

fulfill this responsibility, the Court had cassation powers, that is, powers to quash judicial decisions based either on a mistaken interpretation of the law or on a failure to observe the rules of procedure. Cassation powers were strictly regulated: decisions had to be reasoned and could only be exercised against a limited number of Court of Appeals' judgments. Thus, cassation powers sought to achieve a balance between ensuring the independence and autonomy of lower court judges and ensuring a degree of uniformity and coherence in judicial decisions. By contrast, the complaint proceeding was a summary proceeding subject to flexible rules that did not require the Court to offer reasons in support of its decisions (Arteaga and González 1986:123). Over the years, the complaint proceeding underwent an important transformation. Instead of a genuine disciplinary proceeding, it became, in practice, an informal type of cassation. How this transformation came about is worth recounting.

Transformation of the Complaint Proceeding

The complaint proceeding dates back to 1875, when the first Judicial Code was enacted. Under that code, a "complaint," as it was then known, was a disciplinary device, not an ordinary civil remedy to challenge judicial decisions (Munita 1955:57). Throughout the nineteenth century, the Supreme Court had consistently resisted attempts by litigants to use the complaint mechanism as a device to review lower court decisions. By the early 1900s, however, the Court had changed its policy. It allowed parties to use the complaint proceeding to overturn lower court decisions and enacted regulations setting out the procedural requirements applicable to it. This decision and the ensuing regulations were strongly criticized by contemporary observers, as the Court did not have the power to amend or supplement the provisions of the Judicial Code (Munita 1955:64-65; Robles 1936:162-163). Four decades later, in 1944, the Court's bold transformation of its disciplinary powers was validated by the legislature through an amendment of the Judicial Code. Although under the terms of the amendment, the complaint proceeding continued to be regarded as a disciplinary mechanism, the Supreme Court soon announced that it could be used to challenge any judicial decision regardless of the availability of other judicial remedies (Munita 1955:61-63, 101). The complaint proceeding as a means to challenge judicial decisions, thus instantly became a more attractive and less cumbersome device than cassation. The Supreme Court also used its expanded disciplinary

powers to quash decisions of special administrative tribunals. These tribunals, created by the legislature to resolve disputes in specific areas of public policy, such as labor law or agrarian law, were expressly designed to remain beyond the jurisdictional and disciplinary reach of the Supreme Court. The provisions of the Judicial Code did not apply to these tribunals and the Supreme Court did not play a part in the selection, appointment, or removal of its members. Tribunal members were part of the central administration and so their position was different from that of judges in ordinary courts who were independent of the government, enjoyed security of tenure, and were subject to the disciplinary powers of the Supreme Court (Aylwin 1952:302-310).

The Supreme Court, however, extended the reach of the complaint proceeding to these special tribunals. It did so, based on a broad interpretation of Article 86 of the constitution that entrusted the Supreme Court with disciplinary responsibilities over "all the tribunals in the nation." According to the Court, as special administrative tribunals exercised judicial power, they fell within the scope of its disciplinary jurisdiction. This interpretation enabled the Court to review decisions by special administrative tribunals, which the legislature had established with the express intention of keeping them beyond the reach of the Supreme Court. The Court made ample use of its disciplinary powers to review decisions of labor tribunals, which under the Labor Code were meant to remain outside the framework of the judiciary. The Court's interference with the work of labor courts caused considerable controversy (Aguero 1948). In the end, however, the legislature gave in and formally granted the Supreme Court authority to exercise disciplinary powers over the labor courts (Walker 1965:123). This decision had the unintended effect of strengthening the Ministry of Labor, as workers who had grievances against their employers found the Ministry a friendlier place than labor courts (Jetswaart 1981:657).

By the early 1960s, the Court's expansive interpretation of its disciplinary powers had become generally accepted and the complaint proceeding was available to review decisions handed down by any tribunal, including those that were not formally part of the judiciary, such as the tribunals in the area of price controls, tax administration, competition law, and the special tribunals established under the agrarian reform law.

Legal and Political Impact

The transformation of the complaint proceedings into a form of cassation had a major impact on the Supreme Court's workload.

Statistical evidence shows that by the mid-1950s the complaint proceeding had overtaken cassation as the Court's main area of activity (Arteaga and González 1986:121). This trend continued into the 1960s and early 1970s. Indeed, between 1969 and 1973, the Court handed down approximately 1,700 judgments and decisions per year. Of these, about 50 percent were judgments in complaint proceeding, while cassation judgments amounted to less than 30 percent (Valenzuela 1991: 146-149). The statistics also show that the complaint proceeding was profusely used to challenge labor court decisions. These statistics, however, are not disaggregated, and therefore are not easy to interpret. There is no study analyzing the impact of the complaint proceeding on labor courts or labor law generally. One observer has suggested that, in the area of labor law, the complaint proceeding was largely used to quash labor court decisions that favored workers (Novoa 1970:4-6). This conclusion, however, is based on a very small sample of cases. A statistical survey on the use of the complaint proceeding in the province of Concepción, between 1963 and 1967, indicates that nearly 70 percent of complaint proceedings were rejected (Saavedra and Pecchi 1971:36-39). These figures suggest either that parties were indiscriminately using the complaint proceeding as a third instance, or, that courts showed considerable caution in the exercise of this power. The available evidence on the use of the complaint proceeding against agrarian reform tribunals in the 1960s is also inconclusive. While the complaint proceeding was undoubtedly used by landowners to stop or delay land expropriations, its overall impact was negligible. That the complaint proceeding was not an effective weapon against agrarian reform tribunals is not surprising as their jurisdiction was limited (Thome 1971).

The complaint proceeding was popular with litigants because it became in fact a third instance that allowed parties to challenge otherwise final decisions by ordinary courts or by special administrative tribunals. Thus, the prolific use of the complaint proceeding undermined the authority of lower courts and slowed down the judicial process. But the Court's liberal policy toward the complaint proceeding also had another negative consequence. Because the complaint proceeding was a summary proceeding, the Court was not required to give reasons in support of its decisions (Arteaga and González 1986:123). The prolific use of the complaint proceeding thus undermined the quality of legal reasoning, as well as the independence and autonomy of lower court judges. The Court's reliance on the complaint proceeding to assert its influence on ad hoc administrative tribunals was also deeply resented by the congress and the executive and

contributed to reinforcing their tendency to exclude ordinary courts from important areas of public policy.

Administrative Justice

The 1925 Constitution envisaged the establishment of administrative tribunals with general jurisdiction to review administrative action. This provision of the constitution was never implemented and, therefore, the legal system did not have a judicial mechanism of general application to review acts of the administration. These circumstances placed the Supreme Court in an awkward position as citizens aggrieved by acts of the administration often sought judicial relief from ordinary courts. The Supreme Court, constrained as it was by a constitutional provision that allocated jurisdiction to the nonexistent administrative tribunals, was unable to develop a coherent approach to resolve this question. While the Court formally asserted that, pending the establishment of administrative tribunals, ordinary courts did not have jurisdiction to review acts of the administration, in practice, it tried to fashion legal remedies on a case-by-case basis. This approach, based on a retreat to principles of private law, however, offered neither a suitable judicial remedy to individual plaintiffs nor a useful platform to address the numerous problems arising from the absence of an effective system of administrative justice. Instead, it created considerable uncertainty and, once again, confirmed the view held by most politicians that the judiciary was unfit to handle issues of public policy.

A Disjointed System

The failure to establish administrative tribunals was not an oversight. Indeed, between 1925 and 1973 five bills were submitted to the congress providing for the establishment of administrative tribunals (Junta de Gobierno 1982:277-390). These bills, however, were drowned in esoteric legal arguments regarding the nature of the judicial function and the institutional location of the proposed tribunals. Some argued that they should be part of the ordinary judiciary and subject to the supervision of the Supreme Court, while others argued that they should be independent both of the government and of the Supreme Court.¹² Politicians of every persuasion welcomed this doctrinal controversy, which paralyzed the congress, as, one way or another, they all shared the view that judicial control of administrative action was unnecessary and that the most effective restraints on the executive were those generated by the political process.

Failure to establish administrative tribunals did not end issues of administrative justice. Citizens aggrieved by acts of public authorities resorted to ordinary courts only to find the courts declined to accept jurisdiction on the ground that administrative matters should be resolved by the nonexistent administrative tribunals (Silva Cimma 1968:330). Their argument, though consistent with the constitution, was also convenient, as it protected the already overloaded court system from being flooded with administrative law cases (Aylwin 1952:197-298). Yet, as the administrative machinery expanded and state intervention became increasingly more diverse, it became evident that the absence of administrative tribunals amounted to a denial of justice. There thus emerged a disjointed three-prong arrangement that created considerable confusion and failed to get to the root of the problem.

The first prong consisted of areas of administrative practice in which the legislature explicitly gave ordinary courts jurisdiction to review acts of the administration. Thus, for example, ordinary courts were given power to review administrative decision that imposed fines, such as those imposed by the Health and Safety Inspectorate. Courts were also given the power to review certain decisions by local councils (Aylwin 1952:299-302). The second prong consisted of areas of administrative activity assigned to special administrative tribunals that had the power to review administrative action, in areas such as tax administration, customs valuation, competition law, and agrarian reform law (Aylwin 1952:302-310). These special tribunals varied in structure and composition, but their common feature was that their decisions should remain beyond the reach of ordinary courts. This objective was largely frustrated because of the Supreme Court's expansive interpretation of the scope of the complaint proceeding. The third prong comprised administrative activity that had not been expressly assigned to ordinary courts or that did not fall within the jurisdiction of special administrative tribunals. It thus included the bulk, and most sensitive portion, of administrative activity. In formal terms, third-prong activities fell within the jurisdiction of the nonexistent administrative tribunals.

The Court's Dilemma

The third prong presented the Court with a difficult dilemma. What should it do when, as it inevitably happened, individuals aggrieved by administrative acts that fell within this section brought their grievance before ordinary courts? Should the Court direct ordinary courts to

accept or to decline jurisdiction? The answer to these questions turned on the interpretation of Article 87 of the Constitution, which reads as follows:

There shall be administrative tribunals with permanent membership to pass upon claims that may be interposed against arbitrary acts or measures of the political or administrative authorities and the disposition of which has not been entrusted by the constitution or the laws to any other tribunals. Their organization and jurisdiction are matters of law.

According to one interpretation, since the constitution had made special provision for the establishment of administrative tribunals, ordinary courts could not, unless expressly authorized to do so, review acts of the administration (Silva Cimma 1968:330, Silva Bascuñán 1963:3:440). This interpretation, endorsed by most local administrative lawyers, amounted to a denial of justice, as there was no alternative judicial forum where the aggrieved parties could take their claims. Nevertheless, as ever, an alternative interpretation was available. It was based on Article 5 of the Judicial Code, which sets out the general rule that ordinary courts had jurisdiction over all judicial matters arising within the territory, except those explicitly entrusted by special law to other tribunals. Thus, according to this interpretation, pending the establishment of administrative tribunals, ordinary courts had a duty to assume jurisdiction on claims that challenged acts of the administration (Fontecilla 1953:79-80). This interpretation should have appealed to the Supreme Court, as it was consistent with the expansive notion of judicial power noted in the preceding section. The Supreme Court, however, did not fully embrace it until the eve of the military coup that deposed Allende in 1973, and even then, it did so only temporarily (see chapter 9). Instead, in order to resolve the dilemma posed by the third prong of administrative activity, the Supreme Court resorted to the act of authority doctrine.

The Act of Authority Doctrine

The act of authority doctrine—based on an old French doctrine abandoned in France after the celebrated *Blanco case* in the late nineteenth century (Brown and Garner 1973:64; Dupuis et al. 2004:55, 643)—provided the Court with a simple device to handle cases arising from the third prong of administrative activity, that is, administrative activity that had not been expressly within the jurisdiction of ordinary courts or that did not fall within the jurisdiction of special administrative

tribunals. The act of authority doctrine classifies administrative acts into two categories: acts of authority (*autorité*) and acts of management (*gestion*). Acts of authority are broadly acts that involve the use of public authority. Acts of management, on the other hand, are acts of a commercial nature, in which public authorities become involved in connection with their official duties (Aylwin 1952:133). Thus, for example, while a decision to requisition property is an act of authority, the purchase of stationery by a government department is an act of management. Applying this doctrine, the Court would conclude that ordinary courts did not have jurisdiction to review the legality of acts of authority—as, theoretically, these were within the exclusive jurisdiction of the not-yet-established administrative tribunals—but that ordinary courts did have jurisdiction to entertain claims against public authorities on matters relating to acts of management (Varas 1940:379–383).

The *Socotransco* case, decided in 1964, illustrates the way the Supreme Court applied the act of authority doctrine.¹³ The issue raised in this case was whether ordinary courts could review a presidential decree that had cancelled the legal personality of *Socotransco*, a local transport cooperative. The members of the cooperative sought from the Court a judgment declaring that the president's decree was illegal. The government objected to the jurisdiction of the Court on the ground that the power to grant and cancel legal personality of corporations was vested exclusively in the president. The decree canceling *Socotransco's* legal personality was, according to the government, an act of authority and, as such, could not be reviewed by ordinary courts. The Supreme Court agreed. According to the Court, in the absence of an explicit grant of jurisdiction, ordinary courts are barred from intervening in matters within the jurisdiction of other organs of the state, even though these courts had not yet been established.

The act of authority doctrine had considerable appeal, as acts of the administration that fell within the category of acts of management were fully within the jurisdiction of ordinary courts. Not surprisingly, private litigants with claims against the government put forward an expansive interpretation of the notion of act of management. However, this doctrine also had some disadvantages. On the one hand, the act of authority doctrine provided an incentive for the government to characterize almost all its decisions as acts of authority to escape from the reach of ordinary courts. On the other hand, and more significantly, the act of authority doctrine did not provide a remedy in cases where administrative acts infringed upon private rights. This issue was raised in the *Socotransco* case. In this case, plaintiff

argued—in the alternative—that ordinary courts had jurisdiction because the presidential decree that had cancelled the legal personality of their transport cooperative had financial implications for their members. Although the Court acknowledged that the decree had had this effect, it held nonetheless that ordinary courts did not have jurisdiction either to review the presidential decree or to deal with its financial consequences for the members of the cooperative. Thus, in *Socotransco*, the Court held that the consequences of an act of authority do not alter its nature: once an act of authority, always an act of authority.¹⁴ However, the Court did not always follow this seemingly harsh line of reasoning. Indeed, in some cases where administrative acts had an indirect effect on property rights, the Court attempted to provide a remedy to private parties, while, at the same time acknowledging that ordinary courts could not review acts of authority. Again, drawing loosely on a distinction developed in French administrative law, the court held that where acts of the administration affected assets and liabilities of private parties, ordinary courts had jurisdiction to entertain private claims arising from these acts, although they did not have the authority to review the underlying act of authority.¹⁵ In the *Camus* case,¹⁶ this distinction worked quite well. In this case, the Ministry of Public Works demanded from the residents of a district in Valparaíso a financial contribution to pay for the costs of paving their streets. Mr. Camus along with other local residents refused to pay and instead brought an action asking the court to declare that they were not liable to contribute to the costs of the operation and requesting compensation for damages, which they had sustained as a consequence of alleged negligence attributable to the department. The Supreme Court, while acknowledging that the underlying decision was an act of authority, held that ordinary courts had jurisdiction to deal with the residents' claim because the case involved a dispute between parties over assets and liabilities (*controversia patrimonial*). In *Camus*, the distinction between the public and the private components of administrative acts seemed to work well because plaintiffs in this case were not directly challenging the decision to pave the street, but merely the government's authority to demand a financial contribution from the local residents.

Courts, however, faced more difficult problems when private parties either directly challenged the legality of an administrative act or raised questions about their legality as an incidental question in the context of cases that were otherwise within the jurisdiction of the courts. These problems raise the difficult issue regarding how to draw the line between the jurisdiction of administrative tribunals and ordinary

courts. In general, the solution adopted by most civil law countries with established administrative courts is to reserve to the exclusive jurisdiction of ordinary courts certain category of claims; namely, claims over personal status, individual freedom, or property rights (Brown and Bell 1993:139; Dupuis et al. 2004:646; Szladitz 1984:24–40). In Chile, because of the failure to establish administrative tribunals, the task of drawing the line between the jurisdiction of administrative tribunals and ordinary courts was singularly difficult.

As already explained, one possibility was to argue that pending the establishment of administrative tribunals ordinary courts had full jurisdiction over claims arising from administrative activity. The Court, however, declined to follow this approach. Instead, it adopted a more convoluted approach that, in addition to creating considerable confusion and resentment among government officials, did not resolve the underlying issue of the legality of administrative acts. The following case illustrates this approach.

The Montero Case

As explained in chapter 5, DL 520 of 1932 established the Prices and Subsistence Agency (PSA) to control prices of essential consumer goods. The items subject to control were listed in the decree. The PSA, however, interpreting its requisition powers expansively, introduced a rent control system. The objective was to use the government's requisition powers to protect tenants from unscrupulous landlords. This new policy sparked political controversy in the congress, as it was doubtful whether the PSA had the discretion to add new items to those listed in DL 520 (Talesnik 1940:113–1120). The question of the legality of the PSA's rent control scheme soon reached the courts. Mrs. Montero, a landlady from the city of La Serena, challenged the legality of a PSA decree that reduced the rent and extended the terms of the lease in respect of one of her properties. Mrs. Montero requested the court to declare the decree illegal and demanded the immediate restitution of her property. The lower court found that the rent control scheme was *ultra vires* and declared the requisition order null and void. The Court of Appeals of La Serena affirmed the lower court judgment.¹⁷ The Supreme Court, however, reversed the Court of Appeals decision on the ground that ordinary courts do not have jurisdiction to review acts of the administration.¹⁸ However, while the Court refused to quash the requisition decree, it also provided guidelines to lower courts on how they should decide this type of cases. According to the Court, while ordinary courts were not allowed to

invalidate acts of the administration, they were not expected to give effect to illegal acts of the administration. Applying this reasoning to Mrs. Montero's claim, the Court concluded that had the plaintiff requested only the restitution of her property based on the lease agreement, the Court would have been able to decide the case without having to quash an act of the administration. All they had to do was to refuse to apply it; that is, to pretend that it did not exist.

The distinction between quashing an administrative act and refusing to apply it was as a useful device to circumvent the traditional doctrine that ordinary courts could not review acts of the administration. Yet, it was disingenuous because in order to decide whether to give effect to an administrative decree or not, courts had to form a view about its legality. As according to the Supreme Court's approach, courts could not invalidate a government decree, the parties did not litigate this point and courts did not have to offer reasons as to why they refused to apply a particular decree.¹⁹ The Court's approach opened up the possibility that private law could be used indiscriminately to discard or ignore any government decision with which the courts disagreed. The Court's approach was based on the assumption that in the event of a conflict between private and public law principles, private law would always prevail. While most commentators accepted this approach, none raised any questions as to its implications (Aylwin 1952:302; Silva Cimma 1968:259, 329). The political implications of this peculiar doctrinal development were fully felt in the late 1960s and early 1970s when courts were called upon to protect property rights affected by the policies of governments committed to radical structural reform.

Conclusion

The role of the Supreme Court during the party democracy period is somewhat baffling. While on the one hand, the Court and the judiciary were excluded from key areas of public policy; on the other hand courts, were on the whole, able to maintain their independence, partly because of this exclusion. Moreover, the Supreme Court seemed willing to keep a low political profile and defer to the executive and the legislature as evidenced by its refusal to play its role as guardian of the constitution. Yet, under pressure from individuals aggrieved by acts of the administration, the Court responded dynamically and critically as it developed a variety of strategies and subterfuges to review acts of the administration. The practice of the Court in this area, however, was neither consistent nor coherent. Its haphazard doctrinal elaborations

undermined the confidence and professional independence of lower courts judges while failing to make judicial decisions more predictable. The behavior of the Court as head of the judiciary was also contradictory. On the one hand, it successfully defied the political branches of the state by asserting disciplinary jurisdiction over special administrative tribunals that the legislature had originally intended should be kept beyond its reach. On the other hand, displaying little concern over the formal limits of its powers and exhibiting an alarming authoritarian streak, it transformed its disciplinary powers into a third instance, thus increasing its capacity to influence the content and direction of judicial decisions. Ironically, the Court's expansive interpretation of its powers replicated the way the executive interpreted its regulatory powers. Yet, in the end, the Court's defiance in some areas of policy did not succeed in fundamentally challenging the political organs of the state, as it had virtually abdicated its role as guardian of the constitution. Its defiance was also largely negative and it failed to improve the quality of legal reasoning. As a result, during this period, the Court failed to persuade skeptical members of the political elites that judicial institutions had a role to play in the democratic process. Thus, deep distrust developed between the judiciary and the political branches of the state that, in later years, would prove fatal for political stability.

Part III

Radical Democracy

Democracy should not depend on elites making a one-time gift to the demos of a predesigned framework of equal rights. This does not mean that rights do not matter a great deal, but rights in a democracy depend on the demos winning them, extending them substantively, and, in the process, acquiring experience of the political, that is, of participating in power, reflecting on the consequences of its exercise, and struggling to sort out the common well-being amid cultural differences and socio-economic disparities.

Sheldon Wolin, "Liberal Democratic Divide,"
Political Theory, 98

Chapter 7

A Revolution in Liberty

Thirty Years In Power

Background

Eduardo Frei won the presidential elections of 1964 by a clear majority. In a three-way contest he polled 56 percent of the vote, while Allende, the runner-up obtained 39 percent and Julio Durán, the candidate of the Radical Party, polled a mere 5 percent of the vote. The scale of the electoral victory undoubtedly gave Frei and his team enormous confidence that they could successfully launch their "revolution in liberty." Indeed, such was their confidence that they predicted that the CDP (*Partido Demócrata Cristiano*/Christian Democratic Party), would remain in office for at least three decades. At the time, this prediction seemed reasonable. The CDP being a new party not heavily contaminated by the discredited coalition politics of the 1940s (Fleet 1985; Grayson 1968). It had a good technical team and hundreds of devoted party workers. Moreover, it also had generous financial support from the United States since Washington regarded Frei as an important partner in the struggle against the spread of Marxism in Chile and the rest of Latin America. Given these circumstances, it is not surprising that the new administration made an auspicious start. During its first two years, the government successfully combined sound economic management with the introduction of structural reforms and major social programs in housing, education, and health. Yet, less than three years later, the government began to lose control and by the end of its sixth year in office, it was politically isolated, deeply divided, and its electoral strength had dropped from 42 percent in 1965 to 28 percent in 1970. Frei's failure was made worse by the fact that in 1970 he had to hand over power to Salvador Allende, the man

that both his right-wing supporters and the United States had hoped would never win a presidential election.

Most observers attribute the political failure of the CDP administration to its stubborn refusal to form a broad government coalition for the implementation of its program. CDP opted for an isolationist policy that diluted its electoral support, undermined the spirit of compromise, and brought political polarization (Garretón 1989:14; Valenzuela 1994:128). Left-wing critics of the CDP administration point out that its political failure stemmed from the fact that although its rhetoric was revolutionary, its policies were not. According to this argument, the CDP administration consistently sacrificed its radical programmatic objective in order to satisfy the demands of business associations and other dominant economic groups (Lechner 1970:151-158; Petras 1969:253-255). These views were undoubtedly justified. Instead of seeking political allies, the CDP campaigned vigorously to achieve electoral hegemony across a broad spectrum of classes. This attempt naturally frightened and alienated the rest of the political parties and did nothing to foster the spirit of compromise. Likewise, there is little doubt that the CDP administration was prudent and conservative in managing the economy, as it did not seek to replace the market economy. Yet, these interpretations, though partly correct, do not entirely capture the nature of the dilemma confronted by the CDP administration. While it is true that the CDP did not seek political alliances, there were important political and ideological factors that counseled against such an alliance. An alliance with the Right would have amounted to political suicide as it would have required abandoning the central objective of modernizing the countryside through an agrarian reform and extending union rights to agricultural workers. An alliance with the Left was also unthinkable. The CDP electoral campaign, which had made use of virulent antimunist propaganda to discredit the left-wing candidate, had deeply scarred the Left. Moreover, as a majority within the new administration genuinely believed that the CDP was an alternative to Marxism, it was unlikely that the idea of inviting the Marxists to join the government would have been seriously considered. The argument that the CDP readily compromised its political program in order to please the private sector is also not entirely accurate. Indeed, although the government was undoubtedly determined to apply sound principles of macroeconomic governance, it never entirely abandoned its commitment to social and economic change. Indeed, as the text that follows show, when confronted with the choice between sound economic management and continuation of its program of structural reform, the government opted for both.

The dilemma that the CDP administration confronted at the outset stemmed from the fact that, although it had won the election by an unusually large margin and, once in office, continued to enjoy enormous electoral appeal, it could not readily transform its electoral strength into political and institutional power to implement its program. If one took into account the strength of the right-wing vote in 1965, at least 20 percent of the CDP's electoral support was from right-wing voters who had opted for Frei as the lesser of the two evils. Moreover, a large proportion of those who stood to benefit from the implementation of the radical reforms advocated by the CDP had voted for Salvador Allende. These circumstances suggest that the CDP urgently needed to broaden its base of support. Yet, instead of doing so by means of political alliances, the CDP opted for electoral competition and political mobilization. As the text that follows show, this strategy produced excellent results. The CDP soon became the single largest party and retained this position until the end of the Frei administration. Yet, its electoral success did not instantly resolve the dilemma of implementation. Although it managed to secure congressional approval for its most important legislative initiatives, it was unable to combine its commitment to sound economic management with the expectations of its heterogeneous constituency.

This chapter examines the dilemma confronted by the CDP administration and explains how it was exacerbated by the attempt to extend political and social rights to rural workers and the urban poor.

The Program

The CDP described its "revolution in liberty" as a process that would usher in a communitarian path to development. On the economic side, as noted in chapter 4, the program sought to radically overhaul the prevailing policy of import substitution by introducing a comprehensive land reform and restructuring the regulatory regime in copper mining. The expectation was that these reforms would provide the foundations for reviving the manufacturing sector and increasing its regional competitiveness. These objectives were combined with a commitment to control inflation to ensure economic growth.

The CDP, however, was not only concerned with economic growth and stability. As a party that drew its philosophical inspiration from the social teachings of the Catholic Church, the CDP was also concerned with social justice. Its program of governance thus placed emphasis on income redistribution and social development, especially in the areas of housing, health, and education. This component of the

program was essential since, according to the CDP, underdevelopment could not be tackled merely through the implementation of economic reforms. A truly revolutionary approach required a radical restructuring of the political system. Such a restructuring was necessary because the political system did not adequately represent the claims and aspirations of the majority (Ahumada 1958:136). True democracy, according to President Eduardo Frei Montalva, exists only when the people effectively have access to power and can exercise it (Frei 1967:390). Thus, based largely on the marginality theory developed by Roger Vekemans S. J., a Belgian sociologist, the CDP focused on the issue of political participation. Vekemans's theory of marginality was in fact a precursor of what is today known as "social exclusion" (Vekemans and Giusti 1970). According to Vekemans, "marginals" are people that society treats as outsiders and are permanently excluded from its benefits. Because marginals are weak, disorganized and extremely vulnerable, the state is called upon to play a major role in empowering them so that they can fully exercise their rights as citizens. The marginals that Vekemans had in mind were mainly the urban poor and peasants.

The CDP's objective was ambitious. Its aim was to radically transform the relationship between state and society. Its program envisaged a dynamic role for the state in the management of the economy and the direct involvement of unions in the management of enterprises. This new role of unions called for a redefinition of the relationship between the state and business associations as well as the relationship between management and unions. An indispensable component of this aspect of the program was the introduction of measures to sever the hitherto existing close link between unions and political parties. The aim was to give unions a meaningful stake in the economic process and hence the need to depoliticize them. Accordingly, the CDP set out to become the leading force among workers, peasants, and the urban poor and thus demonstrate that its communitarian path to development was a practical alternative to Marxist socialism.

Given the complexity and scale of the CDP's objectives, it is not surprising that, as the government began implementing its program, sharp disagreements emerged within the party over the meaning of the phrase "communitarian society." It is helpful at this stage to outline the two conflicting interpretations, as they represent the two main political factions within the CDP (Petras 1969:198; Sigmund 1977: 53, 59, 56; Silva Solar and Chonchol 1970; Yocolevsky 1987:307). The moderates—led by President Frei—argued that building a communitarian society was a long-term process that involved two distinct

stages. During the first stage—the Frei administration—the state was called upon to play a dominant role through extensive intervention in the economy and the promotion of social programs in favor of the urban poor and rural communities. During the second stage, community organizations would begin to play a more decisive political role thus bringing about genuine social empowerment. The radicals within the CDP rejected this two-stage approach. In their view, the communitarian society envisaged by the party was a truly socialist society. Therefore, the program of structural reforms implemented by the government had to be tailored to this objective. Accordingly, they called for a more extensive and rapid implementation of the process of agrarian reform. They also called for the immediate involvement of workers in the management of industrial enterprises. As they were also skeptical of excessive state intervention, they called upon the government to speedily devolve power to community organizations so as to limit the paternalistic role of the state bureaucracy. Despite its scholastic overtones, this controversy had important practical implications as it influenced the position of party members on key areas of government policy.

Standing for Principles

When the right-wing parties offered their support to Frei to ensure that Allende would not be elected as president, Frei made it clear that their support would not compromise his political platform. After the election he reiterated this view, promising that he would faithfully carry out the promises made during the electoral campaign. Frei's principled stance was not, however, easy to uphold, as the CDP did not control enough seats in the congress to secure approval for its legislative program. Yet, the government decided against forming broad political alliances on the ground that this would compromise its program.

The government's principled stance was greatly aided by the fact that a general election was scheduled for March 1965, only six months after the presidential elections. This election provided the CDP with an ideal opportunity to strengthen its representation in the congress by taking advantage of the favorable political momentum generated by Frei's freshly won victory. The outcome of the elections was encouraging, but not decisive. The CDP secured overall control of the chamber of deputies, but not the senate. The government was confident, however, that through skillful parliamentary maneuvering it would overcome this problem. It expected the congress to approve most of its key legislative initiatives, either with the vote of the Right or

the Left. This expectation proved correct. Despite strong opposition by the left-wing parties, the government managed to secure the approval of its copper policy with the votes of the Right. The agrarian reform and peasant unionization bills, vehemently opposed by the right, were approved with the vote of the left (Chonchol 1970:71).

But the CDP's success in the 1965 congressional elections, though impressive, did not fully resolve the government's problems. Although the CDP's share of the vote increased from 15 percent in 1961 to 42 percent in 1965, its new supporters came largely from the middle classes. Indeed the success of the CDP in 1965 was achieved largely at the expense of the vote of the Right and the Radical Party. While the electoral strength of the Right dropped from 30 percent in 1961 to a mere 12 percent in 1965, the Radical Party's share of the vote dropped from 21 percent to 13 percent. By contrast, the electoral support of the Left was not affected by the success of the CDP. Indeed, between 1961 and 1965 the electoral strength of the Communist and Socialist Parties remained virtually unchanged, at around 22–23 percent. Thus, it appeared that the CDP had successfully exploited its popularity to attract middle-class voters, but had not managed to increase its appeal among working-class voters (Zeitlin and Petras 1970:27). The electoral results reinforced the government's view that political alliances were unnecessary. Indeed, since the CDP expected that the implementation of its program would largely benefit groups who hitherto supported the Marxist parties, it did not see any reason to seek an alliance or make any concessions. But the CDP did not passively wait for the reforms to take effect. It immediately launched a well coordinated and effective process of popular mobilization, targeted specifically at voters in urban, mining, and rural areas that were regarded as the natural constituency of the Marxist parties.

The CDP's success in the congressional elections of 1965, combined with its principled stance of not seeking allies was deeply resented and feared by the rest of the political parties. The electoral success of the CDP had so undermined the electoral strength of the Right that in order to survive the Conservative and Liberal Parties were forced merge and form the National Party. This new party was anxious about the CDP's promise of a comprehensive agrarian reform and feared that other sectors of the economy would soon fall within the scope of this reformist zeal. The Radical Party was also on the defensive as it was being displaced from its hegemonic position at the center of the political spectrum by the CDP. Although communists and socialists had managed to retain their electoral strength, they had

reason to be concerned because, apart from the vast resources invested by the government in mobilizing subordinate groups, the CDP, as the party of government, was in a position to deliver on its promises. The Marxist parties were also concerned that the CDP's proposals on unions would disrupt their long-standing relationship with the labor movement. Thus, for different reasons, all the parties regarded the CDP with trepidation, as they had grounds for believing that the CDP might achieve its objective of breaking the mould of the prevailing party system. Their anxiety, exacerbated by the tension generated by government policies, fostered a climate of suspicion, corroded the process of political deliberation, and changed the nature of political competition.

Overcoming Hurdles *Economic Reactivation*

The initial economic policy of CPD was expansionist and sought to reactivate the economy through a substantial increase in public expenditure. An important component of this policy was an incomes policy aimed at favoring lower income groups. During the first two years, this expansionist policy was successful. It brought about an increase in production, halved the rate of inflation, and did not create a fiscal deficit. Yet, not all went well. The government was unable to fully gain the confidence of the private sector. As a consequence, investment levels were lower than expected and the increase in production was largely based on improved capacity utilization. Even more worrying was the fact that the increase in remunerations between 1965 and 1967 exceeded government targets by more than 50 percent (Ffrench-Davis 1973:59). The inflationary potential of these factors forced the government to seriously reconsider its economic policy.

Since the mid-1940s, inflation had consistently disrupted government programs. Moreover, during the final years of the Alessandri administration, managing inflation became especially difficult as it was compounded with an ever-growing foreign debt. The government's fear of inflation was thus perfectly reasonable. Accordingly, by mid-term, it cut public expenditure, restricted credit, and reduced import levels. Although these measures helped to ease inflationary pressures, in the long term they proved ineffective. Public expenditure cuts led to a slight recession that hit mainly employment and income levels of the poorest sections of the population. As the tax system was already

overstretched, the government was forced to introduce further cuts in public expenditure and to propose severe austerity measures. Among the measures proposed was a compulsory savings scheme that involved paying 50 percent of the annual readjustment of public sector salaries in government bonds (Molina 1972:139-144). These unexpectedly harsh financial measures were accompanied by a proposal to temporarily suspend the right to strike in support of economic demands. These proposals caused such a political uproar that the government was forced to back down. This policy reversal brought about the resignation of the minister of finance and fatally undermined the government's capacity to control inflation. By the end of Frei's term in office, the annual rate of inflation reached 34 percent; that is, four points higher than in 1964, its first year in office.

The government's defeat on its proposed austerity package was made worse because it exposed deep divisions within the CDP. Indeed, the party, controlled at the time by its radical faction—known locally as *rebeldes*—did not conceal its distaste for the government's proposals and only reluctantly supported them. This attitude caused considerable embarrassment to the president who, in retaliation, used his influence within the party to remove members of the left-wing faction from positions of responsibility. Although Frei managed to reassert control over the party, the cost was high. Shortly thereafter, a small, but influential group of CDP parliamentarians resigned from the party and formed a new political group *Movimiento de Acción Popular Unitaria* (MAPU). The MAPU soon joined the Marxist parties in the establishment of the Popular Unity, the electoral coalition that supported Salvador Allende's successful bid for the presidency.

The government's decision to cut public expenditure and its failure to control inflation had wider consequences. These consequences were not unexpected as a large proportion of public expenditure was devoted to the government's new social programs. Indeed, in 1965, during Frei's first full year in office, more than 50 percent of public investment was allocated to agriculture, housing, and education (Ffrench-Davis 1973:175). The reduction in public expenditure forced the government to scale down these programs. The government, however, refused to abandon them. Not surprisingly, scaling down these programs disappointed its potential beneficiaries and intensified political mobilization. As the CDP would soon find out, the mix of economic austerity with high levels of political mobilization had lethal consequences. In the paragraphs that follow, I examine the government's dilemma in a select number of areas.

Copper—Avoiding Nationalization

Copper policy was a permanent source of frustration for politicians. As explained in chapter 4, copper was explicitly excluded from CORFO's mandate and was left safely in the hands of U.S.-based investors. Yet, revenue from copper exports was subject to sharp fluctuations and, therefore, copper always had the capacity to disrupt the balance of payments and governments' economic policies. Between 1952 and 1970, the annual average fluctuation of the price of copper was 12 percent (Ffrench-Davis 1973:281). The instability of copper revenues was combined with periods when the price was kept artificially low, due to price controls imposed by the U.S. government. Such price controls were strictly enforced during the Second World War and, as a consequence, Chile lost more than five hundred million dollars in revenue from copper exports (Tomic 1974:132). During the Korean conflict in the early 1950s, President González resisted attempts by the U.S. government to impose price controls on copper imports and instead managed to secure a measure of control over the commercialization of copper (Tomic 1974:136). In 1955, however, the Ibáñez administration introduced a new regulatory framework that returned full control over marketing operations to U.S. companies. This new regulatory framework was soon discredited as it yielded greater financial benefits to the companies than to the government (Ffrench-Davis 1974:39-40). Thus, not surprisingly, a new policy on copper was an important component of the CDP's "revolution in liberty."

The objective of the CDP administration was to ensure that copper policy was closely synchronized with national development plans. During its electoral campaign, the CDP had stated that this objective would be achieved through greater state control over copper resources, but its leaders had been studiously ambiguous as to whether this policy entailed the nationalization of U.S. companies operating in the sector. Shortly after taking office, however, President Frei announced the "Chileanization of copper" and presented this policy as a more attractive alternative to full nationalization. The proposed policy involved establishing a joint venture company between CODELCO, the State Copper Corporation, and Kennecott Copper, the owner of one of the country's largest copper mines (Moran 1974:132-138). According to Frei, the proposed joint venture would bring about an increase in production as well as greater control over the country's main natural resource. The government expected that the increased revenue from copper exports would fund other components of its program of structural reforms.

The proposed copper policy was strongly criticized by the Communist and Socialist Parties who demanded instead full nationalization. Several CDP parliamentarians shared this view, but did not oppose the government as they expected, in exchange, that it would sponsor a radical law on agrarian reform (Chonchol 1970:71). The government could afford to ignore the views of the Marxist parties because it could rely on the support in the congress of the National and Radical Parties. Initially, the implementation of the new policy was successful and generated abundant revenue for the government. But, as ever, it was not long before copper once again became the focus of public controversy. Although government revenue increased, the U.S. companies did better than the government. Indeed, not long after the Chileanization was completed and largely as a consequence of the Vietnam war, the price of copper shot up, generating massive windfall profits for the companies. The government's negotiating skills and its ability to look after the country's main natural resources were thus called into question (Ffrench-Davis 1974:40-42). Eventually, the government was forced to take this criticism seriously as some of it came from within the CDP. Accordingly, it took several measures to increase copper revenue. It also entered into a joint venture with Anaconda, the other U.S. company in the sector, which it depicted as agreed nationalization (*nacionalización pactada*). Despite these measures, the government failed to convince its own party about its copper policy. So, in 1970, Radomiro Tomic, the CDP's presidential candidate, called for the full nationalization of copper, thus implicitly repudiating a major plank of Frei's program.

Unions—A New Deal

One of the pillars of the government's program was to eliminate the class struggle through the harmonious integration of capital and labor. To achieve this objective, the program proposed that workers should participate in the management of their workplace. But successful worker participation required unions solely devoted to resolving matters relating to industrial relations, rather than the promotion of political ideology (Yocolevzky 1987:212). In this area, however, the government faced a major difficulty as nearly half the number of union leaders were either members or supporters of one of the two Marxist parties, while only just over 20 percent supported the CDP (Landsberger 1969:129). As a consequence, the main beneficiaries of the proposed enterprise reform would be unions controlled by the Marxist parties. Moreover, as the private sector had

shown no enthusiasm for these proposals, the government quietly abandoned them.

The government, however, did not give up on its aim of reducing Marxist influence within the union movement. To this end, it attempted to establish a new labor confederation as an alternative to the Marxist-controlled CUT and introduced a bill proposing the elimination of the prevailing "closed shop" system (Angell 1972:199). The attempt to divide the labor movement through the establishment of a new confederation was strongly criticized by the union movement and leftist groups within the CDP. Realizing that its initiative was doomed to fail the government backed down, and the CDP remained within the CUT umbrella. But the animosity generated by the attempt to divide the union movement had a negative impact on the government's proposal to abolish the "closed shop" system. The "closed shop" had been in operation since 1931, when the Labor Code was formally enacted. Under the Code, the establishment of plant unions (*sindicatos de empresa*) required the vote of at least 55 percent of the workforce. Once the union was established, however, membership became compulsory for the whole workforce. According to the CDP, these provisions unjustifiably restricted workers' freedom of choice, stifled the development of the union movement, and encouraged its politicization. Thus, they proposed a bill to the congress to abolish compulsory union membership and to simplify the procedure for the constitution of unions (Landsberger 1969:130). The bill, however, met with such strong opposition in the congress that the government was forced to withdraw it. Opposition to the bill came not only from the Marxist parties, but also from members of the CDP in the congress (Angell 1972:200). Joining forces with the Marxists, the CDP rebels claimed that the bill would divide and weaken organized labor rather than offer freedom of choice (Yocolevzky 1987:212-220).

Agrarian Reform and Private Sector Confidence

The government, as expected, secured congressional approval for the agrarian reform bill with the vote of the Communist and Socialist Parties. But the process that led to the approval of this bill further exposed the ideological divisions within the CDP and seriously undermined the government's credibility with the business community.

During the electoral campaign, Frei had strongly criticized the limited scope of Alessandri's agrarian reform and had promised that he would promptly introduce a comprehensive agrarian reform law to

create 100,000 new property owners. Frei did not act as swiftly as expected. He submitted the agrarian reform bill to the congress only by mid-term; that is, three years after taking office. The delay drafting the agrarian reform bill wasted much precious time and contributed to raising political tension in the countryside. The delay was caused by disagreements within the government regarding the nature of the reform process. Frei and his close advisors wanted a limited agrarian reform, as they did not want to antagonize the private sector. Frei was also keen that the new law should promptly assign property rights to rural workers, so as to fulfill the party's campaign promise. But members of the government's land reform team did not share Frei's concerns. As lead promoters of the process of political mobilization in the countryside, they were in close contact with the mood and demands of agricultural workers. Accordingly, they rejected Frei's proposals and demanded a more extensive land reform. Also, instead of immediately assigning individual property rights, they favored the establishment of cooperatives as a device to organize production in expropriated land. In the event, most of the views espoused by the technical team were incorporated into the agrarian reform law. President Frei, however, continued to have sharp differences with his technical team over the implementation of the agrarian reform law.

Landowners' associations lobbied hard to persuade the government to change some of the bill's provisions, especially those regarding compensation. The spokesman of the Coordination Committee of Agricultural Associations even claimed that the bill would lead the country straight to communism (Kaufman 1972:164-165). Frei had several meetings with representatives of the landowners' associations and he made conciliatory gestures that led them to believe that the government would change the terms of the bill. In the end, however, the bill was approved virtually unchanged (Thorne 1989:191-194). The representatives of the landowners were disappointed and frustrated. They regarded Frei's conciliatory gestures as doublespeak and as unequivocal evidence that the CDP could not be trusted.

As the agrarian reform bill undermined the government's credibility with the landowners' associations, relations between the government and business association representing other areas of industry were also deteriorating. Two government policies were a source of special concern to them. First, they were apprehensive about the government's decision to reduce the representation of business associations on the boards of public bodies and state enterprises. This representation had been an important component of the deal that, in the 1940s, paved the way for their acceptance of CORFO's role in the

state-led policy of import substitution (Menges 1966:349). Second, they were alarmed at what they regarded as an attempt to divide business associations. This concern stemmed from the government's decision to establish a special committee to handle relations with the private sector (Cusack 1970:112). Business associations correctly interpreted this decision as a device to sidestep established private sector organizations. Interestingly, however, despite their deep distrust of the government, business associations did not seek supporting from political parties. Instead, they concentrated on strengthening their institutional structures to ensure that they could protect their interests without having to rely on the party system (Cusack 1970). Thus, by the end of the Frei administration the skepticism of the business sector toward the party system was back to the level that prevailed in the early 1950s.

Extension of Rights

One of the central aims of the government was to deepen the process of democratization through the empowerment of groups hitherto excluded from the political system. This process involved mainly the extension of rights to agricultural workers and the developing of policies and institutions designed to resolve the housing problems among the urban poor. As this section shows, many of the obstacles encountered by the government in this policy area foreshadowed the problems that the Allende administration was to confront.

Rural Workers

The extension of the right to form unions to rural workers was a natural component of the process of agrarian reform. Yet, this policy soon encountered problems. These problems stemmed largely from the tension between the narrow scope of some of the provisions of the agrarian reform legislation and the broad terms of the law on agricultural unions. The agrarian reform law, though ultimately committed to creating individual property rights, made provision for a transitional arrangement to organize production through cooperatives known as *asentamientos*. But membership of the *asentamiento* was restricted. Only permanent workers in the expropriated farms were entitled to membership. Seasonal and part-time workers were excluded. Permanent workers had special rights, such as the right to cultivate a small plot of land and the right to live in houses provided by the landowner. They were a relatively privileged group compared with

the majority of landless peasants who only just managed to scrape a living, often working for permanent workers. Thus by restricting *asentamiento* membership to permanent workers the agrarian reform law unwittingly reproduced the employment stratification of the system of domination it was attempting to replace (Lehmann 1974:82-97). Inevitably, this feature of the agrarian reform law became a source of political tension since the government-sponsored law on agricultural unions gave all agricultural workers the right to form unions.

The law on rural unions, enacted in 1967, was one of the main achievements of the Frei administration, as it reversed the discriminatory policies against agricultural workers, in place since the mid-1930s. The impact of this new law was dramatic. The number of agricultural workers belonging to unions increased from just over 10,000 in 1966 to more than 140,000 in 1970 (Barracough and Fernández 1974:176; Yoclevzky 1987:196). The speed of the unionization process reflects the level of political mobilization prevailing in the countryside. Two features of the new law contributed to intensifying this process. First, the new law allowed virtually anyone involved in agricultural activities to establish or join a union. Thus the law gave the right to form unions to peasants who owned or rented small properties (*minifundistas*), as well as to landless agricultural laborers. The institutional framework of participation was thus wider than the somewhat limited production unit envisaged by the agrarian reform law. Second, the law allowed the establishment of more than one union per agricultural enterprise. This feature was introduced by the CDP administration as part of its efforts to eliminate the closed shop system and to depoliticize the union movement. Thus, parallel unionism, which had been rejected for plant unions, was allowed in the agricultural sector. The law on agricultural unions also incorporated several ideas that the government had intended should apply to plant unions, such as the recognition of union federations for the purpose of collective bargaining and legal protection of union officers (Landsberger 1969:131). Ironically, contrary to the CDP's aim of depoliticizing the union movement, the introduction of parallel unions in the countryside, in addition to further worsening the political mobilization process, also provided an incentive for all political parties to become active in the countryside. There thus emerged three major union federations: one controlled by the Communist and Socialist Parties, representing 20 percent of agricultural workers; another established and controlled by landowners and right-wing parties, representing nearly 30 percent of agricultural workers; and a third, the largest of the three, representing some 50 percent of the workers in the sector loyal to the CDP (Barracough and Fernández 1974:179). The new

system of parallel unions in the countryside thus became a vehicle for transferring national political divisions to the rural area.

One of the main achievements of the CDP administration was its serious consideration of the plight of the agricultural sector. It did so by combining a program of land redistribution with the extension of rights to agricultural workers. Despite its many problems, some 1,000 farms were expropriated during the six years of the Frei administration, affecting 15 percent of all agricultural land (Kaufman 1972:97). Yet, agricultural workers were not satisfied either with the form or the pace of the expropriations. Led by CDP and left-wing activists, they demanded speedier and more drastic action. Given these conditions, it is not surprising that rural workers were bitterly disappointed when the austerity measures introduced by the government at mid-term slowed down the pace of expropriations. Indeed rural workers had good reasons to be disappointed—and even enraged—as the publicity machinery of the CDP had led them to expect that there soon would be 100,000 new property owners in the countryside. During the second half of the Frei administration, there was thus a significant increase in the number of strikes in the countryside. While the total number of strikes between 1960 and 1966 was 826, in 1967 and 1968 there were close to 700 per year and in 1969 the number shot up to more than 1,000 (Barracough and Fernández 1974:194). By the end of the Frei administration political conditions in the countryside were in such a state of ferment that it seemed unlikely that it could be contained within the framework of the prevailing agrarian reform legislation.

Mobilizing the Urban Poor

Popular promotion was the name the government gave to the set of policies that were meant to achieve the objective of social inclusion and empowerment among the urban poor. A distinctive feature of popular promotion policies was its emphasis on the establishment of new mechanisms of participation to ensure that community demands were promptly and effectively channeled to public authorities. These organs of popular participation were also meant to be the foundations of a more democratic institutional order.

The mass of urban poor, many living in subhuman conditions in miserable shantytowns, provided the government with a unique opportunity to implement its programmatic aspirations. Among the many problems affecting the urban poor, housing was the most urgent. Indeed, the country was facing at the time a major housing crisis

because of the rapid growth of the urban population during the 1940s and 1950s. While in the 1920s, 40 percent of the population lived in urban centers, in the 1950s this figure had increased to nearly 60 percent, reaching 75 percent in 1970 (Yoclevzky 1987:204). This rapid growth was caused largely by the decline of agriculture, rather than the success of the policy of import substitution. As a consequence, a carefully planned process of urbanization did not accompany the expansion of the population living in cities. There was thus a huge housing deficit, estimated in 1964 to be around 600,000 units (LeGates 1974:55). It was made worse by the fact that more than a third of the total urban population lived in Santiago. The mass of homeless urban poor thus became an obvious target of popular promotion policies, and the Ministry of Housing became its main executing agency.

The first step taken by the Ministry of Housing was the launching of a community development program that led to the establishment of more than 3,000 neighborhood committees. These organizations were intended to provide a direct link between the urban poor and the government (Frei 1970:149). Neighborhood committees also played a key role in the implementation of *Operación Sitio*, a self-help program developed by the Ministry of Housing (Cleaves 1974:210-211). Under this program, the government provided an urbanized plot of land to families who agreed to build their own house. The government also supplied building materials and offered technical assistance. Families enrolled on the program had the ultimate responsibility for ensuring that the house was built.

Operación Sitio was well received by the homeless. During its first week, more than 60,000 families enrolled in the program. But politicians were critical of this policy. Communists and socialists dismissed it as a form of welfare provision that had little to do with genuine empowerment. The National Party claimed that the Ministry of Housing was making improper use of state resources for party political purposes. It also condemned the policy as excessively partisan, as it claimed that the government supported only neighborhood committees whose members supported the government (Duque and Pastrana 1972:279-281; Lechner 1970:130-134). Independent observers complained that the policy was badly managed and plagued by bureaucratic problems (Cleaves 1974:284). As criticism against the Ministry of Housing and *Operación Sitio* mounted, the government introduced a bill in the congress to define the powers and regulate the activities of neighborhood committees. The need for regulation was also prompted by the fact that the activities of neighborhood

committees and the enthusiasm of Ministry of Housing officials were beginning to create conflicts of jurisdiction between central government and local authorities in the municipalities. The parliamentary debate on the Neighborhood Committee bill was long and acrimonious. The bill was eventually approved, in August 1968, close to the end of the CDP's term in office.¹

The law on neighborhood committees was a 10,000-word document divided into 65 sections. It was drafted in technical language hardly accessible to shantytown dwellers. The technical complexity of this law was partly a consequence of the strong opposition the government encountered in the congress. Initially, the government had proposed that the Ministry of Housing should have exclusive responsibility for the establishment of neighborhood committees. The congress rejected this proposal and, instead, gave municipalities broad powers to supervise their activities. Thus, municipalities were entrusted with the task of determining the territorial boundaries of committees—a politically delicate task, as the law allowed only one committee per territorial unit. They also authorized any major project undertaken by the committees.

The new law, however, failed to clarify crucial questions concerning the nature of the neighborhood committees. Were neighborhood committees intended to be effective organs of popular representation, or were they merely conduits to facilitate the implementation of government policy? The law provided that neighborhood committees had four main functions (Section 22): to represent the interest of its members in all matters concerning the regularization of property titles; to promote urban development projects in conjunction with the relevant state and municipal authorities; to promote solidarity among its members; and to protect the general interests of the community. The law, however, did not clearly define the political nature of neighborhood committees. One of its sections (Section 1) defined neighborhood committees as local organizations designed to collaborate with state and municipal authorities in defense of the interests of its members. Another section (Section 6), however, defined them as organs of popular representation. Thus, while according to one section, neighborhood committees were little more than local welfare pressure groups, according to another, they were depicted as genuine organs of popular power. During the parliamentary stages of the bill the government unequivocally favored the concept of neighborhood committees as local welfare pressure groups (Vanderschuren 1973:277-278). The constitutional position on this matter was clarified only in 1970, when the CDP sponsored a constitutional amendment that paved the way

for Salvador Allende's access to the presidency. This amendment, which purported to regulate the right to participate, provided that neighborhood committees and other organs of popular participation were merely vehicles to facilitate and support the activities of state agencies in the provision of community services. They were not allowed, under any circumstance, to claim the right of popular representation or to attempt to exercise state functions. Thus, after their legalization and subsequent elevation to the status of a constitutional organ, neighborhood committees could hardly be described as organs of social empowerment or self-government.

In practice, however, neighborhood committees did empower the homeless and shantytown dwellers. They quickly acquired enormous prominence due largely to their capacity to represent the demands and aspirations of their members. Neighborhood committees thus had a major role in raising political awareness and confidence among its members. In 1965, before the establishment of neighborhood committees, only 36 percent of shantytown dwellers thought that they could influence government decisions. Four years later after their launch, nearly 80 percent of shantytown dwellers expressed confidence that they could effectively use political pressure to persuade government agencies to act on their behalf or to reverse policies with which they did not agree (Cleaves 1974:282). As political confidence among them increased, so did their expectations. The inability of the government to cope with their new demands created a vicious circle whereby unmet demands from urban groups led to new and more radical demands. This process went far beyond the legal concept of neighborhood committees as mere welfare agencies.

The political potential of neighborhood committees did not go unnoticed by the Marxist parties. They became directly involved in the committees' activities and soon managed to assert considerable influence over them. According to a survey on the composition of neighborhood committees, 30 percent of its members were also union members. This overlap in membership enabled the Communist and Socialist Parties to exert considerable influence on them and to use the process of political mobilization as a political weapon against the government (Duque and Pastrana 1972:288; Vanderschuren 1973:280-281).

As shantytown dwellers became more militant, urban land invasions became more frequent, and, by the end of the CDP administration, they had become a significant political problem. During the first two years of the CDP administration, there were few cases of land invasion: only six cases were registered in Santiago. In 1967, there were

13 and in 1968, there were 8. The number of land invasions, however, grew sharply during the last two years of the CDP administration reaching, 73 in 1969 and more than 200 in 1970 (Duque and Pastrana 1972:263-268). Land invasions generally involved several hundred homeless families and more than 1,000 people (LeGates 1974:60-64). They were complex operations, almost of a paramilitary nature. They were organized by ad hoc committees—known locally as homeless committees—which, invariably, had the support of one or another political party. The Communist and Socialist Parties participated actively in these committees as part of their campaign to recruit members among the urban poor. Eventually, even CDP supporters formed homeless committees and organized land invasions (Landsberger and McDaniel 1976:519).

The government's objective of extending rights and empowering the urban poor undoubtedly contributed to enhancing the political confidence of shantytown dwellers and the urban poor. But the government was unable to control the growing political agitation it had unleashed. Thus, not surprisingly, by the end of his period in office, Frei had lost interest in neighborhood committees and in popular promotion in general (Angell 1972:139).

Revolution Prolonged

Assessment

By the end of Frei's term of office, the government could claim impressive achievements, especially in the area of social development. The improvements in education illustrate this point. During the period, primary school enrolment increased by 40 percent and the provision of meals at schools registered a fourfold increase. Adult education was not neglected, as shown by the significant drop in illiteracy rates from 16 to 11 percent (Efrénch-Davis 185). There were also remarkable improvements in health and social security (Foxley et al. 1980:67-83, 145-182). Income distribution also became more equal as the share of labor in total income went up from 48 percent in 1964 to 53 percent in 1969 (Molina 1972:128). But these achievements conceal a colossal failure: the government's inability to transform its massive electoral majority into a solid coalition for change. Instead, by the end of Frei's period in office the CDP was politically isolated and unable to forge a partnership to extend the "revolution in liberty." Ironically, the plight of the CDP in 1970 was similar to that of the Radical Party in the early 1950s. It was the largest party,

but could not find political allies to make a credible bid to stay in power.

As explained above, from the outset the government was as determined to apply sound principles of economic governance, as it was committed to the implementation of its program. But, as the implementation of its policies progressed, it soon had to choose between stabilizing the economy and pushing ahead with its program of structural reforms regardless of economic consequences. After initial hesitation, the government opted for both. It cut public expenditure in order to hold back inflation, but the cuts were insufficient to halt the inflationary pressures. As a result, by the end of Frei's term of office inflation was virtually the same as during the final years of the Alessandri administration. Cuts in public expenditure reduced the funds available for education, health and also had the effect of slowing down the agrarian reform process and the housing program. Yet, despite these cuts, the government did not give up its program of structural reforms. In the end, however, the government's concern with economic stability, combined with its determination to continue pressing for structural reforms, generated a process of political mobilization that had disastrous political consequences.

In political terms the CDP's failure stems largely from its determination to achieve a solid majority for change solely through electoral competition. Initially, this attempt was tactically justified, as evidenced by the impressive performance of the CDP in the general elections of 1965 (42 percent of the vote). But instead of regarding these results as its electoral zenith, the CDP interpreted them as the beginning of an unstoppable trend. Accordingly, it decided to accelerate the process of political mobilization in an all-out effort to increase its electoral strength. The main targets of this effort were the traditional constituencies of the Communist and Socialist Parties. This decision instantly transformed the CDP into the main political adversary of both right and left-wing parties. Thus, not surprisingly, the parties on the extremes of the political spectrum spared no efforts to undermine government policies, even those policies they had supported in the congress. Thus instead of attracting allies to assist in the consolidation of its policies, the CDP converted the process of policy implementation into an arena of discord and political controversy.

The agrarian reform provided the right-wing National Party with an ideal setting to proclaim its commitment to property rights, economic freedom, and middle-class values and thus recover the electoral support that the Right had lost to the CDP in 1964. In electoral terms this strategy was effective. The Right increased its share of the vote

from 12 percent in 1965 (combined vote of the Conservative and Liberal Parties) to 20 percent in 1969. The government also had to contend with the growing skepticism of the private sector. Indeed, despite its genuine concern with sound economic governance, the government was unable to persuade business associations that it was serious about protecting property rights. That business associations lost confidence in the government is not altogether surprising. After all, while the government adopted tough measures to stabilize the economy, CDP activists were busy campaigning in support of the ever-growing economic demands of urban and rural workers.

But more damaging than right-wing resistance to economic reform was the government's clumsy attempt to undermine the influence of the Left within the union movement. The government's frustrated attempts to set up a confederation to compete with the CUT were political folly. Communists and Socialists opposed it, and the government was forced to abandon it, as even CDP unionist opposed it. Likewise, the government's attempt to introduce parallel unionism in the mining and manufacturing sectors was resented by the Left and later abandoned because of opposition from within the CDP. Having given up its attempts to redesign the system of industrial relations, the CDP concentrated fully on bolstering its electoral support at the expense of the Marxist parties. Yet, the ensuing electoral competition did more damage to the government than to the Left as it had a general effect of radicalizing popular demands from all sectors, regardless of political affiliation, thus further disrupting the implementation of the program of reforms. As the number of strikes increased and the occupation of land in rural and urban areas proliferated, the attention of the government was diverted to issues of law and order. In the meantime, the main beneficiaries of this incessant electoral competition were the communists and socialists. Indeed, the CDP's decision to pursue the route of electoral competition greatly benefited them. Between 1965 and 1969, the combined vote of the Communist and Socialist Parties increased from 23 percent to 28 percent.

By the end of Frei's term in office, the CDP's expectations of remaining in power for 30 years were shattered. In hindsight it is clear that the government wasted precious time and energy in its hopeless effort to reduce the influence of communists and socialists among urban and rural workers. Why did the government not adopt a more constructive policy toward the left-wing parties? This issue was the main bone of contention between the party's old guard, led by Frei, and the rebel group that managed to control the party for a short period. The rebels demanded closer cooperation with the Left, as in

their view the communitarian society that the CDP had promise to build was a socialist society. But Frei disagreed and consistently refused to make any overtures toward the Left. Given prevailing animosities, it is, of course, doubtful that either the Communist or the Socialist Party would have responded positively to an approach from the government. What is certain, however, is that the leadership of the CDP refused to contemplate making such an approach, despite the fact that important sectors within the party advocated it. Indeed, the failure to resolve this issue is what prompted the *rebeldes* to break away from the party.

The government's persistent refusal to broaden its base of support through political alliances reinforced the merciless hostility to government policies by both left- and right-wing parties. The Left, riding on the intense wave of popular mobilization unleashed by the government, did its best to accelerate its pace through the promotion of strike action and the occupation of urban and rural properties. The Right, for its part, continued its support to landowners' resistance to the agrarian reform while bitterly complaining that the government was unable to maintain law and order. As the process of mobilization intensified, the CDP found itself squeezed between two political blocs—one on the right and the other on the left—that sought radical change and shared only one thing in common: their contempt for the CDP. Under these circumstances political discourse was impoverished, as it became largely negative and left no room for negotiation or compromise. In the short term, the main loser of the changes in the structure of the party system was the CDP, which despite being the largest party, remained stubbornly isolated. In the long term, however, these changes played a major part in the collapse of the political regime.

A New Coalition for Radical Change

The foregoing suggests that after the eventful years of the Frei administration a political respite was urgently needed. Yet, the imperatives of the electoral cycle did not allow for a break. As the CDP began to lose its electoral appeal, the Marxist parties emerged as attractive electoral partners to non-Marxist parties. After lengthy political squabbles, the Left established the Popular Unity, an electoral coalition between the two Marxist parties and three social-democratic parties, including the old Radical Party and the MAPU. Meanwhile, the CDP embraced a radical political program, thus

distancing itself from the government and implicitly acknowledging the shortcomings of Frei's "revolution in liberty." Yet, despite the party's swing to the left, there were no prospects of an alliance between the CDP and the Marxist parties.

The Popular Unity nominated Salvador Allende as their candidate and called their program a peaceful transition to socialism. Their electoral campaign, however, was uninspiring, as the clear favorite was Jorge Alessandri, the candidate of the Right. After unconditionally supporting the CDP to prevent a Marxist victory, the Right had come to the conclusion that the CDP could not be trusted. Given the persistent division between the parties advocating radical social change and the financial resources commanded by the Right, Alessandri was widely regarded as the strongest candidate. In the event, however, the Popular Unity managed a narrow victory. Allende obtained 36 percent of the vote, while Alessandri obtained 35 percent. The CDP candidate trailed behind with 28 percent of the vote. This unexpected result gave radical democracy a second chance. Yet, although the political slogans and the leading actors had changed, the obstacles to reform had not.

The electoral victory of the Popular Unity, though narrow, confirms that the Marxist parties continued to enjoy the support of a respectable portion of organized workers. But although communists and socialists continued to be a major force within the union movement, their overall influence had decreased. Indeed, the phenomenal expansion of the union movement during the Frei administration brought about a change in the membership of the union movement that significantly reduced the influence of the Marxists parties. In the 1940s and 1950s, when workers from the mining and manufacturing sectors constituted the bulk of the union movement, the communist and socialist had a preponderant influence within it. By the late 1960s, however, as union membership expanded and workers' demands became more radical, neither the Marxist parties nor the CDP could control the activities of unions as they had done in the preceding two decades. The bulk of the newly organized workers were rural workers and workers in the construction and service industries. Although easy to mobilize in pursuit of short-term and sometimes quite radical objectives, they were not as docile or reliable as the members of the old established unions in the mining and manufacturing sectors. During the Frei administration, the main beneficiaries of this volatile workforce were ultraleft movements that were equally critical of the Marxist parties and of the CDP and had no stake in the preservation

of the constitutional framework. Thus, even if Allende had presided over an ordinary administration, he would have confronted enormous challenges. He only polled 36 percent of the vote, did not control enough seats in the congress to secure the approval of legislative initiatives, confronted a party system that had lost the habit of compromise, and faced an unusually high level of political mobilization. Allende, however, did not intend to preside over an ordinary administration. He was determined to bring about a real revolution, albeit through peaceful means.

Chapter 8

A Peaceful Revolution

Introduction

Salvador Allende's victory in the presidential elections of 1970 brought about yet another attempt to achieve a social and economic revolution through constitutional means. Allende's program of government, described as "a peaceful road to socialism," was more radical than Frei's "revolution in liberty." It called for the establishment of a dominant state sector comprising large-scale mining, public utilities, and key firms in manufacturing, distribution, and finance. It also called for the rapid implementation of the agrarian reform law and the enactment of comprehensive social programs to benefit the wage earning population. The program also called for an effective transfer of power from the old ruling groups to workers, peasants and progressive sectors of the middle classes (De Vylder 1976:23-40).¹

The peaceful road to socialism entailed a commitment to total respect for mechanisms and procedures of the political system. Structural reforms would be introduced by means of constitutional or legislative reforms and would be implemented with due respect for the constitutional framework and the principle of legality. In his first annual message to the congress in 1971, Allende reaffirmed his commitment to the institutional framework: "[W]e have promised that our government will put its revolutionary aims into practice with full respect for the rule of law. This is not merely a formal assurance, but the explicit recognition that, in spite of the difficulties inherent in the transition period, the principle of the legality and institutional order are compatible with a socialist regime" (Allende 1973a:149).

These optimistic assertions about the prospects for the new government could not conceal the innumerable obstacles that stood in the way of the peaceful road to socialism. The Popular Unity, Allende's

coalition, had won the election by the narrowest of margins (only 1 percent of the vote) and hence its mandate to carry out a revolution through the democratic process was, if not doubtful, at least problematic. The minority position of the Popular Unity parties was reflected in the composition of the congress where they did not have an overall majority. The Popular Unity thus urgently needed to broaden its base of support. Yet, at the time, there were no political partners available. The CDP was unlikely to offer its support, as the Marxist parties had relentlessly opposed the Frei administration and hence were resented by the party's leadership. The National Party, for its part, emboldened by Alessandri's performance, but disappointed with the electoral process that had allowed a Marxist to become head of state, was busy reestablishing and strengthening its links with business associations and was calling for popular mobilization against the new government. There was also a major external obstacle: the Nixon administration in Washington. Indeed, the United States government had embraced ITT's (International Telephone and Telegraph Corporation) plan of action and its goal was, as described by Henry Kissinger, "to make the economy scream" (Kornbluh 2003:2).

Despite these inauspicious conditions, Allende did not scale down his program. Instead, using every jot of power vested in the executive branch and relying on the prevailing high levels of political mobilization, he pressed ahead with surprising vigor and enthusiasm. Initially, the government had some success. The economy grew, inflation was under control, and scores of business enterprises were taken over by the state. The initial success of the government created the impression that it had a carefully planned strategy. But events proved otherwise. As the economy collapsed and inflation began to run out of control, the opposition regained the initiative. Their strategy, which was based on a combination of total opposition in the congress together with popular protests, economic boycotts, and sporadic acts of terrorism made a sham of the government's claim that the Popular Unity represented the majority of the working class; while demonstrating, at the same time, that the government was unable to run the economy and could not be trusted to maintain law and order. In the end, however, Allende's opponents were unable to secure enough seats in the congress to impeach the president and thus secure his removal from office through constitutional means. They thus turned to the military, which, with covert support from the Nixon administration, overthrew the government and destroyed democracy (Church Report 1975; Hersh 1982; House of Representatives 1976).

There is no shortage of contemporary interpretation of the events leading to the military coup that brought an end to the Allende administration and democracy. Some justified the coup while others criticized it. Some attributed the coup to Allende's determination to destroy an otherwise healthy and normal political system; others claimed that Allende failed because he naively believed in the virtues of the democratic process and did not distribute arms to the people, or because he was incompetent and allowed the economy to run out of control (Faundez 1975). Despite their differences, all these interpretations have a grain of truth. Government policy was at times so reckless that it is difficult not to regard it as anything but a conscious attempt to undermine the prevailing institutional framework. There is also plenty of evidence that shows that the government had little or no concern for the devastating inflationary consequences of its economic policies. Yet, there is also evidence that suggests that, even at a very late stage, the government had an inexplicably strong faith in the possibility of resolving the obviously intractable political crisis through compromise and negotiation.

The conflicting interpretations about this period are not merely a result of different ideological perspectives. They stem from the nature of government policies. A careful assessment of these policies suggests that the government never fully reconciled its commitment to revolutionary change with its commitment to respect the procedures and mechanisms of the prevailing institutional framework. This ambiguity pervaded every aspect of government policy. As a consequence, Government policy appeared to respond to a dual strategy: a parliamentary strategy that purported to channel political change through constitutional mechanisms; and a revolutionary strategy that sought to make use of every iota of executive power to implement its program even at the cost of subverting the institutional order. Under the dual strategy, the objective of empowering workers and peasants was subordinated to the objective of asserting control over the commanding heights of the economy. The government, however, soon found out that it could not indefinitely postpone the expectations of greater empowerment and democratization. As this chapter shows, the tragic end of the Popular Unity administration was due largely to its failure fully to grasp the importance of this point.

A Dual Strategy

Origins

There is no evidence that prior to the September 4, 1970 either Allende or the Popular Unity had seriously considered how they

would implement their program. This oversight is understandable not only because of the pressures of the electoral campaign, but also because, perhaps with the exception of Allende, the leadership of the Popular Unity had not expected to win. Thus, the new administration confronted the unexpected task of designing a strategy to fulfill its commitment to bring about a transition to socialism within the prevailing institutional framework. Given the novelty of the challenge, the strategists of the new government could neither borrow ideas from the experience of other countries nor could they draw inspiration from Marx and Engels. Indeed, with the exception of a few ambiguous paragraphs, the founding fathers of Marxist revolutionary theory had not seriously envisaged the possibility of a genuine revolutionary transformation without a violent overhaul of the prevailing political institutions (Marx 1969:293, Engels 1970:434, 1976:349). Indeed, the standard-bearers of the Marxist revolutionary tradition had ridiculed and characterized as renegades those who, like Karl Kaustsky and Edward Bernstein, had suggested that a violent political revolution was not the prerequisite for a genuine socialist transformation (Claudin 1977; Hunt 1984:325–362; Moore 1963:65–69). Allende and his political advisors thus had neither a historical blueprint nor a textbook to guide them in the design and implementation of their strategy (Garcés 1972).

Three factors contributed to shaping the political strategy of the Allende administration: the immediate constraints imposed by the institutional framework, the imperative of reactivating the economy, and the ideological assumptions and conflicts between the Communist and Socialist Parties, the leading members of the Popular Unity coalition. The interplay of these three factors brought into being a strategy that simultaneously reaffirmed the commitment to the constitutional framework, while indicating an uncompromising determination to push ahead with revolutionary changes, without any concern for procedural niceties and regardless of consequences.

Allende's electoral victory did not merely pose a novel challenge to left-wing strategists. It also posed a challenge to the opposition parties, the CDP, and the National Party. Their response, however, was remarkably different. The right-wing National Party, together with assorted right-wing extremists and supported by the CIA and a handful of prominent U.S.-based multinationals, were determined to do anything—legal or illegal—to keep Allende from taking office. The constitutional rules offered a unique opportunity to achieve this objective without having to instigate a military coup. It provided that where no candidate in a presidential election obtained more than

50 percent of the vote, it fell upon the two chambers of the congress (in a joint session) to choose the president from the two candidates with the largest number of votes. As Allende had obtained a plurality of the vote, the congress could have chosen Jorge Alessandri, the runner-up, as president. Given that the opposition parties controlled the majority of seats in the congress, they were in a position to block Allende's access to power. This option, however, was politically dangerous as the congress had never before selected the runner-up, and given the intense mobilization prevailing at the time, this option could have easily brought about a breakdown of the political system. The CDP thus rejected this alternative and opted for a different policy. It decided to require Allende to give a further guarantee that his administration would respect the rules and procedures of the democratic process. This guarantee took the form of a constitutional amendment that was hastily negotiated and approved on October 13, 1970, only weeks before Allende was due to take office (Evans 1973: 105–106). This decision prompted disgruntled right-wing groups with links to the CIA, to engage in a variety of terrorist acts, including an unsuccessful attempt to kidnap the commander-in-chief of the army, which resulted in his assassination (Kornbluh 2003:1–115).

The constitutional amendment, known also as the Statute of Democratic Guarantees (SDG), was, ostensibly, meant to strengthen civil and political liberties. It contained detailed provisions dealing with the media, education, freedom of assembly, the right to establish political parties, and the right to participate in grassroots organizations. The Popular Unity regarded the SDG as innocuous because it restated rights already in the constitution—such as freedom of speech and freedom of assembly—and gave constitutional status to principles that had a long tradition in local practice, such as the right to establish political parties and the right to strike. Accordingly, the Popular Unity regarded their acceptance of the SDG as a mere tactical concession (Debray 1971:119–120). As it turned out, however, the SDG became an important weapon in the ensuing political confrontation, as it provided Allende's opposition with a powerful standard to judge and criticize the government. This was a standard that the Popular Unity parties could not easily ignore as they had voted for it in the congress. In strategic terms, the constitutional amendment had a wider significance. It demonstrated that the opposition parties were divided on their policies toward the Popular Unity administration. It also showed that constructive negotiations between the CDP and the new government were possible. These developments strengthened Allende's authority within his coalition, as they

appeared to validate his claim that a political compromise with the opposition was possible.

But as the political parties debated the SDG in the congress, events on the ground were moving fast. Allende's election had prompted a new surge of popular mobilization, especially in the countryside where land invasions were proliferating. While left-wing supporters ensured that levels of political mobilization in favor of the government remained high, property owners, frightened by alarmist rumors, brought about a run on the banks. Although the financial panic soon subsided, many industrial firms began to cut production and sack employees and even threatened to shut down altogether, thus raising concerns about a possible investors' strike. In response to the threats of economic boycott, unions promoted a wave of strikes and factory occupations that caused serious concern to the government. Thus, before left-wing political strategists had the time to design a strategy, the government was forced into action. Relying on the extensive regulatory powers vested in the executive, the government intervened to terminate labor disputes and to restore production. The government used two main mechanisms: labor intervention decrees—known also as back-to-work decrees—and requisition decrees (Von Brunn 1972:65–73). Though these decrees placed the enterprise under temporary administration of the government, they did not affect the underlying property rights. The government also launched a policy of economic reactivation that included a massive injection of public funds in labor-intensive projects and an incomes policy in favor of the worst-off wage earners (De Vylder 1976:52–77; Roxborough et al. 1977:71–101).

In the short term, the results of the economic policy were encouraging. Industrial production increased by 12 percent and GDP increased by 8.5 percent. Unemployment fell from 7 to 4 percent and the rate of inflation dropped from 35 percent to 22 percent. The political consequences of the economic policy were also encouraging. In the municipal elections of April 1971, support for the Popular Unity parties increased from 36 percent to a little under 50 percent. The success of these initial measures had the effect of transforming a policy that was meant to be temporary into a permanent feature of the government's strategy. Instead of seeking a negotiated settlement to the congressional impasse, the government began to implement its program relying almost exclusively on its regulatory powers. Thus, back-to-work and requisition decrees enabled the government to take over the administration of scores of industrial and agricultural enterprises. The government also took control of nearly the whole of the

banking system through the purchase of shares on the open market and dramatically accelerated the pace of land expropriation under the agrarian reform law.² Thus, after ten months in office, almost the whole of the banking sector had been transferred to the state, a large number of business enterprises were under state administration, and the government had expropriated virtually all the land that could be expropriated under the agrarian reform. But while government officials and supporters hailed these achievements as a major step toward the socialist revolution, the president and his cabinet continued to make statements that suggested that they expected a political breakthrough with the Christian Democrats to secure congressional approval for the implementation of their program. Allende thus continuously promised that he would introduce a bill to provide for the nationalization of banks and of the manufacturing sector. Yet, given the pace at which the government was ordering requisitions, expropriating land, and buying out banks, the much-promised nationalization bills were rapidly becoming redundant.

Reconciling Conflicting Ideologies

The government's dual strategy was, undoubtedly, prompted by the need to respond to urgent political and economic pressures. Yet, this strategy was also convenient as it had the virtue of accommodating the conflicting views of the Socialist and Communist Parties over the nature of the Popular Unity's program of government. The socialists argued that the program contained an unequivocal mandate immediately to proceed to the nationalization of the commanding heights of the economy. The communists, adopting a moderate position, argued that the program only called for the nationalization of a select number of enterprises in the mining and manufacturing sectors. The nationalization of the rest of the commanding heights of the economy, according to this interpretation, would take place at a later stage, not within the six-year period of the Allende government. These conflicting interpretations entailed two opposing views on how to strengthen the government's position. The Communist Party argued that the government urgently had to seek support from the GDP in order to persuade the congress to approve their legislative program. The Socialist Party did not agree. It emphatically ruled out any such agreement, as, in their view, the GDP was a bourgeois party committed to the revival, rather than the replacement of, capitalism. They thus argued that the only way to strengthen the government was by immediately beginning the implementation of the program, thus showing

determination and commitment to the goal of building a socialist society (Faundez 1980:62-65).

Given these conflicting views, the government's dual strategy played a useful role as both socialists and communists regarded it as an accurate expression of their views. The communists, the main advocates of seeking a compromise with the CDP, regarded the strategy as a useful, albeit temporary, device to soften the hardliners within the CDP, pending a comprehensive agreement with that party over the implementation of the program. The socialists, for their part, embraced the government's strategy because, in their view, its effect would be to bring about a major split within the CDP, thus providing the government with enough votes in the congress to transform the program of requisitions into an effective program of nationalization. Thus, while the communists expected that the CDP would eventually be persuaded to compromise with the government, the socialists did not believe that persuasion would work. They expected that the unfolding of events, mainly the acceleration of the program of requisitions, would make a political compromise unnecessary, as the inevitable split within the CDP would strengthen the position of the Popular Unity in the congress, without having to compromise the program. For the communists, the strategy was a device to push the CDP into negotiations, and for the socialists it was a means of avoiding negotiations—hence their slogan *avanzar sin transar* (move ahead without compromises).

The government's dual strategy was acceptable to both communists and socialists because they shared a common view about their role within the political system. This view, albeit outdated at the time, was based on the assumption that they were the only parties that genuinely represented the interests of the working class and other subaltern classes. It was based on their experience in the 1930s and 1940s when they had a virtual monopoly of the vote of organized workers (Petras and Zeitlin 1967). It led them to believe that workers and other members of the subordinate classes who did not support them were temporarily misguided and, in time, would soon realize that communists and socialists were the only genuine representatives of working-class interests. This view, as explained in chapter 7, made it difficult for the communists and socialists to acknowledge that the CDP had considerable electoral support and influence among workers and peasants. Thus, the government's dual strategy played a useful role, as it was consistent with the Marxist parties' view about their position among workers and other subaltern groups. Indeed, the notion that workers who supported the CDP would eventually gravitate toward the government was consistent with the position of the socialists who

flatly opposed any form of negotiation with the CDP. It was also consistent with the position of the communists, because they claimed that as CDP workers began to gravitate toward the Popular Unity administration, the CDP would have no choice but to negotiate with the government. As it turned out, neither the CDP nor its working-class supporters behaved as the communists and socialists expected. Yet, because the dual strategy served to conceal the differences between the two Marxist parties, the government was unable to shift away from it, even after its shortcomings became obvious.

Marxist Orthodoxy and Constitutional Patriotism

The foregoing suggests that what I have described as the dual strategy was little more than a set of tactical decisions aimed at addressing immediate problems and reconciling conflicting ideologies. Yet, at another level, the strategy was consistent with an orthodox Marxist interpretation about the relationship between politics and economics. The dual strategy assigned absolute priority to the immediate takeover of the commanding heights of the economy, thus postponing the political aspiration of effectively transferring power to workers and peasants (Allende 1972:8-11). This orthodox approach to the economy was combined with equally orthodox expectations about the behavior of the main political actors. Indeed, the government expected that as the commanding heights of the economy fell under the control of the state and the agrarian reform abolished large agricultural states, the CDP and other progressive political actors would either willingly join the government, as expected by the Communist Party; or, as expected by the Socialist Party, they would become politically irrelevant because their members would desert them in favor of Popular Unity parties. Throughout this process it was expected that organized workers would remain loyal to the government and the Marxist parties, as the Popular Unity was seen as the natural representative of the interests of subordinate groups. As it turned out, however, the assumptions on which the dual strategy was based were mistaken. Indeed, although the government formally took over a large number of industries by resorting to its administrative powers, it never had effective control over what it described as the commanding heights of the economy. As a consequence, the assumption that other progressive political actors would sooner or later come to recognize the leadership of the Popular Unity was a delusion based on a crude interpretation of Marxist ideology. The most damaging consequence of

this interpretation was that it took for granted that workers, peasants, and the urban poor would support government policies, even though their political and economic aspirations had to be postponed (Bitar 1979:278-281; De Vylder 1976:147-148). The government assumed that it could endlessly manipulate and control political mobilization in support of its policies. But, as the government was soon to find out, other political forces also had the capacity to mobilize the population. Moreover, the government also found out that it could not take for granted the loyalty of its own supporters.

Apart from reflecting an orthodox Marxist interpretation of the relationship between economic and political process, the dual strategy was also based upon a fairly conventional view about the nature and attributes of the political and legal systems (Garcés 1972). Indeed, it was based on the view that the prevailing political and legal systems were uniquely stable and could be endlessly stretched (Novoa 1971, 1978, 1992). This assumption, though mistaken, was not surprising given that the formative years of most of the senior leaders of the Popular Unity had been during coalition politics period in the 1940s, when political parties behaved with little regard to constitutional restraints. The revival of the party system in the 1950s, which as explained above, was largely the unintended consequence of the failure to introduce market-based policies, further reinforced the confidence among left-wing leaders that political agency could overcome any obstacle. These two misconceptions—endless flexibility and absolute faith in political agency—were complemented by a commonly held belief that the power vested in the executive was virtually unlimited, as the judiciary was not expected to review acts of authority.

The Popular Unity's views about the flexibility of the political and legal systems were widely shared by other members of the political and intellectual elite. This shared view, which could be described as a form of constitutional patriotism, enhanced the credibility of the dual strategy. It is important to bear this factor in mind, as, otherwise, the political and legal debate during this period becomes incomprehensible. This was Regis Debray's reaction when he visited Chile during the early days of the government. Instead of the familiar revolutionary discourse, he was disappointed to find what he regarded as an obsessive concern with legality and the rule of law. From his privileged standpoint as a theorist of Marxist revolutions, his comments on the political debate were both sarcastic and bitter: "[T]he punctilious prose of speeches, of editorials in the major newspapers, of television discussion, of parliamentary debates and the principal ongoing polemics will thrill no one, unless he is a graduate of Constitutional

Law" (Debray 1971:13). But the fact was that constitutional law graduates, as well as opposition politicians, were, at least initially, genuinely confounded by the government's dual strategy.

Overstretching Institutions

The Economy Screams

In party political terms, the main virtue of the government's dual strategy was that it managed to circumvent the ideological differences within the coalition, while, at the same time, delay the establishment of a unified opposition bloc by the CDP and the National Party. In economic terms the government's dual strategy also seemed to yield benefits. In 1971, GDP increased by 8.5 percent and industrial production increased by 12 percent, while unemployment fell from 7.2 percent to 3.9 percent. Even inflation fell during the first year, from 35 percent to 22 percent. The illusion that the government's strategy was effective could be sustained as long as the economy appeared to be doing well. But, as usual, the economy soon showed signs of weakness. Indeed, as Henry Kissinger had wished, predicted, and done much to ensure it would happen, the economy did scream.

The initial economic policy—which comprised a substantial expansion of demand, strict price controls, and a generous incomes policy—ran into difficulties. The problems faced by the Popular Unity after its first 12 months in office were not unlike those faced by the Frei administration. The incomes policy overreached its target. In one year, labor's share in the national income reached the level it was meant to have reached in six years. Although there was a significant increase in production, the increase was 20 percent below the government's target. Moreover, the incomes policy brought about an unexpectedly high increase in the demand for foodstuffs. The government's plight was made worse by an unforeseen fall in the price of copper. Meanwhile, investment in the private sector declined as the considerable profits generated during the boom of the first year were diverted from productive investments. The government thus had to step in and devote most of its resources to importing foodstuff to satisfy the newly created demand, thus postponing major projects of public investment. Indeed, public investment in 1971 increased by only 1 percent, as most of the growth registered that year was due to the utilization of idle capacity (Behrman 1977:76).

As noted in chapter 7, the Frei administration under similar circumstances had opted for economic stability and had drastically reduced

public expenditure. But the Popular Unity did not choose this course of action, as it was unwilling to restrain the political expectations of its supporters. It thus attempted to resolve this problem by relying mainly on the same type of regulatory powers it was using to take over the commanding heights of the economy: strict price and production controls backed by severe sanctions, such as the requisition of goods and the closure of commercial establishments. These measures, however, merely exacerbated inflation.

The government's attempt to fight inflation through administrative measures was a complete failure and led to the breakdown of the price control system. During its first month in office, official prices for basic consumer prices were generally respected, as their supply kept pace with the expansion of demand. As production fell and the capacity to import decreased, however, pressure on prices intensified. This pressure was further aggravated by the determined efforts made by government opponents to withdraw basic goods from the market. The government responded by increasing the number of items subject to price control. This decision did not, however, resolve the problem. As the number of items subject to price control increased, so did the workload of the already overstretched price control agency (Ramos 1979:333-334). Moreover, although the list of consumer goods subject to price control was detailed, it did not include everything and hence, was easily circumvented. Thus, while milk was on the list, but cheese was not. Therefore, there was an abundance of cheese and a shortage of milk. Characteristically, the government responded by imposing price controls on cheese, thus increasing the problem of enforcement.

As the shortcomings of the price control system became evident, the government changed its policy and took direct responsibility for the distribution of essential consumer goods through a network of government-sponsored Price Control Committees (*Juntas de Abastecimientos y Precios*) (Giusti 1975; Meneses 1973). This measure was a total failure and it attracted sharp criticism from government opponents. They depicted the committees as illegal, communist-inspired organizations and as the first step toward the establishment of a totalitarian regime.³ While the leading retailers' association boycotted them, the opposition claimed that Price Control Committees discriminated against small shopkeepers and were plagued by sectarian practices.⁴ The opposition was undoubtedly correct in pointing out some of the deficiencies of the Price Control Committees, particularly with regard to its sectarian practices.⁵ The fundamental weakness of this initiative was, however, political. The committees were launched at the worst possible

time, when inflation and the black market were already out of control, and hence had virtually no chance of success (Giusti 1975:770).

Aware of the political consequences of the onslaught of inflation, the government attempted, at least twice, to rectify its economic policy so as to bring prices into line with the level of production (Faundez 1988:234-235). These attempts, however, were bound to fail, as they did not reflect a wider political consensus. The government did not consult the opposition and did not take into account the views of its own supporters. Its economic decisions were in fact taken at secret meetings of the Popular Unity leadership and led to the predictable decision to devalue the Escudo (85 percent for imports and 33 percent for exports) so as to halt the flood of imports and redirect resources toward production. The decision to devalue, which under normal political circumstances would have caused serious difficulties, had devastating consequences for the government. Anticipating further price increases, the private sector immediately withdrew basic consumer goods from the market, thus encouraging the black market and worsening the ongoing inflationary process. As inflation began to rise, the government hesitated and eventually gave in, ordering a wage increase to make up for the losses brought about by inflation. After this decision, the government effectively lost control over the economy and inflation shot up from 22 percent in 1971 to 163 percent in 1972 and to more than 500 percent in 1973.

The collapse of the price control system further deepened the public sector deficit, which by 1972 had reached 20 percent of GDP. This outcome stemmed from the fact that the only enterprises that complied with official prices were those under state control. Between November 1970 and July 1972, these enterprises did not increase their prices at all while the general price index increased by 51 percent. To compensate for the financial losses of these enterprises, the government made cash available to them, thus further increasing the public sector deficit. According to some calculations, the deficit of state-controlled enterprises accounted for 35 percent of the public sector deficit (Griffith-Jones 1981:150).

Changing the Rules

As the government began to lose control over the economy, a political settlement with the CDP became urgent. During its first year in office, the government had counted on the fact that the CDP would find it difficult to align itself with the National Party. This expectation was reasonable, as the CDP had a solid base of support among workers

and peasants and was reluctant to join the right-wing National Party in its negative campaign against the government. But, as inflation gave way to a flourishing black market and public order began to breakdown, the National Party's allegations that the Popular Unity was unfit to govern and that its real objective was to destroy democracy, began to gain credibility.

As long as Allende's promise to send a nationalization bill to the congress was credible, the CDP sought to keep an independent role as arbiter of the political process. But as time went on, the CDP's position began to shift. In October 1971, after it was obvious that the government was not honoring its commitment to the nationalization bill, the CDP introduced a constitutional amendment that dramatically altered the terms of the political debate. The amendment, though ostensibly designed to regulate the process of nationalizations, was seen by the government as an attempt to undermine it. It contained two main parts: one that divested the executive of the extensive regulatory powers hitherto used by the government to take over the administration of scores of enterprises in the manufacturing and financial sectors; and the other, a set of provisions prescribing the principles that the legislature had to observe in the event it decided to transfer private enterprises into the public sector (Von Brunn 1972:97-111). The government's response took the form of a draft bill delegating broad powers to the president to nationalize enterprises with an authorized capital over a certain fixed amount. According to government estimates, the number of enterprises covered by this measure would have been around 250 (Von Brunn 1972:86-97). Given the balance of forces in the congress, the government bill had no chance whatsoever of securing approval. Congress, however, promptly approved the CDP amendment, leaving the government no option but to use its veto power.

The government's veto provided the basis for negotiations with the CDP. The veto accepted, in general terms, the ideas contained in the amendment, but inserted a clause that provided for the immediate nationalization of 90 enterprises. The figure of 90 was a significant reduction from the government's original proposal of 250. The CDP agreed to negotiate, but insisted that the 90 enterprises would be assessed on a case-by-case basis. After a lengthy process, the negotiations became stuck over seemingly minor procedural wrangles and the inclusion of a handful of firms on the list. Eventually, after six months, in June 1972, the CDP broke off the negotiations. In hindsight, it is clear that if negotiations between the government and the CDP were to have any chance of success, they should have taken place before,

not after, the CDP introduced the constitutional amendment. Yet, the CDP introduced the amendment because the government had made no serious attempt to negotiate. After congress approved the amendment, it would have been suicidal for the CDP to climb down and agree to the government's veto, as this would have caused a major split within the party—precisely the outcome expected by some of the parties within the Popular Unity.

Following the introduction of the constitutional amendment by the CDP, its relations with the National Party became increasingly closer. Although in September 1971 the CDP refused to join the National Party in its attempt to impeach the minister of economics, by the end of that year it supported the impeachment of the minister of the interior (Echeverría and Frei 1974:2:34-79). The allegation against the minister was that he had failed to maintain law and order and protect the freedom of assembly of a group of middle-class women who had staged an "empty-pots" demonstration against the government. These circumstances brought the CDP closer to the National Party, and by mid-1972, the two parties had closed ranks to form an antigovernment bloc, which they called the Democratic Confederation (CODE). This realignment of political forces undermined the credibility of the parliamentary prong of the government's dual strategy and strengthened the radical elements within the Popular Unity coalition.

After this first impeachment, there began an incessant round of impeachment of cabinet ministers (Loveman and Lira 2000:376). Although the government responded defiantly, usually reappointing the impeached ministers to another cabinet post, impeachment did prove to be effective, as it kept the government under constant pressure and concentrated the attention of public opinion on alleged unlawful activities of government departments, one at a time. The government complained bitterly that politically motivated impeachments were reviving the discredited parliamentary practices repudiated by the 1925 Constitution. Yet, as previous chapters of this work show, the parliamentary practices of the political elite did not subside after 1925. In any event, the revival of parliamentarism and the consequent weakening of the president were precisely the outcome sought by the opposition.

Impeachments were partly a consequence of the fact that congress had no business to transact. As the opposition parties controlled more than half the seats in both chambers of the congress, the government was unable to secure the approval of any legislation without their agreement. But, because the opposition parties did not have a

two-third majority they could not override the president's veto. As a consequence, the government could only secure the approval of those bills essential to keeping the state apparatus functioning, but faced defeat in the case of legislation that purported to introduce changes along the lines envisaged by the government's program. Thus, the congress rejected all government bills, including those designed to deal with illegal occupations of private dwellings, to control hoarding and speculation or to establish a Ministry for the Family. The bill proposing the establishment of informal community-based tribunals to improve access to justice among the poor had to be withdrawn from the congress in order to avoid a humiliating defeat.

In the absence of parliamentary business, the opposition parties in congress kept the pressure on the government in different ways. In addition to continuous round of impeachments, opposition members took the opportunity to use the chamber of deputies and the senate to attack the government for the prevailing climate of social and political unrest. They also appointed special congressional commissions to investigate specific government policies, approached the comptroller general directly to ascertain the legality of government decisions and referred matters to the just then established Constitutional Tribunal (Contraloría General de la República 1971).

But the impeachments and other parliamentary maneuvering were only a sideshow. The key issue arose after the congress rejected the government's veto. This event provoked a major constitutional row that, characteristically, unfolded slowly and was preceded by a heated debate about the correct interpretation of the constitution.

First, there was a Byzantine dispute between the government and the opposition over the number of votes required to override the president's veto. The government claimed that the congress needed a vote of two-thirds while the congress claimed that only a majority was necessary (Silva Cimma 1977:147-202). Then there was a dispute as to whether the Constitutional Tribunal had jurisdiction to resolve this dispute. The government, anxious to prolong the debate, claimed that the Constitutional Tribunal did have jurisdiction. The opposition, acknowledging that their case was weak, disagreed and issued a statement announcing that they would not recognize the Tribunal's decision, were it to assert jurisdiction over this case. Despite this warning, the government submitted the dispute to the Constitutional Tribunal. The Tribunal however, quite sensibly, found the government's request inadmissible. At that stage, the government had the option of either enacting the constitutional amendment approved by the congress or calling a plebiscite. The government chose neither

and, as ever, opted for an unconventional solution. It decided to enact only those sections of the amendment that had not been the object of the veto. The opposition—with the backing of the comptroller general—responded immediately, claiming that the partial enactment of the amendment was illegitimate and invalid and demanded the immediate enactment of the text be approved by the congress.⁶

The partial enactment of the amendment trivialized the constitutional process and exacerbated the prevailing political and economic uncertainty. It was yet another sign that the government had lost control over political events and that its dual strategy had collapsed. Shortly thereafter the military deposed the government.

Public Order

The collapse of the price control system hastened the appearance of a black market for basic consumer goods. Government opponents were quick to realize that inflation and market disruption of basic goods were effective political weapons. As political mobilization against the government intensified, the shortcomings of the government's policy on public order became evident.

Upon taking office, the government disbanded the special riot police unit on the ground that it was no longer needed, as the people had acceded to power. This decision was both demagogic and opportunistic because, as already explained, the government took advantage of the militancy of its own supporters during its first months in office to speed up the agrarian reform and takeover of the commanding heights of the economy. As the opposition regained confidence, however, it began to use methods similar to those employed by left-wing supporters. Some involved self-help measures of a paramilitary nature to prevent or repel land or factory occupations. The most important opposition-led protest was a long and costly truck drivers' strike that was followed by a month-long lockout in October 1972 (De Vylder 1976:98). The objective of the lockout was to bring the government down. These events posed a major dilemma for the government. It could not readily use the coercive powers of the state to repress extra-parliamentary activities of its opponents, because it had attempted, albeit unsuccessfully, to control the behavior of its own supporters through persuasion. This weakness played into the hands of the opposition, which described any attempt to restrain antigovernment forces as a sign of the government's totalitarian inclinations and any attempt to resolve conflicts through negotiation as evidence of the government's complicity with the acts of violence.⁷

Aware that these allegations were calculated to create unrest within the armed forces, the government opted for a solution that, in the long term, led to disaster. It increasingly began to call on the military to handle major disruptions of public order, instead of relying exclusively on the police. Thus, the government expected to silence the opposition's allegations, as the professionalism of the army was a myth accepted by all the major political parties. This policy gave the government some breathing space as it enabled it to deal with the opposition-led lockout of October 1972. In the long run, however, the involvement of the army in the enforcement of public order was the beginning of a process that slowly raised the political profile of the armed forces and reassured them of their role as guardians of democracy. After relying on the army to deal with the October events, the government had little choice but to accept military participation in the cabinet. During the period that the military were in the government, the opposition introduced legislation—the Arms Control Act—that gave the armed forces exorbitant powers to conduct searches for weapons and other artifacts allegedly used by terrorist groups.⁸ The government was unable to veto this law because it would have been regarded as an affront to the military and as an indication that the government was protecting left-wing terrorist groups. After military participation in the cabinet came to an end, in January 1973, and “normal” politics resumed, the military began vigorously to apply the Arms Control Law to repress and neutralize government supporters.

Legitimacy Eroded

As already noted, one of the key assumptions on which the government strategy rested was that the regulatory powers of the executive branch were virtually unlimited and not subject to any meaningful control from any organ of the state, other than the congress. This assumption was based on the behavior of the courts and other institutions during the period that I have described as party democracy. But the government, however, failed to take into account that legal systems are not static and that legal institutions often shift their position in line with swings in public opinion and the political debate. In particular, it did not seem to have anticipated that individuals and enterprises affected by government measures would make use of the legal system to defend their interests and protect their rights. Thus, courts were soon inundated with complaints against the government. These complaints challenged the validity of requisition decrees and sought to terminate the illegal occupation of factories and rural properties.

Courts responded favorably, albeit slowly, to these legal challenges, and their response infuriated government supporters, thus further raising the stakes of political confrontation. Workers became increasingly more militant and unwilling to make concessions as courts began to issue injunctions that seriously undermined the capacity of government-appointed administrators to manage enterprises under requisition and injunctions that ordered the arrest of the ringleaders of occupations. The government thus confronted a difficult and unexpected dilemma: if it complied with court decisions, it would in effect have to undo some of its policies, thus infuriating its supporters; if it openly took the side of its supporters, it would risk a major confrontation with the judiciary. The government's response to this dilemma was, characteristically ambiguous. While it refused to reverse its policies, it also employed a variety of legal tactics in an attempt to defuse or at least postpone confrontation with the judiciary.

The multitude of legal challenges confronted by the government became yet another issue that diverted its attention from more pressing political and economic problems. Moreover, the mounting legal challenges also undermined the legitimacy of the government—a matter that was skillfully exploited by the opposition—for, it made it possible to raise questions about the constitutionality and legality of every single aspect of government policy, thus reinforcing the impression that the Popular Unity was purposely creating chaos and disorder. Although many of the allegations against the government had solid constitutional and legal bases, there were many that did not. But in terms of the political debate, whether or not these allegations were true was unimportant. As the government began to lose its legitimacy almost any allegation put forward by the opposition seemed credible.

An important component of the opposition's campaign against the government was the Statute of Democratic Guarantees (SDG). The SDG, as explained above, was a constitutional amendment approved by the congress that the Popular Unity had accepted as part of the negotiations that made possible the accession of Allende to the presidency. The Popular Unity regarded the SDG as harmless, as, ostensibly, it was little more than a restatement and further elaboration of civil and political rights already guaranteed by the constitution.

But the Popular Unity soon realized that the SDG had created some unexpected problems. These problems stemmed partly from the fact that the SDG had provided that the exercise of the rights guaranteed by the constitution could only be regulated by legislation. This otherwise reasonable provision was a departure from practice, as hitherto the exercise of some important constitutional rights was regulated

by government decrees, not by legislation. Because of the haste with which the SDG was approved, the constitutional amendment did not validate these decrees, so that in constitutional terms, the SDG had implicitly repealed government decrees that imposed restrictions in key areas such as freedom of speech and freedom of the press.

One of the most controversial issues that emerged was whether the government had the power to impose restrictions on broadcasting during national emergencies. This controversy arose as a direct consequence of the SDG. The president's powers to restrict broadcasting during national emergencies had been acknowledged for quite some time and had been widely used in the past. However, these powers were set out in a decree—Decree No. 4,581—enacted in 1949 and not in legislation.⁹ Thus, when the government imposed restrictions on radio broadcasting during a major strike in October 1972, a major political row erupted that led to the indictment of a former member of the cabinet.¹⁰ The government claimed that pending the enactment of new legislation, Decree 4,581 should have been deemed as remaining in force. This argument, however, was legally weak, as it failed to take into account the fact that, according to the SDG, only a law could regulate the exercise of rights guaranteed by the constitution.

A similar conflict broke out in connection with the regulation of technical matters relating to television stations. The SDG provided that only universities could establish and operate television stations. Subsequently, new legislation was approved that provided that technical control regarding the allocation of channels was the responsibility of a government agency.¹¹ When two private universities that ran local TV stations set up a national network, a conflict arose over the scope of the powers of the government agency. While the government claimed that the stations—both notoriously in favor of the opposition—were attempting to launch their own network without complying with the appropriate technical requirements, the managers of the channels claimed that the government was attempting to undermine constitutional rights recognized by the SDG. This dispute raised interesting and difficult problems of interpretation. The parties, however, decided to act unilaterally. The television stations carried on working on the expansion of their networks, and the government, claiming that the TV stations were acting illegally, invoked its regulatory powers and ordered the seizure of the new equipment. The opposition responded immediately, impeaching the minister of the interior for serious breach of the constitution.¹² The official who had ordered the seizure of the equipment was indicted for the crime of false imprisonment.¹³

In the area of education also, the SDG created problems for the government. Here, it substituted three long paragraphs for the two succinct paragraphs that had over the years successfully managed to reconcile state and private education. An interesting feature of the new constitutional clause was that it provided that changes to the prevailing educational system required prior democratic deliberation and decision by the relevant organs, but did not contain any indication as to how to fulfill this requirement. Therefore, it is not surprising that when the government attempted to reform the system of primary education, the opposition dismissed it as undemocratic and as a threat to the cultural values of the nation (Fischer 1979:109–115; Quiros 1973; Smith 1982:196–199).¹⁴

The SDG created innumerable problems of interpretation that, even under normal circumstances, would have been difficult to resolve. It also provided the opposition with a powerful ideological weapon, as virtually any government decision could, in one way or another, be regarded as a breach of the SDG. As the SDG had been approved with the votes of the Popular Unity, the government could not claim that the opposition was resorting to old bourgeois legislation to obstruct the revolution.

Mobilization without Empowerment

The Popular Unity, as already noted, assigned absolute priority to the objective of nationalizing the commanding heights of the economy. To achieve this objective it not only made ample use of the administrative powers vested in the executive, but also relied heavily on the mobilization of its supporters. Indeed, the wave of strikes and factory occupations that exploded soon after Allende took office was fully exploited by the government to launch a comprehensive policy of intervention and requisition of enterprises in the manufacturing sector. But though the government's approach to taking over the commanding heights of the economy was dependent on workers' militancy, it effectively postponed the Popular Unity's promise to empower workers and other subordinate groups. Although this feature of the Popular Unity's policy was possibly justified in terms of the prevailing balance of forces, it was also consistent with a somewhat orthodox interpretation of Marxism. Indeed, the government's approach assumed that once it secured control over the economy, its political problems would be easily resolved, as the opposition would disintegrate and the vast majority of workers and peasants would support the parties of the Left. The government's overall approach was also orthodox in the

way it conceived its relationship with the unions. In line with orthodox Marxist approaches, it took for granted that the interests of the unions had to be subordinated to the overall political strategy, as interpreted by party leaders. This approach proved fatally flawed as instead of bringing about the disintegration of the opposition, it made it more cohesive and militant, and instead of enhancing workers' support for the government, it undermined it.

The Other Civil Society

During the early days of the government, the Popular Unity pursued its objective of taking over the commanding heights of the economy with unexpected determination. It secured the nationalization of copper through a constitutional amendment; it took over virtually the whole banking sector through the purchase of shares; and issued scores of decrees ordering the requisition of firms in the manufacturing sector. In order to allay the fears of the private sector, the government claimed, albeit disingenuously, that the majority of firms had nothing to fear from its policies, as the commanding heights comprised a tiny group of companies—approximately 180 out of a total of 30,000 manufacturing establishments (Allende 1972:16, 24; Bitar 1979:284–285). These arguments failed to appease the private sector. Instead, they prompted a militant response from the opposition. Thus, 18 months after his electoral victory, President Allende was besieged from every direction. While the economy was running out of control and the political system was paralyzed, radical groups within the Popular Unity and within the opposition began to consider alternatives to the democratic process. A regional meeting of Popular Unity parties in the Southern city of Concepción, calling themselves the People's Assembly, demanded the abolition of the parliament and the removal of reactionary judges. This event, which was unequivocally repudiated by Allende, was a sign of the deep fissures that were undermining the government coalition. While the Popular Unity began to disintegrate, the opposition began to coordinate their activities more closely. In April 1972, a meeting that included members of the leading business associations, opposition politicians, and members of extreme right-wing organizations linked to terrorist activities, such as *Patría y Libertad*, met to consider the impact of government policies on family and religious values as well as the declining respect for the fatherland. The government promptly denounced this meeting as subversive. Although the opposition ridiculed these claims, General

Pinochet later disclosed that it was at this time that he and his army colleagues began to seriously consider toppling the government (Faundez 1988:227).

The prevailing political deadlock brought into prominence a variety of civil society groups, mainly associations representing business and liberal professions. These organizations, known locally as *gremios*, assumed a leading role in mobilizing public opinion against the government. As the niceties of constitutional politics did not bind them, they could resort to extreme rhetoric, including calling for the forceful removal of the government. The *gremios* were the leading force behind the long-drawn out truck drivers' strike of October 1972 that prompted a massive lockout that affected industrial enterprises in the major cities of the country (Bitar 1979:163–172; Roxborough et al. 1977:116–117). This movement brought the government to the brink of collapse. In order to remain in office, the government was forced to appoint the heads of the three armed services to the cabinet. These events strengthened the position of the *gremios* and enhanced their influence, not only among the middle classes, but also within organized labor. Indeed, after exploiting a minor labor dispute in the copper industry, the *gremios*, led by affluent University students, managed to stage a spectacular demonstration against the government in support of a segment of the powerful union of copper mine workers. Although the workers who demonstrated against the government resented only a tiny fraction of the workforce, the symbolic impact of this demonstration was formidable. It questioned one of the Popular Unity's most cherished claims—the claim that it was the only and most trustworthy representative of the interests of the working class and other subordinate groups.

The mobilization of white-collar workers against the government was, in many respects, not unexpected, as the government's incomes policy had been purposely designed to favor blue-collar workers and the very poor (Heskia 1973:34–35). Thus, as inflation set in, there was growing resentment and dissatisfaction among white-collar workers. Moreover, given the prevailing turbulence, this group of workers was easily mobilized by slogans that called for effective protection of private property and enhanced respect for family values. What seems surprising, however, is that despite considerable efforts, the government was unable to strengthen and deepen its influence among the working class and other subordinate groups. This failing baffled and frustrated government officials and left-wing activists, as they regarded organized workers were their natural constituency and took their loyalty for granted.

Elusive Loyalty

The difficulties that the Popular Unity faced with the unions stemmed partly from its failure to fully assess the impact of the changes that had taken place among organized workers since the inception of radical democracy. Between 1965 and 1970, the number of workers belonging to unions increased from just over 300,000 to nearly half a million (see appendix C). During the first two years of the Allende administration, an additional 100,000 workers joined unions. Thus, within seven years, the overall rate of unionization had shot up from 10 percent to 22 percent of the workforce (Allende 1973b:793). The majority of the newly unionized workers (60 percent) were agricultural workers who up until 1965 had been denied the right to form unions. This group of workers, along with workers in manufacturing, spearheaded the wave of strikes and land and factory occupations that had prompted the government to use its regulatory powers to take over the administration of large number of rural estates and manufacturing enterprises. The traditional union leadership at the CUT was fully aware of the dangers posed by this seemingly unrestrained process of mobilization. They were confident, however, that as these new groups of workers became politically mature, they would become a formidable force in support of government policies.¹⁵ But the limited scope of the government's program and its failure to confront the question of empowerment frustrated workers and intensified their demands.

The Popular Unity's attempt to soothe the private sector by pointing out that the majority of firms would not be affected by the government's nationalization policy caused serious concern among workers. Indeed, as the nationalization of the commanding heights of the economy comprised a relatively small number of firms, only a small number of workers stood to benefit. Indeed, the government's nationalization program would have affected only 20 percent of industrial workers, representing a mere 5 percent of the total workforce (De Vylder 1976:145-148). As the implementation of the program would have effectively postponed the immediate aspirations of the vast majority of workers, they placed strong pressure on the government to expand it. Because their demands were instigated and supported by the Socialist Party, the government was unable to resist them. But the government also, cynically, took advantage of these demands as it expected—misguidedly as it turned out—that workers' militancy would soften CDP's position and bring about a political compromise. Thus, the government ended up requisitioning scores of firms that under any measure were not part of the commanding heights of the economy,

while it was unable to assert control of large firms that should have been part of it (Espinosa and Zimbalist 1978:111; Flores 1973:29-31). Moreover, as the government was carrying out this expanded process of requisitions, it was, at the same time, deeply involved in negotiations with the opposition, in which it was offering to reduce the number of firms covered by its nationalization program from 250 in October 1971, to 90 in June 1972 and then to less than 50 in January 1973. Thus, while the government encouraged workers' mobilization to speed up the takeover of the commanding heights of the economy, it was simultaneously seeking a compromise with the opposition that would have required reversing a process that had generated unrealistic expectations among its supporters. These contradictory signals undermined the political credibility of the government, especially among organized workers. Workers' disappointment was justified as the government, relying on an orthodox Marxist approach, took union support for granted and assumed that unions could be endlessly manipulated to serve its interests. The government's approach to the question of workers' participation illustrates this point.

Limiting Workers' Participation

As noted in chapter 7, the Communist and Socialist Parties were strongly opposed to the CDP's notion of workers' management as they regarded it as little more than a ploy to divert workers from their revolutionary objectives. They also successfully opposed the CDP's attempt to end the closed-shop system in the industrial sector, as they believed that a system of parallel unions would weaken their overall strength. Their concerns, though possibly legitimate, reflected faithfully a fairly orthodox Marxist approach to the relationship between the party and unions. Under this approach unions were expected to subordinate their immediate demands to the enlightened political leadership of the party—the vanguard of the proletariat. That communists and socialists were determined to assert political control over the union movement was amply demonstrated in the 1950s by their ruthless removal of Clotario Blest from the presidency of the CUT. Blest, an independent non-Marxist, had made a major contribution to the rebuilding of the unity of the union movement, but was toppled from office because he was not prepared to subordinate workers' interests to the demands of the Marxist or any other party. In those days, the party line was to contain popular mobilization in order to make a credible bid for the presidency. Thus, it is not surprising that once in office the Marxist parties should have continued to regard the

interests of the union movement as absolutely subordinated to its political objectives. But this policy proved unviable for two reasons. First, because, as already explained, the political messages handed down by the government were, if not incoherent, at least contradictory. Second, because the unions soon became aware of the power to bring about political change and thus refused to toe the party line. Indeed, instead of being passive executors of party political decisions, they became actively involved in seeking to influence government policy. Thus, the government's expectation that it could indefinitely defer the empowerment of workers' proved a delusion. That the government was unprepared to deal with this issue is illustrated by its limited and somewhat bureaucratic conception of workers' participation.

The workers' participation schemes proposed by the government assigned a privileged role to the unions and revealed a deep-seated skepticism of workers' ability to manage their own affairs. In the industrial sector, the government proposed two participation schemes: one for firms in the private sector and the other for firms in the state sector (Espinosa and Zimbalist 1978:53-56). The scheme designed for the private sector entailed setting up committees to ensure that production was not disrupted. This scheme was never implemented. The scheme for the state sector envisaged an elaborate structure that included a general assembly, an administrative council, and several production committees. The expectation was that through these organs the voice and interests of workers would be reflected in the management of the enterprise. Yet, the scheme assigned a disproportionate number of seats on the administrative council to government officials, so that in the end, the state-appointed manager always had the final say. Under the government's scheme, the organs of participation were in fact mechanisms of consultation rather than devices for self-management. Underlying this narrow conception of workers' participation was the view that the main conduit to channeling workers' interests and demands was the union—an organ that political parties could easily control. The government proposed an equally narrow scheme for rural areas. It consisted of peasant councils established in various localities. Membership in these councils was, however, restricted to unionized workers. Peasant councils never caught the imagination of peasants (Barracough and FernándeZ 1974:198-212).

In the manufacturing sector, the government's scheme of participation was soon swamped by traditional rivalry between the Marxists parties. The Socialist Party regarded the new organs of participation as devices to pressure the government to radicalize its program and to enhance its influence among workers. The Communists were skeptical

about these participation schemes, as they continued to regard unions as the main vehicle for channeling workers' interests. But political events soon moved beyond the factory. In their continuing efforts to expand the scope of the government's nationalization program, workers—with the support of the Socialist Party—established new organs of political participation at the local level. They called them *cordones industriales* (industrial belts) (Faundez 1988:267-273). Their objective was to support the efforts of workers in the locality to secure the inclusion of their workplaces into the state sector. Initially, the government strongly opposed the industrial belts, depicting them as divisive and as instruments of the ultraleft. Its views changed, however, when, as a result of the opposition-led strike of October 1972 industrial belts played a major role in ensuring that the supply and distribution of basic goods was not completely disrupted.

The role of industrial belts in support of the government during the October strike was indeed outstanding. Yet, they caused major damage to the government as they consistently opposed its efforts to find a solution to the many problems caused by its misguided dual strategy. However, it would be a mistake to place all of the blame on workers and their organizations. The root cause of the problem stemmed from the government's decision to take advantage of workers' mobilization while failing to take seriously the question of empowerment. Thus, not surprisingly although the majority of workers continued to support the government until the bitter end, their support was not unqualified. A poster carried by a worker at a political rally shortly before the military coup captured the mood of most workers: "[T]his government stinks, but it is my government."

Elections Become Redundant

The Popular Unity was unable to use the political system to further its programmatic objectives, yet it managed to dislocate it. This unintended effect benefited the opposition. The most telling illustration of the dislocation of the political system is reflected in the results of the last general election, held in March 1973, only six months before the military coup. At the time of the election the economic and political situation was bleak and the GDP and the Right had already formed a solid electoral coalition and were determined to remove the government. Given prevailing political conditions, most pollsters predicted an overwhelming victory for the opposition, one that would enable them to secure a two-third majority in the congress to impeach Allende and legally remove him from office. The opposition thus

characterized the elections as a referendum on the performance of the government. The CDP was especially hopeful that this strategy would work, as the removal of Allende by constitutional means would pave the way for the election of a Christian Democrat as president.

The electoral results surprised everyone. Opposition parties were disappointed as, although they obtained 55 percent of the vote, they did not gain enough seats to impeach Allende. The Popular Unity, however, was taken by surprise. Its share of the vote increased from 36 percent in 1970 to 44 percent. This was a remarkable performance. The government had faced the elections in the most adverse conditions. During the previous six months, the opposition had promoted systematic campaigns aimed at disrupting the economy and furthering insecurity and chaos. It had encouraged strikes among liberal professionals and white-collar employees and had made full use of its economic power to withdraw consumer goods from circulation, thus creating a profitable black market. At the international level, the government had to contend also with a variety of measures that further disrupted the economy (NACLA 1973:179-208). These measures included a financial blockade instigated by the U.S. government, indirect interference with the commercialization of copper in Europe, and political intrigue and covert activity organized by the CIA. Yet, despite these difficulties, the government not only succeeded in averting the threat of impeachment, but also managed significantly to increase its share of the vote.

But these electoral results, which in a different context would have been hailed as a sign of the maturity and responsibility of the electorate, did not resolve anything. On the contrary, they complicated matters. The results disrupted the opposition's plan to impeach Allende and thus strengthened the position of those who called for a military coup. Within the Popular Unity, the results strengthened the radical groups, as they interpreted them as a mandate to press ahead with the implementation of the program, regardless of legal niceties and without seeking a political compromise. The political crisis made the electoral process redundant, thus foreshadowing the end of democratic politics.

Chapter 9

Legality Defeated

Introduction

During the three decades of party democracy (1932-64), relations between the Supreme Court and the political branches of the state were, on the whole, cordial. The reluctance of the Supreme Court to exercise its powers as guardian of the constitution and its refusal openly to accept challenges to the legality of acts of the administration gave the executive broad discretion to intervene in the economy and other areas of public policy. Although during this period the Supreme Court occasionally accepted challenges to the legality of executive action and managed successfully to bring special administrative tribunals within the scope of its disciplinary powers, these developments did not have a major impact on the form or content of government policy. Relations between the Contraloría and the political branches of the state were also cordial. Although after the impeachment of the comptroller general in 1945, the legality review procedure became more effective as a restraint on the executive, the efficacy of this mechanism was offset by the persistent willingness of the congress to replenish the government's regulatory powers. Thus, while during the party democracy period, both the Supreme Court and the Contraloría had given some indications that they had the power to effectively curb executive action, in practice, their behavior was cautious and deferential so that relations between the main legal and political organs of the state remained cordial.

The inception of radical democracy opened up a new chapter in the relations between the political and legal organs of the state. During this period the Supreme Court and the Contraloría were pushed into the limelight and began to play a role that hitherto they had shunned. The economic and social reforms launched by the Frei administration

and further deepened by the Allende administration persuaded an already skeptical private sector that the party system could no longer be trusted to protect property rights. Thus, in their efforts to curb government policies they sought help first from the judiciary and later on from the Contraloría. Given the judiciary's traditional caution, its response was slow and incoherent. The response of the Contraloría was also initially cautious. Yet, as the political struggle intensified, both the courts and the Contraloría attracted considerable political attention as they issued rulings and granted injunctions that appeared to favor one or the other side in the increasingly bitter political confrontation. As the materials in this chapter show, the measures deployed by the courts and the Contraloría to curb government action had all been sporadically used in the past. Yet, in the more tranquil political environment of party democracy, these measures were hardly noticed by the political elite. In the polarized context of the Allende administration, however, these measures became highly contentious. While the opposition welcomed them, depicting the courts and the Contraloría as courageous upholders of the rule of law, the government and its supporters deeply resented them, claiming that the courts and the Contraloría were departing from prevailing practice and shamelessly taking sides in the ongoing political confrontation. There thus followed a cascade of injunctions and counterinjunctions, allegations and counterallegations that trivialized the constitutional and legal processes, destroyed the credibility of legal institutions, and eroded the legitimacy of the government. The defeat of legality was a necessary prelude to the violent overthrow of democracy.

This chapter is divided into three sections. The focus of its first section is on the legal strategies employed by the Frei and Allende administrations to achieve their political objectives. The second and third sections focus exclusively on developments during the Allende administration. The second section examines the controversy between Allende and the Contraloría over the legality of requisitions decrees. The third section explains the complex role that courts played during the period leading up to the collapse of the constitution.

Legal Strategies

Taking Notice of the Judiciary

The judiciary's rise to political prominence began in the mid-1960s during Frei's "revolution in liberty." Although the Frei administration meticulously sought constitutional and legislative authority for its

policies, its approach to the implementation of the reform process—consistent with local political practice—was to exclude the judiciary from major areas of public policy. Thus, for example, the amendment that modified the property rights clause of the constitution, as well as the agrarian reform legislation, were carefully drafted so as to exclude the possibility of judicial interference. The constitutional amendment contained detailed provisions on the expropriation of rural properties that were explicitly designed to preclude any interference by the Supreme Court in the agrarian reform process. Moreover, the agrarian reform law established agrarian tribunals with limited jurisdiction to ensure that the implementation of the agrarian reform law would not be delayed by excessive litigation (Avila 1971:92–97).

Despite their limited jurisdiction, landowners made prolific use of agrarian tribunals to challenge government policy. The disciplinary powers asserted by the Supreme Court over these tribunals undoubtedly encouraged private parties to use them. Yet, because the jurisdiction of these tribunals was limited, these challenges had little impact on the pace or direction of the agrarian reform (Thorne 1971: 508–509). During this period, landowners and industrialists also made use of the criminal process to protect their property against the proliferation of land invasions and factory occupations. Thus, the structural reforms launched by President Frei and the ensuing political mobilization were useful reminders to members of the economic elite of the crucial role that courts can play in restraining government action.

Ironically, however, by the late 1960s, as political mobilization intensified, the Frei administration was forced to adopt a tough law and order policy, which, naturally, required the cooperation of the judiciary (Roxborough et al. 1977:60–62). Yet, despite its efforts to enlist the support of the courts, the government did nothing to improve the salary and career prospects of judges. Expenditure on the judiciary—as well as the military—had a low priority, as the government had devoted all its spare resources to fund social and economic development programs. The financial difficulties of the judiciary were not new. As explained in chapter 6, the judiciary was almost invariably allocated less than 1 percent of total public expenditure. What was new, however, was the fact that in the late 1960s, lower court judges—inspired by the highly politicized environment—had begun to organize and were more vocal in their demands for better pay and conditions. The situation came to a head when the newly established Judges' Association staged an unprecedented strike in support of judges' pay claims. Initially, the government dismissed these claims, but after a similar type of action by a group of disgruntled military

officers, the government gave in and awarded substantial pay increases to the military and the judiciary. While this decision resolved the immediate problem, it did not significantly improve relations between the government and the judiciary. Thus, while the Frei administration tried to play by the rulebook, its ambitious program of structural reforms raised the political profile of the Supreme Court. It also made the private sector aware that, despite the shortcomings of the judicial institutions, they could be used to curb the powers of the executive.

Toward the end of the Frei administration, as the government began to increasingly rely on the courts to contain the process of political mobilization, left-wing parties began to openly criticize the judiciary. A misguided decision by the Frei government to prosecute Carlos Altamirano, a Socialist senator, under the State Security Act provided left-wing parties with an excuse to introduce a motion of impeachment against the entire Supreme Court. The events that triggered the motion of impeachment and its sequel are worth recounting.

Upon returning from a short visit to Cuba, Senator Altamirano gave a public lecture at a provincial university in which he praised Fidel Castro's revolution and violently attacked the mild reformist policies of President Frei. The charges against the senator included making an apologia for violence, insulting the office of the presidency, and behaving disrespectfully toward the armed forces. In order to press charges, however, the government had to request the Court of Appeals to lift the senator's parliamentary immunity. The Court of Appeals declined, but, on appeal, the Supreme Court reversed and the senator was prosecuted and sentenced to a short prison term.¹ The Socialist and Communist Parties were outraged and responded by introducing a motion of impeachment against all the members of the Supreme Court alleging, *inter alia*, that the judicial system was class biased.

The sponsors of the motion of impeachment claimed that the Supreme Court was class biased because it consistently ruled in favor of landowners and capitalists and had little sympathy for the plight of the working class and the poor. Although the chamber of deputies promptly rejected this motion, it nevertheless provided socialists and communists with an ideal platform to publicize their views about the Supreme Court and the justice system generally. It also prompted the Supreme Court to respond to the claim of class bias. In its response the Court pointed out that class bias was unlikely to occur because judicial conflicts between the wealthy and the poor were infrequent. According to the Court, most cases decided by courts entailed conflict between wealthy parties or between poor parties, not between the wealthy and the poor (Corte Suprema 1967:1461, 1466). The Court

complemented this rudimentary sociological analysis with a philosophical argument. In a democracy, the Court claimed, class bias was theoretically and practically impossible, as the only domination allowed was that of the majority of citizens, expressed through the ballot box and embodied in laws made by the elected representatives of the people. Thus, according to the Court, by strictly adhering to the letter of the law, judges were indeed instruments of the only truly dominant group: the electoral majority (Corte Suprema 1967:1468, 1971:XXIV).

The Court's defense against the motion of impeachment was a hopeless attempt to keep the judiciary at a safe distance from the turbulent world of politics. By the late 1960s, this was no longer a realistic alternative. Indeed, the question as to whether courts and other legal institutions were neutral or biased was rapidly becoming an urgent political issue.

Law and the Peaceful Revolution

The controversy between the left-wing parties and the Supreme Court faded as the political debate came to be dominated by the presidential elections of 1970. Moreover, as the electoral platform of the Popular Unity coalition was to bring about a socialist revolution within the prevailing legal framework, they could not afford to appear confrontational toward the judiciary. Yet despite their commitment to legality, the Popular Unity gave no indication as to how they intended to implement their proposed peaceful transition to socialism. Moreover, their program of government contained virtually no information on how an eventual government of the Popular Unity would relate to legal institutions. Indeed, apart from some references to the system of judicial appointments and vague proposals on widening access to justice, the program made no other reference to the legal system. Just before taking office, however, the Popular Unity parties endorsed a constitutional amendment—the Statute of Democratic Guarantees (SDG)—that was generally interpreted as a reaffirmation of their commitment to respect legality and the rules of the democratic process. But, as already noted, the Popular Unity regarded this amendment merely as a tactical concession of little political consequence.

Upon taking office, the government had no time to ponder the intricacies of law and the legal system. During its first months in office, it faced a wave of strikes, factory occupations, and land invasions that demanded immediate action (Barracough and Fernández 1974:192; Landsberger and McDaniel 1976:519–526; Sader 1973:11–27). Its

legal strategy was, consequently, largely shaped by its response to these events. Factory occupations were, at least to start with, a by-product of the government's initial economic policy. Strict price controls combined with large wage increases created enormous hardship on small and medium-sized firms. As a consequence, many firms began to cut their workforce, while others threatened to close down their operations. The unions responded defiantly. The ensuing wave of strikes and factory occupations intensified political polarization. On the left, it strengthened the position of the Socialist Party and the view that prompt and decisive action was required to prevent employers from derailing the government. Among the opposition parties, it strengthened the stand of the right-wing National Party, which claimed that the government was incompetent and could not be trusted with the management of the economy. Thus, while left-wing militant began to promote strikes and occupations as a means of prompting the government into action, landowners and the business community allowed industrial disputes to drag on indefinitely so as to further disrupt economic activity and provoke workers and left-wing activists into action.

The proliferation of strikes and factory occupations posed a serious dilemma for the government. While it could not to allow them to disrupt its economic policy, it could not afford to treat them as mere law and order problems that required heavy-handed measures. The solution was thus to resolve these disputes by resorting to the regulatory powers vested in the executive. The regulatory tools used by the government were mainly two: labor intervention decrees, known locally as back-to-work decrees (*decretos de reanudación de faenas*) and requisition decrees.

The labor code and related legislation gave the government extensive powers to intervene whenever a strike or lockout posed a threat to the health or economic well-being of the community. Government intervention involved issuing back-to-work decrees and appointing a temporary administrator to run the enterprise until the conflict was resolved (Oneto 1971; Yávar 1972). Prior to Allende's presidency, back-to-work decrees were used mainly to break strikes, particularly in the copper industry and in the public sector. The Popular Unity government, however, used them to prevent the disruption of its economic policy. Workers welcomed this form of intervention because government-appointed administrators were invariably sympathetic to their demands. These decrees were also useful because they frustrated attempts by employers to seek remedies through the courts. Indeed, as soon as a back-to-work decree was issued, the factory or agricultural

estate was—in legal terms—no longer under occupation and hence judicial remedies to protect property rights could not be used.

Back-to-work decrees, however, posed some difficulties. Under prevailing practice, once the government issued a back-to-work decree, it was required to follow an elaborate procedure aimed at resolving the dispute in question (Contraloría General de la República 1971). Yet, as the disputes were often political, following this procedure would inevitably have led to a decision unfavorable to workers, thus reigniting the conflict. To avoid this problem, the government generally replaced back-to-work decrees with requisition decrees. This move went largely unnoticed by workers, as it did not significantly alter the powers of government-appointed administrators. Requisitions, however, were a useful device because the government could, in theory, keep them in force indefinitely. The rules governing requisition allowed the government to take over the administration of industrial or commercial enterprises whenever a strike, occupation, or lockout seriously disrupted production. Requisition decrees were also attractive because, under prevailing practice, ordinary courts could not review them. Thus, by issuing requisition decrees, the government felt it was beyond the reach of ordinary courts. Accordingly, it soon began to rely almost exclusively on requisition decrees. Thus, the number of enterprises subject to requisition rose from 40 in 1971 to 86 in 1972, while the number of back-to-work decrees during the same period declined from 127 to 75 (De Vylder 1976:146; Instituto de Economía 1973:111; Martínez 1979:268).

The government's willingness to respond to strikes and factory occupations with requisition decrees soon developed a momentum of its own. Workers and party activists realized that all that was necessary to get the government to issue a requisition decree was to start a strike or stage an occupation. As the number of politically motivated strikes and occupations escalated, so did the number of requisition decrees issued by the government. As workers, along with party activists and the left-wing media, regarded these requisitions as full-fledged nationalizations, the government could not easily revoke them. By December 1972, the government found itself administering approximately 40 small and medium-sized enterprises that its supporters regarded as part of the state sector, but which, according to its own program, were not meant to be so (Martínez 1979:268).

Although the government's reliance on the regulatory powers of the executive was, initially, a stopgap measure to deal with strikes and land invasions it soon became the centerpiece of what, in the preceding chapter, I described as the government's dual strategy. Indeed, by

relying on the regulatory powers of the executive the government could show determination in the implementation of its program (the revolutionary prong), while making conciliatory gestures that suggested that it was committed to seeking congressional approval for the implementation of its program (the parliamentary prong).

Legal Rationale

Eduardo Novoa is generally credited as the architect of the Popular Unity government's approach to legality. His depiction in the late 1960s of the justice system as class-biased gave him instant access to Allende's inner circle. He became legal advisor to the president and was entrusted with the delicate task of designing the legal strategy for the nationalization of copper. His approach to the wider issue of legality was deceptively simple. He argued that the government's regulatory powers had been on the statute books for many years, had been widely used, and hence were legally and constitutionally indisputable (Novoa 1971, 1978, 1992). Novoa's argument was based on a thorough diagnosis about the malaise affecting the legal system. In this study he argued that the failure of the legal system to play a meaningful role in economic development stemmed from a distorted conception of the law (Novoa 1963/64, 1968). In his view, judges and lawyers, obsessed with the rules and principles of private law, failed to give due consideration to the array of public law rules that gave the state the power and responsibility to promote economic development. According to Novoa (1963/64), one of the factors that contributed to maintaining this distorted perception about the legal system was the fact that public law rules were scattered in hundreds of laws and regulations and, as such, were not easy to find. As a first step toward resolving this problem, he suggested that these rules be adequately systematized and codified. This somewhat crude legalistic diagnosis of the weaknesses of the legal system was consistent with Novoa's claim in 1971 that the Popular Unity administration had adequate legal tools to begin the implementation of the peaceful road to socialism (Novoa 1971). The opposition flatly rejected this argument, pointing out that the government was acting in bad faith as it was relying on legal instruments that were meant to preserve, not overturn the prevailing economic system (Echeverría and Frei 1974: 3:108-122, 129-150). Novoa and his more politically minded colleagues were naturally aware that these legal instruments had not been intended as tools for overhauling the economy. They claimed, however, that the electoral victory had given the Popular Unity a mandate to interpret

existing laws and regulations in line with the aims of its program (Garcés 1973; Viera-Gallo 1972).

In practical terms, the strategy proposed by Novoa rested on the peculiar features of the prevailing system of administrative law characterized by the absence of judicial review of administrative action. The government, as well as Novoa, were well aware of the risks involved in this course of action, but do not appear to have fully anticipated the pace and direction of the confrontation with the opposition over the issue of legality (1972). At first, the government was confident. It managed to successfully overcome some objections by the Contraloría to the legality of its decrees and found means to circumvent court injunctions. The government's initial success in defeating legal challenges astonished many local lawyers, as it created the impression that it had a carefully planned legal strategy (Eluchans 1972). It also encouraged those affected by government policies to creatively search for legal devices and remedies to defend against government policies. Thus there developed a series of skirmishes that escalated into a full-scale war over the legality of government action. The government's response to the avalanche of legal challenges was incoherent and contradictory, thus confirming that it did not have a strategy for the implementation of its program. Instead, it responded to these challenges with a variety of subterfuges and techniques that, apart from trivializing the legal process, failed to resolve the underlying political problem. One of these subterfuges involved developing a new doctrine about the enforcement of judgments. This ill-considered doctrine provoked a major confrontation that lent credibility to the Supreme Court's allegation that the government was in breach of the principle of the separation of powers and had thus flouted the constitution and the rule of law. Ironically, what this legal confrontation shows is that those affected by government policies had learned Novoa's lesson: legal systems are complex edifices that have many cracks. These cracks, however, were used as much to further as to resist government policy. The following sections offer a detailed analysis of different aspects of the confrontation that led to the defeat of legality and opened the way for the violent overthrow of democracy.

Contraloría versus Allende

By the time the Allende administration came into office, the Contraloría's approach to the legality review procedure, as explained in chapter 5, was well established. Although the Contraloría continued to characterize it merely as a jurisdictional check involving an abstract comparison

between two legal texts, in practice, the legality review procedure involved a scrutiny of the findings of fact by the administration. But, while the Contraloría had unequivocally extended the scope of its review powers, it had not developed clear guidelines regarding what the review of facts entailed—the so-called standard of review. Moreover, its practice was not consistent. In some areas, such as state security, its approach was relatively lenient. In matters relating to labor and economic regulation, however, the Contraloría invariably scrutinized the facts underlying government decrees. Given the government's reliance on the regulatory powers of the executive for the implementation of its program, it is not surprising that there soon developed a conflict between Allende and the Contraloría.

The Allende administration behaved as if it had assumed that the Contraloría's review of its back-to-work and requisition decrees would be largely formal and that any legal objection could be easily overridden by means of a *decreto de insistencia* (Novoa 1971). These assumptions proved wrong. First, the Contraloría did not treat the review of government decrees as a formality. On the contrary, it zealously focused on the facts invoked by the government as predicate for its actions and in some instances went well beyond the scrutiny of facts, extending its reach to areas of policy. Second, the government did not find it easy to use *decretos de insistencia*. Its reliance on them in 1971 and the first half of 1972 provoked major political rows with the congress, which culminated with the impeachment of cabinet ministers. After the truck drivers' strike in mid-1972, the military agreed to accept cabinet posts on certain conditions, one of which was that the government cease to use *decretos de insistencia*. Thus, while the military were in the cabinet (from September 1972 to January 1973) the government had to avoid using them. As a consequence, the government became entangled in a long and debilitating controversy with the Contraloría. In the end, however, the government could not escape issuing the much-dreaded *decretos de insistencia*. This section examines aspects of the conflict between Allende and the Contraloría, with special reference to the legality review of requisition decrees.

Regulatory Requisitions

Under the requisition legislation, the government could take over the administration of industrial and commercial enterprises to prevent disruptions in the production or distribution of essential consumer goods (Von Brunn 1972:68–73). In the past, there had been doubts about the legality of this type of requisition because under the terms

of DL 520 (1932), the government was allowed to requisition only essential consumer goods. As explained in chapter 5, in the 1940s the government expanded the scope of its requisition powers to include the takeover of the administration of enterprises. These regulations provoked a major political row and were cited as one of the grounds for the impeachment of the comptroller general in 1945. Any doubts about the legality of regulatory requisitions were dispelled in the 1960s when the Contraloría, subject to certain conditions, confirmed their legality.² During the early months of the Allende administration, the Contraloría, though objecting on formal grounds to the legality of a decree that had ordered the requisition of a textile company, confirmed nonetheless that regulatory requisitions were well within the powers of the executive. But on this occasion the Contraloría also reminded the government that it had to produce evidence of the underlying facts and that requisitions were temporary measures that did not affect property rights.³

The government accepted, in general terms, that the Contraloría was entitled to scrutinize its requisition orders. Accordingly, it submitted to the Contraloría documentary evidence that purported to establish either a disruption in the distribution channels of specific consumer goods or a standstill in production caused either by a strike, lockout, or workers' occupation. The evidence of these facts consisted of technical reports and certificates on market conditions and on the factors that had brought about the standstill in production. The officials attesting on these facts were civil servants, duly empowered, from the Ministry of Labor or Ministry of Economics. The government expected that the Contraloría would carry out a purely formal assessment of the evidence, checking the accuracy and authenticity of the dates, signatures, and seals of the documents. The scope of the Contraloría's review, however, went beyond the government's expectations.

One of the facts that the government found almost impossible to establish was the existence of a standstill in production. The Contraloría generally objected to the certificates issued by Ministry of Labor officials on the ground that they were based on statements made by workers and, as such, only proved that the statements had been made, not that they were true.⁴ On the surface, this objection was reasonable, except that in most instances the standstill was such a well-publicized fact that it was hardly necessary to establish it through documentary evidence. The government was thus justified in regarding the Contraloría's rejection as politically motivated and unfair. But what caused more irritation to the government was that the Contraloría did not provide any hints as to how facts such as a standstill of production

could be accredited. The meaning of the phrase "standstill in production" is not self-evident and the requisition statute did not define it. It could be said to include different factual situations ranging from the complete shutdown of operations to various degrees of partial decline of a company's activities. Thus, it is reasonable to expect that any attempt to define it would lead to a genuine difference of opinion. In its legal Opinions, however, the Contraloría seemed to assume that there was an authoritative definition that the government had failed to apply. This approach enabled the Contraloría to frame its objections in purely negative terms. It merely stated that the government had failed to establish that there was a standstill in production, without giving any indication as to how this fact could be established. The government attempted to meet the Contraloría's objections by improving the formal presentation of its documentary evidence. But as the government improved on the formal presentation of the evidence, the Contraloría would raise the standard of evidence. Thus, for example, apart from requiring clear evidence about the standstill in production, the Contraloría also began demanding that the government show evidence of a causal link between the standstill in production and market disruption.⁵ The Contraloría also often rejected government evidence by using information, generally contradictory, supplied by the owners of enterprises, without indicating why their evidence was more credible than that offered by the government (Espinoza 1972a:24).

As the conflict with the government intensified, the Contraloría's objections increasingly began to include policy, rather than purely legal matters. Thus, in some cases the Contraloría objected to the legality of a requisition decree on the ground that the government could have resolved the underlying problem by requiring the enterprise to meet production targets.⁶ Likewise, where the standstill of production was caused by a factory occupation, the Contraloría's view was that requisitions were inappropriate because factory occupations were illegal.⁷ In another case, although the Contraloría approved the legality of a decree that ordered the requisition of a firm that manufactured tinned foods, it nonetheless excluded from the scope of the requisition decree units within the firm, which, according to the Contraloría, were not directly responsible for the alleged market shortages. In this case, the units that the Contraloría excluded from the scope of the requisition order were those devoted to servicing and repairing tools and machinery.⁸ As the Contraloría was aware that these decisions constituted a departure from its practice, it formally announced that it had abandoned its formalistic approach to legal interpretation. It embraced instead a teleological approach, one

concerned with the objectives of the law, rather than with its literal meaning.⁹

A Procedural Gap

As explained in chapter 5, the general rule was that government decrees could not be enforced until the legality review procedure was finalized. But requisition decrees were exempted from the general rule. Because they were meant to deal with an emergency, they could be implemented before the legality review procedure was completed. The law, however, did not set a time limit for the completion of the legality review procedure, nor did it set a deadline for the issuing of the decretos de insistencia. This procedural gap was fully exploited by the government, making it possible to prolong its exchanges with the Contraloría, while at the same time indefinitely postponing the decision to issue decretos de insistencia.

A controversial ruling by the Contraloría eventually forced the government to resort to the much-dreaded decretos de insistencia.¹⁰ In its ruling the Contraloría held that requisition decrees that did not pass the legality review procedure were illegal and therefore the government had an obligation to immediately revoke them, unless it chose to override objections by issuing a decreto de insistencia. The accuracy of this interpretation was doubtful, as both the law and practice of the legality review procedure allowed the government an unspecified amount of time to respond to the Contraloría's objections and did not set a fixed time for the government to issue a decreto de insistencia. But the question as to whether the Contraloría's interpretation was constitutionally and legally correct was beside the point. It was welcomed by the opposition who, aware of the distaste of the military for decretos de insistencia, demanded that the government should either immediately revoke requisition decrees questioned by the Contraloría or issue decretos de insistencia. The government rejected this interpretation, but soon had to face the consequences of the Contraloría's ruling.

Early in 1973, an overzealous employee of the post office in the province of Concepción, who also happened to sympathize with the opposition, apparently puzzled by the dispute over the legality of the requisition decrees, asked the Contraloría for guidance: should he deliver the mail of requisitioned enterprises to the owners of the enterprise or to the state-appointed administrator? Not surprisingly, the Contraloría replied that given the illegality of the requisition, the mail had to be delivered to the owners of the enterprise, not to

the state-appointed managers.¹¹ This response posed a major threat to the government's ability to manage requisitioned firms, as it required state employees to redirect orders, thus discontinuing the delivery of spare parts and disrupting distribution networks. State employees who failed to comply with the Contraloría's ruling faced disciplinary sanctions that were also administered by the Contraloría. In an attempt to prevent a "lawful" boycott against enterprises under requisition, the government issued a single decreto de insidencia that had the effect of ratifying the requisition of 42 firms. This decree effectively removed the issue of the legality of requisition decrees from the jurisdiction of the Contraloría.¹²

The Role of Courts

The government's approach to legality rested on the assumption that courts would not interfere because, under the prevailing system of administrative law, they did not have jurisdiction to review acts of the administration. According to Eduardo Novoa, the government was merely taking advantage of the loopholes and contradictions in the legal system (Novoa 1971). But the government failed to anticipate that those affected by government measures would make use of other loopholes and contradictions within the legal system to defend their interests and protect their rights. Thus, courts were soon flooded with complaints that challenged the validity of requisition decrees and that sought to terminate the illegal occupation of land and factories. Courts responded by granting injunctions that restrained the powers of state-appointed managers and by ordering the arrest of the ring-leaders of occupations. The injunctions presented the government with a dilemma: if it complied, it would infuriate its supporters; if it refused, it would provoke a major confrontation with the judiciary. The government's response to this dilemma was, characteristically, ambiguous: it refused to reverse its policies, but at the same time it employed a variety of legal tactics to avoid a damaging confrontation with the judiciary. In the end, however, the government was unable to avert confrontation with the judiciary. This section explains the various stages of this confrontation, illustrating both the legal and political issues arising from it.

In Search of Remedies

The main targets of judicial challenges were requisition orders that placed commercial and industrial enterprises under the temporary

administration of state-appointed managers. As already noted, this type of requisition was described as regulatory requisition in order to distinguish it from the requisition of essential consumer goods. The Directorate of Industry and Commerce (DIRINCO), a department of the Ministry of Economics, issued requisition decrees. A special administrative tribunal—the Commerce Tribunal—heard appeals against decisions taken by DIRINCO. It consisted of three members: a lawyer from the Ministry of Economics appointed by the minister; a lawyer from the Consejo de Defensa del Estado (the government's legal advisors and attorneys); and a lawyer appointed by the National Association of Merchants (Eluchans 1972:50–51).

The Commerce Tribunal was thus the natural forum to challenge the validity of requisitions. The first to resort to it were the owners of a textile company requisitioned by the government in 1971. The tribunal, however—with the dissenting vote of the member appointed by the National Association of Merchants—declined to accept jurisdiction. In its decision, the tribunal pointed out that while it had jurisdiction to review requisition of essential consumer goods, it did not have jurisdiction to review regulatory requisitions, as these were acts of authority (Espinoza 1972b). The case eventually reached the Supreme Court, which exercising its disciplinary jurisdiction, ordered the Commerce Tribunal to hear the appeal.¹³ The tribunal did so, but was unable to reach a decision. At first its meetings were delayed as the member of the tribunal appointed by the Ministry of Economics boycotted its sessions. Eventually, when the tribunal finally met, its three members could not agree on a decision.¹⁴

The deadlock of the Commerce Tribunal paved the way for a direct confrontation with the judiciary, as those who sought to challenge requisition decrees had no alternative but to seek remedies through ordinary courts. But because courts did not have general jurisdiction to review acts of the administration, the option of resorting to the courts was not straightforward. It was thus that the owners of enterprises under requisition came to rely on the possessory actions, which enabled them to resort to the courts to demand the recovery of possession over their assets. Possessory actions were accompanied by a request for provisional remedies.¹⁵ Lower courts generally accepted jurisdiction and immediately granted provisional remedies. Provisional remedies (granted *ex parte*, that is without a hearing) were generally injunctions that froze the bank accounts of the enterprises under requisition and prohibited state-appointed administrators from selling the goods produced by the enterprise. Courts also often appointed an administrator to look after the interests of the company. Court

injunctions posed a major problem for the government. In political terms, the government could not afford to comply, as this would have alienated its supporters and would almost certainly cause a rift within the Popular Unity coalition. Thus, the government circumvented the injunctions. This was, initially, relatively easy. For example, an order freezing bank accounts could be circumvented by withdrawing funds in advance, and the prohibition from entering into contracts for the sale of goods could be circumvented simply by transferring the goods to a state agency. As most injunctions were specifically addressed to state-appointed managers, the government developed the practice of appointing new managers, thus forcing the owners of the enterprises to start new proceedings. But this type of maneuvering could not last forever, as it led to ever-stronger responses from the courts and strident reactions from the opposition. As the battle over court injunctions intensified, the government was placed on the defensive and slowly, but consistently, began to lose control over the behavior of its supporters. The case of *Empresa de Maderas Prensadas Cholguán* (hereafter Cholguán) illustrates this point.

The Requisition of Maderas Prensadas Cholguán

Cholguán, located in one of the southern provinces, was a relatively large enterprise that manufactured chipboard and other timber products.¹⁶ The government was aware of the potential of timber as an export and was keen that Cholguán should expand its operations. It thus began to explore the possibilities of establishing a joint venture with the owners of Cholguán in which the state, through CORFO, would become a minority partner, in exchange for an important injection of public funds. To secure workers' support, Cholguán's management entered into an agreement with its unions under which the unions accepted, in principle, the idea of the joint venture and agreed that questions concerning the eventual incorporation of Cholguán into the state sector would be resolved through direct negotiations between Cholguán and CORFO officials. Negotiations between CORFO and Cholguán did not, however, make progress. The unions attributed the delay to bad faith on the part of management. Thus, after a wait of nearly seven months for a decision on the proposed joint venture, the unions repudiated the agreement, occupied the factory, and demanded its nationalization.

Unwilling to antagonize the unions, the government issued a back-to-work decree and appointed a state official to manage the enterprise.

As this decree failed to pass the Contraloría's legality review, it was promptly replaced by a requisition decree. The owners of Cholguán responded by bringing a possessory action before a lower court, accompanied by a request for provisional remedies, which was duly granted. The provisional remedies enjoined the state-appointed administrator from entering into any contract or carrying out any activity without prior approval by the court-appointed administrator.

The state-appointed administrator did not comply with the injunctions, aware that the unions would have strongly resisted it. He thus proceeded to arrange for several shipments of chipboard from Cholguán's warehouse to clients in Santiago. On that same day, however, the owners of the company brought proceedings against the state-appointed administrator for contempt of court and asked the court to immediately issue an injunction prohibiting the removal of products from the warehouse. The police was duly notified of the injunction. However, following instructions from the intendant of the province, they did not enforce it. Thus, the government-appointed administrator was able to resume delivering orders, although he could not use the firm's logo on the invoices as the injunctions were still in force. As criminal proceedings against the state-appointed managers were going through the courts, the opposition parties initiated impeachment proceedings against the intendant, accusing him of violating the principle of judicial independence and of the crimes of usurping judicial functions and denial of justice. The senate approved the impeachment and the intendant was removed from office.¹⁷

Arguments about Possessory Actions

The opposition welcomed the court injunctions against state-administrators of enterprises under requisition, as it confirmed their view that the government was openly in breach of legality and the rule of law. The government, for its part, vigorously rejected them, claiming that they were illegal and inconsistent with prevailing judicial practice. The legal arguments in support of the government's position, though not compelling, were not altogether unfounded. Indeed, they were consistent with the position held by most of its predecessors, including the Frei administration. Yet the Allende government appears not to have noticed that only three years before the Popular Union came into power, the Supreme Court had taken the view that possessory actions could indeed be used to challenge government decrees deemed illegal. In order to fully understand the strength and

weakness of the position of the Allende government on the issue of possessory actions, it is helpful briefly to examine a case decided by the Supreme Court in 1967.

In order to resolve a strike in a large agricultural estate that had escalated into a full-blown land occupation, the Frei administration issued a back-to-work decree and appointed a government official to take over the administration of the farm. As the landowner feared that this decision was a prelude to expropriation, he challenged it through the courts. As ordinary courts could not directly review the legality of the decree, he brought, instead, a possessory action to recover possession. The lower court accepted jurisdiction and granted a provisional remedy, enjoining the state-appointed administrator from taking up his job. The government strongly objected on the familiar ground that ordinary courts did not have jurisdiction as they could not review acts of the administration. The Supreme Court disagreed. By a narrow majority of 6 to 5, the Court held that the lower court had jurisdiction. Hereafter I refer to this case as the *Conflict of Jurisdiction* case.¹⁸

In the *Conflict of Jurisdiction* case, the Supreme Court followed the reasoning of the *Montero* case (see chapter 6). It began by restating the general proposition that courts do not have jurisdiction to review acts of the administration, but pointed out that courts, nonetheless, have a duty to uphold property rights. Because the dispute in the *Conflict of Jurisdiction* case involved an action to recover possession, the lower court could not decline to exercise jurisdiction. The Supreme Court then went to state that, if, in order to resolve a claim to recover possession, judges are required to apply a decree that in their view is either unconstitutional or illegal, they should refuse to apply it. According to the Court, by refusing to apply such a decree lower courts were not invalidating it, but merely refusing to acknowledge its efficacy. Toward the end of the Allende administration, the Supreme Court employed the same reasoning—in the *Rayonhil* case¹⁹—to hold that courts were not required to give effect to requisition decrees in proceedings where owners affected by requisition asserted a private right.

Given the similarities between the *Conflict of Jurisdiction* case and the *Rayonhil* case, it is not surprising that the arguments of the Frei and the Allende administrations were almost identical. They both pointed out that the distinction between invalidating and refusing to apply a decree was unconstitutional because, in order to refuse to apply a government decree, courts had to form a view about the decree's validity, a matter that was solely within the jurisdiction of administrative courts. Apart from this general argument, they also put forward an argument that related specifically to the nature of possessory proceedings.

The argument about the nature of possessory proceedings pointed out that this mechanism was a public order device aimed at ensuring peaceful relations among individuals and, as such, could not be used to challenge acts of the administration. According to this argument, possessory actions are designed to protect de facto possession over immovable or chattel interests, either by restoring possession or by protecting it from eventual disturbance. The aim of possessory actions is to discourage self-help. Therefore, plaintiff in these proceedings only needs to prove de facto possession for one year. Moreover, in these proceedings, neither property rights nor the intentions of the disturber are at issue; and they are not contingent on the initiation of further proceedings, where questions concerning property rights or criminal responsibility may be raised. On the basis of this analysis, the Frei and Allende governments argued that possessory proceedings were designed to govern relations among individuals and were not a device to challenge acts of the administration. This argument was persuasive, but it posed difficult doctrinal issues regarding judicial practice, which neither the Supreme Court nor government lawyers were interested in exploring.²⁰

The five dissenting Supreme Court Justices in the *Conflict of Jurisdiction* case agreed with the Frei administration that possessory actions could not be used to challenge administrative acts. Allende made a similar argument, which was accepted by the Court of Appeals of Santiago in 1972 in the *Rayonhil* case. Rayonhil was a textile company requisitioned by the government and placed under the administration of a state-appointed manager. Rayonhil brought a possessory action requesting provisional remedies against the state-appointed administrator. The lower court and the Court of Appeals declined to hear the case, pointing out that ordinary courts could not grant Rayonhil's request because it required the court to decide upon the legality or otherwise of the underlying administrative act—a matter which was not within the jurisdiction of ordinary courts.²¹ The Supreme Court, however, disagreed. According to the Court, what was at issue here was not the validity of administrative acts, but the protection of plaintiff's property—a right protected by the constitution. The Court—relying on the reasoning of the *Montero* case—held that ordinary courts were not required to give effect to illegal acts of the administration. Therefore it sent the case back to the lower court with instructions to assert jurisdiction over Rayonhil's claim. While it is difficult to quarrel with the outcome of this case, the Court's reasoning is unpersuasive, as it is based on the assumption that private rights can always be invoked to override acts of the administration.

Because the Court does not acknowledge the possibility of a genuine conflict between private and public law, it does not offer any indication as to how state action could ever be justified. This failing in the Court's reasoning, as explained in chapter 6, can be traced to the peculiar features of the legal system and its seriously flawed system of administrative justice.

But if the reasoning of the Supreme Court was unpersuasive, so was the reasoning of the plurality of the Court of Appeals in the *Rayonhil* case, as well as its reasoning in the *Conflicts of Jurisdiction* case decided in 1967. In these two cases, the Court of Appeals merely reaffirmed the well-rehearsed, but unrealistic view that pending the establishment of administrative tribunals, ordinary courts did not have jurisdiction to review acts of the administration. In practical terms, this argument transformed every act of the administration into an unassailable act of authority. Absent from the Court of Appeal's reasoning was any attempt to acknowledge the need to develop a legal discourse that would seek to reconcile private and public interests. It is thus not surprising that courts were, generally, unable to play a constructive role in deciding this type of cases.

Public Order and the Criminal Process

Possessory actions, though effective devices to disrupt the administration of enterprises, did not immediately bring about a return of the requisitioned enterprises to their owners. Indeed, as the *Rayonhil* case shows, it merely remanded the case to the lower court for further lengthy proceedings. Thus, the enterprises affected by requisition orders sought protection from the criminal law. But this approach also presented difficulties.

Criminal trespass was an offense defined in section 457 of the Penal Code as the unlawful occupation of realty. The penalty for this crime was only a small fine that increased slightly if force against persons had been employed. The reported cases suggest that criminal trespass was mainly intended to discourage self-help, especially in disputes between small farmers over the delimitation of boundaries or the use of water resources (Etcheberry 1987:1-7). An interesting feature of the case law was that courts generally held that the offense required a profit motive (*animus lucrandi*), even though this was not mentioned in the definition of the offense (Labatut 1964:363). Thus, government lawyers naturally argued that land and factory occupations did not fall within the scope of the notion of criminal trespass, as they were politically

motivated. Courts, however, departing from their previous practice, rejected this argument and asserted jurisdiction over politically motivated factory occupations and land invasions.

The Supreme Court, while acknowledging that under normal circumstances politically motivated occupations would not fall within the scope of offense of trespassing, emphatically stated, in a case decided in July 1972, that "as long as property rights are recognized by the constitution . . . courts have a duty to protect them."²² Earlier, the Court had urged lower courts to adopt tougher measures to bring occupations to an end. Until then, courts had relied on the police to secure the end of occupations and land invasions.²³ The Supreme Court, however, decided that, given prevailing political conditions, courts could order the arrest of ringleaders of factory or land occupation and keep them in detention for up to two months as a means of compelling the others to bring the occupation to an end. Interpreting broadly other provisions of the criminal law, the Court also decided that persons excluded from possession of their property because of illegal occupations could, at any stage of the criminal process, request provisional measures (*precautorias*) to compel occupiers to vacate the property. These provisional measures were all the more drastic as they could be ordered without a hearing (*ex parte*). The Supreme Court also issued special instructions urging courts to deal swiftly with complaints arising out of factory occupations and land invasions.²⁴

Occupation of the Court of Melipilla

As courts became stricter in their interpretation of the crime of trespass, workers became increasingly more militant. Thus, the government found itself once again caught between the pressure of militant workers who refused to comply with court orders and judges who demanded the enforcement of their decision. The occupation of the court of Melipilla, a small farming community in the vicinity of Santiago, illustrates the government's plight.²⁵

Melipilla had its fair share of rural labor disputes. In April 1972, one such dispute involving six workers at a small farm, led to its occupation. The landowner initiated criminal proceedings against the workers, accusing them of trespassing and requesting, as a provisional remedy, their arrest. As consequence, five workers were arrested. Upon hearing about these events, workers in neighboring farms occupied the farm in solidarity with their colleagues. The landowner went back to the court and obtained another arrest warrant against the occupiers.

Shortly before the police were due to begin enforcing the court order, the intendant of the province arrived at the farm and held discussions with the occupiers. According to the intendant, the purpose of his visit was to advise workers not to use force against the police. The landowner, however, claimed that the intendant had gone there to alert the occupiers of the imminent arrival of the police and to advise them to hide. In the event, the occupation was brought to an end and 39 workers were arrested.

The workers remained in custody despite the fact that the occupation had come to an end and that the penalty for trespassing was only a fine. Lawyers representing workers unsuccessfully requested the local judge to release them, even though they had been in detention for more than a month. The plight of these 39 workers soon became a huge political issue in the locality. It prompted a large demonstration outside the court by hundreds of workers from the region who demanded the immediate release of their colleagues. In the course of this demonstration, 60 odd workers marched into the court and assembled outside the judge's office chanting slogans against the judge and the judicial system. The judge immediately telephoned the president of the Supreme Court to report the events and called upon the local chief to evict the occupiers.

The local police chief could not comply with the judge's request because his unit was small and it needed reinforcement. In the meantime, however, the intendant of the province and the undersecretary of state of the Ministry of Justice arrived on the scene. After separate meetings with the judge and the demonstrators, they persuaded the demonstrators to leave the building peacefully, thus avoiding police intervention. The behavior of the intendant came under close scrutiny, although the president of the Supreme Court acknowledged, in a statement issued shortly after the event, that timely intervention by government officials had made it possible to avoid violence. Nevertheless, the judge appointed to investigate the Melipilla events requested the senate to lift the immunity of the intendant so that he could be tried for the crime of "failure to assist the public authority" (Penal Code: Article 253). The request was based on an allegation that the intendant had ordered the police not to comply with the judge's request for assistance. The intendant, for his part, argued that the removal of the demonstrators from the court had been achieved with the agreement of all parties concerned and that neither he nor the undersecretary of justice had, at any time, ordered the police not to comply with the judge's request. The senate, quite unexpectedly, refused to lift the immunity.²⁶

Delaying the Enforcement of Judgments

The tough measures announced by the Supreme Court to secure the end of occupations encouraged property owners affected by land or factory occupations to make use of criminal proceedings. This development posed a difficult problem for the government. As criminal courts could directly request assistance from the police to enforce their decisions, the government feared that the enforcement of eviction orders would provoke violent clashes. The government's response to this new situation was original. The minister of the interior, General Carlos Prats—who was also the commander in chief of the army—issued detailed instructions to the police on how to respond to a request for eviction orders. Under these instructions, police officers were required temporarily not to enforce them if, in their judgment, the matter raised serious issues of public order. Where the police opted for suspending the execution of the eviction order, they were required to notify the minister of the interior who, if in agreement with the police decision, would endorse it in writing. If the minister did not respond within a prescribed period of time, the eviction order had to be enforced.²⁷

The government justified these instructions on public order grounds. The enforcement of court orders, according to the government, often had political and social consequences that could lead to serious disruption of public order. Hence, it claimed, the decision as to the timing and opportunity for the enforcement of court orders had to rest with the government. The instructions were intended to assist police officers on the ground, as it established that the enforcement of court orders could only be delayed if the minister of the interior issued a written order to this effect. The instructions thus distinguished between the operational responsibility of police officers and the political responsibility of the minister of the interior. The government was convinced that the indiscriminate enforcement of eviction orders would merely intensify social unrest.²⁸

The government instructions on the enforcement of court orders provoked a political and constitutional dispute that culminated in an acrimonious exchange of letters between Allende and the Supreme Court.²⁹ The Supreme Court wrote several letters to Allende expressing its concern about the policy on the enforcement of eviction orders. Allende responded by restating the view that, in the interest of public order, it was legitimate for the government to delay the implementation of court orders. Allende also pointed out that by indiscriminately

granting eviction orders, courts were abusing their power and worsening a highly volatile political situation.³⁰ The Supreme Court dismissed Allende's argument about the behavior of courts claiming it to be sociological speculation devoid of any legal meaning.³¹ But the Court also admitted, albeit implicitly, that judges had expanded their power to grant injunctions. It argued, however, that the prolific use of injunctions was a legitimate judicial response to the government's abuse of power. According to the Court, it was the duty of courts to do everything within their power to protect property rights.³² The Supreme Court had undoubtedly drawn inspiration from the government's view that political events continuously renewed the content and spirit of the law.

Conclusion

The drive toward radical democracy was carried out without careful consideration of the response of courts and other legal institutions. Indeed, both the Frei and Allende administrations seemed to assume that their radical policies would not clash with prevailing principles of legality. This assumption was based on the practice that prevailed during the party democracy period, when courts and the Contraloría maintained a deferential attitude toward the executive and rarely challenged administrative decisions. During the radical democracy period, however, both courts and the Contraloría became more assertive and more willing to accept claims from private parties that sought to restrain the scope of government action. While the Frei administration accepted these institutional restraints, the Allende administration did not. Under pressure from his supporters, facing a hostile congress and high levels of political mobilization, the Allende administration pressed ahead with the implementation of its programs making use of every scrap of power vested in the executive branch. In hindsight, the notion that in a democracy a socialist program of reforms could be launched through the backdoor by means of administrative decrees is bizarre. Yet, as explained above, this policy was only intended as temporary, pending the approval of comprehensive legislation for the nationalization of the commanding heights of the economy. In practice, however, because the government's political strategy proved unworkable, this bizarre legal policy became permanent.

The political stalemate between Allende and the opposition raised the political profile of the Contraloría and the courts, as parties aggrieved by government policy demanded swift remedies to undo what they claimed were arbitrary decisions by the government. The

government argued, however, that it was acting within the letter of the law, as it was merely applying decrees and regulations that had been on the books for years and had been profusely used by previous administrations. Although, this argument was politically disingenuous, in strictly legal terms, it was not unsound. Indeed, the government was merely taking advantage of a fundamental weakness of the legal system: the absence of an adequate system of administrative justice. In the past most administrations had invoked this weakness to claim that their decisions were beyond the reach of the courts and that the legality review of the Contraloría was a mere formality. Given the nature of the policies implemented by the Allende administration, these arguments sounded hollow and lacked any credibility. Nevertheless, as this chapter shows, the response by the Contraloría and the courts to the policies of the Allende government was slow and not entirely coherent. While the Contraloría openly announced a shift from a formalistic to a purposive approach to the legality review, the Supreme Court deployed a variety of doctrines that successfully disrupted the implementation of government policies. But the Supreme Court's shift from a passive to more active and rights-orientated approach was prompted more by immediate political considerations than by a genuine transformation in the way it conceived its role as guardian of constitutional rights. Thus, it is not surprising that after Allende was safely out of the way, the Supreme Court reverted to type, refusing to question the atrocities committed by the Pinochet regime and thus, implicitly endorsing them. Even today, after nearly 15 years of democracy, the Court continues to regard executive action as virtually unassailable (Couso 2005). Sadly, the Supreme Court's appalling record on human rights during Pinochet's dictatorship appears to have vindicated Allende's bizarre legal policies, as well as his skepticism toward the courts.

Concluding Comments

My study has adopted a historical approach with a focus on institutions, using the process of democratization as its unifying thread. The historical perspective has enabled me to explain the interplay between enduring institutional structures on the one hand, and political action, on the other. Thus, this study acknowledges both the capacity of institutions to constrain political action and the power of individuals and groups to transform society. The historical approach, combined with the multilevel focus of the enquiry has, hopefully, enabled me to relate the uneven advances and frequent setbacks in the democratization process to the complex interplay of political, economic, and legal processes. The concluding comments that follow highlight some of the themes of the book.

Institution Building

State building and regime building in Chile were arduous processes in which amazing political and economic achievements were combined with formidable and persistent failures. The success of the elite during the nineteenth century is generally seen as a by-product of their integration and cohesion. Yet, neither integration nor cohesion of the elite was spontaneous. They were objectives that the elite relentlessly and ruthlessly pursued and the elite did not hesitate to crush any challenge to the supremacy of the central government. However, they were not only obstinate and ruthless; they were also pragmatic and flexible as they promptly incorporated their former opponents into their circle, shifted the balance of power from the president to the congress, and spearheaded a process of political liberalization that recognized basic civil and political rights and expanded the franchise. Thus toward the end of the nineteenth century the domestic and international legitimacy of the state and regime seemed firmly established.

The economic prosperity brought about by the acquisition of nitrate mines following the war against Perú and Bolivia seemed to reinforce the virtues of the political regime. Yet, the newly acquired wealth brought about a major rupture among the elite and in 1891, plunged the country into a Civil War that deposed President Manuel Balmaceda, and brought presidentialism to an end. The controversy that led to the military confrontation was about how to use the abundant revenue flowing from the ever-expanding nitrate exports. Balmaceda's administration sought to devote the bulk of the newly acquired export revenue to building the infrastructure to facilitate the development of a national market. His opponents, however, preferred the easier option of relying on the newly acquired revenue to ease the tax burden of the elite. This option also entailed bringing the incipient process of democratization to a halt. Thus the regime that emerged after the Civil War embraced economic liberalism—insofar as it lowered tariffs for luxury goods and handed over the exploitation of nitrates to foreign investors—but shunned political liberalism, as the self-styled parliamentary regime that emerged after the Civil War was unwilling to incorporate new social forces—miners, and urban workers—into the political system.

The institutions of the legal system had no difficulty accommodating to these new conditions. After all, the tough law and order measures against the emerging working class were not inconsistent with Bello's oligarchic conception of "limited freedom." According to this concept, law was seen as guarantor of rights, but only on condition that public order was not threatened. The ruthless use of the law against subordinate groups was also consistent with the narrow conception of political rights held by most members of the political elite during the nineteenth century. Indeed, even the most prominent liberals of the time had serious reservations about democracy and would have agreed with Diego Portales, who regarded democracy as wholly inappropriate to the conditions prevailing in the country.

What confounds most observers, however, is that although the regime that emerged from the Civil War effectively brought to a halt the incipient process of democratization, the formal trappings of constitutionalism and democratic procedures were scrupulously observed. The old 1833 Constitution remained in force and there were regular elections for presidents and members of the congress. Moreover, the political parties established in the nineteenth century—which were the only parties that participated in the electoral process—soon acquired a taste for the sophisticated maneuvering generally associated with genuine parliamentary regimes. Thus there developed a modern

party system, but one that did not reflect or represent the needs and aspirations either of the mining and industrial proletariat or of the middle classes. It is thus not surprising that when nitrate revenue became unstable and workers' organizations became more assertive, the much-revered 1833 Constitution collapsed without a shot being fired.

The crisis of the regime in the 1920s presented the elite with a problem that, so far, had been neglected: the inclusion of new social forces into the political system. The two political options on offer—Arturo Alessandri's liberal populism and General Carlos Ibáñez's authoritarianism—proved unsatisfactory. The main reason for their failure was that both Alessandri and Ibáñez were reluctant to fully incorporate the emerging social groups into the political system. Despite his considerable electoral appeal, Alessandri turned to the military instead of seeking a broad political alliance with parties that represented working- and middle-class interests. Ibáñez, who sought to restore the old presidential regime, but was also concerned with the modernization of the economy, manipulated and repressed workers' organizations, while attempting to establish an authoritarian regime with fascist overtones. The failure of both Alessandri and Ibáñez to expand the scope of the political system and to accept the legitimacy of workers' demands exacerbated and prolonged the political crisis. Indeed, the four military juntas that attempted to govern the country between July 1931 and the end of 1932—some of which had a marked leftist orientation—reflect the prevailing confusion, suggesting that the pragmatism characterizing nineteenth century elite had long vanished.

Given the political chaos and persistent economic crisis of the 1920s and early 1930s, the return to constitutional democracy in 1932 is a surprising outcome that calls for an explanation. I reject as simplistic the explanation the claims that in the 1930s, the political elite recovered their pragmatism and taste for political compromise and established a regime, which some describe as the "*estado de compromiso*" (Garretón 1989). I have argued that it was neither the democratic proclivities of the elite nor their addiction to the principles of constitutionalism that brought about and sustained the regime after 1932. Instead, the consolidation of the regime that I characterize as party democracy should be attributed to three closely connected factors: the purge of the army, the incorporation of the Socialist and Communist Parties into the political system, and the consensus among the main political actors on a limited state-led policy of import substitution.

In hindsight, the purge of the army—carried out during the early stages of the second Alessandri administration—seems a relatively

simple process. Indeed, after the debacle of the Ibáñez administration and the disarray brought about by the four military juntas in 1932, the army was deeply divided and politically exhausted. It was also politically discredited as the brunt of the impact of the Great Depression was felt during the Ibáñez administration and attributed to government incompetence. It is important to note that it was Arturo Alessandri, a prominent member of one of the two leading right-wing parties, who led the purge of the army. Alessandri, moreover, carried out this task with the support of the Republican Militia—a 15,000 strong paramilitary organization—originally established by right-wing sympathizers in 1932 to resist the short-lived Socialist Republic. From the perspective of the Right, the decision to send the military back to the barracks was understandable as events in the early 1930s suggested that important elements within the armed forces were either dangerously attracted to the Left (as was the case of Marmaduke Grove, member of the first Military Junta in 1932 and later founding member of the Socialist Party), or were interested in political modernization and had little sympathy for the established oligarchy—as was the case of Ibáñez. The right-wing parties' decision to purge the army under the leadership of Alessandri signaled their commitment to seek a political solution to the prevailing crisis.

The second factor that accounts for the consolidation of party democracy was the emergence of the Popular Front coalition as a major political force. This coalition brought together for the first time parties representing middle- and working-class interests. Several factors made its creation possible: the meteoric electoral growth of the recently established Socialist Party; the Communist Party's decision—following the line set by Moscow—to seek alliances with reformist parties; and the Radical Party's desperate search for allies in its efforts to become the leading representative of middle-class voters. It was thus that the Popular Front coalition came into being and in 1938 achieved an unexpected victory in the presidential elections. The third factor that contributed to the consolidation of party democracy was a consensus on the policy of import substitution. This policy had been partially implemented by several administrations since the mid-1910s, after nitrate revenue became unstable. By the late 1930s, however, political conditions were ripe and all major political parties signed up to it. But, this policy had severe limitations, as it was largely circumscribed to the industrial sector, thus excluding the all-important mining and agricultural sectors.

Given the political and economic disruption caused by the Great Depression, the return to constitutional government was not an

outcome that could have been predicted in the early 1930s. It was also an outcome that, initially, the main political actors accepted with serious reservations as neither the Right nor the Left regarded each other as trustworthy partners. Nonetheless, the three factors identified above persuaded these reluctant democrats to play by the rules of the constitution.

Embracing Constitutionalism

A remarkable feature of the period I characterize as party democracy is the way the reluctant democrats of the 1930s appeared to abandon their distrust of the democratic process and embraced the principles of constitutional government. Was this a genuine shift or one that was opportunistic and determined largely by circumstances? Can this shift be attributed to the long-term impact of institutions? There can be no precise answer to these questions as both short-term considerations and institutional factors played a role in the stability of the regime. Yet, it is significant that the 1925 Constitution, which at the time of its adoption was almost unanimously rejected by the main political parties, was, by the early 1960s, embraced by all political parties as an emblem of legitimacy and stability. Despite embracing constitutionalism, the main political actors remained skeptical about the virtues of the democratic process.

The commitment of the main political actors to compromise was as shaky as the consensus on the new economic policy. Although, initially, the Left agreed to exclude the agricultural sector from the reach of the state-led policy of import substitution, it never fully agreed to exclude it from the reach of democratic politics. Accordingly, the communists, prompted partly by their intense electoral competition with the socialists, made a decisive move to promote the unionization of agricultural workers. The parties of the Right regarded this move as political heresy as they viewed the introduction of democratic institutions in the countryside as tantamount to social revolution. They thus did everything within their power—including supporting a law that banned the Communist Party from politics and severely restricted union rights—to retain the long-standing veto on agricultural unions. Meanwhile, the implementation of the restricted import substitution policy was causing further disruption to the political order. The consequences of the exclusion of copper from the scope of the new economic policy were fully felt during the run-up to World War II, when the price of copper in international markets soared, while Chilean copper was sold at subsidized prices to support the Allies' war effort.

The considerable loss of export earnings was not compensated and, unsurprisingly, was deeply resented. This explains why in 1952, the government was so keen to have greater control over the marketing of copper exports. But the more immediate problem was caused by the exclusion of agriculture, as the inefficiency of the sector put enormous pressure on the balance of payments and greatly contributed to fueling inflation. The economic policy implemented during this period thus had devastating political consequences. It fragmented the party system, destroyed the unity of the labor movement, and fueled strong authoritarian and antiparty sentiments among the electorate. Indeed, by the late 1940s, the political system was on the brink of collapse. That it did not do so was largely due to Carlos Ibáñez who, in his reincarnation as a 75-year-old populist candidate, brought about, unintentionally, a revival of the party system, which, in turn, reinvigorated the decaying process of democratization.

It is ironic that it should have been Ibáñez, the authoritarian figure of the 1920s and indefatigable plotter against the constitutional government, who inadvertently created the conditions that gave the political regime a new lease of life. In addition to restraining the political ambitions of the military, his failure to shift from a state-dominated import substitution policy toward a market-friendly policy opened the door to a further process of political liberalization that was to radically alter the terms of political competition in favor of the parties of the Left. By the early 1960s, the popular discrediting of market-based policies was so overwhelming that the right-wing parties, having abandoned any hope of winning a presidential election, were forced to support Eduardo Frei, their archrival, who promised to implement a program of reforms diametrically opposed to their most cherished values. The electoral decline of the right-wing parties also prompted the business community to question whether they were really capable of representing their interest. Thus, not surprisingly, as the power base of the parties of the Right was eroded, their confidence in the democratic process declined. The picture on the Left was totally different. As the party system regained its strength and the unity of the labor movement was reestablished, the left-wing parties became increasingly convinced about the virtues of constitutional government and of the democratic processes. Accordingly, they spared no effort to contain the militancy of the labor movement so as to give credibility to their bid to achieve power through democratic means. The positive attitude of the left-wing parties toward constitutional democracy is not surprising as they had greatly benefited from the electoral reforms

of the mid-fifties. Thus, even the most militant supporters of the Marxist parties began to accept that achieving socialism through democratic means was both possible and desirable.

It is important to emphasize that the neutralization of the military both at the beginning and toward the end of the party democracy period was due to an unexpected sequence of events. The purge of the military in the 1930s was possible because the armed forces were largely blamed for the economic consequences of the Great Depression and, as a consequence of their failure in government, were deeply divided. Likewise, in the late 1940s, when the political regime came under severe strain and the prestige of political parties was at its lowest, General Ibáñez capitalized on the antidemocratic sentiment, in order to preserve his status as a constitutionally elected president, he managed to deflect the growing political dissent within the armed forces. Thus, to a significant extent, the much-hailed professionalism of the armed forces was brought about by a fortunate and unexpected sequence of events.

Institutions Matter

As this book has shown, institutions and institutional practices played an important role in shaping both the advances and setbacks to the process of democratization. In political terms, what is most noteworthy is the belated acceptance of the controversial presidential regime. Since the mid-nineteenth century, the presidential regime was regarded as the embodiment of authoritarian and arbitrary rule. The process of political liberalization in the nineteenth century involved largely a transfer of power from the president to the congress. Indeed, so powerful was the sentiment against presidentialism, that it was the deterring factor in the dispute that led to the Civil War in 1891. Thus, it is not surprising that in the 1920s, despite the obvious failure of the parliamentary republic, virtually all the political parties opposed the 1925 Constitution because it proposed a presidential regime. Yet, they soon tamed the new regime and presidents had to concede that political parties had a major say in the appointment and removal of cabinet ministers. Political parties thus found it easy to accept this modified form of presidentialism, which, in turn, was consistent with well-established practices developed during the parliamentary republic.

Having tamed presidentialism, the parties had no difficulties reverting to the old tradition of rallying around the political center in order to enable the government of the day to effectively respond to political

and economic emergencies. Thus, the ruthless use of regulatory powers, so prevalent during this period, was not exclusively brought about by the unilateral action of autocratic presidents. On the contrary, the extraordinary expansion of executive power was carried out with the active involvement of the congress and the acquiescence of the Supreme Court. Thus, governments during this period enjoyed widespread institutional legitimacy, despite paying scant attention to legal and constitutional niceties. Paradoxically, however, despite the congress's willingness to delegate legislative power and tolerate constitutional delinquencies in the drafting of regulations, most presidents felt powerless and some vigorously campaigned to secure a further expansion of their powers. This perception of powerlessness is also surprising as presidents were effectively beyond the reach of ordinary courts because of the failure to establish administrative tribunals. The Supreme Court was not especially concerned by this state of affairs, as it had a misplaced aversion to exercising its role as guardian of the constitution. In any event, the Court did not have much room to maneuver because the constitutional provision that explicitly provided for the establishment of administrative tribunals made it difficult for the Court to develop a coherent approach to provide effective remedies to individuals aggrieved by acts of the administration.

In the absence of judicial review of administrative action, the legality review administered by the *Contraloría* assumed enormous importance. This unlikely mechanism, which was a preventive type of review and which took place before administrative decisions took effect, did—on the whole—restrain the executive, as evidenced by the level of compliance with the comptroller general's decisions. It also made an important contribution to the improvement of the quality of governance as it instilled in government officials the habit of publicly giving reasons for their decisions. Yet, because the legality review procedure was merely an administrative check, governments retained an enormous discretion to act in areas that they deemed urgent and important.

These features of the legal system—though seemingly incongruous—were not irrational. They were the product of a process of accommodation between the executive and the congress, on the one hand; and the Supreme Court and the *Contraloría*, on the other. Together they enabled governments to respond swiftly to economic and political emergencies, while claiming full adherence to the constitution and to the principle of legality. Thus, these features served to enhance the legitimacy of the regime and contributed to the reinforcement of the general perception that it meticulously respected the constitution and the principle of legality.

Ideology Also Matters

The process of accommodation between political and legal institutions had a counterpart in legal reasoning that was reflected in the sharp distinction between public and private law and in the somewhat obscure notion of the act of authority. This feature of legal reasoning, often invoked in attempts to justify the expansion of regulatory powers, also encouraged political parties to believe that popular mandates were not restrained by constitutional and legal procedures. This self-styled version of popular constitutionalism also explains the inordinate optimism underlying the efforts of the two administrations that in the 1960s and early 1970s sought to radically transform democratic governance.

Governments, as well as courts, invoked the act of authority doctrine to justify and explain why certain acts of the government were beyond the reach of ordinary courts. This doctrine, which effectively gave judicial immunity to the executive, led in turn to the development of a sharp distinction between public and private law. While civil law systems generally draw a distinction between public and private law, in Chile the distinction was stretched to absurd limits. Given the absence of judicial control of administrative action, public law was effectively regarded as an autonomous sphere having no bearing on the realm of private law. Thus, instead of regarding public and private law as different dimensions of the same legal order, they were regarded as tightly sealed compartments. This conception of the public/private divide was expedient, as it enabled the political system to expand without taking notice of the courts.

As noted above, although the Supreme Court was not overly concerned by this state of affairs, it did not have room to maneuver and develop strategies to protect rights of individuals aggrieved by administrative action. The sharp line that divided public from private law further compounded the Court's difficulties. Yet, while acknowledging these difficulties, the Court's attempt to resolve this problem was clumsy and counterproductive. Indeed, as explained in chapter 6, the Court proposed that whenever lower courts were called upon to apply illegal acts of administration they should ignore them; that is, refuse to apply them and treat them as nonexistent. From the perspective of the executive, this approach was seen as arbitrary as it enabled courts to effectively annul administrative acts without having to give reasons. Given this clumsy approach, it is not surprising that governments and most politicians tended to regard the Court and the judiciary as untrustworthy and unable to understand policy issues. As a consequence, the

judiciary, though independent, was irrelevant in terms of public policy. The exclusion of the judiciary from key areas of public policy had fatal consequences. Indeed, during the Allende administration, legal discourse proved divisive and instead of providing a common ground to resolve disputes, it exacerbated them. The government and the Court, adducing plausible arguments, firmly believed the interpretation of the law of was correct. Thus, unwittingly the poverty of legal discourse contributed to the ongoing political dispute.

It should also be noted that the judicial immunity enjoyed by the executive and the broad notion of the act of authority also played a role in shaping political leaders' perception about the possibility of achieving revolutionary outcomes through the procedures of the political system. Indeed, both Frei and Allende had an excessive, if not naïve, faith in the strength and flexibility of the political and legal systems. They both believed that the prevailing institutional framework was resilient and capable of withstanding the pressure of massive social and economic change. This belief—shared by most of the members of the political elite—stemmed from their own experience as leaders of progressive political movements. They both began their political careers in the 1930s, when the country managed an unexpected return to democracy. During this period they both served as cabinet ministers and were soon elected to the congress. As senators in the 1950s, they played an important role in the reconstitution of the union movement and in diverting the Ibáñez administration from its authoritarian aim. They were also closely involved in challenging the right-wing government of Jorge Alessandri. Thus, from their perspective, as well as from the perspective of their parties and the organizations that supported their programs, the political system had demonstrated an extraordinary capacity to accommodate the political interests they espoused. Thus, it is not surprising that they should have believed that a peaceful revolution was both desirable and possible. Even Allende's legal strategy, though in hindsight bizarre, had the hallmark of the regime, as it was based on a plausible interpretation of the regulatory powers of the executive shared by many lawyers and senior judges.

Empowerment and Rights

An upsurge of popular mobilization, political polarization, and the erosion of centrist positions accompanied the emergence, in the 1960s, of two strong political movements that proposed radical reforms. The erosion of the political center is often regarded as a factor that contributed to the collapse of democracy. Yet, the disappearance of the

center was a symptom, rather than the cause, of the malaise affecting the political regime. A key factor leading to the radicalization of politics was the discrediting of market-based policies, which, in turn, was due largely to the stubborn refusal by right-wing forces and the business community to resolve the agricultural question. They failed to impose market discipline on agricultural enterprises and refused to carry out a meaningful agrarian reform. The failure to resolve the agricultural question, combined with the liberalization of the electoral system, had fatal consequences for the right-wing parties. The discrediting of the market and the subsequent collapse of the right-wing vote created a political imbalance, which, though not perceived as such at the time, had a hugely detrimental impact on the political regime. Indeed, after Frei's victory in 1964, the only two credible political actors on the electoral scene were the CDP on the one hand, and the Socialist and Communist Parties, on the other. As a consequence, these two progressive forces, mistakenly confusing the electoral decline of the Right with its disappearance, became mortal enemies. Their antagonism not only debilitated them, but also greatly deteriorated the political system. The CDP, which had planned to govern for 30 years, was unable, in 1970, to muster enough votes to beat a resurgent Right, which was beginning to turn toward neoliberalism. The socialists and communists concentrated more on eroding the electoral strength of the CDP than on working toward broadening their electoral and political appeal.

While the self-destructive competition between the CDP and the Marxist parties can, to some extent, be attributed to the logic of electoral competition, their inability to develop a coherent policy to further democratization through the extension of rights to subordinate groups raises more fundamental issues. There is little doubt that, on paper, Frei's policy on popular promotion was both persuasive and attractive. It was based on a diagnosis of the impact of social and economic exclusion, which it sought to remedy through the establishment of grassroots organizations. The policy was well received and it greatly benefited shantytown dwellers by providing them not only with material support to resolve basic needs, but also, more importantly, with the means to enhance their political awareness and self-respect as citizens. It soon became clear, however, that the government did not assign priority to these lofty objectives. Indeed, as soon as the economy showed signs of instability, the government's interest in Popular Promotion policies declined. But the government's loss of interest in Popular Promotion also reflects a profound distrust of autonomous grassroots organizations. The ambiguity reflected in the law

that established Neighborhood Committees concerning the nature of these organizations and the government's failure to act on its promise to empower unions through workers' management schemes suggests that, while the CDP had carried out a correct diagnosis of the problem of social and economic marginality, it failed to fully gauge its political consequences.

The Popular Unity's approach to empowerment and the extension of rights to subordinate groups also had serious shortcomings. The Popular Unity took full advantage of the intense process of mobilization, using it as a mechanism to take over the administration of industries. Yet, its proposals and policies on workers' participation revealed a deep mistrust in the ability of workers and the urban poor to run their affairs. The participation schemes proposed by the government gave overriding decision-making power to government officials, while relegating workers' representatives to an advisory role. Implicit in this approach was the assumption that popular empowerment was not a government priority. The priority was the takeover of the commanding heights of the economy. According to this view, only after the government was firmly in control of the commanding heights of the economy could issues of participation and empowerment be considered. Despite their tactical disagreements, the Socialist and Communist Parties shared this orthodox conception about the relationship between economics and politics. They both agreed that taking over of the commanding heights of the economy was an absolute priority. It is not, however, easy to reconcile this orthodox Marxist approach with the government's claim that it was attempting a new and unconventional transition to socialism—one that sought to reconcile socialist economic policies with prevailing democratic structures.

It could be argued that the government's orthodox Marxist approach to the question of empowerment pervaded the whole strategy of the Popular Unity. Indeed, the government's overall strategy seemed to rest on the assumption that its programmatic objectives could be achieved through the manipulation of administrative mechanisms rather than through democratic deliberation and political compromise. From this perspective, Allende's claim that his government was committed to a transition to socialism through democratic means seems purposely designed to conceal his real intention and to conceal the electorate. Yet, as this work has shown, the Popular Unity's program, its strategy, as well as its virtues and failings, were deeply embedded in the country's political history.

Chile had a reputation for political stability and adherence to the principle of legality. This book has shown law's contribution to shaping

the political regime, as well as the impact of the political process on legal and institutional development. The legal system undoubtedly had many failings, but it also had some outstanding features. It is an open question whether timely legal reform would have simultaneously improved the legal system and the quality of the democratic process. It could well be—as I have argued—that what I have called the judicial immunity of the executive was crucial in sustaining political stability during the early years of democratic consolidation, in the 1930s and 1940s. It is thus debatable whether a more creative and daring Supreme Court would have effectively contributed to the protection of the rights of citizens. It is likely that a more dynamic Court would have provoked a political backlash that would have undermined judicial independence and perhaps even destabilized the democratic process.

I hope also that the contents of this book contribute to the debate on the breakdown of democracy. By 1970, standard political indicators—such as electoral participation, levels of unionization, freedom of the press, and freedom of assembly—suggested that the process of democratization had reached a peak. Yet, only three years later, the Pinochet dictatorship launched a massive and brutal process of dedemocratization that was warmly welcomed by those who had opposed Allende on the ground that his government had failed to respect the rule of law and the principles of democracy. In order to understand the double standards of Pinochet's supporters, as well as the efficacy of Pinochet's policy of dedemocratization, it is necessary to relate the political squabbles that preceded the breakdown of the regime to its historical evolution. This book has shown that the radicalization of the democratic process was mainly rooted in policy failings, rather than in right- or left-wing ideology. While the political liberalization of the 1950s was carried out without corresponding economic reform, the substantive economic reforms of the 1960s were not accompanied by equivalent changes at the political level. Thus while in the 1950s there was political democratization without economic change, in the 1960s there was economic change without corresponding political and institutional change. Under these circumstances, the breakdown of the political regime in 1973, though by no means inevitable, was not wholly unexpected.

Appendix A

Presidents and Administrations between 1831 and 1973

1831-1925

1831-41	General José Joaquín Prieto
1841-51	General Manuel Bulnes
1851-61	Manuel Montt
1861-71	José Joaquín Pérez
1871-76	Federico Errázuriz
1876-81	Aníbal Pinto
1881-86	Domingo Santa María
1886-91	José Manuel Balmaceda
1891	Civil War
1891-96	Jorge Montt
1896-1901	Federico Errázuriz (son of President Federico Errázuriz [1871-76])
1901-06	Germán Riesco
1906-10	Pedro Montt (son of President Manuel Montt)
1910-15	Ramón Barros
1915-20	Juan Luis Sanfuentes
1920-25	Arturo Alessandri

1925-32

Between the second resignation of President Alessandri in October 1925 and the restoration of constitutional government in December 1932, there were 15 administrations, some of which were elected:

October 1-December 23, 1925	Vice Presidency of Ramón Barros
December 23, 1925-April 7, 1927	Presidency of Emiliano Figueroa (elected)
April 7, 1927-July 21, 1927	Vice Presidency of Carlos Ibáñez

July 21, 1927-July 26, 1931	Presidency of Carlos Ibáñez (elected)
July 27-August 20, 1931	Vice Presidency of Juan Esteban Montero
August 20-November 15, 1931	Vice Presidency of Manuel Trucco
November 15-December 4, 1931	Vice Presidency of Juan Esteban Montero
December 4, 1931-June 4, 1932	Presidency of Juan Esteban Montero (elected)
June 4-June 13, 1932	First Military Junta
June 13-June 16, 1932	Second Military Junta
June 16-June 30, 1932	Third Military Junta
June 30-July 8, 1932	Fourth Military Junta
July 8-September 13, 1932	Provisional Presidency of Carlos Dávila
September 13-October 2, 1932	Provisional Presidency of General Bartolomé Blanche
October 2-December 24, 1932	Vice Presidency of Abraham Oyadene

1932-73

1932-38	Arturo Alessandri
1938-41	Pedro Aguirre
1941-46	Juan Antonio Ríos
1946-52	Gabriel González
1952-58	Carlos Ibáñez
1958-64	Jorge Alessandri (son of President Arturo Alessandri)
1964-70	Eduardo Frei
1970-73	Salvador Allende

Appendix B

Presidential Elections 1932-70

Date	Number of Registered Voters and Registered Voters as Percentage of Total	Participation Rates of Registered Voters	Percentage of Vote for Each Candidate
October 30, 1932	464,879 (9.5%)	74%	A. Alessandri 55% M. Grove 18% H. Rodríguez 14% E. Zañartu 12% E. Lafferte 1%
October 25, 1938	503,871 (10.3%)	88%	P. Aguirre 50% G. Ross 49% C. Ibáñez 0.02%
February 1, 1942	581,486 (11.1%)	80%	J. A. Ríos 55% C. Ibáñez 44%
September 4, 1946	631,257 (11.2%)	76%	G. González 40% E. Cruz-Coke 30% F. Alessandri 30% B. Ibáñez 3%
September 4, 1952	1,105,029 (17.6%)	87%	C. Ibáñez 47% A. Matte 28% P. E. Alfonso 20% S. Allende 5%

Continued

Appendix B Continued

Date	Number of Registered Voters and Registered Voters as Percentage of Total Population	Participation Rates of Registered Voters	Percentage of Vote for Each Candidate
September 4, 1958	1,497,902 (20.5%)	84%	J. Alessandri 31% S. Allende 29% E. Frei 20% L. Bossay 15% A. Zamorano 3%
September 4, 1964	2,915,121 (34.8%)	87%	E. Frei 56% S. Allende 39% J. Durán 5%
September 4, 1970	3,539,747 (36.2%)	83%	S. Allende 36% J. Alessandri 35% R. Tomic 28%

Source: Correa et al. 2001:192-193; Borón 1971b:51.

Appendix C

Union Membership and Rates of Unionization 1932-73

Year	Number of Members	Unionization as Percentage of Workforce	Percentage of Unionized Workers in Agriculture
1932	54,801	-	-
1938	125,972	-	-
1946	251,774	-	-
1952	282,383	13.20	0.4
1953	298,274	12.17	0.6
1954	299,364	11.88	0.7
1955	305,192	12.08	0.7
1956	317,352	13.90	0.7
1957	300,040	13.00	0.7
1958	276,346	11.90	0.7
1959	282,498	10.30	0.7
1960	232,417	10.10	0.6
1961	257,563	10.60	0.6
1962	247,007	10.00	0.6
1963	262,498	10.30	0.6
1964	270,542	10.30	0.7
1965	292,653	10.90	0.7
1966	350,516	12.80	3.0
1967	406,186	14.64	11.5
1968	499,761	17.48	16.7
1969	530,984	18.20	19.7
1970	551,086	19.40	20.7
1971	586,600	20.63	21.7
1972	632,485	22.00	21.6
1973	934,335	30.80	24.6

Source: Allende 1973b:858; Correa 2001:78; Sader 1973: 29, 32; Scully 1992:156.

Appendix D

Comptroller Generals 1927-77

Pablo Ramirez R.	March 26, 1927-July 21, 1927
Kenneth Page	July 22, 1927-December 14, 1927
Rodolfo Jaramillo	January 5, 1928-January 8, 1929
Edecio Torreblanca	January 9, 1929-November 5, 1929
Miguel Solar	November 7, 1929-February 22, 1932
Gustavo Ibáñez	February 23, 1932-December 31, 1938
Agustín Vigorena	January 5, 1939-December 18, 1945
Humberto Mewes	February 7, 1946-June 14, 1952
Enrique Bahamondes	September 16, 1952-May 11, 1959
Enrique Silva Cimma	September 16, 1959-January 31, 1967
Héctor Humeres	August 11, 1967-December 31, 1977

Notes

Translations into English are by the author, unless otherwise stated.

1 Building a Strong State

1. For the text of the 1833 Constitution and its amendments see, <http://www.historia.uchile.cl/> (last accessed March 13, 2006).

2 Political Liberalization and Civil War

1. The text of Article 82 paragraph 6 reads as follows: "Son atribuciones especiales del Presidente: . . . (6) Nombrar y remover a su voluntad a los Ministros del Despacho y oficiales de sus secretarías a los Consejeros de Estado a los Ministros Diplomáticos a los cónsules y demás agentes exteriores, y a los Intendentes de provincia y Gobernadores de plaza;" at www.historia.uchile.cl (last accessed March 13, 2006). [The special powers of the President include the prerogative: . . . (6) To appoint and remove, at his discretion, Cabinet Ministers, senior officers of Government Departments, Members of the Council of State, Ambassadors, Consuls and other diplomatic agents, and Intendents and Governors.]
2. Courcelle-Seneuil lived in Chile between 1855 and 1863. He worked as consultant to the Ministry of Finance, established the first economics course at the University of Chile and influenced a generation of intellectuals and politicians (Martner 1929: 274–278).

3 Transition to a Modern State

1. For the text of the 1925 Constitution and its amendments see, <http://www.historia.uchile.cl/> (last accessed 13 March, 2006).

5 Governance and Accountability

1. *Boletín de la Cámara de Diputados*, Sesión 3, January 29, 1969.
2. See the *Contraloría's* Annual Reports (*Memoria Anual de la Contraloría General de la República*) 1964–70.

3. *Diario de Sesiones del Senado*, Sesión 21, (Legislatura Extraordinaria) December 17, 1945, p. 691.
4. *Ibid.*, p. 705.
5. On the impeachment of the comptroller general, see, *Boletín de la Cámara de Diputados*, Sesións 10 and 11, on November 22, 1945, pp. 603-621, 623-698; and *Diario de Sesiones del Senado*, Sesiones No. 14 to 25 held between December 4 and 27 and December 14 and 25, 1945, pp. 469-489, 499-523, 537-553, 566-590, 596-621, 629-659, 663-688, 691-719, 723-738, 748-770, 831-832.
6. *Diario de Sesiones del Senado*, Sesión 21, December 17, 1945, pp. 695, 705.
7. *Ibid.*, p. 692.
8. *Ibid.*, p. 705.
9. *Diario de Sesiones del Senado*, Sesión 29, January 2, 1946, p. 953.
10. *Diario de Sesiones del Senado*, Sesión 30, January 8, 1946, pp. 995-1019.
11. See the Contraloría's Annual Reports (*Memoria Anual de la Contraloría General de la República*) 1963-69.
12. *Contraloría General de la República*, Oficio 77516, October 21, 1965, Oficio 915, June 27, 1966 and Oficio 51559, July 9, 1966. Source: *Contraloría General de la República*, *Secretaría General*.
13. Dictámen No. 41,164 (July 16, 1968) *Boletín de Jurisprudencia* (7) July 1968, pp. 52-53.

6 The Supreme Court

1. *Cámara de Diputados*, *Boletín de Sesiones*, 20a Sesión, June 28, 1933, p. 1000.
2. *Cámara de Diputados*, *Boletín de Sesiones*, Sesión 13a Ordinaria, June 19, 1933, p. 625; Sesión 19a Ordinaria, June 27, 1933, pp. 931-975; Sesión 20a Ordinaria, June 28, 1933, pp. 995-1057.
3. For the Supreme Court's response to the allegations contained in the articles of impeachment, see *Cámara de Diputados*, *Boletín de Sesiones*, Sesión 16a, November 14, 1967, pp. 1451-1473. For the congressional debate on the impeachment, see *Cámara de Diputados*, *Boletín de Sesiones*, Sesión 16a, November 14, 1967, pp. 1487-1552; and Sesión 17a, November 14, 1967, pp. 1562-1608.
4. *Cámara de Diputados*, *Boletín de Sesiones*, Sesión 16a, November 14, 1967, p. 1468.
5. *Ibid.*, p. 1463.
6. *Cámara de Diputados*, *Boletín de Sesiones*, Sesión 19a Ordinaria, June 27, 1933, p. 934.
7. *Ibid.*, p. 948.
8. De Castro (inaplicabilidad e inconstitucionalidad), Corte Suprema September 13, 1932, *Revista de Derecho y Jurisprudencia*, Vol. 30 (1933), pp. 36-45.

9. *Ibid.*
10. Frías Ojeda, René (inaplicabilidad), Corte Suprema, February 3, 1949, *Revista de Derecho y Jurisprudencia*, Vol. 46 (1949), pp. 618-640.
11. Article 72 (17) reads as follows: "Si a la reunión del Congreso no hubiere expirado el término señalado, la declaración que ha hecho el Presidente de la República, se entenderá como una proposición de ley." [In case of internal unrest, the prerogative to declare a state of siege rests with the Congress; but if Congress is not in session, the President of the Republic may declare a state of siege for a specific period. If the state of siege ordered by the President has not expired by the time the Congress reconvenes, the state of siege declared by the President will be regarded as a legislative bill.]
12. For a sample of these views, see Junta de Gobierno 1982: 25-184.
13. Sociedad Cooperativa de Compra de Transportes Colectivos Ltda (*Socotransco*) con Fisco, Corte Suprema, January 9, 1964, *Revista de Derecho y Jurisprudencia*, Vol. 61 (1964), pp. 7-14.
14. *Ibid.*, p. 13.
15. See Dupuis et al. 2004: 647 on what French administrative law characterizes as *l'emprise irrégulière* (irregular seizure or expropriation).
16. Canus V., Alfredo y otros con Dirección de Pavimentación, Corte Suprema, May 23, 1961, *Revista de Derecho y Jurisprudencia*, Vol. 58 (1961), pp. 144-150.
17. Montero con Comisariato Departamental de Subsistencias, Corte de Apelaciones de La Serena, March 2, 1945, *Revista de Derecho y Jurisprudencia*, Vol. 42 (1945), pp. 3-16.
18. Montero con Comisariato Departamental de La Serena, Corte Suprema, October 14, 1947, *Revista de Derecho y Jurisprudencia*, Vol. 45 (1948), pp. 248-250.
19. For an early statement of this doctrine, see Fernández Concha con Municipalidad de Ñuñoa, Corte Suprema, June 14, 1909, *Revista de Derecho y Jurisprudencia*, Vol. 14 (1916), pp. 112-116.

7 A Revolution in Liberty

1. Ley de Junta de Vecinos y Demás Organizaciones Comunitarias, Ley No. 16,880, *Diario Oficial*, No. 27113, August 7, 1973.

8 A Peaceful Revolution

1. For the Popular Unity's Program of Government see, Zammit (1973), pp. 255-286.
2. Copper was nationalized in 1971 by means of a constitutional amendment that had the support of all the parties.
3. *El Mercurio*, January 15, 1973, p. 21.
4. *El Mercurio*, January 18, 1973, p. 12; *El Mercurio*, January 29, 1973, p. 17.

5. See debate on the impeachment of Orlando Millas, minister of economics: *Cámara de Diputados, Boletín de Sesiones*, Sesión 51, May 17, 1973, pp. 2833-2852; *Diario de Sesiones del Senado*, Sesión 27, July 3, 1973, pp. 1075-1110; Sesión 29, July 4, 1973, pp. 1155-1188; Sesión 30, July 5, 1973, pp. 1193-1195.
6. Dictamen No. 50,782 (July 2, 1973) *Contraloría General de la República, Boletín de Jurisprudencia* (6-10) June-October 1973, pp. 461-465.
7. See, for example, the senate debate on the impeachment of Hernán del Canto, minister of the interior, *Diario de Sesiones del Senado*, Sesión 37, July 24, 1972, pp. 2016-2050; Sesión 39, July 25, 1972, pp. 2116-2149; Sesión 42, July 26, 1972, pp. 2272-2288 and Sesión 44, July 27, 1972, pp. 2334-2366.
8. Ley No. 17,798, *Diario Oficial*, No. 28,383, October 21, 1972.
9. Decreto No. 4,581, *Diario Oficial*, No. 21,588, February 23, 1949.
10. *El Mercurio*, January 27, 1973, p. 12.
11. Ley No. 17,377, *Diario Oficial*, No. 27,779, October 24, 1970.
12. *Diario de Sesiones del Senado*, Sesión 42, July 17, 1973, pp. 1465-1498; Sesión 46, July 18, 1973, pp. 1607-1618; Sesión 47, July 19, 1973, pp. 1627-1630.
13. Ministro en Visita Extraordinaria (Corte de Apelaciones), Contra Jaime Schatz Pilurtsky, July 11, 1973, *Revista de Derecho y Jurisprudencia*, Vol. 70 (1973), pp. 70-77.
14. "La Escuela Nacional Unificada y la Constitución Política" *El Mercurio* (editorial), March 20, 1973.
15. *El Siglo*, June 27, 1971, p. 4.

9 Legality Defeated

1. Corte Suprema (desafuero) Contra Carlos Altamirano Orrego, September 12, 1967, *Fallos del Mes*, Vol. 9 (107) 1967, pp. 228-230 and Corte Suprema (desafuero apelado) Contra Carlos Altamirano Orrego, September 14, 1967, *Fallos del Mes*, Vol. 9 (107) 1967, pp. 231-232.
2. Dictamen No. 60,058 (October 30, 1962) in Soto 1974: 253-255 and Dictamen 81,916 (December 30, 1968) *Contraloría General de la República, Boletín de Jurisprudencia* (12) December 1968, p. 63.
3. Dictamen No. 43,315 (June 29, 1971) *Contraloría General de la República, Boletín de Jurisprudencia* (5-6) May-June 1971, pp. 349-351; and Dictamen No. 58,371 (August 20, 1971) *Contraloría General de la República, Boletín de Jurisprudencia* (7-8) July-August 1971, pp. 472-473.
4. Dictamen No. 87,708 (December 7, 1971) *Contraloría General de la República, Boletín de Jurisprudencia* (11-12) November-December 1971, pp. 721-722.

5. *Contraloría General de la República, Memoria de la Contraloría General de la República Correspondiente al Año 1973*, p. 46.
6. Dictamen No. 18,447 (March 15, 1972) *Contraloría General de la República, Boletín de Jurisprudencia* (3-4) March-April 1972, p. 198.
7. Dictamen No. 1638 (January 8, 1973) *Contraloría General de la República, Boletín de Jurisprudencia* (1) January 1973, pp. 16-18.
8. *Contraloría General de la República, Memoria de la Contraloría General de la República Correspondiente al Año 1973*, p. 44.
9. *Contraloría General de la República, Memoria de la Contraloría General de la República Correspondiente al Año 1971*, pp. 9-10; *Contraloría General de la República, Memoria de la Contraloría General de la República Correspondiente al Año 1972*, pp. 10-13; *Contraloría General de la República, Memoria de la Contraloría General de la República Correspondiente al Año 1973*, p. 10.
10. Dictamen No. 50,782 (July 2, 1973) *Contraloría General de la República, Boletín de Jurisprudencia* (6-10) June-October 1973, pp. 461-465.
11. "La Contraloría Ignora Oficialmente las Objeciones del Ministro Millas" *El Mercurio*, March 14, 1973, p. 8; "Ministro Millas Insiste ante Contralor para que Enmiende un Dictamen" *El Mercurio*, March 21, 1973, p. 16.
12. Decreto No. 206, *Diario Oficial*, No. 28,543, May 4, 1973, pp. 2-3.
13. Corte Suprema (recurso de queja) S.A. Yarur Manufacturas de Algodón, January 4, 1972, *Revista de Derecho y Jurisprudencia*, Vol. 69, Sección Sexta (January-April 1972), pp. 1-7.
14. Corte Suprema (recurso de queja) S.A. Yarur Manufacturas de Algodón, November 15, 1972, *Revista de Derecho y Jurisprudencia*, Vol. 69, Sección Primera (December 1972), pp. 195-197.
15. According to records held at the Consejo de Defensa del Estado in 1973, 26 possessory actions were pending before civil courts (*juegados civiles*) in Santiago (information on file with the author).
16. The account that follows is taken from *Diario de Sesiones del Senado*, Sesión 31, July 9, 1973, pp. 1209-1219.
17. *Diario de Sesiones del Senado*, Sesión 34, July 10, 1973, p. 1277.
18. Corte Suprema, (contienda de competencia) Juez de Letras de Melipilla con S.E. el Presidente de la República, May 3, 1967 in *Junta de Gobierno* 1982, pp. 223-239.
19. Corte Suprema (casación de fondo) Rayonhil Industria Nacional de Rayón SA con Director de Industria y Comercio y Otros, September 5, 1973, *Revista de Derecho y Jurisprudencia*, Vol. 70, Sección Primera, pp. 66-71. See also, Corte Suprema (*recurso de queja*) Juan Bravo Ramos, 27 September 1972 in *Junta de Gobierno* 1982, pp. 240-248.
20. It should be noted that the argument that possessory actions were designed to govern relations among individuals and not designed to challenge administrative acts could well be consistent with the intention of the legislature, but it is not consistent with judicial practice. Arturo

Alessandri and Manuel Somarriva, the leading authorities on this subject, provide useful background on this issue, but do not resolve it. They explain that before the adoption of the 1925 Constitution (which arguably divested ordinary courts from jurisdiction to review acts of the administration), possessory actions were frequently used to challenge and invalidate administrative acts. They cite very few cases after 1925 where possessory actions were successfully used to oppose acts of public officials. This shift in the case law should, presumably, be attributed to the provision in the constitution on administrative tribunals. The authors, however, do not make this point (Alessandri and Somarriva 1957, pp. 829-845).

21. On May 31, 1972, the Sexto Juzgado Civil decided that it did not have jurisdiction to resolve the possessory action brought by Rayonhill on May 18 (Rol 684-72) of the same year. On November 28, 1972, the Court of Appeals (Santiago) affirmed the lower court's decision. The Court of Appeals decision was not reported (photocopy of the judgment on file with the author).
22. Corte Suprema (recurso de queja) Gerardo Garrido Rojas, July 26, 1972, *Revista de Derecho y Jurisprudencia*, Vol. 69, Sección Cuarta (July-December 1972), pp. 98-102.
23. Corte Suprema (recurso de queja) Empresa Nacional de Construcciones, August 3, 1972, *Revista de Derecho y Jurisprudencia*, Vol. 68, Sección Cuarta (July-August 1971), pp. 156-157.
24. Circular No. 664, March 20, 1972, *Fallos del Mes*, Vol. 13 (164), p. 48.
25. For the events in Melipilla see, "Antecedentes Relacionados con los Sucesos Acaecidos en el Juzgado de Letras de Melipilla el 9 de Mayo de 1972," *Revista de Derecho y Jurisprudencia*, Vol. 70 (7/8) 1973, pp. 157-161.
26. *Diario de Sesiones del Senado*, Sesión 27, July 7, 1972, pp. 1792-1800.
27. Circular Confidencial No. 3 de 19 Enero 1973 del Ministro del Interior (General Carlos Prats) "Sobre Procedimiento a Seguir en Caso de Cumplimiento de Ordenes Judiciales de Desalojo de Determinados Establecimientos Industriales," *Revista de Derecho y Jurisprudencia*, Vol. 70 (7/8), p. 203.
28. See, for example, the statement by Hernán del Canto, minister of the interior, explaining that the government often delayed the enforcement of judgments in order to prevent a disruption of public order. *Diario de Sesiones del Senado*, Sesión 3, July 24, 1972, p. 2026.
29. For the exchange of letters between the Supreme Court and President Allende, see *Revista de Derecho y Jurisprudencia*, Vol. 70 (7/8) 1973, pp. 206-211, 215-240.
30. *Ibid.*, pp. 216-226.
31. *Ibid.*, p. 229.
32. *Ibid.*, p. 235.

Bibliography

- Abbott, Roger S. (1951) "The Role of Contemporary Political Parties in Chile," *American Political Science Review*, Vol. 45 (2), pp. 450-463.
- Affonso, Almíno (1972) "Esbozo Histórico del Movimiento Campesino Chileno," *Revista Latinoamericana de Ciencias Sociales*, No. 3 (June), pp. 37-69.
- Affonso, Almíno, Sergio Gómez, Emilio Klein, and Pablo Ramírez (1970) *Movimiento Campesino Chileno* (2 vols.) (Santiago: ICIRA).
- Agor, Weston H. (1971) *The Chilean Senate* (Austin: University of Texas Press).
- Aguero, Luis (1948) "Sobre la Imprudencia del Recurso de Queja con que se Pretende Invalidar las Sentencias Definitivas de las Cortes del Trabajo," *Revista de Derecho y Jurisprudencia*, Vol. 46, pp. 50-56.
- Ahumada, Jorge (1958) *En Vez de la Miseria* (Santiago: Editorial del Pacífico).
- Alessandri, Arturo and Manuel Somarriva (1957) *Curso de Derecho Civil (Volume 2) De los Bienes* (Santiago: Editorial Nascimento).
- Alexander, Robert J. (1962) *Labor Relations in Argentina, Brazil and Chile* (New York: McGraw Hill).
- Allende, Salvador (1972) "Segundo Mensaje del Presidente Salvador Allende al Congreso Pleno," *Sesiones del Congreso Nacional, Legislatura 316a Ordinaria, Sesión del Congreso Pleno, May 21, 1972*, pp. 5-28.
- (1973a) "The Chilean Road to Socialism—First Annual Message to the Congress, 21 May 1971," in Salvador Allende, (ed.), *Chile's Road to Socialism* (London: Penguin Books), pp. 138-166.
- (1973b) *Mensaje del Presidente Allende ante el Congreso Pleno, 21 de Mayo 1973* (Santiago).
- Alvarez, Oscar and Moisés Poblete (1924) *Legislación Social Obrera Chilena* (Santiago: Imprenta Santiago).
- Angell, Alan (1972) *Politics and the Labour Movement in Chile* (Oxford: Oxford University Press).
- Anonymous (1868) *La Acusación a la Corte Suprema* (Santiago: Imprenta del Ferrocarril).
- Aramayo, Oscar (1964) *Régimen Legal del Comercio Interior Chileno* (Santiago: Editorial Jurídica).
- Arellano, José Pablo (1985) "Social Policies in Chile: An Historical Review," *Journal of Latin American Studies*, Vol. 17 (2), pp. 397-418.