transición al Socialismo." Op. Cit. p. 15.

¹⁶³ Misael Inostroza Soto: "Derecho, Política y Economía." *Revista de Derecho. Universidad de Concepción*. No. 155. 1971. pp. 74-75.

¹⁶⁴ See note 45.

¹⁶⁵ Ministerio de Justicia: "Líneas Básicas de la Política Jurídica de la UP."

¹⁶⁶ "Bases para la Reforma a la Constitución Política del Estado." Op. Cit.

particular values.¹⁶⁷ Naturally, I am not arguing here that these lawyers were chiefly, or even consciously, looking at professional self-promotion. More precisely I sustain that, due to the convergence of their preferences and positions in the legal field, their political and professional strategies of mobilization were closely coupled in the struggle to reframe law in public governance.

In all this account, their Marxist reading of the rhetoric of legal crisis performed a crucial function. Its portrayal provided a sound narrative to agglutinate the idea of an asynchronous law and the decline of the capitalist system, denouncing a supposedly class bias of legal institutions. It is not surprising that some of its elements, such as the chaotic legislation and pervasive legal formalism, were seen by them as an opportunity to advance regime transformation and a ground of an instrumental view of the law. Neither is unexpected to conclude that, inasmuch as this discourse was aimed to review the very republican structures and the juridical expertise alike, this rhetoric allowed them to bind their political and professional agendas.

Finally, this chapter presents enlightening material on clear limits of the strategy of mobilization explained above. The network of left-leaning lawyers emerged to advance the political program of the UP by the use and contestation of positivistic legal authority. To a large extent, they used loopholes in economic restructuring attempting to bypass the forums of democratic deliberation. Consequently, legal institutions that dominated the juridical sphere became gradually aligned by acting as an oppositional bloc. When turmoil and economic inflation rose, these latter ones fight back the UP policy by relying on legal technicalities, inverting the tactic used by its antagonists. Since they possessed a high degree of legitimacy anchored in a stance of neutrality and symbolic capital, and also an advantageous position inside the state apparatus, they contribute shaping the UP's fate. In the end, this experience confirms the failure of the law to determine the first steps of radical regime transformation and its inadequacy to replace politics, especially when its instrumental use is carried out through convoluted administrative venues that move significant sections of the legal profession to an oppositional role.

¹⁶⁷ Marjorie Zatz: *Producing Legality: Law and Socialism in Cuba*. Routledge. New York: 1994.

Chapter 6

The Legal Crisis as Authoritarian Narrative: Autonomy, Modernization and Entrenchment (1973-1990)

[...] The movement of September 11th of 1973 did not only mean the overthrow of an illegitimate and failed government, but it implied the end of a political and institutional system that was worn out, and the subsequent imperative to build a new one.
(*Preliminary Project for a New Constitution*, 1978)¹

Introduction

At the morning on September 11th of 1973, a military coup deposed Salvador Allende's rule ending up the Chilean way to socialism. In a context of economic stagnation and overwhelming political turmoil, the heads of the military forces and the police constituted a Junta that took over the power and set forth its goals intending to reestablish the "justice, the Chilean character, and the public institutions."² Relying upon a very legalistic language that recalled a prior conflict on the separation of powers and claimed several infringements to the law, the military laid the foundations of its action by mean of a statement carefully drafted by the law professor Guillermo Bruna.³ In the midst of a violent breakdown of the Chilean democratic regime, the juridical language was employed to call into question the government and to invoke the right to rebellion. The next days, the Junta closed the Congress, intervened universities, and issued the state of war, opening an interregnum in the former political democracy. For the following 17 years, a military dictatorship that gradually became a competitive authoritarian regime towards the late 1980s ruled the country, being featured by its remarkably institutional stability, its iron fist in repressing political dissidents and a booming process of economic modernization.⁴

Far from constituting a monolithic bloc plainly controlled by the armed forces, the military government was initially supported by a large sector of public opinion and a broad range of civic groups previously attached by the reactive politics against the Popular Unity. Right-Wing Christian Democrats, followers of former president Jorge Alessandri, conservative "gremialistas", the cadres of the National Party, and members of

¹ Comisión de Estudios de una Nueva Constitución (Comisión Ortúzar): *Anteproyecto Constitucional y sus Fundamentos*. Santiago: Editorial Jurídica de Chile. 1978. p.2.

² D.L. No. 1. *Acta de Constitución de la Junta de Gobierno*. [September 11th, 1973]. *Diario Oficial*. September 18th, 1973.

³ "Bando No 5 de la Honorable Junta de Gobierno de Chile." September 11th, 1973. In *Libro Blanco del cambio de Gobierno en Chile*. Santiago: Editorial Lord Cochrane. 1973. pp. 248-249. Interview Guillermo Bruna Contreras.

⁴ It would be impossible to present a full relation of the different legal issues of the period. The massive political repression of dissidents and human rights violations, the state and left-wing terrorism, the polemic figure of the General Pinochet, the consolidation of his power as President of the Republic, or the economic reorganization of the country on the basis of neoclassical economy are only some of the topics that have drawn the attention of the press and specialized literature alike.

the semi-fascist movement Fatherland and Freedom constituted some of the political sectors that initially backed the coup and the subsequent rule. These did not act as mere puppets and struggled to consolidate their influence. Along the years, however, they were finally transformed by the polarized politics of the regime until comprising a somewhat coherent alliance at the right of the political spectrum about 1980.⁵ By the action of right-leaning elite lawyers and legal scholars, the legal field would be one of the main settings where this dynamic of progressive convergence and coordination operated. Here, I tackle three central inquiries on their role: a) how did they articulate their process of mobilization of juridical expertise at a discursive level? b) how did they collaborate to shape the institutional design of the new regime? and, c) how their strategies of mobilization contribute to understanding their engagement to authoritarian politics?

This chapter argues that these right-leaning lawyers and scholars were agglutinated around an authoritarian reading of the rhetoric of legal crisis. Although coming from diverse political variations of the conservative or nationalist streams, they were able to develop a relatively shared diagnosis of the legal system that served as groundwork to collaborate in the project of restructuring carried out by the military dictatorship. According to their standpoint, the breakdown of the democratic rule in 1973 did not respond only to a critical political juncture, and it was associated with a long decay of the public authority and the inadequacy of the juridical institutions for the new context. Put it in other words; they outlined a negative appraisal of the constitutional and legal system that included several of the elements that we have already studied in the previous chapters, like the asynchrony of law and social reality and an excessive legal formalism. Over such basic ideas, they overlapped the advancement of their different agendas and introduced new discursive elements like the necessity of depoliticizing public decision making or the protection of individual rights against democratic majorities

Indeed, the process of juridical institutionalization of the Chilean military dictatorship results complex and somewhat puzzling. This is not only a case of authoritarianism that heavily relied upon the rule by law. The dictatorship was bound by its own set of norms, restraining its power by completely enacting a new constitution in 1980 until finally paving the road to a fair electoral contest that led to a democratic transition ten years later. It is likely this dynamic obeyed to a multi-causal phenomenon determined by the necessity of credible commitments to the law and by how the Junta set the mechanisms to resolve its internal disputes, among others origins.⁶ Here I offer an additional cause for this process: the dominant narrative behind the cadres that looked to provide the juridical legitimacy of the regime and that implemented its legal infrastructure. In part, they were able to collaborate with the dictatorship offering a sound

⁵ The different groups that backed the regime maintained some important concerns regarding contingent politics, such as about the timing of a further democratic transition. However, this was not a serious obstacle for joining forces with the re-foundational project of the regime, chiefly expressed through the Constitution of 1980. For a general overview on the complexities of the military rule, and, in particular, on the role of the civilians, see: Carlos Huneeus: *El Régimen de Pinochet*. Santiago: Editorial Sudamericana. 2002.

⁶ Robert Barros: *Constitutionalism and Dictatorship. Pinochet, the Junta, and the 1980 Constitution*. New York: Cambridge University Press. 2002. Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 228-245. For a theoretical perspective, see: Tamir Moustafa, Tom Ginsburg: "Introduction: The Function of Courts in Authoritarian Politics." In Tamir Moustafa, Tom Ginsburg: *Rule by Law: The Politics of Courts in Authoritarian Politics*. New York: Cambridge University Press. 2008. pp. 1-23.

and rather sophisticated diagnosis on the pitfalls of the juridical and political system (the legal crisis). At the same time, they also presented a model of authoritarianism that could be fully bound by a neo-conservative version of the rule of law, aimed to be completely in force once the political emergency ceased. The very idea of a military rule that should go beyond restoring the broken constitutional order, building a new one, is rooted in the core of such a narrative.

For that purpose, this right-leaning legal network employed this rhetoric to strategically moved in several directions. This chapter connects the bits and pieces of different areas of their collective action: a) the process by which they re-claimed the autonomy of law as a space free of partisan interference; b) their different attempts to modernize the statutory order by which they tried to enhance their role; and c) the reorganization of the constitutional structures to entrench the policy preferences that the military government and its supporting groups intended to safeguard.

Their strategies of mobilization contribute to comprehending why these lawyers actively engaged in authoritarian politics. Such as in any other chapter of the second part of my dissertation, I propose that they saw an opportunity to advance their political agenda and to consolidate their own social and professional capital in a rather coherent way. For example, the appeal to of legal autonomy would be employed by higher courts to reassert their traditional bureaucratic discourse, and also by traditionally trained law professors to displace reformist lawyers and social scientists outside of the law school. Meanwhile, prestigious lawyers, high-rank judges and legal scholars massively participated in the efforts to reorganize legislation, which initially promised to be superb opportunity to enhance their expertise, particularly in civil and commercial law. In a similar way, the politics of constitutional entrenchment would serve to expand selectively the authority of public law scholars and courts to oversee economic policymaking, and certainly it would favor the protection of property rights and investments, a sensible topic for many of the members of this network who were related to businesses. All in all, I assert that, along this complex dynamic of rearrangement of the state and the legal field, lawyers' political and professional strategies were closely coupled.

The chapter initially analyzes the main participants of this authoritarian legal network looking at their political, social and professional identities. Then, it turns to their particular version of the rhetoric of legal crisis, explaining how that narrative was gradually incorporated in the official discourse of the dictatorship, chiefly by the action of law professor Jaime Guzmán. Next, the chapter conceptually links their discourse to three interrelated programs of collective action: a) the reinforcement of the autonomy of legal institutions; b) the attempts to modernize legislation, and, c) the project of constitutional entrenchment and control on state activity. Finally, the chapter briefly presents its concluding remarks and describes some flaws and contradictions of the legal politics advanced by the regime.

The Convergence of a Pro-Authoritarian Legal Network

A careful analysis of legal and state fields between late 1973 and 1989 shows the emergence of a network of conservative and/or pro-authoritarian lawyers and scholars, which consolidated their position inside the governmental apparatus, the bar, courts and law schools. Although most of them were highly involved in the institutional design

carried out by the military regime, we also can find some few who were politically passive, but that outstand by their influential academic contributions attuned with the new predominant discourse. They all would reshape the definition of legal authority and built an alternative that challenged the reformist and Marxist approaches to the law that predominated in the 1960s and early 1970s.

Indeed, most of the upper strata of the legal profession massively endorsed the coup (*pronunciamiento*) and the policies of the subsequent military rule, particularly until the mid of the 1980s, when the pressures for a democratic transition increased.⁷ In concrete terms, that support was gradually manifested in the emergence of the aforesaid pro-authoritarian legal network, which responded to the conflict at the end of the UP and to how the new regime reflected their political preferences and professional interests. For its members, the image of a hostile government that openly had broken the law to advance a totalitarian socialist project constituted a focal point to cement their vital story.⁸ At the same time, their convergence would have deep roots in their social origins and structural positions inside the legal field. It is likely that their predominant highborn profiles and their close links to business litigation had influenced their defiance against the redistributive policies carried since the early 1960s and their proposal to use the law as a mean to control the bureaucratic state.⁹ Such a characterization is determinant to understand their discursive practices and attempts of legal reform.

Elite lawyers constituted one of the most enthusiastic opponents to the Popular Unity since late 1971. Many of them got engaged in the judicial representation of business interest against the expropriations of industries and estates, certainly challenging those measures with increasing success towards the end of Allende's rule.¹⁰ As I have explained in the previous chapter, the organized bar (CHBA) led by Alejandro Silva Bascuñán rose as one of the staunch antagonistic of the socialist government, participating in strikes and plainly proposing the constitutional impeachment against the president in August of 1973.¹¹ However, such an attitude did not constitute an isolated strategy, and it resulted coherent with the take of other actors of the legal field, like higher courts and the Comptroller's office with which little by little comprised an oppositional bloc. The divergences on the separation of powers, the lack of enforcement of some judicial decisions and the reigning social chaos had alienated important sections of the elite legal profession, and after the coup, most of them were embedded in a sort of relief.

In the days immediately after the military takeover, legal institutions moved to recognize the new authorities and to laud its purposes, without forgetting to say that they were on the same page. On September 12th of 1973, the Chief Justice of the Supreme

⁷ Supporters of the military government, and in particular, lawyers, use to refer to Allende's overthrow as pronouncement [*pronunciamiento*] avoiding the concept of coup de' état that would have characterized military takings of Latin American governments. Equally, they eschewed to use the term dictatorship, employing the concept military or authoritarian rule. In this way, they tried to underscore the legitimacy of the army action. Here, I do not intend to enter into that kind of academic disputes, employing all these concepts in an indistinctive way to facilitate the reading.

⁸ See the last section of Chapter 5, on the oppositional behavior of legal institutions during the last part of the UP's government.

⁹ See *Table 6.1* below.

¹⁰ Interview Jorge Ovalle.

¹¹ See Chapter 5.

Court, and then the plenary tribunal itself, publicly praised the coup and the incoming authorities, underscoring that, unlike Allende, they were willing to enforce judicial decisions.¹² By the same token, the CHBA's General Board visited the Junta and the new Minister of Justice short afterward, and, later, it called for the collection of financial support to the national reconstruction and actively delivered legal arguments to legitimate the new rule in Chile and abroad. The next weeks and months, both the Supreme Court and the CHBA created formal links with the Junta employing ceremonial protocol and letters interchange.¹³ Finally, the main law schools of the country issued statements following a similar pattern. For instance, 21 academic authorities at the University of Chile Law School inserted a statement in *El Mercurio* endorsing their new authorities and offering their technical collaboration.¹⁴

In a less institutional fashion, private lawyers moved in the same direction. They published a number of letters to newspaper publicly celebrating the liberation of the country from the "totalitarian menace", and even an ad-hoc "committee for the defense of the rule of law"—composed by elite attorneys—gathered to congratulate the incoming authorities.¹⁵ Several sources indicate that as soon as the military junta took over the power, quite a few lawyers approached to offer their cooperation. The memoirs of the first Undersecretary of Justice, Mario Duvauchelle, and the records of the CHBA indicate that prestigious lawyers were eagerly available to collaborate in limited tasks for free.¹⁶ Beyond the possibilities to advance professional and partisan agendas, the evidence shows that they honestly considered that the legality, and the nation itself, had been at risk and that juridical expertise could make a substantial part in the restructuring of the country.

Looking at the context, it is not surprising to observe that the Military Junta heavily relayed on the elite legal profession to recruit its cadres. Initially, they were critical exposing the arguments to legitimate the new rule and to explain the details of these at international level. In October of 1973, a commission of the CHBA flight to Perú, Colombia, and Ecuador to give its version of Allende's overthrow, and the Chief Justice of the Supreme Court, Enrique Urrutia Manzano, traveled to Argentina on behalf of the government for Perón's second inauguration with the same purpose. In the next December, a commission of seven pro-regime jurists—which included the Head of the CHBA, a former Minister of Justice during Frei's rule, and a Justice of the Supreme Court—visited Western Europe to explain the legitimacy of the military rule, finding the

¹² Paul E. Sigmund: *The Overthrow of Allende and the Politics of Chile, 1964-1976*. Op. Cit. pp. 250-251.

¹³ The CHBA issued a carefully crafted statement in October of 1973, backing the military taking of power. Memoria Colegio de Abogados de Chile, 1973. pp. 28-32. Additionally, its Head—the well-regarded professor of constitutional law Alejandro Silva Bascañán—, sent various letters to the Junta underpinning the legitimacy of the new rule according to the traditional view of the right to rebellion. Late in time, the CHBA published a compilation of documentary sources to summarize Allende's breaks to the law. Colegio de Abogados: *Quiebra del Estado de Derecho durante el Régimen Marxista de Salvador Allende y Adhesión del Colegio de Abogados al Nuevo Gobierno de Chile* [leftlet]. Santiago: Imprenta y Litografía Roma. 1973. See also, Colegio de Abogados: *Antecedentes Histórico Jurídicos*. Op. Cit.

¹⁴ Other groups within the same school, such as the members of the department of the economic law, would compete to gain the Junta's attention, doing the same. Mateo Gallardo Silva: *Intima Complacencia*. Op. Cit. p. 43.

¹⁵ *Ibid.* p. 33.

¹⁶ *Memoria Colegio de Abogados de Chile, 1973*. p. 31. Mario Duvauchelle. *Algo de lo vivido*. Santiago: Arquén, 1996. pp. 50-51.

cold reception of their counterparts.¹⁷ However, beyond those activities of promotion abroad, the main role of right-leaning elite lawyers was the integration of the structures of juridical support that collaborated in the reorganization of the country.

Along the years, the dictatorship established a complex system of lawmaking organized in multiple councils and agencies, allowing the participation of its different factions. Most of the members of this network intervened in the debates of architectonic politics from those settings: the Commission and sub-committees for the Study of a New Constitution (Commission Ortúzar), the legislative councils of the Junta, the Ministry of Justice, the Council of State, the main responsibilities at the Program to Reform the Codes and Basic Statutes, an ad-hoc commission for the modernization of justice (Bustamante Commission, 1980-82), the committees for the study of the constitutional organic legislation, among others. Equally, the Junta had formal and informal bodies of legislative advisory that served as a paralleled means of juridical counseling.¹⁸ Less frequently, some of the members of this network acted purely at the bar, courts or law schools, having a crooked degree of influence. Although they did not comprise a homogeneous group and largely varies in their political commitments, all they were prone to collaborate with the military regime or manifested some degree of sympathy for the authoritarian politics, at least by a period of two or three years. *Table 6.1* shows a summary of the main participants of this sort of network and their characterization.¹⁹

¹⁷ In October of 1973, a Commission headed by Armando Alvarez traveled to Colombia, Ecuador, and Perú to explain the position of the CHBA to other bar associations of the continent. Mateo Gallardo Silva: *Intima Complacencia*. Op. Cit. p. 31.

¹⁸ Few lawyers maintained a close contact with General Pinochet, such as Pablo Rodríguez, Waldo Ortúzar, and Olga Feliú, constituting part of his inner circle.

¹⁹ A more exhaustive analysis includes a sample of about 70 persons, which include Aldo Montagana, Hernán Damiliano, Hermogenez Pérez de Arce, Gonzalo Prieto, Sergio Rillón Romani, Fernando Lyon, Lorenzo de la Maza, Francisco Bulnes Ripamontti, Alicia Romo Salas, Gustavo Lorca, Armando Álvarez, Julio Salas Romo, Héctor Humeres, Oscar Iturriaga, Jorge Guzmán Dinator, Raúl Lecaros, Samuel Lira, etc.

Table 6.1. The Authoritarian Legal Network (Main Participants involved in the transformation of the legal field and the state)

	S	P	Prior experience	1973-1980	1981-1990	Academics by subject
"Alessandristas"						
Miguel Schweitzer S.	4	*	M. Labor 1963-64	M. Justice 1975-1977, CRC	CE 1981-1990	UCH / Criminal Law
<i>Enrique Ortúzar</i>	1	*	M. Justice 1960-64	CENC	TC1981-90, CE1984-90	UC / Civil Law
Jaime del Valle A.	1	**	USct. Justice 1958-64	Sub.ENC	M. Justice, 1983. H. BAR	UC / Procedure
Conservative-leaning						
Guillermo Bruna C.	2	**		LA. , Sub.ENC	LOC	UC / Constitutional
Julio Phillippi	1	**	M. Justice 1958-60	Sub. ENC, CE 1976-81, CRC	TC 1981-1987	UC / Civil Law
<i>Hugo Rosende S.</i>	2	*	D. 1942-65, LA 1961	Dean UCH 1976-83, BAR	M. Justice.1983-90,	UCH / Civil Law
<i>Jorge Hubner Gallo</i>	4	*	D. 1961-1965	CL	CL, Vice-Dean UCH	UCH / Legal Theory
Gremialistas						
<i>Jaime Guzmán E.</i>	1			CENC, LA Junta	LA, LOC 1983-89	UC / Constitutional
Sergio Gaete	2	*		CL	M. Education 1985. LOC	Dean UC 73-85/Civil Law
<i>Sergio Fernández</i>	4	**	Bank Pension Fund	M. Labor, Comptroller 1978	M. Interior 1982-87, LOC	UCH / Civil Law
Ramon Suárez	4	**			C.Bust. M. Gov. 1983	UC / Labor Law
Military						
Mario Duvauchelle	4		Navy Court Officer	Under. of Justice 1974-1978	Sct.Leg.Junta 1978-1988	
Julio Tapia Falk	4	*	LA Air Force, BAR	BAR., UCH, LA Air Force		
National Party						
Sergio Diez	1	**	D., Se. 1973	CENC, ambassador NU		UC / Constitutional
<i>Luis Valentín Ferrada</i>	1	*		Coordinator CRC		
Gonzalo Vial C.	1	*		CDE, M. Education	CDE	UC / Legal History
Ricardo Rivadeneira	1	**	CDE	CDE	C.Bust, LOC, BAR,	
Judges						
Enrique Urrutia M.	2		Supreme Court	Chief S. Court, 1972-75; CE	CE 1976-90	
Israel Bórquez	2		Supreme Court	Chief S. Court, 1978-83	Head TC 1981-85	
José M. Eyzaguirre E	1		Supreme Court	Chief S. Court, 1975-78	TC 1981-85	

	S	P	Prior experience	1973-1980	1981-1990	Academics by subject
Far Right						
Pablo Rodríguez	4	**		BAR.1977-78, LA	LA	UCH / Civil Law
<i>Carlos Cruz-Coke</i>	2	*		BAR 1975-77		UCH / Constitutional
<i>Gustavo Cuevas Farren</i>	2				LOC	UC - UCH / Politics
Independents Lawyers						
Mónica Madariaga	4		C. Comptroller Office	M. Justice 1977-83	M. Justice 1977-83	
Luz Bulnes Aldunate	1	*		CENC, BAR	TC 1989-92	UCH / Constitutional
Roberto Guerrero d.	2	**		C. CB, LA Economy	C.Bust.	UC / Business Law
Julio Chaná Cariola	4	**	Pro-tempore S. Court.	CRC	CE 1984-1990	UC / Business Law
Carlos Urenda Zegers	1	**		Sub. ENC (Property), CRC		UC / Civil Law
Eugenio Valenzuela S.	1	*	CDE	CDE	TC 1981-89, C.Bust.	
Arturo Alessandri Cohn	4	**		C. ODEPLAN	C.Bust.	Inter. Stds UCH
Juan Carlos Dörr	2	**		C.CORFO,	TC (pro-tempore), C.Bust.	UC / Civil Law
Rafael Eyzaguirre E.	1	**		CENC		Dean UCH / Business Law
José M. Eyzaguirre G.	1	**		Sub. ENC (Property), CRC	CL Family Law 1986-89	UC / Civil Law
Independent Scholars						
Alejandro Guzmán B.	2					Dean UCV / Roman Law
Bernardino Bravo Lira	2					UCH / Legal History
<i>Eduardo Soto-Kloss</i>	2	**	C. Comptroller Office		TC (pro tempore)	UCH - UC / Administrative
Raúl Bertelsen R.	2			CENC	LOC	Navy. UC / Constitutional
Other Parties (CD-RP)						
Alejandro Silva B.	2	**	Head BAR 1964-74	CENC 1973-77		UC / Constitutional
<i>Enrique Evans</i>	1	**	USct. Justice 1964-66	CENC 1973-77		UCH / Constitutional
Julio Durán Neuman	4	**	D., Se. 1957-73	Head BAR 1976-81		
Juan de Dios Carmona	4		D., Se. 1969-73	CE 1976-81, CENC 1977-80	CE 1976-81	
William Thayer Arteaga	2		M. Justice 1968	CL, 1976-78	CE 1979-1990	UC / Labor Law
Jorge Ovalle Quiroz	2	**		CENC 1973-77, LA		UCH / Constitutional

Dataset elaborated by the author. Abbreviations: M: Minister; USct.: Undersecretary; D.: Deputy; Se.: Senator; C.: Counsel; CDE: State Defense Council; BAR: Board Chilean Bar Association; S.Court: Supreme Court; LA: Legal Advisor; CL Legislative Commission of Junta; CENC: Commission to Study New Constitution; Sub.ENC: Sub-Commission of Study for New Constitution; CB: Central Bank; ODEPLAN: Office of Planning; CORFO: National Development Corporation; CRC: Commission to Reorganize Codes and Basic Statutes; TC: Constitutional Tribunal; CE: Council of State; Sect.Leg: Legislative Secretary Junta; LOC: Organic Laws Commission; C.Bust: Ad-hoc Legislative Commission; UC: Catholic University. UCV: Catholic University of Valparaiso; UCH: University of Chile; Practice (P): * (regular practice), ** (big business). Social Extraction (S): (1) Landed Elite; (2) Minor Gentry; (4) Outsiders. *Cursive:* Attuned with the Rhetoric of Legal Crisis. **Bold Cursive:** Highly and Explicitly Committed to the Rhetoric of Legal Crisis.

Table 6.1 illustrates how lawyers and scholars coming from different streams of nationalistic and conservative politics were positioned within the legal field and the state, constituting the main participants of the abovementioned network ($n = 43$). An exhaustive analysis of them exposes the allocation and evolution of their power and influence. Some factions played most significant roles than others, such as the experienced followers of Jorge Alessandri, the former supporters of the conservative and national parties, and the emerging “gremial” movement.²⁰ Their profiles also confirm that as long as the Junta was contemptuous of partisanship, it relied on a broad group of independent or institutionally linked law graduates (i.e. military, non-affiliated attorneys at the comptroller office or the state defense council, and higher court justices), who performed key functions. All these groups provided a kind of linkage of continuity between the dictatorship and the previous institutional structures, constituting a very stable basis of sustain at the legal field.

In the same light, the data make clear that there were relatively marginal or displaced blocs, which usually manifested some degree of open dissidence. For instance, who were closer to far-right had a low level of influence within the formal apparatus. These are the cases of the nationalistic movements Fatherland and Freedom (1971-1973) and National Advancement (1987-1990), since their members were vocal critics of the policies of economic liberalization and advocated for a more radical system of corporative (functional) representation.²¹ The study of the profiles also evidences that who were previously members of the Christian Democracy and the Radical Party defected or cutter their previous political links about 1977-1978, when General Pinochet consolidated his power by expelling the Junta’s Air Force member Gustavo Leigh and proscribed political parties. Since then, the military rule would set forth long-term goals and polarized their relation to its constituencies under the label friend/enemy, strengthening the pro-regime identity of its cadres.²²

A careful analysis of the profiles additionally provides enlightening information about some regular patterns in the composition of this network. In the first place, although they constituted a rather heterogeneous social group, the analysis shows that many of its members belonged to minor gentry ($n= 17$, 39%) or possessed aristocracy ascendancy associated with the landed elite ($n = 15$, 35%). It is curious to observe that even when many of them possessed a clear pro-business discourse and some commercial interests, almost none of them was part of families originally featured by their connections to industry, mining or banking.²³ This aspect constitutes evidence of the professional preferences of the small commercial bourgeoisie and the social foundations

²⁰ Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 153-160.

²¹ The profiles of the few lawyers who were associated with the far-right reveal that they acted in academics, informal advisory and the CHBA's General Board in the 1970s, which had a limited influence in the period. They almost were not present at the different legislative commissions established by the regime.

²² Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 151. 159-160. Ascanio Cavallo, Manuel Salazar, Oscar Sepúlveda: *La Historia Oculta del Régimen Militar. Memoria de una Epoca. 1973-1988*. Santiago: Random House, DeBolsillo. 2001. pp. 304-320.

²³ Certainly, some of them had shares in corporations and even performed critical functions in the institutional design of big businesses, like Carlos Urenda and Julio Chaná. At the same time, many times their families could have a participation of diverse economic activities other than agriculture. However, almost none of them directly belonged to the most prominent families originally related to banking and industry (e.g. Matte, Yarur, Edwards, among others.).

of the elite legal profession, traditionally linked to landed and minor aristocracy and, to a lesser degree, to the emerging middle class.

In the second place, the data straightforwardly indicate that most of them already occupied high profile places within the legal field before 1973 and that their situation only improved along the years of the military rule. Among them, we can find five members of the CHBA's board—including its Head—, three Justices of the Supreme Court, some pro-tempore justices at higher tribunals (*abogado integrantes*), and several ministers and undersecretaries of justice during the previous periods. In the same light, we observe a substantial number of them possessed significant political experience in lawmaking on behalf of right-wing politics before 1973 (n =11, 26%).

Besides their transitory positions, we can notice a privileged role in law schools and legal practice. A substantial number of them (79%) performed relevant roles as law professors mainly at the University of Chile and the Catholic University since the late 1960s, being respected by their teaching activities. The distribution of their expertise is closely related to the courses of the military dictatorship. After 1973, these law professors usually invested an important part of their intellectual capital in working in the political reordering of the country. So, it is not surprising to note the 23% of them taught constitutional law and directly led the debates on a new charter issued in 1980 (e.g. Alejandro Silva Bascuñan and Jaime Guzmán). In a different stream, a 30% of the total sample was composed of professors of civil and business law, which constituted the most prestigious juridical discipline in the country. Several of these later ones worked in implementing the agenda of market liberalization advanced by the neoclassical economists of the regime, the Chicago Boys, although their action was not restricted only to that realm.²⁴ Few members of this network were legal scholars who only outstand by their academic contributions (e.g. Alejandro Guzmán Brito and Bernardino Bravo Lira). In such cases, they were associated with Roman Law and Legal History, subjects that were diminished during the reform of legal education of the late 1960s, but that, in the new context, appeared as a suitable groundwork to arrange the legal academia according to a more traditional canon.²⁵ In a higher education system that was controlled by military authorities, some of those right-leaning law professors thrived as Deans or other top ranks of the university politics of the mid-1970s and early 1980s.

We also can verify that the members of this network occupied preponderant places in an increasingly segmented market of legal services. The 71% of them practiced in litigation and counseling, and a 49% of the entire total sample is associated with big law and high-profile lawyering. Some of these latter ones intervened against the process of nationalization carried out by the UP and were part of well-established law firms that began to lead the legal forum by the early twentieth-century Chile. In this sample we can

²⁴ Accordingly, the members of this network were not usually related to other matters that resulted less prestigious in legal practice, like labor law, social security, and criminal law.

²⁵ As a matter of fact, legal historians and professors of Roman Law lost influence during the process to reform of the law school in the 1960s and early 1970s. Their expertise, anchored in humanism, general political history and law in books, appeared out of touch with the new training required for social development. So, they acridly resented the reduction of their courses in the curriculum of the law school. See as example, Manuel Salvat Monguillot: "Necesidad de la Perspectiva Histórica en los Estudios de Derecho." *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. No 7. 1967. pp. 1-28.

find a number of very well-regarded lawyers associated with traditional law firms like José María Eyzaguirre (Claro & Cia.), Julio Phillipi (Phillipi, Irrázaval and Pulido) and Arturo Alessandri Cohn (Alessandri & Cia); founders of thriving new advocacy offices (Jorge Ovalle, Miguel Schweitzer and Roberto Guerrero); notable solo practitioners (i.e. Pablo Rodríguez); well reputed arbitrators (e.g. Julio Chaná, Julio Phillipi and Carlos Urenda); and relevant attorneys at the State of Defense Council (e.g. Eugenio Valenzuela, Ricardo Rivadeneira and Gonzalo Vial). In several cases, they invested their legal capital in the reform the most relevant codes and economic legislation, especially in areas such as banking, mining, and foreign investment. In so doing, they will consolidate their positions inside the legal forum, taking advantage of the possibilities brought by the free market policies.²⁶

From Crisis of the Public Authority to the Crisis of Law

To a large extent, this network mobilized along the conceptual horizon of the rhetoric of legal crisis, endorsing the same sort of malaise that has been explained in the previous chapters. They perceived that the juridical intuitions needed a deep adaptation to match the requirement of the new social milieu of the late twentieth century, and that legal expertise must raise above positivist jurisprudence, in particular, the procedural concept of justice. This discourse was usually endorsed by the most politically or academically oriented among them, who additionally used to have enough influence to sway the intellectual mood inside the network.²⁷ Sometimes this narrative would be explicitly labeled by them as “legal crisis,” others, their appeal would be subtle, depending upon the circumstances. Yet, the commonalities with the previous versions of this discourse would not be an obstacle to articulate a distinctive authoritarian reading of it.

The confluence of right-leaning law graduates towards a relatively common perspective on legal institutions was not a spontaneous phenomenon neither it was restricted merely to the juridical field. In Chapter 3 I have extensively explained that some conservative and nationalist law professors actively intervened in the debates of the legal crisis of the mid-1960s, like Pablo Rodríguez Grez, Pedro Lira Uriqueta, Guillermo Poumpin and Hugo Rosende. So did some of the Christian Democrats lawyers who later supported the military dictatorship during its first years, such as Alejandro Silva Bascuñan and Pedro Jesús Rodríguez. At the same time, its is convenient to recall that right-leaning attorneys and professors already manifested their dissatisfaction about the process of lawmaking by that time, actively promoting a constitutional reform by the very end of Jorge Alessandri’s rule, in 1964.²⁸ However, all these discursive interventions of the mid-1960s were loosely articulated if we think of from the perspective of a collective enterprise. Although usually they took less radical stances than reformist and Marxist

²⁶ The analysis of the data containing a broader sample (n = 70) does not substantively change the previous characterization. See Note 19.

²⁷ After a systematic review of the members of this network, we can observe that this discourse was usually delivered by who had more strong links to theoretical legal scholarship and politics. By contrast, who were mostly related to advocacy and business counseling were generally reluctant to engage in a general and abstract appraisal on the legal system. See *Table 6.1*.

²⁸ See Chapter 4.

lawyers, there was not a sort of common framework serving as a starting point to orientate their joint action at the juridical field. This only will emerge around 1970, along the steady political polarization.

Such as reformist and Marxist lawyers were influenced by the external perception of socio-economic underdevelopment and the downfall of the capitalist system, this network was embedded in the idea of “crisis of authority” delivered at the intellectual circles that came out to the right of the political spectrum.²⁹ Since the early 1940s on, conservative and nationalist sectors had been criticizing the power of political parties and the increasing social turmoil, promoting corporative ideals. These groups finally joined some former fellows of the liberal cadres through the foundation of the National Party (1966), which was established to face their electoral decline and the expansion of the redistributive policies, such as the land reform promoted by Frei’s rule.³⁰ Their convergence around a conservative agenda was not merely an electoral enterprise, but also an intellectual one.³¹ By 1969, a group of academics and lawyers founded the review *Portada* and the center *Instituto de Estudios Generales*, which constituted the most consistent expression of their intellectual coupling. Although also composed by economists and artists, in both settings chiefly converged well regarded law graduates acting in advocacy, politics, journalism and the university, representing the different right-wing tendencies: nationalist (Gonzalo Vial, Jorge Prat, Hermógenes Pérez de Arce, Fernando Silva Vargas), gramialistas (Jaime Guzmán, Hugo Tagle, Cristián Zegers), and conservatives (Guillermo Bruna, Ricardo Claro, Arturo Fontaine, Javier González Echeñique). They and the other members of these initiatives would lay the seeds of a relative common intellectual stance.³²

Portada merged nationalistic and conservative tendencies under the umbrella of Hispanic cultural values as the matrix of the Chilean nationhood, praising the authoritarian republic of the mid-nineteenth century. Originally led by the professor of legal history Gonzalo Vial, the review followed the influence of another legal historian, Jaime Eyzaguirre, who had recently passed away but that conserved a significant weight within this group. It also was swayed by external authors, such as the Spanish Professor of Roman Law Álvaro d’Ors, who resulted particularly significant in their understanding of political legitimacy and the boundaries of the juridical expertise. Considering the influences behind *Portada*, it is not surprising this focused its efforts to provide a historical framework which served as a guideline for the convergence of right-leaning groups.³³

²⁹ Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. p. 223.

³⁰ The National Party, established in 1966, gathered the former fellows of the Conservative, Liberal and National Action parties. It is convenient to notice that the Chilean Liberal Party follow a kind of old-fashioned style, more related to nineteenth-century debates and aristocratic politics than to modern formulations of liberalism. Additionally, it comprised some members Labor Agrarian party that did not join forces with the Christian Democracy. Timothy Scully: *Rethinking the Center*. Op. Cit. p. 160.

³¹ For a complete explanation on the intellectual convergence of the different streams of nationalist, conservative and later, monetarist agendas, see Renato Cristi, Carlos Ruiz: *El Pensamiento Conservador en Chile. Seis Ensayos*. Santiago: Editorial Universitaria. 1992.

³² Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 223-225. 257. Verónica Valdivia Ortiz de Zárate: *Nacionales y Gremialistas. El parto de la nueva derecha chilena: 1964-1973*. Santiago: Lom Editores. 2008. p. 368.

³³ Francisca Alessandri: “La Tradición Hispana y la Revista Portada.” *Cuadernos de Información*. No 2. 1985. pp. 115-136.

By and large, they frequently referred to a “crisis of authority”, denouncing a steady dynamic of turmoil and partisan factionalism that, according to their view, was undermining the social fabric of the country. The traditional spiritual unity of Chile, –which would have been anchored around Catholicism, the respect for the rule of law and a hierarchical sociopolitical structure dominated by presidential authority–had lived a long-term decadence along the twentieth century. The last and most visible expression of such as decay was observable in the political arena. The parties, organized around the Congress, had unleashed a harsh competition to conquest the power, being featured by corruption, the prosecution of petty sectarian interests and demagoguery. In doing so, they had drag associations at the civil society, which entered into the political game following partisan alignments. Embedding such a contest, students, farmers, and workers’ unions would have wrecked havoc through restless protest, attempting to take advantage of this enduring political downfall. The successive governments since the mid-1960s would have endorsed comprehensive foreign ideologies and carried out a set of unfeasible redistributive policies to compete for the electoral constituencies, but only pushing the country to a lower point. For instance, they pointed to the extensive process of land reform and the reorganization of universities during Frei and Allende’s rules would illustrate the dramatic pandemonium in which Chilean society had felt.³⁴ In their opinion, the solution to escape of this final decline was the reestablishment of an authoritarian government structured toward a strong president, who appeared as the only institution that was able to reestablish political order and to secure citizens’ freedom.³⁵

Numerous other voices, coming from different right wing streams, joined to these debates along the early seventies, like Bernardino Bravo Lira, Julio Philippi, Alejandro Guzmán Brito, Pablo Rodríguez, Mario Duvauchelle, and others who already were engaged in these debates during the prior decade. On the whole, almost all they would organize their discourse chiefly around the historical framework synthesized by *Portada* and their intellectual origins, influencing the courses of the dictatorship and the legal culture even after the journal disappeared in 1975. Thus, they collaborated in applying such an agenda to a more concrete analysis of the legal institutions. Thus, by the very beginning of the military rule, this network already would have a relatively common groundwork, which orientated their process of mobilization at the legal field.

Despite the heterogeneous origins of the members of this network, the authoritarian discourse on the legal crisis was articulated on four axes that resulted largely consistent with the historical approach presented by *Portada* (i.e. social conflict, bureaucratic state, legal authority and legal formalism). First, they offered a particular picture about how groups of interest and partisan competition were one of the principal causes of this normative disarray. Taking advantage of the lack of political authority, unions and business associations would have bargained in the political process to access to economic privileges and special juridical conditions, producing, at least in part, a

³⁴ See the Editorials: “Crisis de Autoridad” *Portada*, No 5. 1969. p.4. “Desorden Social y Crisis Política” *Portada* No. 9. 1969. pp. 5-8. “Que gobierne el compañero Presidente.” *Portada* No 17. 1970. p. 5

³⁵ Bernardino Bravo Lira: “Nueva Institucionalidad. Medio siglo de trayectoria institucional de Chile. 1924-1973” *Portada* No. 43. 1973. pp. 24-29. Fernando Silva Vargas: “Un contrapunto de medio siglo: democracia liberal y estatismo burocrático. 1924-1970.” In Sergio Villalobos et. al.: *Historia de Chile*. Santiago: Editorial Universitaria. 1976. pp. 972-977. In a similar perspective, see Crescente Donoso Letelier: “Notas sobre el Origen, Acatamiento, y Desgaste del Régimen Presidencial en Chile. 1925-1973.” *Historia*. No. 13. 1976. pp. 271-352.

chaotic process of lawmaking featured by miscellaneous statutes and benefits to specific groups. Meanwhile, disenfranchised sectors of the population, such as unemployed urban poor, did not have the power to exert pressure or to speak inside the halls of the public agencies, being neglected.³⁶ Hence, the increasing normative disorder did not only echo the break of the coded law, but it portrayed the very decline of the Congress as the setting of deliberation to advance the permanent interest of Chile and the common good.³⁷

Second, conservative groups directly attacked the expansion of the administrative state, particularly in regard to the growth of public agencies and redistributive policies that called into question property rights. They were not necessarily seen as an improvement in the public institutional capacity, as left-leaning groups used to observe. By contrast, *Portada's* historical framework asserted that the excessive enlargement of the bureaucracy embodied the capture of the state machinery.³⁸ Behind the expansion of the public agencies, political parties would have tried to advance their own electoral goals using administration to keep their clienteles, and, later in the sixties, to move on their ideological agendas. From the perspective of the rule of law, the problem was not only the lack of adequate political regulation of the parties—an issue that belonged to the political process itself—but the deficient juridical control of the state action. It is instructive, in this regard, to remember the deferential behavior of courts and legal institutions along the emergence of the administrative state by the mid-twentieth century.³⁹ Right-leaning lawyers, especially who ascribed to a more conservative sensibility, tended to look such dynamic with disdain. For instance, Raúl Bertelsen's article "*La Crisis of the Constitucionalismo Chileno*" [the Crisis of the Chilean Constitutionalism] explains how different cases of behavioral deference of legal institutions composed a more general panorama of inefficacy of law as mean of restraint: the constitution was unclear to fix the economic sphere of the state, the administrative courts promised by the constitution of 1925 never were established, and the judiciary ducked in the juridical control on the public bureaucracy and judicial review.⁴⁰ In all these cases, courts preferred to rely on formalist and exegetic interpretation as a way to sustain their obsequiousness to the political power.

Third, the members of this network also acridly resented the diminishing place of law in public governance, such as the other competing groups did. For them, the lack of juridical control on state agencies represented a broader pattern: Chilean legal culture had reduced the law to a mere formal legality, which had been revealed as an ineffective frame to advance towards common good [*bien común*]. The experience of Allende's government illustrated that positivist jurisprudence could be manipulated to slash freedom, being finally overflowed by violence.⁴¹ The phenomenon touched the very epistemological boundaries of the law. For example, in a suggestive article entitled *En*

³⁶ *Supra*.

³⁷ For conservative decriptions on this issue see Hugo Tagle Martínez: "Origen y Generalidad de la Ley Chilena bajo el Imperio de la Constitución de 1925." Op. Cit. Bernardino Bravo Lira: "Metamorfosis de la legalidad. Forma y Destino de un ideal dieciochesco." *Revista de Derecho Público*. No 31- 32. January 1982. pp. 85-92.

³⁸ See as example: Jaime Guzmán: "El Miedo: Síntoma de la Realidad Político-Social Chilena." *Portada*. No 2 Febraury 1969, pp. 5-7. 14.

³⁹ See Chapter 3.

⁴⁰ Raúl Bertelsen: "La crisis del Constitucionalismo Chileno" *Cruz del Sur*. No. 1. 1975. pp. 39-43.

⁴¹ "El Destino de Chile y Portada." *Portada* No 29. Abril, 1972. p. 5.

torno a la Crisis del Derecho Moderno [On the Crisis of Modern Law], the well-regarded professor of Roman Law, Alejandro Guzmán Brito, explains how juridical expertise was called into question, acquiring a lessened secondary function. Instead of normative legal considerations, modern society tended to look at the naked reality, particularly considering its economic, social and political aspects as the unique relevant criteria. The law, consequently, had lost its ordering capacity to collaborate in solving the problems of contemporary world.⁴² The origin of such demise was mainly related to how the legal authority had been narrowly reframed in the previous decades and the abuse of legalism and the exegetic juridical methodology.

It is fair to say that the jurist has been partly guilty of this process of the debasement of law [*vulgarización*]. But it is a kind of reflexive guilt, as long as it responds to an imposed juridical conception, the positivist legalism [...] This is in crisis, and it would be overcome soon, being replaced by the Jurists' oeuvre [...] who, as in other periods, has been the engine of the creation and formulation of law.⁴³

Finally, the central element of their juridical discourse was given by their radical critique of the procedural concept of justice emerged along positivist jurisprudence. By the 1960s, right-leaning politicians and lawyers, such as the senator Francisco Bulnes Sanfuentes, severely complained about the lack of legal restraint on redistributive policies (e.g. agrarian reform), which reflected that citizen's rights had not been "protected from occasional parliamentary majorities."⁴⁴ By the mean of *Portada* in the early 1970s, such moans would be synthesized as a coherent claim for respecting enduring legal principles anchored in natural law, which would rise above politics. This network did not deny the value of formal legality but considered the later one was not an end in itself, constituting merely an instrument to promote their view on common good rooted in traditional Catholic thought.⁴⁵ Albeit such an approach possessed ancient origins, they used to follow a more recent articulation authored by Spanish Roman law professor Álvaro d'Ors, as long as they distinguished between the mere formal fitness of a juridical norm or government (legality), and its merit anchored in their respect for superior ethical principles of public action (legitimacy).⁴⁶ "The intrinsic value of the statute [*la ley*] does not emanate from the omnipresent will of who exert the power to dictate it, because not every statute, by the fact of its mere normative status, corresponds to what is fair [*justo*]. The moral force of a positive rule arises from its very nature aimed to protect the general interest, which demands, at the same time, the respect for the citizens' fundamental rights," explained Julio Philippi—a former Minister of Justice during Alessandri's rule and

⁴² Alejandro Guzmán Brito: "En torno a la Crisis del Derecho Moderno." Speech at Universidad Católica de Valparaíso School of Law. *Cruz del Sur*. No. 1. 1975. pp. 21-35.

⁴³ Ibid. p. 32. It is noteworthy that Guzmán Brito is heavily influenced by his mentor Álvaro d'Ors. Of this latter one, see: *Los romanistas ante la actual crisis del Derecho*. Madrid. Reus. 1954. *Escritos varios sobre el derecho en crisis*. Roma – Madrid. Sucesores de Rivadeneyra, 1973

⁴⁴ Felipe Bulnes Sanfuentes: Intervention at the congressional debates on the Constitutional Reform of Property Rights [1966]. Quoted in Enrique Evans de la Cuadra: *El Estatuto Constitucional del Derecho de Propiedad*. Op. Cit. p. 367.

⁴⁵ Francisca Alessandri: "La Tradición Hispana y la Revista Portada." Op. Cit.

⁴⁶ See a synthesis of that viewpoint in: Álvaro d'Ors: "Legitimidad." *Revista Chilena de Derecho*. Vol.8, 1981. pp. 41-53.

one of the most influential and respected practitioner and professor law at the early 1970s—illustrating the point.⁴⁷

In this light, the historical framework proposed by the members of *Portada* charged against the “value neutrality” of the entire juridical system. The former Constitution of 1925 had ended with the public status of the Catholic Church as the official religion of the state, and lacked clear substantive sources of restraint or further purpose to orientate governmental action. So, they asserted that the constitutional design of the liberal democratic regime mostly constituted a formal regulation for lawmaking. According to their view, this would have become a danger as long as the doctrinal consensus in Chilean politics would have been gradually broken, becoming particularly acute by the ascendance of the Christian Democracy and Marxist parties that promoted competing and exclusives projects of development. Through the conservative historiography, they would continuously come back to this idea in the different writings published during the late 1970s and early 1980s, setting a key piece of their narrative of the legal crisis.⁴⁸ Illustratively, Gonzalo Vial addressed this position asserting: “the formalism was the only and basic legal and political structure of the liberal democracy before 1973; considered in its double face, its unlimited trust in the mechanism of public elections and in the constitutional provisions to enact statutes and to modify the charter itself. Aside from that, there was no obligation to respect anything. [...] Any political, social or economic idea—the anti-Semitism, the slavery, the torture—could be introduced in the constitutional and legal structure of Chile [...]”⁴⁹

The ideas of *Portada*, such as their rejection of value neutrality in the constitution, were not reduced to theoretical speculation, and orientated the discourse of who led the institutional design of the regime. Even, they influenced to more moderate lawyers that initially cooperated with the military rule—principally to those with a former conservative filiation in their young years—. All they began to share their attack to legal formalism as a key manifestation of the legal crisis and a threshold for Allende’s socialist experiment. For instance, the Christian Democrat law professor Alejandro Silva Bascuñán, who was head of CHBA and took part of the constitutional commission created by the military Junta, followed a similar line in this respect, when calling for the building of a new law in 1974:

The divorce between the law and its deepest ends drove to a crisis that emerged through a set of attacks to the law, conducted by the mean of diverse theories that impeded the victory of the true goals of the juridical order, like, for example, the Rousseau’s that conferred force to any expression of general will expressed in the majority constituency, the Kelsen’s which intended only to attend to the perfection of the normative hierarchy, and the Marx’s that looked to intensify the class consciousness to fuel the social struggle [...]⁵⁰

⁴⁷ Julio Phillipi: “Reflexiones sobre el bien común, justicia, derecho y formalismo legal.” In: Tomás MacHale, Pablo Barahona Urzúa (eds.): *Visión Crítica de Chile*. Santiago: Ediciones Portada. 1972. p. 32.

⁴⁸ Gonzalo Vial: “Decadencias, Consensos y Unidad Nacional en 1973.” *Dimensión Histórica de Chile*. No. 1. 1984. pp. 140-164. See also. Bernardino Bravo Lira: *Régimen de Gobierno y Partidos Políticos en Chile. 1924-1973*. Santiago: Editorial Jurídica de Chile 1978.

⁴⁹ Gonzalo Vial: “Decadencias, Consensos y Unidad Nacional en 1973.” Op. Cit. p. 161.

⁵⁰ Alejandro Silva Bascuñán: “Nuevo Derecho”, Speech, June 24th, 1974. In Alejandro Silva Bascuñán: *El Abogado, un Servidor de la Justicia*. Op. Cit. p 346.

Ultimately, right-leaning lawyers and scholars largely complained against the unsophisticated version of legal formalism that outweighs in the courses of Chilean politics. And, this perception has persisted among them along the decades have elapsed.⁵¹ According to Gonzalo Rojas Sánchez, a conservative law professor who addressed the issue at the beginning of the 1990s, the crisis of law was predominantly the crisis of the positivistic jurisprudence and its most immediate manifestations.⁵² By the same token, historical sources indicate they went on to say that the normative disarray, the lack of control of state activity, the demise of juridical expertise, and the value neutrality, would have been intimately associated with the shortcomings of an underlying legal positivism, at least such as this was understood by mid-twentieth century Chile. However, to be acuter, it was not merely a naked juridical mentality that was the target of their critique. Their previous adherence to the practices of legal formalism in the early decades shows they were not totally reluctant to this model as long as it respected some social principles, such as a basic protection of property rights and fundamental political and legal freedoms. In their standpoint, they tackled the positivism that was an expression of state's increasing political power to exert control on the rest of the society; and a law that was unable to serve as an effective restraint.⁵³

Looking at the *Portada* review's intellectual legacy, it is noteworthy to observe that this network of lawyers admired the institutional building of the authoritarian republic (1831-1861), presented through the lens of a somewhat idealistic picture. In their view, this latter one not only exemplified a period in which there would have been a rooted social and political consensus, but also represented a strong executive authority that was an impartial arbitrator able to legislate and enforce an impersonal law. By this way, this constituted a model of state transformation. Naturally, they did not attempt to turn the clock back, and, as a matter of fact, they proposed some significant variations to the former model of authoritarianism, like a major protagonist role of judges to control the abuses of political power through a kind of "judicial rule of law."⁵⁴

However, their veneration for the authoritarian republic was more than a mere political inclination. In the same vein, this laudatory depiction addressed the symbolic reconstruction of their role as legal professionals. The praise to that period simultaneously underscored how law and lawyers were at the very center of the modernization of the country, particularly by the elaboration of Andrés Bello's civil code, which synthesized the Hispanic tradition and French legal rationalism. In fact, the most scholarly oriented member of this network would extensively research on the role of law and legal scholarship in this period. The works of Bernardino Bravo Lira on the

⁵¹ See as example, Gonzalo Vial: "Grandes Problemas del Derecho en Chile durante los 100 años de esta Facultad." Speech at Pontificia Universidad Católica de Chile School of Law. March, 1989. *Revista Universitaria*, No 27. 1989. pp. 14-15.

⁵² Gonzalo Rojas Sánchez: "Notas sobre el positivismo legal en Chile en el siglo XX." *Op. Cit.* p. 38.

⁵³ Bernardino Bravo Lira: "La Positivización del Derecho." *Revista de Derecho y Jurisprudencia*. LXII. 1965. p. 20. Raúl Bertelsen: "La crisis del Constitucionalismo Chileno." *Op. Cit.*

⁵⁴ For that purpose, they looked at the colonial past, in which—they asserted—a strong Chief Executive was controlled by the judicial authority. Bernardino Bravo Lira: *Presidente y Estado de Derecho en Chile. Un estudio histórico institucional.* *Revista de Derecho y Jurisprudencia*. XC, No 2, 1993. pp. 62-89.

Constitutional organization of the authoritarian republic,⁵⁵ and Alejandro Guzmán Brito's oeuvres on Portales and the Law and, overall, his monumental *Andrés Bello Codificador* [Andrés Bello Code Maker], constituted enlightening examples about how they intellectually admire the links between the authoritarian republic and juridical expertise.⁵⁶ Again, the lawyers' political discourse and professional enhancement came out interviewed, orienting the collective action of this network.

The Institutionalization of the Regime as a Juridical Project: Jaime Guzmán and the Re-foundation of the Republican Order

As it has been explained in the previous sections, right-leaning lawyers and legal scholars looked to legitimate the military regime and collaborated with this since its early stages. On the whole, their description of the legal crisis and their appeal to the authoritarian model of the nineteenth century were carefully articulated, constituting a consistent narrative. Following the line of *Portada*, they pointed that the authoritarian politics could be channeled by the law such as in the mid-1800s, when a strong executive could repress social chaos and modernize the country by legal means. In their view, the old authoritarian republic exemplified that a strong government was not incompatible with constitutionalism and the rule of law. However, their stances did not remain only as an academic proposal of institutionalization adapted to the new milieu. Additionally, they were able to influence the official discourse of the dictatorship. Their most remarkable contribution was to convince the military rule that its task was not merely to restore the constitution broken by Allende, but that, considering the juridical and political crisis, they must build a new institutional order. In the long-run, this proposal served to elaborate a blueprint to refund the Republic on new bases other than the liberal democracy of the mid-twentieth century.

Jaime Guzmán Errázuriz was a pivotal figure in shaping the official discourse of the military rule, being its most influential legal advisor and who introduced the agenda of *Portada* into the ideals of the new regime.⁵⁷ Coming from an impoverished family of the old aristocracy, Guzmán had been a student leader influenced by traditionalist reading of the Catholic Church doctrine and several personalities of the right wing politics, such as Jaime Eyzaguirre, father Osvaldo Lira, and Jorge Alessandri, among others. Since early, he manifested a deep criticism to progressive sectors of Catholicism and sympathized with corporative anti-liberal ideas of Francoist Spain. During his student years, he combated the process of reform at the Catholic University in the late 1960s,

⁵⁵ Bernardino Bravo Lira: "Portales y la Consolidación del Estado Constitucional en Chile" *Revista Universitaria*. 1979. No 2. pp. 120-127. See also his: "La Constitución de 1833." *Revista Chilena de Derecho*. No 10. 1983. pp. 317-329.

⁵⁶ Alejandro Guzmán Brito: *Portales y el Derecho*. Santiago: Editorial Universitaria, Universidad Metropolitana de Ciencias de la Educación. 1988. (Which collects some of his works and speeches of the 1980s.) *Andrés Bello Codificador. Historia de la fijación y codificación del derecho civil en Chile*. 2 Vols. Santiago: Universidad de Chile. 1982.

⁵⁷ For Jaime Guzmán's role, see: Renato Cristi: *El Pensamiento Político de Jaime Guzmán. Autoridad y Libertad*. Santiago: Lom Ediciones. 2000. Belén Moncada Durruti: *Jaime Guzmán, el político de 1964 a 1980. Una democracia contrarrevolucionaria*. Santiago: Ril Editores. 2006. Cristián Gazmuri: *¿Quién era Jaime Guzmán?* Santiago, Ril Editores. 2013. José Manuel Castro: *Jaime Guzmán, ideas y política. 1946-1973. Corporativismo, Gremialismo, Antocomunismo*. Santiago: Centro de Estudios Bicentenario. 2016.

leading the foundation of the gremial movement, which intended to challenge the increasing partisanship of civil society. Since 1970, he reached public visibility on television programs and newspapers, getting involved with the journal *Portada* and harshly struggling against the Popular Unity. By the same time, he rose as a young professor of constitutional law at the Catholic University, proven to be a decisive institutional designer in the following years, as we will see.⁵⁸ Although he was not a pure academician figure, Guzmán became the most prominent politician with a strong intellectual instruction of the Chilean right during the twentieth century. He was familiar with the doctrinal basis of conservative politics, which were grounded on scholastic natural law, and resorted to them to legitimate Allende overthrow. After the coup, in the mid-1970s, he was able to rearrange its previous corporative stances with a more active support to free market policies (e.g. Hayek, Novak). Also, Guzmán would become a helpful organizer of civilian groups behind the military power, participating in the publication of the journal *Realidad* and promoting the presence of the gremial movement's members inside public agencies. Later on, he established the Independent Democratic Union (1983), the main party that backed the dictatorship and attempted to keep its legacy alive.⁵⁹ With the beginning of the democracy, in 1990, Guzmán became elected Senator, being assassinated by radical left terrorists the following year.⁶⁰

Guzmán's sway and, by him, the diffusion of *Portada's* ideals throughout the regime were not an immediate process. By September of 1973, the military Junta did not have clarity on a timetable or a political itinerary, and the main function of its supporting legal cadres was aimed to legitimate the military takeover and to resolve the most immediate issues of the junta organization. Among the different lawyers who collaborated with the Junta, Guzmán quickly outshined as the most influential at the level of architectonic politics. Two days after the coup, the Junta entrusted to him the study of the enactment of a new constitution, consolidating his influence once he was appointed as a member of the constituent commission some weeks later.⁶¹ In addition, he became a close advisor of General Pinochet, collaborating both in the institutionalization of the regime and in the strengthening of his political authority. In fact, Guzmán advocated for recognizing the Junta had assumed the supreme command of the nation, which included constituent powers. Moreover, he supported Pinochet's positions in the different turns and twists of the internal politics of the regime, like at the moment in which he was challenged by the air force member of the Junta Gustavo Leigh in 1978.⁶²

There is not here the right place to extensively explain the doctrinal evolution and a detailed account of Guzmán's influence on constitutional making and legislation, albeit something about this latter aspect is referred to deal with the process of entrenchment, at the end of this chapter. In any case, there is an extensive literature on him.⁶³ Here, I only

⁵⁸ For an overview on his classes of constitutional law see: Gonzalo Rojas, Marcela Achurra, Patricio Dusallant (eds.): *Derecho Político. Apuntes de Clases del Profesor Jaime Guzmán Errázuriz*. Santiago. Ediciones de la Pontificia Universidad Católica de Chile. 1996.

⁵⁹ Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 327-388.

⁶⁰ He was elected Senator entering into his office in 1990, and passed away in April of 1991 assassinated by the Manuel Rodríguez Patriotic Front, a radical left terrorist group.

⁶¹ "It is under the study of a new political constitution of the state, a work that is under the direction of the university professor Mr. Jaime Guzmán." *Acta Junta de Gobierno* No.1. September 13th, 1973. p. 2

⁶² Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 367-369.

⁶³ See note 57.

intend to show how he influenced the institutional itinerary of the military rule, somewhat following the *Portada*'s ideals on legal crisis and authoritarian models. In fact, the foundational documents of the Junta, such as its Statement of Principles (1974) and General Pinochet's Chacarilla's Speech (1977), were drawn up by him. These documents result crucial in orientating the dictatorship's institutional program, and, certainly, set up the scenario to understand the collective mobilization of this right-wing legal network during the same period.⁶⁴

Once the most violent moments of the coup ended up, Guzmán contributed to cementing the dictatorship's departure from the previous liberal democratic system that was in force before 1973. By the Junta's Statement of Principles [*Declaración de Principios de la Junta de Gobierno*, March 1974], Guzmán laid the basis of a new model that intended to left behind the partisanship of social life, the value neutrality of constitutional structures and the large role of the state in society and economy.⁶⁵ The document asserted that Chile must look for a national project of institutional organization, that should proscribe Marxism and overcome the society of consumption of the Western democracies. To do so, Guzmán proposed to re-organize Chile from a new set of values that matched the "Christian conception of man and society" that prevailed in most of the population.⁶⁶ Following such a perspective, he asserted that "the man has natural rights that are over the state," and that they emerge ultimately from God.⁶⁷ Next, he concluded several premises related to his previous logic, like that the state only can carry the activities that individuals and other minor private social associations cannot achieve by themselves (principle of subsidiarity), and the respect of property rights and free enterprise in the economy. In the same light, Guzmán describes the new regime as an authoritarian government that should follow Portales' inspiration (in reference to Diego Portales, the minister in charge of organizing the authoritarian state in the nineteenth century). Resorting to a nationalistic style, he proposes a strong presidential authority that performed the role of impartial arbitrator, rising above political parties and groups of interest. This latter one would be in charge of leading the path to a new institutional system, which would be featured by marked corporatist elements and the establishment of a "civic-military movement." Associations of students, business, and professional groups would be granted with their proper realm of autonomy, free from the interference of partisanship, "being destined to be the most important organic channel of citizens' expression."⁶⁸ Hence, Guzmán's document clearly merged nationalistic and conservative elements that were present in the authoritarian reading of the legal crisis, such as the discourse of *Portada* did.

Pinochet's speech at Chacarillas hill, in 1977, constituted a second document that reflects Guzmán's influence during the early stages of the dictatorship.⁶⁹ Read under a solemn ceremony to commemorate the Youth day; this became one of the main milestones in the process of institutionalization of the military rule.⁷⁰ Unlikely the

⁶⁴ Renato Cristi: *El Pensamiento Político de Jaime Guzmán*. Op.Cit. p. 35.

⁶⁵ Junta de Gobierno: *Declaración de Principios del Gobierno de Chile*. Santiago: Editorial Gabriela Mistral. 1974.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ "Discurso de Chacarillas." [July, 9th, 1977]. *El Mercurio*. July, 10th, 1977.

⁷⁰ Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 289-290.

Statement of the Junta, which only asserted that this had a task of national reorganization, the Chacarillas's speech set a timetable to return to a democratic regime for first time.⁷¹ Although the schedule was finally modified, it evidences the first attempt to project the end of the dictatorship by an institutional transition. On the whole, this plan corresponds to Jaime Guzmán's perception of several circumstances that constituted a sort of critical juncture by that year. He was alarmed about how Spanish dictatorship was dismantled after Franco's passed away in 1975, illustrating the convenience to set carefully a long-term plan for the transition to democracy. At the same time, he noticed the need to legitimize the military government that faced the criticisms that arisen after the assassination of the former socialist minister Orlando Letelier, in Whashington D.C. (1976). Moreover, finally, he perceived the increasing internal conflicts within the Junta, which confirmed its erosion over time and the necessity of consolidating the structure of the regime and its itinerary before the emergence of an ample demand for democratic return.⁷²

The Chacarilla's Speech laid down some features of the further regime such as their heads projected it.⁷³ Firstly, it reasserted the substantive commitments explained in the Junta's Statement of Principles—like the subsidiarity of state action—assuring that the new institutional system will protect itself from the attacks against such values. Second, it defined an authoritarian model of new democracy, inasmuch as it would respect “objective and impersonal juridical rules,” additionally asserting that it would be governed by a “legal order that secures persons' rights, under the control of independent courts.”⁷⁴ Third, it promises to reestablish democracy with organic counterbalances such as some senators non-elected through the ballot, proposing a more technocratic process of public decision making that would limit the ideological confrontation to a narrower realm. Finally, in several passages the speech addressed juridical modernization, asserting the necessity to harmonize “social evolution with the certainty of juridical rules.”⁷⁵ All these proposals tackled the elements of the legal crisis described by *Portada* and subtly delivered by Guzmán.

The arrangement of the institutional physiognomy of the military regime was not a soothing question and implied some tensions within the governmental apparatus. The issue of the Statement of Principles in 1974 did not count on the sympathy of several military high ranks, who did not share neither its pro-market perspective not the religious doctrinal style of some of its provisions.⁷⁶ Furthermore, the Speech of Chacarillas and the subsequent moves to reestablish a democratic system with corporative counterbalances awaken the opposition of the hard-liners nationalistic who directly proposed a longer military rule and a complete organic corporative system. Such is the case of the prestigious lawyer and close General Pinochet's advisor, Pablo Rodríguez Grez, who formally manifested to the Junta that such bases were not enough to advance to a

⁷¹ This itinerary established three stages to advance to a new democracy, a) a period of replacement of the former charter by different constitutional acts, b) a transition which would be characterized by a mixed legislature composed of elected and corporative representatives, and c) the democratic return in 1985.

⁷² Robert Barros: *Constitutionalism and Dictatorship*. Op. Cit. pp. 204-207.

⁷³ The speech describes the new democracy under different labels, such as authoritarian, integrative, protected, technocratic [tecnificada] and of authentic social participation.

⁷⁴ “Discurso de Chacarillas.” Op. Cit.

⁷⁵ Ibid.

⁷⁶ Interview Jorge Ovalle.

nationalistic state.⁷⁷ Despite such resistance, Guzmán's sway would finally prevail inside the juridical cadres of the dictatorship that gradually would get aligned with his stances. So, the said documents guided the constitutional debates of the regime and the process of lawmaking.⁷⁸ Additionally, Guzmán would count on the support of other important actors, like the Chicago boys and the Minister of Interior Sergio Fernández.⁷⁹ By these years, he would consolidate his influence, deepening the articulation of his proposals along several conferences and writings published about 1980, the year in which the new constitution was enacted.⁸⁰

Naturally, Guzmán was not the only actor involved in the institutionalization of the regime, and the elaboration of the official discourse was not the only sphere in play. As a matter of fact, following the gradual clarification of dictatorship courses, the diverse actors of the legal profession strategically move to rearrange the juridical field. In doing so, they would come back on some of the central issues of the above-mentioned malaise that has been already described in the preceding chapters.

Law without Politics? The Faces of Legal Autonomy

After September of 1973, the official discourse of the military government pointed to excessive ideological struggle and partisanship as one of the principal causes of the democratic breakdown. Accordingly, the CHBA, courts and law schools moved to rearrange the legal field, asserting their expertise constituted a discipline that was separated from contingent political decision-making. Thereby, most of them invested their intellectual and social capital into building an attitude of professional neutrality, looking to secure their position in a context of high uncertainty. As expected, however, such appeal to legal autonomy would have diverse immediate purposes, depending on the context and the legal actors that were in play, such as to duck on conflictive issues and to displace other professional competitors.

Their appeal to legal autonomy was structured on two behavioral patterns built on different doctrinal traditions: a) the reinforcement of an “apolitical” identity anchored in the idea of separation of powers and positivist jurisprudence (that we could call a thin version of legal autonomy); and b) the claim of a juridical knowledge that rises above contingent politics, which lay down a thick version. So far, these stances echoed the repertoire of strategic behavior and the tensions between the nationalistic and conservative perspectives of law that dominated the mid-1970s. At the level of jurisprudence, the association of these two logics seem sloppy and misguided. However, their coexistence reflects the compromise inside their reading of the legal crisis that pointed, simultaneously, both against the excessive partisanship and the unsophisticated juridical formalism of the Chilean legal culture.

⁷⁷ Pablo Rodríguez Grez: Exposition to the Junta: *Acta Junta de Gobierno* No 102. March, 12th, 1974. pp.1– 8. See also, Pablo Rodríguez Grez: *¿Democracia Liberal o Democracia Orgánica?* Santiago. Instituto de Ciencia Política. Universidad Católica de Chile. 1977.

⁷⁸ See for example. *Acta Constitucional* No 2. D.L. 1.551 September 13. 1976.

⁷⁹ Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 331. 414-424.

⁸⁰ Jaime Guzmán Errázuriz: “El sufragio universal y la nueva institucionalidad.” *Realidad*, No 1. 1979. pp. 33-34. “Aspectos Fundamentales del Anteproyecto de Constitución Política.” *Revista Universitaria*. No 5, 1980. pp. 89-87. “La Definición Constitucional.” *Realidad*, No 3. 1980. pp. 17-39.

A thin version of legal autonomy

On one side, the idea of separation of powers implied that legal institutions, particularly courts and lawyers, must mechanically apply legal rules previously elaborated by the political will (the prior Congress or the Junta). This perspective matched the authoritarian discourse of legal certainty that emphasized the application of objective and impersonal provisions.⁸¹ Indeed, that approach was the most spread stance inside legal institutions by this time, reinforcing their bureaucratic character. This is particularly noticeable in which moved towards shrinking their sphere of jurisdiction, like the CHBA, courts and at the University of Chile Law School.

At the CHBA's General Board, the value of legal autonomy was employed by right-leaning lawyers to displace those who gradually became detractors of the repressive policies of the military dictatorship. By mid-1974, the head of the CHBA, Alejandro Silva Bascuñán, had turned increasingly contentious on the human right abuses committed by state agents and proposed the necessity of a new election of the CHBA's representatives. As a result, the board got split into two factions that acridly contested against each other by crossed recriminations in October of 1974: a minority who supported Silva Bascuñán and a majority of right-leaning lawyers who was reluctant to carry any behavior that could be interpreted as an oppositional stand before the new government. Debating on Silva's reluctance to collaborate with the military justice, these latter ones heavily charged against him, arguing that instead of channeling "the political concerns of the UP's lawyers and their new companions", the CHBA should take advantage of the historical opportunity and focus on "the legislative reforms and to develop an efficient professional labor."⁸² So, they censured Silva Bascuñán electing a new Head, provoking the resignation of other three members of the board that supported him in the next weeks.⁸³ The following years, diverse pro-regime lawyers—like Arturo Alessandri Bessa, Carlos Cruz-Coke, Pablo Rodríguez Grez, and Hugo Rosende—were appointed to the board by its remaining members.⁸⁴ Although certainly the CHBA was composed by hard-liners and shrieked its realm of jurisdiction to eschew political risk, it would gradually become less influential in the public sphere and lawmaking.⁸⁵ They were scarcely considered in any constitutional and legislative debates of the mid and late

⁸¹ In several opportunities, the higher officials of the regime, and General Pinochet himself alluded to the authoritarian spirit [espíritu portaleano] of the new rule. This would have been characterized by the impersonal enforcement of authority and the equality before the law. Junta de Gobierno: *Declaración de Principios del Gobierno de Chile*. Op. Cit. p.

⁸² The final conflict came out when Julio Salas Romo and Julio Tapia Falk, two members of the Board, asked to collaborate with the military justice that required the records of Eugenio Velasco Letelier's interventions before the organized bar. Valentín Robles Letelier drafted the censure against Bascuñán. *Acta Consejo Colegio de Abogados*. October 28th, 1974. p. 2.

⁸³ In response to the censure, Silva Bascuñán resigned some weeks later. Manuel Daniel, Sergio Baeza, and César Serani, the members that supported Silva Bascuñán within the Board and who were considered closed to the Christian Democracy or Radical Party, quit as well.

⁸⁴ See *Actas Consejo Colegio de Abogados 1974-1981*.

⁸⁵ To surmount their professional demise, the members of the board attempted to reestablish the Institute of Legislative Studies with the University of Chile of Law in 1976. However, these talks did not prosper. *Acta Consejo Colegio de Abogados*. January 19th, 1976. p. 4

1970s, to lose finally its public law status by becoming a mere private professional association in 1981.⁸⁶

The thin version of legal autonomy was also a central issue for courts, which reinforced a bureaucratic organizational pattern that emerged since about the late 1920s.⁸⁷ Such as Lisa Hilbink's research as extensively showed, Chilean justices constantly appealed to an apolitical institutional ideology originated in their process of socialization and hierarchical judicial structures. They were not expected to deliberate in adjudication, but defined their role—at least rhetorically—in terms mechanical jurisprudence.⁸⁸ After the coup, higher courts expelled the judges who were committed to Allende's legal reforms by the expedient of applying disciplinary sanctions and poor qualifications related to their participation in partisan politics.⁸⁹ In the same light, they asserted the value of legal certainty, criticizing those who promoted more flexible judicial interpretation, usually identified with left-leaning stances. In his annual speech of 1974, for example, the Chief Justice Enrique Urrutia pointed against the juridical views of Marxist lawyers: “a social justice that was arbitrary, without law, changing and even criminal to facilitate the action” of the UP cadres.⁹⁰

Moreover, the judiciary avoided incurring in any challenge to the military rule in sensitive areas, such as human right abuses and the juridical validity of the executive legislation (decrees laws). For instance, higher courts systematically refused the writs of habeas corpus filed on behalf of left-wing dissidents who were jailed, exiled and disappeared. More than 4,400 writs were presented only between 1973 and 1983, in particular by the Catholic Vicariate of the Solidarity, but only ten of them were admitted.⁹¹ The considerations for their refusals were related to the executive prerogatives to detain persons in cases of threats to national security and the validity of such attributions under the declaration of the state of siege. At the same time, high tribunals did not apply their jurisdictional prerogatives over the military trials under the expedient that the Supreme Court could not exert surveillance on them during a state of war. Finally, they consistently uphold the amnesty law enacted by the military rule in 1978, applying harsh disciplinary sanctions against who attempted to prosecute human rights abuses committed before such year. In all these cases, higher courts implicitly resorted to their non-deliberative character and the narrow textual interpretation of statutes.⁹²

Here, I do not intend to explore an issue that has been comprehensively studied by literature, but only to situate the judiciary within a broader pattern of the legal profession that, supporting the military dictatorship, moved towards specific readings of legal autonomy.⁹³ Overall, the evidence clearly indicates that the military rule did not directly

⁸⁶ DL No 3621. *Fija Norma Sobre Colegios Profesionales*. Febrary 3rd, 1981.

⁸⁷ See Chapter 3.

⁸⁸ Lisa Hilbink: *Judges Beyond Politics...* Op. Cit.

⁸⁹ The Junta broadened the prerogative of the Supreme Court in the process of evaluation of the judicial personnel. See *Diario Oficial* March 29, 1974 and April 5th, 1974.

⁹⁰ Enrique Urrutia Manzano. “Discurso de Inauguración del Año Judicial 1974.” *Revista de Derecho y Jurisprudencia*. LXXI. No1. 1974. p. 20.

⁹¹ Lisa Hilbink: *Judges Beyond Politics...* Op. Cit. p. 115.

⁹² *Ibid.* 114-122.

⁹³ *Ibid.* See also: Anthony W. Pereira: *Political (In) Justice: Authoritarianism and the Rule of Law in Brazil, Chile and Argentina*. Pittsburgh: University of Pittsburgh Press. 2005. pp. 90-116.

coerce the judges. Instead, higher tribunals looked positively at the dictatorship as long as this ended up the political threats of the UP and formally promised to respect judicial independence. The Supreme Court resorted to their traditional discourse of an apolitical character to discipline lower ranks, decide promotions and to duck on potentially conflictive issues.⁹⁴ This behavior did not plainly mean a mere application of statutes and constitutional provisions, since different textual interpretations could be advanced in these specific cases, like in the refusal of the writs of habeas corpus. Neither this implied a total abdication of judicial prerogatives. In fact, justices asserted their competence of judicial review on the legislation enacted by the Junta (*inaplicabilidad por inconstitucionalidad* and later, the *recurso de proteccion*). However, courts avoided any challenge to its main policy preferences, and the regime itself skillfully limited their competence by the mean legislation, explicitly excluding the possibility of a judicial review on constitutional norms and specific issues associated with national security.⁹⁵ By and large, justices' appeal to the non-deliberative role of courts echoed their institutional discourse and strategic behavior.

The University of Chile School of Law constitutes a third setting where we can clearly appreciate how right-leaning lawyers resort to a thin version of legal autonomy, this time, as a way to displace professional competitors. After the coup, the new military Chancellor that intervened the university expelled professors and students who were committed to the Popular Unity.⁹⁶ Furthermore, he initiated a new restructuring entrusted to politically moderated law professors like Antonio Bascuñán Valdés, Miguel Luis Amunátegui, and Gonzalo Figueroa. They both resented the “stifling intromission of politics” in the university and endorsed the diagnosis on the asynchrony of law that has been explained in Chapter 3.⁹⁷ On such basis, they proposed a new reform, articulating law and social sciences and reorganizing the departments that included several non-juridical fields. By this way, the traditional structure would become a School of Juridical, Social and Administrative Sciences. The new authorities removed the Christian Democrat Dean, Máximo Pacheco, and, by March of 1974, appointed the scholar Antonio Bascuñán Valdés in his place. A rightist liberal, Bascuñán intended to streamline legal education by integrating the study of positive rules, ethic values, and empirical observation, sustaining that law was not only in books.⁹⁸

Quickly, hard-liners law professors that were highly committed to the dictatorship, like Pablo Rodríguez and Hugo Rosende, delivered pungent criticism against the new reorganization to the law school, attempting to narrow its sphere of jurisdiction in the name of the legal autonomy. For them, the new reform of 1974 was a mere continuation of the gauche transformation of the late 1960s, which had originated the politicization of legal education and scholarship. Through the press, Pablo Rodríguez advocated to close the school for some years, and privately before the Junta, he moaned about how this had become an umbrella to protect Christian Democrats who veiled

⁹⁴ Lisa Hilbink: *Judges Beyond Politics...* Op. Cit. pp. 157-173.

⁹⁵ See Federico Dunker Briggs ruling in which the Supreme Court asserted its prerogatives of judicial review on decrees laws (1974). However, these holdings were modified by further executive legislation. Robert Barros: *Constitutionalism and Dictatorship*. Op. Cit. pp. 96-107.

⁹⁶ For example, these were the cases of Sergio Politoff, Eduardo Novoa, and Juan Bustos.

⁹⁷ Miguel Luis Amunátegui Monckeberg: *El Departamento de Ciencias del Derecho y la Restructuración de 1974*. Santiago: Editorial Jurídica de Chile. 1975. pp. 8-9.

⁹⁸ *Ibid.* p. 19. Interview Antonio Bascuñán Valdés.

criticized the regime.⁹⁹ This denunciation was seconded by the Supreme Court and the Board of the CHBA, which also pushed to end the reform for a more traditionally oriented law school. As a result, the new military Chancellor—and former member of the CHBA Board—Julio Tapia Falk, appointed Hugo Rosende as a new Dean in January of 1976. He, one of the closest advisors of General Pinochet by that time, removed law professors who were engaged with Christian Democracy and the Radical Party, such as Jorge Ovalle, Máximo Pacheco and Francisco Cumplido, and limited the influence of those who had a reformist spirit. Rosende resented that the social sciences and new juridical methodologies had had a “damaging result” and “disintegrating effect” inside the law school.¹⁰⁰ Accordingly, he claimed the necessity to focus legal education exclusively on juridical studies, “without attending strenuous subjects.”¹⁰¹ Rosende guided a new restructuration that relocated social sciences to outer departments and came back to the organization and methodologies that were in force before the 1960s, which were focused in the memorization of statutes and the legal formalism. Thus, he intended to demobilize politics from law school, shrinking the boundaries of juridical expertise.

A thick version of legal autonomy

However, the faces of legal autonomy were not only reduced to its thin version. On the other side, the idea of non-political juridical knowledge also was employed by who promoted natural law theories and more sophisticated legal scholarship, which appeared as suitable theoretical grounds to surmount the excessive legal formalism that was at the backstage of the legal crisis. In so doing, they followed the traditional distinction between power and expertise (*potestas* and *auctoritas*) originated in Roman Law and Hispanic institutions, which was especially upheld by Spaniard jurist Álvaro d’Ors, one of the most influential scholars that inspired Chilean conservatives.¹⁰² If the rule of law meant that legal authority binds political power, they asserted, both contingent politics and juridical expertise should belong to different spheres. Evidently, to a large extent, this position suggested that law was somewhat above politics, being able to legitimate and judge the governmental action.¹⁰³ Unsurprisingly, some conservative lawyers relayed in these academic perspectives to legitimate the military rule and their own position within the legal field.

The promotion and use of the natural law constituted one of the clearest examples of a move towards a thick version of legal autonomy. Conservative lawyers and legal scholars, particularly at the Catholic University, had kept the natural law as a propedeutic framework in legal training, which, however, did not have any relevance to scholarship or practice. In fact, the most remarkable professors of the subject stayed outside the law

⁹⁹ Presentation to the Junta. *Acta Junta de Gobierno* No 102. March, 12th, 1974. p. 6.

¹⁰⁰ *Acta Consejo Colegio de Abogados*. January 19th, 1976. p. 4

¹⁰¹ *Ibíd.*

¹⁰² Álvaro d’Ors: “Legitimidad.” *Op. Cit.*

¹⁰³ See as example of these ideas, Eduardo Soto Kloss: “Poder y Derecho.” *Revista Chilena de Derecho*. Vol. 1 No. 1. 1974. pp. 62-73. The most graphic portrayal of these ideals, which matched the official discourse of the dictatorship, were the ruler who counts with an experienced body of legal advisory to assist his decision-making, and also the judge that could correct the abuses of power. Jaime Navarrete Barreto: “El Poder del Poder Judicial.” *Revista Chilena de Derecho*. Vol. 1 No. 1. 1974. pp. 73-82.

school (i.e. Osvaldo Lira) or were lawyers who were devoted to legal advocacy following a positivistic style (e.g. Julio Philippi).¹⁰⁴ The uniformity of the law curriculum, instilled by the mandatory examination imposed by the state, relegated this sort of perspectives to a marginal place until the mid-1950s, reinforcing the positivistic formalism in Chilean legal culture. For conservative lawyers, the conflict emerged during Allende's rule and the first years of the military regime carried out a matchless opportunity to enhance the value of natural law to participate in the debates on public governance. This rose as a non-political version of juridical knowledge that responded to a long tradition of humanistic thinking. As we had seen, *Portada's* group saw in natural law a ground to distinguish between legality and legitimacy, constituting a central element of its discourse. Hence, it does not result surprising to observe that, after 1973, conservative legal scholars strengthened the study of the subject, organizing conferences and resorting to this in the public debate.¹⁰⁵ As expected, several of them authored writings to advance these ideals as well, such as Julio Philippi's work on the natural justice among the Yámana native people.¹⁰⁶

Some of the members of this network occupied natural law to back the policy preferences of the military rule. Most of them emerged from the Catholic University of Chile School of Law, where they counted on the support of the appointed military Chancellor, Admiral Jorge Sweig. The abovementioned example of Jaime Guzmán and the foundational documents of the regime posed a remarkable example, but, indeed, they were not the only ones.¹⁰⁷ The Dean of the School of Law by the mid-1970s, Sergio Gaete, constituted another instructive case. Soon after the coup, Gaete supported Allende's overthrow by delivering several speeches to assert the legitimacy of the military pronouncement and the new authorities according to the principles of natural law. Recalling that the same law school had been a vocal actor in the opposition to the UP, Gaete asserted that the military uprising was an action of "active resistance."¹⁰⁸ Over time, he would become committed to supporting the regime, even hosting an invitation to the member of the Junta, General Gustavo Leigh, to give the inaugural speech for 1974.¹⁰⁹ Along the years, Gaete's writings advocated recognizing the junta had assumed constituent powers that were only limited by natural law.¹¹⁰ "[...] Such a lack of limits on

¹⁰⁴ Gonzalo Vial Correa: "Los Grandes Problemas del Derecho en Chile durante los 100 años de esta Facultad." *Op. Cit.* pp. 14-15.

¹⁰⁵ See as example: Primeras Jornadas de Derecho Natural. *Revista Chilena de Derecho*. Vol. 1 No. 2. 1974. *El Bien Común: Segundas Jornadas Chilenas de Derecho Natural*. Santiago: Editorial Nueva Universidad, 1975. *Derecho y Justicia. Terceras Jornadas Chilenas de Derecho Natural*. Santiago: Pontificia Universidad Católica de Chile. 1977.

¹⁰⁶ Julio Philippi: *La Estructura Social del Pueblo Yámana*. Santiago: Editorial Universitaria. 1978.

¹⁰⁷ See other examples: Gustavo Cuevas Farren: *Cuando la Rebelión es un Derecho. El Caso de Chile durante la UP*. Santiago. Instituto de Ciencia Política, Universidad de Chile. 1976. Gonzalo Ibáñez Santa María: *El Estado de Derecho en Hispanoamérica*. Conferencia leída en las Primeras Jornadas Brasileiras de Derecho Natural. Santiago" without editorial. 1977.

¹⁰⁸ Sergio Gaete: "Legitimidad de Origen de la Junta de Gobierno." Speech October 1973. In Dieter Blumenwitz and Sergio Gaete: *La Constitución de 1980. Su Legitimidad*. Santiago: Editorial Jurídica de Chile. 1981. p. 11.

¹⁰⁹ "Discurso del General Gustavo Leigh en la Facultad de Derecho de la Universidad Católica de Chile." *Revista Chilena de Derecho*. Vol. 1, No. 1. pp. 407-413.

¹¹⁰ Sergio Gaete: "La Legitimidad de Ejercicio de la Junta de Gobierno." Speech, March 1974. In Dieter Blumenwitz and Sergio Gaete: *La Constitución de 1980*. *Op. Cit.* p. 22.

the constituent power is only in regard to the positive law. This shall not imply that the limits imposed by the Natural Law can be broken, since they emerged from the human nature, that none procedure, majority or unanimity could overstep without departing from God's project [...]” Gaete explained to clarify the point.¹¹¹ Reiterating that position, he would write down a Statement signed by more than 50 law professors, backing the plebiscite to approve the constitution of 1980.¹¹² Thus, although his stances reflected a partisan attitude that would drive Gaete to become Minister of Education in 1985, his writings echoed the attempt to pose natural law as a neutral supra-order that rises above political will, even binding the dictatorship itself.

There was a second version of thick legal autonomy emerged along new legal scholarship grounded in Roman Law, whose ancient roots has usually served as a source of symbolic capital in the continental legal tradition. Distrusting of legalism and the system of separation of powers, this thick version of the legal autonomy was anchored on the old distinction between political power and expertise (*potestas* and *autoritas*), employed by conservative scholars to enhance the role of jurists and judges in the creation of law.¹¹³ Alejandro Guzmán Brito—an advantaged disciple of Álvaro d’Ors—maybe portrays the best example.¹¹⁴ A Roman and Civil Law Professor, Guzmán Brito actively advocated for the non-political nature of juridical science and the relevance of scholars in guiding lawmaking. “The Law, according to the best Classic tradition, it is defined inside a political society, but it is not, by itself, a political entity. This is separated from the changing character of politics looking, in an independent way, at the fair proportion in the interchange of goods between men,” he explained to present a de-politicized definition of law that was, overall, an academic discipline focused on the resolution of private conflicts.¹¹⁵ According to him, its non-political character did not mean that law was irrelevant in the public and social sphere. Political power would be a pure force if this is not conducted by who had an authority socially recognized, and in important sections of social life, such authority should be exerted by legal professionals. Put it in other words, legal authority, “which in the society is exercised in a non-official way by legal scholars at the university and officially by courts,” should limit political power and, to some extent, guides public governance.¹¹⁶ To accomplish such an outstanding vocation—Guzmán Brito asserts—, the juridical science should remain a humanistic discipline that thinks about justice, starting its observation from the law in books. This implied that law should disengage from social sciences that studied social behavior, and turn to the study of judicial decision and scholarly opinions (e.g. treatises,

¹¹¹ Sergio Gaete: “El Poder Constituyente.” Inaugural Speech for the Nineth Confrence of Public Law [1978] In Dieter Blumenwitz and Sergio Gaete: *La Constitución de 1980*. Op. Cit. p. 37.

¹¹² “Declaración de Profesores Facultad de Derecho. Pontificia Universidad Católica de Chile.” 1980. In Dieter Blumenwitz and Sergio Gaete: *La Constitución de 1980*. Op. Cit.pp. 47-54.

¹¹³ On the early dissemination of the use of Roman Law to lay the ground of a pragmatic and non-legalist approach to law, see: Álvaro d’Ors: “El Servicio del Derecho Romano a la Libertad.” [1965]. *Revista Chilena de Historia del Derecho*. No. 5. 1969. pp. 9-21.

¹¹⁴ Guzmán Brito is a well-regarded professor of Roman Law trained by d’Ors in the seventies. See also Álvaro d’Ors: “Autoridad y Potestad.” *Portada* No 44. February 1974. pp. 42-44.

¹¹⁵ Alejandro Guzmán Brito. “Autoridad y potestad como categorías de la organización política” *Revista de Derecho de la Universidad Católica de Valparaíso* 4 1980. p. 118.

¹¹⁶ This perspective represents the separation and complementarily between political power (force) and authority (will). Ibid. pp. 101-119. See also Alejandro Guzmán Brito: “Discurso.” *Actas de las VII Jornadas de Derecho Público*. Valparaíso. Ediciones Universitarias de Valparaíso. 1976. pp. 15-24.

compiled court decisions, statutes and so on).¹¹⁷ So, he would explain this point in its article “About the Crisis of Modern Law”:

Only reassuring the autonomy of law before the social science the justice can fulfill his social calling. This social mission—no longer his scientific mission—consists of something that is derided in nowadays: to indicate ways of action, to signal limits, to discriminate what is feasible, to balance interests, impeding that the life flows wildly, without discipline.¹¹⁸

Despite Guzmán Brito became a worldwide authority in Roman Law by the end of the 1970s, his positions on the boundaries of the legal expertise did not remain as a mere theoretical exercise. In the perspective of the legal crisis, which pointed to excessive formalism and the flaws of the separation of powers, Guzmán Brito’s appeal to juridical science appeared as a suitable program to re-legitimate juridical expertise in public governance, particularly in the authoritarian context that resented the prior liberal-democratic regime. As a matter of fact, he became Dean of the Catholic University of Valparaíso Law School, leading its reorganization since 1975. Agglutinated a categorical support of his colleagues at such a setting, Guzmán Brito diminished the place of social sciences in the law curriculum and reinforced more sophisticated versions of juridical dogmatic; attempting to reframe law as a humanistic discipline chiefly associated with private issues. For that purpose, he and other professors, like Francisco Samper, would promote Álvaro d’Ors works in the same direction.¹¹⁹ Employing their view on Roman Law, they would try to enhance the role of jurists in lawmaking, its scaffolding built over judicial actions instead of rights, and a model of a predominantly non-statutory law.¹²⁰ By this mean, they reinforced their academic capital. Guzmán Brito’s insights, which went beyond the mere positivist jurisprudence, would result critical to understand legal scholarship in Chile during the following decades.

In the end, the different moves of the right-leaning lawyers towards legal autonomy constitute an insightful dynamic to comprehend the political (de)mobilization of the legal profession. Within the authoritarian context, the evidence indicates that those lawyers intended to frame their expertise in terms of an autonomous knowledge free of partisan interferences, selectively looking at diverse purposes associated with their strategic position and their organizational history. For example, the institutional ideology of apolitical profile of courts responded to a long-run process, and also allowed judges to eschew a potential conflict with the junta on some issues like human rights abuses. In the same light, the well-established doctrines of natural law not only answered to the identity of most conservative law professors, and constitute a valuable resource to advance their position inside the state and back the new regime.

Finally, these different behaviors not only made sense from a perspective of each institution or actor, but also from the collective logic. A thin version of the legal autonomy facilitated that they could discipline judges and hold back professional

¹¹⁷ Interview. Alejandro Guzmán Brito.

¹¹⁸ Alejandro Guzmán Brito: “En torno a la crisis del derecho moderno.” Op. Cit. pp. 31-32.

¹¹⁹ Álvaro d’Ors: “Derecho es el que aprueban los jueces.” *Gaceta Jurídica*. Year 1 No 5. 1977. pp. 28-29. *Una Introducción al Estudio del Derecho*. Valparaíso: Ediciones Universitarias de Valparaíso. 1976.

¹²⁰ Francisco Samper: “La Finalidad de la Enseñanza Romanística. Bases Intelectuales para la Presentación de un Programa de Estudio.” *Revista Chilena de Derecho*. Vol. 18 No. 1. 1991. pp. 39-59.

competitors, such as reformist lawyers associated with the Christian Democratic Party. A thick version, on the other side, resulted useful to grant legitimacy to the military rule, and to enhance their role as elite legal professionals. Put it in other words, the diverse attempts to recreate a law without partisanship possessed, paradoxically, a profound political meaning.

The Strategy of Authoritarian Modernization: Legal Reform and the battles for governmental expertise.

Some pages back we have discussed that the military dictatorship took the mission of building a new institutional order, to a large extent, both echoing the narrative of *Portada* and fostering a long-run period in power. The government assumed a foundational character at least as early 1974, when it issued the Statement of Principles of the Junta drafted by Jaime Guzmán.¹²¹ This task not just comprised a renewal of the constitutional structures that we will revisit in the next section, but also a complete attempt to reorganize the statutory system. Elite lawyers and law professors would see in this process an opportunity to employ their expertise, trying to surmount several decades of professional displacement from the central roles in public governance. Albeit they would not surpass the ascending influence of economists, right-leaning lawyers would play a critical role in the attempts of top-down modernization carried out by the dictatorship.

The discourse of the asynchrony of law and social development remained a concern for lawyers, in particular among those intervened in governmental circles during the first ten years or so of the dictatorship. This rhetoric was present in the diverse interventions of the Minister of Justice Miguel Schweitzer (1975-1977), the Undersecretary Mario Duvauchelle, scholars like Alejandro Guzmán Brito, and even reached the speeches delivered by the Chief Justice of the Supreme Court, José María Eyzaguirre (1976), among many others.¹²² All they coincided in a negative appraisal on the statutory order with other groups that were active by this time, such as the reformist Christian Democrat lawyers and the neoliberal economists, who from different angles also charged against the condition of the juridical system. For the most conservative agents inside the right-leaning network, legislative chaos and delay not only was intimately associated with technologic advancement, social complexity, and deficient legislative technique. At the same time, they would have reflected the declining liberal democracy as it grew before 1973, as long as it fostered the pervasive bargain of interest groups and the stifling legal formalism. Those constituted one of the central elements in the crisis of authority and an obstacle to political stability and economic progress.¹²³

¹²¹ See Note 65.

¹²² In addition to other works quoted in this chapter, see as example: Waldo Otarola: "El compromiso del Abogado. Discurso de los 110 años, Escuela de Derecho." *Revista de Derecho, Universidad de Concepción*. No 163. 1975. pp. 157-166. Sergio Galaz: "Reflexiones en torno al memorando elaborado por la H. comisión redactora de la reforma o la nueva constitución política." *Revista de Derecho, Universidad de Concepción*. No 161. 1974. p.123. Antonio Pedrals: *La Innovación Jurídica*. Valparaíso: Edeval. 1976.

¹²³ For the origins of this discourse, see the account on the Portada's group. Supra.

Mario Duvachelle's words about the future challenges in building a new institutional order are enlightening on this point:

To make the legal order be adequate to the conception of modern state—such as the Supreme Government look at—this rapidly should recognize the new forms of social and cultural life [...] The new legality must be rich in content and procedures to go ahead of social changes, impeding the action of vandal groups that, in the name of social change and their urgency, committed political abuses that ashamed the Republic [...] the inadequacy of the basic statutes and social reality hinder this task [...]¹²⁴

The military regime oriented an important part of its labor to renew gradually the statutory order and the state organization. For that purpose, this established different legislative commissions that acted within the bureaucratic machinery, which seemed well suited to modernize juridical system in an authoritarian context where the government did not need to bet on democratic deliberation. These were usually integrated by military officials, right-leaning elite lawyers and law professors, although politically independent law graduates and judges also were incorporated to perform a relatively marginal role. These constituted one of the main settings where this network of lawyers mobilized since the mid-1970s to the end of the military regime.

By mid-1974, the Junta formally took the legislative powers up and established a Secretary of Legislation and an Advisory Committee (COAJ) for that purpose.¹²⁵ Two years later, it laid out a complex system of lawmaking to structure its work.¹²⁶ The principal pieces of this organization were three legislative commissions composed of civilian and military law graduates by which the Junta divided the study of the bills according to their subject. So, for example, a commission presided by the Commander in Chief of the Navy was in charge of Economy, Mining, Finances and Foreign Affairs; another headed by the Commander in Chief Air Force was in charge of Justice, and so on.¹²⁷ Only the Army did not lead a legislative commission since General Pinochet headed the Executive as President of the Republic.¹²⁸ All they were coordinated by the aforesaid Advisory Committee, which oversaw their work and informed about the progress of the legislative study, presenting the drafts to the Junta for their final approval. These legislative commissions constituted the true legislatures of the regime, becoming highly specialized bodies. Initially, the main task of these commissions was linked with the sort-out of administrative and political agencies, the liberalization of markets, and national security issues, drafting the numerous executive legislation of the period.¹²⁹ Over time, other legislative committees will emerge by the mid-1970s, such as small Council

¹²⁴ Mario Duvachelle: "Perspectivas de una tarea de Gobierno." *El Mercurio*, March, 19th, 1975. p. 2.

¹²⁵ On the Closure of the Congress, see: D.L. No. 27, 1973. On lawmaking, see: D.L. No. 527, 1974. Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 273-274.

¹²⁶ *DL. No. 991*. 1976.

¹²⁷ Mario Duvachelle Rodríguez: "El Actual Sistema Legislativo Chileno." *Vigilia*. No. 6. 1978. pp. 37-41. Jorge Guzmán Dinator: "Algunas Observaciones sobre el Sistema de Legislación Actual en Chile." *Vigilia*. No. 9. 1978. pp. 51-52.

¹²⁸ After the enactment of the Constitution of 1980, the Junta established a Fourth Legislative Commission, under the control of the Army.

¹²⁹ For a panoramic view of the legislation drafted by them, see: Mario Duvachelle Rodríguez: "El actual Sistema Legislativo Chileno." Op. Cit. pp. 40-41.

of State (1976) composed by former presidents of the Republic and other well-known former officials, but they remained as advisory bodies with a minor relevance for public governance.

Due to its ambitious aims and focus on the legal system, the *Program of Study and Reform to the Codes and Fundamental Laws of the Nation*, is one of the experiences that perhaps best reflects the foundational character of the military rule and its engagement with the rhetoric of the legal crisis. Conceived by the Undersecretary of Justice and Navy Officer Mario Duvauchelle—who was one of the most influential agent in lawmaking during the mid and late 1970s—, the program looked at a comprehensive actualization and unification of legislation in the country, intending to definitively end up the statutory disarray. Such as the governmental statements of the period explained, the complete restructuring of the legislation did not depart from the national tradition. It has been Bello himself who had prevented about the constant necessity of legal reform to adequate statutes “to the real forms of social order.”¹³⁰ Nevertheless, this comprehensive project seemed more than a mere update. Such as Duvauchelle went on to say on the Program’s goals, the principles stated by the Junta, “that guides the state action, should be translated into the new institutional order of the Republic; in its juridical order.”¹³¹ Thus, joint to the effort to modernize legislation according to technological change and new customs, the project possessed a clear political goal, trying to advance a project of reordering carried out by the dictatorship.

Established in early 1975, the Program was composed by eight legislative commissions that included what was devoted to the study of a new constitution since September of 1973. They were formally linked with the Ministry of Justice that appointed their members and oriented their labor, mostly comprising the key subjects of the legal system: constitution, civil code, penal code, civil procedure, criminal procedure, commerce code, cultural legislation and traffic laws.¹³² For the authors’ of the initiative, they implied a true relocation of law in public governance. Instead of the political bargain of liberal democracy, which would have caused the statutory disarray, the Program constituted an effort to redeem juridical expertise in lawmaking.¹³³ “From now on, the country’s legislative order will be stuck to a uniform technique. The serious and peaceful study of the commissions, which are integrated by the more authorized men of law, will give to the country an organic set of statutes of the highest level, with all the elements to facilitate its knowledge and an expedited enforcement,” explained Duvauchelle.¹³⁴ It is not trivial to observe that those commissions met regularly in the halls of the former Congress that have been closed by the military rule in September of 1973, and perhaps in an unintended way, they symbolically portrayed the replacement of democratic deliberation by technical juridical debates.

Accordingly, the program heavily relied upon the intellectual capital of elite legal profession and the commissions, at least in their work, counted on a substantial degree of

¹³⁰ Ministry of Justice: *D.S. No 78*, January 31st, 1975. p. 4.

¹³¹ Mario Duvauchelle: “Perspectivas de una tarea de Gobierno.” *Op. Cit.* p. 2.

¹³² Ministerio de Justicia: *Programa de Comisiones de Estudio y Reforma de los Códigos y Leyes Fundamentales de la Nación*. Santiago: 1976.

¹³³ Interview Luis Valentín Ferrada. Coordinator of the Program.

¹³⁴ Mario Duvauchelle: “Presentación.” In: Ministerio de Justicia. *Programa de Comisiones de Estudio y Reforma*. *Op. Cit.* p. 12.

autonomy. Possessing a consultative character, they incorporated 73 well-reputed lawyers and judges, who usually performed parallel tasks as law professors. A careful analysis of their composition shows that these were much more than a mere meeting of the hard-liners of the regime. In fact, although the commissions did not incorporate left-leaning lawyers who openly were at the opposition, they possessed considerable room for moderate or politically passive professionals. Only in sensitive areas, such as the constitution, civil and commerce code, and cultural legislation, lawyers who were clearly identified with the regime dominated the scene, as long the Minister considered the strengthening of the market economy and the control of politics were key aspects. As expected, the chairs of the key commissions were usually reserved for who were closely positioned at the political right, such as Enrique Ortúzar (constitution), Julio Philippi (civil code), and Julio Chaná (commerce code). *Table 6.2* illustrates their composition, detailing the number of professors and their ascription to right-wing politics.

Table 6.2.

Commissions Reform to the Codes and Fundamental Laws of the Nation: 1975-1977 (Composition) (Percentages between brackets)

Commission	Members	Professors	Pro-Government
<i>Constitution *</i>	10	10 (100)	7 (70)
<i>Penal Code</i>	9	8 (89)	4 (44)
<i>Civil Code</i>	11	10 (91)	9 (82)
<i>Commerce Code</i>	12	12 (100)	9 (75)
<i>Civil Procedure Code</i>	9	8 (89)	4 (44)
<i>Penal Procedure Code</i>	9	7 (77)	3 (33)
<i>Cultural Legislation **</i>	11	7 (64)	9 (82)
<i>Code of Vehicles Traffic</i>	12	4 (33)	3 (25)
Total	73	66 (90)	45 (62)

SOURCE: *Programa de Comisiones de Estudio y Reforma de los Códigos y Leyes Fundamentales de la Nación. Op. Cit.* NOTE: * Members who resigned or were expelled due to harsh political differences with the authoritarian regime are not considered as pro-government. ** Include some non-law graduate members.

During its most active periods, between 1975 and early 1978, the Program produced several legislative drafts. Alongside the new text of the constitution, which will be analyzed in the next section, the project to renovate the civil legislation seemed to draw most of the attention. Since at least the mid-1960s, several law professors, like Fernando Fueyo, Pedro Lira Urquieta, and Eduardo Novoa, had begun to speak about the necessity of a new civil code.¹³⁵ This played a pivotal role in the entire legal system, not only by articulating the economic interchange through defining private property and freedom of contracts, but also by organizing fundamental aspect of legal practice, like the value of statutes, the sources of law, judicial interpretation, and the description of personhood. So, the Chair of the Commission on Civil Legislation, Julio Philippi,

¹³⁵ See Chapter 3.

harbored the idea of a comprehensive reform to the code.¹³⁶ Although the commission desisted of a whole new text soon, this kept the idea of a major arrangement that involved matters such as the regulation of human body as subject of rights, the inclusion of industrial property, covenants and contracts, torts, changes to the rules of evidence, wills, rental agreements, and so on. Certainly, the initial target implied an in-depth revision of vital concepts of the code. So, for instance, the study of covenants, contracts, and manifestations of will (*actos jurídicos*) comprised the introduction of theories that departed from the core concept of liberalism, like onerous contractual unbalances (*contrato leonino*), unpredictable circumstances (*teoría de la imprevisión*), and the abuse of rights.¹³⁷ Before such a tough task, Philippi asked the assistance of all the law schools in the country by the time (5), dividing the areas of analysis and organizing sub-groups of study.¹³⁸

The restructuring of the civil code—and the program in general—would awake interesting academic debates on law and social change, originated by the resistance of diverse jurists, such as Alejandro Guzmán Brito. This latter one would criticize the messianic trait of the Program, and would advocate about the inconvenience of a comprehensive reform to the civil code by asserting there would have not been conditions to elaborate an enduring text.¹³⁹ Through his work the Fixing of Law [*La Fijación del Derecho*], he asserted that neither was a stable socio-economic situation that cemented a sort of agreement on social organization, and not preparatory scientific works to gather the fresh advancements of the juridical dogmatic elaborated by jurists. In Guzmán Brito's view, before any major codification we should observe scholarly epigones that synthesize the special statutes, judicial jurisprudence and dogmatic innovations that satisfactorily dealt with a new, but well-established social arrangement (e.g. Roger Pothier's work prior the French Civil Code).¹⁴⁰ Enhancing the role of the jurists, he went on to say nothing of this happened in Chile by the mid-1970s: “a code prematurely formulated, which has not been able to be grounded in a mature science or accurate technique, will be surpassed by its own shortcomings. Such a code will be, beforehand, condemned to the failure.”¹⁴¹

Despite the ambitious initial statements of the Program, most of its projects resulted in partial reforms without posing a complete streamlining, involving only very limited legislative changes. The case of the civil code results emblematic. Far from a major makeover, the commission only achieved the promulgation of small modifications to the code, like some rules on the economic regime of marriage. But this was not the only example of puny influence. In some cases, the study simply pointed to small amendments at the outset (e.g. civil procedure) or dealt with specific issues through non-coded statutes (e.g. like a new regulation on checks and letters of exchange prepared by

¹³⁶ Interview Alejandro Guzmán Brito.

¹³⁷ Julio Philippi: “Comisión de Estudio y Reforma del Código Civil.” In: *Ministerio de Justicia. Programa de Comisiones de Estudio y Reforma*. Op. Cit. p. 31.

¹³⁸ *Ibid.* pp. 29-32. René Millar: *Julio Philippi Izquierdo. Pasión por el Servicio*. Santiago. Ediciones de la Pontificia Universidad Católica de Chile. 2005. pp. 428-430.

¹³⁹ Interview Alejandro Guzmán Brito.

¹⁴⁰ Alejandro Guzmán Brito: *La Fijación del Derecho. Contribución al estudio de su concepto y de sus clases y condiciones*. Valparaíso: Ediciones Universitarias de Valparaíso. 1977. pp. 11-19.

¹⁴¹ *Ibid.* p. 18.

the commission on commerce code).¹⁴² We also can find that some commissions finally elaborated comprehensive projects of reform, like a draft of a new code of criminal procedure based on Ruben Galecio's previous works, but they simply were not backed by the government even when an in-depth reform seemed urgent.¹⁴³

By 1977, after Mónica Madariaga was appointed as new Minister of Justice, the Program gradually declined in relevance. Unless the study of the political constitution, which occupied the center of the agenda, the interest for a comprehensive legal reform got waned and the commissions to amend the codes did not meet anymore since early 1978.¹⁴⁴ This demise was not merely the result of Madariaga's preferences, but of a major turn. The military dictatorship got under the leadership of neoclassical economists (the Chicago boys), who coped the main public agencies to guide the process of modernization since 1978. They organized a complete program of state sort-out following a neo-liberal approach. This not only implied that the updating of the codes was overshadowed but a change in the *locus* of decision-making.¹⁴⁵ In September of 1979, President Pinochet announced a massive process of seven modernizations that promised to revolutionize the country's face, involving labor, social security, health services, education, territorial administration, agriculture and the judiciary. All these changes were chiefly inspired by the Minister of Labor, José Piñera, looking to promote a market economy and to transfer broad matters from the state apparatus to private management.¹⁴⁶ As expected, these transformations were led by neoclassical economists, who lived their heyday by the turn of the decade. "They used to make us feel as insects," recalled the Minister of Justice Mónica Madariaga regarding how economists displaced lawyers by appealing to new technocratic knowledge, dominating the debates on public governances of the period.¹⁴⁷

Although in a more limited scope, the process of modernization also seemed to touch the courses of the legal system in these years. It was not a matter of a major juridical restructuring, as by the mid-1970s, but it was about to remove judicial delay and the shortcomings that interfered with economic liberalization. In 1980, the Minister of Finance, Sergio de Castro, proposed to create a commission with that purpose. Under a more centralized structure headed by Mónica Madariaga herself, the Ministry of Justice organized a group to study the improvements to the justice system. This was integrated mostly by prestigious lawyers with experience in public advisory, such as Arturo Alessandri Cohn, Juan Carlos Dörr, Eugenio Valenzuela Somarriva, Ricardo Rivadeneira, Roberto Guerrero del Río and Ramón Suárez (Bustamante Commission). They faced the reluctance of courts to an eventual process of modernization, and although they counted on the support of some sections of the right-wing cadres like the gremial

¹⁴² "Progreso en las tareas de las comisiones de reforma a los códigos." *Gaceta Jurídica*. No. 2. November, 1976. pp. 3-4.

¹⁴³ "Esperando al Promulgador." *Gaceta Jurídica*. No. 11. August, 1977. pp. 37-38.

¹⁴⁴ René Millar: *Julio Philippi Izquierdo...* Op. Cit. p. 430. Interview Mario Duvauchelle. Interview Luis Valentín Ferrada.

¹⁴⁵ See Patricio Silva: *In the Name of Reason. Technocrats and Politics and Chile*. Op. Cit. pp 143-171.

¹⁴⁶ Alejandro Foxley: *Experimentos Neoliberales en América Latina*. Santiago. Cieplan. 1982. p. 83.

¹⁴⁷ Pamela Constable, Arturo Valenzuela: *A Nation of Enemies. Chile Under Pinochet*. New York. Norton. 1991. p. 171.

movement, their contribution was reduced to draft some minor procedural betterments.¹⁴⁸ Along the months, they became an unofficial advisory body, writing down a project to modify the university system plus other that never were passed by the Junta.¹⁴⁹ However, they influence stayed low at the substantive level. Unless the new constitution, the Minister of Justice only achieved the increment of material resources by which the government established more courts, improved salaries and other structures of support.¹⁵⁰

Lawyers performed important tasks in assisting the process of structural changes led by economists in the late 1970s and early 1980s, actively working in agencies and drafting bills. Although they were not who finally defined the policies of economic liberalization, lawyers were particular relevant agents in the implementation of the labor plan, the social security reform, the new mining statute, and the privatization of state corporations, among others.¹⁵¹ For them, the building of markets was also their task, being at the very roots of the Chilean legal tradition. Such as Sergio Fernández, the Minister of Interior, explained, it has been Bello himself who stood in defense of individual responsibility, trying to keep private law “as the broadest regulation of society.”¹⁵² Freedom of contract, which looked like the engine of the progress during this period, not only was a mere political-economic issue but, according to elite lawyers, it demanded the involvement of juridical knowledge to articulate its regulation and boundaries. Facing such an opportunity, some of them claimed to retake their relevant place. “We have the means; we need the purpose. We need to surmount the frustration that we, the men of law, have suffered during the last years; first when we were said that our discipline was condemned to disappear, and now, when we are excluded from these debates under the excuse that these belongs to other science, the economy, which moved the world,” asserted the law professor Ramón Domínguez, trying to heighten the place of the juridical expertise in pro-market policies.¹⁵³

Despite such claims, however, the long-awaited modernization led by lawyers still seemed a promise by the mid-1980s. To a large extent, they occupied a secondary position in public governance, at least at the state level. Several of the members of this network, as such legal professionals, finally turned to invest their academic capital into the new opportunities for advisory, dispute resolution and international contracts that offered the market opening, keeping a lesser public role that seconded economic expertise. The dream of a major reorganization of the legal order, via a re-codification that followed the nineteenth-century fashion, seemed died.

¹⁴⁸ Editorial: “La Modernización que falta: La Justicia.” *Realidad*. July, 1982. Pp. 2-4. Juan Bennet: “El Sistema Judicial Chileno en Juicio.” *Realidad*. August, 1982. pp. 11-16. Editorial: “Poder Judicial: Soluciones Pendientes.” *Realidad*. Marzo, 1983. pp. 2-4.

¹⁴⁹ Ascanio Cavallo, Manuel Salazar, Oscar Sepúlveda: *La Historia Oculta del Régimen Militar...* Op. Cit. p. 501.

¹⁵⁰ Mónica Madariaga: “La justicia y sus avances en el decenio 1973-1983.” *Política*. Instituto de Ciencia Política de la Universidad de Chile. Special Number. November 1983. pp. 287-235.

¹⁵¹ For example, these are the cases of Carlos Urenda, Roberto Guerrero and Julio Chaná on finances and banking, Samuel Lira in Mining and Ramón Suárez in Social Security, among others.

¹⁵² Sergio Fernández: “Presentación.” In Martín Alonso Pinzón: *Bello Jurisconsulto*. Santiago: Editorial Universitaria, 1982. pp. 16-17.

¹⁵³ Ramón Domínguez Águila: “La autonomía de la voluntad. Decadencia y Renacimiento.” *Revista de Derecho, Universidad de Concepción*. No 169. 1981. pp. 154-155.

The Politics of Constitutional Entrenchment

Constitution making comprises a different—and likely the most important—realm where right-leaning lawyers mobilized to lay down the basis of a new institutional order. Tackling the central complaints described by their reading of the legal crisis, such as value neutrality and the weakening of executive authority, they renewed the republican structures by drafting a charter that was finally enacted in 1980. This would be complemented by a set of organic constitutional laws that were passed by the Junta in areas like education, the central bank, general administration, and political parties (1981-1989). Through this new constitutional structure, right-leaning lawyers entrenched specific policy preferences of nationalist and conservative groups, foreseeing to isolate them from democratic deliberation once the military dictatorship concluded. Hence, they would actively contribute providing legitimacy and to institutionalize the regime, building its more enduring legacy.¹⁵⁴

By the late September of 1973, the new military regime convoked some professors of constitutional law to draft a new political charter. Initially backed inside the Junta by General Leigh, this commission mostly gathered law professors who took part of the opposition against the Popular Unity: Sergio Diez (former Deputy and Senator), Jaime Guzmán, Enrique Ortúzar (past minister of justice), and Jorge Ovalle (affiliated to of the Radical Party). The next weeks, other members would be incorporated, such as Alicia Romo, the former Liberal Deputy Gustavo Lorca, and the Christian Democrats Alejandro Silva Bascuñán and Enrique Evans. They would elect to Ortúzar as Chair of the Commission, working in the halls of the former Congress until the mid of 1977, when a political turn within the regime would push for a rearrangement in its composition.¹⁵⁵ Although formally linked with the Minister of Justice, which included its work into the Program of Reform to the Codes and Fundamental Laws of the Nation (1975), the now called Ortúzar Commission counted on autonomy to deliberate.¹⁵⁶ In parallel, other 30 persons, mostly lawyers and judges, integrated diverse sub-groups of study that dealt with specific issues and reported their conclusion to them: Judiciary and Neighboring courts, Political Parties and Elections, Mass Media, Property Rights, Municipalities, and Internal Administration.¹⁵⁷

As it has been pointed, the Ortúzar Commission was highly influenced by the prior experience of the Popular Unity, placing their debates in the perspective of the Cold War politics. Again, the rhetoric of legal crisis would emerge as a subtle framework. A glance at its records, especially of its initial meetings in 1973 and 1975, shows the narrative of *Portada* would entice its discussions, even when their members would avoid delivering an acrid critique that called into questioning the entire legal system. They included in its debates all the topics that we have revisited along the previous chapters, like legislative chaos, judicial delays, lack of substantive commitments of the

¹⁵⁴ Since early, the regime attempted to build a new institutional order, which should surmount the traditional formal democracy by safeguarding specific juridical values and principles, like the subsidiary role of the state. See, Junta de Gobierno: *Declaración de Principios del Gobierno de Chile*. Op. Cit. [1974].

¹⁵⁵ Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 230-232.

¹⁵⁶ Enrique Ortúzar: “Comisión Constituyente.” In Ministerio de Justicia. *Programa de Comisiones de Estudio y Reforma*. Op. Cit. pp. 17-24.

¹⁵⁷ These sub-groups were coordinated by José María Eyzaguirre García de la Huerta. *Actas Oficiales de la Comisión Constituyente*. Session No. 5. October 3rd, 1973. Session No. 6. October 9th, 1973.

constitutional texts, the null control on state agencies, and so on. According to their standpoint, all these shortcomings echoed a general malaise both on the political structures and the juridical, having an important weight in the breakdown of the democratic regime.¹⁵⁸ Enrique Ortúzar recalled in the years immediately after the enactment of the constitution of 1980:

If in our country could emerge the moral, political, social and economic chaos; if its legal system was unable to protect the dignity and fundamental rights of its inhabitants, the public order and the social tranquility; if it was possible that a power of the state [the Executive] usurped the essential functions of the other ones; if we witnessed the actual dissolution of the Republic [...] it was because the institutional system then in force was in crisis and worn out.¹⁵⁹

The records also evidence that the commission promptly achieved some basic definitions about its labor. So, the majority agreed the Junta had assumed the constituent powers, and that these kept in force the former constitution in all the subjects that had not expressly modified.¹⁶⁰ In the same light, they agreed about the necessity of a deep constitutional restructuring, underscoring they must fill a gap between the constitutional text and the social identity of Chile. Later, they were buoyed up by the abovementioned Statement of Principles of the Junta drafted up by Guzmán (1974), which served as their main document of orientation. To a large extent, the fact that most of them held positions as professors at the Catholic University School of Law, and were already familiar with the conservative discourse, facilitated their intellectual collaboration.¹⁶¹ The previous project of an amendment introduced by Jorge Alessandri's government (1964), and the German Basic Law (1949), would serve as the main source of inspiration for the draft although this remained as an original venture. On such groundwork, the commission would channel its first three years of debates or so, which were the most relevant to determine the content of the text. These would be characterized by Guzmán's leading sway to determine the main lines of the project, and the opposition of Jorge Ovalle, and less frequently, Enrique Evans and Alejandro Silva Bascuñán.¹⁶²

It is not my goal here to describe in detail the dogmatic deliberations of the constitutional commission or to present an account of its different turns and twists. Instead, I prefer to draw my attention on how the drafters of the new constitution tackled diverse elements of the authoritarian version of the legal crisis: a) lack of substantive commitments, b) lack of control over state power, and c) the decline of political authority and pervasive ideological partisanship. For that purpose, I intend to show that many of the final provisions of the constitution answered to the narrative that it has been presented throughout this chapter. Obviously, several other aspects resulted significant in the

¹⁵⁸ This perceptions of the legal system were shared by prominent governmental officials, like the Minister of Interior Sergio Fernández. See his "Elementos para la Protección de la Nueva Institucionalidad." *Vigilia*. Vol 2 No 8, April 1978. pp. 54-60.

¹⁵⁹ Enrique Ortúzar: "La Constitución de 1980. Razón de ser del Régimen Fundacional que ella instaura." *Política*. Instituto de Ciencia Política de la Universidad de Chile. Special Number. November 1983. p. 47.

¹⁶⁰ Initially, the Commission referred to derivative constitutional powers. *Actas Oficiales de la Comisión Constituyente*. Session No. 14th, November 8th, 1973. pp. 137-144. 150-153.

¹⁶¹ Guzmán, Diez, Ortúzar, Evans, and Silva Bascuñán were professors in the above-mentioned law school.

¹⁶² Interview Jorge Ovalle.

deliberation of the commission, such as the timetable for an eventual democratic transition, the armed forces' role as guarantors of the institutional order, and the states of constitutional emergency, but their complexities exceed the purpose of my research at this point. They would be only mentioned as long as needed.

In the first place, the constituent commission attempted to surmount the previous value neutrality that used to be denounced by conservative lawyers of *Portada*. Both a Memorandum of Goals elaborated by them (November 1973) and the Statement of Principles of the Junta (March 1974) pointed to what they thought was the ethics of the Chilean nation.¹⁶³ According to who headed the deliberations within the Commission—Guzmán, Diez, Silva Bascuñán and Ortúzar—, such moral principles would have been comprised by the Catholic identity of most of the population. In concrete terms, the commission decided to enshrine the predominance of men over the state and the common good as core values of the new constitutional machinery. They devoted long hours of discussion, and several sessions, to deliberate on the convenience of introducing those philosophical ideals inside the preamble of the charter (Basis of the Institutional Order).¹⁶⁴ The final text of the constitution affirmed the state must be at the service of the person, what, according to Guzmán, would reflect the ontological primacy of the human being. At the same time, this reasserted a traditional version of common good as state's goal —understood as the social arrangements to facilitate the spiritual and material advancement of all the inhabitants of the nation at their utmost grade—.¹⁶⁵

Far from remaining at a rhetorical sphere, the definitions of the constitution possessed significant consequences that are present in other sections of the text, like the defense of property rights and the autonomy of the social groups to achieve their own ends free of the state's intervention. Still others normative consequences were developed by the constitutional jurisprudence immediately after 1980, trying to interpret the original intent expressed in the statements that inspired the work of the Ortúzar Commission. Perhaps, the principle of subsidiarity is the most relevant of these latter ones, narrowing the socioeconomic responsibilities of the state only to the tasks that individuals and groups cannot achieve by themselves (for example, by restricting the role of the public corporations in businesses).¹⁶⁶ In the end, those constitutional principles encompassed a particular view on democracy as well, as long as they considered lawmaking was not merely a political bargain within a formal procedure, but a process of deliberation oriented by specific ethics guidelines, whose core must not be chiefly altered. So, they ascribed to one of the central pieces of the *Portada*'s discourse. “The democracy is only a mean, whose validity and legitimacy has a direct relation to its efficacy in advancing the

¹⁶³ Junta de Gobierno: *Declaración de Principios del Gobierno de Chile*. Op. Cit. “Metas u Objetivos Fundamentales para la Nueva Constitución Política de la República.” *Actas Oficiales de la Comisión Constituyente*. November 26th, 1973.

¹⁶⁴ See as example: *Actas Oficiales de la Comisión Constituyente*. Session No. 45. June 13th, 1974. Session No. 46. June 18th, 1974. Session No. 47. June 20th, 1974.

¹⁶⁵ Art. 1. Hereinafter, the reference to articles belong to: *Constitución Política de la República de Chile*. 1980.

¹⁶⁶ See, for axample the article 19 No. 21 on economic freedom. On property rights, see for example Renato Cristi, Pablo Ruiz-Tagle: *El constitucionalismo del miedo. Propiedad, bien común, y poder constituyente*. Santiago, Lom Editores. 2014. pp. 80-94. Arturo Fermandois: *Derecho Constitucional Económico. Garantías Económicas, Doctrina y Jurisprudencia*. Tomo I. Santiago, Ediciones de la Pontificia Universidad Católica de Chile. 2011. pp. 83-117.

desired finalities and ways of life,” wrote Guzmán by 1980, clarifying their view on the role of substantive commitments.¹⁶⁷

In the second place, the new constitution laid down a set of limitations on public power. On one side, its text assumed an anti-statist perspective, and directly declared that the rights that emerged from human nature constituted limits to the sovereign will.¹⁶⁸ Accordingly, it framed the pertaining provisions on specific constitutional guarantees restricting public interference. For instance, the text recognized anyone the right to establish educational centers, the possibility to open a business and to develop economic activities; granted previous compensations in cases of expropriations; reinforced the right of free association, and so on; always sustaining restrictive interpretations on state prerogatives. Of course, all these were not neutral provisions, and the very concept of rights chiefly as a limitation of public power enclosed a biased standpoint. It is not casual that the text was reluctant to protect socio-economic welfare benefits, which were not considered justiciable rights. On the whole, the constitutional guarantees broaden the realm of individual freedom in the economy, but in specific subjects, they echoed the restrictive policy preference of the conservative stand. For example, it instituted a Council to Control Broadcasting stations overseeing mass media (without including prior censorship), submitted public corporations to legal equality inside the market economy, protected the life of the unborn, and safeguarded parents’ right to decide on their children education.¹⁶⁹

On the other side, the text set up a new legal infrastructure to uphold constitutional values and to restrain public power. Expressly ascertaining its responsibility, the state became accountable for its administrative acts before ordinary courts, ending up with decades of lack of judicial control on public bureaucracy.¹⁷⁰ In the same light, it was established a writ to shelter constitutional guarantees before appellate courts, both against administrative agencies and private actors (*recurso de protección*). This was inspired by a similar project introduced by congressmen of the National Party at the end of Allende’s term (1972), which attempted to curb socialist policies.¹⁷¹ Meanwhile, the text also instituted a refurbished Constitutional Tribunal that expanded its jurisdiction to exert an ex-ante judicial review on legislation and to resolve the conflicts on separation of powers.¹⁷² Unless regarding the protection of property rights, all these mechanisms initially would have a scant effect, particularly due to the usual deference of

¹⁶⁷ Jaime Guzmán: “La definición constitucional.” Op. Cit. p. 22.

¹⁶⁸ Art. 5, sub-section 2.

¹⁶⁹ See Note 165.

¹⁷⁰ This innovation constituted a central aspect for many right-leaning lawyers and scholars, who waited this turn for a long time. See Eduardo Soto Kloss: “La competencia contencioso-administrativa de los Tribunales Ordinarios de Justicia.” *Revista Chilena de Derecho*. Vol. 1, N° 3-4, 1974, pp. 349-459. Jaime Navarrete Barreto: “El Poder del Poder Judicial.” Op. Cit.

¹⁷¹ Eduardo Soto Kloss and Jaime Navarrete, two professors of Public Law, were the authors of the idea of the writ of protection. In 1972, they drafted a bill of a constitutional amendment that tried to provide a juridical tool to resist the advancement of expropriation and other revolutionary policies carried out by the UP. The project was introduced into the Congress by Deputy Mario Arnello and the Senator Sergio Diez, who belonged to the National Party. Later on, in the middle 1970s, their project would be retaken by the constituent commission. Eduardo Soto Kloss. *El Recurso de Protección. Orígenes, Doctrina y Jurisprudencia*. Santiago: Editorial Jurídica de Chile. 1982.

¹⁷² Teodoro Ribera Neumann: “Función y Composición del Tribunal Constitucional de 1980.” *Estudios Públicos*. No 27. 1987. pp. 77-112.

higher courts and the system of appointment of the Constitutional Tribunal, which would be dominated by the judiciary and the military authorities.¹⁷³ In the following decades, however, they gradually became critical mechanisms of dispute resolution and a vehicle to advance diverse agendas in the political arena.

Finally, the new constitution addressed what conservative and nationalistic groups moaned as a crisis of authority since the mid-1960s; this is to say, the above-mentioned excessive ideological struggle, social turmoil, and the institutional weakness of the President of the Republic. Although the drafters refused to depart completely from the traditional constitutional structures of the country, establishing a complete corporative system such as nationalistic hard-liners proposed, they were embedded in a kind of anti-liberal aim.¹⁷⁴ In so doing, they introduced a set of authoritarian checks and cleavages that intended to modify the rules of the democratic game such as this latter one operated before 1973. By this mean, they intended to restrain the influence of the Socialist, Communist and Christian Democratic parties that, according to their stance, were associated with the republican decline.

Numerous provisions illustrate the point. In the controversial article 8th, the new constitution banned the parties and all the political movements that disseminate doctrines that threaten the family, and that propagated “class struggle” or “totalitarian ideas,” bestowing the control on this issue to the Constitutional Tribunal. In the practice, the Article 8th meant the proscription of the Communist Party, and their members were banned from politics, education, press, and the leadership of the professional and neighboring organizations. It also seriously imperiled the different version of socialism.¹⁷⁵ By the same token, the Constitution strictly separated social participation from politics, impeding that workers’ union, business associations, and neighboring leaders participated from high-rank partisanship and as candidates for electoral competition.¹⁷⁶ All these measures looked to reinforce political stability and to prevent the emergence of a scenario similar to the Popular Unity years.

Besides the examples already quoted, we can find other authoritarian cleavages that were designed to serve as political insurance after the dictatorship ended up. For instance, the Congress incorporated several institutional senators who were not elected by the ballot (e.g. former presidents, a commander in chief of each branch of the armed forces, two past justices of the Supreme Court);¹⁷⁷ a Council of National Security (COSENA) composed by military and civic authorities was in charge of deliberating on some critical selections of officials and defense plans;¹⁷⁸ the Commanders in Chief of the Armed Forces were appointed for fixed terms;¹⁷⁹ and the autonomy of the Central

¹⁷³ See debates on its regulation at *Acta Junta de Gobierno* No. 2/81-A pp. 9-12.

¹⁷⁴ Carlos Cruz-Coke: “¿Bases para una nueva Constitución Política para Chile o para los Políticos Criollos?” In, *Actas Oficiales de la Comisión Constituyente*. Session No. 20. January 15th, 1974. Pablo Rodríguez Grez: Exposition to the Junta: *Acta Junta de Gobierno* No 102. March, 12th, 1974. pp.1– 8. See also, Pablo Rodríguez Grez: *¿Democracia Liberal o Democracia Orgánica?* [1977], Op. Cit.

¹⁷⁵ Rafael Larraín Cruz, Leopoldo Nuñez Tomé: *Protección de la democracia ¿Deben proscribirse los partidos marxistas? Historia fidedigna del artículo 8 de la Constitución Política de 1980*. Santiago: Editorial Jurídica de Chile, 1984.

¹⁷⁶ Art. 19. No 19, subsection 3.

¹⁷⁷ Sergio Carrasco: “Composición del Senado de Chile: Institución del Senadores Designados.” *XX Jornadas de Derecho Público Edeval*. 1990. pp. 117-130.

¹⁷⁸ Art. 95.

¹⁷⁹ Art. 93

Bank—in control of the monetary policy—, was granted.¹⁸⁰ The Constitution also reinforced the legislative powers of the Chief Executive and set up a normative hierarchy of statutes that established higher quorums for some matters that dealt with specific areas of decision-making (e.g. political parties, education, the Central Bank, elections).¹⁸¹ Later on, these regulations would be complemented by a binominal voting system to elect Deputies and Senators to the Congress, which, in the practice, functioned as a lock to restrain the rising of the left-wing parties.¹⁸² In sum, the pertaining provisions modified the terms of the public deliberation, selectively changing the conformation of a political body or isolating sensitive subjects from democratic majorities.

Although the members of the commission reached a definite text, the genesis of the project was not exempt of turns. Certainly, the draft reflected the core guidelines provided by the Statement of Goals of the Junta (1974), but there were qualms. By 1975, the Junta began to promulgate diverse constitutional acts that covered partial matters, such as on the Council of State (No.1), States of Constitutional Exemption (No.4), and the Writ of Protection (No.6). It is likely these latter ones mirrored the underlying conflicts of the Junta and their supporting groups, and the difficulties in reaching a complete agreement.¹⁸³ By 1977, equally, the Christian Democrats members of the Commission quit once the political parties were banned by the government, and the Junta expelled Jorge Ovalle after General Leigh was forced out from the Junta in 1978. These turns implied that they were replaced by other lawyers who were prone to the policies of the military dictatorship, such as Luz Bulnes, Raúl Bertelsen, and Juan de Dios Carmona.¹⁸⁴

Only in 1978 the Junta finally decided to advance towards the promulgation of a complete new constitution. As we have seen previously, Jaime Guzmán's sway played a major role in such a turn, as long as he foresaw the necessity to advance in the institutionalization of the regime submitted to important internal tensions. A preliminary version of the draft was sent to the Council of State in the late 1978.¹⁸⁵ This latter one—headed by the past president Jorge Alessandri—did not exert any significant influence on the processes of decision-making, although some colorful debates on selective suffrage resulted illustrative of the anti-liberal spirit of few of its members. The disagreement on the long timetable of the transition, and the status of the Commander in Chief of the Armed Forces comprised the most polemic stands of the Council, but its rebuttals did not have any weight for the final draft.¹⁸⁶ At last, the text would be

¹⁸⁰ Art. 97.

¹⁸¹ Peter M. Siavelis: *The President and Congress in Postauthoritarian Chile: Institutional Constraints to Democratic Consolidation*. University Park: Penn State University Press. 2000.

¹⁸² According to the binominal electoral system, the members of the Congress were elected filling two seats by each district (Chamber of Deputies) or circumscription (Senate). The political parties, alone or organized in coalitions, could present a list containing until two candidates per each territorial division. To take the two seats, the winning list must double the number of the votes of the following most voted list. Daniel Pastor: "Origins of the Chilean Binominal Election System." *Revista de Ciencia Política* Vol. 24 No 1. 2004. pp. 38-57.

¹⁸³ Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 232-233.

¹⁸⁴ *Ibid.* p. 233.

¹⁸⁵ Comisión de Estudios de una Nueva Constitución (Comisión Ortúzar): *Anteproyecto Constitucional y sus Fundamentos*. Op. Cit.

¹⁸⁶ Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. pp. 239-241. Ascanio Cavallo, Manuel Salazar, Oscar Sepúlveda: *La Historia Oculta del Régimen Militar...* Op. Cit. pp. 425-441.

submitted to a plebiscite for its approval, which would be carried out without electoral records, political parties' legislation and open press. Neither the electorate had enough time to study the project proposed to vote some weeks later. The opposition to the military rule was only allowed one public meeting at the Caupolicán Theater in Santiago, where some spokesmen—such as past President Frei—, congregated dissidents calling to vote against the project. The draft was approved by a 67% of the votes.¹⁸⁷

The constitution entered into force in March of 1981, but some sections—such as the pertaining dispositions on Congress—, were dormant, waiting for the results of a further plebiscite on the military rule's continuity, planned for 1988. Meanwhile, a set of transitory provisions regulated subjects like lawmaking and the restrictions to political rights that were associated with the authoritarian nature of the dictatorship. During the 1980s, the legal cadres of the regime mobilized to implement different sections of the constitutional apparatus. For that purpose, the Junta established a new commission to study organic constitutional legislation, and usually it got directly involved into the deliberation of their content.¹⁸⁸ By this way, the regime regulated the Constitutional Tribunal, Education, Basis of Administration, Mining, Political Parties, the Central Bank, among several others matters.

Some of the most controversial constitutional issues of the period arose in regard to the conditions of the plebiscite of 1988. According to the transitory provisions of the Constitution, the electoral courts and records were projected to be established only for the next parliamentary election of 1990, after the plebiscite. Such a situation cast doubts on the legitimacy of the act and awaken the distrust of the pro-democratic sectors and the international community. This seemed particularly severe by the mid-1980s, when the rising opposition convoked mass mobilization against the dictatorship —stoked by the economic recession—, and new outbreaks of violence and terrorism began to emerge. During the debates on the organic constitutional statute that regulated the electoral court, there were disagreements regarding the date in which this should be operative. Although the members of the legislative commissions (especially from the Navy and the Air Force) asserted the electoral court should oversee the plebiscite of 1988, the Junta finally passed a statute that followed the express transitory provision of the constitution. By 1985, the Constitutional Tribunal reviewed the draft before its promulgation, issuing a landmark ruling. In a sentence written down by Eugenio Valenzuela Somarriva, the vote of majority asserted that the real intent of the text was to carry fair elections that could be supervised by a competent court. According to the tribunal's principled decision, this requirement appeared still more relevant in regard of the plebiscite, since this would decide on the transition and to start a democratic government.¹⁸⁹ Despite some resistance and pressures coming from the Ministry of Justice prior the publication of the sentence, finally the tribunal kept its decision, and the Junta just announced its enforcement. Following this ruling, the Constitutional Tribunal issued other opinions in the same direction during the next years, particularly on electoral records and on ballots and voting

¹⁸⁷ Ascanio Cavallo, et. al.: *La Historia Oculta del Régimen Militar...* Op. Cit. p. 442-455.

¹⁸⁸ For the establishment of the commission of study of the constitutional organic legislation, see: DS No. 362 of the Minister of Interior, March, 1983. The Commission was comprised by Sergio Fernández (Chair), Raúl Bertelsen, Luz Bulnes, Jaime Guzmán, Hermógenes Pérez de Arce, Gustavo Cuevas Farren and Francisco Bulnes Sanfuentes.

¹⁸⁹ *Sentence Rol No 33-85*. Tribunal Constitucional. (25.07.1985).

procedures.¹⁹⁰ Those landmark decisions paved the road to fair elections and legitimated the role of the tribunal itself, made up by members appointed by the Military Junta or the Judiciary. At the same time, they laid down the triumph of harmonious and systematic interpretation, surmounting the traditional positivistic approach.¹⁹¹ By the late 1980s, the constitutional machinery seemed ready to govern the following decades.¹⁹²

Concluding Remarks:

The account presented along this chapter confirms a network of right-leaning lawyers performed a critical role in the process of institutionalization of the military regime. They advocated for its juridical legitimacy and clearly influenced the very decision to advance towards a re-foundation of the republican order. An authoritarian version of the narrative of legal crisis originated in the group behind Portada's review, meant a sound rationale that agglutinated the different streams of conservative and nationalist lawyers. Through Jaime Guzmán's figure, they were able to sway the official discourse of the dictatorship and, over time, were integrated into the diverse groups that backed the government in its project of comprehensive constitutional and legal reform.

The idea of an underlying crisis of authority served as the conceptual scaffolding to coordinate the negative perceptions of the political and legal institutions, laying the ground for their collaborative enterprise. Although this rhetoric initially dominated their discourse during the first years of so the dictatorship, it was present among these lawyers along the entire period.¹⁹³ This also fostered their compromise with other important agendas inside the regime, such as the pro-market liberalization promoted by neoclassical economists and the doctrines of national security. Featured by legislative chaos, lack of juridical control on bureaucracy and the reduction of law to a mere bargain within the boundaries of legal formalism, their account of the crisis condensed the very core of the right-wing complaints in this period. As a matter of fact, their description was not anchored in an impartial observation but echoed the fears that the groups to which they belonged harbored about this time: social chaos, state enlargement and radical redistributive policies. The Popular Unity's years served to cement their vital experience.

This narrative also comprised a true program of mobilization, which was inspired in the authoritarian republic of the nineteenth century Chile. An idealistic portrayal of a prior ethic consensus anchored in the Catholic tradition, social order and a strong executive authority crossed their writings between the late 1960s and late 1970s. Some tracks of such programmatic narrative can be easily identified.¹⁹⁴ Their strategies towards (de)politicisation of law and the constitutional entrenchment could be traced back to their view on the role that lawyers and legal scholars played in the authoritarian past. In the

¹⁹⁰ *Sentencia Rol No 38-86*; and *Sentencia Rol No 53-88*.

¹⁹¹ Robert Barros: *Constitutionalism and Dictatorship*. *Op. Cit.* p. 296.

¹⁹² In 1989, a new plebiscite would be carried to modify some minor regulations of the democratic system, which were previously negotiated between the military rule and the winning coalition (Concertación). Carlos Andrade Geywitz, *La Reforma de la Constitución Política de la República de Chile de 1980*. Santiago, Editorial Jurídica. 1991.

¹⁹³ Carlos Concha [under the alias name Pepe Grillo] "¿Crisis Jurídica en Chile?" *Realidad*. No. 45. March, 1983. pp. 17-21. Republished in *Revista Chilena de Derecho*. Vol. 13. No.1. 1986. pp. 33-37.

¹⁹⁴ See *Supra*.

same light, the ambitious programs of statutory reordering also resembled the efforts to employ legal means in nation building. Indeed, their strategic behavior counted on a sound model.

Naturally, the advancement of parallel strategies of mobilization (autonomy, modernization, and entrenchment), embodied a subtle balance of their different—and sometimes contradictory—political and professional goals. On several occasions, its poise was broken and presented flaws. For instance, a thin juridical autonomy of the legal institutions would be characterized by a veiled political orientation in favor of the regime, and, to a large extent, it also led to unresponsiveness, such as the courts' lack of control on massive human rights abuses.¹⁹⁵ In another perspective, the policy of constitutional entrenchment would be undermined by the tribunals' autonomy and the possibilities of a non-positivist juridical interpretation that several of the right-leaning lawyers previously promoted. The landmark ruling of the Constitutional Tribunal mentioned above, which upheld the necessity of electoral courts for the plebiscite on the continuity of the military rule in 1988, offered a remarkable example, paving the road to fair elections.¹⁹⁶

Finally, the Chilean experience also provided some clues to comprehend the cooperation of an important section of the legal profession with authoritarian regimes. Usually, law and politics literature has shown that those governments have a specific interest in advancing a limited version of the rule of (by) law. By this way, authoritarian rules get legitimacy, show up commitments to foreign investors, resolve internal conflicts, establish political insurances facing a further oppositional hegemony, and exert administrative control on lower ranks.¹⁹⁷ Nevertheless, we still need to advance in our understanding of the legal professionals behind authoritarian policies. This right-leaning legal network constituted an insightful example that illustrates how the behavior of lawyers backing authoritarianism is closely intertwined both with their political preferences and their structural positions inside the legal field.

Historical sources are very instructive to observe that this group of right-leaning lawyers feared social turmoil that characterized Frei and Allende's terms. Coming mostly from landed elite and minor gentry lineage, they resented redistributive policies and the break in the social hierarchy that still persisted in Chilean society until the mid-1960s. At the same time, many of them initially acted in defense of the legal system itself. In fact, they got aligned as a broad oppositional bloc against the Popular Unity emerged about 1972, which comprised most of the bar, law schools, and courts. This latter one was chiefly structured around the conflict on separations of powers during Allende's government, and particularly arose when the executive seemed committed to a more radical policy of expropriations through legal loopholes and chose to challenge adverse judicial decisions. However, all these reasons allow comprehending the initial support to the military takeover and the first subsequent period of the dictatorship, but not an involvement of seventeen years. Neither mere political loyalty nor fears to left-wing violence seem enough to explain these lawyers' active engagement in supporting the military rule and their strategies of juridical mobilization.

This chapter has shown that right-leaning lawyers strategically moved to advance simultaneously their political preferences—attuned with the new regime—and their

¹⁹⁵ Anthony W. Pereira: *Political (In) Justice: Authoritarianism and the Rule of Law...* Op. Cit. pp. 90-116.

¹⁹⁶ See Note 188.

¹⁹⁷ See Note 6 supra.

professional and social agendas. Alternatively, put in other words, the military dictatorship allowed that the most committed of them could maximize their intellectual and social capital and back the regime, even at the level of influencing its itinerary.¹⁹⁸ For example, the discourse of non-partisan government certainly favored courts that traditionally possessed a bureaucratic and non-deliberative institutional ideology associated with positivism, and also encouraged lawyers trained in the old school to displace to those who promoted the model of “legal engineers,” usually strongly identified with reformist partisanship and redistributive economic policies. In the same light, it constituted an opportunity to revalue traditionalist version of natural law theories to cement the legitimacy of the military takeover and its emerging institutional order.

From a similar perspective, the military dictatorship offered unbeaten opportunities to participate in intuition building, one of the most remarkable ideals of the legal profession that, at least in Chile, was associated with the enactment of constitutions and legislative codes during the old authoritarian republic. The military rule, in part as a result of the lawyers’ sway itself, assumed a re-foundational task. This included a process of constitution making and a general program of re-codification that offered a setting to exercise different forms of their juridical expertise. This opportunity seemed particularly attractive to who possessed substantial legal capital in areas such as civil, commercial and constitutional law, and resulted sensitive for right-wing lawyers that had been displaced from the process of public decision-making by electoral competition and social scientists. Outside the constitutional arena, they finally occupied the second line in economic and state restructuring, but still played key roles. A noteworthy example is their participation in the liberation of the markets. This process fostered their previous high-profile positions within the legal field so that they could thrive in litigation, arbitration, and commercial counseling. All in all, such as in the other networks that have been revisited along his dissertation, the fates political regime and its supporting legal cadres appear closely intermingled.

¹⁹⁸ See Characterization in *Table 6.1*.

Chapter 7

Reforming Law, Pursuing Democratization. Dissident Lawyers and the Alternative Juridical Expertise (1978-1990)

The way to resolve the conflicts between statutes and the principles of fairness is perhaps one of the gravest elements of the deep crisis of Chilean Justice. The courts are supposed [...] to make justice; that is to say, to look among the elements at their disposition (the statutes, the concrete reality) to find the point of balance to solve conflicts [...] However, experience shows that courts think their mission is to apply statutes, although these are unfair, although these are inadequate, although these allow atrocities against human beings. (Jaime Hales: *Los Fallos de la Justicia*. 1980).¹

Introduction

On July 21st, 1978, a group of twenty-four people—most of them lawyers—met to organize the first think-tank aimed to compete with the dictatorship in the arena of constitution-making. Congregated at a hotel located in one of the most select neighborhoods of Santiago, the gathering established the Group of Constitutional Studies (popularly known as “the 24’s Group,” in reference to its founding members), which should serve as a central setting to further an alternative program of reforms.² Although quite a few of them held well-known partisan affiliations, they claimed that they concurred only as ordinary citizens concerned with the authoritarian political reorganization carried out by the military rule. Several of the prominent politicians, lawyers and legal scholars of the opposition, who held moderate stances, established the group. They ranged from former Radical Party lawyers like Manuel Sanhueza, Raúl Rettig, and Gonzalo Figueroa, to Christian Democrats such as Patricio Aylwin, Francisco Cumplido, and Alejandro Silva Bascuñán. Chiefly, all they proposed was an adaptive upgrading of the democratic institutions that were in force before Allende’s overthrow.³ “We conceive the New Institutional order as a profound and realist reform of what governed over us for so many years before entering into final crisis in 1973,” they explained in clear reference to their refusal of the military re-foundational project that they tried to confront.⁴ The group became more established over time by adding other members and sections around the country, becoming one of the most important spaces to bypass the restrictions on the

¹ Jaime Hales: “Los Fallos de la Justicia.” *Analisis*, April, 1980. No.22. p. 23.

² Jeffrey M. Puryear: *Thinking Politics. Intellectuals and Democracy in Chile, 1973-1988*. Baltimore: The John Hopkins University Press. 1997. pp. 42-43. Patricio Aylwin: *El Reencuentro de los Demócratas. Del Golpe al Truinfo del No*. Santiago: Ediciones B. 1998. pp. 147-155. Jorge Mario Quinzio: “El Grupo de los 24 y su crítica a la Constitución Política de 1980.” *Revista de Derecho de la Universidad Católica de Valparaíso*. XXIII, 2002. pp. 15-37.

³ Ibid.

⁴ “Manifiesto Grupo de Estudios Constitucionales.” [July 21th, 1978] In Patricio Chaparro (ed.): *Las Propuestas Democráticas del Grupo de los 24*. Santiago: Corporación Grupo de Estudios Constitucionales. 1992. p.6.

opposition imposed by the dictatorship. Thus, behind the veil of academic envisioning of constitutional and legal reform, they organized the first efforts of dissident politics, resulting in several years of passive retreat among opposition lawyers.

The year in which they began to mobilize does not constitute a trivial aspect. By mid-1978, the military rule had announced that it has a rather finished constitutional project, and were delaying its presentation. All the official utterances indicated that the draft elaborated by the constitutional commission of the government would only be reviewed by the Council of State and the Junta, to be further submitted to a plebiscite without substantial opportunity for deliberation in the public sphere.⁵ At the same time, the cohesion of the Junta began to show the first signs of erosion. The criticisms delivered by General Gustavo Leigh on the lack of a timetable for return to democracy had opened a polemic that ended with his being expelled from the Junta the very same month.⁶ Simultaneously, international pressure against the dictatorship increased. All the clues about the assassination of the former socialist minister Orlando Letelier, committed by detonating an explosive artifact in Washington D.C. in 1976, appeared to point to the security services of the military regime.⁷ Moreover, the Catholic Church chose 1978 to commemorate as “the year of human rights,” and the first critical press and public manifestations against the government began to emerge timidly.⁸ The political milieu seemed propitious to confront authoritarian politics.

The establishment of the 24's Group represents the starting point of the convergence of dissident lawyers who tried to pursue democratization by advancing the rearrangement of the legal system.⁹ And the context would offer new opportunities. The international economic crisis, whose effects were amplified in the country by its adjustment to pro-market policies, would spread social turmoil from about 1982 onwards, provoking massive protests pushing for return to democracy.¹⁰ Equally, the constitutional structure instituted by the dictatorship in 1980 set up some conditions that favored lawyers' mobilization, particularly in regard to the safeguard of academic and economic freedom. After 1982, other experiences of mobilization emerged following a strategy similar to the 24s' Group, relying upon the institutional scaffolding provided by the regime itself. The CHBA lost its public status, being transformed into a private corporation opened to free gremial ballot, and falling under the control of Christian Democrats and Radical Party attorneys by 1985. The attempts to structure a new juridical scholarship at the Diego Portales University, and the groups of mid-level judges who would try to redefine the judicial role, constitute good examples in this direction as well. The emergence of a broad network of dissident legal professionals was evident by the mid-1980s.¹¹

This chapter intends to explain how lawyers who identified with the opposition to the dictatorship, and who usually were displaced to mid-level positions in the legal field, got aligned to advance democratization through projects of constitutional and legal reform.

⁵ Ibid. p. 5.

⁶ Ascanio Cavallo et al.: *La Historia Oculta del Régimen Militar*. Op. Cit. pp. 304-320.

⁷ Robert Barros: *Constitutionalism and Dictatorship*. Op. Cit. pp. 204-207.

⁸ “Carta de Santiago. Documento Final del Año de los Derechos Humanos” [1978] *Vicaría de la Solidaridad Archive*.

⁹ Jeffrey M. Puryear: *Thinking Politics*. Op. Cit. pp. 41-42 Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. p. 578. Interview Hugo Frühling, Interview Jorge Correa Sutil, Interview Humberto Nogueira.

¹⁰ Ascanio Cavallo et al.: *La Historia Oculta del Régimen Militar*. Op. Cit. pp. 503-549.

¹¹ See extensive description of them below.

As in any other chapter of this dissertation, I propose that they coordinately looked to participate in the political struggles and to consolidate their professional positions, in a kind of two-fold strategy of collective action. Thus, such efforts to promote the rule of law and state accountability both reflect their sincere policy preferences and also how they tried to advance their professional agenda, by, for example, maximizing the acquisition of symbolic capital of the human rights discourse and democratic credentials. The latter would allow building links with international actors that provided valuable material support, and, at a domestic level, would be reinvested in an attempt to broaden their sphere of professional jurisdiction and to enter into state politics once the democratic transition approached by the end of the 1980s. Additionally, this chapter asserts that, over time, the different strategies would be crystallized in a kind of collective approach to law, characterized by a commitment to democracy and human rights in the perspective of political liberalism.

The chapter unfolds as follows. First, I study the profiles of who participated in the above-mentioned network of dissident lawyers, drawing my attention to the social, political and professional identity of its principal members. Second, I turn to analyze how they held a common diagnosis of the crisis of the legal system, being particularly critical of the judiciary. This section also examines how, starting to form such a diagnosis, they gradually framed a narrative of mobilization, which employed a maximalist view of democracy, and had as its axis a substantive commitment to human rights to articulate a new model of legal expertise. Third, I provide a relatively brief account of four experiences in which the reshuffle of the juridical field and the political restructuring are intermingled: a) the work of the 24s' Group; b) the battles for the control of the CHBA; c) the emergence of an alternative legal academia developed at the Universidad Diego Portales Law School; and d) the efforts of young generations of judges advocating for the construction of a new model of courts and adjudication. Finally, the concluding remarks are focused on how these different experiences are interweaved, decisively influencing the projects of reform during the first years of the democratic transition.

The Convergence of a Dissidents' Legal Network.

The years that followed Allende's overthrow were hard times for Marxist lawyers, and even for the reformist law graduates who looked at the past redistributive policies with sympathy. Most of the legal profession massively backed the first period of the dictatorship, and the judiciary, the bar association, and law schools decided to support its legitimacy and collaborate with its legal tasks.¹² There was not so much room for dissidence inside the legal field, and antigovernment attorneys were disbanded. After September of 1973, most left-leaning lawyers who took part in the socialist rule like Eduardo Novoa, José Antonio Viera-Gallo, and Sergio Politoff, were exiled and expelled from their positions in administrative agencies, courts, and legal academia. Abroad, they would continue proposing a neo-Marxist approach to law, reinterpreting the UP's downfall and the new political process in Chile in the perspective of a class struggle.¹³ The few who

¹² Mateo Gallardo Silva: *Intima Complacencia*. Op. Cit. pp. 17-35.

¹³ See as example: Eduardo Novoa Monreal: *El derecho como obstáculo al cambio social*. Ciudad de México. Editorial Siglo XXI, 1975. *¿Vía Legal al Socialismo? El caso de Chile. 1970-1973*. Caracas: Editorial

remained in the country went underground or got engaged with the legal claims to defy human rights violations committed by state agents, being, in several cases, exiled some time later.¹⁴

As the months and years elapsed, the hard times for reformist lawyers came too. Quite a few of them, usually identified with the right wing factions of the Christian Democrats and the Radical Party—like Alejandro Silva Bascuñán and Jorge Ovalle—had gotten involved in the first years of the dictatorship, supporting its legitimacy or collaborating in specific tasks of institutional design. Only a few had remained politically active by taking an oppositional stance from late 1973 onwards, assuming a critical position regarding the new government, particularly vis-à-vis the political repression. Some of them, such as Andrés Aylwin, Jaime Castillo Velasco, and Eugenio Velasco Letelier worked in litigation against human rights abuses and were exiled by the mid-1970s.¹⁵ Others, like Francisco Cumplido, published subtle dissenting writings in the press and academia, trying to keep the party structures alive.¹⁶ However, these cases of political engagement constituted isolated exceptions.

After celebrating Allende's overthrow, most lawyers with moderate political preferences remained in an attitude of expectancy since about mid-1974. The spread of political repression and the polarization of the regime, which began to divide citizens under a friend/enemy distinction, would imply a new scenario that undermined their position until pushing them to an oppositional stand. Many of them were displaced from their former posts in academia and the bar organization, such as the Dean of the University of Chile School of Law, Máximo Pacheco, and the Head of the CHBA, Alejandro Silva Bascuñán.¹⁷ Gradually, this meant that several reformist lawyers were expelled from the university or saw utterly reduced their opportunities to teach and conduct research.¹⁸ These measures affected even lawyers and scholars who, holding right-wing preferences, were reluctant to collaborate with the regime.¹⁹ Meanwhile, work in the higher sections of administrative agencies was reserved for those who were fully committed to the process of modernization carried out by the military rule, which was eager to count on well-trained professionals without interest for traditional partisan politics. The market for legal services, particularly

Jurídica Venezolana. 1978. Sergio Politoff: "Justicia y Facismo." *Araucaria de Chile*. No 3. 1978. pp. 3-8. José Antonio Viera-Gallo: "Tiranía y Derecho." *Chile-América*. Suplemento II. January. 1975. pp. 15-23.

¹⁴ Such is the case, for example, of Carmen Hertz and José Zalaquett, who passed from working for the Agrarian Reform Corporation during the UP to the litigation in human rights at the Vicariate for the Solidarity, being exiled. Gabriela Alvarez, a Communist lawyer who worked as legal counsel of the Central Bank during the UP, lived a similar process, being exiled after a brief time working on human rights litigation.

¹⁵ Eugenio Velasco Letelier: *Expulsión*. Santiago: Editorial Copygraph. 1986.

¹⁶ For instance, Cumplido remained publishing dissident writings in the review *Mensaje*, usually under the nickname Felipe Ademar. At the same time, he actively worked in the Christian Democratic Party's underground organization. Interview Francisco Cumplido.

¹⁷ See Chapter 6.

¹⁸ Such is the case of Francisco Cumplido and Jorge Mario Quinzio in the University of Chile School of Law.

¹⁹ Antonio Bascuñán Valdés, Andrés Cuneo in the University of Chile School of Law, and Pedro Pierry at the Catholic University of Valparaíso. Others, such as Manuel Sanhueza Cruz at the Universidad de Concepción School of Law, were reduced their position and were exonerated some years later. Still others were expelled and hired again under less favorable terms, like Mario Verdugo in the University of Chile. It was not uncommon that dissidents law professors, particularly in the area of public law, used to silence their criticism against the military regime feeling themselves encroached by the new political milieu. See Interview Pedro Pierry. In Mateo Gallardo Silva: *Intima Complacencia*. Op. Cit. pp. 179-184.

among elite lawyers working in business and corporations, also reduced the possibilities for lawyers that were dubious of the liberalization of the economy.²⁰ In this way, they progressively were relegated to a lower place in the profession. The formal proscription of all the parties in 1977 would constitute a watershed in this process of displacement. Responding to such a banning, Christian Democrats Alejandro Silva Bascuñán and Enrique Evans resigned to the Commission of Constitutional Studies established by the government. A year later, Jorge Ovalle—a past member of the Radical Party—was expelled from the commission after General Leigh was dismissed.²¹ By 1978, a good number of reformist lawyers, plus a few others with left or right moderate preferences, seem to have a relative shared position in the legal field and state politics.

The emergence of a dissidents' network constitutes a slow process in which diverse groups of law graduates that were usually displaced from law schools, the bar, and courts, got aligned to develop an articulated program to advance democratization by reforming the juridical field. In so doing, they echoed their policy preferences on moderate government and the restructuration of the legal system toward a liberal understanding of human rights, enhancing the role of judges and scholars. To study this emerging network, I have selected the main participants of four experiences of mobilization that comprise the most significant examples of lawyers' collective action: the 24's Group, the battles on the control of the CHBA, the Diego Portales University Law School, and the National Association of Magistrates.

I have excluded from my analysis lawyers who were active during this period, but who operated under other logics of mobilization, such as those who were highly involved in cause lawyering, fighting abuses against human rights committed by state agents. The data reveal that most human rights advocates had a narrower focus and, usually, did not perform a significant role in the general functioning of the legal system, being almost absent from the endeavors to rearrange the state and the legal field at least until the mid-1980s. It is likely they initially tried to take a non-partisan stand (e.g. the Vicariate of the Solidarity, and the Peace and Justice Service) or built their relational capital with those who held more radical oppositional attitudes towards the military rule (the Corporation for the Promotion of the People's Rights).²² I have also excluded some moderate law professors who, despite their relevance in the academic arena, maintained only slight contact with the experiences analyzed in this chapter.²³

To facilitate a glance on the main members of this network, *Table 7.1* summarizes the data on their profiles with information concerning the late 1970s to the mid-1980s.²⁴ The table shows that, albeit usually acting in different spheres, they shared some basic interest grounded on their positioning in the legal field and political preferences.

²⁰ See as example, Patricio Aylwin: *El Reencuentro de los Demócratas*. Op. Cit. p. 129.

²¹ Interview Jorge Ovalle.

²² For a general perspective: Hugo Frühling, Patricio Orellana: "ONG de derechos humanos bajo regímenes autoritarios y en la transición democrática." In Hugo Frühling (ed.): *Derechos Humanos y Democracia. La Contribución de las Organizaciones No-Gubernamentales*. Santiago Instituto Interamericano de Derechos Humanos. 1991. pp. 25- 83.

²³ e.g. Antonio Bascunán Valdés, José Luis Cea.

²⁴ I have excluded of my account lawyers who were involved in all these experiences of mobilization performing secondary roles, for instance: Carlos Andrade, Carlos Briones, Jorge Mera Figueroa, Humberto Nogueira Alcalá, Cecilia Medina, Zarko Luksic, Francsico Tapia, Raúl Espinoza, Carlos Briones, Jorge Molina, Lautaro Ríos, Hernán Bosselin, among others.

Table 7.1. The Convergence of Dissident Lawyers. (Main Participants by the early and mid-1980s)

S	Party	P	Previous	Subject	G.24	UDP	O-AC	CHBA	ANM	Other
<i>Jorge Correa Sutil</i>	1	DC	*		Theory	secty.	Dean			LL.M. Yale
<i>Carlos Peña</i>	4				Theory, Civil		council	UCH		Ms. Sociology
<i>Carlos Cerda</i>	2			judge	Procedure		council		member	LL.D. Leuven
<i>Andrés Cuneo</i>	4		**		Theory, Civil		council			Post. Harvard
<i>Francisco Cumplido</i>	4	DC	*	AA	Constitutional	member	council	ICHEH	member 1987-90	
<i>Agustín Squella</i>	2				Philosophy		council	UCH		LL.D. Madrid
Mario Verdugo	4				Constitutional	member2	council	UCH		
Davor Harasic	4		**		Procedure		council	UCH		
Enrique Cury	2	DC	*		Criminal		council	UC		LL.M. NYU
Jorge Mera	4		*		Criminal		professor			
<i>Gonzalo Figueroa Y.</i>	2	RP	*		Civil	member	professor	UCH	member 1985-90	Post. UCLA
<i>René Abeliuk</i>	4	RP	**		Civil	member		UCH		
<i>Patricio Aylwin</i>	4	DC	*		Administrative	member			member 1985	
<i>Jaime Castillo Velasco</i>	1	DC		Min.	DDHH	member		CHCHR	member 1985-90	
Héctor Correa Letelier	1	Con.	*	dipt.	International	member			member 1985-89	
Juan Agustín Figueroa	2	RP	**		Procedure	member		UCH	member 1981-90	
Eduardo Jara Miranda	4	RP	*	AA	Administrative	member				
Eduardo Long A.	2	PS.1.	*	AA	Labor	member				
Luis Fernando Luengo	4	PSD		sen.		member				
Hugo Pereira A.	2	PS?	*	CDE	Procedure	member			member 1987-89	
Raúl Rettig	4	RP	*	sen.	Philosophy	member			Head 1985-87	

S	Party	P	Previous	Subject	G.24	UDP	O -AC	CHBA	ANM	Other
<i>Pedro J. Rodríguez</i>	2	DC	*	Min.	Civil	member		Head 1964		
<i>Manuel Sanhueza</i>	4	RP	*	Min.	Constitutional	Chair		member 1989-91		
Víctor Santa Cruz	1	PL	**	dipt.		member				
<i>Alejandro Silva B.</i>	2	DC	*		Constitutional	member	professor	UC	Head 1964-74	post. Sorbonne
Julio Subercasaux B.	1	PN	*	dipt.		member				
<i>Enrique Silva Cimma</i>	4	RP		CT	administrative			member 1981-83		
Alejandro Hales	4	DC	*	Min.				Head 1988-89		
Luis Ortiz Quiroga	2	DC	**		criminal		UCH	member 1981-		LL.D. Rome
Hernán Montealegre	2		*		DD.HH.		Vicariate	member 1985-89		
Roberto Garretón M.	2		*		DD.HH.		Vicariate	member 1987-89		
Mariano Fernández M.	2	DC	*					member 1985-90		
<i>Alfredo Etcheberry</i>	2	DC	**		criminal	professor		Head 1989-91		LLM Columbia
Hernán Correa de.	4			judge			UC		member	
Germán Hermosilla	2			judge					member	
Alberto Chaigneau	4			judge		professor			member	
Mario Garrido Montt	4			judge		professor			Chair	
Marcos Libedinsky	4			judge					member	
Jorge M. Quinzio	4	PR		Dpl.	Constitutional	member2				
Manuel Guzmán Vial	1	DC	*		criminal	member 2		UC	member 1987-90	
<i>Hugo Frühling</i>	4				Politics	member 2		AHC		SJD, Harvard

SOURCES: Data Collected by the Author on information c.1980. *ABBREVIATIONS:* S: *Social Extraction*, 1: landed elite, 2: Minor Gentry, 3: Industry, 4: Outsider; *Party:* DC: Christian Democracy, RP: Radical Party, PN: National Party, PL: Liberal Party, Con: Conservative, PS: Socialist of any faction, PSD: Social Democrat; *P:* * *Practice*, ** Big Law; *Previous:* Experience in State before 1980, AA: Administrative Agency, TC, Constitutional Court, Sen. Senate, dip: Deputy, Min. Minister of Cabinet, Dpl.: Diplomacy; *G24:* 24's Group, member: founder, member2: relevant no founder fellow; *Subject:* Main Academic Interest; *UDP:* Diego Portales University School of Law; *O-AC:* Other Academic or relevant public activity by the early 1980s, UCH University of Chile Law School, UC Catholic University Law School, Vicariate for the Solidarity (Catholic Church), AHC Academy of Christian Humanism; ICHEH: Chilean Institute of Humanist Studies; CHCHR: Chilean Commission of Human Rights. *CHBA:* Chilean Bar Association General Board; *ANM:* National Association of Magistrates; *Other:* Additional Academic Credentials. *Cursive Names:* Commitment to Rhetoric of Legal Crisis.

A first approach to the data offered by *Table 7.1.* shows that the members of this network presented some striking commonalities that explain their convergence. First, their profiles reveal that they used to be identified with the center of the political spectrum. About 60% of the them had a known partisan affiliation (n = 25); remarkably, 29% (n = 12) were identified with the Christian Democracy and 22% (n = 9) with the Radical Party. Equally, preliminary data indicate that several of those who appear with no known partisan affiliation were sympathetic with different streams of moderate politics, from liberalism to Social Christian ideas (14%, n = 6). Such is the case for Carlos Peña, Agustín Squella, Davor Harasic, and Andrés Cuneo, among others. Meanwhile, those who used to be openly identified with ideological stances outside of the center of the political spectrum, like the different stems of the Socialist Party, do not represent a significant sharing (10%, n = 4). It is likely that Marxist lawyers could not participate in an oppositional legal network since most of them were exiled or lived under more stringent measures of political repression. At the same time, they appeared on the defeated side after the UP's downfall, and initially were more concentrated in an exercise of introspection on their failure than in articulating a feasible rearrangement of the legal system.²⁵

Second, several of them occupied mid-level positions in the legal field, mainly as a product of their displacement carried out by the authoritarian politics of the military rule. Indeed, they did not occupy the traditional leading positions in legal education by 1980, and, as it was explained, several of them had being expelled from their academic posts at the University of Chile and the University of Concepcion (e.g. Manuel Sanhueza, Francisco Cumplido, Jorge Quinzio, and Andrés Cuneo).²⁶ Although a substantial percentage of them practiced law by the late 1970s and early 1980s (65%, n = 27), they were almost absent in the emerging law firms associated with business operations and big law, with few exceptions (e.g. René Abeliuk, Juan Agustín Figueroa). By contrast, most of them usually practiced in cases of general jurisdiction and criminal affairs. This phenomenon was not only related to their diminishing political and relational capital in the sphere of new corporations that emerged during the military rule, but also it has to do with their most general professional preferences. In fact, after tracking their professional and academic backgrounds, we can notice few of them taught in civil law, one of the most prestigious subjects that frequently serves as a threshold to enter into the world of prominent law firms. None of them used to teach in business law, either. At the same time, the data indicate that they were completely absent from the general board of the CHBA between 1974 and the early 1980s, which fell under the control of pro-authoritarian advocates.²⁷ Regarding the judges and justices who took part in the effort to renew the judicial role by the late 1980s, we can observe they were kept among middle ranks and were under permanent surveillance of the Supreme Court, which was reluctant to promote their careers in that period.²⁸

²⁵ Jeffrey M. Puryear: *Thinking Politics. Op. Cit.* Pp. 37.56.

²⁶ See Note 19.

²⁷ See *Table 7.1.*

²⁸ During this period, the Supreme Court exerted harsh disciplinary sanctions against judges who manifested some degree of dissidence regarding the official opinion of the judiciary (i.e. Sergio Dunlop), or on who were prone to challenge amnesty law or human rights violations (e.g. Carlos Cerda, René García Villegas). Judges who ushered "letter of reflection" on the judicial system or that participates in dialogues to imagine a new style of judiciary in the mid-1980's were warned to receive negative evaluations that influenced their promotions to move up ranks. Lisa Hilbink: *Judges Beyond Politics...* Op. Cit. pp.170-172.

Neither social extraction, nor previous political experience or academic credentials seem to agglutinate this network, although some regularities on these descriptive features can be found in its different sub-groups, as we will see. Their social composition was heterogeneous, presenting a balance between those who had diverse types of aristocratic ascendancy (landed elite 14%, n = 6; minor gentry, 35% n = 15) and outsiders who came from lower social extraction, usually middle class (50%). Their previous political responsibilities and academic backgrounds vary among them. And we can notice that few were particularly active actors in the network of reformist lawyers of the late 1960s. Nevertheless, such participation does not seem determinant to comprehend their position within this new network of dissidents.

This network was relatively structured around three sub-groups that, despite possessing some particular distinctive features and focus of action, were able to operate as a kind of alliance. The 24's Group –whose establishment was described at the beginning of this chapter– operated as the earlier and most comprehensive of these blocs. Its members were associated with a more traditional configuration of the legal profession of the mid-twentieth century and possessed a clear partisan stand.²⁹ Thus, for example, they used to be comparatively older and more experienced in state politics (55%) and usually maintained a generalist legal practice as attorneys (64%). In the same light, they still conserved social capital from their elite ascendancy (landed elite 28%, n = 6; minor gentry, 28% n = 6). Initially, their main area of action was the drafting of an alternative institutional design to compete with the military rule. Later on, they would also enter the contest to control the CHBA's General Board, dominating it from 1985 until early 1991.³⁰

A second group was composed of the leading faculty and academic council at the Diego Portales University Law School of the 1980s.³¹ In this converged law professors who were active within the network of reformist lawyers that had emerged in the late 1960s (Cumplido, Figueroa, Cuneo), and younger law professors inspired by the U.S. model of juridical scholarship.³² With more modest social origins, usually associated with the middle class (57%), and weaker political experience and partisan identities, they heavily relied upon intellectual capital built on research and international legal education. Accordingly, they kept a focus on the academic criticism of the legal system and authoritarian politics.

Finally, we also can find a bloc of judges, usually at intermediate ranks in appellate courts, who were members of the National Association of Magistrates.³³ Like most members of the judiciary, they frequently emerged from middle-class extraction, began their careers very early –usually as soon as they finished their legal studies–, and did not have other political experience outside courts. Starting from their role as judges, they got familiar with the Supreme Court's deference to political repression and, in several cases,

²⁹ Percentages and analysis of the 24's Group were taken considering the lawyers who participated as its establishment and more important members included in *Table 7.1* (n = 22). For a complete list of them, see Patricio Chaparro (ed.): *Las Propuestas Democráticas del Grupo de los 24*. Op. Cit. pp. 308-321.

³⁰ See below.

³¹ My sample has been selected from all the members of its Academic Council during the 1980s plus two influential law professors in the same period (n = 11). See, Lautaro Tellez Anguita: *Historia de la Escuela de Derecho de la Universidad Diego Portales: 1983-1990*. Licenciature Degree Thesis, Santiago: UDP School of Law. 2000. p. 87.

³² Interview Jorge Correa Sutil. Interview Carlos Peña.

³³ My sample is included in the *Table 7.1* (n = 6).

knew the judicial processes on human rights violations firsthand.³⁴ Such experience would constitute their starting point to attempt to build a new ideal of the judicial role and to promote legal reform.

Although this network was comprised of three well-defined blocs, it was able to have a rather efficient coordination articulated by lawyers that performed simultaneous roles in more than one of them, exerting organizational or intellectual influence. For instance, Jorge Correa Sutil, a well-bred law graduate of the Catholic University and Yale, was appointed as secretary of the 24's Group and then as Dean of the Diego Portales University School of Law, exerting an enduring leadership in linking the political lawyers of the old school with both a kind of new policy-oriented legal scholarship and judges. Something similar can be said about the Christian Democrat Francisco Cumplido and the Radical Party member Gonzalo Figueroa, who took part in the 24 Group, the Diego Portales University and the Board of the CHBA in the mid-1980s. A special mention needs to be made regarding Justice Carlos Cerda Fernández, who as will be noted below, emerged as the primary referent of a new model of judge that challenged the traditional bureaucratic and non-deliberative stances of Chilean courts, being a pivotal actor in connecting the National Association of Magistrates and the Diego Portales University School of Law.³⁵

Legal Crisis: The Failing and the Reconstruction of the Republican Project

The coordination among the different blocs of this network of dissident lawyers operated not only at the organizational level but also in the discursive sphere. Although their various experiences of collective action were motivated by very concrete goals, like oppositional politics, academic legitimation, or the judges' professional redemption, they began to develop a kind of common standpoint on the situation of the legal system and its relation to politics. This would be progressively more articulated over time, acquiring a particular character that constituted a new version of the rhetoric of legal crisis. Chiefly, they proposed that the legal system lived a generalized quandary, which was portrayed by the catastrophic situation of courts that were unable to respond to human rights violations and the general necessities of a country that had lived through deep social changes in the past decades. They argued that judges, lawyers, and scholars had been unresponsive to this situation because they were tied to mechanical jurisprudence and suffered significant institutional constraints. As a result, law and lawyers had progressively lost legitimacy before the population. Only the building of a new model of juridical expertise, and a rather comprehensive restructuring of the legal system—especially of courts—, seemed a suitable answer to the legal crisis in the milieu of a democratic society.

Until 1975, reformist lawyers had been producing scholarship from the perspective of the law and development movement, with which most of them had gotten involved at Institute of Teaching and Legal Research (1969), financed by the Ford Foundation. However, the authoritarian context and the failure of this group to consolidate its influence meant that by 1975, it lost its economic support.³⁶ This coincided with the gradual reduction of academic opportunities for reformist law professors in the context of the new

³⁴ Alejandra Matus: *El Libro Negro de la Justicia Chilena*. Santiago: Editorial Planeta. 1999. pp. 159-160.

³⁵ See their presence at the different blocs in *Table 7.1*. Their influence was reiterated by the interviewees during the recollection of the data.

³⁶ Interview Andrés Cuneo.

military regime. Between 1974 and 1977, some members of the group worked mostly on collecting previous research and trying to reflect on methodological innovations in legal education, without substantively developing original scholarship.³⁷ Perhaps, the only exception was law professor Francisco Cumplido, who published some new work under the coverage of the Latin American Faculty of Social Sciences (FLACSO). They still continued calling into question the incapacity of the Chilean legal institutions to process the social demands of the mid-twentieth century, being attuned to the idea of the law as a tool to foster redistributive policies.³⁸ Nevertheless, their efforts seemed the last death rattle of the developmental approach to law. By that time, the previous narrative on the legal crisis that reformist lawyers harbored since the mid-1960s began to appear irremediably faded.

The intensification of repression against the political center and the slow-moving exposure of human rights violations would collaborate to shift the focus of the former reformist lawyers who, as it was explained, began to organize a new network of dissident legal professionals roughly by 1978. Undeniably, there were some continuities with the prior narratives, like the malaise concerning courts and the unsophisticated juridical formalism prevailing in the culture of the country. However, these lawyers would assume a different agenda. They turned from being concerned about law and the unresolved problems of economic development in the early 1970s, to the limitation of state power, initially with regard to the authoritarian context. Thus, their previous inquiries on the socialization of property, chaotic lawmaking, and a new legal methodology inspired by social sciences progressively yielded to issues such as criminal justice, judicial organization in democracy, constitutional accountability and human rights standards.

The authoritarian emergency initially comprised the departing point of their new discourse. The mere fact of a military dictatorship governing the country would have illustrated the inability of the juridical institutions in resolving social conflict. Clearly, the disappearances and the use of torture in the prosecution of political dissidents appeared as the gravest example of how courts were unable to react, even by the means of writs of habeas corpus and the surveillance of the military courts.³⁹ Meanwhile, the administrative control of the Comptroller, which had exhibited a high degree of autonomy in the early 1970s, now seemed to duck in front of the repressive policies, such as press censorship.⁴⁰ They asserted that attempts to discipline such procedures inside the military rule remained

³⁷ Gonzalo Figueroa (ed.): *Derecho y Sociedad*. Santiago: Corporación de Promoción Universitaria. 1978. Andrés Cuneo: *Materiales para un estudio del fenómeno jurídico*. Santiago: Editorial Jurídica de Chile. 1974.

³⁸ Francisco Cumplido, Ignacio Balbontín: *Crisis de las instituciones jurídico-políticas chilenas*. Santiago: FLACSO, 1976. *Proyectos legislativos e institucionalidad jurídica*. Chile. 1964-1973. Santiago: FLACSO, 1977. *Opinión pública, institucionalidad jurídica y cambio social (Chile 1964-1973)*. Santiago: FLACSO, 1978. *Proyecto de cambio e institucionalidad jurídico-política en Chile, 1964-1973*. Santiago: CISEC. 1978. Francisco Cumplido: "La Constitución Política de 1925 y el cambio social." *Mensaje*. May. 1976. No. 248. pp. 272-277. *Proyectos de cambio, multipartidismo y representación proporcional*. Santiago: FLACSO, 1977. Francisco Cumplido, Andrés Cuneo: "El contrato y los regímenes económicos en Chile." *Estudios Sociales*. No. 16. 1978. pp. 107-140.

³⁹ Andrés Barrientos: "El Poder Judicial y las garantías individuales." *Mensaje*. May. 1976. No. 248. pp. 292-301.

⁴⁰ Andrés Barrientos: "La Contraloría General de la República y las garantías individuales." *Mensaje*. September. 1976. No. 252. pp. 415-425.

only dead letter in books, only confirming the “ineffectiveness of the juridical system in protecting against arbitrary detentions [...]”⁴¹

But the flaws of the legal system in the authoritarian context largely exceeded lack of control on human rights violations, and according to dissident lawyers, they involved the quotidian operation of the military regime itself. By the mid and late 1970s, they denounced that the dictatorship had initiated an in-depth restructuring of the country by the issue of law decrees, advancing without any constraint and accentuating the legislative chaos. For instance, Francisco Cumplido asserted that the Junta issued more legislation than democratic governments on an annual average, and continued with the practice of controlling particular situations through lawmaking. Additionally, he went on to say that the Junta regulated important areas of the governmental organization, especially on national security affairs, under reserved decrees unknown to the public.⁴² Finally, as the D.L. No 806. of December 16th 1974 clarified, any decree laws that differed from the constitution of 1925 prevailed over it. According to dissident lawyers, all these situations portrayed the breakdown of the rule of law in the country. “The current regime of government concentrates all the exercise of legal power into the Junta, which acts without limitations and without any responsibility, moving away from the principles of the rule of law [...],” insisted Cumplido, expounding that point.⁴³

How did courts and constitution-making get engaged in a kind of anti-liberal experiment that, according to their point of view, hampered the principles of the rule of law? Although with different emphasis, they chiefly looked to the traditional legal formalism that had dominated the practices and *habitus* of lawmakers and legal professionals: courts must apply legislation, and the statutes themselves are a mere construction of whoever holds political power. So, the Junta had broken the chain in the procedure to elect public authorities, but, for them, it only constituted a new starting point that continued with a long tradition of legal formalism. In all of this, there was nothing so original or distinctive, besides the application of an earlier idea of legal crisis to the authoritarian context.⁴⁴ However, the more academically oriented members of this network would slowly develop a new approach that became their leitmotiv. Since the beginning of the 1980s, they a) drew their attention to courts as the central locus of the drawbacks of law; b) developed a rather sophisticated explanation about the increasing de-legitimation of the juridical system, which would constitute the utmost origin of the debates on the legal crisis; and c) tried to reconnect formal democracy and the discourse of human rights as an answer to the current predicament they faced. This narrative was steadily spread over time, particularly as the democratic return started to seem closer by the second half of the 1980s.

First, the new network of lawyers began to insistently point to the judiciary as one of the principal manifestations of the shortcomings of law, where their narrow sphere of professional jurisdiction was best expressed. They did not focus on the lawmaking, the statutory system, or the juridical methodology in scholarship anymore, as they had in the mid-1960s. And the naivety that overemphasized the role of lawyers in socioeconomic

⁴¹ Andres Barrientos: “El Poder Judicial y las garantías individuales.” *Op. Cit.* p.298.

⁴² Francisco Cumplido [under the nickname Felipe Adelmar]: “Variaciones de la Nueva Legalidad Chilena.” *Mensaje*. September. 1976. No. 252. pp. 409-414.

⁴³ Francisco Cumplido [under the nickname Felipe Adelmar]: “Estado de Derecho en Chile.” *Mensaje*. November, 1979. No. 284 p. 717.

⁴⁴ See Notes 37 to 42.

development was replaced by a much more politically conscious style, by which dissidents began to pay more attention to courts as a central setting around which juridical practice was defined. Naturally, there was a radical critique of the role of military tribunals in political repression and regarding the lack of judicial control on human rights violations.⁴⁵ But, as it will be extensively explained in the further sections of this chapter, the critique of dissident lawyers on the judiciary posed a much more comprehensive scope. By 1983, the 24s' Group issued a specific document addressing the "crisis of the judicial administration," which was portrayed by their shortage of material resources, bureaucratic organization and their lack of real independence. This was not only expressed in the unresponsiveness vis-à-vis political repression, but also in the judicial inefficiency and general inattentiveness to the problems of the urban poor and minority groups. Again, the legal formalism was situated as one of the main reasons for such a situation. They explained that the judicial labor was characterized "by the mechanical application of the legal provisions, excessively attached to the text, without assigning to the legal values the high meaning that they have, and, many times, far from fairness itself."⁴⁶ In similar terms, the General Board of the CHBA issued an utterance by July of 1987, moaning about the "crisis of the judicial system" and reiterating the same concerns: "all the men of law who have been devoted to working for a better judicial administration, and in general, we the lawyers, bear on the frustration of observing that our calling to serve justice cannot be fully accomplished without the authorities getting aware about the necessity of a global reform of the judicial system [...]"⁴⁷ Numerous articles written down by dissidents at this period used to address the topic, basically exposing the same malaise apropos the situation of the judiciary.⁴⁸ Such a pervasiveness illustrates the centrality of the judicial problem in the construction of this new narrative of the legal crisis and the subsequent process of mobilization, as we will see below.

The new focus on courts was the result of several reasons associated with the political context and the rearrangement of the public sphere from the mid-1970s onwards. Indeed, the unresponsiveness to political repression set the agenda by putting the spotlight on the judiciary. At the same time, the economic development driven by pro-market policies seemed to require an efficient judicial system to arbitrate in private conflicts and in the regulation of business. So it is not surprising that even from the far right and far left politics, scholars and journals called for judicial reform by the early-1980s.⁴⁹ But there was a reason related to the transformation of the governmental expertise within the dissident cadres as well. Inside the opposition to the military government, some of the most

⁴⁵ Luis Ortiz Quiroga. "Algunas Consideraciones sobre la Justricia Militar." *Téngase Presente*. October-November 1987. pp. 4-11.

⁴⁶ Grupo de Estudios Constitucionales: "Proyecto relativo a la Organización y Funcionamiento del Poder Judicial." In Patricio Chaparro (ed.) *Las Propuestas del Grupo de los 24*. Op. Cit. p. 19.

⁴⁷ CHBA's statement: "Crisis y Superación de la Administración de Justicia." *Téngase Presente*. October-November 1987. p. 15.

⁴⁸ All they described the loss of confidence in the court system and its incapacity to resolve the social conflict in modern society. See for example, Pedro Méndez Fetter: "Crisis de Confianza en la Justicia." *Mensaje*. No 284. November, 1979. pp. 719-728. Jaime Hales: "Los fallos de la justica." Op. Cit.

⁴⁹ Helia Henríquez: "El Poder Judicial." *Chile-América*. No. 1979. pp. 18-25. Helia Henríquez: "La crisis del estado y el poder judicial en Chile." Unpublished paper. 1980. Editorial: "La Modernización que falta: La Justicia." *Realidad*. July, 1982. pp. 2-4. Juan Bennet: "El Sistema Judicial Chileno en Juicio." *Realidad*. August, 1982. pp. 11-16. Editorial: "Poder Judicial: Soluciones Pendientes." *Realidad*. Marzo, 1983. Pp. 2-4.

substantial debates on the new social policies that should be applied upon the democratic return were guided by economists and sociologists at different think tanks, like CIEPLAN (Corporation for Latin American Economic Research), FLACSO (Latin American Faculty of the Social Sciences), and CED (Center for Development Studies), among several others. Resorting to their foreign trained staff, they seemed the only ones with real possibilities to compete with neoclassical economists that backed the military rule on issues such as social expenditure and the regulation of markets.⁵⁰ Elite lawyers of the opposition intuitively perceived that—letting constitutional issues aside—there was little additional room to substantively contribute to institution-making. The judicial arena came out as a setting where lawyers can undisputedly exercise their professional authority, where some of the most urgent necessities of reform were clear, and a feasible locus in which to transform social issues into normative juridical debates in the future. Both the new structures of concrete judicial review established by the constitution of 1980, and the comparative examples of judicial activism and litigation pointed in that direction, becoming new referents of their professional ideals. Therefore, this network would largely define the juridical expertise around the activity of courts, unlike the reformist lawyers of the 1960s who mostly looked to a more multifarious profile of social engineers in administrative agencies and law schools.

Second, they were able to build a relatively sophisticated understanding of the flaws of the legal system and its steady loss of social legitimacy. By the late 1980s, as the democratic return seemed approaching, they theorized about the issue, maybe as a result of their accumulated experience and the envisioning of a further process of reform to courts and the constitution. In 1987, the Corporation of University Promotion— a think-tank leaning to the Christian Democracy that received funds from the Konrad Adenauer Foundation—, organized some workshops and conferences to analyze the Chilean legal culture from a critical point of view.⁵¹ At intellectual level, this effort of theorization was led by the professors linked with the Diego Portales School of Law, such as Agustín Squella and Jorge Correa, although it would count on the participation of several of the most noted scholars that agreed about the necessity of a democratic transition, even those who held moderate liberal preferences to the right.⁵² Albeit with different accents, they all recognized the legal culture was in a situation of crisis, characterized by facts like the abuse of the mechanical jurisprudence in judicial ideology (Correa);⁵³ the absence of substantial protection to human rights (Cea);⁵⁴ and the inability to conceive a shared theoretical understanding of the juridical order, reducing law to a mere instrument that separated juridical practice from the principled values of justice (Barros).⁵⁵ In this way, they initially linked the legal crisis with the impoverished legal formalism of the juridical expertise, and definitively situated most of the shortcomings of law in the line of judicial attentiveness to

⁵⁰ Jeffrey M. Puryear: *Thinking Politics. Intellectuals and Democracy in Chile, 1973-1988*. Op Cit. pp. 87-98. 110-121. Patricio Silva: *In the Name of Reason*. Op. Cit. pp. 167-170.

⁵¹ Interview Jorge Correa Sutil.

⁵² Agustín Squella (ed.): *La Cultura Jurídica Chilena*. Santiago: Corporación de Promoción Universitaria. 1988. Agustín Squella et al. (ed.): *Evolución de la Cultura Jurídica Chilena*. Santiago: Corporación de Promoción Universitaria. 1994.

⁵³ Jorge Correa: “La Cultura Jurídica Chilena en relación con la Función Judicial.” In Agustín Squella (ed.): *La Cultura Jurídica Chilena*. Op. Cit. pp. 75-94.

⁵⁴ José Luis Cea: “Derecho, Justicia y Derechos Humanos.” In *Ibid.* pp. 67-74.

⁵⁵ Enrique Barros: “Funciones del Derecho y métodos de argumentación jurídica.” In *Ibid.* pp. 105-116.

substantial values. From their standpoint, all these characteristics would have been well ingrained in the local legal culture, being reproduced in the law schools, in the habitus of the legal professionals and reinforced by the institutional constraints present in the political arena.⁵⁶ As Agustín Squella attempted to sum up the conferences, they ultimately thought the law was unable to fulfill its proper functions in society, like resolving social conflicts by consistent deliberation and providing guidelines for human behavior that were accepted by those who were their addressees.⁵⁷

Maybe the most elaborated comprehension of the legal crisis inside this network was provided by Carlos Peña, a young lawyer graduated from the Catholic University that moved to the Diego Portales School of Law after graduation, who became the rising star in scholarship as Dean and influential legal advisor of the Ministry of Justice. He pointed out in the early 1990s:

What are the facts that, interwoven, configure the current situation of the legal institutions in Chile and that, according to the linguist uses of social analysis—from Gracián to Habermas—can be labeled under the word ‘crisis’ [...]? Overall, that set of facts can be situated towards the judiciary, configuring a sort of dissonance between the virtues of the project of modernization carried out by the state during the nineteenth century and the ethos that has gradually emerged within the legal system.⁵⁸

By and large, he proposed that the legal crisis emerged when lawyers got conscious of the discordance between the process of social modernization and some enduring behavioral patterns (*ethos*) of the legal profession, particularly of courts. Or in other words, when they realized that the role that political elites used to assign to law in the perspective of republican ideals (e.g. rational deliberation and social ordering) did not match the opacity and sloppy nature of the juridical practice. According to him, there have been two projects of modernization in Chile and Latin America: the elite’s undertaking of nation-building through liberal constitutionalism and legislative codification, and the developmental projects of the post-war period (1960s-1970s). Both of them embraced the spirit of Enlightenment and attempted to advance a top-down social restructuring guided by the political elite, trusting in the possibilities of the formal apparatus to order society. The process of nation-building initially would have been characterized by the centralization of state power that relied on old colonial bureaucratic structures, which had persisted in the functioning of the judiciary. So, the legal process and courts presented substantial continuities with premodern times. As a matter of fact, Peña asserted that the tribunals had been absent or relegated to a clear second place during the first program of modernization, which, in concrete terms, moved along an impoverished and unsophisticated form of legalism that aspired to exert social control without engaging in an argumentative deliberation anchored in rational principles. Historically, the judicial practice had remained in that condition and had permeated the ethos of the entire legal profession. Judicial performance offered plenty of examples of a high degree of discretion and corporatism that

⁵⁶ Francisco Cumplido: “La Función del Abogado.” In *Ibid.* pp. 95-104.

⁵⁷ Agustín Squella: “La *Cultura Jurídica Chilena*.” [*Basic Document for the Seminary on the topic, 1987*] In *Ibid.* pp. 16-23. For a similar interpretation, see Hugo Frühling: *Law in Society: Social Transformation and The Crisis of Law in Chile*. Unpublished SJD Dissertation Harvard Law School.

⁵⁸ Carlos Peña: “Hacia una caracterización del ethos legal: De nuevo sobre la cultura jurídica.” In Agustín Squella (ed.): *Evolución de la Cultura Jurídica Chilena*. Op. Cit. pp. 35-36.

were inconsistent with republican ideals.⁵⁹ Courts' decisions do not accurately follow pre-existing rules of public rationality, and, for instance, the constitutional review and the writ of cassation (*recurso de casación*) have diminished in front of the greater relevance of extraordinary disciplinary controls as the primary vehicle to review judicial decisions (*recurso de queja*).⁶⁰ Judges moved within the opacity of irregular hall hearings, influences, and personal loyalties, and portrayed their function as an apolitical body that must not intervene in public deliberation, among many other features of the legal ethos that were reproduced over time. In the same light, there was not a specialized academic community able to submit judicial decisions to rational scrutiny, and legal professionals themselves seemed unable to address critical issues in the intellectual field, losing step with social scientists.⁶¹ Overall, all these drawbacks remained in force at the beginning of a new process of modernization guided by developmental ideologies of the 1960s, a period in which society got increasingly complex, and politics held high expectations for social reform. The legal crisis reflected the frustration of legal professionals regarding their inability to deal with the aforesaid scenario in their terms of the rationalist and republican ideals that, at least in theory, they were supposed to embody. It also responded to the uncertainty that came out in the process of rearrangement of their roles, and to their failed expectations to command the social process.⁶²

Finally, the members of this network attempted to rearticulate the relations between democracy and human rights to orient their narrative of mobilization. By this means, they tried to address both the shortcomings of the legal system and the tensions of their ideological disagreements. On one side, there was an almost unanimous diagnosis about the necessity to transcend the sterile model of basic formalist jurisprudence that prevailed in the previous decades. Such a necessity did not only have to do with how the military regime had employed legal means but also with their view on the democratic breakdown of the early 1970s. Thus, for instance, Francisco Cumplido went on to say that positivism had distorted the ontological goals of the law, reducing the self-limitation of public power to the general character of statutes and the definition of the competencies of the state organs.⁶³ On the other side, the members of this network pointed to formal democracy as the only way to create a broad alliance incorporating the different sectors of the opposition, from Marxists to pro-democracy right wingers. And though many of them were conscious of the flaws of the prior constitutional order in force before 1973, they finally looked at the latter with a degree of indulgence.⁶⁴ Any feasible project of political cooperation implied to address these two issues in strain (i.e. overcoming legal formalism and re-building procedural democracy).

The re-articulation of formal democracy and human rights offered the pathway to resolving the said tension and to set a common agenda. In the political arena, particularly in the 24s' Group, they actively worked on this issue. Unlike conservative sectors that backed the military regime, dissident lawyers used to look at democracy as an end itself, identified with social participation in the exercise of public power. At the same time, they

⁵⁹ Ibid.

⁶⁰ Ibid. p. 38.

⁶¹ Ibid.

⁶² Interview Carlos Peña.

⁶³ Francisco Cumplido: *¿Estado de Derecho en Chile?* Santiago: Instituto Chileno de Estudios Humanísticos. 1984. pp. 11-12.

⁶⁴ Interview Jorge Correa Sutil.

set respect for human rights as the proper standard of the rule of law and the goal of any democratic government.⁶⁵ For instance, the Group would continually come back to the point and even elaborated a specific Act promoting human rights (1988) including political liberties, social security access and economic wellbeing.⁶⁶ In the academic sphere, a similar convergence occurred. Diverse authors inside this stream, like Agustín Squella, expressly linked effective democracy with the basic political rights like freedom of thought, expression, association, and gathering.⁶⁷ By the same token, they heavily relied on a pragmatic solution, assuming that international human rights documents already had set well-established standards, and that the ultimate problem of rights was not about their fundament, but mostly on their effective enforcement.⁶⁸ Although this articulation did not constitute a sound solution in terms of jurisprudence, at least, it seemed to solve their initial tensions and the most urgent dilemmas of the legal system by the mid-1980s.

In the end, this network of dissidents lawyers looked at the legal crisis as a favorable juncture for collective action. This not only encompassed the shortcomings of the legal system in dealing with the new social conditions and the authoritarian context—as Jorge Correa explained, addressing a convention of judges in 1988—, but it also offered a possibility for revising the legal machinery.⁶⁹ And Agustín Squella graphically clarified in the same years, “[...] it is not accidental that the two symbols employed in Japan to compose and portray the idea of crisis are peril on one side, and opportunity on the other. A situation of crisis, therefore, warns about a peril or a difficulty, but, at the same time, it opens an opportunity [...]”⁷⁰ As it might be expected, this rhetoric served to coordinate their projects towards democratization and reordering of the legal field.

Contesting Authoritarian Constitutionalism (The 24s’ Group)

The abovementioned 24s’ Group constituted the first serious effort to organize a network of dissidents mostly focused on the constitutional and legal arena. By 1978, this was established as an enterprise dominated by the Christian Democracy and, to a lesser degree, the Radical Party, though the group gradually began to gather dissidents linked to a broad spectrum from the socialist cadres to some right-leaning politicians committed to putting an end to the military rule. In practice, the experience was led by the former Christian Democrat Senator Patricio Aylwin, who although he did not formally appear as

⁶⁵ Interview Francisco Cumplido.

⁶⁶ Patricio Chaparro: “El Proyecto de Acta de Derechos Humanos.” In Patricio Chaparro (ed.): *Las Propuestas Democráticas del Grupo de los 24*. pp. 273-282.

⁶⁷ Agustín Squella: *Positivismo Jurídico y Democracia*. Santiago: Instituto de Chile. Academia Chilena de Ciencias Sociales. 1989. p. 51.

⁶⁸ Ibid. pp. 77-79. Julio Silva Solar: “Derechos Humanos y Convergencia Democrática.” *Chile-América*. No 46/47. 1978. pp. 113-116. Cecilia Medina: *Chile: la nueva constitución, democracia y derechos humanos*. Rotterdam. Instiuto para el Nuevo Chile. 1985. Waldo Fortín: “Autoritarismo, derecho y derechos humanos.” *Anales de la Cátedra Francisco de Suárez*. Nos. 26/27. 1986/1987. pp. 45-67.

⁶⁹ Jorge Correa: “El rol de juez.” In *Cómo Hacer Justicia en Democracia. Segundo Encuentro Internacional de Magistrados*. Santiago: Comisión Chilena de Derechos Humanos. 1989. pp. 241-243.

⁷⁰ Agustín Squella: “La Cultura Jurídica Chilena.” Op. Cit. p. 25.

the head of the association, came out as its most conspicuous figure and coordinator.⁷¹ This reflected the convergence of the different streams at the moderated opposition and, over time, it gained in organizational complexity, resembling the practices and debates of the former Congress.⁷² By the early 1980s, the think-tank was structured around a permanent council that operated in Santiago, which carried out the most relevant intellectual tasks, and fifteen different regional sections that occasionally gathered up to about 1,200 members in total.⁷³ At the same time, the Group organized its work in various thematic commissions to study specific topics, such as the legislation on political parties, socioeconomic participation, and human rights, dividing its main posts according to the diverse political leanings inside the group.⁷⁴ Most of its principal members were lawyers that occupied crucial responsibilities in the political order prior to 1973, although it also incorporated some fellows with different professional backgrounds, like the engineer and former Chancellor of the University of Chile Edgardo Boeninger, who performed a very influential role.⁷⁵ Its alleged academic nature eschewed the enforcement of the most stringent repressive measures against the group, attracting some press coverage. In its first years, when political parties and public manifestations were banned, the 24s' Group became the most relevant gathering of dissidents to the dictatorship. "We were at the center of the opposition in the early 1980s," remembered Hugo Frühling, one of its younger members.⁷⁶

As soon as the group was established in 1978, its first task was to elaborate an alternative project to compete with the constitutional draft that was being prepared by the military government. By and large, they initially intended to reform the prior charter of 1925 as a way to correct the drawbacks that allowed the democratic breakdown, which meant rejecting any re-foundational pursuit. In a draft of *Foundations for a Constitutional Reform* (October 1979), they proposed that a constituent assembly pass some amendments to facilitate the formation of stable political majorities in Congress, also proposing to facilitate the resolution of political conflict in settings like the constitutional court. Mostly, its program consisted in updating the projects of constitutional reform advanced by Frei in the late 1960s, but that were not integrally passed by that time.⁷⁷ From the ideological perspective, the text constituted the first concrete expression of an attempt to rearticulate formal democracy and the human rights discourse, answering to the contingencies of the political milieu. Thus, the constitutional draft explained: "We think that democracy, without any further qualification, is the only one that responds to the historical tradition of Chile [...] There is not democracy if the right to rule of the majority is not recognized, and when the rights of the minorities, such as the right to become a majority, are not respected.

⁷¹ The founder members chose Manuel Sanhueza, a Radical Party fellow and past Minister of Justice, as president of the group, and the former Christian Democratic Senator Patricio Aylwin as vice-president and chair of the Permanent Committee of the Group. Carlos Huneeus: *El Régimen de Pinochet*. Op. Cit. p. 578.

⁷² "Manifiesto Grupo de Estudios Constitucionales." Op. Cit. Its sessions used to be opened in the name of God, as in the closed Congress and tried to keep a kind of ceremonious solemnity. Interview Jorge Correa.

⁷³ See Patricio Chaparro (ed.): *Las Propuestas Democráticas del Grupo de los 24*. Op. Cit. pp. 308-321.

⁷⁴ Ibid. 319-321.

⁷⁵ Besides lawyers usually linked with former political parties, there participated some intellectuals and social scientists such as the historian Sergio Villalobos and sociologists Manuel Antonio Garretón. Interview Jorge Correa.

⁷⁶ Interview Hugo Frühling.

⁷⁷ This was rejected by Marxist lawyers in the exile, such as Novoa, who advocated for a more radical turn to the left. Eduardo Novoa: "El Documento de los 24." *Chile-América*. No 60/61. pp. 140-142.

Neither is there a democracy when the civil, political, social and economic rights that are inherent to the person are ignored or undermined by alluding to reasons of state.”⁷⁸

The opposition to the Constitution of 1980, which was passed by a plebiscite carried out without electoral records and political parties, constituted one of the most critical moments of mobilization of the 24s’ Group. Its leading members were vocal actors against the new charter, sending a petition to the Junta attempting to stop its procedure of approval.⁷⁹ Furthermore, they directly were behind a statement issued by 100 lawyers of the CHBA of Santiago that refused the plebiscite and denounced that the new draft departed from “the constitutional tradition of the country.”⁸⁰ These kind of criticisms intensified after the enactment of the constitution, in particular by a detailed study that the group published just when its text got into force in March of 1981.⁸¹ The study asserted that the constitution would have tried to perpetuate the defense of pro-market policies and conservative moral principles, designing a complex system of entrenchment. “The new text refuses the representative system, ignores the peoples’ natural right of self-government, and denies ideological pluralism [...]” they went on to say.⁸² In concrete terms, they pointed out that different constitutional provisions, like the proscription of Marxist parties and the non-elected senators, were aimed to contain democratic demands. Popular sovereignty would have been replaced by a set of authoritarian cleavages –they explained–, and the generous statement of constitutional rights was followed by the large number of exceptions that intended to reduce the scope of constitutional guarantees through executive decisions.⁸³ For some of them, such as Francisco Cumplido, the new charter intensified the shortcomings of the previous constitution of 1925 since it restrained social change and impeded reliance upon the law as a setting of political contestation, aggravating the legal crisis.⁸⁴ In this way, the Group concluded that “the text precludes any further political, economic and social transformation within its framework,” indicating that it could only be expected to conserve “plutocratic and militarist authoritarianism.”⁸⁵

But the labor of the 24s’ Group’s did not remain a failed attempt to challenge the authoritarian constitution. As the military rule advanced in its process of institutionalization, dissident lawyers also embraced a more comprehensive enterprise to write down drafts to propose an alternative legality from very early on. “The return to democracy will not solve the crisis, to recover the rule of law is only the first step [...],” wrote the radical lawyer René Abeliuk by 1979, insinuating the necessity of a wide-ranging program of legal reforms.⁸⁶ Hence, there were several projects that emerged within the Group: the Basis for a New Economic Order (1979), a Program of Judicial Reorganization (1983), a Statute on Political Parties (1983), a project of the Social and Economic Council

⁷⁸ “Bases Fundamentales de la Reforma Constiucional.” Patricio Chaparro (ed.): *Las Propuestas Democráticas del Grupo de los 24*. Op. Cit. pp. 49-50.

⁷⁹ They sent a note to the Junta asking to stop the plebiscite of 1980. Ascanio Cavallo et al.: *La Historia Oculta del Régimen Militar*. Op. Cit. p. 450.

⁸⁰ “Declaración de los Abogados de Santiago.” *El Mercurio*. September, 9th, 1980. p. C.4.

⁸¹ Centro de Estudios Constiucionales: “Las Críticas del Grupo de los 24.” *APSI*. No 94. March. 1981. pp. 9-23.

⁸² *Ibid.* P.2.

⁸³ For a detailed analysis see Jorge Mario Quinzio: “El Grupo de los 24 y su crítica a la Constitución Política de 1980.” Op. Cit.

⁸⁴ Francisco Cumplido: *¿Estado de Derecho en Chile?* Op. Cit. pp. 25-26.

⁸⁵ Centro de Estudios Constiucionales: “Las Críticas del Grupo de los 24.” Op. Cit. pp. 11-12.

⁸⁶ René Abeliuk: “Chile entre la institucionalidad y la inestabilidad.” *Análisis*. No. 15. July, 1979. p. 33.

(1983) and a Human Rights Act (1988), among several others drafts.⁸⁷ Through debates inside the group, dissidents reviewed some of the crucial aspects of legal politics by the mid-1980s, like the proscription of anti-systemic parties, the limits of state intervention in the economy, and the guidelines for free elections, reaching substantial settlements. As the opposition gained momentum by the mid-1980s, the 24s' Group began to increase its links with political parties and private think-tanks, such as the Center for Development Studies (CED) and the Corporation for Latin American Economic Research (CIEPLAN). Much of its influence finally would be channeled by its most active members towards the political arena, serving as capital to participate in the diverse agreements aimed to put an end to the military rule, such as the Democratic Alliance (1983), the National Accord for the Transition to a Full Democracy (1985), and the Concertation (1988).⁸⁸

Regarding the legal field, the 24s' Group recommended important reforms aimed at improving the institutional capacity of the judiciary and promoting human rights, two of the areas where the first democratic governments would focus some of their main projects later in the early 1990s. The Program of Judicial Reform not only defined the "crisis of courts" addressing the lack of material resources and the inattentiveness to the low-income sectors. At the same time, it dealt with the very definition of their sphere of jurisdiction, since judges would have lacked powers to known conflicts of competence between agencies, abstract judicial review and, in the practice, they have not been considered a real power of the state.⁸⁹ Accordingly, they planned an ambitious undertaking that encompassed different areas of the judicial system, from courts' competencies, access to justice, judges' training and structural organization.⁹⁰ For instance, their proposals incorporated the creation of a judicial school, the establishment of a Council of Justice in charge of governing the judiciary (with political and judicial integration), flexibility in the management of courts' financial resources, improvement of access to justice for the low-income population, and enlargement of the faculties of the constitutional court, among several others. Their point of departure was the diagnosis that the unfruitful labor of the tribunals operated due to several institutional constraints that should be removed.⁹¹

In the same light, they attempted to transform the central axis of the juridical system, setting human rights as the highest standard to orient and limit governmental action. Through the publishing of an Act on the issue (1988), they proposed the ratification of the American Convention on Human Rights (Pact of San José) and recommended laying the foundations of particular institutional tools to advance these guarantees, both by courts and a specific state agency aimed to further their enforcement.⁹² To a large extent, the programs of judicial reform and the promotion of human rights seemed to re-define the

⁸⁷ Patricio Chaparro (ed.): *Las Propuestas Democráticas del Grupo de los 24*. Op. Cit.

⁸⁸ In fact, Patricio Aylwin, one of the leading members of the group was who delivered the idea of contesting the military rule employing the institutions that this latter had set through the constitution of 1980. Finally, that strategy served as threshold to return to democracy. Patricio Aylwin: *El Reencuentro de los Demócratas*. Op. Cit. pp. 260-267. Interview Hugo Frühling. Interview Jorge Correa.

⁸⁹ Grupo de Estudios Constitucionales: "Proyecto relativo a la Organización y Funcionamiento del Poder Judicial." Op. Cit.

⁹⁰ William Prillaman: *The Judiciary and Democratic Decay in Latin America*. Westport: Preager. 2000. pp. 137-162.

⁹¹ Grupo de Estudios Constitucionales: "Proyecto relativo a la Organización y Funcionamiento del Poder Judicial." Op. Cit. See also: Manuel Sanhueza: "Organización y Funcionamiento del Poder Judicial." In: *Cómo Hacer Justicia en Democracia*. Op. Cit. pp. 211-223.

⁹² Patricio Chaparro: "El Proyecto de Acta de Derechos Humanos." Op.Cit.

juridical arena and its relation to public decision making, trying to leave behind the former model of bureaucratic organization of courts and formal legalism.

To the Conquest of the Organized Bar

Several of the members of the 24s' Group along with other dissident attorneys trained in the old school, attempted to gain the control of the CHBA's General Board. By means of the constitution of 1980, the organized bar lost its public legal status and became a mere professional association, whose bylaws called for the renewal of its authorities.⁹³ In 1981, a new election of the board allowed the incorporation of the first dissident attorneys: Augusto Elgueta, Luis Ortiz Quiroga, Juan Agustín Figueroa, and Enrique Silva Cimma.⁹⁴ Over time, moderate lawyers in the opposition gained access to critical spaces of participation until finally displacing right-leaning members who backed the military rule, getting the control of the CHBA board between 1985 and 1991. They rapidly understood that their labor was not a mere corporative affair, inasmuch as they were closely connected with the central political debates of the moment in which they were not neutral actors.⁹⁵

As they increased their share inside the board, in 1983, dissident attorneys were successful in re-orientating the public stances of the association vis-à-vis the military rule. Contrasting with the passivity of the CHBA during the mid- and late 1970s, when it impassively gave in to authoritarian politics, the new board gradually began to address the issue of the human rights violations and political violence alike. Although the relations between pro-regime and dissident members of the board were under strain, particularly regarding the repressive measures against oppositional lawyers that were exiled and jailed—like Jaime Castillo Velasco and Andrés Zaldívar—, the CHBA progressively made a shift. With the support of some right-wing members, the board sent different letters and petitions to the regime asking the revocation of those sanctions, awakening the alienation of the government that provoked the head of the bar, Sergio Gutiérrez Olivos, to step down in 1984. Under Jorge Guzmán Dinator's new chairmanship, and with still a high percentage of right-leaning attorneys on its board, the CHBA issued the first utterances condemning any kind of terrorism and the lack of respect for the constitutional guarantees during the state of siege.⁹⁶ Thus, the CHBA slowly turned from protection of members of the profession to the central debates on the rule of law.

By mid-1985, two former senators and members of the 24s Group were elected to lead the association: Raul Rettig from the Radical Party as Chair, and Patricio Aylwin from the Christian Democracy as Vice-Chair.⁹⁷ At the same time, the profiles of those who were incorporated into the board steadily became more committed to open politics and human rights lawyering.⁹⁸ Their election would initiate a period of a clear predominance of

⁹³ D.L. 3.621, 1981. A new bylaw reorganized the CHBA's General Board, whose 18 members were elected by partialities each two years.

⁹⁴ *Memoria del Directorio Nacional del Colegio de Abogados. A.G. 1981-1983. pp. 1-2.*

⁹⁵ Interview Luis Ortiz Quiroga.

⁹⁶ "Terrorismo y Derecho a la Vida." (August 13th, 1984); "El Estado de Sitio y las garantías constitucionales." (November 26th, 1984); "Sobre la Violencia Política." (April, 1985). In *Memoria Colegio de Abogados. 1984-1985. pp. 30-32.*

⁹⁷ As a matter of fact, by 1986, 14 of 18 members of the board held oppositional stances.

⁹⁸ This is the case of Jaime Castillo, Roberto Garretón, Hernán Montealegre.

moderate dissident attorneys in the CHBA. Immediately, this was clearly manifested in its behavior and public interventions. For instance, the board insistently petitioned the return of the exiled lawyers, sending more than six notes to the Government in this direction during 1985 and 1986.⁹⁹ In the same light, only between May of 1986 and March of 1988, the CHBA issued 40 public statements, addressing detentions of lawyers, political violence, and the repressive measures of the regime.¹⁰⁰ During the administration of new chairs—Alejandro Hales (1987-1989) and Alfredo Etcheberry (1989-1991)—, the CHBA’s agenda would increase its political engagement, building links with other associations that supported the promotion of liberal democracy through law, such as the American Bar Foundation.¹⁰¹ In fact, the CHBA’s board expressly endorsed the National Accord for the Transition to a Full Democracy (1985), in whose elaboration participated three of its members (Francisco Bulnes, Patricio Aylwin, and Enrique Silva Cimma).¹⁰² Later on, through its chair, it also would call for citizens’ participation in the plebiscite on the continuation of the military rule in 1988 and the next presidential election.¹⁰³

The CHBA of the mid- and late 1980s was proactive in proposing a streamlining of the legal field, being precisely attuned with the 24s’ Group program. In July of 1986, the board organized the Seventh Lawyers National Congress, ending up with fourteen years without general gatherings. Dominated by dissident attorneys, the meeting issued several utterances that laid the foundations of a wide-ranging package of structural reforms to the legal system.¹⁰⁴ Through a statement about *The Rule of Law and the Institutional Regime*, they denied the legitimacy of the constitution of 1980, and called on the legal profession to support “the urgent changes that must be conducted in the National Law and Administration of Justice to match the requirements of a democratic society[...].”¹⁰⁵ The meeting also elaborated a document *On the Legal Force of Human Rights*, asserting the necessity of broader competence for the constitutional court and the establishment of a particular state agency aimed to protect those guarantees (the defender of human rights). Moreover, they reframed the professional calling in the same perspective: “we sustain and declare that the defense of human rights is a fundamental duty to the lawyer’s profession, and comprises his most noble and worthy function,” they went on to say.¹⁰⁶ Considering its high public mission, the CHBA drafted a *New Legal Statute for Lawyers*, proposing that the organized bar get back the former public standing, recovering the disciplinary jurisdiction over all lawyers and control over the service of judicial assistance.¹⁰⁷ Finally, they issued an extended report on the *Rule of Law and the Judiciary*, describing a broad range of pitfalls: “the systematic study of the courts reveals that we are in front of an

⁹⁹ *Boletín Informativo Colegio de Abogados*. No. 2. May. 1986. pp. 6-7.

¹⁰⁰ *Memoria Colegio de Abogados 1986-1987*. pp. 11-12. *Memoria Colegio de Abogados 1988-1989*. pp. 7-8.

¹⁰¹ “Visita a Chile de Juristas de la American Bar Association.” *Téngase Presente*. No. 7. May-June. 1988. pp.4-7.

¹⁰² Acta Sesión Extraordinaria Colegio de Abogados. August 30th, 1985. p.1.

¹⁰³ Alejandro Hales: “Editorial.” *Téngase Presente*. No 6. March-April. 1988. p.1. Alejandro Hales: “Por un estado de derecho.” *Téngase Presente*. No. 7. May-June. 1988. p. 1. Alejandro Hales: “Tiempo de Esperanza.” *Téngase Presente*. No. 8. July-December. 1988. p. 1.

¹⁰⁴ Lisa Hilbink: *Judges Beyond Politics*. Op. Cit. p. 140.

¹⁰⁵ “El Estado de Derecho en el Régimen Institucional Chileno.” *Boletín Informativo, Colegio de Abogados*. No. August, 1983. p.4.

¹⁰⁶ “Vigencia y Protección de los Derechos Humanos.” *Ibid*. p. 6.

¹⁰⁷ “Estatuto Jurídico de la Abogacía.” *Ibid*. pp. 11-13.

integral and profound crisis that impede proper judicial activity and that there is not an office that performs such a high function in Chile.”¹⁰⁸ Such complaints about courts would be restated by the CHBA a year later, in July of 1987, reiterating their account of the crisis of the judiciary and proposing the same programs of reforms elaborated by the 24s’ Group, explained above.¹⁰⁹

Certainly, the turn of the CHBA illustrates a substantial degree of convergence with the mobilization at the political arena. In part, this is explained because a handful of those who entered its board by this period already were active in oppositional politics, especially from the 24s’ Group. Such is the case of Enrique Silva Cimma, Patricio Aylwin, Raúl Rettig, Jaime Castillo Velasco, and Manuel Guzmán Vial, among several others. In so doing, they only reproduced a long-established pattern of high partisanship inside the organized bar. As Luis Ortiz Quiroga—a member of the board in the 1980s—recalls, they attempted to “express their civic indignation on the illegalities committed by the regime, assuming an oppositional perspective. One thing [political concern] drove to the other [the professional mobilization].”¹¹⁰ The previous analysis of their programs of reforms reflects the same dynamic, being directly aimed to respond to political contingency by trying to reconstruct their professional authority. In so doing, they would attempt to recover and enlarge the institutional capacity of the organized bar and courts, illustrating, again, how their political and professional interests were intimately embedded.

Building an Alternative Legal Scholarship

At a different stream within this network, dissident law graduates in academia lived a similar experience of convergence and collective action. After being expelled from law schools or displaced to secondary positions, they used to go to law practice or the few think-tanks that attempted to challenge authoritarian politics by the late 1970s, like the Latin-American Faculty of Social Sciences (FLACSO from UNESCO) and the Academy of Christian Humanism backed by Cardinal Raul Silva Henriquez.¹¹¹ There, some of them lived the hardest years of the military regime, getting in touch with social scientists, underground politics and some international organizations that provided small grants of financial support.¹¹² The 24s’ Group itself, described above, would serve to agglutinate a handful of them by developing a political function under a quasi-academic façade by the turn of the decade. However, in the strictly intellectual sphere, most of their scholarly works of the late 1970s and early 1980s were directly orientated to deal with the urgent legal problems of authoritarianism and a further process of democratization, without comprising a definite scholarly enterprise of renewal.¹¹³

¹⁰⁸ “El Estado de Derecho y la Administración de Justicia.” Ibid. p.8.

¹⁰⁹ CHBA: “Crisis y Superación de la Administración de Justicia.” *Téngase Presente*. October-November 1987. p. 12-16.

¹¹⁰ Interview Luis Ortiz Quiroga.

¹¹¹ The Institute of Humanistic Studies (DC) and the Center for Development Studies constituted other two well-known examples linked with the Christian Democratic Party.

¹¹² Interview Hugo Frühling.

¹¹³ See as example: Hernán Montealgre: *La Seguridad del Estado y los Derechos Humanos*. Santiago, Academia de Humanismo Cristiano. 1979. Francisco Cumplido and Hugo Frühling: “Los problemas jurídico-políticos de la transición hacia la democracia. Chile: 1924-1932.” *Estudios Sociales*. 1979. No. 21. pp. 71-113.

Paradoxically, the process of institutionalization of the military rule and the liberalization of markets would constitute an opportunity for several of them, especially since this allowed the establishment of new settings for legal education established since the mid-1980s.¹¹⁴ The Diego Portales University School of Law (hereinafter, UDPLaw) is the experience that, indeed, best portrays how dissident lawyers took advantage of this institutional framework, representing the emergence of a new style of scholarship strongly linked with the liberal comprehension of human rights discourse and the process of democratization. Since the early 1990s, this would decisively influence diverse programs of legal reform and the training of judges and public interest litigators.

An initiative originally aimed at training professionals for a market economy, the Diego Portales University was established in 1982 as an enterprise that intended to transform an old center devoted to teaching market technicians into a corporate-oriented university. This was projected by several right-wing businesspeople and intellectuals who chose the very name of the institution evoking the framers of the authoritarian republic of the nineteenth century, being in tune with the spirit of the military regime.¹¹⁵ Though they were reluctant to establish a law school, one was finally incorporated only to match the number of departments needed to fulfill the requirement to be qualified a university. Due to their purpose and weak university governance, the law school did not initially comprise the primary focus of the educational project, holding a high degree of independence from its central authorities.¹¹⁶ So, this produced the conditions of autonomy and academic nature to be a suitable setting to develop an alternative juridical expertise.

The first director—and then dean of the law school—, Jorge Correa Sutil, became the architect of the academic program at the UDPLaw and one of the principal actors of the network of dissident lawyers. A well-bred law graduate of the Catholic University, Correa had been a member fellow of the Christian Democracy, a volunteer in access to justice activities in Santiago shantytowns, and, later—due to his closeness to Patricio Aylwin—, the secretary of the 24s' Group between 1979 and 1981. After returning from getting an LLM at Yale in 1982, he found that the opportunities for his academic development were closed at the main law schools of the country. Nevertheless, due to his social connections and academic credentials, he was invited to direct the UDPLaw project. Over the years, he would resort upon the autonomy of the latter to transform an initially low-profile enterprise into a progressive setting that congregated several of the most important scholars of the opposition to the military rule.

An analysis of the Faculty at UDPLaw reveals that this was a place for convergence of dissident law professors by the mid-1980s, indeed echoing the role of Correa as coordinator of different streams among them. In the first place, we can find a group of displaced lawyers inspired by the law and development movement, who initially constituted the mainstream of this faculty until the late 1980s. This was the case for Andrés Cuneo, Gonzalo Figueroa, and Francisco Cumplido who even took part in the reformist

¹¹⁴ *DFL* No. 1. 1981.

¹¹⁵ The group was composed of well-known figures like Manuel Montt Balmaceda, Ricardo Krebs, Otto Dörr, Gustavo Serrano, and Carlos Urenda. They transformed the Institute of Advertising, Enterprise and Sales (IPEVE in Spanish, 1963), into the Diego Portales University in 1982. See, Lautaro Téllez Anguita: *Historia de la Escuela de Derecho de la Universidad Diego Portales: 1983-1990*. Op. Cit. p. 12.

¹¹⁶ Nevertheless, it is important to note that the school had important institutional pressures due to its early stage. Each student needed to fulfill their examination in front of external law professors coming from the Universidad de Concepción.

group that was active in the country at the end of the 1960s, and also others such as Carlos Cerda, Agustín Squella and Jorge Correa himself, with whom they possessed significant theoretical similarities. They all optimistically thought that the law is a valuable tool to foster social change if it is correctly employed and that juridical institutions have a special value in themselves. In the second place, another stream looked at law as an institutionalized amalgam of politics, economics and ethical points of view that needs to be observed in context in order to be properly understood—influences from the law and society scholarship and the critical legal studies movement (e.g. Carlos Peña, Cristián Riego and the younger scholars trained at UDPLaw).¹¹⁷ They were incorporated in about the late 1980s and prevailed inside the faculty from the mid-1990s on. Additionally, other law professors who were more traditionally oriented, and who even held right leaning preferences participated as well, but they were relatively absent from the academic council and did not influence the core of the intellectual activity of the law school.¹¹⁸ It is noteworthy to say that the presence of prestigious law professors, who largely exceed the modest expectations of the founders of the university, gradually reinforced its margin of autonomy.

Over time, the academic orientation at the UDP tried to depart from the traditional juridical dogma that prevailed at the Chilean law schools of the period, which looked at legal professionals as technical agents of the juridical apparatus. “We aspire that the Licentiate in Law and the lawyer are professionals that, linked with social conflict, attempt to manipulate it through a technique of social inducement that the Law is,” a foundational document explained in 1985, describing the role of lawyers in society.¹¹⁹ As Correa explains, although the law school still did not have its own intellectual hallmark by the mid-1980s, they timidly began to propose that law graduates should move towards reshaping the judicial arena and “get rid of the legal formalism that had destroyed the Chilean legal culture.”¹²⁰ Years later, by the early and mid-1990s, this kind of statement would evolve into a more self-conscious institutional identity. Carlos Peña, Dean by 1995 recalls: “We thought that the law could be a valuable tool for political change [...] At least when I was dean I sustained—and all agreed—, the idea that at the law school we train intellectuals, and that the way to comprehend the law is relevant to the configuration of the public sphere [...] We train lawyers that understand that law is not merely an adjective element to the market or social relations, but has an impact in the ways we conceive of civic life.”¹²¹ To a great extent, Peña insisted, this perspective elucidates “why we try to link law with policy making,” and the permanent attempt to transmit to the students that “law is coagulated politics,” incentivizing that they participate where this relation is more evident, such as in the area of human rights, gender or minorities’ rights.¹²²

In concrete terms, the UDPLaw did not offer a substantive change in the curriculum by this period, and its principal contribution would be associated with its critical focus to deal with traditional legal subjects (e.g. civil law, criminal law, etc.), and its model of

¹¹⁷ Interview Carlos Peña.

¹¹⁸ The only exception was Sergio Illanes, who was the Dean between 1991 and 1995, performing mainly administrative functions.

¹¹⁹ UDP. Law School: *Documento de Trabajo para el Diseño de Política Curricular y Académica*. June. 1985. p. 4.

¹²⁰ Interview Jorge Correa.

¹²¹ Interview Carlos Peña.

¹²² Ibid.

scholarship.¹²³ From being initially a small school of law that included some math training to orient students towards corporate life, the UDP moved to a standard curriculum that was explored through a critical stance.¹²⁴ For example, dissident professors used to openly find faults in the constitutional apparatus and the criminal courts, alleging these did not match democratic ideals and human rights standards. At the same time, they developed several initiatives of dialogue with students, judges and other dissident scholars, disseminating their critical appraisal of the crisis of the legal system. As we will see in the next section, one of the most important of them were the workshops with judges from the National Association of Magistrates, organized by Jorge Correa and the justice Hernán Correa de la Cerda, in which they analyzed judicial decisions to explore the different pattern of alternative interpretation.¹²⁵ Finally, the center also was able to foster research in sensitive areas such as reform of the judiciary, military courts, and public interest litigation, supporting the academic career of its former students interested in these topics as well. For that purpose, they would gradually build an organizational structure aimed at the creation of global academic links (e.g. Agreement with Yale), and the advancement of scholarship (e.g. full-time faculty).

Indeed, the UDPLaw would exert a decisive influence during the 1990s. Although their students still have a weak presence in the world of the most prestigious law firms focused on litigation and corporate issues, its faculty and alumni have been crucial actors in the process of transformation of the legal system, particularly at the level of policy-oriented research and implementation. Some of them, such as Jorge Correa and Francisco Cumplido, were highly engaged in the comprehensive program to reform the judiciary in the early 1990s, which involved different realms like access to justice and judicial governance.¹²⁶ In doing so, they backed the said proposals carried by the 24's Group and also heavily relied upon the research UDPLaw conducted on the flaws of judicial organization, underpinning its disguised partisanship, hierarchical structures, and inattentiveness to the poor.¹²⁷ Later on, a younger cadre of them, headed by Peña, would support the projects to reform criminal courts and family law, two aspects that would have been closely related to the legal crisis and the discourse on the asynchrony of juridical

¹²³ Jorge Correa: *Antecedentes para el informe institucional de la Escuela de Derecho de la Universidad Diego Portales*. Santiago: CPU, 1988.

¹²⁴ Peña describes a struggle for the definition of the curriculum in the law school during the mid-1990s, between who taught criminal procedure according to the old style or the authors of the reform to criminal courts, who were closer to a policy-oriented academia (i.g. Riego, Vargas, Duce, Baytelman). The latter group finally won the contest.

¹²⁵ Interview Jorge Correa.

¹²⁶ Francisco Cumplido was appointed the first Minister of Justice of the democratic transition, and Jorge Correa would be the legal advisor of the government and secretary of the Truth and Reconciliation Commission. They actively advocated for the reforms to the judicial structures. Francisco Cumplido Cereceda, Gisela von Muhlenbrock: *La gestión gubernamental en el sector justicia: 1991-1992*. Santiago: CPU, 1993.

¹²⁷ Jorge Correa, Luis Barros Lezaeta, Antonio Bascañán Valdés et.al: *Justicia y marginalidad percepción de los pobres: analisis de los resultados de un estudio empírico*. Santiago: CPU - Departamento de Estudios Sociológicos de la Universidad Católica de Chile, 1993. Jorge Correa, Carlos Manuel Garrido: *Situación y políticas judiciales en América Latina*. Santiago: Escuela de Derecho, Universidad Diego Portales, 1993. Jorge Correa, Juan Enrique Vargas: *Diagnóstico del Sistema Judicial Chileno*. Santiago: CPU, 1995.

institutions.¹²⁸ “While the country had been living a process of social change as consequence of the capitalist modernization [...], we had legal structures that were well behind in that process [...] On one side, we had archaic social and family structures –we did not have divorce and had the distinction between marital and non-marital children–. And, on the other side, in the judicial sphere, we had an inquisitorial criminal procedure, which was pre-modern,” Peña reminds about how the idea of crisis influenced the rationale behind the projects they backed by the mid-1990s.¹²⁹ Therefore, it is undeniable to observe that by this time, dissident law professors had converged towards UDPLaw, which had become an important vehicle to transform their concerns on the legal system in a rather coherent program of reforms for the years of the democratic transition.

Challenging Judicial Bureaucracy

Finally, the judicial arena became the last sphere in which this dissident legal network extended its influence. As it was explained above, they had begun to assert that the pitfalls of the judiciary went well beyond its unresponsiveness regarding human rights abuses during the military rule, involving a more enduring and complex set of issues such as its hierarchical structures, legalist model of statutory interpretation, and lack of material resources. “We should all make a self-examination about the crisis of justice. All the governments have incurred in this sin because nobody has been concerned enough to solve its real problems,” claimed a dissident litigant by 1980.¹³⁰ Accordingly, several members of this network – particularly at the CHBA and UDPLaw– moved towards young judges who seemed uncomfortable regarding the military dictatorship and the Supreme Court stance. They understood that it was not enough to design legal reforms to reorganize courts; in order for those reforms to succeed, it was also necessary that judges participate in its implementation and to change their mindset.

Since 1986, Jorge Correa and Justice Hernán Correa de la Cerda began to organize regular workshops involving both academics and critical judges, which aimed to analyze the situation of the bench. Principally, they used to talk about how to transform courts during a future democracy and the ways to overcome the legal formalism in the legal culture. These incorporated several members the National Association of Magistrates (ANM), who were positioned at the appellate courts of Santiago and the impoverished urban area of San Miguel (e.g. Alberto Chaigneau, Carlos Cerda, Marcos Libedinsky and Haroldo Brito).¹³¹ Although their participation got the distrust of the Supreme Court, which did not look at these activities with sympathy, the interaction of judges and dissident academics got institutionalized over time.¹³² So, these meetings also got linked with the members of the CHBA Board and organized several symposiums such as the Second

¹²⁸ For a description of their role in the regional context, see Máximo Langer: “Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery.” *The American Journal of Comparative Law*. Vol. 55. 2007. pp. 617-676.

¹²⁹ Carlos Peña: “Informe sobre Chile.” In Jorge Correa (Ed.): *Situación y Políticas Judiciales en América Latina*. Santiago: Cuadernos de Análisis Jurídico, UDP. 1993. pp. 285-393.

¹³⁰ Jaime Hales: “Los fallos de la justicia.” *Op. Cit.* p. 22. Pedro Méndez Frettel: “Crisis de Confianza en la Justicia.” *Op. Cit.*

¹³¹ Other members: Nancy de la Fuente, Mario Garrido Montt, José Benquis and Mónica Maldonado. Interview Jorge Correa Sutil.

¹³² *Cómo Hacer Justicia en Democracia. Segundo Encuentro Internacional de Magistrados*. *Op. Cit.*

International Conference of Judges about how to make justice in a democracy (1988). Later on, the participant judges established an organization for research and professional reflection under the ANM, replicating the work at the said gatherings: The Institute of Judicial Studies (1990).¹³³

There were two lines of joint labor of dissident scholars and judges. Firstly, they regularly worked on reviewing sentences to debate the boundaries and prospects of judicial interpretation, one of the hottest topics in Chilean academia at that time, as long as it dealt with the possibility to disobey the rules established by the military government and the legalism of the judicial establishment.¹³⁴ In this way—Jorge Correa remembers—, scholars intended to say that legality was not an absolute value, and that “the judicial hierarchy used the legal formalism as a veil to hide other kinds of motivations in judicial decision making,” such as conservative political preferences.¹³⁵ Secondly, dissident lawyers also tried to promote the idea that judges must be the protagonists of a broad process of reforms to surmount the legal crisis, going beyond mechanical jurisprudence. For instance, in the above-mentioned conference on how to make justice in a democracy, Correa explained: “the judge is not a passive operator that applies the law; the judge is an active agent that builds what the law is inside a society.”¹³⁶ So, he asserted, legal reforms are not enough, judges needed to change their mind incorporating democratic ideals and human rights goals in judicial practice.¹³⁷

Roughly speaking, this was not merely a kind of political colonization from dissident academia, but a convergence of interests with judges that had their own agenda. They felt courts had been put on the back burner by the state, and that the eventual democratic transition offered an opportunity for professional redemption. Becoming consequential agents became the only path to turn this stalemate and to re-legitimate its role in the public sphere. In the particular case of the magistrates who were involved in the workshops, there was also a kind of resentment against the Supreme Court, which was loathed for pulling the judiciary to one of its lowest points exerting excessive disciplinary zeal against who were available to break ranks. Joined to their efforts to get rid of the most stifling aspects of legalism, they subtly re-activated their gremial demands of better salaries, and rearrangement of the system of evaluation and the judicial career.¹³⁸

Within this network, Carlos Cerda Fernández indeed constituted the most important referent and promoter of the new model of judicial performance. A graduate of the Catholic

¹³³ Although the institute was formally established in 1990, it already operated as a kind of organization about two years before.

¹³⁴ See as examples: Agustín Squella et al. (eds.): *Naturaleza del Razonamiento Judicial*. Santiago: Cuadernos de Análisis Jurídico. 1987. Enrique Barros, Carlos Cerda, Jorge Correa Sutil (eds.): *Razonamiento judicial: verdad, justicia, ley y derecho*. Santiago, Universidad Diego Portales, 1991.

¹³⁵ Interview Jorge Correa.

¹³⁶ Jorge Correa: “El rol de juez.” In *Cómo Hacer Justicia en Democracia. Segundo Encuentro Internacional de Magistrados*. [1989] Op. Cit. pp. 241-243.

¹³⁷ It is noteworthy to observe that some liberal lawyers by this period, such as Enrique Barros, remained skeptical about this kind of discourse and its limits. They warned about the impossibility of courts to assume the technical tasks of administrative agencies in policy-making since they did not count on the proper expertise, not with the political legitimacy for that purpose, and only should keep a substantive normative focus. Enrique Barros: “Funciones del Derecho y métodos de argumentación jurídica.” In Agustín Squella: *La Cultura Jurídica Chilena*. Op. Cit. pp. 105-116.

¹³⁸ “Nuestros Problemas no están solucionados.” Entrevista a Germán Hermosilla. *Téngase presente*. October. 1987. pp. 18-20.

University Law School, Cerda had initiated his judicial career very early in his twenties, beginning in the low ranks. Alongside his duties, he soon got a Doctorate in Law at Leuven (1970), and later, a Doctorate in Law from the University of Paris (1979). In both places, he researched new rhetoric and flexible judicial interpretation, writing his first dissertation on “The Judge and Values.” After some years teaching at his alma mater, where he became a mentor of Jorge Correa, Cerda felt that his research on the nature of the procedure and his initiative to work in the postgraduate training of judges were not well received, quitting in 1982. The next year, he began giving classes at the UDPLaw, invited by Correa, becoming a frequent attendee to the workshop organized with the ANM later.¹³⁹ By the same period, he moved up the ranks to the Appellate Court of Santiago, where he would challenge the Supreme Court in one of the most controverted judicial cases of that period. Since 1983, Cerda was in charge of prosecuting and judging the disappearance of thirteen members of the Communist Party and the Left Revolutionary Movement in 1976. Although the case usually would have been closed under the application of the amnesty law issued by the military rule in 1978, Cerda continued investigating what seemed an unknown security service organized by the Armed Forces. In 1986, he indicted forty high officers of the military, including the former member of the Junta, General Gustavo Leigh.¹⁴⁰ Although the Supreme Court revoked his decision, he refused to reverse the prosecution charges [*procesamientos*], alleging the amnesty law only can be applied once the crimes were clarified. He received several threatens from the security services, was temporally removed from the case by his superiors and almost expelled from the judiciary. As expected, he also was publicly supported by the UDP and the CHBA, which looked at him as a sample of the new ideal of judicial responsiveness that they were looking for.¹⁴¹

His academic and moral prestige inside the network of dissident lawyers turned Cerda into a glaring figure, who invested his intellectual and social capital in an effort to transform the judicial role. A fervent Catholic, he advocated that judges should ascribe to a sort of priesthood that constituted the center of the legal life, framing the making of justice as a calling that should be characterized by moral strength and openness to society.¹⁴² As intellectual, Cerda actively promoted a flexible model of legal reasoning that integrated ethical values, dogmatic analysis and social observation as the groundwork of the judicial decision. Both elements were well synthesized in a set of lectures and conferences that he began to deliver over this period, which would decisively influence young judges and dissident scholars by the late 1980s and early 1990s.¹⁴³ In so doing, he continually evoked the idea of legal crisis, putting the new model of judge forward as one of the platforms to surmount the stalemate:

A Judge is not one who merely applies the statutes. He says what the law is, as a synonym of what he considers fair [...] This society, dear fellows, is eager for leaders of what is good, true and fair. Therefore, it is attentive

¹³⁹ Interview Carlos Cerda.

¹⁴⁰ Lisa Hilbink: *Judges Beyond Politics*. Op. Cit. pp. 171-172.

¹⁴¹ Patricio Aylwin: “Proposición de Voto” Anexo al *Acta Colegio de Abogados de Chile*, No 24, October 20th, 1986. pp. 1-2. Also in *Boletín Informativo, Colegio de Abogados*. No. 4. November 1986. p.1. Jorge Correa: “A propósito de una sanción.” *Gaceta Jurídica*. No. 76, October, 1986. pp.3-8.

¹⁴² Carlos Cerda: *Exigencias Primordiales de la Jurisdicción del Presente y del Mañana* [Speech, 1988.] Santiago: Instituto Chileno de Estudios Humanísticos. 1989.

¹⁴³ For a selection of them, see Carlos Cerda: *Jurisdictio*. Santiago: Editorial Jurídica de Chile. 1992.

to what we can do, publicly, armored with the pursuit of justice and the shield of strength [...] We cannot let it down; do not disappoint it anymore. The law is in crisis. As is the jurisdiction. Because we have not known or have not wanted to assume our own identity.¹⁴⁴

By the late 1980s, young judges associated with this network also got actively engaged in the debates on the reform of the judiciary.¹⁴⁵ As a matter of fact, they published several studies and worked on the guidelines of legislative drafts, endorsing the measures proposed by the 24's Group, the CHBA and UDPLAW, like the establishment of the judicial school and the Council of the Judiciary, among others. But they did not act merely as one-sided agents; they also timidly attempted to build bridges with liberal sectors of the right wing to advance judicial reform (e.g. the Center for Public Studies, CEP).¹⁴⁶ At the time of the democratic turn, almost everyone recognized courts lived through a moment of deep crisis, and looked to young judges with expectation, as key actors of a further reorganization.

Concluding Remarks

The evidence analyzed throughout this chapter shows that dissident lawyers, scholars and later, judges, primarily operated as a kind of network whose early origins can be found about 1978. Composed by individuals with different social backgrounds, this network was wrought around the common political inclinations and shared positions of its members within the legal field. On one side, most of them harbored different types of moderate political preferences associated with the demands of democratization and opposition to the military rule, clearly under the dominance of Christian Democrat or Radical Party fellows. Even the judges inside this group, who were not prone to publicly manifest their political leanings, seem to have been on the same page. On the other side, they all occupied relatively mid-level posts in the legal field, at least initially, after being displaced by pro-authoritarian attorneys during the dictatorship's early years. By 1980, they still were absent from the CHBA's General Board, the principal responsibilities in legal education and the most prestigious law firms.¹⁴⁷ These shared preferences and commonalities would allow their convergence, and explain why they distinguished themselves regarding leading Marxist lawyers (Ch.5) and the pro-authoritarian group (Ch.6).

Certainly, a handful of those who participated in this network intervened by means of direct forms of mobilization, such as underground partisan organization, human rights

¹⁴⁴ Carlos Cerda: "El Juicio Jurisdiccional." Speech at the Asociación Nacional de Magistrados Meeting, 1987. In. *Ibid* p. 178.

¹⁴⁵ Alberto Chaigneau: *Las Reformas Procesales de la Ley 18.705*. Santiago: Cuadernos de Análisis Jurídico. Universidad Diego Portales. 1988. Davor Harasic, Marcos Libedinsky Tschorne, Milton Juica: *Estudios de la reforma procesal: Ley No. 18.705 de 24 de mayo de 1988*. Santiago: Editorial Jurídica Ediar-Conosur, 1988. Enrique Paillás: "Tenemos Procedimientos Arcaicos y una Legislación del Medioevo." *Téngase Presente*. May-June. 1988. pp. 11-14. Carlos Cerda: "Persona y Sistema de Formación de los Jueces." [1988] In Carlos Cerda: *Iurisdictio*. Op. Cit. pp. 221-226.

¹⁴⁶ Eugenio Valenzuela et al. (eds.): *Proposiciones para una Reforma Judicial*. Santiago: Centro de Estudios Públicos. 1991.

¹⁴⁷ See *Table 7.1*.

advocacy and journalism.¹⁴⁸ However, their main line of action was related to their efforts to advance the process of democratization by drafting projects of constitutional and legal reform. Despite their diminished position within the field, they possessed a broad concern about the general functioning of the juridical machinery and believed that the end of the military regime must involve a substantive rearrangement of it. Hence, they coupled the advancement of their political and professional agendas.

As any other group presented during this dissertation, the leading actors of this network held a narrative of the legal crisis as a way to coordinate their collective action. Initially, looking at human rights violations and authoritarian government, some of them argued against the inability of the law to stop political repression. Over time, however, they concluded that the crisis was a more complex failure, associated with legalism, its pre-modern institutional practices, and organization—particularly of courts—. It is remarkable to observe that all who performed a role in coordinating the different blocs within this network (i.e. 24's Group, the UDPLaw, and judges) expressly endorse that rhetoric. Such is the case of Francisco Cumplido, Jorge Correa, Gonzalo Figueroa and Carlos Cerda, among some others who took leading positions in more than one experience of mobilization. This reveals the significance of this discursive practice.

In concrete terms, the rhetoric of legal crisis was critical in their alignment of the aforesaid two-fold strategy. Past formal democracy did not seem to hold enough capacity to resolve social conflict within the margins of law and appeared lacking basic substantive guidelines for republican life. So, they asserted that the process of re-democratization should carry a political program consistent with profound constitutional reform and the establishment of human rights as the standard of governmental activity.¹⁴⁹ In this way, they tried to set a common agenda and to eschew the institutional flaws that had led to the 1973 breakdown. In the same light, their political agenda simultaneously implied to rearrange the legal field, particularly by getting rid of legalism and hierarchical judicial structures. As we have studied throughout this chapter, they tried to advance in different directions for that purpose: advocating for a comprehensive judicial reform, attempting to build a policy-oriented legal scholarship with a critical outlook on the legal system, spreading a new conception of the judicial role that let aside mechanical jurisprudence, and recovering the public stance of the organized bar, among other strategies of collective action. All in all, their efforts to foster democratization were closely coupled with their struggles to broaden their sphere of professional jurisdiction, enhancing the role that they perform in the legal field, as scholars, eventual public interest litigators, and judges.

As it could be expected, several of the projects drafted by dissident lawyers during the late 1980s had relevance for the following years. Some of them, such as the new judicial school and the passing of international agreements of human rights could survive the convoluted political itinerary of the first years of the democratic transition initiated in 1990,

¹⁴⁸ In the initial years of the dictatorship, several of those lawyers, such as Francisco Cumplido, participated in the human rights advocacy. However, this kind of labor would be specialized over time, being taken by organizations like the Vicariate for the Solidarity and the People's Defense Council. Interview Francisco Cumplido. Regarding lawyers' role in journalism, see for example, the publication of the dissident journal *Cauce*, edited by a group led by Jorge Ovalle and Gonzalo Figueroa. Gonzalo Figueroa: *Memorias de mis últimos 200 años*. Santiago: Editorial Andrés Bello. 2006. pp. 281-296.

¹⁴⁹ Interview Francisco Cumplido.

being finally enacted.¹⁵⁰ Other projects, like the reform of criminal procedure, would emerge in association with the cadres forged in those years as well, coming into force by the end of the decade.¹⁵¹ Indeed, these projects are not the only relevant factors that explain the keen institutional transformation of Chilean law in the last twenty years or so, since the very process of social modernization and the institutional scaffolding built by the military rule also have played a major role. Nevertheless, although this is not the right place to assess their relevance, it is undeniable to conclude that the labor of dissident lawyers has possessed a decisive influence in gradually reframing the law and the judicial role along the years.

Something similar can be said about the place of lawyers and juridical expertise in public governance. The experience of the analyzed network of dissident lawyers illustrates how relational and academic capital build around law can be explicitly reinvested into the political arena. After the end of the dictatorship, in 1990, several members of this network turned to governmental structures. For example, Patricio Aylwin became President of the Republic, Francisco Cumplido was appointed as Minister of Justice proposing an ambitious plan of reforms, Jorge Correa Sutil was called as coordinator of the Commission on Truth and Reconciliation to investigate human rights abuses, and Carlos Peña rose as public intellectual behind the reform to criminal procedure. Others, such Alejandro Hales, Andrés Cuneo, and Gonzalo Figueroa, would be placed into critical positions in bureaucracy and diplomacy in the next years as well. And still many others, such a new generation of judges and scholars, have arisen taking the flags of human rights to the center of the public sphere.

Though lawyers did not hold a quasi-monopoly over state crafting anymore, and their influence remains pale in front of economists and other technocrats in many areas, they speak out louder now than they did in the middle twentieth century. The institutional transformation associated with the different networks allowed a more consequential legal action. The legal profession has continued advancing its process of specialization and division of governmental labor. However, unlikely the previous decades, the institutional capacity of law and lawyers has allowed them to intervene in social and political conflict, particularly as Chilean society gets more complex and diverse and political fragmentation has gradually increased by the first decade of the new century.

¹⁵⁰ Immediately after the return of democracy, court and the political forces that remained close to the former military regime resisted the proposals of judicial reform, accusing these projects attempted to politicize courts. Also, they kept conservative stances until the turn of the century. Yves Dezalay, Bryant Garth: *The Internationalization of Palace Wars*. Op. Cit. 227-229.

¹⁵¹ Máximo Langer: "Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery." Op. Cit.

Conclusion

Understanding the Politics of Juridical Expertise: Chile, Latin America, and Beyond

The state is a legal fiction produced by lawyers, who produce themselves as lawyers by producing the state. Pierre Bourdieu¹

During the last century or so, Latin American countries have become increasingly complex societies, transforming the place of legal professionals in public governance. Indeed, lawyers constituted central figures of the political arena in several countries of the region until at least the turn of the twentieth century. To a large extent, they led the efforts for state-building, which were initially focused on laying the juridical foundations of the new republics. Since about the 1960s, however, we can observe that law graduates moaned about a diminished role, and continuously issued utterances asserting that legal institutions fall short of answering the volume and variety of demands that have emerged in modern society. In the context of the Cold War, several groups of them attempted to respond to such a dilemma, competing through contending modalities of law and projects of legal reform. We know little about the aforementioned processes of demise and competition, which have not been systematically analyzed by socio-legal scholarship, remaining obscure.² My study on Chilean elite lawyers provides some elements to understand why and how they have occurred.

This dissertation has inquired whether lawyers have lost power in public governance, and how they have subsequently contended through coordinated strategies of collective action inside the juridical and state fields. By a lengthy account of almost two hundred years of lawyers' involvement in Chilean politics, with a particular focus on their mobilization around the rhetoric of the legal crisis between the mid-1960s and the 1980s, I have tried to answer the two parts of my research question. Certainly, this study has presented substantive evidence about the inquiries under the scope, which needs to be adequately assessed here. Additionally, it allows as to cast a brief comparative glance and to reflect generally on some aspects concerning the authority of the legal profession.

Lawyers and the Structural Transformation of Public Governance

The diminishing role of law graduates and the appearing unresponsiveness of legal institutions in the process of modernization of mid-twentieth century Chile are not a subject of simple observation. Albeit the historical sources of the period agreed on this matter, and the participants in the debates on the legal crisis posted their claims as if they were describing an objective phenomenon, the topic is far from intuitive. As a matter of fact, law graduates remained a high percentage of the members of the cabinets of ministers and

¹ Pierre Bourdieu: *On the State. Lectures at the Collège de France. 1989-1992*. Op. Cit. p. 55.

² As explained in the introduction, these processes only have been addressed by socio-legal scholarship through anecdotal evidence, looking to understand other phenomena, like lawyers' reorientation to the market or the increasing relevance of economists and public technocracy in globalization. Yves Dezalay, Bryant Garth: *The Internationalization of Palace Wars. Lawyers, Economist and the Contest to Transform Latin American States*. Op. Cit. Iñigo De la Maza: *Los abogados en Chile: Desde el Estado al Mercado*. Op. Cit.

of the Senate by the early 1970s. Law schools continued being one of the key settings for the recruitment of political cadres, and lawyers occupied key positions in partisan life. At the same time, a careful study of the legal system in the twentieth century shows a significant degree of institutionalization of the bar and courts. Likewise, everything indicates that the administrative state offered an outstanding opportunity for professional placement, mainly, but not only, for rank and file law graduates. If, at first glance, the situation of lawyers appears well-established, why they did use to refer persistently to a crisis of law and the legal profession since the mid-1960s?

As it was proposed in the introduction, this dissertation asserts that such a rhetoric mainly echoed a phenomenon related to the decoupling of the legal field and state politics, bringing a subsequent shrinking in the sphere of jurisdiction of legal professionals. But, of course, addressing such a gradual process of reframing means we must deal with its causes and consequences. In Chapters 1 and 2, I have explained that increasing social demands would have been translated into the division of governmental labor previously organized around juridical expertise. Due to political and financial constraints, legal institutions became bureaucratic entities that were deferential to public power and attached to positivistic formalism. These conditions not only contrasted with the prior functions of the elite legal profession but meant that this could not authoritatively intervene in the increasing conflict on socioeconomic development emerging during the Cold War years. Hence, as I explain in Chapter 3, juridical expertise and institutions would have become unresponsive to the process of social change in the mid-twentieth century, and such a failure began to constitute a divisive issue within the legal profession itself.

In Chapter 1, my research has explained how lawyers evolved from clerical tasks to comprise real brokers for the aristocratic groups, forging a political compromise in state building that was manifested in a rather sophisticated juridical architecture (e.g. codification) and governmental stability (e.g. enduring and adaptive constitutional provisions). At the structural level, they were positioned in several simultaneous roles in the juridical field and the state, concentrating the process of decision making as double agents. By lauding the legal mind, political elites—composed mostly of law graduates—understood that they performed a key role in determining the fate of the republic. The discursive representation of law and the legal profession is noticeable in Bello's portrayal of the homeland and in the speeches delivered at the inaugural session of the Institute of Lawyers of Santiago (1915). These offer a colorful characterization that is helpful to understand what were the parameters of comparison with which lawyers contrasted their subsequent role in state politics. It is likely that this kind of representation constituted a sort of mental disposition of elite lawyers (*habitus*), by which they naturalized a privileged place in the public sphere and overestimated the possibilities of law in commanding society, setting their expectations for the following decades.

The rhetoric of legal crisis, however, did not merely respond to the failure of a professional ideal, but also to a real change in the relations between the state and the juridical field. Chapter 2, on the reframing of the juridical expertise in public governance, has presented conclusive evidence about the process of decoupling that happened along with the emergence of the administrative state (*Estado de Compromiso*). The first manifestation of such a phenomenon is the division of governmental tasks, which can be observed by systematically measuring and comparing the accumulation of posts in the state and the juridical field over time. In other words, this is not a matter of how many lawyers

had seats in the Congress or the cabinets of ministers, but about their profiles and on how they build their authority throughout their careers. Quantitative evidence shows that lawyers who took part in politics were increasingly specialized in electoral struggle, leading ministerial tasks, and partisan life. Meanwhile, those who were engaged in proper juridical work in legal agencies, courts, law school, and the bar organization gradually tended to be separated from the process of decision making in political forums. At the same time, it is noticeable that in this decoupling, other professions emerged to compete for control public governance, such as economists and sociologists, who held other skills and competencies that fit with the necessities of social planning inside the administrative state. This process of division of labor only can be explained by an increasing competitiveness in the electoral arena, and a greater variety of social demands that pushed for a rearrangement in governmental practice.

The shrinking of the sphere of jurisdiction of legal expertise constitutes a second manifestation of the process of decoupling. Chapter 2 has extensively explained that both the bar association and courts steadily became bureaucratic organizations characterized by deferential behavior. While the CHBA needed to negotiate its status and resources with the executive branch, courts strengthened their passivity as a way to eschew the attacks coming from the political arena, such as the purges and constitutional impeachments against judges that occurred during the initial years of the administrative state (1925-1932). As a result, legal institutions reinforced their attachment to positivistic jurisprudence, being deferential in areas like the lack of accountability of public agencies, their approval of executive lawmaking, or regarding the repression of political dissidents. Although the bar and courts used to portray their actions in the perspective of the of legal autonomy, this picture, in reality, hid their deep institutional weakness. They could barely participate in decision-making, and their opinion remained quite irrelevant on issues ranging from economic governance to civil liberties. And the entire profession the same trend followed, even the advocates and part-time law professors who were highly dependent for their labor before the courts. The last part of Chapter 2 illustrates that many law graduates exited from the legal arena, for instance, by establishing centers of non-judicial expertise, such as schools of the economy and public administration. When they tried to raise collectively their voice in lawmaking, for example through the Institute of Legislative Studies organized by the CHBA and the main law schools of the country, they got, on the whole, negligible results. Their failed efforts to intervene in the regulation of contracts to face the steady monetary inflation, or to establish administrative courts in the mid-1950s, plainly clarify the point.

While the Chilean version of the welfare state, the *Estado de Compromiso*, could manage social conflict through pragmatic bargaining and legislative arrangements, the unresponsiveness of juridical expertise mostly remained an inconsequential matter. And, in fact, the political process was accomplished in handling intricate conflicts between the mid-1930s and the late 1940s, like the regulation of labor, the structuring of social security, and the organization of a system to foster national industries. However, when such a regime began to be contested by the increasing social demands of the urban and rural poor, and faced the steady political fragmentation of the cold war politics in the early 1960, the absence of a resourceful juridical institutions appeared as the central issue, particularly for lawyers who had a long tradition of intervening in state-crafting.

Reacting to the ambitious program of social reforms of the period, lawyers and law professors bitterly resented a phenomenon that they labeled as a crisis of law. Chapter 3

explains that they moaned that the statutory order was chaotic, that interpretation inspired in positivistic exegesis was unfruitful to guide their labor in courts and scholarship, and that they had been displaced from top posts in governmental agencies. Except for justices in higher courts who faced specific institutional constraints, almost the entire elite legal profession shared such a diagnosis. Overall, they pointed out to a supposed asynchrony between the massive process of social change and juridical expertise, which would have remained inadequate. Moreover, they did not see an easy way to get out of the stalemate. The crisis of law comprised a starting point to call into question the very legitimacy of longstanding institutional arrangements, like the separation of powers, the work of Congress and the organization of courts and law schools. And although many voices went on to say that an increasing process of socialization challenged the original spirit of liberal republican structures, the general scenario was characterized by uncertainty. “The crisis is fundamentally the loss and undervaluation of the principles that have ruled over us, while the new ones do not appear or do not get a uniform and complete consolidation,” wrote the appellate justice Rubén Galecio by 1966, trying to sum up the deadlock in resolving the unresponsiveness of juridical expertise.³

How much could lawyers have done to foster economic development or to eschew a gradual breakdown of the democratic system? It is hard to say. Although it is likely no so much, since they naively exaggerated their real possibilities of intervention in the public sphere, perhaps looking at the myth of heroic lawyer-statesman that emerged during the nineteenth century.⁴ I am not arguing here that legal professionals can take the problems of social and economic development on their shoulders, or that they can control the political process. On the contrary, I remain skeptical and think that to accept such assumptions would imply to fall into the trap that lawyers made for themselves. My interpretation of the evidence starts supposing that they use to overemphasize their possibilities to influence social ordering by reducing complex problems, such as poverty, crime, and governmental stability to the terms of the old-style judicial and legislative adjudication.

My point is a much more modest claim. Following Halliday, we can assert that when state effectiveness is weak, and the forums of politics cannot set an arrangement, a legitimated and resourceful legal profession can moderately contribute to defining state power and improving its institutional capabilities. The literature has shown that juridical expertise can collaborate by an adaptive upgrading of the public machinery, by helping to overcome the gridlock regarding divisive questions, stabilizing social expectations, by exerting control over administrative agencies vis-a-vis constitutional rights, or by translating particular political conflicts into meaningful juridical debates. The case of the Chicago Bar Association authoritatively intervening in the political emergencies in Illinois, presented by Terence Halliday, or the multiples examples of constitutional adjudication in which courts restructure the work of the Congress and public agencies in continental Europe, illuminate about how the law can limitedly contribute to the political process.⁵

³ Rubén Galecio Gómez: “El Juez en la Crisis.” Op. Cit. p. 125.

⁴ The quasi-mythic view on lawyers in aristocratic societies has been a topic delivered in other latitudes as well. On the American case, see: Anthony Kronman: *The Lost Lawyer: Failing Ideals of the Legal Profession*. Cambridge MA: Belknap Press. 1995.

⁵ Terence Halliday: *Beyond Monopoly: Lawyers, State Crises, and Professional Empowerment*. Op. Cit. Alec Stone Sweet: *Governing with Judges. Constitutional Politics in Europe*. New York: Oxford University Press. 2000.

But little about an effective contribution, even within a limited scope, can be said regarding my case study. The account presented throughout my dissertation indicates that Chilean lawyers and legal institutions of the period were ill-equipped, and their authority looked cramped. First, tiresome and descriptive legal scholarship was unable to participate in most of the substantive debates on policy making of the mid-1960s, being overshadowed by social scientists. Legal scholars were unable to sway the social mood about the possibilities of relying upon traditional juridical expertise to advance social reform. While some of them counted on an assorted variety of theoretical insights (e.g. abuse of rights or the lack of foresight circumstances in contractual agreements), they seemed unsatisfactory designs considering the challenge they had before them. When law professors achieved a minimal degree of influence in policymaking, these contributions were channeled through partisan action, not usually as the impact of an autonomous legal profession. Second, courts lacked the material resources to resolve the numerous lawsuits filed before them, and their dockets were too overburdened for these to intervene in economy or to address social conflict. There were some attempts to react through judicial decision-making in the late 1960s, such as in the case of monetary inflation, but their responses were delayed. At the same time, justices remained deferential, without exerting their attributions of judicial review or control on public power. What is more, when courts tried to contest governmental action later on, like in the case of the nationalization of industries by the mean of loopholes during the Popular Unity government, their response was also grounded in the ancillary practices of legal formalism, without addressing the substantive issues on the limitation of state power. Finally, lawmaking seemed chaotic, lacking proper technique, and dominated by polarization, constituting an unsuitable departing point to foster social change. The awkward regulation of the process of land reform in the late 1960s offers a clear example of this point.

To sum up, I think that both the institutional weakness of the state to deal with new rising expectations of social reform, and the fragmentation of politics of the late 1950s and early 1960s, constituted an opportunity for a limited involvement of the legal profession, but this latter was unable to cope with this. When the demand for input of legal expertise became dire from 1964 on, legal institutions did not have consolidated neither its authority nor its institutional capabilities to collaborate in the political process. In part, the rhetoric of legal crisis portrays the perception of such a failure.

Dual Strategies of Mobilization: Fractional Alignment between the Juridical Field and State Politics

The second part of my dissertation has addressed the process of fragmentation and contest among different groups of elite lawyers, who competed to advance their position inside the legal field coordinately by participating in the battles of the cold war politics. Despite the aforesaid decline of law graduates within the governmental structure, they still were intermingled with the state apparatus by the mid-1960s, and usually held partisan identities. Thus, it is not surprising to notice that they got involved in the political conflict of this period. In fact, the four networks analyzed throughout my dissertation present remarkable similitudes in their strategies of collective action, which allows us to maintain that there was a rather consistent pattern of mobilization.

Besides signifying the breakdown of the profession, the rhetoric of legal crisis constitutes a milestone in its steady process of division which simultaneously operated both in the political realm and inside the juridical field. As explained in Chapter 3, before the 1960s, law graduates embraced a kind of unitary interpretative community that comprised basic assumptions such as the principle of separation of powers, which was shared by almost all the members of the profession no matter their political stances. Naturally, there were different emphases. For instance, judges use to deliver the ideal of their absolute lack of political biases, while attorneys assumed this or that other judge held some ideological preconception.⁶ Yet, this kinds of judgment formerly did not alter the core of their assumptions on the allocation of roles in governmental practice. Therefore, practically nobody cast doubts on the inability of courts to directly create law or to become regulatory agents, at least explicitly among those who participated in legal practice and scholarship. Since the debates on the legal crisis, that interpretative community became broken.

As there were four networks of lawyers that arose between the mid-1960s and the early 1980s, there were four versions of the rhetoric of the legal crisis. All these started with the underlying diagnosis explained in Chapter 3 but set their distinctive character over time. By taking into account external political discourses, like the developmental ideology of planning or neo-Marxism, these networks articulated their own narratives from a juridical perspective. These echoed their policy preferences and their professional interest that came up from their positions in the legal field, serving to coordinate their dual strategies of mobilization. Although looking for diverse political goals, this pattern was present in the four networks of lawyers analyzed in my dissertation: reformist (Chapter 4) Marxist (Chapter 5), pro-authoritarian (Chapter 5), and dissident lawyers at the opposition to the military dictatorship (Chapter 7).

First, Chapter 4 extensively describes how lawyers and legal scholars that were close to the Christian Democracy and the Radical Party dominated the process of legal reform about the mid-1960s. They basically adapted the malaise about the process of social development posed by social scientists, like Jorge Ahumada's portrayal of the "integral crisis of Chile," backing the ambitious program of structural socioeconomic changes of the period.⁷ They coordinated their political goals with a professional interest oriented by their preponderant place in law schools and public agencies, being gradually inspired by the law and development approach. Their efforts to strengthen executive authority in lawmaking and to transform the law school in a setting to train lawyers as social engineers clearly express that alignment.

Second, Chapter 5 shows how Marxist lawyers, who usually occupied relatively marginal and lower positions in the legal field, articulated a different strategy of collective action. This network intended to advance socialist revolution by legal means, overcoming the opposition of Congress. As any other network analyzed in this research, they held their own narrative on the legal crisis, which, according to their standpoint, was originated by a broader crisis of the capitalist system, characterized by an uncontrolled legislative bargaining and the use of institutional violence to avoid its ultimate downfall. Attuned with such a reading, left-leaning attorneys—such as Eduardo Novoa and Jose Antonio Viera-Gallo—plotted a strategy to nationalize industries through legal loopholes and attempted to

⁶ Peña, Carlos: "Hacia una caracterización del ethos legal: de nuevo sobre la cultura jurídica chilena". Op. Cit. pp. 69-70.

⁷ Jorge Ahumada: *La crisis integral de Chile*. Op. Cit.

lay the foundations of a popular state. In doing so, they were not only oriented by political concerns but also looked to consolidate their role as co-agents of the revolution and to open the opportunities to maximize their intellectual and political capital in an eventual socialist regime.

Third, Chapter 6 explains how conservative and nationalistic law graduates who were positioned in the higher sphere of the legal field, particularly in law schools, the bar organization and law firms, converged to back the process of authoritarian modernization carried out by the military dictatorship (1973-1990). Material sources plainly indicate that, through the intellectual work of the group *Portada*, they embraced a discourse on the crisis of authority and the decline of the Chilean polity, which served as a matrix to speak about the shortcomings of juridical institutions and expertise. Following the leadership of Jaime Guzmán, who was able to communicate the narrative towards the highest governmental circles, they were able to sway the goals of the military Junta, which got embarked on a foundational task. Pro-authoritarian lawyers mobilized to advocate for the de-politicization of the legal system, to modernize legislation with a pro-market spirit, and to raise a new constitutional structure aimed to entrench the policy preferences of the military regime. In all these activities, they performed a clear political function and advanced a professional agenda as well. For instance, they rose as crucial agents in the institutionalization of the regime and reinforced the capacity of courts and litigation to oversee governmental action. Moreover, they emerged as privileged actors to face the process of economic liberalization by participating in big law practices.

Finally, Chapter 7 explains how dissident lawyers and scholars who were in the opposition to the dictatorship—and who were displaced to a secondary role in the juridical field—articulated a new program to reform law and the state between 1978 and 1990. Overall, they asserted that the institutional and legal system had lost its legitimacy among population, failing to resolve social conflict and to limit state power. Accordingly, they proposed an alternative constitutional project and fostered a new model of consequential legal scholarship and justice that looked to participate in the promotion of the rule of law ideal. These efforts were beyond merely confronting authoritarian politics and to pave the way for the democratic return. At the same time, they were aligned to enhance their role as legal scholars, judges and further lawmakers, who held the symbolic capital of the human rights discourse and democratic credentials.

Table 8.1 offers a concise review of the process of mobilization summarized above, illustrating the successive alignments between diverse sections of the legal field and contingent politics. It is noteworthy that all these alignments can be explained by the convergence of shared political and professional interests, presenting some salient commonalities: a) they are grounded on objective relations that have to do with their positions in state politics and inside the juridical field; b) they implied a rearrangement that responds to external transformations, such as increasing social demands, the erosion of traditional forms of authority, and the frustration of the process of social development; and c) they are highly dependable of the context at the moment of structuring the concrete programs of coordinated action (e.g. legal reforms).

Table 8.1. Dual strategies of mobilization: A concise review.

<i>Networks</i>	<i>Political Preferences</i>	<i>Political Agenda</i>	<i>Position in the Legal Field</i>	<i>Professional Agenda</i>
1.- Reformist Lawyers "Law & Development" (1964-1975)	Dominance Christian Democrats and Radical Party	<ul style="list-style-type: none"> - Economic Development - Economic Redistribution - Strengthening of Executive authority in lawmaking - Administrative Planning - Corporatist Participation - Expansion Social Services 	<ul style="list-style-type: none"> - Law Schools (leading posts) - Administrative Agencies 	<ul style="list-style-type: none"> - Law as tool of social change - Lawyers as social engineers - New methodologies inspired in social sciences - Streamlining of lawyers' role in agencies and lawmaking
2.- Marxist Lawyers (1969-1973)	Socialist, Communist and other of Marxist orientation	<ul style="list-style-type: none"> - New Socialist State - Nationalization of Economy - Expansion Social Services - Administrative Planning - Workers' participation in industries management 	<ul style="list-style-type: none"> - Displaced from control of law schools. (Peripheral subjects) - Mid and low-level posts in agencies and courts before 1970 	<ul style="list-style-type: none"> - Lawyers as co-agents of revolutionary change - Enlargement of state legal agencies and corporations - New State with opportunities for public-oriented lawyers
3.- Pro-Authoritarian Lawyers (1970-1990)	Conservative and nationalist streams plus independents (initially, some DC and RP Lawyers)	<ul style="list-style-type: none"> - Limitation of the state's power in society (entrenchment against formal democracy) - Market Liberalization - Authoritarian Modernization 	High Positions in the legal field before 1973 (law school, CHBA, law firms and courts)	<ul style="list-style-type: none"> - Selective reinforcement of legal autonomy - Judicial writs to oversee public governance - Broad Legislative Restructuring - Pro-market legislation (opportunities for law firms)
4.- Dissidents Lawyers (1978-1990)	Dominance of Christian Democrats and Radical Party plus independents	<ul style="list-style-type: none"> - Return to democracy - State accountability grounded on human rights standards 	<ul style="list-style-type: none"> - Alternative Law Schools (e.g. UDP) - Think-Thanks (e.g. 24 Group, CPU) - Mid-level judges 	<ul style="list-style-type: none"> - New Legal Scholarship - Alternative Constitution - Flexible judicial interpretation - Judicial Reform

Some other possible approaches could explain the allegiances of those legal professionals in collective action, which need to be discarded. The account presented in chapters 4 to 7 does not respond merely to a theoretical turn in legal thought, following a sort of paradigm shift in Thomas Kuhn's line.⁸ All these networks cast doubts on the juridical orthodoxy that used to dominate Chilean legal culture during the previous decades, which could be identified by what Duncan Kennedy labels as juridical classicism (e.g. separation of powers, textual interpretation, free will in contracts, property rights, etc.). Indeed, the networks of reformist and Marxist lawyers can be associated with a model of socialization of law that contested previous arrangements, and the pro-authoritarian and dissident's networks were influenced by a different stream in legal thought, characterized by constitutionalization, human rights, and juridical neo-formalism.⁹ Although such academic trends were present in their agendas, they do not entirely explain who, why, and how selectively they moved along the process of legal reform. Besides providing some academic insights, those theoretical keys should chiefly be interpreted as forms of intellectual capital that lawyers employed for mobilization, at least initially. They would shape their expectations on the role of the legal professionals in a more enduring way only once they got consolidated over time. Or in a word, they originally were a sort of resource for collective action. For example, reformist lawyers of the mid-1960s began to reorganize the law school to train "agents of social change" before they became familiar with the law and development movement through academic links. Initially, they were much more concerned with their status anxiety and the unresponsiveness of legal institutions than with a theoretical inquiry itself. In the same light, dissident lawyers of the late-1970s were focused on confronting the authoritarian regime by designing new policies, initially employing the human rights discourse and neo-constitutionalism as a way to structure their claims and get legitimacy in the international arena. Their academic questions would come some years later in time. Therefore, there is no way to sustain theoretical inquiries, as such mere brainwork, initially constituted the most important aspects that precede mobilization, explaining the timing, selectiveness, and physiognomy of collective action.

The process of mobilizations can be fully explained neither by pure partisan affiliations nor by political leanings since these latter are not oriented to specific programs of legal reform, but by general views on society. To prove my point, we can compare the stance of some law graduates who shared political preferences, but who were not aligned with the aforesaid positions inside the legal field. For instance, socialist lawyers that were specialized in electoral competition, such as the Senator Carlos Altamirano, were dubious regarding the legal strategy followed by the Popular Unity and preferred to draw their attention to the electoral arena or violent action. In the same light, lawyers who directly worked in the repression of dissidents during the military dictatorship, like the dreaded Army Coronel Fernando Torres Silva, did not have any relevance for architectonic politics despite their direct access to the higher circles of power. And human rights advocates of the Vicariate of the Solidarity, who led the attempts to stop disappearances and torture, were not usually involved in the comprehensive effort to transform law and the state. In all these cases, the evidence indicates that the formation of these networks and their strategies of mobilization were not structured by ordinary politics, but also needed the convergence of the particular interests of who participated in the legal field.

⁸ Thomas Kuhn: *The Structure of Scientific Revolutions*. Chicago: The University of Chicago Press. 1970.

⁹ Duncan Kennedy: "The three globalizations of legal thought. 1850-2000." In David M. Trubek, Alvaro Santos: *The New Law and Economic Development. A Critical Appraisal*. New York: Cambridge University Press. 2006. pp. 19-73.

The class-centered approach constitutes a final competing hypothesis that requires being discharged. Interpretations on the organic links of the elite legal profession with the capitalist structures, such as Larson's work, have been proposed to study lawyering in the United States. These situate lawyers as hired guns who do not have precisely a clear social identity, but who perform a critical service for the propertied class, gaining in exchange a privileged status in industrial society. My evidence does not support such an account. The class-centered explanation does not reflect the features of Chilean lawyers, initially more associated with the state.¹⁰ At the same time, the process of fragmentation of the elite legal profession in Chile shows a diversification of interests, goals, and incentives.

Certainly, the behavior of lawyers does not respond to a more basic class centered perspective grounded in the social identity of law graduates. There are some patterns in their social composition, for example the pro-authoritarian network records more members with aristocratic origins than the group behind the UP. But these do not follow a kind of Marxist explanation. Although there was a higher percentage of patrician lawyers in the pro-authoritarian network supporting the military rule, there is also a good number of them who were part of the middle class. As matter of fact, several of the most crucial legal positions in the military regime were occupied by outsiders to the traditional elite, like Sergio Fernández (law professor, Comptroller of the Republic, and Minister of Interior), Mario Duvauchelle (Undersecretary of Justice and Secretary of Legislation of the Junta) and Mónica Madariaga (Minister of Justice).¹¹ Additionally, there was a good number of lawyers with ascendancy in the aristocracy or the minor gentry in all the other networks, who shared their space with others from middle-class extraction. For instance, the network of Marxists lawyers was composed by some members of minor gentry ascendancy (e.g. Viera-Gallo, Novoa, and Uribe), and middle-class professionals. None of these networks record a significant number of lawyers emerged from the urban poor or destitute rural families.

In the same light, the data neither supports the more sophisticated class centered approach proposed by Larson, which portrays lawyers as hired guns of the capitalist power. The behavior of Chilean lawyers did not simply follow the interest of capitalist corporations, even in cases when well-bred advocates headed these networks. State and partisan politics comparatively played a more prominent role. For instance, many reformist lawyers of the mid-1960s came from traditional families, presenting connections with the landed or business elite. The cases of Jaime Castillo Velasco, Eugenio Velasco Letelier, Alejandro Silva Bascuñán, Pedro Jesús Rodríguez and William Thayer Arteaga are good examples on this point. However, they backed the redistributive plans of Frei's rule that were resisted by the rural aristocracy and business associations. In the same light, many private advocates inside the pro-authoritarian network supported market policies during the military dictatorship, albeit usually these impaired an important segment of the industry that relied on measures of protection for local production. All in all, the Neo-Marxist approach lacks the depth to comprehend a much more complex process of professional mobilization offered here.¹²

By and large, the alignments of specific sections of the juridical field and state politics match better the four networks described in my work. These should be explained by the

¹⁰ Although Chilean lawyers were more connected to the state and partisan politics by the mid-twentieth century, they still did not reach the level of state control as Germany. See as example, Dietrich Rueschemeyer: *Lawyers and Their Society: A Comparative Study of the Legal Profession in Germany and in the United States*. Cambridge, MA: Harvard University Press, 1973.

¹¹ See *Table 6.1* in Chapter 6.

¹² Naturally, the variations in the composition of these networks reveal that social origins constituted a factor to the general conformation of political preferences. However, social origins cannot provide, by itself, a sound explanation of the behavior of these different groups of legal professionals.

convergence of professional and political interests. These also match other academic findings that, in the line of Bourdieu's scholarship, reflect both the gradual fragmentation of the legal profession and their contextual alignments in diverse processes of political conflict. Ronen Shamir's description on the struggles between legal realists who backed the advancement of the administrative state during the New Deal, and corporate advocates that opposed such policies, have been associated with a similar pattern of competition inside the juridical field adapted to the U.S. context in the 1930s and 1940s.¹³ Similar evidence has been presented by Fabiano Engelmann on law professors' attempts of professional and political re-legitimation in the Brazilian state of Minas Gerais during the post-dictatorial period (the 1990s).¹⁴ The evidence studied regarding Chile contributes to go deeper in such a line of analysis, particularly in the Latin American context, presenting a long-run analysis of the political behaviors of lawyers.

Throughout this account, the rhetoric of legal crisis has constituted a key point of departure to understand lawyers' collective action, exploring the rearrangement of their professional and political authority. This illustrates that, at least at some critical junctures, legal professionals can be consciously concerned about the responsiveness of law and its adaptability to social change. In this way, this study constituted a rebuttal against authors, such as Alan Watson, who depict law as a closed autonomous system.¹⁵ At the same time, it shows that the reframing of law does not follow a kind of evolutionary progression not an inner dynamic in legal thought such as Selznick and Nonet seem to propose. By contrast, the evidence indicates the rearrangement of juridical expertise is driven by a more complex political conflict.¹⁶

This discourse also provides some insights on the ways by which legal professionals coordinate their struggles in the political sphere and the juridical field. To a large extent, the different versions of this rhetoric illustrate how these successive alignments need to be constructed by the translation of external queries into specific programs of legal reforms and narratives of collective action. The comparative experience could show similar rhetorical practices operating under different models of legal profession and political contexts. What did the legal scholars and lawyers who participated in the conference about the legal crisis in Padua in 1951 try to achieve? Did these lectures have anything to do with their role within new constitutional courts (Capograssi in Italy), with their defense of property rights by constitutional means (Ripert in France), or with their support to the first steps of the European System of Human Rights?¹⁷ What did other Latin American legal scholars who referred to the crisis of law over the same period than Chilean lawyers try to accomplish?¹⁸ What motivated the American Bar Association of the City of New York in 1970 to convoke to the conferences on the dead of law?¹⁹ Are all these examples related to the conformation of political/legal alignments? Did they respond to a general adaptation of law to

¹³ Ronen Shamir: *Managing Legal Uncertainty. Elite Lawyers in the New Deal*. Durham: Duke University Press. 1995.

¹⁴ Fabiano Engelmann: *Sociologia do campo jurídico. Juristas e usos do direito*. Porto Alegre: SAFE. 2006.

¹⁵ In this way, the data provide ground to rebut Watson's view on the inertia of the legal profession, at least in times of political conflict. Alan Watson: *Society and Legal Change*. Philadelphia: Temple University Press. 2001. pp. 1-11.

¹⁶ Philip Selznick, Philippe Nonet: *Law and Society in Transition: Toward Responsive Law*. New York: Octagon Books, 1978. Malcolm Feeley: "Law, Legitimacy, and Symbols: An Expanded View of Law and Society in Transition". *Michigan Law Review*, Vol. 77, No. 3, 1979. pp. 899-907.

¹⁷ See the conferences on this topic delivered by some of the most important legal scholars of the European continental tradition during the mid-twentieth century, Giorgio Ballardore Pallieri et al.: *La Crisi del Diritto*. Padova: Cedam-Dott. 1953.

¹⁸ See for example: César Sepúlveda: "Los Juristas y la Crisis Actual del Derecho en México." *Boletín Mexicano de Derecho Comparado*. No 35. 1979. pp.487-496.

¹⁹ Eugene V. Rostow (ed.): *Is Law Dead?* New York: Simon and Schuster. 1971.

modern society by similar patterns of rearrangement? Obviously, such questions exceed the scope of my research and involve a broader academic agenda. However, certainly, my case study has something to contribute in searching for the possible answers.

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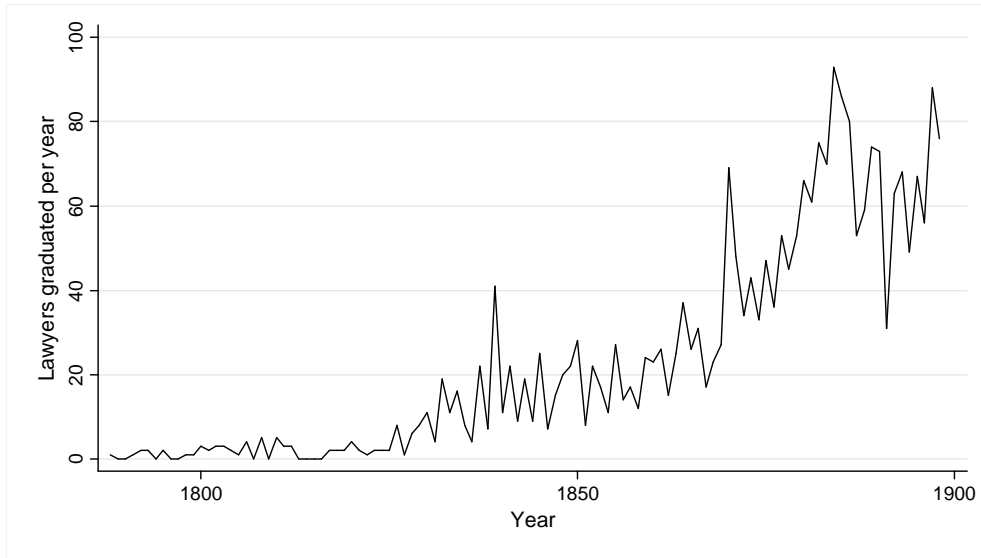
Zahaler, Reuben: *Ambitious Rebels. Remaking Honor, Law and Liberalism in Venezuela. 1780-1850*. Tucson: The University of Arizona Press. 2013.

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Appendix 1

Lawyers Graduated per year between 1788 and 1898 (N = 2,567).

Figure A.1.



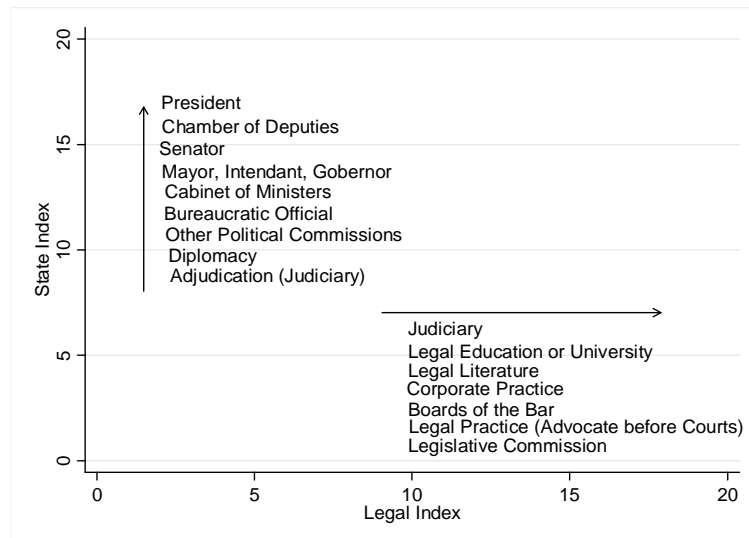
Source: Official Record (Minister of Justice): *Lista Alfabética de Abogados Recibidos en Chile desde el 13 de diciembre de 1788 hasta el 22 de noviembre de 1899*. Santiago: Imprenta Nacional. 1899.

Appendix 2

Observing the links between the State and the Legal Field (Methodology for a Bivariate Analysis)

The systematic study of politically active law graduates shed some light about how the relations between the state and the legal fields evolved over time. As explained for Appendixes 3 and 6, each biographical profile has been codified to assess their position within these fields quantitatively. In so doing, two quantitative benchmarks summarize the aggregation of their life-long posts, their experience, and their influence. The state field index evaluates all the posts and opportunities of their participation in governmental structures (e.g. Presidency, the Chamber of Deputies, the Senate, Cabinets, diplomacy, bureaucracy, etc.). By the same token, the legal field index goes over their roles in the juridical system (e.g. judicial clerks, judgeship, the legal academy, legal literature, participation in the organization of the bar, legal practice, etc.). These indexes are employed to build graphs aimed to illustrate lawyers' place in these realms (state field at the axis y, and legal field at the axis x).

Figure A. 2 Example on the period 1830-1924:

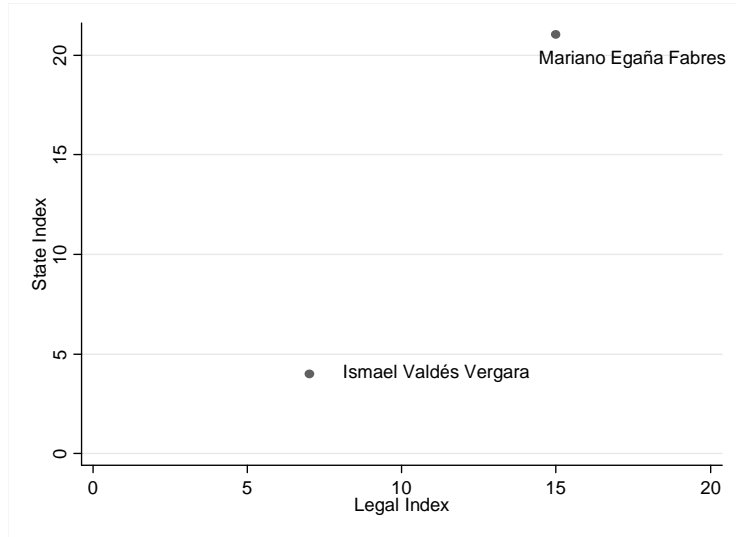


Here, I use two concrete cases study to make clear the previous description, applying the referred scores locating law graduates' place in the state and the legal field (see Appendix 3). The first is Mariano Egaña Fabres (1793-1846), who was one of the most prominent lawyers and politician of the first half of the nineteenth century. Within the State field, he was Senator during several terms (S +4); Member of the Town Hall or Cabildo (m +1); Minister of the Cabinet in key areas (C +3); important official during the first decades of the Republic (b +3); participant of at least tree constitutional commissions (1812, 1823 and 1833); member of the conservative commission to operate during the parliamentary recess (O +4); diplomat in England (d +2); and Fiscal at the Superior Tribunal of Appeals, and at the Supreme Court (A +4). Regarding the Legal Field, we can note he was an outstanding member of the High Courts (J +5), Law Professor and the First Dean of the Law School at the University of Chile (U +5), drafter of a project of civil code that was abandoned (ll +1), and member of the first commission for civil codification and of the Commission of Legislation and Justice at the Senate (L +4).

Our second case study is Ismael Valdés Vergara (1853-1916), a prestigious lawyer who occupied some relevant political responsibilities at the turn of the twentieth century. He was one of the first mayors of Santiago (m +1), Secretary of Public Works (C +2), among other minor positions as official (b +1). Also, he was Fiscal Prosecutor before the courts (Promotor Fiscal) (J +1), a pivotal man in the organization of the Institute of Lawyers of Santiago (+3), and one of the most successful practitioners of his time, sharing a small law firm with Oscar Dávila and Julio Philippi Bihl (p +3). Thus, the profiles of

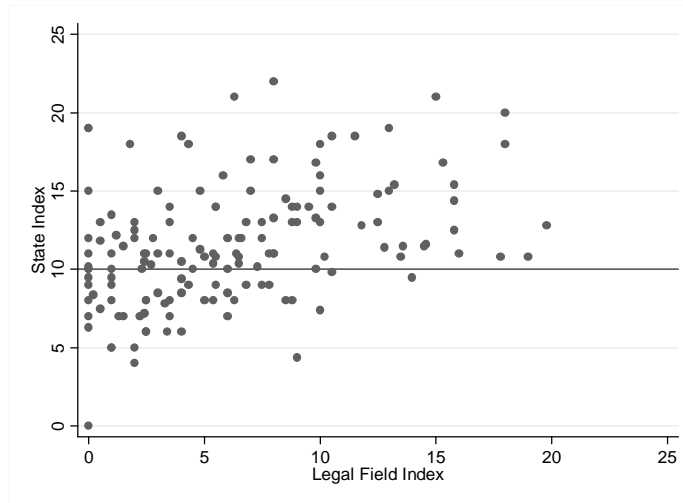
Egaña and Valdés Vergara and their respective positions at the state and the legal fields would look as follow:

	<i>State Field</i>								<i>Legal Field</i>						<i>Indexes</i>			
	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	SI	LI
Mariano Egaña Fabres			4	1	3	3	4	2	4	5	5	1				4	21	15
Ismael Valdés Vergara				1	2	1				1				3	3		4	7



As indicated, each graph using this methodology provides a bivariate analysis that sums up the concentration and density of the relations between the state and the legal fields. Considering the graphs evaluate life-long profiles, it intends to show patterns that operate during a relatively extended time span. The ultimate goal of this methodology is to cast a comparative glance between different periods and to observe the change in the place of lawyers and legal expertise within the governmental practice. For instance, the next graph of all the population of Senators between 1831 and 1924 provides an insightful picture of the close relations between the legal field and the higher strata of state politics.

Example 2



Although the model seems pretty simple, a brief explanation is needed. First, due to its particular characteristics, judicial appointments are the only aspect that is included in both fields. Meanwhile, judicial tasks are fully assessed for the legal field (summing up all their posts), a diminished score is assigned in the state field to law graduates occupying positions at lettered courts, appellate courts and the Supreme Court (according to their highest rank). Second, since the organization of the state power evolved over time, the construction of the indexes for the periods before and after 1924 possesses some differences (compare abbreviations and scores explained in Appendixes 3 and 6). Third, to facilitate visualization and to enhance the accuracy of the graphs, each final index could be modified between 0.2 to 0.8 according to timing, relevance, and other non-arbitrary characteristics. Finally, as a reference, a line has been included at point 10 of the axis y.

Appendix 3 Lawyers at the Senate (1834-1924)

The present Appendix summarizes the occupational profile, political experience and social background of 149 lawyers who filled the post of senators (plus Andres Bello, who should be considered a self-trained jurist, N = 150). The sample has been selected from all the senators who were at least one year as proprietors in their charge between 1834 and 1924. I have excluded substitute senators since they occupied a diminished place in the field of power. Nonetheless, preliminary analysis shows they do not alter the described pattern. Names appear in chronological order according to their year of entry. When they joined the Senate the same year, they follow the order of their circumscription.

The sources used to build this dataset are: Luis Valencia Avaria: *Anales de La República*. Santiago: Editorial Andrés Bello. 1986. Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. 4 Vols. Ediciones Pontificia Universidad Católica de Chile. Santiago: 1999. Virgilio Figueroa: *Diccionario Histórico, Biográfico y Bibliográfico de Chile 1800-1928*. Nendeln, Liechtenstein: Kraus Reprint. 1974. Julio Retamal Favereau et al.: *Familias Fundadoras de Chile*. Santiago: Ediciones de la Universidad Católica de Chile. 2000-2003.

Intending to describe the engagement of the legal and state fields, each profile quantitatively assesses the posts that they occupied along their lives. According to the methodology explained in Appendix 2, the aggregation of their posts is used to elaborate a State Index (SI) and Legal Field Index (LI), which shows the position of each law graduate in those realms through a bivariate analysis. For profiles of senators acting before 1924, the abbreviated denominations of columns and a brief account of the determination of the scores are explained in the next lines:

STATE FIELD:

(P) Presidential Authority: + 5 President of the Republic (once), + 9 (twice).

(D) Chamber of Deputies: + 2 (one term), + 3 (more than one term).

(S) Senate: + 3 (one term), + 4 (more than one term).

(m) Mayor or other relevant posts of local politics (e.g. Governor, Intendants): + 1.

(C) Cabinet of Ministers: + 2 (one term), + 3 (more than one term).

(b) Bureaucratic Official (non judicial): + 1 to +3, depending upon timing and relevance.

(O) Other Political Commissions: Drafter Constitutions 1823-1833, +2 once, +3 twice; Conservative Commission operating during Congress recess, + 1; Council of State: + 1)

(D) Diplomacy: + 1 or + 2, upon relevance.

(A) Adjudication, highest post held at the judiciary: Supreme Court + 4; Appellate Court + 3; low level lettered court + 2. Integral lawyers (pro-tempore justice) are excluded, since they were not part of the judicial service.

LEGAL FIELD:

(J) Judiciary (aggregation of posts): + 1 minor clerk, public defender; + 2 judicial secretary at trial court, court reporter (*relator*), integral lawyer (pro-tempore judge); + 3 judge at trial court; + 4 Justice at Appellate Court; +5 Justice or *Fiscal* at the Supreme Court.

(U) University: + 1 to + 3 University Positions outside the Law School, upon relevance to law; +4 relevant private docent (Bello), + 5 President at the University; Professor at the law school, or Forensic Academy: + 2 no core legal subject; + 3 to + 4 main legal subject, + 5 Dean at the Law School.

(ll) Contributions to Legal Literature: + 1 to + 3 upon relevance;

(c) Corporate Practice: + 1 to + 3 upon relevance.

(B) Boards of the Bar Organization: + 2, + 3 (more than five years), + 4 (more than ten years), + 5 (Chair, no matter how many years).

(p) Legal Practice as advocate before courts: + 1 to + 3 upon relevance.

(L) Legislative Committee: + 2 to + 5, Commissions for codification (upon relevance); + 1 Commission of Constitution, Legislation and Justice at the Senate:

Social Groups (s) have been qualify as follows: (1) Landed Elite: person belonging to traditional Chilean Families associated to relevant possessions of power and land; (2) Minor Gentry, Senator coming from traditional families of Chile or descendant of Spanish bureaucratic cadres without relevant links to land property at the beginning of their careers; (3) Bourgeoisie, person whose familial capital is originated in banking, mining or commerce during the nineteenth century; (4) Outsiders: anyone who does not conform to the previous description, and (0) not information available. After one generation of relevant property, individuals with a previous minor gentry's ascendancy are identified as landed elite.

A more detailed dataset, which includes other characteristics, such as their participation in journalism, agriculture and industry is with the author.

Table A. 3:

State Field

Legal Field

Indexes

	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	s	SI	LI
José I. Eyzaguirre A.		3	3		2		3									1	1	11	1
Santiago Echeverz		3	3			1	2		4	5						4	4	13	9
Gabriel J. Tocornal		3	3			3	4		3	4	4					1	2	16	8
Manuel J. Gandarillas		3	4		3	1	4		4	5	5				2	1	2	19	13
Jose María Rozas L.		3	3	1													4	7	0
Fernando Elizalde M.		2	4				1		3	4							2	10	4
Fernando Errázuriz A.	5	3	3			3	2										1	16	0
Ramón Errázuriz A.		3	4		2		1										1	10	0
Juan Fco. Meneses		3	4		2	3	3		3	4	5					1	1	18	10
Agustín Vial S.		3	4		2	3			4	5	4					1	1	16	10
Juan de Dios Vial D.		3	4			3	3	1	4	5	4					1	1	18	10
Mariano Egaña F.			4	1	3	3	4	2	4	5	5	1				4	1	21	15
Pedro Ovalle y Landa		3	4			1	3		4	5	4					1	1	15	10
José Yrarrázabal A.		3	4			1	3		3	4	4					1	1	14	9
Andrés Bello López (*)			4			3	1	2			9	3				5	4	10	17
Francisco A. Pinto	5	3	4	1	3		3										1	19	0
Manuel C. Vial F.		3	3		3		3	2	4	5	5					1	1	18	11
José Joaquín Pérez	5	3	4		3		2	2									2	19	0
Fernando Lazcano M.		3	3		3	1	1		2	3						1	1	13	3
Máximo Mujica E.		2	3		2		2		3	6	5					4	1	12	15
Silvestre Ochagavía E.		3	3		2			1								1	1	9	1
Justo Donoso V.		2	3		2	3					3	3					2	10	6
Francisco J. Ovalle B.		3	3		2			1									1	9	0
Manuel Alcalde V.		3	4		3		2										1	12	0
Miguel M. Güemes F.			3		2			1	4	5	4						2	10	9
Eugenio D. Torres D		3	3				1									1	1	7	1
Francisco Marín R.		2	3														1	6	0
Álvaro Covarrubias O.		3	4		3		2		4	7	4			4			1	16	15
Manuel A. Tocornal Grez		3	3		3	2					5			5	3	3	2	11	16
Melchor Santiago Concha		3	3				4		4	5	4					1	1	14	10
Jose Santos Lira Calvo		3	3			2	2		4	7						1	2	14	8
Miguel Barros Morán		3	3				1		3	4		1				1	1	10	6
Alejandro Reyes Cotapos		3	4		2	1			4	5	2			4	2	2	1	14	15
Francisco Vargas F.		3	3		2	1	1		3	6							2	13	6
José Ramón Lira Calvo		3	3	1	2	1	1		3	5							2	14	5
Manuel J. Yrarrázaval L.		3	4	1	3		1									1	1	12	1
José Victorino Lastarria		3	4		3	1	1	2	4	5	4	2					2	18	11
Benjamín Vicuña M.		3	3	1				1									2	8	0
Manuel Valenzuela C.		3	4	1		1	1		3	7						1	1	13	8
Antonio Varas D.		3	4		3		1					2	3	3			2	11	8
Domingo Urrutia Flores		3	3	1					3	4							1	10	4
Rafael Sotomayor B.		3	4	1	3	1	1		2	3							1	15	3
Jerónimo Urmeneta		3	3		3		1										3	10	0
José E. Vergara G.		2	3		2	2				1	4						1	9	5
Belisario Prats Pérez		3	3	1	3				4	8						1	1	14	9

Aniceto Vergara Albano	3	4		3	2	1	1	4	5	4		4	2	3	1	18	18		
Federico Errázuriz Z.	5	3	4	1	3		1			4				1	1	16	5		
Juan de Dios Arlegui G.		2	3	1				1	3				2		2	8	5		
Javier Errázuriz E.		2	4										2		1	6	2		
José Joaquín Blest Gana		3	4					1					2	1	4	8	3		
Pedro E. Altamirano		3	4	1	3	1	1	2	1	4		2			2	15	7		
Adolfo Ibáñez Gutiérrez			4		3		2	1	3	7			2	1	2	13	10		
Manuel Montt Torres	5	3	3		3		1	1	4	5	7			2	4	20	18		
Marcial González Ibieta		3	3	1				1						2		2	8	2	
Luis Pereira Cotapos		3	4		2			1	3	7	2		2		1	2	13	12	
Melchor Concha y Toro		3	4		3					4		2	2	2	1	10	10		
Ricardo Claro Cruz		3	3											3	1	1	6	4	
José F. Vergara Donoso		2	3		2			1	3	4						1	11	4	
Miguel Elizalde Jiménez		2	3	1				1		2	1	1		2		2	7	6	
Manuel García de Huerta		3	3		3			2						2		1	11	2	
Jovino Novoa Vidal		3	3	1	2			1	1	2	3	4				1	13	7	
Juan E. Rodríguez Segura		3	4	1									1			1	8	1	
Francisco Puelma C.		3	4	1					1						1	1	9	1	
Manuel Recabarren R.		2	3		3						2			2		1	8	4	
Vicente Sanfuentes T.		3	4			1								2		2	8	2	
José J. Laso Castillo		2	3	1										2		1	6	2	
Luis Aldunate Carrera		3	4		3	1		1		2	2	1			1	1	12	6	
José Clemente Fabres		3	4			2			3	7	5	3		3	1	2	12	19	
Mariano Sánchez F.		3	3	1	3				1						1	1	11	1	
Vicente Reyes Palazuelos		3	4		3			2			4			2		2	12	6	
Jorge Huneeus Zegers		3	3		3	3		1	2	3	4	3			3	4	15	13	
Augusto Matte Pérez		3	3		3			1				3		2		3	10	5	
Rafael Casanova C.		3			2			1	3	4						2	9	4	
Domingo Santa María G.	5	3	4	1	3	1	2		3	4	3	1				2	22	8	
Aníbal Zañartu Zañartu		3	4		3			1						2	1	2	11	3	
Manuel Amunátegui A.		3	3			2			3	6	4	1		2	1	2	11	14	
Waldo Silva Algüe		3	3		2	2	1		3	4	4			1	3	2	14	12	
Miguel Antonio Varas H.		3	3			1	1				4			3	1	2	8	8	
Francisco Ugarte Zenteno			3	1			1		3	6						1	8	6	
Abdón Cifuentes E.		3	4		2	1	1				4			2	1	4	11	7	
Ramón Donoso Vergara			3		3								2	2		1	6	4	
Isidoro Errázuriz Errázuriz		3	3		3			1								1	10	0	
José A. Gandarillas Luco		3	3		3	2	1		3	6	4		2		3	1	15	15	
Juan Castellón Larenas		3	4		3	1	1				4					2	12	4	
Ramón Barros Lucos	5	3	4		3	1	1	1					3		1	2	18	4	
Carlos Walker Martínez		3	4		2	2	1						2		3	1	4	12	6
Enrique S. Sanfuentes		3	3		3	1		1					1	2		1	11	3	
Fco. J. García Huidobro		3	3					1								1	7	0	
Marcial Martínez Cuadros		3	3			1	1	1		2	4	1		2	1	4	9	10	
Fernando Lazcano E.		3	3					1					3			1	7	3	
Federico Errázuriz E.	5	3	3		2											1	13	0	
José Tocornal Jordán		3	4		2			1								1	10	0	

	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	s	SI	LI
Joaquín Santa Cruz V.	2	3	1		2				2	3				2			2	10	5
Rafael Errázuriz U.	3	4			3				2					2			1	12	2
Ventura Blanco Viel	3	3			3		1	1			4		2				0	11	6
Carlos Yrarrázaval Larraín	3	4												2			1	7	2
Manuel Egidio Ballesteros		3			2	1			4	8	4	2		2	3		1	10	19
Germán Riesco Errázuriz	5		3			1			4	5			2			1	1	13	8
Raimundo Silva Cruz		3	3		3	2			1		4					3	3	12	7
Pedro Bannen Pradel		3	3					1								2	4	7	2
Pedro Montt Montt	5	3	4		3	2								3	3	1	1	17	7
Eduardo Matte Pérez		3	3		3				1					3	2		3	10	5
Juan Luis Sanfuentes A.	5	3	4		3	2	1						3			1	1	18	4
Ricardo Matte Pérez		3	4	1	3												3	11	0
Pedro Letelier Silva			3	1												2	1	4	2
Enrique Mac-Iver R.		3	4		3		1	1			4			3	3	1	4	12	11
Ramón Escobar Escobar		3	3	1	3				3	7						2	2	13	9
Javier A. Figueroa Larraín		2	3		3	2	1		4	7			2	3	1		1	15	13
Rafael Sotomayor Gaete			3	1	3	1				3						2	1	8	6
Maximiliano Espinosa P.		3	3		2				2	3						3	0	10	6
Joaquín Figueroa L.			3		3	2								1	2		1	8	3
Luis Antonio Vergara R.		3	3		2	2					4	1		2	2		1	10	9
José Francisco Fabres R.		2	3	1	3					1	4			2	3		1	9	10
Arturo del Río Racet			3	1	2											2	0	6	2
Guillermo Rivera Cotapos		3	4	1	3	2			1		2			2	3	1	2	14	8
Carlos Aldunate Solar			4		3	1			1		4			3	3	2	2	9	14
Javier Eyzaguirre E.		3	3			1											1	7	1
Juan E. Mackenna A.		3	3	1	2	1			1					3	2		1	14	5
Luis Claro Solar			4		3	2	1				4	3	3	3	3	1	1	10	17
Ángel Guarello Costa		3	3	1	3	1	1									2	4	12	2
José María Valderrama L.		1	4	1												1	2	5	1
Pedro Correa Ovalle			4			1								2			1	5	2
Pedro García de la Huerta		3	3		3				1							2	1	10	2
Miguel Urrutia Barbosa		3	3		3	2								2			2	11	2
Pedro N. Montenegro O.		3	3		3									2	3	1	0	9	6
Manuel Salinas González		3	3	1	3	1	1	1								2	2	13	2
Eliodoro Yáñez P.		3	4		3				1	2	4	1		3	3	1	2	11	14
Alfredo Barros Errázuriz		3	4		3	1					4	2	3	3	1		1	11	13
Silvestre Ochagavía (Jr.)		3	4		2												1	9	0
Arturo Alessandri Palma	9	3	4		3	1								2	3	1	4	20	6
Antonio Varas Herrera			3			2	1	1			4			2	3	1	1	7	10
Abraham Ovalle Ovalle		3	4		3											2	1	10	2
Ismael Tocornal Tocornal		3	4		3	3											1	13	0
Daniel Feliú Manterola		3	3		2				1		3			2	2		4	9	7
Juan Enrique Concha S.		2	4	1					1		3	1	2			2	1	8	8
Rafael Urrejola Mulgrew		3	3			2				2			3				2	8	5
Armando Quezada A.		3	3		3	3	1	2			2					2	4	15	4

	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	s	SI	LI
Malaquías Concha Ortiz	3	4			3									2			4	10	2
Luis A. Barrios Ugalde	3	3			2	3							3	2			4	11	5
Ladislao Errázuriz L.	2	4	1		2								2	2			1	9	4
Luis Enrique Concha			4	1													4	5	1
Fernando Freire G.	3	3			2	1			2								1	11	0
Ramón Briones Luco	3	3			3	3	1	1						3			2	14	3
Héctor Arancibia Laso	3	3				3		2		4			2	2			3	11	8
Arturo Lyon Peña	3	4	1			1											1	10	1
Luis Garnham Moreno			3					1		4			2	2			4	4	9
Jorge Errázuriz Tagle	3	3												2			1	6	3
Eduardo Opass Letelier	3	3						1						2			2	7	3
Romualdo Silva Cortés	3	4					1	1		4			4	3			2	11	12
Pedro Aguirre Cerda	5	3	4		3			1		2	1		3	3			4	16	9

Appendix 4
Lawyers at the Cabinet of Ministers (1831-1924)

The following Appendix summarizes the occupational profile and political experience of 128 lawyers who held posts at the Cabinet of Ministers. Due to the limits of space, this list does not include the coding of social groups and who occupied the positions of senators along their lives, which have been described previously. When applicable, abbreviations and scores have been kept from the Appendix 3.

Table A.4

	P	D	m	C	b	O	D	A	J	U	ll	c	B	p	L	SI	LI
Santiago Aldunate B.		3		3				2	1	4					2	8	7
Luis Aldunate E.		2	1	2	3			2				1				10	1
Manuel M. Aldunate S.				1	2	1							2	2		4	4
Arturo Alemparte Q.		3		3				1		4			3	2		7	9
José Alfonso Cavada				3	1			4	7	4	1					8	12
José D. Amunátegui R.				1	3	2	1	1		4	2	2		3		8	11
Domingo Amunátegui S.					3	3				2	1					6	3
Francisco Baeza S.		2	1	3				3	7					2		9	9
Ruperto Bahamonde R.					2	3			1	5				2	1	5	9
Julio Bañados E.		3		3	1					4	2					7	6
Luis Barros Borgoño				3	2				2		1	2				5	5
Ernesto Barros Jarpa		2		3	2			1		4						8	4
Luis Barros Méndez		3		2	1					4				2		6	6
Emilio Bello C.		3		3			1	1			1	2			1	8	4
Enrique Bermúdez P.		3	1	3				2								9	0
Rafael Casanova C.		3		2			1	3	4							9	4
Carlos Castellón L.		3	1	2												6	0
Víctor Celis Maturana		3		3	2											8	0
Samuel Claro L.		3		3	2			1				3		3		9	6
Camilo Cobo G.		3		2	1					2						6	2
Francisco Concha B.		3		3				2	3							8	3
Carlos Concha S.		3	1	2				2								8	0
Enrique Cood		3		2	2					4	1		3	2		7	10
Agustín Correa Bravo		3	1	2	1						1			2		7	3
Hernán Correa R.		3		2	3									2		8	2
Manuel Covarrubias O.		2	1	3									3	2		6	5
Anibal Cruz Díaz		3		2				1		4						6	4
Ricardo Cruzat H.		2		3								2		2		5	4
Juan M. Dávila Baeza				2	1								1			3	1
Óscar Dávila Izquierdo				3	1					4	1		4	2		4	11
Máximo del Campo Y.		3		3	1				2			2		2		7	6
J. Raimundo del Río S.				2	1				2			2		2		3	6
Alberto Edwards A.		3	1	2										2		6	2
Guillermo Edwards M.		3		3	3								3	2		9	5
Gregorio Donoso V.				2										2		2	2

	P	D	m	C	b	O	D	A	J	U	ll	c	B	p	L	SI	LI
Elías Fernández Albano		3		3										2	2	6	4
Belfor Fernández R.		3		3	2			2	3					2		10	5
Alejandro Fierro P.		3		3	1			2	4					1		9	5
Emiliano Figueroa L.	5	3		3	3		1									15	0
Manuel Foster R.		3		2	2		1		1	4		3		2	2	8	12
Francisco Freire C.		2	1	2												5	0
Abraham Gacitúa B.		3		2					2					2		5	4
Galvarino Gallardo N.		2	1	3	2	1	1							3		10	3
Francisco Garcés G.		3		3										2		6	2
Joaquín Godoy Cruz				3	2		2	3	6							10	6
Domingo Godoy Cruz				3	2		1	2	3							8	3
Nicolás González E.		3		2												5	0
Adolfo Guerrero V.		2		3	2		2			4		2		2		9	8
Jose R. Gutiérrez M.		3	1	3						5		2	3	3		7	13
Roberto Guzmán Montt		2	1	2	1											6	0
Javier Herboso E.		3		3			1							2		7	2
Anselmo Hevia R.		3	1	3			1	1	1					2		9	3
Ernesto Hübner B.		2		2						2				2	1	4	5
Alamiro Huidobro V.				3	1				1	4						4	5
Antonio Huneeus G.		2		3			1			3	2			2		6	7
Alejandro Huneeus G.		3		2												5	0
Roberto Huneeus G.				2	1		1		2	4	1			2		4	9
Maximiliano Ibáñez I.		3		3	3		1		2	4	2			2		10	10
Abraham König V.		3		2	2		2		1	4	1	3		2		9	11
Carlos Larraín Claro		3		3	1							2				7	2
Marcial D. Lastarria V.		3	1	3		1	1		2							9	2
Aníbal Letelier Nuñez		3		3	2	1		2	3			2		2		11	7
Alejandro Lira Lira		3		3			2			4		2		2		8	8
Ignacio Marchant S.		3	1	2					2					2		6	4
Beltrán Mathieu		3	1	3	1		2		1							10	1
Marcial Martínez D.				2	2		2			1						6	1
Jorge Matte Gormáz		3		3	1		1					2				8	0
Claudio Matte Pérez		2		2	3									2		7	2
Benjamín Montt Montt				2												2	0
Alberto Montt Montt		2		2					2					2		4	4
Lorenzo Montt Montt		2	1	2	1							2		2		6	4
Anfión Muñoz M.		3	1	2	1									2		7	2
Fidel Muñoz R.		3	1	2	2		1		2					2		9	4
Juan A. Orrego G.				3	2		1									6	0
Luis Orrego Luco		2	1	2			1			1				2		6	3
Francisco J. Ovalle B.		3		3			1									7	0
Carlos Palacios Z.		3		3										2		6	2
Guillermo Pereira I.		3		2			1					1				6	1
Ismael Pérez Montt		3		3								2		2		6	4
Julio Philippi Bihl				3	3				2	1			1	3		6	7

	P	D	m	C	b	O	D	A	J	U	ll	c	B	p	L	SI	LI
Gregorio Pinochet E.		3		2						4				2		6	5
Guillermo Pinto A.		3		2	1		1			2				2		7	4
Horacio Pinto A.				2	1	1		3	7							7	7
Francisco A. Pinto Cruz		3		1	3					2				2		7	4
Anibal Pinto G.	5	3		1	2			1								12	0
Julio Prado Amor		2		1	2	2								2		7	2
Arturo Prat Carvajal		3			3					2				2		6	4
Belisario Prats Bello				1	3	2		1	2							7	2
Joaquín Prieto Hurtado		3			2				1	4				2		4	7
Tomás Ramírez Frías		3			2	2		1		4	1			2		8	7
Pablo Ramírez R.		3			3	3	1	2				3		3		12	6
Manuel Rengifo Vial		3			2	1										7	0
Oswaldo Rengifo Vial		3		1	2	3				3				2		9	5
Germán I. Riesco E.					3	2				4		3				5	7
Carlos Riesco Errázuriz					2	1						2				3	2
Manuel Rivas Vicuña		3			3			1	1		1					7	2
Carlos Rivera Jofré					2	2								2		4	2
Víctor V. Robles V.		3			3	2		1	2	4		2		2		9	10
Alcibíades Roldán		3			3					4	3	2		2		6	11
Enrique Rodríguez C.		3			3											6	0
Luis Rodríguez H.		3		1	2				2					2		6	4
Aníbal Rodríguez H.		3			3	2			1							8	1
Alberto Romero H.					2	1						1		2		3	3
Carlos Ruiz B.		3			3					3	1			2		6	6
Ricardo Salas Edwards		3			3	1		1			1					8	1
Manuel Salas L.		3			2	2						2				7	2
Roberto Sánchez G		3			3	2		1								9	0
Salvador Sanfuentes T.				1	3	1		4	5				4			9	9
Aníbal Sanfuentes V.		2			2									2		4	2
Vicente Santa Cruz V.		3			2	1		2						2		8	2
Luis Serrano Arrieta		3		1	3	2			1	4				2		9	7
Gustavo Silva Campo		3			2			1	2					2		6	4
Carlos Silva Cruz					2	2										4	0
Antonio Subercaseaux		2			2	2				4				3		6	7
Juan E. Tocornal D.		3			2	2						2		2		7	4
Gaspar Toro Hurtado		3			3			1								7	0
Melquíades Valderrama				1	3			3	7							7	7
José F. Valdés C.		3			3	1										7	0
Ismael Valdés Vergara				1	2	1			1				3	3		4	7
Absalón Valencia Z.		3		1	3	2			2			2				9	4
Efraín Vásquez G.		3		1	2									2		6	2
Ramón Vergara D.					3		1	3	7					2		7	9
Luis Vicuña Cifuentes		3			2				1	3				2		5	6
Antonio Viera Gallo					2									2		2	2
Enrique Villegas E.		3			3			1						2		7	2
Ramon Yrarrázaval A.		3		1	3	2		2	4	6	4				3	15	13
Manuel Zañartu Z.		2			2									1		4	1
Julio Zegers S.		3			2	1	1	1			1	3		2		8	6

Appendix 5

A Detailed Account on the Cabinets of Ministers (1831-1881)

Table A.5.1:

Profession and occupational background of Cabinet Ministers by presidential periods (1831-1881) (in percentages).

	1831-41	1841-51	1851-61	1861-71	1871-76	1876-81	Mean
Law Graduates	50	72	53	77	100	80	72
Military	10	21	18	14	0	10	12
Business	20	7	11	0	0	5	7
Other	20	0	18	9	0	5	9
Total Number of Ministers (N)	(10)	(14)	(17)	(22)	(11)	(20)	

Note: The total number of ministers considers each government in the fields of Interior, War and Navy, Finance, Justice and Education, and, Foreign Relations. There has been taken into account secretaries, or subrogate and interim ministers that were more than one year in their posts. Few of them performed the post of minister in more than one government. *Sources:* Luis Valencia Avaria: *Anales de La República*. Op. Cit. Armando De Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit. Virgilio Figueroa: *Diccionario Histórico, Biográfico y Bibliográfico de Chile 1800-1928*. Op. Cit.

Table A.5.2:

Social Extraction of Law Graduates in Cabinet of Ministers by presidential periods (1831-1881) (in percentages)

	1831-41	1841-51	1851-61	1861-71	1871-76	1876-81	Mean
Law Graduate							
- from landed elite	40	36	29	36	9	30	30
- from minor gentry	10	29	12	36	73	45	34
- Other	0	7	12	5	18	5	8
Law Graduates as Percentage of Total	50	72	53	77	100	80	72

Sources: Ibid for Table 1.

Table A.5.3:

Place of Legal Training of Law Graduates in Cabinet of Ministers by presidential periods (1831-1881) (in percentages)

	1831-41	1841-51	1851-61	1861-71	1871-76	1876-81
Law Graduate						
- at U. of San Felipe	30	29	6	4.5	0	0
- at National Institute	20	29	12	13.5	0	5
- at University of Chile	0	7	29	59	100	75
- Other	0	7	6	0	0	0
Law Graduates as Percentage of Total	50	72	53	77	100	80

Note: As explained, in this period, the state coordinated legal education toward one dominant actor. So, the different places identified here show the consecutive dominant centers: the University of San Felipe (-1830); the National Institute (1830-1842), and the University of Chile (which initially certified the students trained in a special university section of the National Institute between 1842-1879). Therefore, the preceding table illustrates not only a centralized pattern of legal training but also a generational transition of the gentlemen politicians of law. *Sources:* Ibid for Table 1.

Table A.5.4:

Previous or concurrent judicial and academic experience of Law Graduates in Cabinet of Ministers by presidential periods (1831-1881) (in percentages).

	1831-41	1841-51	1851-61	1861-71	1871-76	1876-81	Mean
Law Graduates							
- Academic experience	30	36	23	45	45	35	36
- Judicial experience	30	29	18	27	36	35	29
- At least academic or judicial experience	30	50	35	64	73	55	51
Law Graduates as Percentage of Total	50	72	53	77	100	80	

Note: The table illustrates the experience of law graduates before or during their appointment as ministers. The observation of the data examines specific years in the cabinet, and, accordingly, the codification regarding the same person sometimes varies when this occupied the post more than once. Although most of the lawyers also had congressional experience, and some of them moved to academics or the judiciary after their position in the cabinet, such information has not been included. *Sources:* Ibid for Table 1.

Appendix 6 Lawyers at the Senate (1932–1951 / 1952-1973)

The present appendix summarizes the occupational profile, political experience and social background of lawyers who were senators between 1932 and 1973 (N = 118). The sample has been selected from all the senators who were proprietors in their charge at least one year. For analytical purposes, they have been divided into two groups or sub-periods: 1932 -1951 (N = 72) and 1952 -1973 (N = 58). Some individuals occupied the post in both sub-periods. Names appear in chronological order, according to their year of entry. When they joined to the Senate the same year, they follow the order of their circumscription.

Sources: Luis Valencia Avaria: *Anales de La República*. Santiago: Editorial Andrés Bello. 1986. Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Ediciones Pontificia Universidad Católica de Chile. Santiago: 1999. Ronald Hilton (ed.): *Who's Who in Latin America. Part IV. Bolivia, Chile and Peru*. Stanford: Stanford University Press – Marquis. 1947. Julio Retamal Favereau et al.: *Familias Fundadoras de Chile*. Santiago: Ediciones de la Universidad Católica de Chile. 2000-2003.

For methodology and definition of State Index (SI) and Legal Field Index (LI) see Appendixes 2 and 3 above. For profiles of senators and members of the cabinet acting after 1932 (Appendix 6 and Appendix 8), I have adapted the same coding model to the new institutional milieu. A more detailed dataset, which includes other characteristics, such as their participation in journalism, agriculture and industry is with the author. The abbreviated denominations of columns and a brief account on the determination of the scores are explained in the next lines.

STATE FIELD:

(P) Presidential Authority: + 5 President of the Republic (once), + 9 (twice).

(D) Chamber of Deputies: + 2 (one term), + 3 (more than one term).

(S) Senate: + 3 (one term), + 4 (more than one term), + 6 (more than five terms)

(m) Mayor or other relevant posts in local politics (e.g. Governor, Intendants): + 1.

(C) Cabinet of Ministers: + 2 (once), + 3 (more than once).

(b) Bureaucratic Official (including, among others, at the Comptroller's Office, the State University, and State Defense Council): + 1 to +3, depending upon timing and relevance.

(O) Other Political Post: Central Bank + 2 or + 3 upon relevance; Constitutional Commission of 1925 (subgroup of drafting) + 3; Constitutional Commission of 1973-1980 + 3; Constitutional Tribunal: 1970-1973, 1980-1989, + 2.

(D) Diplomacy: + 1 or + 2, upon relevance.

(A) Adjudication, highest post held at the judiciary: Supreme Court + 4; Appellate Court + 3; trial court + 2. Integral lawyers (pro-tempore justice) are excluded since they were not part of the judicial service.

LEGAL FIELD:

(J) Judiciary (aggregation of posts): + 1 minor clerk, public defender; + 2 judicial secretary at low level court, court reporter (*relator*), integral lawyer (pro-tempore justice); + 3 judge at trial court; + 4 Justice at Appellate Court; +5 Justice or *Fiscal* at the Supreme Court.

(U) University: Professor at the law school: + 2 no core legal subject; + 3 to + 4 main legal subject, + 5 Dean at the Law School.

(ll) Contributions to Legal Literature: + 1 to + 3 upon relevance;

(c) Corporate Practice: + 1 to + 3 upon relevance.

(B) Boards of the Bar Organization: + 2, + 3 (more than five years), + 4 (more than 10 years), + 5 (Chair, no matter how many years).

(p) Legal Practice as advocate before courts: + 1 to + 3 private practice upon relevance. + 1 or + 2 is added to include litigation on behalf of the state or other public agency.

(L) Other activity of legal relevance: + 3 Constitutional Commission of 1925 (subgroup of drafting) + 3 Constitutional Commission of 1973-1980; + 3 Constitutional Tribunal: 1970-1973, 1980-1989; + 2 to + 3, Commissions for codification (upon relevance); + 1 Commission of Constitution, Legislation and Justice at the Senate; +1 or +2 role at the Comptroller office; + 2 Comptroller' office.

Social Groups (s) have been qualify as follows: (1) Landed Elite: person belonging to traditional Chilean Families associated to relevant possessions of power and land; (2) Minor Gentry, Senator coming from traditional families of Chile or descendant of Spanish bureaucratic cadres without relevant links to land property at the beginning of their careers; (3) Bourgeoisie, person whose familial capital is originated in banking, mining or commerce during the nineteenth century; (4) Outsiders: anyone who does not conform to the previous description, and (0) not information available. After one generation of relevant property, individuals with a previous minor gentry's ascendancy are identified as landed elite.

Table A.6.1. Period 1932-1951

	<i>State Field</i>									<i>Legal Field</i>						<i>Indexes</i>			
	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	s	SI	LI
Guillermo Azócar	2	4	1	2	2										2		4	11	2
Joaquín Yrarrázaval	2	3				1											1	6	0
Nicolás Marambio	2	4	1			1								1	2	1	4	8	3
Óscar Urzúa J.	3	3		2	2					1						1	4	10	2
Guillermo Barros J.		3		3									2		2		1	6	4
Roberto Sánchez	3	4		3	2												2	12	0
Óscar Viel Cavero	3	3		3				1				1	3				2	10	4
Alberto Cabero	2	4	1	2	2			2		1	1			3	2	1	4	13	8
Silvestre Ochagavía	3	4					3										1	7	0
Rafael Barahona S.		4		3	1					4		3			2		3	8	9
Aurelio Cruzat O.		4			1					2	4			2	3		4	5	11
Alberto Vial Infante	2	3													2		1	5	2
Arturo Lyon Peña	2	4	1			1											1	8	0
Armando Jaramillo	3	4	1	3											2	1	4	11	3
Francisco Vidal G.	3	3				1						1			2	1	2	7	4
Ladislao Errázuriz	2	3	1										3		2		1	6	5
Enrique Oyarzún	3	4		3			3			2							4	13	2
Alfredo Barros E.	3	3		3	1					4		3				1	1	10	8
Luis E. Concha G.		4	1													1	4	5	1
Enrique Zañartu P.	3	4		3													1	10	0
José Maza F.	3	4		2	2	3	1			1		2		2			4	15	5
Luis A. Cariola M.		3	1				2			4		1					2	6	5
Carlos Schurmann		3	1									2	4	2			3	4	8
Absalón Valencia	3	3	1	3	2					2		2				1	4	12	5
Carlos Villarroel M.	2	3								2		2		2			4	5	6
Romualdo Silva C.	3	4				3	1			4			3	2	1		2	10	10
Jacinto León L.		3	1		1					1						1	2	5	2
Juan Antonio Ríos	5	3	3		3		1			2		2		3			2	15	7
Remigio Medina N.		3	3		3					1					1		4	9	2
Fernando Alessandri		6			2	3				4	2			3	4		2	11	14
Álvaro Santa María	3	3		2	2					2		3		2			2	10	7
Octavio Señoret S.	2	3	1			1		1		2				2			1	8	4
Héctor Rodríguez	2	4		2		2								2	1		2	10	3
Luis Alamos B.	2	3	1	3	2	3						1					4	15	1
Luis Raúl Puga M.		3		2	1					2	4		1	3	2		4	5	12

	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	s	SI	LI
Alejo Lira Infante		3	4			2								3			1	9	3
Guillermo Portales			3			1		2		3							1	6	3
Eugenio Matte H.			3			2								2			4	5	2
Rafael Gumucio L.		3	3			1					2			3			1	7	5
Horacio Walker L.			4		3			1		2	3		3	3	2		1	8	13
Pedro León U.		3	3	1						2							4	7	2
Arturo Ureta E.			3		2	3					5		3	5	4		2	8	17
Ernesto Cruz C.		3	4							2							1	7	2
Maximiano Errázuriz		3	4					1									1	8	0
Aurelio Meza		3	4									2		1			4	7	4
Hernán Figueroa A.		3	4		2	2		2					3	2			4	13	5
Virgilio Morales V.		3	4		3									2			4	10	3
José María Ríos A.		3	3		3								3	2			4	9	5
Miguel Cruchaga T.		3	4		3	2		2			2			2			1	14	4
Oswaldo Hiriart C.			4		3	2							2	3			4	9	5
Manuel Muñoz C.		3	4								3		2	2			4	7	8
Gustavo Rivera B.		3	4								4		3	3			2	7	10
José F. Urrejola M.		3	4	1		2		2		2							1	12	2
Celso A. Cruzat		2	3	1		1					4						4	7	4
Humberto Álvarez		3	3		2	1				2	4		2	4	3		4	10	15
Carlos Contreras		3	4		2	1		1		2							4	11	2
Arturo Alessandri P.	9	3	4		3		3						2	2			4	22	4
Joaquín Prieto C.		3	4		3		3						2				1	13	2
Pedro Optiz V.		3	3			2	2						2				4	10	2
Pedro Poklepovic		3	4			2							3	2			4	9	6
Ladislao Errázuriz		2	3			2							2				1	7	2
Francisco Bulnes C.		3	4			1		1		2			3	4	5		1	9	14
Fernando Aldunate		3	3					2			3		3	2			1	8	8
Sergio Fernández L.		3	3					2			4						1	8	4
Fernando Maira C.		3	3			2	2			2	4			2			2	10	8
Raúl Marín B.		3	4			1											2	8	0
Eduardo Frei M.	5		3		3						4		1	2			4	11	7
Arturo Matte L.			3	1	2								3				3	6	3
Eduardo Alessandri		3	4			2							2	3			2	9	5
Julio Pereira Larraín		3	3		2								2				1	8	2
Pedro Opaso C.		3	3			2	2						2	2			1	10	4
Raúl Rettig Guissen			3			2		2			2			5	2		4	7	9

Table A.6.2. Period 1952-1973

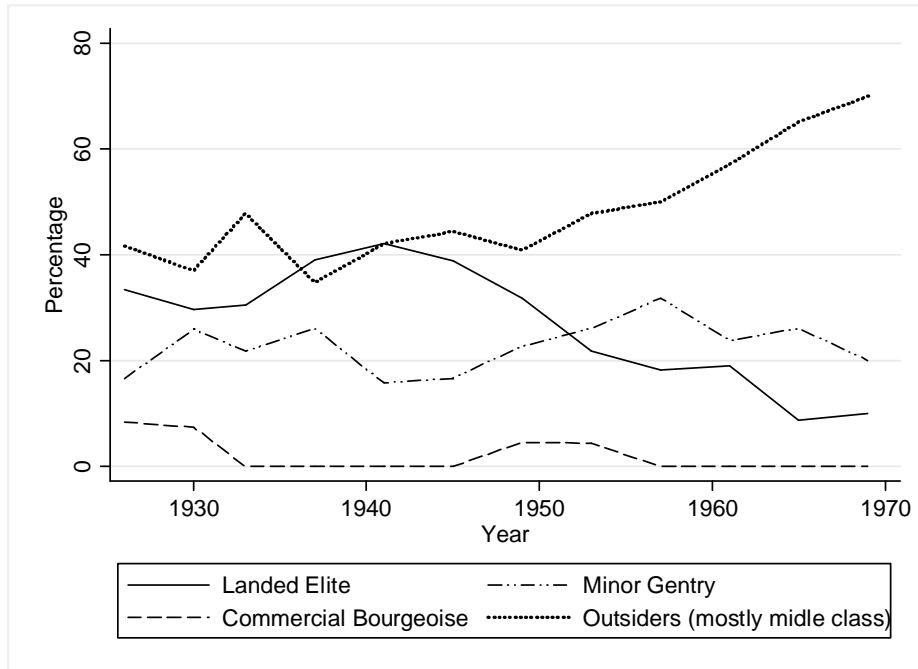
	<i>State Field</i>									<i>Legal Field</i>					<i>Indexes</i>				
	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	s	SI	LI
Fernando Alessandri			6			2	3			4	2			3	4	2	11	13	
Hernán Figueroa A.		3	4		2	2		2					3		2	4	13	5	
Gustavo Rivera B.		3	4							4			3		3	2	7	10	
Humberto Álvarez S.		3	3		2	1				2	4		2	4	3	4	10	15	
Pedro Poklepovic N.		3	4			2							3		2	1	9	6	
Raúl Marín B.		3	4			1										2	8	0	
Eduardo Frei M.	5		3		3					4			1		2	4	11	7	
Arturo Matte L.			3	1	2								3			1	6	3	
Eduardo Alessandri		3	4			2							2		3	1	9	5	
Julio Pereira L.		3	3		2								2			1	8	2	
Pedro Opasso C.		3	3			2	2						2		2	1	10	4	
Raúl Rettig Guissen			3		2		2			2				5	2	4	7	9	
Luis Quinteros Tricot			4		2					4				3	2	1	6	10	
Joaquín Prieto C.		3	4		3		3						2			1	13	2	
Marcial Mora M.		2	3		3	3	2	2							1	4	15	1	
Raúl Ampuero D.			4		3					2						4	7	2	
Guillermo Izquierdo A.			3		2					2			2		2	1	5	7	
Francisco Bulnes S.		3	4		3		2			2			3		2	1	12	8	
Juan A. Coloma M.		3	3		2								3			2	8	3	
Eduardo Moore M.		3	4		2	2										2	11	0	
Gerardo Ahumada P.			3	1												4	4	0	
Aniceto Rodríguez A.		2	4			2										4	8	0	
Hugo Zepeda B.		3	4												2	2	7	2	
Bernardo Larraín V.		3	3										1		2	1	6	3	
Luis F. Letelier Icaza			3		2	1				4			2		2	2	6	8	
Carlos Vial Espantoso			3		2								3			1	5	3	
Julio Durán Neumann		3	4				2			1				5	1	4	9	7	
Galvarino Palacios G.			3	1		2								3	2	1	6	6	
Radomiro Tomic R.		3	4					2					2			4	9	2	
Armando Jaramillo L.		3	3	1				1								2	8	0	
Humberto Enríquez F.		3	3							2	5				2	4	6	9	
Tomás Pablo Elorza		2	4								2		2			4	6	4	
Sergio Sepúlveda G.		3	3			2		1							2	2	9	2	
Benjamín Prado C.			3	1							2				2	4	4	4	
Tomás Chadwick V.			3			2				1				1	2	1	5	5	

Hugo Miranda Ramírez	3	4		1				2	1	4	8	3	
Carlos Altamirano O.	2	4		2			2	2	2	1	8	6	
Rafael A. Gumucio V.	3	3	1	2				2	1	2	9	3	
José Musalem Saffie	3	4					1	2		4	7	3	
Volodia Teitelboim V.	2	4		1					1	4	7	1	
Patricio Aylwin A.	5	4		2			1	4	2	4	11	12	
Raúl Juliet Gómez	3	3		2	1	1		2	2	2	10	5	
Renán Fuentealba M.	3	4	1							4	8	0	
Alberto Baltra C.		3		3	3		2		2	1	4	9	5
Luis Luengo E.		3					1		2	1	4	3	4
José Foncea A.	3	4		1					2	1	4	8	3
Raúl Morales A.	3	3					1		2		4	6	3
Alfredo Lorca V.	3	3		1							2	7	0
Juan Hamilton D.		3		3	1			2	3		1	7	5
Juan Carmona P.	3	3	1	3						2	4	10	2
Eugenio Ballesteros	3	3		1			2		2	1	2	7	5
Víctor García G.		3					4		3	3	2	3	13
Anselmo Sule C.		3						3	2		4	3	5
Ricardo Valenzuela S.	3	3					2				4	6	2
José M. Isla Hevia	3	3		1					2		4	7	2
Alberto Jerez Horta	3	3							2		4	6	2
Américo Acuña R.	3	3							2	1	4	6	3
Narciso Irureta A.	2	3		2					2		4	8	2

Appendix 7

Lawyers at the Senate (1925-1969): Their Social Backgrounds

Figure A.7



Sources: Luis Valencia Avaria: *Anales de la República*. Op. Cit. Armando de Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Op. Cit. Julio Retamal Favereau et al.: *Familias Fundadoras de Chile*. Op. Cit.

Appendix 8 (Table A. 8)
Lawyers at the Cabinet of Ministers (per government, 1932-1970) *

	<i>State Field</i>										<i>Legal Field</i>						<i>Indexes</i>		
	P	D	S	m	C	b	O	d	A		J	U	ll	c	B	p	L	SI	LI
<hr/>																			
1.- A. Alessandri																			
(1932-1938)																			
<hr/>																			
Francisco Garcés		3			3	2	3						2		2			10	4
Oswaldo Vial Vial					2	2							2	5				2	7
Humberto Álvarez		3	3		2	1				2	4		2	4	3			10	15
Alejandro Serani B.		3			3						4			4	2			6	10
Guillermo Correa F.		3			3	1					4		2	2	2			8	10
Pedro Freeman C.		3			2	2									1			5	1
Horacio Hevia L.					3				3	6								6	6
Luis Salas Romo		2	4		3										2			9	2
Manuel Silva S.		3	4		3	1												11	2
Miguel Cruchaga T.		3	4		3	2		2			4	2	3		3			14	12
José Gutiérrez A.		2			2	1		1		2	4		3	4	3			7	16
Luis Arteaga García					2	2												4	0
Emilio Bello C.		3			3	2		1					1					9	1
Luis Alamos Barros		2	3	1	3	2	3						1					15	1
Alejandro Errázuriz					3	1		1										7	0
Fernando Möller B.					3	1							1		2			4	3
Fernando García O.					2			2										4	0
Roberto Vergara D.					2	2									2			4	2
Bernardo Leighton		3			3													6	0
Joaquín Prieto C.		3	4		3		3						2					13	2
<hr/>																			
2. P. Aguirre Cerda																			
(1938-1941)																			
<hr/>																			
Luis R. Puga M.			3		2	1				2	4		1	3	2			5	12
Domingo Godoy P.					2										2			2	2
Tomás Mora P.					2			2		3	2				2			4	7
Pedro E. Alfonso B.		3			3	1	3	2		3			2					10	7
Luis Alamos Barros		2	3	1	3	2	3						1					15	1
Fernando Möller B.					3	1							1		2			4	3
Abraham Ortega A.				1	2	1									2			4	2
Marcial Mora M.		2	3		3	2	2	2							1			12	1
Rudecindo Ortega		3	4		2		2	2										11	0
Juan A. Iribarren					3	2					5	2	1		2			5	10
Raimundo del Río					2					2	5	3			2			2	12
Alberto Cabero D.		2	4	1	2	2	2	2		1	2			3	2			13	8
Juvenal Hernández					3	2					2							5	2
Carlos Valdovinos				1	3			4		6	4	1	2					8	14
Alfonso Quintana B.		2		1	3	2	2	2		2					2			10	4

* As indicated, the coding system has been described in the Appendix 6.

	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	SI	LI
3. J A. Ríos																		
(1941-1946)																		
Oswaldo Hiriart C.			4		3	2							2		3		9	5
Alfonso Quintana		2		1	3	2		2		2					2		10	4
Hernán Figueroa		3	4		2	2		2					3		2		13	5
Luis Alamos Barros		2	3	1	3	2	3						1				15	1
Ernesto Barros J.		2			3	2		1		4	2						8	6
Joaquin Fernández				1	3			2					2				6	2
Óscar Gajardo V.		3		1	3	2							2		2		9	4
Benjamín Claro V.		2			3	1				4		2		3			6	9
Enrique Arriagada					2	1											3	0
Eugenio Puga F.					3	2				2		1					5	3
Jerónimo Ortúzar					2			3	6						2		5	9
Arturo Matte L.			3	1	2								3				6	3
Pablo Ramírez R.		3			3	5	3		2						2	2	16	6
Juan A. Iribarren					3	2				5	2	1			2		5	10
Enrique Marshall					3	2				2	1						5	3
Eduardo Frei M.	5	3			3					4		1		2			11	7
Oswaldo Fuenzalida					2	2		1	2	2			1				6	5
Oswaldo Vial Vial					3	2		2					3	1	1		7	5
Jorge Urzúa Urzúa		3		1	2	1									1		7	1
Remigio Medina N.		3	3		3				1						1		9	2
Fernando Möller B.					3	1							1		2		4	3
Mariano Bustos L.					2	2		1									5	0
Alejandro Tinsly					2	1				2			2		3		3	7
Pedro E. Alfonso		3			3	1	3		2	3			2				10	7
4.- G. Gonzalez																		
(1946-1952)																		
Pedro E. Alfonso		3			3	1	3			3			2				10	5
Luis Cuevas C.		3		1	2	2				1	2		1	1	3		8	8
Juan B. Rosetti		3			3	2		1						2	2		9	4
Luis F. Letelier I.			3		2	1				2							6	2
Humberto Correa L.		3			3	1									2		7	2
Guillermo Correa		3			3	1				4		2	3	2			8	11
Luz Olgún Buche					3	2				2			2	1	1		5	6
German Pico C.					2	2							2		2		4	4
Arturo Mashke T.					3	2	3	2					1				10	1
José Infante L.				1	2												3	0
Alejandro Serani		3			3					4				4	2		6	10
Bernardo Leighton		3			3												6	0
Alberto Baltra C.			4		3	2		1		2							10	2
Luis Bossay L.		3	4		3												10	0
Benjamín Claro V.		2			3	1				4		2		3			6	9
Armando Mallet S.		2			2	2				4							6	4
Eugenio Puga F.					3	2				2		1					5	3

J. Ruperto Puga F.	3			3					1	2		6	3	
Humberto Parada	3			2								5	0	
Alfonso Quintana	2	1	3	2	2			2		2		10	4	
Manuel Bulnes S.			3	3				3	2	2		6	7	
Juvenal Hernández			3	2				2				5	2	
Raúl Juliet Gómez	3	3	2	1					2	2		9	4	
Germán Vergara			3	1	2					1		6	1	
Horacio Walker L.		4	3		1			2	3	3	3	2	8	13
Julio Ruiz B.			2	3				2	3	3	3		5	11
Pablo Larraín T.	3			2								5	0	
Alberto Garnham			2	2	3			3	2	3		7	8	
Carlos Contreras	3	4	2	1	1			1				11	1	
Ernesto Merino			3	4				4	2		1	7	8	
Carlos Vial E.		4	2						3			6	3	
Raúl Yrarrázaval L.	3		2	1	1							7	0	
Ignacio Lorca G.			2	1						1		3	1	
Luis Cruz Ocampo			2	1	2					2		5	2	
Ciro Álvarez B.			2	1					1			3	1	
Camilo Cobo G.			2	2						3		4	3	
Germán I. Riesco			3	2				4	3			5	7	
Guillermo Varas C.			2					2	4	2	3	2	2	12
Fernando Claro S.			2		2				3	2	3	4	8	

	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	SI	LI
<u>5. C. Ibañez</u>																		
<u>(1952 - 1958)</u>																		
Orlando Latorre G.					2	1									1		3	1
Enrique Monti F.					3	1				2					2		4	4
Santiago Wilson			2		3	1											6	0
Óscar Acevedo V.					3			4		6							7	6
Oswaldo Koch Krefft					3	2						1		3			5	4
Arturo Zúñiga L.					3	1				1		1					4	2
Mariano Fontecilla V.					3	1		2	4	6	2						10	8
Luis Reyes Ugarte					2	1											3	0
Oswaldo Sainte Marie					3	2						2		1			5	3
Sergio Recabarren		2			3			1						2			6	2
Eduardo Urzúa M.					2	2				2						1	4	3
Óscar Fenner Marín					3	2		2		3							7	3
Enrique Orozimbo		3			2						4			2			5	6
José Serrano P.					2												2	0
Alberto Sepúlveda					2			1									3	0
Óscar Herrera P.					3	2								1			5	1
Felipe Herrera L.					2	1	3			2							6	2
Jorge Prat E.					2	2								2			4	2
Alejandro Hales J.					3	2								2			5	2
Jorge Muñoz de C.					2	1						1	1				3	2
Diego Lira Vergara					3	2				2		1	1				5	4
Mario Montero S.					3									2			3	2

Armando Uribe H.		2				2	1		1	2		2	6
Raúl Rodríguez L.		2	1									3	0
Carlos Vasallo R.		2	2		1							5	0
Clodomiro Almeyda	2		3			2						5	2
Adriana Olguín B.		2	2			2			3		1	4	6

	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	SI	LI
6. J. Alessandri (1958 -1964)																		
Enrique Ortúzar E.					3	3	2					1			2	3	8	6
Germán Vergara					3	1		2							1		6	1
Carlos Martínez S.					2			2									4	0
Julio Philippi I.					3	3	2			2	5				3	3	8	13
Manuel Pereira I.					2			1					2		2		3	4
Eduardo Moore					2	1											3	0
Patricio Barros A.					2	1							1		2		3	3
Enrique Bahamonde					3	5										3	8	3
Orlando Sandoval	3				2	1		1							2		7	2
Pedro E. Alfonso	3				3	1	3		2	3			2				10	7
Paulino Varas A.					3	4					4				3	1	7	8
Federico Peña C.					2	1			3	6							6	6
Hugo Gálvez G.			1		2	1					4				3		4	7
Miguel Schweitzer S.					3						4			4	2		3	10
Benjamín Cid Q.					2	1					4	1					3	5
Julio Chaná					2	2				2	3		3		2		4	10
Joaquín Prieto C.	3	4			3		3						2				13	2
7. E Frei M. (1964-1970)																		
Bernardo Leighton	3				3												6	0
Gabriel Valdés S.					2								3				2	3
Andrés Zaldívar L.			3		3	2				2							8	2
Juan Carmona	3	3	1		3										2	3	10	5
Enrique Krauss R.					3	2							3		2		5	5
Carlos Figueroa S.					3	1				2	4				2		4	8
William Thayer A.					3	1					4	2	2				4	6
Máximo Pacheco					3			2			5	1		4			5	10
Pedro J. Rodríguez					3	1				2	4		2	5	2		4	15
Jaime Castillo V.					3										2		3	2
Víctor González M.	3				2										2		5	2
Eduardo León V.					2	2					2		1		2		4	5
Alejandro Hales J.					3	2									2		5	2
Juan Hamilton D.			4		3	1							2	3			8	5

Appendix 9

Board of the Institute of Lawyers of Santiago (1915) *

Figure A. 9

	<i>State Field</i>									<i>Legal Field</i>							<i>Indexes</i>	
	P	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	SI	LI
Ismael Valdés V.				1	2	1				1				3	3		4	7
Miguel Varas H.		3	3			1	1				4			2	3	1	8	10
Enrique Mac-Iver		3	4		3		1	1			4			3	3	1	12	11
Eleodoro Yáñez		3	4		3			1		2	4	1		3	3	1	11	14
Luis Claro Solar			4		3	2	1				4	3	3	3	3	1	10	17
Carlos Aldunate S.			4		3	1		1			4		3	3	2	2	9	14
Luis A. Vergara R.		3	3		2	2					4	1		2	2		10	9
Alejandro Valdés R.						2					4		2	2	3		2	11
Alejandro Lira Lira		3			3			2			4		2	2	2		8	10
Óscar Dávila I.					3	1					4	1		4	2		4	11
Exequías Allende Z.						2					4			2	2		2	8
Miguel L. Valdés M.						2			4	5	4		3	2		2	6	16
Raimundo del Río					2	1				2			2	2	2		3	8
Tomás Ramírez F.		3			2	2		1			4	1		2	2		8	9
José G. Palma R.						3				2	4	1	3	4	3		3	17
Pedro Aguirre Cerda	5	3	4		3			1			2	1		3	3		16	9
Juan E. Mackenna		3	3	1	2	1		1						3	2		14	5
Romualdo Silva C.		3	4					1	1		4			4	3		11	12
Roberto Sánchez G.		3			3	2		1						2			9	2
Eduardo Opazo L.		3	3					1						2	2		7	4

* For coding system and sources, see Appendix 3. See additionally, *Opening Session. Institute of Lawyers of Santiago*. Santiago: Imprenta Cervantes, 1915.

Appendix 10

The Chilean Bar Association (CHBA) (1925-1970)

This section presents all the members of the CHBA's General Board between 1925 and 1970. The members of the board have been determined according to the CHBA *Annual Reports* at the CHBA Archive, in Santiago. To analyze their socio-political profiles, I have used the following sources: Luis Valencia Avaria: *Anales de La República*. Santiago: Editorial Andrés Bello. 1986. Armando De Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Ediciones Pontificia Universidad Católica de Chile. Santiago: 1999. Ronald Hilton (ed.): *Who's Who in Latin America. Part IV. Bolivia, Chile and Peru*. Stanford: Stanford University Press – Marquis. 1947. For probable social origins, I have employed: Julio Retamal Favereau et al.: *Familias Fundadoras de Chile*. Santiago: Ediciones de la Universidad Católica de Chile. 2000-2003. Additionally, when information is not available in previous sources, I have examined: *El Mercurio* (newspaper), *Revista del Abogado* (CHBA), *Revista de Derecho y Jurisprudencia y Gaceta de los Tribunales*, *Anuario de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*, *Revista Chilena de Derecho*.

For methodology and coding system, see Appendixes 2 and 6. Regarding partisan identities, these have been codified as follow: (c) Conservative Party considering its different factions (Conservative, Social Christian, Traditionalist); (l) Liberal Party; (r) Radical Party; (n) National Party; (cd) Christian Democracy; (s) Socialist; and (o) other. Partisan identities are observed at the moment they were at the board. After presenting a list of the CHBA's General Board members, the last part of this Appendix offers a brief analysis and comparisons of their profiles.

Table A. 10. Profiles at the CHBA's General Board

	Years	<i>State Field</i>							<i>Legal Field</i>						<i>Indexes</i>				
		D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	pp	s	SI
Carlos Estévez G.	1925-54.	3				3				4	2		5	3		c	2	6	14
José R. Gutiérrez A.	1925, 1932-39	2			2	1		1	2	4		3	4	3		c	2	7	16
Manuel A. Maira	1925								4				2	2		r	2	0	8
Óscar Dávila I.	1925-64				3	1			4	1			4	2		l	1	4	11
Alejandro Valdés R.	1925, 1930-32					2			4			2	2	3		c	1	2	11
Julio Philippi Bihl	1925				3	3			2	2			1	3			4	6	9
Alfredo Santa María S.	1925-45			1					4				2	2			1	1	8
Francisco Walker L.	1925							1	2	4	3		2	2		c	1	1	13
Germán Riesco E. (Jr.)	1925 -27, 1933				3	2			4		3					l	1	5	7
José G. Palma R.	1925-27, 1955-57					3			2	4	1	3	4	3			2	3	17
Francisco Langlois V.	1925-1930											2	2	2			2	0	6
Lindor Pérez G.	1925-30, 1935-52	2						1	4			2	4	3		c	3	3	13
Carlos Schurmann R.	1925-32		3	1								2	3	2		r	4	4	7
Arturo Ureta E.	1925-45		3		2	3			5		3	5	4			c	1	8	17
Santiago Santa Cruz C.	1925-67												4	2			1	0	6
Arturo Alessandri R.	1925, 1930-55.								5	3	3	5	3			r	2	0	19
Federico Villaseca M.	1930								4				2	3			2	0	9
Nicolás Marambio M.	1930	2	4	1		1							1	2	1	r	2	8	3
Alberto Cabero D.	1930, 33	2	4	1	2	2		2	1	1			3	2	1	r	4	13	8
Alfredo Egaña P.	1930-37					2			4				3	2		c	1	2	9
Eugenio Ortúzar R.	1930-37					2							3	2			1	2	5
Oswaldo Vial V.	1930, 33.				2	2						2	5			l	1	2	7
Rafael Figueroa G.	1930-39												3	2		r	4	0	5
Rafael Moreno E.	1930	3		1					4		3	3	2			c	1	4	12
Manuel Rodríguez P.	1930-35												2	2		l	2	0	4
Juan B. Rosetti C.	1932	3			3	2		1					2	2		s	4	9	4
Guillermo Varas C.	1932-33, 1935-39				2				2	4	2		3	2		l	2	2	13
Miguel Retamal F.	1932												1	2			4	0	3
Oswaldo Hevia L.	1933-1948												4	2			2	0	6
Luis Quinteros T.	1933-35		4			2			4				3	2	1	s	4	6	10

	Years	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	pp	s	SI	LI
Horacio Walker L.	1934-35, 1946		4		3			1		2	3		3	3	2		c	1	8	13
Alberto Pizarro F.	1934-37													3	2			4	0	5
Leopoldo Ortega N.	1934-39, 1946-53				1					2	4		2	4				2	1	12
Fernando Claro S.	1935-37, 1959-60					2		2					3	2	3		l	1	4	8
Jorge Barceló P.	1936-41, 1956-61						1							3	2			1	1	5
Enrique Rossel S.	1936-39, 1942-54						2			4	2		4	2				4	2	12
Pedro Lira U.	1936-39, 1941-62						2	2		5	2	2	5	3			c	1	4	17
Alejandro Méndez G.	1938-39, 1941							1						2	1			1	1	3
Humberto Álvarez	1938-53	3	3		2	1				2	4		2	4	3		r	4	9	15
José Bravo W.	1938-39													1	2			2	0	3
Ignacio Ureta E.	1938-52													4	2		c	1	0	6
Francisco Bulnes C.	1940-46	3	4			1		1					3	4	5		l	1	9	13
Víctor Delpiano	1940-43									4				2	2		c	1	0	8
Eulogio Guzmán D.	1940-45													3	2			1	0	5
Guillermo Fuentes	1940-43													2	2			2	0	4
Ernesto Silva I.	1940-50, 1959-62									2			2	4	3		c	1	0	11
Raúl Varela V.	1940-62					2			1	3	4	2	2	5	3			4	3	19
Luis Barriga E.	1942-52				2						4			4	3			1	2	11
Pedro Ortiz M.	1944-48								2	3	4			2	1		l	4	2	10
Antonio Ramírez L.	1944-49, 1962-63													3	2		r	2	0	5
Mario Tagle V.	1947	2				1								1	2		c	1	3	3
Guillermo Correa	1947-50	3			3	1				4		2	2	2			l	1	7	10
Pablo Langlois	1947-50													2	2	1		2	0	5
Fernando Albónico V.	1949-58									4				3	2			2	0	9
Carlos Vicuña F.	1951-56	2				1		1						3	2		o	1	4	5
Oscar Lizana P.	1951-66													4	2			2	0	6
Miguel Schweitzer S.	1951-62				3					4				4	2			4	3	10
David Stitchkin B.	1951-55				2	2				5	2		2	3			r	4	4	12
Eduardo Novoa M.	1951-53				3					4	3		1	3	2			2	3	13
Alejandro Serani B.	1953-61	3			3					4				4	2		r	4	6	10

Years	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	pp	s	SI	LI
Alejandro Silva B.	1953-58, 1960-74					3			2	4	3		5	2	3	cd	1	3	19
José Vergara V.	1953-56					3							2	2			1	3	4
Máximo Pacheco G.	1953-56, 1958-64			3			2			5	1		4			cd	2	5	10
Manuel Somarriva U.	1954-58								2	4	2		2	3			1	0	13
Luis Varas Gómez	1955-62								4	1	2		3	2			2	0	12
Armando Uribe H.	1955-58			2					2	1			1	2			2	2	6
Adriana Olguín B.	1955-58			2	2					2			3		1	r	4	4	6
Fernando Castro A.	1957-59								2				1	2			2	0	5
Marco Noguera R.	1957-64												3	2			2	0	5
Miguel Ibáñez B.	1958					3							1	3			2	3	4
Fernando Cerda V.	1959-60												1	2			2	0	3
Florencio Galleguillos	1959-62	3				1			1				2	2		r	4	4	5
Sergio de Ferari J.	1959-62					3							2	3			4	3	5
Juan Hamilton D.	1959-63		4		3	1						2	3			cd	4	8	5
Luis Ribalta Puig	1959-74					2			2				4	2		n	2	2	8
Héctor Correa L.	1961, 1986	3				1				3			1	2		c	1	4	6
Carlos Ducci Claro	1961-1963									4	2		4	2		l	1	0	12
Gilberto Villablanca C.	1961-69, 1971-72					2							3	2		r	2	2	5
Pedro Rodríguez G.	1962-63				3	1			2	4		2	5	2		cd	2	4	15
Mariano Benavente	1963-64								2				1	2			0	0	5
Edgardo Goldenberg	1963-64				1							3	1	2			2	1	6
Lorenzo de la Maza	1963-64				3					4			1	3		c	2	3	8
Patricio Morales S.	1963-70, 1984-85				2								3	2		cd	4	2	5
Daniel Ramírez G.	1963-69									4	1		3	2			4	0	9
Jacobo Schaulsohn	1963-70	3			3		1			4			3	2		r	4	7	11
Julio Salas Romo	1963-80				3				2				5	2			4	3	9
Anselmo Sule C.	1963-70		3										3	2		r	4	3	5
Arturo Montes R.	1964												1	2			2	0	3
Jaime Ross Bravo	1964-66				2					3	1		1	2		cd	3	2	7
Humberto Pizarro B.	1964-66				2								1	2			4	2	3

	Years	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	pp	s	SI	LI
Alfredo del Valle A.	1965-68													2	2			2	0	4
Sergio Baeza Pinto	1965-74					3					4	2	2	3	2			2	3	13
Sergio Guzmán R.	1965-66					1				2				1	2		n	2	1	5
César Serani Martelli	1965-74													3	2			4	0	5
Jaime Silva Silva	1965-74, 1977-78					2								4	2		n	2	2	6
Alfredo Etcheberry O.	1965-70, 1989										4	2	2	4	3		cd	4	0	15
Luis Orlandini M.	1965-72					2				2	3			3	2			4	2	10
Hugo Gálvez G.	1966-74, 1977-82				1	2								3	4	2	n	2	3	9
Enrique Evans	1967-1970					2	3			4	2			2	3	3	cd	2	5	14
Alfonso Azolas C.	1967-1970													2	2			4	0	4
Alfredo Alcaíno B.	1967-69				1									1	2		n	2	1	3
Julio Tapia Falk	1968-72, 1978-80					2		2						3	2			4	4	5
Diego Barros A.	1969-72											1		2	2			1	0	5
Benjamin Moreno	1970-74									1				2	2			4	0	5

Partisan Identities at the CHBA's General Board

Figure A 10.1. Dominants Political Parties during the period 1932-1958

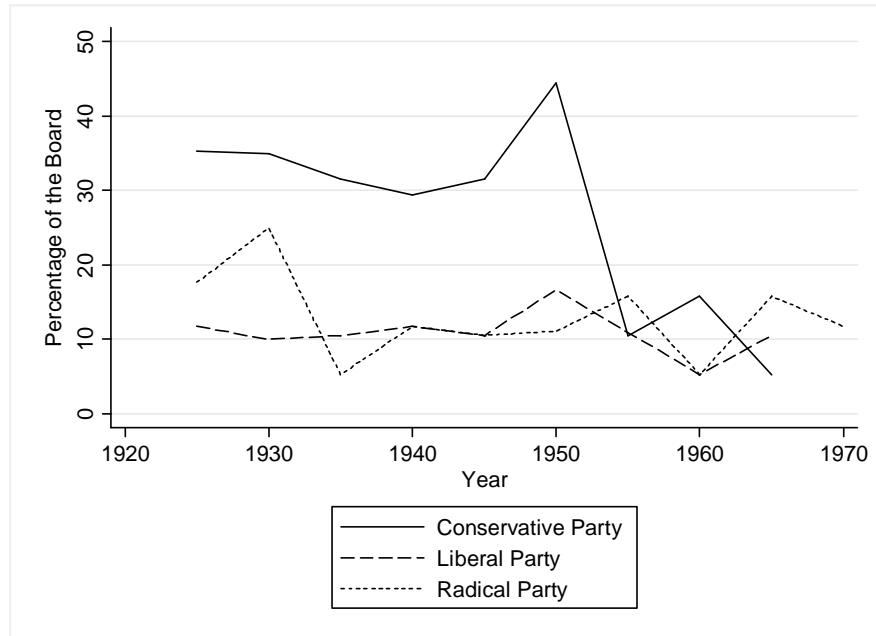


Figure A 10.2. Main Political Parties since the mid-1960s

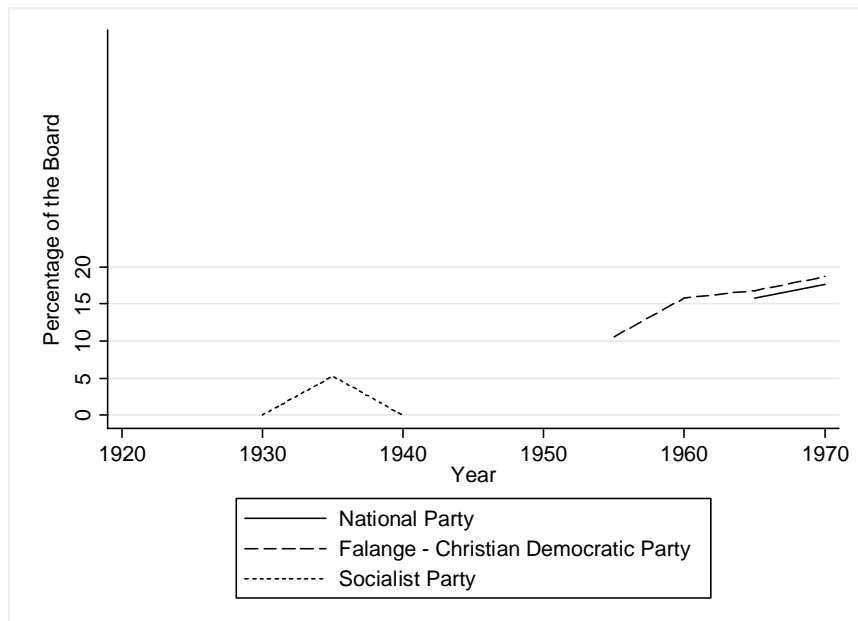
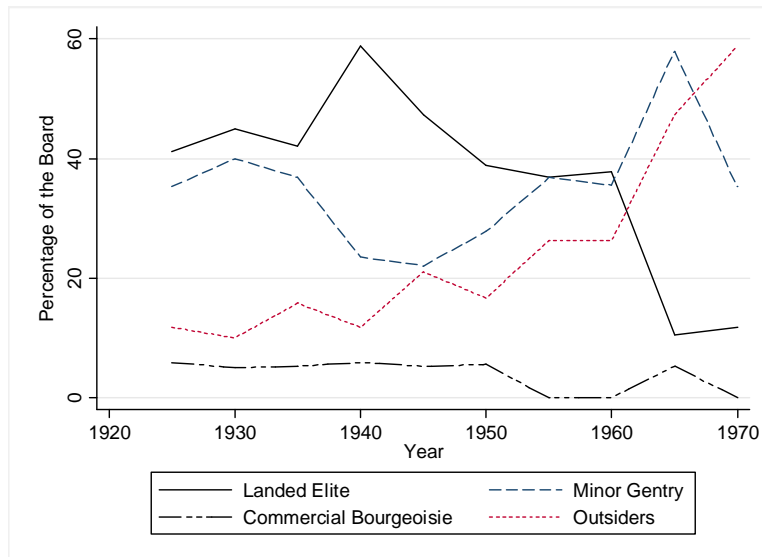


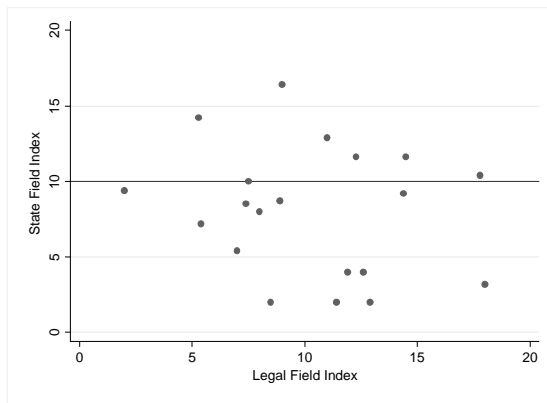
Figure A 10.3. Social Profiles at the CHBA's General Board



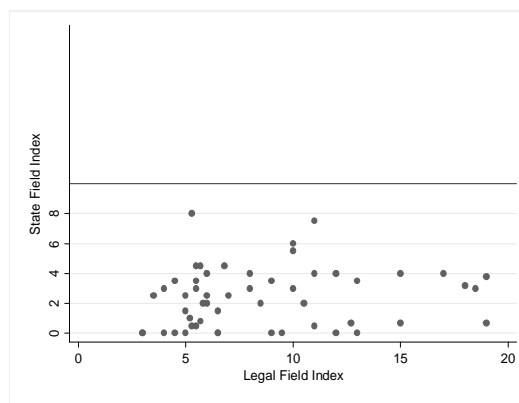
Casting a Comparative Glance on the Bar Boards

Resorting to the same methodological approach that it was used previously to study the members of the Senate and Cabinets, measuring their positions in the state and the legal fields through a bivariate analysis, it is possible to observe a clear characterization. Such as the next figure shows, meanwhile the profiles of the board members at the Institute of Lawyers of Santiago (1915) were highly engaged with politics, the members of CHBA's General Board between 1955 and 1965 seem more passive. On average, the latter ones possessed more episodic and briefer political posts, and were characterized by lower positions in the state.

Figure A 10.4.



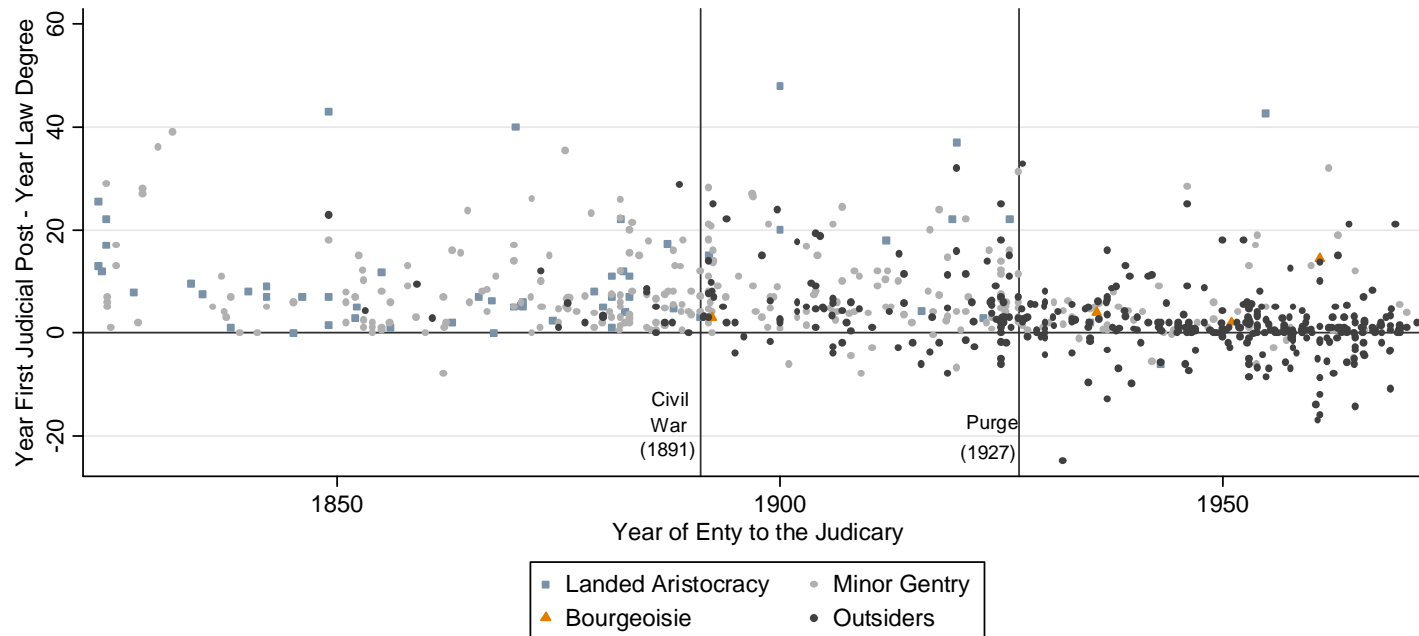
A.- The Institute of Lawyers of Santiago (1915)
($N = 20$)



B.- The CHBA Boards (1955-1965)
($N = 53$)

Sources: *Sesión Inaugural. Instituto de Abogados de Santiago* (1915). Op. Cit. *CHBA Annual Reports 1926-1970*. Chilean Bar Association Library and Archive.

Appendix 11 (Figure A 11)
The Judiciary: A Glance on Judges' Social Profiles



Sources: Bernardino Bravo Lira: *Anales de la Judicatura Chilena. Durante cuatro siglos por mi habla el Derecho*. Santiago: Corte Suprema de Justicia. Editorial Jurídica de Chile. 2011. Armando De Ramón: *Biografías de Chilenos, 1876-1973. Miembros de los Poderes Ejecutivo, Legislativo, y Judicial*. Ediciones Pontificia Universidad Católica de Chile. Santiago: 1999. Julio Retamal Favereau et al.: *Familias Fundadoras de Chile*. Santiago: Ediciones de la Universidad Católica de Chile. 2000-2003. *Note:* The previous graph illustrates the total number of justices who entered to the judiciary between 1823 and 1970, reaching positions at higher courts along their careers (Appellate Courts and the Supreme Court) ($N = 745$). To analyze their social background, I have used the characterization extensively described in Chapter 2.

Appendix 12

The Rhetoric of Legal Crisis: An Analysis of its Timing (1960-1975)

To analyze the emergence of the rhetoric of legal crisis I have selected all the books, articles, letters to newspapers, and intervention at conferences that a) explicitly refer to a crisis of law, legal expertise or juridical institutions; or b) provided an overlook on the legal system that reflects the same mood. In determining this latter aspect, I have included written sources that, at least, indicate 2 of the following characterizations of the Chilean Law of the mid-twentieth century: asynchrony law and society, normative chaos, conflict between codes and new legislation, excessive legal formalism, passivity of courts, delay of juridical academia, class bias as obstacle to social change, and the demise of lawyers in public governance. Although the primary focus of this section is the analysis of the period 1964-1973, I have extended the range of this analysis to the period 1960-1975, attempting to provide a better understanding of its timing.

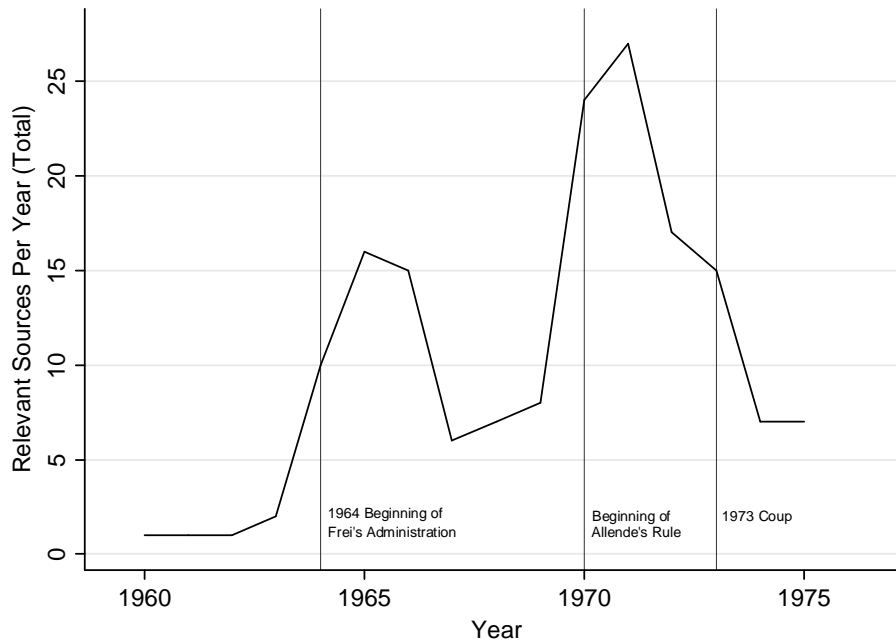
Considering the absence of previous systematic information, I have built a thematic dataset of historical sources. Besides books and recorded conferences, I have selected other material from journals and newspapers which used to be relevant in the legal field and politics by that time: *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*, *Atenea*, *Boletín del Instituto de Investigación y Docencia Jurídica*, *Chile Hoy*, *Cruz del Sur*, *Cuadernos de la Realidad Nacional*, *El Mercurio*, *Estudios Jurídicos*, *Mapocho*, *Mensaje*, *Política y Espíritu*, *Principios*, *Revista Chilena de Derecho*, *Revista de Derecho Económico*, *Revista de la Universidad Técnica del Estado*, *Revista de Derecho Público*, *Revista de Derecho y Ciencias Sociales*, and *Revista de Derecho y Jurisprudencia*. The collected sample is composed of 164 sources of intervention in these debates. In the case of conferences, I have taken into account the date of the event, not of its publication.

Once selected the material sources, they have been classified according to their emphasis and political orientation of their authors. By juridical emphasis, I understand an audience of lawyers or the predominance of strict legal topics, even when they are approached beyond juridical dogmatic. By political emphasis, I have considered the close association of the materials with contingent debates in the public sphere and the general audience to which they were addressed. The political identity of the authors has been considered at the moment in which the materials were published, and, accordingly, it can vary regarding the same author. The next table and graph illustrate the referred data.

Table A.12.

	total per year	by emphasis		by authors political identity			
		juridical	political	left	center	right	n/a
1960	1	1			1		
1961	1	1					1
1962	1	1			1		
1963	2	2			1	1	
1964	10	10		1	5	2	2
1965	16	14	2	3	7	5	1
1966	15	8	7	2	8	2	3
1967	6	6		1		2	3
1968	7	2	5	4	2		1
1969	8	4	4	3	4	1	
1970	24	18	6	5	13	4	2
1971	27	5	22	10	10	1	6
1972	17	7	10	8	6	2	1
1973	15	8	7	5	9	1	
1974	7	7		1	5	1	
1975	7	6	1	1	2	4	
total	164	97	63	43	74	26	20

Figure A 12



Appendix 13

The Rhetoric of Legal Crisis: A Glance on the Authors (1964-1973)

Starting from the material sources, I have compiled a list of 57 law graduates who endorsed this rhetoric between 1964 and 1975, the primary focus of chapters 4, 5, and 6. Bold characters indicate the most active participants according to the relevance, number, and influence of their writings. A brief biographical description of the latter ones, with a particular focus on their responsibilities in this period, is included at the end of this appendix.

To summarize their sociopolitical identities of the lawyers covered in the sample, I have followed code system explained in Appendixes 2 and 6. In regarding 3 of the studied individuals, there was not significant data. Additionally, I have included information about their political identity (pt), social background (soc) and the subject of his academic activity. They have been codified as follow: They have been codified as follow:

- (pt) Political Party: 0 = Not available; 1 = Right (conservative party, liberal party, national party, nationalist, or non-partisan lawyer highly committed to Jorge Alessandri's Government). 2 = Christian Democracy; 3 = Radical Party (including its different denominations); and 4 = Left (Socialist Party, Communist Party, MAPU, Christian Left, others).

- (soc) Social Background: 1 = Landed Elite; 2 = Minor Gentry; 3 = Commercial Bourgeoisie; and 4 = Outsiders coming from middle and lower classes.

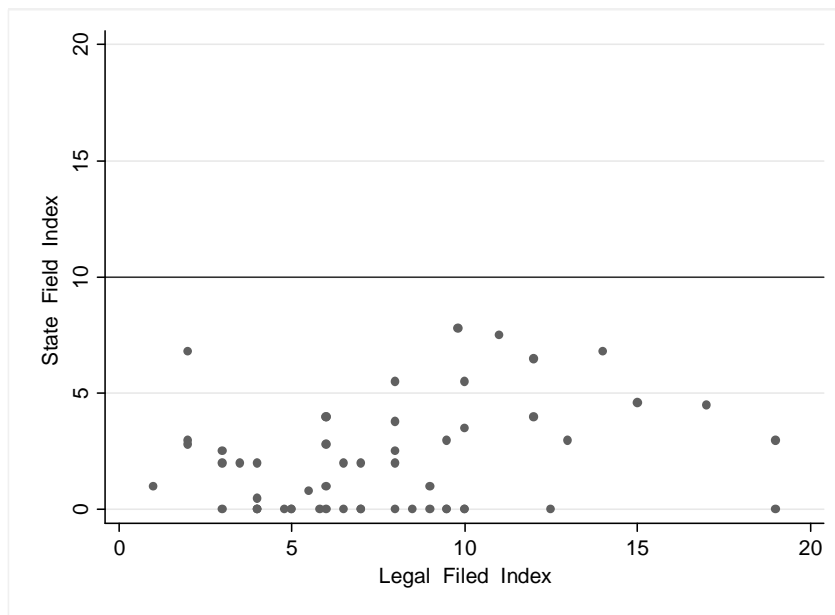
- (su) Subject of Juridical Activity: 1 = Judiciary; 2 = Constitutional Law; 3 = Civil Law; 4 = Commercial Law; 5 = Criminal Law; 6 = Administrative Law; 7 = International Law; 8 = Labor Law; 9 = Legal Philosophy/ Legal History; 10 = Procedure.

Table A 13. An overview on their identities

	State Field					Legal Field					Indexes		Others							
	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	SI	LI	pt	soc	su
Óscar Álvarez							2		3							2	3	0	4	1
Armando Arancibia							2		3							2	3	0	4	1
Patricio Aylwin		4			2				1	4	2			1	2	6	12	2	4	6
Eduardo Azócar (n/a)																	2			0
Sebastián Babra Lyon									4	1	3			2		0	10	0	3	4
Sergio Baeza Pinto					3				4	2	2	3	2			3	13	0	4	4
Bernardino Bravo Lira									3	2						0	5	1	2	9
Álvaro Bunster Briceño					2		2		4					2		4	6	4	2	5
Ismael Bustos Concha									3	1						0	4	2	2	9
Juan Bustos Ramírez					1				4	2						1	6	4	4	5
Rafael Cañas L.					1				4	1	2			2		1	9	0	2	4
Jaime Castillo Velasco					3									2		3	2	2	2	9
Francisco Cumpido					2				4	2						2	6	2	4	2
Andrés Cuneo									3	1						0	4	2	4	9
Alonso De la Fuente							2	3								2	3	0	4	1
Lorenzo De la Maza					2				4			1	3			2	8	1	1	3
Ramón Domínguez A.									4	2			3			0	9	1	2	3
Crescente Donoso L.									3	1						0	4	1	1	9
Raúl Espinoza Fuentes					2				4	2						2	6	4	4	10
Alfredo Etcheberry O.									4	3			3			0	10	2	2	5
Gonzalo Figueroa Y.									4				2			0	6	3	2	3
Fernando Fueyo L.									4	3	2		3			0	12	0	2	3
Rubén Galecio G.							2	3	4					1		2	8	0	4	1
Bernardo Gesche M.					1				4	2			2			1	8	0	4	7
Renato Guzmán Serani									3				2			0	5	1	4	4
Felipe Herrera				2	1	3			2							6	2	4	4	7
Jorge I. Hübner G.									3	2			2			0	7	1	4	9
Misael Inostroza Soto									2				2			0	4	4	4	4
Pedro Lira Urquieta					2		2		5	2	2	5	3			4	17	1	1	3
Octavio Maira Lamas									4	2			2			0	8	0	4	3
Jorge Morales (n/a)													2				2			0
Pedro Neira Molina									3				2			0	5	0	4	2
Eduardo Novoa M.				3		3			4	3		1	3	3		6	14	4	4	5
Francisco Orrego V.									3	2						0	5	1	2	7
Máximo Pacheco G.				3		2			5	1		4				5	10	2	2	9
Jorge Precht Pizarro									3	1						0	4	2	4	9
Rubén Oyarzún G.									5	2			2			0	9	0	4	7
Hugo Pereira Anabalón					2				4	1			2			2	7	4	4	10
Guillermo Pumpín B.					3				5				3			3	8	1	4	3
José Rodríguez E.					2				3	1						2	4	4	4	9

	<i>State Field</i>							<i>Legal Field</i>						<i>Indexes</i>			<i>Others</i>			
	D	S	m	C	b	O	d	A	J	U	ll	c	B	p	L	SI	LI	pt	soc	sj
<i>Pedro J. Rodríguez G.</i>				3	1				2	4		2	5	2		4	15	2	2	3
<i>Pablo Rodríguez G.</i>										4	2			3		0	9	1	4	3
Hugo Rosende S.	3				2				4	2			2			5	8	1	4	3
Emilio Saavedra E. (n/a)																		2		0
Manuel Salvat M.									2	1						0	3	1	4	9
Manuel Sanhueza Cruz									5					2		0	7	3	4	2
Jacobo Schaulsohn	3				3		1		4			3	2			7	11	3	4	3
Miguel Schweitzer S,				3					4			4	2			3	10	1	4	5
<i>Enrique Silva Cimma</i>					3	4			2	4	2				1	7	9	3	4	6
<i>Alejandro Silva B.</i>									2	4	3		5	2	3	0	19	2	1	2
David Stischkin				2	2				5	2		2	3			4	12	3	4	3
Raúl Varela Varela					2		1	3	4	2	2	5	3			3	19	0	4	4
<i>Eugenio Velasco L.</i>				2		1			5	2			2			3	9	3	2	3
Carlos Vergara Bravo									4				2			0	6	2	2	9
<i>José A. Viera-Gallo</i>				2										2		2	2	4	2	9
<i>Jorge Tapia Valdés</i>				3	1				4	2						4	6	3	4	2
Luciano Tomassini					1					1						1	1	4	4	7

Figure A 13. A Look at their positions at the State and the Legal Fields.



Brief biographical notes of lawyers highly committed to this rhetoric (Name, date of birth and death, legal education, the area of practice or scholarship, relevant positions, most relevant publication of law during the period, if so).

1. **Sebastián Babra Lyon.** (b. 1939-). Catholic University of Chile School of Law, 1962. Professor of Law (Business Law) at the same university (late 1960s early 1970s), Attorney.

2. **Jaime Castillo Velasco.** (b.1914 - d. 2003). University of Chile School of Law, 1935. Studies in Philosophy, UCH, and France. Professor of Political Science at UC and UCH. Minister of Land 1964. Minister of Justice 1966-1969. Christian Democrat Politician. Director of the Institute for Political Studies. Editor *Política y Espiritu*. Human Rights Advocate in the 1970s. Exiled. Member of the Board of the CHBA in the late 1980s. Numerous publications on politics and philosophy.

3. **Francisco Cumplido Cereceda.** (b. 1930). University of Chile School of Law, 1957. Professor of Constitutional Law at the same school in the sixties and early seventies. Legal Adviser, Minister of Land. Director of the Institute of Political Sciences (UCH), 1969-1972. Director of National Research Department, 1970. Christian Democrat Politician. Researcher at Latin-American School of Social Sciences (FLACSO) in the 1970s and 1980s. Member Group of Constitutional Studies (G- 24). Professor at other universities, such as Diego Portales University School of Law. Member of the Board CHBA (1987-1989). Minister of Justice, 1990-1994. Numerous publications on politics.

4. **Andrés Cuneo Machiavello.** (b. 1940) Lawyer, Catholic University of Valparaiso, 1965. Legal Training Stanford (1967) and Harvard (1972). Professor of Law, Catholic University of Valparaiso (1967 - 1970), Catholic University of Chile (1970-1973), University of Chile (1973-75). Director Institute for Teaching and Legal Research (1970-1975). Banking Lawyer. Professor of Civil Law since 1983, and Dean Diego Portales University (2004-2007). *Materials for an Introduction to Law* (1974)

5. **Crescente Donoso Letelier** (b. 1932 – d. 2007). Catholic University of Chile School of Law, 1956. Researcher at the Institute of Economy, University of Chile during the mid-1960s. Professor of Legal Philosophy and Natural Law. Catholic University of Chile since the late 1960s. *Our Legal Crisis. Some observations on the inadequacy of the legal forms to current reality* (1964)

6. **Alfredo Etcheberry Orthusteguy** (b. 1931). University of Chile School of Law, 1956. LL.M. Columbia University. Professor of Criminal Law since 1959 (UCH, UC). Board CHBA, 1965-1970. Vice-Provost Catholic University of Chile, 1967-1973. Christian Democrat Leaning. Attorney. *Criminal Law* (1964), *Criminal Law before Jurisprudence* (1967).

7. **Gonzalo Figueroa Yáñez.** (b. 1929 – d. 2011). University of Chile School of Law, Legal Training Stanford and UCLA (1968). Professor Agrarian Law, Civil Law UCH since the late 1960s and at the UDP since the early 1980s. Board Institute for Teaching and Legal Research (1970-1975). Latin American Council of Law and Development in the mid-1970s. Radical Party. Editor of the Journal *Cauce* in the 1980s. *Handbook of Civil Law* (1974).

8. **Rubén Galecio Gómez.** (b.1919) University of Chile School of Law, 1943. Justice. Appellate Court of Santiago. Professor of Law at the UCH by the mid-1960s (Procedure). *Project to Reform the Code of Criminal Procedure.* (1968).

9. **Bernardo Gesche Müller.** (b.1917–d.1997). University of Concepcion School of Law, 1942. Former Intendant of Concepcion, 1952-1953. Professor International Private Law. Director of the Legal Research Department at the University of Concepcion School of Law. *Jurisprudencia Dinámica* (1971).

10. **Octavio Maira Lamas.** (b. 1932). University of Chile, 1957. Doctor in Law, University of Paris, 1960. Professor of Civil Law. Director Seminar of Private Law, UCH.

11. **Eduardo Novoa Monreal.** (b.1916-d.2007) University of Chile, 1940. Professor of Criminal Law UCH and UC since the mid-1950s, Professor of Legal Theory, UCH 1970-1973. Head Institute of Criminal Sciences of Chile, 1959-1971. Collaborator Model Penal Code for Latin America, by the mid-1960s. Candidate to Provost, University of Chile, 1970. Board CHBA, 1951-1953. Attorney. Officer State Defense Council since 1937 (Chief, 1970 -1972). Legal Advisor Salvador Allende, Drafter Constitutional Reform to Nationalize Cooper, 1971. Associated Drafter Project for a Workers' Republic Constitution, 1972. Exiled, serving in several Latin American universities. *Chilean Criminal Law* (1960), *The Law as an obstacle to social change* (1975), numerous books and articles on law and politics.

12. **Rubén Oyarzún Gallegos.** (- d.2004) University of Chile, 1948. Lecturer Institute of Economy UCH by the mid-1950s. Professor of Law, Director of the Department of Economic Law UCH since the early-1960s; Interim Dean, 1971-1972. *The Law of the Integration* (1968).
13. **Guillermo Pumpin Belloni.** (b.1932-d.2005) Catholic University of Chile, 1955. Professor of Civil Law UC in 1958, Dean, 1968-1970. Attorney, Labor Bureau Director, 1959-1963. State Defense Council, 1963-1978 (Nationalization of Cooper Legal Commission). Leaning-Right Lawyer.
14. **José Rodríguez Elizondo.** University of Chile, 1960. Legal Staff, Comptroller of the Republic Office, 1959-1970. Chief Legal Department, National Development Corporation (CORFO, 1970-1973). Board Chile Films, State Insurance Institute, 1970-1973. Professor of International Relations, UCH School of Law, 1970-1973. Communist Party. Books and articles on Politics.
15. **Pedro Jesús Rodríguez González.** (b. 1907-d.1982). Catholic University of Chile, 1930. Professor of Civil Law, UC. Integral Lawyer Supreme Court, 1953-1958. Head, Board CHBA in 1963-1964. Minister of Justice, 1964-1966. Christian Democrat.
16. **Pablo Rodríguez Grez.** (b. 1937). University of Chile, 1962. Professor of Civil Law UCH, since 1964. Attorney. Leader Nationalist Movement Fatherland and Freedom, 1970-1973. *From the Juridical Relativity. Legal Crisis and functional statutes* (1965).
17. **Enrique Silva Cimma** (b.1918- d.2012) University of Chile, 1945. Professor of Administrative Law UCH from 1949. Founder School of Public Administration and Political Sciences, UCH, 1956-1957. Director Seminar of Public Law UCH during the 1960s. Interim Dean UCH, 1968. Attorney. Comptroller of the Republic, 1959-1967. Integral Lawyer Supreme Court, 1968-1973. Chief Justice, Constitutional Tribunal, 1970-1973. Radical Party Politician. Minister of Foreign Affairs, 1990-1994. Senator, 1998-2006. *Chilean and Comparative Administrative Law* (1954, several editions).
18. **Alejandro Silva Bascuñán.** (b.1910 –d.2013) Catholic University of Chile, 1933. Studies of Political Sciences, University of Paris, in the early 1950s. Professor of Constitutional Law UC, between 1946 and 2013. Director Department of Public Law UC in the 1950s and 1960s. Attorney. Board CHBA, 1953-1974 (Head, 1964-1974). Member, Constitutional Commission, 1973-1977. Group of Constitutional Studies, G-24 in the late 1970s and early 1980s. Integral Lawyer Supreme Court. 1991-1994. Christian Democrat. *Treatise on Constitutional Law* (1963, several editions).
19. **Eugenio Velasco Letelier** (b.1918-d.2001). University of Chile, 1942. Professor of Civil Law UCH 1943-1973. Director School of Law, 1957-1963. Vice Provost UCH, 1960. Dean UCH School of Law, 1965 – 1971. Ambassador in Tunisia, 1963-1965. Radical Party Politician. Human Rights Advocate in the 1970s. Exiled. Justice Constitutional Tribunal, 1991- 1993. *The law and the social changes* (1967)
20. **José Antonio Viera-Gallo Quesney.** (b. 1943) Catholic University of Chile, 1968. Degree in Political Sciences, Latin American Institute of Doctrine and Social Studies (ILADES), 1968. Lecturer Political Sciences and Researcher at the Center of Studies for Contemporary Reality in the early seventies (CEREN), UC. Judicial Clerk, Supreme Court, 1965-1968. Founder, Movement of Unitary Popular Action, MAPU, 1969. Undersecretary of Justice 1970-1973. Exiled. Editor *Chile-America*. Socialist Party in 1985. Deputy, 1990-1998, Senator, 1998-2006. Minister of the Presidency, 2007-2010. Justice, Constitutional Tribunal 2010-2014.
21. **Jorge Tapia Valdés.** (b. 1935). University of Chile, 1960. Legal Training, Stanford, 1966. Legal Clerk at the Senate in the 1960s. Professor of Law, UCH in the mid-1960s. Institute for Teaching and Legal Research (1970-1973). Minister of Justice, 1972-1973. Exiled. *The Legislative Technique* (1960). *Constitutional Hermeneutics* (1971)

Appendix 14

Rhetorical Elements of the Written Sources

An important portion of Chapter 4 has been built on the study of the written sources and the authors that refer the legal crisis, which were described in Appendix 12 and 13. To examine the substantive aspects of these debates, I have coded each participant in the discussions according to the content of their writings between the period 1964 and 1975. I have preferred to use intervening lawyers as the unit of analysis attempting to observe the distribution of topics along the political, occupational and generational spectrum.

Once determined the analyzed individuals, I have proceeded to code the rhetorical elements of their writings. In so doing, I have divided the analysis into two sections a) The description of the legal crisis and b) the proposals that they present to overcome the shortcomings of law. The rhetoric elements that I have tracked were coded according to a positive or negative answer (Yes/No), The definition of the rhetorical elements has been considered as follow:

1. Description of Legal Crisis.

- a. *Asynchrony Law and Society*: Inadequacy of the legal institutions and social change, the law as an obstacle to social change.
- b. *Excessive Legal Formalism*: Lack of responsiveness of law due to the rigidity of the juridical dogmatic and statutory textual interpretation.
- c. *Conflict Old Law and New Social Legislation*: Unresolved contradictions and tensions between the old liberal codes that structured state and the legal field in the nineteenth century and new disorganized social legislation enacted during the welfare state.
- d. *Normative Chaos*: Big amount of norms, lack of systematic character of the statutory norms, legislative disarray, contradiction, and obscurity of statutes and administrative rules.
- e. *The Demise of the Legal Profession in Public Affairs*: Declining influence of lawyers, law professors and judges within decision-making and governance.
- f. *Bourgeois Legality/ Class bias*: A Marxist approach to law as an instrument of dominant capitalist class, and one of the causes of the legal crisis.
- g. *The role of groups of interest*: Bargaining and Lobbying of Economic, labor, political, and social groups is a cause of the normative chaos.

2. Proposals

- a. *Reform Legal Education and Scholarship*. Curricular changes within the school of law to provide new professionals skills and knowledge to law graduates other than mere dogmatic expertise anchored on textual interpretation. Socio-legal and others types of methodologies in juridical scholarship.
- b. *Flexible Legal Reasoning and Interpretation*. Problematic study of law and use of methods other than mere textual interpretation.
- c. *Reorganize / Actualize Legislation*: Re-codification, Major legislative amendments or reordering.
- d. *Reform Judicial Procedure*: Change to judicial training, procedural issues, judicial interpretation, access to justice.
- e. *Major Amendments or Changes to the Civil Code*.
- f. *Reform to Political Institutions*: Reform to the Congress, Presidential Authority, Electoral Districts, Separation of Powers.
- g. *Reform to Lawmaking* (reinforce juridical advice): Lawmaking commissions, legal advisors, legal indexes, technical procedures to conciliate norms, etc.
- h. *State Intervention in Economy*. Expropriations, panning.

- i. *Reorganize State Bureaucracy*: New Departments, autonomous agencies and public corporations, ombudsman, etc.
- j. *Reform Lawmaking* (Reinforce Executive): Presidential Initiative, Congressional delegation, etc.
- k. *Establishment Administrative Tribunals*.

Political Orientation: See Appendix 13.

Employment: Considered for the period 1964-1973. Lawyers at Public positions are considered within public employment even when such a post was not a full-time responsibility. Judiciary is classified as an independent indicator.

Age: Considered by 1964.

Table A. 14

Code	n	%	Political Orientations (n)				Employment (n)				Age (n) (by 1964)		
			left	center	right	n/a	public	private	judiciary	n/a	< 40 yrs.	> 40 yrs.	n/a
1. Description of Legal Crisis (emphasis)													
a. Asynchrony Law and Social Change	41	72	9	16	9	7	17	7	3	13	15	21	4
b. Excessive Legal Formalism	29	51	8	12	4	6	11	6	1	12	14	11	4
c. Conflict Old Law v. New Social Legislation	25	44	7	7	7	6	11	5	0	8	12	10	0
d. Normative Chaos	23	40	4	8	7	5	11	5	1	7	12	11	1
f. Demise of Legal Profession in Public Affairs	14	25	2	4	5	3	8	3	1	2	6	8	0
g. Bourgeois legality as obstacle / Class Bias	12	21	10	2	0	0	5	1	4	1	2	9	1
h. Role of groups of interests	10	12	1	3	5	0	7	2	0	1	3	6	2
2. Proposals													
a. Reform Legal Education and Scholarship	22	39	2	11	2	6	9	4	0	8	9	12	0
b. Flexible Legal Reasoning and Interpretation	19	33	2	10	2	6	10	3	0	6	5	12	2
c. Reorganize/ Actualize Legislation	19	33	2	8	4	7	11	4	0	6	7	11	3
d. Reform Judicial Procedure and Training	11	19	5	3	2	1	5	2	1	3	5	6	0
e. Major Amendment or Change of the Civil Code	10	18	2	5	3	1	8	1	0	2	4	6	1
f. Reform Political Intuitions	10	18	4	3	1	1	8	1	0	1	6	3	1
g. Reform Law Making (reinforce juridical advice)	8	14	2	3	2	1	6	1	0	1	2	5	1
h. Expanding State Intervention in Economy	7	12	4	3	0	0	4	2	0	1	3	4	0
i. Reorganize State Bureaucracy	4	7	1	3	1	0	2	1	0	1	1	3	0
j. Reform Law-Making (reinforce Executive)	3	5	1	2	0	0	3	0	0	0	1	2	0
k. Establishment of Administrative Tribunals	2	4	0	2	0	0	2	0	0	0	0	2	0
Total Sample (by individual speaker)	57	100%	13	22	12	10	23	14	4	16	23	28	6

Appendix 15

Lawyers involved in the projects of constitutional reform (on lawmaking, 1964-1970)

Projects of Reform	Role	Other Post 1964-1970	Academics
Bill of 1964 (not passed)	<u>Drafting Commission 1964-1965</u>		
	<i>Pedro Rodríguez González (p)</i>	CHBA, M. of Justice 64-66	Civil Law
	<i>Patricio Aylwin (p)</i>	Senator	Administrative
	<i>Alejandro Silva Bascuñán (p)</i>	Chief CHBA	Constitutional
	<i>Francisco Cumplido (p)</i>	Counsel Minister of Land	Constitutional
	Francisco A. Pinto (*)		
	Eugenio Ballesteros R. (p)	Representative	Political Economy
	Enrique Evans (p)	Under-Secretary of Justice	Constitutional
Bill of 1969 (Ley 17.284, 1970)	<u>Drafting Commission 1968</u>		
	<i>Jaime Castillo Velasco</i>	M of Land, M. of Justice 66-69	
	<i>Pedro Rodríguez Gonzalez (p)</i>	CHBA, Minister of Justice 64-66	Civil Law
	<i>Gustavo Lagos (p)</i>	FLACSO, IB, M. of Justice 69-70	Political Economy
	<i>Patricio Aylwin (p)</i>	Senator	Administrative
	Guillermo Piedrabuena R. (p)		Procedure
	Alberto Pulido		
	José Luis Cea (p)		Constitutional
	Juan Manuel Baraona		
	Alejandro González Poblete	Undersecretary of Justice 66-70	
	<u>Reports to the Congress 1969</u>		
	<i>Enrique Silva Cimma (p)</i>	Former Comptroller	Constitutional
	<i>Francisco Cumplido (p)</i>	Counsel Minister of Land	Constitutional
	<i>Alejandro Silva Bascuñán (p)</i>	Chief CHBA	Constitutional
Enrique Evans (p)	Former Under-Secretary of Justice	Constitutional	
Jorge Ovalle Quiroz (p)		Constitutional	
Jorge Guzmán Dinator (p)		Constitutional	
Carlos Cruz-Coke (p)		Constitutional	

Sources: Guillermo Piedrabuena Richard: *La Reforma Constitucional. Historia de la Ley 17.284, sus principales alcances y posición de los partidos políticos.* Op. Cit. Abbreviations: (p) Law Professor; * economist. M.: Minister of the Cabinet; IB: Inter-American Development Bank.

Appendix 16

Law Professors Involved in the Reform to the Law Schools

Table A 16.1 University of Chile. 1966 Reform

Teaching Commission (1964-1965)	Other posts (about 1964-1968)
Dario Benavente (RP)	<i>Dean (1956-1965)</i>
<i>Avelino León Hurtado</i>	Attorney State Defense Council (Board)
Eugenio Velasco (RP)	<i>Dean (1965-1972)</i> , Ambassador (1963-64)
Enrique Silva Cimma (RP)	Comptroller of the Republic (1959-1967)
Eduardo Novoa Monreal (left)	Attorney State Defense Council (Board)
Alfredo Etcheberry (CD)	Board CHBA (1965-1970)
<i>Jacobo Schaulsohn (RP)</i>	Deputy Congress (1949-1965)
<i>Miguel Schweitzer</i>	Minister of Labor (1963-64)
<i>Máximo Pacheco (CD)</i>	Ambassador (1965) M. of Education (1968-70)
Luis Cousiño	
Enrique Munita	
Alberto Baltra (RP)	Senator (1968-1973)
Pablo Rodríguez Grez (right)	<i>Secretary Reform Teaching Commission</i>

Source: Dataset build by the author based on Roberto Mayorga: *La Reforma a la Escuela de Derecho de la Universidad de Chile de 1966*. OP. Cit. p. 12. Only Law Professors are included. NOTE: Political Affiliations between brackets: (CD) Christian Democracy; (LP) Liberal Party; (NP) National Party; (RP) Radical Party in its different denominations; (SP) Socialist Party. Other: (left) left leaning without affiliation at the time of observation; (right) right-leaning without affiliation at the time of observation. Committed to the Rhetoric of Legal Crisis: Cursive; Highly Committed to the Rhetoric of Legal Crisis: Bold Cursive.

Table A. 16.2. University of Chile. 1970 Reform

Reform Commission (1968-1969)	Other posts (about 1969-1970)
Eugenio Velasco (RP)	<i>Dean (1965-1972)</i>
Ricardo Lagos Escobar (SP)	General Secretary University of Chile. 1969-1971.
Enrique Silva Cimma (RP)	<i>Interim Dean (1969)</i> Chief Justice Const Court (70)
Francisco Cumplido (CD)	<i>Chair Reform Committee</i> . Advisor M. of Land
Alfredo Etcheberry (CD)	Vice-Provost UC. Board CHBA (1965-1970)
Eduardo Novoa Monreal (left)	Chief Attorney State Defense Council (1970)
Aida Figueroa Yávar	
Jorge Ovalle Quiroz (RP)	
<i>Rubén Oyarzún (right)</i>	<i>Interim Dean (1970 / 1972)</i>
Rolando Pantoja	Legal Counsel Comptroller's Office
<i>Hugo Pereira Anabalón (left)</i>	Attorney State Defense Council, Board (1970)
Carlos Fortín Cabezas (SP)	FLACSO, Inter-American Bank
Iván Lavados Montes (CD)	Office of Planning (Odeplan)

Source: *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile*. Faculty of the School of Administration are not included). Jaime Eyzaguirre, who had elected to take part of the commission passed away before he entered into office.

Table A 16. 3 Catholic University of Chile School of Law. 1970 Reform.

Academic Council (1969-70)	Other Posts (1964-1970)
Guillermo Pumpin (right)	<i>Dean (1968-1970)</i> . Head Labor Agency (1958-64). Attorney State Defense Council (Board)
Jaime del Valle (NP)	<i>Vice Dean</i> . Undersecretary of Justice. 1958-1964
José Luis Cea	<i>Academic Council Secretary 1969</i> . Gov. Advisor.
Andrés Cuneo	<i>Academic Council Secretary 1970</i>
José Bernales Pereira	Secretary. UCH School of Law, Valparaiso (1967-70)
<i>Enrique Cury (CD)</i>	
Sergio Gaete Rojas	
Patricio Novoa Fuenzalida	
Álvaro Puelma Accorsi	
Raúl Santa María de la Vega	Chief. Diplomatic Academy, 1968-1970
Edmundo Vargas Carreño	Advisor. State Agricultural Commerce Corp. ECA
<i>Sergio Baeza Pinto (pro CD)</i>	
Francisco Bulnes Rippamonti	
Álvaro Covarrubias B. (pro CD)	Undersecretary of Social Security, 1967-1970
Sergio Diez Urzúa (NP)	Deputy, 1962-1965
José María Eyzaguirre G. (NP)	
<i>Enrique Evans (CD)</i>	Undersecretary of Justice, 1964-1966
Jaime Guzmán Errázuriz	
Manuel Guzmán Vial (pro CD)	Attorney State Defense Council.
Hugo Hansih Espíndola	
<i>Pedro Lira Urquieta (NP)</i>	Ambassador 1958-64. Attorney State Defense Council.
Julio Philippi Izquierdo	Former M. Justice, Land, Foreign Affairs (1958-64)
Fernando Rozas Vial	
César Sepúlveda Latapiat	Chair. National Society of Agriculture. 1964
Gustavo Serrano Mahns	
Alejandro Silva B. (CD)	Head Bar Association (1964-1974)
Other participants	
<i>Alfredo Etcheberry (CD)</i>	<i>Vice Provost UC</i> . Board CHBA (1965-1970)
<i>Luis Bates (CD)</i>	<i>Founder Clinic Program (1970)</i> . State Defense Council

* SOURCE: *Reforma a la Escuela de Derecho Universidad Católica (1969-1970)*. Santiago: Universidad Católica de Chile. 1970. Also, biographical dataset collected by the author.

Appendix 17
List of Interviewees (Alphabetical Order)

1. Antonio Bascuñán Valdés (August 22nd 2014)
2. Raúl Bertelsen Repetto (August, 11st, 2014)
3. Guillermo Bruna Contreras (July 1st 2013)
4. José Luis Cea Egaña (August 4th 2014)
5. Carlos Cerda Fernández (August 6th 2014)
6. Jorge Correa Sutil (June 19th, 2013)
7. Francisco Cumplido Cereceda (July 15th, 2014)
8. Andrés Cuneo Machiavello (June 21st 2014)
9. Mario Duvauchelle Rodríguez (July 21 2014)
10. Luis Valentín Ferrada Valenzuela (July 13th 2014)
11. Waldo Fortín Cabezas (July 10th 2014)
12. Hugo Frühling Ehrlich (July 1st 2014)
13. Edmundo Fuenzalida Faivovich (July 9th 2013)
14. Alejandro Guzmán Brito (July 12nd 2013)
15. Cecilia Medina Quiroga (July 10th 2014)
16. John Henry Merryman (November 27th 2014)
17. Humberto Nogueira Alcalá (July 29th 2014)
18. Jorge Ovalle Quiroz (July 11th 2013)
19. Luis Ortiz Quiroga (July 10th 2014)
20. Carlos Peña González (August 13th 2014)
21. Eduardo Soto Kloss (July 3rd 2013)
22. José Antonio Viera-Gallo (July 8th 2013)