

Fills an important gap in our understanding of Chilean development. By putting the legal system at the forefront of his analysis, Julio Faundez offers a original account of a political system in which legality and the constitution al roles in the shape and outcome of political and economic conflict from dependence period to the fall of the Popular Unity government in 1973. It is a model for the exploration of the role of law in the development of other countries in America."

—ALAN ANGELL, Emeritus Fellow, St Antony's College, and former Director, Latin American Centre, University of Oxford

An extremely valuable study that adds significantly to the understanding of the legal institutions in the political process in Latin America in general, and Chile in particular. Faundez employs a wide gamut of sources for an original perspective and provides striking insight into the process of social change in Chile."

—JOSEPH THOME, Professor Emeritus of Law, University of Wisconsin

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DEMOCRATIZATION, DEVELOPMENT, AND LEGALITY
Chile, 1831–1973

Julio Faundez



STUDIES OF THE AMERICAS

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STUDIES OF THE AMERICAS

edited by

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List of Acronyms and Abbreviations

CAS	<i>Consortio Agrícola del Sur/Southern Agricultural Partnership</i>
CDP	<i>Partido Demócrata Cristiano/Christian Democratic Party</i>
CERAS	<i>Centros de la Reforma Agraria/Centers of Agrarian Reform</i>
CIA	Central Intelligence Agency
CODE	<i>Confederación Democrática/Democratic Confederation</i>
CODELCO	<i>Corporación del Cobre/State Copper Corporation</i>
CORFO	<i>Corporación de Fomento de la Producción/State Development Corporation</i>
CRAC	<i>Confederación Republicana de Acción Cívica/Republican Confederation of Civic Action</i>
CTCH	<i>Confederación de Trabajadores de Chile/Chilean Workers' Confederation</i>
CUT	<i>Central Única de Trabajadores/United Workers' Federation</i>
DIRINCO	<i>Dirección de Industria y Comercio/Industry and Commerce Directorate</i>
FOCH	<i>Federación Obrera de Chile/Chilean Workers' Federation</i>
ITT	International Telephone and Telegraph Corporation
JAPs	<i>Juntas de Abastecimientos y Precios/Price Control Committees</i>
MAPU	<i>Movimiento de Acción Popular Unitaria/United Popular Action Movement</i>
MNS	<i>Movimiento Nacional Socialista/Nationalist Socialist Movement</i>

POS	<i>Partido Obrero Socialista/Socialist Workers' Party</i>
PUMA	<i>Por un Mañana Auspicioso/For a Better Tomorrow</i>
PSA	Prices and Subsidance Agency/ <i>Comisariato de Subsistencias y Precios</i>
SDG	Satute of Democratic Guarantees/ <i>Estatuto de Garantías Democráticas</i>
SNA	<i>Sociedad Nacional de Agricultura/National Agricultural Society</i>

Introduction

Until the military coup of 1973, Chile's political regime was exceptionally stable. During the nineteenth century it managed to establish a strong state and a stable constitutional government. Pre-sidents were regularly elected; the congress, representing different interests within the elite, had an increasingly important political role; and the military, under the control of civilian authorities, was often mobilized to suppress insurrections and to fight wars that resulted in a significant expansion of the territory. Stability within the framework of the constitution continued to be a feature of the political process during most of the twentieth century. Despite recurrent economic problems, political and legal institutions were stable and between 1932 and 1973 and they seemed to operate in accordance with the standards of developed Western democracies. Political and civil rights were generally respected; the press was free and lively; the judiciary was independent; the principle of legality was respected; and there were strict financial and legal controls on the activities of the state bureaucracy. These features of the political regime suggest that Chile had found a formula that even today eludes most developing countries. It achieved effective governance within a democratic framework that respected constitutionalism and legality.

Because of these features, the study of Chile's political system was popular among political scientists from Europe and the United States. In Chile they found a familiar milieu in which they could apply standard political science analysis to assess and predict political developments. Political parties had clearly defined programs with distinct constituencies; there were frequent elections; interest groups expressed their views through established channels; and the political organs of the state behaved very much like those in old established democracies. Thus, most observers of the democratic regime after 1932 tend to offer an optimistic appraisal of the political regime and compare it

favorably with those of other countries. This optimistic appraisal was reinforced by the use of comparative political indicators. Indeed, in 1960 some empirical studies of democracy ranked Chile ahead of Switzerland and the United Kingdom and in 1965 ahead of the United States, France, and West Germany (Bollen 1980:387).

A special attraction that Chile had was that, despite its stability, the country's political process was neither dull nor entirely safe. Two of its main parties were Marxist and since the late 1950s had significantly increased their electoral appeal to become serious contenders in presidential elections. It also had two other strong parties, which, inspired, influenced, and often financed by social democratic parties from Europe, favored income redistribution and advocated the extension of rights to members of the subordinated classes. Thus, apart from academics with a genuine intellectual interest, some Chile-watchers had their own political agendas. European observers regarded Chile as a fertile ground for testing the possibility of implementing European style welfare policies in developing countries. Those from the United States were interested because the political process in Chile raised the specter that parties aligned with the Soviet Union would achieve power by electoral means, thus posing a threat to U.S. dominance in the Latin American region.

In the event, in 1970 Salvador Allende, a Marxist, won the presidential elections, but his period in office was short-lived. In 1973 he was deposed by a military coup that destroyed democracy and established a brutal dictatorship that was to last nearly two decades. The collapse of democracy generated a flood of books and articles that purported to explain the so-called lessons of Chile. Some welcomed the coup as a necessary step toward the restoration of democracy, while others attributed it to the undercover machinations of the U.S. government and multinational companies (Faundez 1975). Yet, neither critics nor apologists of the military coup raised any questions about the accuracy of interpretations depicting the former regime as an exemplary democracy fully committed to the principle of legality.

The collapse of democracy in 1973 suggests that, despite appearances, neither the democratic framework nor the legal system had the strength or resilience hitherto assumed. Optimistic assessments of the strength of democratic institutions (Gil 1966; Valenzuela 1994, 1978) focus mainly on variables such as the structure of the party system, levels of electoral registration and participation, ideological alignment, voting patterns and the role of unions, which can be easily observed or measured. Although these studies offer valuable insights into political behavior, they overlook facts that cannot be reconciled with the

tranquil environment of established democracies. They either ignore or tend to gloss over the crucial role played by the military in the design of institutions during the period of intense political instability in the late 1920s and early 1930s. Also, they fail to take into account that during the period of coalition politics of the late 1930s and early 1940s, women were excluded from the franchise and their involvement in politics virtually had no impact until the early 1960s. Moreover, had these scholars examined, even superficially, the structure and operation of the law during that time, they would have noticed that many features of the regime were sharply different from those of well-established constitutional democracies. Thus, while the executive, with the acquiescence of the congress, consistently expanded the scope of its regulatory powers, the Supreme Court made no attempt to fulfill its role as guardian of the constitution. Further, the political elite consistently refused to establish an effective system of administrative justice. Most interpretations of Chile's political regime overlook these problems, as they tend to regard law and legal institutions as background factors that have little or no influence in shaping political outcomes.

Among the numerous scholars who have studied the evolution of state institutions, several have noted the shortcomings, as well as the virtues, of the country's institutional framework (Bauer 1975; Collier 2003; Drake 1989; Góngora 1986; Hirschman 1963; Loveman 1976; Pike 1963; Pinto 1973; Petras 1969; Silvert 1965; Sunkel 1959, 1965; Valenzuela and Valenzuela 1983; Véliz 1971; Zeitlin 1984). Yet, they have not developed their valuable insights into a comprehensive interpretation of the political regime. Maurice Zeitlin's seminal article on the evolution of state institutions in the late nineteenth and early twentieth centuries stands out as the most interesting and cogent (Zeitlin 1968). He attributes the stability and democratic nature of the system to the flexibility and self-confidence of the local elite, as well as to their relative independence from the two hegemonic powers in the region—Great Britain and the United States. Zeitlin's explanation of key structural features of the state in Chile is powerful and persuasive. Its shortcoming, however, is that it depicts the political process and the institutional framework as mere by-products of economic processes. As a consequence, he examines neither the influence that institutions have in the way political actors articulate their preferences nor the role of institutions in shaping political and social outcomes. Though the central importance of economic processes cannot be ignored, most scholars have neglected the complex interplay between economic policies and political and institutional outcomes. This oversight is regrettable as Chile was the pioneer of the policy of import substitution and

also one of the first countries that sought, albeit unsuccessfully, to find market- and nonmarket-based alternatives to the policy of import substitution.

The shortcomings of prevailing interpretations are attributable not only to the methodology employed or to the absence of interdisciplinary approaches, but also to the complex and contradictory nature of the political regime. Indeed, though it is undeniable that the political regime had some outstanding features, it also had fundamental flaws. By the 1960s, the process of democratization had reached a high point, the polity had become more inclusive, the electorate significantly expanded, and governments were facing the dilemma of economic development. There were also imaginative attempts to promote new forms of political participation so as to effectively empower the subordinate classes, especially agricultural workers and the urban poor. Governments also began to implement comprehensive programs of economic modernization in the agricultural and mining sectors. But the political regime also had many unsavory features. Though the political elite consistently and effectively invoked the constitution and the law to legitimize their authority and thwart attempts to destabilize the regime, their commitment to constitutionalism and legality was neither straightforward nor orthodox. Indeed, while claiming strict adherence to the constitution, they often circumvented or ignored constitutional rules and crushed fundamental political rights. Throughout most of the period, agricultural workers were denied the right to form unions, and the exercise of their right to vote was severely curtailed through bribery and intimidation. Moreover, even workers whose right to organize was recognized by the constitution had no judicial protection when they were confronted with draconian state security measures that restricted their rights or curbed union power. Courts were reluctant to challenge policies designed to undermine basic constitutional and legal rights. They were indeed independent, but their independence was due more to their political irrelevance than to genuine respect for the principle of the separation of powers or any other constitutional principle. Meanwhile, the military, which was renowned for its respect for constitutional government, kept a close watch on political developments and, from time to time, made its presence felt in the political process.

The shortcomings of Chile's political regime are hardly surprising, as they are a feature of many developing countries. The political regime's achievements, however, cannot be ignored. Indeed, Chile made the transition in a relatively orderly and stable fashion from a largely rural economy in the nineteenth century to a fairly complex

semi-industrialized country in the second half of the twentieth century. Moreover, in 1932, while most of the countries in the region were facing severe economic and political instability, there emerged in Chile a stable constitutional government that lasted for a little over four decades. Yet, the local elite were persistently haunted by problems that characterize underdeveloped economies. The dependence of the economy on a single export commodity, first nitrate and then copper, was a permanent source of concern and the cause of recurring waves of unemployment, inflation, and balance of payments crises. A stagnant agricultural sector combined with a rapid process of urbanization exacerbated economic difficulties. Given the magnitude of these problems, it is remarkable that throughout most of the period, 1831-1973, governments and other public authorities were almost invariably elected in accordance with the procedures established by the constitution.

The foregoing facts suggest that prevailing interpretations have failed to adequately explain crucial features of the political regime. Recurrent political crises have either been ignored or seen as exceptional in an otherwise consistent pattern of stability; legal institutions have been regarded as factors having no bearing on political and economic processes; and political outcomes have been regarded merely as by-products of economic policies.

This study while building on the vast academic literature on Chile seeks to supplement it. Its objective is to offer an interpretation of the evolution of state institutions and the political regime between 1831 and 1973, which takes into account the complex interaction of political, economic, and legal processes. Its approach is historical, its focus is on institutions, and the unifying thread is the concept of democratization. The historical approach helps to identify and trace long-term trends in political, economic, and legal processes. It is complemented by a focus on institutions, which make it possible to ascertain their impact on the political regime. Institutions are thus examined in their political and economic context. Thus, for example, in order to ascertain the impact of legal institutions on the evolution of the political regime, this study explains both the manner in which patterns of political development contributed to shape legal institutions, and the bearing of these institutions in shaping political choices and perceptions. Through an examination of the complex interplay among political, legal, and economic institutions, this study uncovers connections and interacting processes that available interpretations either ignore or misconstrue. Thus, for example, this approach helps to explain the key, but contradictory role of the Office of the Comptroller General

(hereafter *Contraloría*) in developing a system of accountability that was generally regarded as an effective device for restraining the executive. It also makes it possible to uncover critical linkages between economic policies and political institutions. Instead of assuming that economic policies always determine political outcomes, this study explores the relationship between political and economic choices. Thus, for example, though prevailing interpretations regard the crisis of the import substitution model as an economic issue, a close analysis reveals that the crisis was far more complex. Indeed, the failure to find viable market-based as well as nonmarket-based alternatives to the policy of import substitution was caused as much by political as by economic factors. Likewise, on close inspection, the alleged economic incompetence of the Allende administration in the early 1970s had roots that had deeply penetrated the political regime. Indeed, the evidence suggests that, considering the peculiar evolution of the prevailing institutional framework, Allende's expectation regarding the regime's flexibility and its unlimited capacity to accommodate radical political and economic change was not altogether unreasonable.

This study employs as its unifying thread the notion of democratization, which, in turn, is loosely based on the conceptual framework developed by Charles Tilly (2000, 2004, 2007). He identifies four components of political regimes: breadth, equality, consultation, and protection. Breadth refers to the number of persons who are members of the polity. Equality denotes the extent to which polity members have similar access to government agents and societal resources. Consultation refers to the degree to which polity members exercise binding collective control over governmental agents, resources, and activity. Protection designates the extent to which members of the polity are shielded from arbitrary action by the government. Democratization, according to Tilly, obtains when there is a positive shift in these four components (2000:4-5, 2004:13-15, 2007:59-60). In other words, democratization is the result of a process that enhances the breadth, equality, accountability, and protection within the political regime. Tilly notes, however, that these components often change independently of each other and do not follow preordained sequences. In other words, high levels of participation (breadth) in the polity may coexist with low levels of protection or with profound inequalities. Moreover, he also points out that positive shifts of some of the components do not necessarily lead to an increase in the process of democratization.

Tilly's framework is helpful as it incorporates into the analysis political, economic, and legal factors, without assigning priority to any. This is especially pertinent to this study because, as what follows show, law

and legal institutions are often so deeply entangled in the design and operation of political and economic institutions that ignoring them, or assigning them the role of background factors, distorts our understanding of the political process and trivializes the concept of law. The suggestion that shifts in the four components of democratization do not follow preordained sequences is especially relevant to the case of Chile, as some components of the regime, such as political accountability or consultation, developed at a relatively early stage, whereas others, such as the persistent discrimination against agricultural workers (breadth and equality), did not change throughout most of the period. The evolution of electoral politics is also a case in point. Though elections played an important role in the development of the political system, universal suffrage came at a relatively late stage. Initially, the president and members of the congress were selected by a narrow segment of the oligarchy. Although the electorate expanded in the 1870s, electoral participation did not become free, fair, and universal until the 1950s, when the suffrage was extended to women and electoral procedures were tightened so as to prevent widespread vote buying. However, though the extension of the suffrage constitutes an acknowledgment of formal equality among citizens (breadth), it does not guarantee that the political process takes into account their interests and demands (equality). Democratization thus requires that the members of the various groups and classes incorporated into the polity have the possibility of effectively engaging in collective action in defense of their interests. Although in Chile the incorporation of a segment of the subordinate classes into the political system, mainly workers in mining and manufacturing, occurred at a relatively early stage—in the 1930s—a large proportion of workers was excluded from the political system throughout most of the period. Similarly, although in the mid-nineteenth century some form of accountability of public authorities (consultation) became a feature of the political regime, its evolution was not uniform, as there were relatively long periods when restraints on state authorities were either nonexistent (throughout most of the 1920s) or very weak (during the 1940s). An important dimension of accountability is the relationship between different state authorities (the well-known system of “checks and balances” that more recently has been described as “horizontal accountability”). In Chile, this dimension of accountability had peculiar features, as often the president and the congress appeared determined to circumvent it either by inordinately expanding the powers of the executive or by totally excluding the judiciary from important areas of public policy.

The protection of citizens against arbitrary acts of the government is an area where Chile's experience is bewildering. During the nineteenth century, the regime provided a stable framework through its political and judicial organs that facilitated and protected commercial activities in mining, agriculture, and the commercial sectors. The early codification of civil and commercial laws was explicitly designed to enhance the legal security of the business community. The protection of property and contractual rights was soon combined with the guarantee of political rights, which made possible first the emergence of political parties and later on, through a chequered and combative history, the emergence of unions and other associations through which citizens struggled to assert their interests and demand new rights. But, despite the early expansion of political rights, courts never developed the strength or the interest to adequately protect these rights. Although in many areas of legal practice, courts were efficient guardians of legality, they were unable fully to safeguard democratic rights.

In this study I use the term *legality*, rather than *rule of law*, because the latter is a highly contested normative concept associated mainly with established democratic regimes (Tamanaha 2004). By contrast, *legality*—defined, for the purposes of this study, merely as the practice of following rules—does not presuppose the existence of any particular regime. It is thus a useful analytical tool for studying legal institutions and practices in societies that are not fully democratic, as was the case of Chile during most of the period under study. This approach makes it possible to identify and trace the evolution of an array of complex institutional mechanisms that came into existence during the nineteenth century, when the process of democratization was incipient. These mechanisms allowed for the progressive parliamentarization of politics, restricted the powers of the president, and extended basic political and civil rights to an ever-increasing number of individuals. It also makes it possible to explain how and why, in the mid-twentieth century, Chile's political regime managed to combine a meticulous concern for administrative legality, a ruthless style of governance, and an absence of effective judicial remedies to protect citizens from abuse of power by the executive.

Law and legal institutions are essential components of political regimes long before political institutions become democratic, and the legal system develops specialized procedures to protect and defend the rights of individuals. The notion of the rule of law as a benevolent device designed to restrain government excesses captures only one aspect of the role of law in the long, arduous and bumpy road to democratization. Yet, it is crucial to note the close relationship between

processes of democratization and the evolution of legal institutions. Indeed, it is through legal institutions that the aims and objectives of the process of democratization are achieved or, as it often happens, are frustrated. Thus, from this perspective, law is not merely an outcome of political and economic processes, but is also an independent factor that shapes social and institutional practices. Yet, the impact of legal institutions is not always easy to gauge. Although it often takes time to establish legal institutions, once established they cannot be easily discarded and they often sustain and justify social practices quite different from those that prompted their establishment. This attribute of legal institutions—which is also a general attribute of institutions—underscores the need to study them from a historical perspective, rather than by the snapshot methodology of decontextualized case analysis employed by traditional legal scholars. A historical approach to the study of legal institutions thus makes it easier to identify their practical and ideological impact.

The notion of legal culture is generally used to refer to the attributes and peculiarities of a legal system. One such attribute is the fact that Chile is part of the civil law tradition. As a civil law country, its legal institutions share most of the features generally attributed to those from this family of legal systems (Merryman 1969). For the purposes of this study, two of these features are of special relevance: first, the tendency to regard legislative enactments as the main, if not the only, source of law, even, occasionally, above the constitution; and second, the reluctance to accept that courts have a role to play in matters of political significance. Yet, as the contents of this book show, these two features are far too general to explain fully the interaction between legal and political institutions. At various moments during the period covered by this study, courts displayed considerable activist tendencies and resorted to various subterfuges in order to assert themselves and challenge decisions by the government or the legislature. Likewise, although governments were often ruthless in interpreting their regulatory powers, they were generally mindful of the views of the courts and, except for the final months of the Allende administration (1970–73), rarely sought a confrontation with the courts. Thus, while the fact that the legal system was part of the civil law tradition is not irrelevant, it does not provide more than a very general indication of the nature of the interaction between legal and political institutions. In order to understand this interaction, it is necessary to examine the evolution of legal and political institutions.

The notion of legal culture also has a wider connotation. It refers to ideas, attitudes, expectations, and opinions about law held by people

in a certain community (Friedman 1975). It is reflected in the approach of judges to legal interpretation, in the prominent role played by public notaries, in the propensity of citizens to resolve their disputes through litigation, in the content and style of legal education, and in popular beliefs about the authority of law in general. Although this book is not intended to offer a systematic analysis of Chilean legal culture, it considers many features of the legal system that could well be regarded as part of the local legal culture.

Before concluding this section I should point out that while the focus of this study is the process of democratization, its aim is not to determine when Chile became democratic. Under a minimalist conception, political democracy arguably came into being after the Civil War of 1891, as, during that period, regular elections of the president and the congress were combined with a fairly active, though restricted, party system (Remmer 1984). If a stricter definition is to be used, democracy came into being only in 1938, following the second successive election of the president under the rules of the 1925 constitution, the expansion of the party system to include parties that represented the interests of an important segment of subordinate groups, and the widespread recognition of the right to form unions (Przeworski et al. 1996). On the other hand, some may choose a later date, as it was not until the mid-1950s that free and fair elections became a feature of the political system. Under an even stricter definition, it is arguable that full democracy did not begin until 1970, when the literacy requirement was dropped from the franchise (Rueschemeyer et al. 1992:185). The object of this study, however, is not to determine the exact moment of democratization, but to trace its evolution and its relationship with legal and economic institutions.

Structure of the Book

This book is divided into three parts, each containing three chapters. An overview of each of the parts follows.

Part I: State and Regime Building

The early consolidation of a stable political center under the rule of the constitution is one of the most outstanding features of the state during the nineteenth century. Indeed, in 1831, shortly after Chile achieved independence from Spain, a strong government evolved.

From 1831 until 1891, presidents were regularly elected and, over the years, became increasingly accountable to a more influential and active congress. Political stability enabled the local elite to develop the productive sectors of the economy, mainly agriculture and mining. Sustained economic growth was accompanied by a successful campaign for the extension of territory, which led, through war, to the conquest of vast mineral-rich territories in the North and, through internal colonization, to the incorporation of valuable agricultural land in the South. The remarkable political and economic success of the elite also enabled them to develop an early attachment to the notion of constitutional government and to the principle of legality.

The elite undoubtedly displayed enormous skill as they pursued the aim of consolidating a strong political center and establishing a national identity. They were also cunning, as evidenced by the way they successfully linked the principle of constitutional supremacy with their aim of securing political stability. However, they were not as successful in their efforts to design a political regime. Indeed, toward the end of the nineteenth century, as society and the economy became more complex, the elite proved unable to contain conflict. Despite their alleged gift for compromise and flexibility, in 1891 they were unable to avert a Civil War and the new regime was clumsy and ineffective. It turned its back on the emerging political forces and stubbornly refused to extend political and social rights to the emerging middle classes and working-class organizations in urban and mining centers. The failure of the political elite to effectively steer institutions toward a path of modernity brought about, in the 1920s, the collapse of the constitution, prolonged military intervention and political instability.

The three chapters in this part offer an overview of this process. Chapter 1 outlines the factors that explain the elite's success in establishing a strong political center. Its focus is on the constitutional arrangement, the nature of economic interests, the process of territorial expansion, and the prevailing conceptions of power and law. Chapter 2 explains why, despite their remarkable success in state building and their reputation for political flexibility, the elite, in 1891, were unable to prevent the breakdown of the political system and the costly Civil War that ensued. It also explains the impact that the emergence of nitrate mining as the mainstay of the economy had on the events leading up to the Civil War. Chapter 3 describes the nature of the regime that emerged after the Civil War and examines the factors that led to its collapse.

Part II: Party Democracy

The election of Arturo Alessandri in 1932 marks the beginning of 40 years of uninterrupted constitutional government. Alessandri implemented tough law and order policies, stabilized the economy, and in 1938 handed over power to an elected successor. It was the first transfer of power in accordance with the rules of the constitution in 18 years. The focus of this part is on the first three decades, from 1932 to 1964. I characterize this period as party democracy (Manin 1997:206–218). During this period, the party system became more inclusive and political parties emerged as the driving force of the political system. Parties had stable electoral constituencies. They also had well-defined and conflicting ideological positions. Despite their ideological diversity, they established broad government coalitions in which, at one time or another, all the political parties, including most notably the two Marxist parties, participated. During this period there were major advances in the process of democratization. The constitution acquired unexpected legitimacy, the military withdrew to the barracks, the political system became more inclusive, and governments became receptive to the needs and demands of an ever-increasing number of enfranchised citizens.

The chapters in this part focus on the political, economic, and institutional features of the regime. Chapter 4 examines the tension between the narrow scope of the political system and the limits of the prevailing economic policy. Initially, a limited consensus on a state-led policy of import substitution made constitutional government viable. Yet, this policy soon proved unsustainable, as it required the denial of social and political rights to a large proportion of the population. Then followed two attempts to restrict state intervention and shift the economy toward the market. Although these attempts failed, they brought about a process of political liberalization that radicalized the political process, and that was to mark the end of party democracy. Chapter 5 explains the paradoxical aspects of governance during this time, which combined a powerful executive with a unique mechanism of accountability that contributed to the reaffirmation of the principle of legality. Chapter 6 discusses the role of the Supreme Court during party democracy and explains how the Court responded to attempts by the political organs of the state to consistently sideline the judiciary from key areas of public policy.

Part III: Radical Democracy

Between 1964 and 1973 two successive administrations—Eduardo Frei (1964–70), and Salvador Allende (1970–73)—attempted to

bring about major structural reforms. Their political slogans adequately summarize their objectives. While the Frei administration promised a “revolution in liberty,” the Allende administration promised “a peaceful transition to socialism.” These slogans record both the differences and similarities between them. The differences are important and are analyzed at length in chapters 7 and 8. Yet, the differences overshadow the fact that these administrations had a common aim: deepening the process of democratization through the inclusion and empowerment of subordinate groups. Accordingly, they both vigorously campaigned to increase electoral registrations, to further the unionization of urban and rural workers and to encourage the urban poor to establish mechanisms of political participation. They also launched ambitious policies of income distribution and comprehensive programs in health and education. Although they had different conceptions about the ultimate aims of these policies, they were both determined to break the mold of politics so as to accommodate the demands and interests of subordinate groups. Thus, for the prevailing political regime, the objectives of these administrations were unequivocally radical.

The Frei and Allende administrations achieved many of their objectives. During their tenure there was a massive increase in electoral registration, the rate of unionization, and the provision of health and educational services to the poorest sections of the population. Indeed, according to some observers during this period Chile finally achieved the status of a full democracy (Rueschemeyer et al. 1992:185). Yet, as this was also the period that brought about the collapse of democracy, it is necessary to explore the link between the undeniable expansion of the process of democratization and the destruction of the political regime. Three sets of questions arise from this exploration. The first concerns the conception of these administrations about the prevailing institutional framework. Did they misjudge the capacity and resilience of political institutions? Did their political programs lack coherence? Were they simply too ambitious or naive? The second set of questions concerns the relationship between their political strategies and the mobilization of subordinate groups. Did their policies effectively empower subordinate groups? Did electoral competition among left-wing parties undermine popular support for radical social and economic change? The third set of questions concern the role of legal institutions. What role did they expect legal institutions to play in the revolutionary changes they espoused? What impact did their policies have on legal institutions? Was the response of legal institutions consistent

with prevailing practice? The chapters in this part attempt to answer these questions. Chapters 7 and 8 examine, in turn, the Frei and the Allende administrations. Chapter 9 explains the role of law and legal institutions in the process that led to the defeat of radical democracy.

Part I

State and Regime Building

Power can be stopped and still be kept intact only by power, so that the principle of the separation of power not only provides a guarantee against the monopolization of power by one part of the government, but actually provides a kind of mechanism, built into the very heart of government, through which new power is constantly generated, without, however, being able to overgrow and expand to the detriment of other centres or sources of power.

Hannah Arendt, *On Revolution*, 151–152

Chapter 1

Building a Strong State

Constitutional Framework

The turbulence that followed independence in 1818 came to an end in 1831. In that year, a coalition led by traditional landowners and the clergy inflicted a decisive military defeat on liberal groups advocating the establishment of a loose federation. Instead of a federation they established a unitary state. Instead of a liberal political system, they framed an authoritarian constitution that gave the president and the executive branch sweeping powers to suppress and repress dissent. Presidents, however, were also given extensive powers to facilitate and promote the activities of the emerging economic elite.

The constitution that presided over the establishment of the political regime was framed in 1833 and proved surprisingly flexible.¹ Although at first it served mainly as cover to legitimize the repression of political opponents, it had, by the middle of the century, become the focus of a lively political debate. As the process of political differentiation evolved, an assortment of groups enthusiastically and successfully campaigned for constitutional reform. The reforms that ensued significantly reduced the powers of the president and transformed the congress into the center of political deliberation and decision. Thus, by the end of the nineteenth century, a process of parliamentarization had begun to develop, which suggests that, as well as creating a strong state, the elite had also successfully established a viable and modern political regime.

After independence, there were four failed attempts at establishing a durable constitutional framework. While the constitutions of 1818 and 1822 were authoritarian and provided for a strong executive, those of 1823 and 1828 were liberal and they attempted to introduce principles of federalism. The 1828 Constitution was short-lived.

Following the first presidential elections held under its adoption, there erupted a civil war that was won by a conservative coalition of traditional landowners, the army, and the clergy. This winning coalition repudiated liberalism, depicting it as a foreign ideology unsuitable to the country (Bravo 1986:134; Encina 1934:242; Kinsbruner 1973:61–65). According to Diego Portales, the architect of the new political regime, the country was not ready for either liberalism or democracy. He advocated, instead, a republic with a strong central government run by men who were models of civic virtue and patriotism. Democracy, according to Portales, would be introduced at a later stage, and only after citizens had learned and practiced the principles of public morality. In the meantime, the only realistic alternative was a strong authoritarian regime (Bravo 1986:15). Portales's authoritarian views were eventually embraced by some of his fiercest critics. Thus, for example, in 1885, the prominent liberal president, Domingo Santa María, defended the authoritarian features of the constitution on the ground that citizens were still not ready for democracy (Castedo 1954:3:1985–88). His opinion serves to show that even liberals at the end of the nineteenth century regarded democracy as little more than an aspiration.

The 1833 Constitution faithfully reflected Portales's concerns and objectives. Its preamble read as follows: "[R]ejecting theories which are as hallucinating as they are impractical . . . [the drafters of the constitution] have concentrated their attention on establishing mechanisms which will forever ensure public order and tranquility" (Heise 1960:36). Such mechanisms included a president and a congress elected by a small group of property owners. The suffrage was restricted to males over 25 years of age, who were literate and owned property. Only a tiny group met this requirement. Until 1874 the number of registered voters was around 1.2 percent of the population (Valenzuela 1985:150). The president had sweeping administrative and legislative powers, including a broad legislative veto. He also had direct control over the judiciary, whose members were appointed by the Council of State, an advisory body established by the constitution and made up of members appointed by the president. Provincial government was entrusted to intendants, who, as personal representatives of the president, were accountable to him alone. The powers of the president were in fact similar to, if not greater, than those of the military governor (*Capitán-General*) during the colonial period. It is not a coincidence that the first two presidents of this period, Joaquín Prieto (1831–41) and Manuel Bulnes (1841–51), were both army generals,

and Bulnes even resumed his military career, albeit briefly, upon completing his term in office.

Presidents were elected—through indirect elections—to a five-year term and could be reelected for a second term. The first four presidents each served two terms. The reelection of presidents owed more to their capacity to control the electoral process than to their popularity. Electoral intervention by the president made it possible for the executive to control the composition of the congress, thus making a sham of the electoral process. Indeed, 7 out of the 11 congressional elections held between 1833 and 1864 were virtually uncontested. The president's influence over the composition of the congresses was strengthened by the fact that members of the congress were allowed to hold jobs in the civil service. In 1843, two-thirds of the members of the congress had jobs in the civil service and were, thus, under the direct authority of the president (Collier and Sater 1996:57–58).

The president's emergency powers were equally broad and open-ended. A state of siege declared by the president had the effect of suspending the constitution in any locality identified by the president (Roldán 1913:321, 410–413). Given their concern with law and order, presidents made prolific use of their emergency powers. Thus, for example, in 1837, when Chile was at war with Perú and Bolivia, the congress approved a special emergency law authorizing the president to make use of all the powers he deemed necessary to enforce the emergency. This law remained in force for two years, and the president made full use of it, issuing scores of decrees on matters unrelated to state security (Roldán 1913:323–324). Similarly, in the 1850s, at a time when the government confronted two military insurrections, the country was placed in a state of siege for almost the whole decade (Schweitzer 1972:141).

Despite their exorbitant powers, presidents were neither military tyrants nor improvised political bosses. They were elected officials who, though initially not accountable through formal constitutional procedures, were nonetheless held to account by their electors, a small, but increasingly diverse group of oligarchs and property owners, including artisans and shop keepers. Government policies sought to balance the interests and expectations of this group. This process made possible the institutionalization of the office of the president, thus preventing the emergence of a *caudillo* tradition, so prevalent in other countries of the region at the time (Collier and Sater 1996:53).

The bicameral congress, though largely under the influence of the president, had jurisdiction in three key areas of policy. It had the power to approve the annual budget, to set land taxes, and to fix

the size of, and expenditures for, the armed forces (Heise 1960:41). Over the years, these three policy areas provided the congress with a powerful leverage to reduce and control the powers of the president.

The authoritarian framework of the 1833 constitution left little room for judicial independence. Judicial appointments were made by the president upon a recommendation by the Council of State, an organ controlled by the president. Thus, it is not surprising that, during the three decades following the 1831 settlement, the courts did not challenge the behavior of the executive or the legislature. Although the constitution did not give courts the power to review the constitutionality of legislation, in 1848, the Supreme Court gave express assurances to the government that no judicial tribunal would ever contemplate declaring a law unconstitutional, as this would place courts above the legislature (Carvajal 1940:89).

The Economy

Before independence, Chile's leading export commodity was wheat, and its main market was Perú. After independence, at different intervals, new markets opened in England, Australia, and California. During the first half of the nineteenth century, a new group of dynamic entrepreneurs, made up of recently arrived European immigrants, emerged. These entrepreneurs, who, initially, had no links with the old landed aristocracy, developed the mining and financial sectors (Villalobos 1987:41-45). They discovered and exploited silver, copper, and coal, and were instrumental in bringing about an export boom.

Between 1820 and 1870, silver exports increased from 20,000 to 127,000 kilos, while copper exports increased from 3,000 to 45,000 tons (Collier 1985:595). By the 1860s copper exports represented nearly 40 percent of world production (Pinto 1973:26-27). The mining boom led to the establishment of export houses and financial institutions based mainly in Valparaíso. The boom generated further industrialization as cement plants, glass and bottle factories, as well as foundries and machine shops were established and some of these industries even exported their products to the United States (Zeitlin 1984:24-25). The export boom also led to the establishment of banks, insurance companies, and commercial houses.

Governments were, on the whole, responsive to the needs of the main economic actors. They facilitated the establishment of a national merchant marine, and, through a complex tariff structure, protected the interests of local manufacturing firms (Martner 1929:149). They

built railway lines and roads, and provided exporters with special storage facilities that enabled them to weather unfavorable conditions in international markets (Cariola and Sunkel 1990:37). Governments also launched a major process of legal reform that led to the enactment of modern legal codes expressly designed to facilitate economic transactions. A special concern of most governments during this period was education, especially at the primary level.

Government intervention in the economy, however, was contentious. At issue was not whether the state should support economic activities, but, rather, who should benefit from state revenue. By the end of the century, state revenue was largely derived from duties levied on mining exports (Culver and Reinhart 1989:740). Mining enterprises based in the North and South of the country resented the central government for spending most of its revenue on projects aimed at benefiting Central Valley landowners and merchants in Santiago or Valparaíso. These economic grievances, in combination with other political and social factors, were the trigger for two major insurrections, one in 1851 and the other in 1859, against the central government in the mid-nineteenth century (Campos 1963:171-81; Volk 1993:92).

The landed aristocracy of Spanish origin enjoyed disproportionate economic, social, and political influence. They owned most of the productive land in the Central Valley, which, in turn, was heavily concentrated in a few large estates. According to tax records for 1860, approximately 850 landowners received two-thirds of the agricultural income from the Central Valley (Collier and Sater 1996:81). The power and influence of the landed aristocracy is underscored by the fact that, at the time, 80 percent of the population lived in the countryside and most of them were dependent on the large estates—the *haciendas*—for their livelihood.

The *haciendas*—as one observer has noted—came close to constituting a natural economy (Bauer 1975:35). Labor there was composed of service tenants—*inquilinos*—and seasonal workers. *Inquilinos* exchanged their labor for subsistence plots and a daily food ration. Seasonal workers, hired mainly during harvests, constituted a floating mass of over 50,000 workers (Bauer 1975:150). Service tenancy was a complex institution. As well as working for the *hacienda*, the *inquilino* was under obligation to supply one or more workers—often, family members—who generally received only a food ration from the landlord. Although neither the *inquilino* nor the rest of the workforce was under legal obligation to remain on the estate, they did so in practice as there was little else on offer (Kay 1977:104).

Life for the *inquilino* and other farm workers revolved around the *hacienda*, where relations with the landowner were paternalistic (Thiesenhusen 1966:20). Remuneration was mostly in kind and landowners settled disputes. Since the rural population was largely excluded from the market, social life revolved around the *hacienda*. Education—if any—was provided by schools within the *hacienda* and religious services were held in its chapel. Provincial cities, with the exception of the growing industrial centers of Valparaíso and Concepción and possibly, Talca, remained small and dilapidated (Bauer 1975:81).

While the *hacienda* system was an obstacle to modernization, landowners were not reluctant to venture into other sectors of the economy. Indeed, as absentee owners, for the most part living in Santiago, they often had a stake in urban-based investments. Easy credit terms enabled them to invest in commercial firms, insurance companies, and banking. While landowners ventured into other sectors of the economy, miners, merchants and bankers began to buy agricultural land (Pike 1968:209). With the abolition of entailments (*mayorazgos*)—the prohibition to alienate, divide, trade, or mortgage large estates—in 1852, the commercialization of rural property began, resulting in closer integration among the economic elite (Feliú 1951:222; Pregger-Roman 1983:49). Not surprisingly, most commentators of the nineteenth century remark on the extent to which the dominant sectors formed a cohesive group with common economic and political interests (Véliz 1971; Zeitlin 1968:232). By the turn of the century, as Frederick Pike notes, “urban and rural interests were crossed and crisscrossed to such a degree that the distinction was often meaningless” (1968:209–210). Henry Kirsch, a leading student of Chile’s industrial development, arrives at a similar conclusion: “[O]ne of the strengths of the Chilean hierarchy has been its flexibility and ability to transfer its capital and talent among different areas of the economy in accordance with the relative opportunities offered by each” (1977:75). Money used in the purchase of rural estates did not, however, extend to modernizing agricultural production or altering social relations within the *hacienda*. The wealth derived from mining exports—as Bauer aptly puts it—“simply ran out on to the sands of a traditional countryside” (1975:181). Thus, by the end of the nineteenth century, although more diverse, the landowning aristocracy had lost none of its social and cultural prestige and still commanded significant influence over political developments (1990:236–238).

Territorial Expansion

Permanent Warfare

The elite’s commitment to a strong state is evident in its foreign policy. It was based on the notion that, regardless of social or economic costs, the state had to be protected from any external threat, real or imagined. This policy led to a virtual permanent state of war and a determination to expand the territory, without regard for the principle of the sanctity of boundaries (Góngora 1986:37). During the five decades following the 1830 settlement, Chile experienced three major international conflicts. Between 1836 and 1839, it waged a successful war against the Perú-Bolivian Confederation. In 1865, it fought a brief war against Spain, and, later on, in 1879, it again successfully confronted Perú and Bolivia. This last war was to have a lasting impact on the country’s development, as it resulted in the conquest of valuable mining territory in the north. There was also, during this time, an extended war against the indigenous Mapuche people.

The Perú-Bolivian Confederation was established in 1835 under the leadership of General Andrés Santa Cruz from Bolivia (Encina 1934:412–503). Its establishment was, undoubtedly, a source of concern, but it was not seen as a serious military threat (Burr 1965:33). At worst, the Confederation was a minor irritant. After the establishment of the Confederation, Perú repudiated a treaty that granted preferential treatment to products transported by vessels registered in Chile. This decision annoyed the Chilean government, but did not significantly affect its commercial interests (Burr 1965:35). Another source of concern was that Perú had granted political asylum to some of the military leaders defeated in 1830 and appeared to sympathize with their cause. Although it is likely that the establishment of the Confederation revived political ambitions among Chilean exiles in Perú, there was no imminent threat to the government in Santiago. Nonetheless, in December 1836, the Chilean Congress adopted a resolution formally declaring war on the Perú-Bolivian Confederation. Initially, ordinary citizens did not support the war. It was only after three years, following the battle of Yungay, which dealt a fatal blow to the Confederation, was there a major display of patriotism and public support for the war (Góngora 1986:34–35).

Chile’s decision to wage war against the Perú-Bolivian Confederation reflects the elite’s obsessive concern with stability. Their vision of the international role of the state is summarized by Diego Portales, the most influential politician of the 1830s, in his letter to

Admiral Manuel Blanco Encalada upon the latter's appointment to lead the naval expedition against the Confederation. Here, Portales argues that the Confederation had to disappear, both because it was disturbing the regional balance of power and was likely to upset domestic order in the country:

The Confederation must forever disappear from the American scene. By its geographical extent; by its larger white population; by the combined wealth of Perú and Bolivia, until now scarcely exploited; by the influence that it would assert in the Pacific . . . by the greater intelligence—though lesser character—of its public servants . . . for all these reasons, the Confederation would soon suffocate Chile.

The navy should act before the military . . . We must forever be the masters of the Pacific: this must be your objective now; and, hopefully, it should, at all times, be Chile's objective. (Góngora 1986:35–36)

While conceding that the Confederation did not pose an immediate threat to domestic political stability, Portales was, nonetheless, certain that its objectives were sinister. In his view, the Confederation would first act as a catalyst for political dissent among the exiled community; and then, after destroying Chile's social fabric, would force it to surrender (Góngora 1986:36). Thus, for Portales and the political elite, the mere existence of the Confederation posed a threat to Chile (Burr 1965:57).

Victory gave the local elite greater confidence in their political system. As Robert Burr explains, after the war,

Chileans became aware of the extraordinary contrast between their own law and order and the chaotic turbulence of their neighbors. The more the Chileans learned about others, the more convinced they became that they were unique among Spanish American peoples in being able properly to govern themselves and to make orderly social and material progress. (1965:114)

By the mid-nineteenth century, national pride was flourishing. Newspaper articles proudly proclaimed that Chile had become "the England of South America" (Collier 2003:146). In 1853, Diego Barros Arana, a leading intellectual, wrote: "[F]orty years ago we were nothing in the eyes of the world or to ourselves, and today we call ourselves Chileans with pride and dignity" (Collier 2003:146). This level of self-confidence served the elite well during the War of the Pacific (1879–83) when Chile again defeated the combined forces of Perú and Bolivia and secured a massive expansion of territory. Self-confidence

and arrogance was also on display during the brutal military campaign against the Mapuche people.

Internal Colonialism

Pressure for land in the 1850s brought about the occupation of Araucanía, a vast territory south of Concepción, inhabited by the Mapuche people. Initially, a scheme was set up to allow speculators to buy land from the Mapuches, but when it failed the government launched a military campaign lasting nearly 15 years and resulting in the death of hundreds of Mapuche people, the destruction of their way of life, and the expropriation, without compensation, of agricultural land.

The Mapuche people lived in an area south of Concepción comprising approximately 50,000 square kilometers. They had their own political and social organization and owned and cultivated the land under traditional rules. In 1852, however, the government, resorting to its emergency powers, declared Mapuche territory to be a province of the Republic, the Arauco province, and began to establish military forts in key locations along the coast (Bulnes 1980:17). Military presence was combined with the establishment of a regulatory framework that required the intervention of government officials to validate any transfer of land (Bulnes 1980:19). The regulations did not achieve their objective. Because the notion of property among the Mapuches was based on customary usage, it was not possible to identify individual holdings. As a consequence, government intervention in the sale of land was ineffective. Instead, it served as cover to conceal the exploits of land speculators. Aware of the shortcomings of its approach, the government changed its tactics. A law enacted in 1866 effectively dispossessed the Mapuche people of their land and made provision for the sale of individual plots by the state to eligible buyers, a significant number of whom turned out to be military officers who had participated in the campaign against the Mapuches. Some of the Mapuches were granted smallholdings—called *mercedes*—while more than 30 percent had to leave the area to become farm laborers (Bengoa 1985:356, 377). This massive land expropriation strongly resisted by the Mapuche people became the cause of a protracted military confrontation.

All the main political groups supported the military campaign against the Mapuches. The means, however, were not universally approved, as the brutality of the army and paramilitary forces, acting in collusion with the army, was disproportionate to the resistance of

the Mapuches. Thus, for example, in merely five months, between November 1868 and April 1869, while the army sustained 35 casualties, it killed 200 Mapuche people, taking 200, including women and children, into custody, and confiscating more than 10,000 heads of cattle (Bengoa 1985:221). This level of violence was a source of concern within some sections of the elite and was reflected in the editorials of some of the leading newspapers of the time. Thus, the Valparaíso daily, *El Mercurio*, though a staunch supporter of the military campaign against the Mapuches—which it described as “a civilizing process”—objected to the level of force employed “to contain the barbarians” on the ground that the “colonization” of the Mapuches could be effectively secured by other means (Bengoa 1985:223).

In 1883, the Mapuches were finally defeated. A year later, Chile completed its second, successful campaign against Perú and Bolivia, which led to its annexation of extensive nitrate-rich territory in the Atacama desert. Thus, by the mid-1880s, the self-confidence of the elite had seemed justified. They had undoubtedly managed to establish a strong state.

Power and Law

Limited Freedom

Given that one of the main objectives of the political elite during the early days of the Republic of Chile was to secure public order, it is not surprising that priority was given to the modernization of the legal system. Their concern with the legal system is consistent with the view that a comprehensive and robust legal system is an important component of a strong state. But, law also sets limits to the exercise of power, so there arises the question as to how the elite reconciled their concern for public order and stability with their interest in legal rationalization and legality. To answer this question, I will compare the views of two leading figures during this period: Diego Portales, the architect of the regime established in the early 1830s, and Andrés Bello, the main legal drafter and indefatigable advocate of codification. At one level, their approach to the relationship between law and power appears to be diametrically opposed. This view is reflected in the work of many historians of the period. While some depict Portales as a practical politician with nothing but contempt for constitutional or legal restraints (Villalobos 1989:116–125), others regard Bello as a legal purist with an uncompromising determination to restrain power through law (Encina 1934:271). On close inspection, however,

Portales's and Bello's approaches to law and power are not inconsistent, but complementary.

Portales undoubtedly had a healthy skepticism toward the law. Indeed, he states in a letter explaining why he was not interested in commenting on the draft of the 1833 constitution: “[A]s you know, no work of this kind is absolutely good or absolutely evil; neither the best nor any [constitution] will be of any use if the main spring of the machine is faulty” (Villalobos 1989:119). The phrase “main spring of the machine” refers to the institutional capacity and the political will of those who run state institutions. Portales skepticism about the law was combined with a conviction that neither the constitution nor ordinary laws should be allowed to restrain the government in fulfilling its overriding responsibility of maintaining public order (Jocelyn-Holt 1997:112–119).

An incident in 1834 exemplifies Portales's approach. While he was governor of Valparaíso, he uncovered a plot against the government. He informed his legal advisor that he intended to arrest those implicated. His legal advisor reminded him that, under the constitution, he did not have the power to order the arrest of any person, unless duly authorized by a court. To underscore his point, the advisor gave Portales a copy of a book on the right of habeas corpus. Portales was enraged by the legal advisor's response and in a letter to a close friend complained bitterly about it: “[W]hat the hell are constitutions and other pieces of paper good for if they are unable to stop an evil activity which is known to exist . . . As far as I am concerned, I can assure you that in extreme circumstances . . . that lady which they call the constitution should not be respected” (Villalobos 1989:121–122). Portales's commitment to the constitution was thus subject to the overriding imperative of maintaining public order by any means available.

Portales's views about public order were combined, however, with awareness that a well-designed legal framework is essential for achieving effective governance. In a letter written in 1832 to one of his cabinet colleagues he bitterly complained about the inefficiency of public officials, particularly of those in charge of maintaining public order. According to Portales, public officials did not properly perform their functions because they were ignorant of the law and unaware of their duties. He therefore proposed that his cabinet colleague should prepare a code, setting out clearly and in detail the powers and responsibilities of public officials (Guzmán 1988:79–81). Portales thus saw legal codification not primarily as a restraint on power, but as a means of ensuring compliance with legal rules.

Andrés Bello, the Venezuelan scholar and diplomat who arrived in Chile in 1829, played a leading role in the process of legal codification. Bello unequivocally supported the idea of a strong state. He wrote several newspaper articles in praise of the 1833 constitution. In one of these articles, he explains that the main objective of the constitution should be to combine a vigorous government with the full enjoyment of limited freedoms (*libertad arreglada*). According to Bello, limited freedom entailed giving the government ample powers to restrain the excesses of democracy. Although he acknowledged that procedures should be in place to protect individuals against despotism, he did not anticipate these procedures being used to restrain the government's insatiable appetite for order (Bello 1982:85–86; Jaksic 2001:178–179). In this respect, his notion of limited freedom is consistent with Portales's view that securing public order takes precedence over any right guaranteed by the constitution. Bello conceded that phrases such as “the good of the nation” are meaningless if individuals are not allowed to fully enjoy civil liberties guaranteed by an independent and technically competent judiciary (1982:620–625). Yet, Portales was also keenly aware of the crucial importance of having an efficient system for the administration of justice. Indeed, in 1837 he issued a decree requiring judges to give reasons for their decisions and to identify specifically the laws on which they based their decisions (Hanisch 1982:143). Portales's main concern was with public order, in particular, with what he regarded as the unacceptable leniency and inconsistency of judges in criminal cases (Guzmán 1988:43).

Legal Codification

Given the government's concern for order and stability, it is not surprising that Portales and his successors should have enthusiastically embraced the enterprise of legal codification. The process of codification, however, was also prompted by the chaotic state of the laws and regulations inherited from the colonial regime. Portales and his associates were keenly aware that the poor performance of courts stemmed largely from the fact that judges were often uncertain as to which laws were in force. The laws in force during the colonial period were fragmented, incoherent, and not easy to locate (Jaksic 2001:158). Courts, thus, had difficulties performing their functions and their interpretation of the law was not uniform. Soon after independence, attempts were made to rationalize the maze of legislation, but they were partial and failed to resolve the underlying problem (Borchard

1917:388; Matus-Valencia 1958:71). Concern about the chaotic state of the legal system prompted the government in 1831 to propose to the congress the appointment of a special law commissioner to identify and codify the laws in force. Although this proposal was not approved, the process of codification began thereafter, with the full support of the government. Throughout this process, there was a lively and well-informed debate both about the nature of the enterprise and about specific technical questions arising from successive drafts of the various codes (Guzmán 1982:61–71).

The entry of the economy into the world markets also contributed toward the need for a modern, well-designed legal system. By the middle of the nineteenth century, the economy had undergone changes as a consequence of the export boom in mining and agriculture. Moreover, prominent members of the educated classes uncritically embraced liberal economic doctrine, as popularized locally by Jean-Gustave Courcelle-Seneuil (Collier 2003:111). Thus, it is not surprising that the elite regarded legal codification as essential to securing economic prosperity (Fruhling 1978:21–32). Indeed, the objective of furthering certainty in legal transactions is strongly emphasized in the preamble to the civil code enacted in 1857. The preamble also points out that the implementation of the civil code would contribute to the reduction of lawsuits, thus indirectly helping to improve the administration of justice.

Work on codification began in the 1830s, and by the end of the century a comprehensive and well-systematized body of civil, commercial, and criminal law was in place. The first major code enacted was the civil code of 1857. The commercial code was enacted in 1867 and the criminal and judicial codes in 1875. The process of codification was completed early in the twentieth century, with the enactment of the codes on civil procedure in 1903 and the code on criminal procedure in 1907 (Borchard 1917). The most impressive achievement of the process of codification was the civil code drafted by Andrés Bello. It had a major impact in Latin America. It was adopted almost verbatim in Colombia and Ecuador, and it served as a model for the civil codes of Argentina, El Salvador, Nicaragua, Paraguay, Uruguay, and Venezuela. The main sources of Bello's civil code were Roman law, the French civil code (code of Napoleon) and Spanish law. It also drew upon other codes, such as those of Austria, Louisiana, Russia, and Sardinia (Bravo 1982; Matus-Valencia 1958:74).

Legal education and scholarship flourished during the process of codification. Teaching of law started at the University of San Felipe in the late eighteenth century. Upon independence, law was taught as a

practical trade at the *Instituto Nacional*, but the University of San Felipe awarded law degrees. After 1842 the University of Chile started awarding law degrees. Law schools were later established in Concepción (1865), Valparaíso (1878), and a second law school was opened in Santiago, at the Catholic University in 1888 (Lowenstein 1970:80–83). Codification prompted the publication of books aimed at practitioners. Academic contributions to legal studies also appeared in the nineteenth century. Case reporting began in 1841 with the publication of the *Gaceta de los Tribunales*, and in 1903 the Law Society began publishing the *Revista de Derecho y Jurisprudencia*, both a law review and a law reporter (Insunza 1966:103–106).

Conclusion

During the nineteenth century, the elite established strong institutions that were widely respected both at home and abroad. Through war and diplomacy, the state created a distinct international presence and conquered valuable new territory. State resources were also used ruthlessly to complete the colonization of territory held by the Mapuche people. Thus, by the end of the nineteenth century the territory controlled by the state was nearly three times larger than in 1830 (Collier and Sater 1996:115). Given their success in state building, it is not surprising that the elite had a somewhat inflated view about the quality and strength of their political institutions. They were also fully aware that their political system was exceptional when compared with that of their neighbors. Thus, in an address to the congress toward the end of his term in office, President Joaquín Prieto boasted that Chile's social edifice had "serenely and majestically displayed its excellence in the midst of the storms that had wrought havoc in every other part of Spanish America" (Ortega 1985:154). The elite's level of success in establishing strong state institutions was not, however, matched in regime building. Indeed, despite their cohesiveness and reputation for pragmatism, by the end of the nineteenth century, the elite were unable to avert a major crisis that in 1891 led to a costly civil war.

Chapter 2

Political Liberalization and Civil War

Introduction

The Civil War raises puzzling questions that have long divided observers. Interpretations of the Civil War fall into two main groups: one concentrates mainly on political factors, while the other stresses the pervasive importance of economic factors. The first attributes the conflict to the stubborn and obstinate behavior of President Balmaceda (1886–91), who ruthlessly defied the authority of the congress and the constitution. According to this interpretation, those who opposed the president in the Civil War are depicted as upholders of the rule of law (Blakemore 1974; Campos 1963; Castedo 1954). Left-leaning and Marxist historians disagree with this interpretation. They regard Balmaceda as the victim of an unholy alliance between British investors and local oligarchs who, determined to defend their stake in the nitrate industry, destroyed the possibility of a genuine independent path to capitalist development (Ramírez 1969; Zeitlin 1984).

The Civil War has an important bearing on the theme of this book, as it had a major impact on the evolution of democratization. Indeed, the conflict contradicted the generally held view about the pragmatism and flexibility of the ruling elite, and its timing was baffling. The Civil War took place not long after the political elite had, in an exemplary display of civic consciousness, resolved major political differences. It also occurred at time of unprecedented economic prosperity. In the 1870s, the authoritarian regime established by Portales changed beyond recognition. Legal and constitutional reforms made the political system more inclusive and drastically reduced the hitherto arbitrary powers of the president. These liberal reforms modernized state institutions and seemed ideally suited to enabling the political regime to cope with the ongoing crisis of the export sector and, later on, with

the social and economic changes brought about by the enormous revenue generated by nitrate exports. Given these auspicious conditions, it is not surprising that the violent collapse of the political regime should be a source of controversy and bewilderment. The Civil War is also important because it shaped the contours of the political regime during the first three decades of the twentieth century and it accounts for the strong state-centered policies pursued after 1932. These policies, embraced by most administrations until the collapse of democracy in 1973, were based on the widely shared perception that the *laissez-faire* policies espoused by the victors of the Civil War, squandered a valuable national asset, thus wasting a unique opportunity to set the country on course toward sustained economic development.

The debate over the Civil War is unlikely to subside. The aim of this chapter is not to resolve this debate, but to answer two related questions arising from it. First, why did the elite allow a seemingly important dispute over the powers of the president develop into a full-blown armed confrontation? Second, if the elite were as flexible and closely integrated as most observers suggest, why did they slip into a costly and divisive conflict? To answer these questions it is necessary to understand the nature and evolution of political and economic processes in Chile in the second half of the nineteenth century. Accordingly, the first section of this chapter examines the evolution of the political process before the outbreak of the Civil War. It traces the emerging fractions within the ruling elite, shows how political groups evolved into parties, and explains the factors that brought about a major liberalization of the political regime through constitutional and legal reforms. Political liberalization and stability seemed set to open up a process of democratization. Yet, as the final part of this section shows, a dispute over the constitutional powers of the president led, in 1891, to the outbreak of the Civil War and the collapse of presidentialism. An interesting feature of the political and constitutional debate during this period is that it did not address issues of economic policy. The neglect of economic issues is surprising because, while the congress was busy debating the constitutional amendments, the economy was experiencing serious difficulties as export markets became more competitive and unstable. To cope with this situation, successive administrations were forced to take tough economic decisions that, naturally, favored some economic sectors and groups more than others. Yet, remarkably, they did not spark a debate on economic policy. In the event, the debate over economic policy became redundant as the annexation of extensive nitrate-rich deposits after the War of the Pacific (1879-83) instantly resolved the economic problems that had

haunted the elite since the early 1860s. The second section of this chapter thus traces the tensions and disagreements over economic policy and explains why, despite their importance, they did not spill over into the political arena. As a consequence, when the abundant nitrate revenue gave the state a degree of autonomy from the economic elite, and President Balmaceda attempted to use this revenue to advance national development objectives, he found himself isolated. Depicting him as a tyrant who was in breach of the constitution, the elite opted for a model of development in which the role of the state was limited to the collection of export taxes and the maintenance of law and order.

The Political Process

By the middle of the nineteenth century serious divisions emerged within the coalition that supported the settlement of 1831. These divisions stemmed from conflicting views over the role of the church in society and led to a breakdown of the forces that supported the government. They also led to the emergence of political groups that, at least initially, defined themselves largely in terms of their position regarding this dispute. But the split within the ruling coalition also provided liberals and other critics of the regime with the opportunity to agitate for political liberalization. Thus there began a political process that led to major constitutional and political transformations that were to strengthen the role of the congress and provide the foundations for the development of a party system that soon extended to the entire country.

Republicanism versus Clericalism

Given the elite's determination to establish a secular state that would ensure public order and tranquility, it was inevitable that they would soon clash with the Catholic Church. The church supported the conservative forces in 1831, but was closely identified with the social, cultural, and economic interests of the old colonial power. In exchange for its support of the conservative forces, the church had obtained constitutional recognition of the union of church and state and a ban on the public worship of other religious faiths. The church, however, was deeply suspicious of the vigor with which the elite pursued their republican objectives, especially in the area of education (Campbell 1959:371-374). It regarded President Manuel Montt's (1851-61) efforts to establish a national system of state education as a deliberate

attempt to undermine its influence in society. A law approved during the administration of President Manuel Montt had set a goal of having at least 1 primary school for every 2,000 inhabitants. Although this goal was not realized, Montt's achievements are, nonetheless, remarkable. Between 1851 and 1861, the number of pupils in primary education increased from 22,000 to 43,000, while the number of educational establishments nearly doubled (Castedo 1954:2:1197). The church was also alarmed at the tolerance displayed by the government toward other religious faiths (Castedo 1954:2:1097-1104; 1298-1300, 1343-1346).

The 1833 Constitution recognized Catholicism as the official religion and prohibited the offer of public worship by any other religion. The church, however, regarded the government's religious tolerance and its policies on education as a sign that the political system was falling under the influence of freemasons and atheists. Thus, influential clerics began seriously to reassess the relation between church and state. Their immediate target was the *patronato*, an established colonial institution. Under the *patronato*, the Spanish crown had granted the church religious monopoly and other privileges in its colonies, and in exchange the church gave the crown control over the appointment of senior clerics. The 1833 Constitution retained the *patronato* giving the president the powers once vested in the colonial authorities. These powers included the right to nominate clerics for the post of bishop and archbishop (Castedo 1954:2:1099; Scully 1992:31-33). Church authorities, however, were unhappy with this arrangement. Their views on this issue became public in 1845, when a Catholic publication demanded the abolition of the *patronato* and called for the separation of church and state. In that same year, the cleric, who was a leading advocate of church autonomy, was nominated by the government to the post of archbishop of Santiago, but he rebuffed the government by declining the nomination (Edwards 1932:1:134).

The controversy over the appointment of archbishop was resolved, but tension between the church and the government persisted. In an attempt to retain the *patronato*, the government decided, in 1855, to raise the issue directly with the Vatican. The negotiations, however, were unsuccessful. Instead of accepting the government's position, the authorities in Rome demanded that all educational establishments be placed under the direct supervision of the church. They also insisted that clerics should retain their traditional rights under canon law. The government flatly rejected these demands, regarding them as a ludicrous attempt to expand the powers of the church and as an unacceptable challenge to the supremacy of the constitution (Edwards 1932:1:138,139).

The collapse of the negotiations with the Vatican exacerbated relations between the church and the Montt administration. Thus, not surprisingly, shortly thereafter, in 1856, a seemingly innocuous conflict blew up into a major political confrontation. The matter concerned two junior clerics dismissed from their duties in the cathedral. After exhausting legal remedies within the church, the clerics requested the Supreme Court to review the archbishop's decision as, under the *patronato*, the Court had jurisdiction (*recurso de fuerza*) to review some decisions by Ecclesiastical tribunals. The Court accepted jurisdiction and ordered the archbishop immediately to reinstate the clerics. The archbishop refused, claiming that the Supreme Court did not have jurisdiction over spiritual matters. Instead, he requested the president to intervene. But the president refused as he claimed that the decision of the Court was final (*res judicata*). While this exchange was taking place, the Supreme Court handed down yet another decision threatening the archbishop with penalties—including deportation—if he failed promptly to reinstate the clerics. In the end, the government persuaded the clerics to withdraw their complaint and the matter was laid to rest (Collier 2003:199-204).

This episode involving the Court and the archbishop had huge political repercussions. It caused a split within the government forces and brought about the establishment of a proclerical Conservative Party. The church, nonetheless, continued to oppose and criticize the government. Indeed, just before the congressional elections of 1858, the archbishop issued a pastoral letter, read in all the churches during three consecutive Sundays, claiming that a vote for the government was a vote for Protestantism and calling upon Catholics to support opposition candidates (Castedo 1954:2:1109). In the event, candidates who supported the government won a majority of seats in the congress, but the opposition, led by the proclerical Conservative Party, won 20 percent of the seats. Relations between church and state remained tense (Castedo 1954:2:1298-1300, 1343, 1346).

A further source of tension was the enactment in 1865 of a law that recognized the right of members of any religion to worship in private and to establish schools to educate their children (Campos 1963:311). Moreover, the controversy over the *patronato* resurfaced in 1878 when, following the death of the serving archbishop, the Vatican refused to appoint the cleric nominated by the government. This snub prompted the government to break off diplomatic relations with the Vatican. Thereafter, a series of legislative enactments, which included laws on civil marriages and lay cemeteries, continued to exacerbate the tension between the government and the church. The church's

uncompromising position not only served to test the republican resolve of the elite, but also marked the beginning of a process of political differentiation that formed the basis for the emergence of political parties.

Political Divisions

As noted above, the conflict between the Montt administration and the archbishop brought about a split within the government forces. Those who remained loyal to President Montt came to be known as *Nacionales*, or the *Montt/Varista* party (after the surnames of the incumbent president and his senior minister). Those who withdrew from the government formed the proclerical Conservative Party. It must be noted that, although the *Nacionales* held strong republican views, they were not against the Catholic Church. They disagreed with the Conservatives on the role of the church in society, but at no time did they advocate a separation of church and state.

The question over the role of the church was not, however, the only source of discord. From the late 1840s, the ruling coalition had begun to face challenges from the regional elite, mainly mining entrepreneurs, dissatisfied with the economic policies of the government in Santiago and liberal intellectuals frustrated by the excessive powers of the president. In 1851, and then again, in 1859, these groups, together with disaffected military officers, rebelled against the government. The leaders of the 1851 insurrection called for the establishment of a constituent assembly to devolve power and provide adequate financial resources to the provinces (Campos 1963:171, 180). A similar objective inspired the 1859 insurrection, though in this case the rebels, couching their claims in the language of federalism, demanded self-government for the provinces. Although the insurrections were crushed, their leaders did not lose their economic influence and soon became prominent members of the elite and energetically campaigned for political reform.

During this turbulent period there also emerged a small group of intellectuals who, inspired by contemporary developments in France, disseminated utopian socialist ideas. The two most prominent members of this group, Francisco Bilbao and Santiago Arcos, established, in 1850, the Society for Equality, and vigorously campaigned for electoral liberalization, political equality, and social and economic reforms. In one of his writings, Arcos described the situation of the poor as intolerable and called for the establishment of a political party to represent the laboring masses (Galdames 64:289-304). The government did not

take kindly to the Society's activities and soon disbanded it, sending its leaders into exile. But such harsh measures could not be used against the moderate liberal leaders who, in addition to being profoundly hostile to the political influence to the Catholic Church, demanded constitutional reform and enjoyed considerable support from regional economic elite. Prominent among these intellectuals was José Victorino Lastarria, who played a leading role in the establishment of the Liberal Party in 1857 (Bravo 1986:188). Lastarria became a parliamentarian and then a cabinet minister during the administration of President José Joaquín Pérez (1861-71).

In 1861 yet another party emerged: the Radical Party. It was formed by a group of disillusioned liberals led by Pedro León Gallo, a wealthy miner from the North who had played a prominent role in the 1859 insurrection. It was a liberal party, both in political and economic terms. It represented the interests of wealthy miners from the North and an emerging group of agricultural entrepreneurs from the South. It was thus a party that represented regional interests, but which soon developed a nationwide network and an important presence in Santiago. In 1864 five radical candidates were elected to the congress on a platform that included demands for constitutional and electoral reform, decentralization, and lay education.

The configuration of political forces brought about significant changes. It forced presidents to seek the support of the newly established political groups in the congress and prompted these groups to form broad coalitions. Thus, in 1861, clerical Conservatives and the core of the new Liberal Party joined forces and shared cabinet seats in the administration of President José Joaquín Pérez. This coalition supported the Pérez administration throughout its two terms in office and provided the basis for the election of a prominent liberal, Federico Errázuriz (1871-76). This Conservative-Liberal coalition broke down in 1873 over differences regarding the role of the church in education (Edwards 1932:2:224). Its collapse forced the proclerical Conservatives out of government, paving the way for nearly 20 years of Liberal-led governments (Aníbal Pinto (1876-81), Domingo Santa María (1881-86), and José Manuel Balmaceda (1886-91)).

The alliance between the Conservative and Liberal Parties enabled President Pérez to restore confidence in political institutions, which had seriously declined after the failed insurrection of 1859. The Pérez administration, however, did little to move forward the agenda of political liberalization. This neglect brought into being, in 1868, the *Club de la Reforma*, a loosely structured alliance of all the political forces that sought, above all, to reduce the powers of the president. It

included members of the liberal and radical parties, as well as prominent members of the *Partido Nacional*, the party that supported the Montt administration. The *Club* also had close links with wealthy mining entrepreneurs. Indeed, two of the most prominent mining entrepreneurs, Pedro León Gallo and Jerónimo Urmeneta, were actively involved in *Club's* activities (Gazmuri 1998:143). One the most remarkable features of the *Club* was that it served both as a pressure group for constitutional reform and as a center to promote civic education and raise citizens' awareness of their rights and obligations (Estelle 1970:120; Gazmuri 1998:201). It established 15 branches throughout the country and organized regular conferences and discussion groups on constitutional topics (Estelle 1970:120-123). The *Club de la Reforma* played a decisive role in building a consensus that led to the approval in 1874 of constitutional reforms. In 1874, the *Club*, having accomplished its objective dissolved itself, and its members pursued their careers through the newly established network of parties.

Affirming the Separation of Powers

The broad coalition that advocated constitutional reform reflected the elite's deep-seated and long-standing dissatisfaction with the prevailing autocratic presidential regime. Indeed, long before the approval of the constitutional amendments, the elite, acting through the congress, had attempted to rein in the powers of the executive, thus bringing about an effective separation of powers. This process also served to give the judiciary, albeit indirectly, a measure of independence.

Concerns about the excessive powers of the president were expressed early on and, as already noted, account in part for the insurrections of the 1850s. These concerns were also reflected in parliamentary practices. Although there was no constitutional procedure to give effect to the principle of executive accountability to the congress, such a procedure was introduced through parliamentary practice long before the debate over constitutional reform became part of the political agenda. In 1846, Manuel Antonio Tocornal, a prominent member of the congress, drawing on the French model, introduced the practice of *interpelaciones*, or parliamentary questions to cabinet ministers (Edwards 1932:1:28). This procedure soon became established and in the 1880s was prolifically used to challenge President Balmaceda's policies. Efforts by the congress to influence government policy and have a say in the composition of the cabinet also predate the approval of the constitutional amendments. Indeed, in 1850, close

to the end of President Manuel Bulnes's administration, the congress attempted to use its powers over the budget to influence government policy. The government successfully rejected this attempt (Edwards 1932:1:32). Seven years later, in 1857, President Montt faced a similar challenge. The majority in the senate, dissatisfied at what it regarded as the incompetence of some members of the Montt administration made approval of the annual budget conditional to changes in the composition of the cabinet. The president, a staunch defender of the constitution and of the presidential regime, regarded this pressure as unacceptable and sent a letter of resignation to the congress (Edwards 1932:1:158). The conflict was eventually resolved and the president withdrew his resignation. Two years later, government opponents again attempted to use the debate on the budget to secure policy concessions. This time, however, the government made full use of its majority in the congress, bringing the debate to an end. This decision, characterized as unconstitutional by government opponents, is regarded by some observers as one of the factors that sparked the insurrection of 1859 (Edwards 1932:1:173). Although in 1857 President Montt admitted that the congress had the right to scrutinize the activities of the executive, he resolutely rejected the notion that the congress could have any say on the composition of his cabinet (Edwards 1932:1:160).

Judicial independence also became part of the political debate long before the adoption of the constitutional amendments. In 1857 President Montt invoked the principle of judicial independence when he clashed with the church over the dismissal of two clerics. As noted above, on that occasion the Supreme Court, acting under the provisions of the *patronato*, ordered the archbishop to reinstate the clerics. The archbishop refused to comply with the order and, instead, requested the government to intervene. President Montt, however, declined the archbishop's request, claiming that under the constitution he was bound to respect the principle of judicial independence. While Montt's decision was, undoubtedly, prompted by political expediency, it did, nonetheless, also reflect the elite's determination to affirm the republican objectives embodied in the constitution. These objectives required respect for the secular nature of the state, as well as the principle of separation of powers.

The issue of judicial independence reemerged in 1868, when the chamber of deputies approved articles of impeachment against four members of the Supreme Court (Edwards 1932:2:43-84; Huneeus 1891:234). This incident also involved Manuel Montt, who, after completing his term as president, was appointed to the Supreme

Court and, at the time, was acting as its president (Anonymous 1868). The articles of impeachment claimed that Montt had used his influence as a member of the Supreme Court to secure the release from prison of a relative accused of murder. Although the objective of the impeachment was to embarrass Montt, it generated a lively debate in the congress and the media. The proceedings lasted nearly nine months, from August 1868 to May 1869, and focused mainly on issues regarding the role of courts in the constitutional order and the nature of the judicial function. In the event, the senate rejected the impeachment. This outcome, as well as the debate that preceded it, was widely regarded as a public endorsement of the principle of judicial independence (Edwards 1932:284).

It is likely that the controversy over the impeachment and the debate on the nature of judicial independence enhanced the Court's status within the political system. An exchange of notes in 1872 between the Supreme Court and the minister of war suggests that this was the case. The exchange began with a letter from the Court to the minister, in which the Court complained that, in the course of implementing emergency legislation, military officers had usurped the powers of ordinary courts. According to the Court, the officers had ignored the principle of the separation of powers and had thus committed a serious breach of the constitution. The government replied promptly, concurring with the Court's view that, even in the case of a state of emergency, state officials, including military officers, could not ignore the independence of the courts or tread on their jurisdiction. As the minister's statement reaffirming the principle of judicial independence was contained in a private communication, the Court suggested that the exchange of notes should be published so that public opinion could be informed about government policy on this important point. The government acquiesced. *El Araucano* published the exchange of notes on May 25, 1872. While this exchange did not have a dramatic outcome, the fact that it took place and that the Court demanded its publication was significant, as it shows that the Court was beginning to assert its rights under the prevailing institutional framework (Huneeus 1891:479-485; Roldán 1913:451).

The foregoing suggests that, at the time of the adoption of the constitutional amendments of the 1870s, the political regime had already undergone a major transformation. Presidents could not ignore the interests represented in the congress and could not treat courts as instruments of the executive branch. The constitutional amendments moved this process forward by formally reducing the powers of the president and expanding the powers of the congress.

Constitutional and Electoral Reform

The first constitutional amendment, approved in 1871 under the Pérez administration, prohibited the reelection of the president, thus effectively reducing the term of office from ten to five years. The amendments approved in 1874, under the Errázuriz administration (1871-76), were aimed mainly at curtailing the powers of the president. This was achieved by a restructuring of the Council of State, an organ responsible for judicial appointments and hitherto controlled by the president. Its membership was expanded to include a majority of members appointed by the congress. As a consequence, the executive lost influence over judicial appointments. The emergency powers of the president were also drastically reduced. The president's powers under the state of siege provisions were restricted to measures relating to personal freedom. The provisions on emergency legislation were also redesigned. While hitherto the congress could authorize presidents to indefinitely suspend the constitution, the amendment provided that emergency legislation could last only one year and could only restrict freedom of assembly, personal freedom, and freedom of the press. The amendments also strengthened civil and political rights. A new clause was added to the constitution recognizing, for the first time, freedom of assembly, freedom of association, and freedom of education. The constitutional amendments also introduced changes aimed specifically at strengthening the congress. In order to expedite the legislative process, the quorum required to take decisions in the congress was reduced to one-third in the senate and one-quarter of the members in the chamber of deputies. The senate, hitherto elected from a single national list, was transformed into an organ that represented groupings of provinces, thereby enhancing the political profile of the regions, while making it more difficult for the president to control the election of senators. Provisions on the impeachment of cabinet ministers were clarified. The congress could impeach cabinet ministers for the crime of treason, extortion, misappropriation of public funds, bribery, breach of the constitution, disregard of the laws, and for seriously compromising the honor and security of the state. A conviction upon impeachment brought about the removal from office, but did not always have the effect of disqualifying the person concerned from holding a similar office in the future. The person ousted from office by impeachment was subject to trial by ordinary courts. Finally, in order to safeguard the independence of the congress, its members were barred from holding presidential appointments, except for posts in the cabinet.

The constitutional amendments were complemented by major reforms to the electoral regime. Control over the electoral process was transferred from the municipalities to local committees of leading taxpayers. The objective of this measure was to reduce the influence of the president on the electoral process while encouraging political participation by regional elite. Legislation enacted in 1874 eliminated property qualifications. It provided that males over 25 years of age who could read and write were deemed to have fulfilled the property qualifications required by the constitution. (In 1888 the minimum age was reduced to 21.) The liberalization of the electoral system is a landmark in the process of democratization. It is important to bear in mind, however, that democratization was not the main aim of the forces promoting legal and constitutional reforms. Their main aim was to reduce the powers of the president. Throughout this period, the elite remained deeply suspicious of the notion of democracy. Thus, in 1885, the liberal president Domingo Santa María—echoing Portales's views—claimed that citizens were still not ready for democracy (Castedo 1954:3:1985–88). Other prominent liberals shared Santa María's skepticism about democracy. Indeed while liberal leaders were determined to shift the constitutional balance of power in favor of the congress, they were cautious on matters regarding the extension of the vote, as they feared that given the large rural population, the main beneficiaries of any major electoral reform would be the conservative landowners. Their unease on this issue is reflected in a pamphlet written in 1850 by Victorino Lastarria and Federico Errázuriz, who later became president and under whose presidency most of the reforms were adopted:

We accept universal suffrage, but only when this universality is that of men (without distinction of class) who are capable of exercising political rights . . . All men are equal . . . But in the political order not everyone can have equal participation . . . In Chile, if the day-laborers and servants of the haciendas were to exercise the electoral right, the result of the election would be very different from the result of an election voted in by artisans of the towns and other citizens who are legally qualified to vote. In the first instance it is the landowners, the bosses of that multitude without a will of its own, who would do the electing; in the second case, the election would give us a free expression of the national will. (Collier 2003:133)

In 1850, Lastarria and Errázuriz described their brand of universal suffrage as “intelligent universal suffrage.” Yet, despite their misgivings about the virtues of universal suffrage, the electoral reforms

sponsored by the liberal administrations had an immediate impact on electoral registrations and participation. Thus, while in 1873 the number of registered voters was 49,000, representing 2.4 percent of the population, in 1876 this figure reached 106,000 or 5 percent of the population. Electoral participation during the same period increased from 26,000 in 1873 to 80,000 in 1876 (Borón 1971a:432). The expansion of the electorate did not, however, improve the quality of the electoral process. Indeed, since under the new electoral regime presidents could not rely on state agencies to manipulate electoral outcomes, the executive—and the opposition—resorted to violence and intimidation. Thus, the three liberal presidents who succeeded Errázuriz did not hesitate to use force to secure favorable electoral outcomes. So effective were liberal presidents in determining the outcome of elections that in 1882, not a single Conservative candidate was elected to the congress (Borón 1971a:402). As the opposition resisted intervention by the executive, electoral contests became bloody events. In 1886, for example, 45 people died and 160 were seriously injured as a consequence of electoral violence in Santiago (Valenzuela 1977:190). Despite these problems the constitutional amendments and the liberalization of the electoral regime brought about a shift in the balance of power in favor of the congress. Thus, not surprisingly, the leading constitutional textbooks of the period argued that the amendments had abolished presidentialism and brought about a parliamentary regime (Bravo 1986:211). This view, though technically incorrect, reflects the spirit that animated those who campaigned to secure the approval of the constitutional amendments.

Civil War and the Constitution

The question as to whether the political system had shifted from a strong presidential regime into a parliamentary one became a lively political issue in 1890. Indeed, the factor that ostensibly triggered the Civil War was a disagreement between the president and the congress about their respective roles in the political system. While Balmaceda's opponents claimed that he could not appoint cabinet ministers without the approval of the senate, the president argued that, under the constitution, he was entitled to do so. Given the extended, well-informed and responsible debates that surrounded the approval of the constitutional amendments, it seems astonishing that those involved in the reform process had failed to address this important issue. Yet, they had not. Under the constitution, the president had special and discretionary powers to appoint and remove from office cabinet

ministers.¹ In 1874, the text of Article 82 (6) was slightly amended in order to reflect the changes made to the composition of the Council of State. The rest of this clause, however, remained unaltered. This suggests that those involved in the process of constitutional reform did not intend transforming the prevailing presidential system into a parliamentary regime. But while the constitutional text was unambiguous, political practice, on the eve of the Civil War, was not.

As already noted, the constitutional amendments significantly reduced some of the powers of the president. But presidents still retained enormous powers. The executive deployed this power to great effect between 1879 and 1883, during the war against Perú and Bolivia. Indeed, the constitutional reforms of the 1870s appear to have strengthened state institutions, as evidenced by the speed and effectiveness with which Chile responded to the challenge posed by a war against two countries that had superior military power and twice its population (Martner 1929:330). As Harold Blakemore notes, despite the economic problems that the country was facing when war broke out, Chile's "lack of preparation, economic weakness and uncertainty . . . looked like meticulous planning when compared to their adversaries" (Blakemore 1986:501). During the war, constitutional procedures were rigorously observed: there was an orderly transfer of power from one elected president to another and not once did the government have to resort to the use of emergency powers. Thus, not surprisingly, success in this war served to enhance the legitimacy of the government and, in particular, contributed toward the reinforcement of the confidence of the executive on its ability to run the affairs of the state.

Victory in the war also resulted in the acquisition of rich nitrate deposits that added a valuable asset to the country's economy. Aware of the importance of this newfound wealth, President Balmaceda embarked on a massive program of investments in infrastructure development and launched an ambitious program to further primary and secondary education. These interventionist policies, however, were singularly out of step with the *laissez-faire* views dominant among the political and economic elite. His determination to expand the economic role of the state was seen by his opponents as an attempt to revert to the style of presidency that prevailed before the constitutional reforms of the 1870s (Jocelyn-Holt 1997:49-51). Thus, not surprisingly, Balmaceda's opponents had no difficulties in depicting him as a ruthless politician determined to accumulate power at any cost. Differences between the president and the congress developed into a major constitutional conflict. The congress refused to approve

the annual budget and Balmaceda responded defiantly, announcing that he would implement the budget approved for the previous year (Collier and Sater 1996:154). This threat prompted the congress to adopt a resolution deposing him. Balmaceda responded by issuing a decree that purported to close down the congress. These events marked the beginning of the Civil War.

The confrontation between the president and the congress was accompanied by an intense debate about the correct interpretation of the constitution. Balmaceda, relying on Article 82 (6), argued that the president did not need the explicit, or implicit, approval of the congress to determine the composition of the cabinet. His opponents disagreed. As noted above, in 1857 the congress had deployed this argument unsuccessfully against President Montt. From then on, presidents managed to neutralize the congress mainly through electoral intervention. During the Balmaceda administration, however, the president was unable to resist political pressure from the congress. As a parliamentarian, Balmaceda had endorsed the view that congress should have a say in the composition of cabinets. Thus, it is not surprising that, once in office, when confronted with strong congressional opposition, he repeatedly made changes to his cabinet in order to appease his opponents. But Balmaceda's tactics backfired, since his opponents in the congress interpreted his conciliatory moves as further evidence that, in practice, presidents required congressional approval for the appointment of cabinet ministers. Yet, the dilemma that Balmaceda's opponents faced was that, although the constitution had been recently amended, the president's power to appoint ministers without consulting the congress had not been altered. This dilemma is reflected in a pamphlet his opponents published in Washington in 1891, in which they sought to justify before international public opinion the uprising against the government (Montt 1891:6-8). In this pamphlet, they were unable to point to any specific provision to justify their claim that Balmaceda had ignored the constitution, on this point. In any event, the disagreement about the interpretation of the constitution was not the real source of conflict. The conflict was over the role of the state in the administration of the newly acquired nitrate wealth.

Economic Policy and Nitrates

Underlying the dispute between Balmaceda and his opponents over the nature of the political regime was a fundamental disagreement over economic policy. Balmaceda's attempt to use nitrate revenue to

achieve general development objectives met with strong resistance from the political elite, including members of his own Liberal Party. Balmaceda's opponents regarded his policies as a departure from sound economic management and as a way of usurping the newly acquired powers of the congress. The Civil War resolved this conflict in their favor. Their victory brought into being a self-styled parliamentary regime that eliminated most domestic taxes, reduced import duties, and relied on the revenue collected from nitrate exports to fund the bulk of public expenditure.

The disagreement between Balmaceda and his opponents regarding economic policy is surprising. Indeed, hitherto the elite had managed to resolve serious economic differences through compromise and accommodation. The first part of this section explains why economic policy was not an issue among the elite, despite the numerous problems that plagued the economy during the second half of the nineteenth century. Balmaceda's ambitious policies challenged the prevailing consensus on economic policy and caused the breakdown of the political regime. Balmaceda, however, also had difficulties formulating a coherent policy. Thus, the second part of this section examines the problems that Balmaceda faced as he tried to develop a policy on the nitrate industry.

Crisis and Adjustment

From 1845 to 1861, the economy flourished as agricultural and mining exports expanded. Foreign trade grew at an annual cumulative rate of 7.9 percent, and the value of exports was three times larger than that of imports (Ortega 1985:154). The state played an important role facilitating economic activity. It simplified customs procedures, maintained an efficient system for the collection of duties, and provided basic infrastructure facilities (Cariola and Sunkel 1977:281). By 1860, however, these favorable conditions came to an end as successive administrations were forced to make policy adjustments. This task was not easy as the elite strongly resisted increases in domestic taxation and were reluctant to raise import duties.

Chile's agricultural exporters began to face problems when producers from America, Australia, and Russia began to compete in the former's traditional markets. As products from these countries pushed prices down, Chilean exports—flour, wheat, and cereals—lost ground with the result that by the late 1880s the agricultural sector went into a deep recession (Bauer 1975:65–71; O'Brien 1982:37). Mining exports, especially copper, were also affected as a consequence of

protectionist policies in the United States, the Franco-Prussian War, and a general slowdown of the world economy. The decline of the export sector brought about a fiscal crisis. While before 1860, customs duties accounted for 60 percent of ordinary revenue, by 1878 this figure had dropped to 40 percent. During the same period, the annual growth of ordinary revenue declined from 6.3 percent to 4.1 percent, while public expenditure increased at a rate of 5.7 percent per year (Ortega 1985:157). As attempts to introduce taxes were strongly resisted, successive administrations were forced to meet the shortfall of public revenue with loans from domestic and international banks. Deficit financing led to a sharp increase in the national debt so that by the late 1870s the cost of servicing it represented nearly 40 percent of total expenditure (Ortega 1985:159). Eventually, in 1877, the government finally secured authorization from the congress to raise import duties on selected products. This measure gave a boost to local producers of textiles, footwear, paper, and furniture. But this protectionist measure was taken reluctantly, as it was considered to be inconsistent with sound economic principles. Senior government officials regarded import duties exclusively as a device to raise revenue and made it clear that any benefit to local artisans and industrialists was unintended (Ortega 1985:164).

The reluctance of the elite to provide incentives to local artisans and industrialists and their inclination to rely on deficit financing have generally been attributed to the overriding social and economic power vested in large landowners and local merchants (Bauer 1990:236; Zeitlin 1984:59). Claudio Véliz offers a complementary and more immediate explanation. He argues that none of the three main economic actors during this period—landowners, miners, and import-export houses—would have benefited from protectionist policies as they derived the bulk of their revenue from international trade. Thus, according to Véliz, free trade and disdain for protectionism was a natural option for the economic elite (Véliz 1971:232–240). Given their aversion to protectionism, it is not surprising that the elite were also devout followers of the *laissez-faire* doctrines disseminated in Chile by Jean-Gustave Courcelle-Seneuil, the French economist.² Evidence confirms that the elite were not especially concerned with the fate of local artisans, even though the government was aware of their plight. Indeed, in 1861 a delegation of artisans requested President Pérez to impose duties on selected industrial products, but their request was ignored (Collier 2003:244). Bauer notes, referring to textiles and flour milling, that government policy during the second half of the nineteenth century was characterized by indifference to local

artisans and industrial entrepreneurs. As a consequence, he argues, they were not allowed to develop into proto-industries, as they were swamped by imports and enjoyed no protection from the government (1990:234-235).

Small artisans were not, however, the only neglected group. The government also neglected entrepreneurs involved in copper mining, even though their activities contributed greatly to state revenue. Between 1850 and 1880, Chile was a leading exporter of copper. Such was the importance of copper for the national economy that one observer has characterized this period as the age of copper (Fox-Przeworski 1980:118). Chile's copper production, both in relative and absolute terms was impressive. In 1870, Chilean output accounted for 42 percent of world total, with the United States and Great Britain accounting for 12 percent and 7 percent respectively. In terms of volume, production increased from 7,000 tons in 1840 to nearly 40,000 tons in 1860 (Culver and Reinhart 1989:726). By the mid-1870s, the copper industry accounted for 50 percent of the total value of exports (Fox-Przeworski 1980:9). Yet, by the early 1880s Chilean copper began to lose ground in world markets and production went into a steady decline. In 1882, it was less than 50,000 tons. By 1895, while production was reduced to just over half of this figure, Chile's share of world production dropped to a mere 7 percent (Culver and Reinhart 1989:726).

Some observers attribute the decline of copper to the inability of local entrepreneurs to keep up with the technological developments in the industry (Mamalakís 1976:40). Zeitlin disputes this view, pointing out that the decline of the industry began long before technological advances were introduced. Instead, he attributes the decline to high fuel and transport costs and to the absence of adequate infrastructure (1984:144, 194). This interpretation suggests that the right mix of policies would have succeeded in arresting, and even reversing, the decline of the industry. Benjamín Vicuña McKenna, a prominent nineteenth-century intellectual and politician, complained bitterly about the government's failure to support the copper industry (Culver and Reinhart 1989:731). Local mining entrepreneurs strongly lobbied the government to secure changes to the mining code and improvements in infrastructure. Mining legislation, based on old colonial regulations, established cumbersome and costly procedures aimed mainly at maximizing tax receipts rather than production (Culver and Reinhart 1989:731; Volk 1993:73). The new mining code approved in 1888 made things worse, as it strengthened surface land rights and introduced a tax based on production rather than profits

(Culver and Reinhart 1989:739). The government's response to the miners' demand for infrastructure improvements, in particular, transport, was even more disappointing. Indeed, while the government borrowed money in London to build railway lines to provide landowners in the Central Valley with easy access to the port of Valparaíso, mining entrepreneurs had to build private railway lines to access ports in the North (Fox-Przeworski 1980:118-119). Thus, as most observers agree, the decline of copper was a failure of policy caused by the inability of copper mining entrepreneurs to overcome the indifference of the government (Culver and Reinhart 1989:731; Fox-Przeworski 1980:251; Zeitlin 1984:198).

It is important, however, not to overstate the implications of the government's neglect of the copper industry. While entrepreneurs involved in copper mining had reasons to be dissatisfied with the policies of the government, mining entrepreneurs in other sectors, such as coal and nitrate, did not. Indeed, the events that led to the 1879 War of the Pacific suggest that mining interests played a key role in shaping state policy. Indeed, the main factor that triggered the war was the protection of the interests of local mining entrepreneurs with investments in Perú and Bolivia. From the mid-1860s, Chilean entrepreneurs had begun investing in nitrate mining in Bolivia (Antofagasta) and Perú (Tarapacá). In addition to direct investment, there was also a large flow of migrant workers from Chile into Bolivia and Perú to work on the newly established enterprises. Indeed, so intense was this migratory movement that on the eve of the war nearly 90 percent of the population of Antofagasta was Chilean, while in Iquique, the main urban center of Perú's Tarapacá province, Chileans accounted for 70 percent of the population (Cariola and Sunkel 1990:72). Thus, not surprisingly, Chile claimed that the objective of the war was to protect foreign investment and the well-being of its nationals. But, as is generally the case in international relations, the legal justification concealed other objectives. In this case, the objective was annexation of territory. Before and during the war, the policy of annexation was openly advocated by leading liberal politicians, including Domingo Santa María and José Manuel Balmaceda, both of whom were to become presidents. Moreover, Domingo Santa María, as well as half of the members of President Pinto's cabinet, which took the country to war, were also shareholders of the *Compañía de Salitres y Ferrocarril de Antofagasta*, the main Chilean company affected by Peruvian government policies (Ortega 1984:362, 372, 374). It must also be noted that Gibbs and Son, a British-owned company operating in Valparaíso, held more than a third of the stock of *Compañía de Salitres y Ferrocarril de Antofagasta* (Ortega 1984:348).

The foregoing shows that despite the serious problems facing the economy from 1860 onwards, the adjustment process was relatively painless. The elite refused to take hard economic decisions. They refused to cut public expenditure, resisted raising domestic taxes, reluctantly raised import duties, and relied on loans to cover the growing deficit in the public sector. Although the government neglected the interests of some important economic players, such as copper mining entrepreneurs, it did not ignore the interests of core economic actors, as evidenced by its response in defense of Chilean nitrate investors in Perú and Bolivia. The War of the Pacific, however, not only resolved the immediate problem faced by nitrate investors, but it also revived the export sector and stimulated domestic economic activity. These circumstances explain why differences between the government and segments of the economic elite—such as copper mining entrepreneurs—did not spill over into the mainstream of the political debate. Thus, after successfully resolving the problems that had troubled the economy since the 1860s, it is not surprising that the elite should have welcomed a return to the good old days when domestic taxes were low, and export revenue funded the bulk of public expenditure and provided ample resources to pay for luxury products imported from Europe. Given these expectations, it is not surprising that the elite regarded Balmaceda's attempt to shift the direction of economic policy not only as unacceptable but also tyrannical.

Disagreements over Nitrate Policy

The acquisition of nitrates resolved the impending economic crisis and added a new asset that appeared to guarantee indefinite growth and prosperity. After the War of the Pacific, nitrate became the mainstay of the economy, replacing copper and silver as the leading mining export. The abundant revenue derived from nitrate exports also compensated for the decline of agricultural exports. The introduction of new production methods reduced labor costs and brought about a significant increase in output. Between 1880 and 1886, nitrate exports doubled, reaching 451,000 tons a year (O'Brien 1982:63). The economic boom brought about by nitrate stimulated the development of manufacturing industry and expanded the national market for the ailing agricultural sector (Kirsch 1977:14). The state, which already had considerable experience in collecting export duties and ruthlessly enforcing law and order, thus assumed

an important role in the transfer of resources from the mining sector in the North to the elite in the urban centers and landowners in the Central Valley and the South. Yet, formulating a coherent policy on nitrates proved difficult.

The first policy decision facing the government was the question of ownership of the nitrate deposits. The Peruvian government had expropriated the foreign-owned nitrate deposits and, instead of paying compensation in cash, had issued certificates redeemable in two years. Perú refused to honor the certificates and when the war broke out their value plummeted. The certificates were subsequently acquired by a group of British speculators led by John Thomas North on the expectation that Chilean victory would bring about a shift in policy in favor of foreign investors (Blakemore 1986:20; O'Brien 1982:26). Their expectation, based on inside knowledge of the views of Chilean government officials, proved correct (Osgood 1949:71). A committee appointed to advise the government on the future of the nitrate industry rejected the option of state ownership. Characterizing state ownership as dangerous, the committee recommended that the government should "observe and reaffirm the golden rule of economic policy that rejects any form of state intervention in the economy" (Cariola and Sunkel 1977:290). Given that the War of the Pacific was waged to vindicate private rights trampled by the alleged arbitrary acts of the governments of Perú and Bolivia, the committee's recommendations are not surprising. In 1881 the government turned over the nitrate fields to the holders of Peruvian government certificates. The main beneficiaries of this self-styled privatization were British investors who, by 1895, were controlling more than 60 percent of nitrate production (Collier and Sater 1996:165).

When President Balmaceda took office in 1886 he was determined to make good use of the newly acquired state revenue and thus launched an ambitious program of reforms. He established a Ministry for Public Works and Industry and used nitrate revenue to modernize the infrastructure of roads and railways, to build hospitals, prisons, and government offices. He also significantly increased expenditure in education and achieved impressive results. In less than four years, school enrolment nearly doubled (Blakemore 1974:31–32). But Balmaceda's enthusiasm for national development projects was not widely shared. Indeed, even before Balmaceda took office the elite had shown no interest in using nitrate revenue to further public investment. Their attitude is reflected in changes made to the tax system: domestic taxes and import duties were drastically reduced and

export taxes on copper and coal were virtually eliminated. With these changes the elite were clearly signaling their determination to use nitrate revenue to ease their tax burden and increase their consumption of imported goods (Bowman and Wallerstein 1982:446).

Balmaceda's problems did not, however, stem exclusively from the elite's fiscal irresponsibility. Although his program of public expenditure was clear, his nitrate policies were not. His main objective was to achieve greater participation by Chilean interests in the production of nitrate. Yet, it was unclear whether he intended to increase local participation through public or private investment. His foreign investment policy was also ambiguous. He strongly opposed the monopolistic practices of foreign investors—such as John Thomas North's attempt to extend his control over the railways in the area. Yet, he was keen to encourage investment by U.S. firms, although in his speeches he often complained about the preponderant role of foreign capital in the industry. Thus, while Balmaceda was determined to ensure that nitrate revenue should contribute to national development, he was unclear as to the role that the state should play in securing this objective. While he did not wish to restrict the role of the state to that of a mere tax collector, he offered no clear alternative (Blakemore 1974:85–91; Zeitlin 1984:102–108).

Balmaceda's dilemma was further complicated by the fact that the structure of the industry made it difficult to find allies even among those who would have benefited from his policies. The involvement of foreign investors in the industry was prompted largely by growing international demand for nitrate, both as a fertilizer and as a component in the manufacture of explosives. By the 1880s, technological and capital requirements were making it difficult for local entrepreneurs to effectively compete with foreign investors. Between 1879 and 1886, average capital investment per nitrate enterprise (*oficina*) doubled, while the number of *oficinas* dropped from 164 to 42. Despite these economic trends, Chilean-owned enterprises still accounted for nearly 10 percent of production (O'Brien 1982:74). However, given their subordinate position, it was unlikely that local entrepreneurs would have become Balmaceda's allies in increasing local investment. Moreover, Balmaceda's objective of increasing output clashed with the interests of investors—both foreign and local—as their concern was to avoid overproduction in order to keep prices at reasonable levels. To this effect, they had entered into a variety of restrictive agreements and were thus not in a position to support Balmaceda. As a consequence, even those who stood to benefit from Balmaceda's nitrate policies resisted them.

Conclusion

At the outset I raised two questions. Why did the elite allow a relatively unimportant political dispute to develop into a full-blown, armed confrontation? And why, if the elite were as flexible and closely integrated as most observers have noted, did they slip into such a costly and divisive conflict as the Civil War? The contents of this chapter show that, while, on paper, the constitutional reforms of the 1870s foreshadowed a strong commitment to political liberalization and democratization, the objective of the main advocates of reform was more limited. Rather than extend the vote and include more citizens into the political sphere, they simply wanted to ensure that the congress would decide key political and economic decisions. Thus, after the reforms, the congress undoubtedly had a major say on matters of economic policy. The sluggish response of successive administrations to the chronic economic crisis that developed after 1860 reveals not only the values and objectives of the economic elite, but also that state policy was firmly under their control. Likewise, the brisk and efficient response of the state to the plight of Chilean companies and workers in Perú and Bolivia illustrates the overwhelming influence of the economic interests represented in the congress. Thus, Balmaceda's attempt to assert a more direct control over the economy contradicted the spirit underlying the constitutional amendments of 1874, which was to ensure that the congress retained control over key policy decisions. From this perspective the dispute over the nature of the presidential regime was neither trivial nor pedantic. It was an issue of the gravest importance to the economic elite, who were also the main players in the political system.

The foregoing analysis also answers, in part, the question as to why such cohesive and closely integrated elite so readily slipped into such a costly conflict. Indeed, it was precisely because the economic elite were so closely integrated that Balmaceda's attempt to redirect state policy was so out of step with the dominant views. It must be noted, however, that the cohesiveness of the elite was not spontaneous. It had been achieved through a bitter struggle that involved both force and compromise. The decisive military defeat of the two insurrections in the 1850s was followed by the integration of most of the defeated leaders into the ruling circles. It must also be noted that not all members of the economic elite had equal access to political and social influence, as evidenced by the government's neglect of the copper industry. Thus, though the integration of the elite made it difficult to establish the identity of its various segments, landowners clearly

emerged as the leading group. Evidence from an 1882 survey of the 59 wealthiest people in Chile highlights the preeminent role of large landowners. Among them, 20 had made their fortune in agriculture. The remaining 39 were miners, merchants, and bankers. But remarkably, these 39 individuals had all reinvested their earnings in rural estates (Bauer 1990:243). The economic integration of the elite was thus tilted in favor of agricultural interests and, not surprisingly, contributed to prolonging the seigniorial social relations that prevailed in the countryside (Zeitlin 1984:29).

The dominant role of agricultural interests was reflected in the composition of the congress. In 1875, 50 percent of the members of the congress included a large estate on the list of their main assets. A quarter of a century later the proportion of large landowners with seats in the congress had increased to 60 percent (Bauer 1990:242-243). Thus the hegemony of landowners made it difficult for Balmaceda to find reliable allies in his struggle to modernize the economy. Moreover, as any attempt to modernize it would have required a commitment to developing a national market that would have threatened the survival of seigniorial relations in the countryside, landowners were among Balmaceda's fiercest opponents. Balmaceda's defeat thus had negative consequence for national economic development and it kept landowners socially and economically in power (Bauer 1990:243). The Civil War thus marks the end of the elite's drive toward democratization and political liberalism. After the war they refused to extend rights to subordinate groups, concentrating their energies on sterile parliamentary maneuvering in a congress that had turned its back on social and economic developments.

Chapter 3

Transition to a Modern State

Introduction

The victors of the Civil War established a self-styled parliamentary regime that lasted a little over 30 years. The central role of the nitrate industry during this period accounts for not only the relative stability of the regime, but also its decay and eventual collapse in 1924. Stability, however, was deceptive. Although presidents and members of the congress were regularly elected, the regime stubbornly refused to include the emerging middle and working classes into the political system. The political exclusion of the most dynamic social groups prompted sporadic, but effective public protests and the consequent use of strong law and order measures. It also brought about the emergence of a union movement hostile to state institutions and skeptical of political democracy. The malaise of the political regime was reflected in widespread vote buying and favoritism regarding appointments to the public service, the judiciary, and the army. The nitrate industry was also the main cause for the regime's collapse. By the mid-1920s, nitrate revenue had become unstable, bringing about a breakdown in the political system. This was followed by nearly a decade of political and economic dislocation. The growth of nitrate industry was responsible for important social and economic transformations. It was accompanied by a major shift in population from the countryside to the cities. The population became more literate, the service and manufacturing sectors grew, and there was a major expansion of roads and railways. The elite, however, failed to respond to the challenge posed by economic and social modernization. Their failure to tackle these issues was further complicated by international developments beyond their control. Thus, not surprisingly, it took the elite more

than a decade to restore a semblance of stability after the collapse of the political regime in 1924.

Between 1924 and the restoration of stable democracy in 1932 there were 15 administrations. During this period, there were several attempts to adapt the political and constitutional order to the changes that had taken place since the Civil War. Under the watchful eye of the military, a new constitution and a comprehensive system of labor regulation were introduced. There was also a determined attempt to modernize state institutions and to stimulate domestic investment and growth through a process of import substitution. As working-class organizations became more militant, the middle classes also began to assert themselves and play an important role. Although many of the laws and policies launched during this period were not fully implemented or their implementation was partial or biased, they all had a decisive impact on the development of political and legal institutions during the 30 years that followed.

This chapter is divided into two sections. The first examines the nature of the regime that emerged after the Civil War and explains the factors that led to its demise in 1924. The second section provides a brief outline of the chaotic developments between 1924 and 1932 and assesses the blend of authoritarian and populist policies implemented during this period.

A Gentle Anarchy: 1891–1924

Reaffirming the Rule of the Constitution

Constitutional government was promptly restored after the Civil War. The 1833 Constitution remained in place and the groups that had run the country before the war continued in charge. Even the party that had supported Balmaceda—the Liberal Democrats—soon returned to the political arena, and by 1894 had elected four of its members to the congress (Edwards 1972:176). Thus, after the war, the government promptly recovered its “regularity, civility and respect for public law and legal forms” (Edwards 1972:264). Yet, despite signs of continuity, the political regime was novel. Although known as the parliamentary republic, this regime did not have the features typical to a parliamentary system. While the congress had the power to bring cabinets down, the president did not have the power to dissolve it. Moreover, although the congress could remove ministers, it could not remove the president. The system thus did not have an effective mechanism to settle conflicts between the president and the congress (Reinsch

1909:514). As a consequence, there were 121 cabinet reshuffles during this period, while there had been only 31 in the preceding 55 years. The average length of service of the 530 ministers appointed during this period was 4 months (Heise 1960:77). Because of chronic cabinet instability, parliamentarians spent most of their time plotting parliamentary maneuvers. As a consequence, the legislative output during this period was low and there was virtually no policy innovation (Remmer 1984:206–208, 220). Government bills languished in the congress for several years. They were discussed at great length, but never approved, as was the case with a bill that purported to reform the educational system (Millar 1972:16). The complacency of the political regime was partly a consequence of the abundant revenues generated by nitrate exports.

Revenue Windfall and Economic Modernization

After the War of the Pacific, nitrate mining became the main economic activity, providing the bulk of the country's foreign exchange. Chile was in an enviable position. It was the sole supplier of natural nitrates. Nitrate exports increased from 6.3 million dollars in 1880 to a peak of 90 million dollars just before World War I, representing around 70 percent of the country's exports between 1900 and 1914 (Meller 1996:24). Between 1895 and 1920, taxes on nitrate-related activities accounted for 50 percent of total tax receipts (Cariola and Sunkel 1990:89). The abundance of revenue from nitrate and other exports led to the progressive dismantling of direct and indirect taxes and to a complete erosion of fiscal discipline (Meller 1996:28). The reduction of the internal tax burden also brought about a sharp increase in the national debt (Remmer 1984:146).

The nitrate boom had a major impact on all sectors of the economy. It boosted infrastructure development, created a significant domestic market for agriculture, and strengthened local industries. Between 1891 and 1894, public expenditure fell by 47 percent, but later rose sharply so that by the turn of the century, it had overtaken the levels reached during the Balmaceda administration. At the outset, a large part of this increase in expenditure was devoted to the military because of fears of war with Argentina. Later on, a sizeable portion of it was spent on education and infrastructure development, mainly on the railways (Bowman and Wallerstein 1982:432–437). The network of state railways increased from just over 1,000 kilometers in 1890 to nearly 5,000 in 1920 (Cariola and Sunkel 1990:142). The agricultural

sector also benefited. While between 1870 and 1900 agricultural exports fell sharply from 30 percent to 6 percent of total exports, the demographic changes brought about by the nitrate industry opened up a vast new domestic market for agricultural produce (Remmer 1984:40). Between 1895 and 1920, the population in the mining areas and cities of the North increased from just over 100,000 to 300,000 (Cariola and Sunkel 1990:81). During this period, the proportion of the population living in cities with more than 5,000 inhabitants increased from 23 percent to nearly 40 percent (Remmer 1984:42). This demographic shift was concentrated in two cities: Santiago and Valparaíso. Between 1865 and 1925, Santiago's population grew from just over 100,000 to more than 500,000 and that of Valparaíso trebled, reaching nearly 300,000 (Kirsch 1977:9). The growth of urban centers brought about an expansion of primary and secondary education. The number of pupils in state educational establishments increased from 150,000 in 1869 to 500,000 in 1925 (Cariola and Sunkel 1990:92). Expenditure in education was reflected in an increase in the literacy rate from 29 percent in 1885 to a little over 50 percent in 1920.

With the exception of education—a priority area for most governments since the middle of the nineteenth century—governments showed no interest in developing policies to favor less privileged groups (Remmer 1984:208). Although the process of urbanization expanded the market for agriculture produce, the agricultural sector failed to modernize. The average yield per acre fell during this period by nearly 40 percent (Pike 1963:100). Inefficient local producers were protected by legislation that excluded cheaper food imports, mainly from Argentina. Thus, commercial policy continued to favor agricultural interests (Remmer 1984:151). The nitrate boom also provided an impetus to manufacturing industry. Although the government afforded protection to some industrialists, it did not have a coherent policy to support industrial development. The elite's main concern was to protect their insatiable appetite for luxury imports. Indeed, the import bill for luxury products during this period—jewels, champagne, silks, and perfume—was twice as much as that for industrial goods and agricultural machinery (Pike 1963:100). Despite the absence of a policy on industrial development, by 1930, the manufacturing, construction, and service sectors were employing 50 percent of the workforce (Atria 1983:204). During this period employment in the state also increased, rising from 3,000 in 1880 to 13,000 in 1900, reaching 27,000 in 1919 (Cariola and Sunkel 1990:141). Thus, by 1920, the sums spent on wages and salaries in the public sector

had become equal to the entire state budget for 1900 (Remmer 1984:146).

Limits of Political Competition

Throughout this period governments were regularly elected under the rules established by the constitution. There was intense electoral competition and lively political debates in the congress. The electorate expanded from 134,000 in 1888 to 370,000 in 1920. As a proportion of the population, the number of registered voters increased from 5 percent to almost 10 percent. Elections, however, were marred by widespread corruption (Reinsch 1909:515, 525). The rate of electoral abstention was also high, reaching 54 percent in the 1920 presidential elections. The three major parties represented in the congress—the Conservative, Liberal, and Radical—drew their support from a narrow constituency and most of their leaders came from the upper classes. Only a few were from the medium and lower end of the socioeconomic scale. Large landowners continued to dominate the political establishment. They controlled 40 percent of seats in the Senate and 20 percent of the seats in the chamber of deputies. Thus, as Remmer argues, party competition during this period not only failed to equalize political opportunities, but also may have enhanced the importance of wealth and social status as mechanisms to achieve political influence and power (1984:131).

Political competition and contestation are widely regarded as the most positive features of this period (Loveman 1979:216; Valenzuela 1977:210–214). The congress was the main center of political activity. It was where parliamentarians aired their differences with dignity, ability, and decorum (Reinsch 1909:509–510). Political parties, however, lacked cohesion and did not offer distinct policy alternatives. The never-ending cabinet reshuffles—an average of one every four months—were the result of shifting factional interests within the parties, rather than substantive disagreements over public policy. The absence of major political disagreement is confirmed by the fact that nearly three quarters of the divisions in the congress were “open issues,” that is, decisions over questions in which parliamentarians had a free vote, for, political parties had no interest in their outcomes. Congressional majorities were thus unstable and party loyalty inherently weak. As a contemporary observer noted, party government did not exist and the congress was little more than a council of the governing classes (Reinsch 1909:509, 527, 533).

Given the shortcomings of the regime, it is not surprising that the elite showed little concern for the plight of the laboring masses.

Although from time to time members of the Conservative and Radical Parties, drawing attention to the harsh working conditions of the poor, sponsored the enactment of paternalistic social legislation, there was no coherent response from the political system (Alvarez and Poblete 1924). Only a small circle of intellectuals took this issue seriously, but was unable to bring it to the forefront of the political agenda (Pike 1963:103–107). The dominant political parties did not even take into account the interests of the emerging middle classes. This neglect prompted the establishment in 1919 of a pressure group that called itself the Middle-Class Federation. This group, however, did not seek to form an alliance with the subordinate groups. Instead, its objective was to become part of the oligarchy. In 1930, *El Mercurio*, the mouthpiece of the dominant classes, warmly acknowledged this fact when it noted, with satisfaction, that whenever public order was threatened the middle classes invariably took the side of the upper classes (Pike 1968:211–212).

Except for the tiny Democratic Party, established in 1887 to defend the interests of the working class, subordinate groups virtually had no voice within the political system. As the Democratic Party had supported Balmaceda, it was banned after the Civil War and it only managed to elect a deputy in 1894. In 1912 it elected four deputies and one senator, but was not a serious challenge to the established parties and never became part of a government coalition (Remmer 1984:67–69). In the absence of proper channels of representation, strikes, and other forms of protest proliferated. Governments, distracted by the permanent threat to cabinet instability, were unable to respond to protestors' and strikers' demands other than through repression. The most violent repression was handed out to the nitrate workers in Antofagasta and Iquique. Thus, for example, in Iquique in 1907, a peaceful protest in support of a miners' strike led to a massacre in which more than 200 people—men, women, and children—were murdered by security forces who were following orders from the government in Santiago (Fernández: 2003:104; Morris 1966:98–99). Massive popular demonstrations also took place in Valparaíso and Santiago. A key issue prompting these demonstrations was the soaring price of food as a consequence of duties imposed on Argentinian livestock. This protectionist measure benefited local landowners, but had devastating consequences for the urban poor who spent nearly 50 percent of their income on food (Wright 1982:100). The demand for lower food prices was backed by public rallies, which in October 1905 led to a week of riots in Santiago following a spontaneous demonstration of approximately 50,000 people. Demonstrators demanded

higher salaries, the establishment of health services, and an end to police brutality (Izquierdo 1976:90–91). The ensuing riots of October 1905, known as the Red Week, left about 300 dead and 1,000 injured (De Shazo 1983:113–142, Wright 1982:103).

Failure to accommodate the demands of the new social forces greatly contributed to shaping the emerging workers' movement in the mining areas of the North and the industrial centers in Santiago and Valparaíso. Initially, workers' organizations were mainly mutual aid societies. By the middle of the 1910s, however, they had evolved into unions and they came together to form a powerful labor confederation known as the *Federación de Obreros de Chile* (FOCH). FOCH was soon closely identified with the just then established Socialist Workers' Party, created by a faction of Democratic Party dissidents. In 1922, after the Socialist Workers' Party joined the Third International and changed its name to the Communist Party, the FOCH embraced the party's anticapitalist ideology. Thus, by the early 1920s, despite neglect by the official political system, the labor movement had developed an institutional base that was closely identified with the Communist Party. Workers' organizations in Santiago and Valparaíso were also influenced by anarchism and syndicalism (De Shazo 1983:112, 212–218; Drake 1978:50, 57). According to government statistics, the number of workers affiliated to unions in 1925 was 205,000, about three quarters of whom belonged to unions affiliated to the FOCH. Nitrate workers were the most highly unionized, with a rate of about 60 percent, followed by metal, and railway workers (Poblete 1926:Anexo 5).

Politicians in the congress did not fully appreciate the significance of developments taking place at the grass roots. The contrast between the sophisticated political maneuvering in the congress and political reality is admirably captured by Alberto Edwards. According to Edwards, politicians during this period had no contact with the people and controlled elections with their check books. The political process was, in his view, a "gentle anarchy" (1972:264). This gentle anarchy was sustainable so long as revenue from nitrate exports poured regularly into the coffers of the state. But as nitrate exports began to fluctuate, the regime began to fall apart. Sharp swings in the price of nitrate, combined with the closure of some markets and competition from synthetic substitutes, had a dramatic economic and social impact. Employment in the nitrate industry oscillated from 56,000 in 1918 to 25,000 in 1922, and 60,000 in 1925 to 35,000 in 1927 (Loveman 1979:226). While the decline of public revenue was offset with international loans, the political and social unrest that ensued could not be ignored.

Arturo Alessandri, a member of the Liberal Party, capitalized on the growing political discontent. Running on a platform that called for major social and economic reforms, he won the presidential elections of 1920, thus opening a new and turbulent chapter in the evolution of the political system.

Between Populism and Authoritarianism

Alessandri's victory in the 1920 presidential election is generally regarded as a watershed that marks the incorporation of the middle and working class into the political system (Borón 1971b:50; Serrano 1979). This interpretation is correct insofar as Alessandri's political platform largely reflected the interests and aspirations of middle-class voters. Alessandri, however, did not seek to incorporate the working class into the political system (Pinto and Valdivia 2001:19–22). Indeed, as soon as his administration began to experience difficulties, he turned his back on his working-class supporters and sought help from the armed forces (Aylwin and Alamos 1979). His expectation was that the military would help him impose discipline among workers and restore the presidential regime abolished by the Civil War. The military responded swiftly to Alessandri's approach and not only helped him secure approval of part of his legislative program, but also soon forced him out of office. Thus, Alessandri's election in 1920 marks the beginning of 12 years of instability that brought about the collapse of the 1833 Constitution. During this period, the political regime oscillated between populist and authoritarian rule. Had Alessandri been a genuine leader of the emerging middle class he would have attempted in the 1920s what the Radical Party was to achieve in the late 1930s: the establishment of an alliance between middle- and working-class parties.

Upon taking office Alessandri attempted to persuade the congress to approve several bills designed mainly to regulate labor and restore trust between workers and employers (Pinto and Valdivia 2001:19). But the congress, in characteristic fashion, debated his proposals at great length, and took no action. Instead, parliamentarians preferred to concentrate on their favorite pastime of bringing down cabinets. Between 1920 and 1924, Alessandri was forced to reshuffle his cabinet 16 times (Pike 1963:175). Frustrated, Alessandri focused on winning a majority in the general elections of 1924, while calling at the same time for a constitutional amendment to strengthen the powers of the president. His efforts were partly rewarded. His party—the

Liberal Party—and its allies won an overall majority in both houses of the congress. But Alessandri was unable to persuade the liberals to approve his legislative program. Although he had a large following among workers, artisans, and members of the emerging middle class, Alessandri did not appeal for their support. Instead, he turned to the military. His decision to rely on the military was not accidental. Despite his inflammatory rhetoric, Alessandri was a conservative politician, who, in 1914, had advocated restricting the suffrage in order to contain the excesses of democratic politics (Valenzuela 1977:214–215). Aware of the obstacles that his reform proposals would encounter, he had maintained close relations with the military from the beginning of his administration. Thus, not surprisingly, in 1924 scores, of young officers accepted his invitation publicly to express their discontent with the behavior of the congress. (Haring 1931:6). They attended a public session of the congress and demanded the immediate approval of government bills, including one that gave them a substantial pay increase. This unprecedented military intervention was successful. In less than 24 hours the congress approved all the outstanding government bills (Gil 1966:58).

Alessandri had no difficulties persuading the military to side with him. Discontent within the military had been brewing for some time. Senior officers were alarmed at the growing popular unrest, which they regarded as the main cause for the deterioration of the economy (Strawbridge 1968:68). Junior officers had specific grievances. Between 1912 and 1920, as inflation soared to 80 percent, the salaries of the military remained unchanged (Millar 1972:45). Alessandri enthusiastically supported its claim for higher salaries, but could not persuade the congress to act. The military was also frustrated because there were no clear rules for promotions and no compulsory retirement age. Moreover, politicians had so corrupted the promotion process that officers often needed the sponsorship of a member of the congress to secure advancement in their careers (Millar 1972:51).

Political meddling in military appointments was a consequence of the Civil War. As the army had remained loyal to President Balmaceda, it was subjected to massive restructuring after its defeat. As a consequence, most senior officers during the parliamentary republic were political appointees, with little or no formal military training. In 1924, only 10 of the 40 highest-ranking officers had completed a full course of study at the military academy, 13 had had no military training whatsoever, and the remaining 17 had completed only part of their formal training (Millar 1972: 33–34). By contrast, junior officers were well trained, but were underpaid and had virtually no career prospects.

They were thus keen supporters of military intervention and they played a decisive role in political events after 1924.

Given the discontent among military officers, it is not surprising that Alessandri's attempt to rely on them backfired. Indeed, once they became aware of their power, the military closed down the congress and dispatched Alessandri to Italy on an extended leave (Silva Bascuñán 1963:2:51). Thus, a bloodless military putsch brought down the parliamentary regime and the much-revered 1833 Constitution. Military intervention did not, however, bring about stability. Policy disagreements soon broke out among the military, and Alessandri emerged as the only politician capable of resolving the political impasse and so the military then invited him to return from exile to complete his period in office (Fernández 2000:140). He accepted the invitation on condition that the military should return to barracks and that a constituent assembly should be elected to draft a new constitution that would restore the presidential regime (Silva Bascuñán 1963:2:52). His conditions were accepted, and in March 1925 he resumed his presidency. Upon his return, however, the military continued to take a keen interest in politics as by then they had regarded themselves as the sole guardians of good governance (Strawbridge 1968:70). Alessandri presided over the drafting of the new constitution, but, unable to withstand pressure from the military, he again resigned from office in October 1925.

On December 23, 1925, Emiliano Figueroa was elected president. The reestablishment of constitutional government, however, was brief. After two years in office, the new president also resigned. Figueroa's frustration stemmed from the behavior of the parties in the congress and persistent pressure from the military, which he opposed. The three main parties—Conservative, Liberal, and Radical—continued to behave as if they were still under the parliamentary regime. They questioned the legitimacy of the constitution, claiming that it had been imposed by the military, and refused to endorse the government's legislative program, including its annual budget, claiming that the government was dominated by the military (Donoso 1976:318). The military, through Colonel Carlos Ibáñez—Figueroa's minister of war and later minister of the interior—considerably influenced the formulation of government policy. Ibáñez skillfully exploited the behavior of the political parties. Echoing the frustration of large sections of the public, he repeatedly reminded the congress not to indulge in the parliamentary maneuvers that had brought down the previous regime and called upon politicians to address the real problems of the nation, rather than focus on narrow party interests (Donoso 1976:314). In

the event, President Figueroa's resignation was prompted by Ibáñez's clumsy attempt to eradicate corruption from the judiciary. Initially, the president had agreed to a partial purge of the judiciary. But he changed his mind when Ibáñez demanded the resignation of the president of the Supreme Court, who happened to be the president's older brother (Haring 1931:22; Vergara 1954:393–400).

Following Figueroa's resignation, Ibáñez was elected president in a hastily arranged election in which he, the sole candidate, polled nearly 90 percent of the vote. Once in office (1927–31), although he reaffirmed his loyalty to the constitution, he did not observe it. He persecuted political opponents, repressed workers' organizations, and manipulated congressional elections (Nunn 1970:127, 167). On the economic front he established several institutions that, ten years later, were to provide the foundations for the development of a comprehensive policy of import substitution. His administration, however, was unable to withstand the economic consequences of the Great Depression. In 1931, following several demonstrations by middle-class professionals and university students, he was swept from office and was forced to flee to Argentina. After Ibáñez's departure, there were 11 administrations, including one that was democratically elected under Juan Esteban Montero, and 4 military juntas, one of which was a self-styled Socialist Republic that lasted 12 days in office. Constitutional stability was not restored until December 1932, when, once again, Arturo Alessandri was elected president.

Designing New Institutions

The political and economic turmoil that prevailed between 1924 and 1932 forced the numerous administrations of this period to address three key tasks: the design of a new constitution; the establishment of a system for the regulation of labor, and the search for a new economic policy. This section examines, in turn, how they approached this task.

A New Constitution

One of Alessandri's main aims upon his return from Italy in 1924 was to restore presidentialism. His original intention was to convene a constituent assembly, but, as he became aware that the main political parties did not share his enthusiasm for presidentialism, he changed his mind. He entrusted the task of drafting the new constitution to a committee of approximately 122 members. This committee, in turn,

appointed a drafting committee of 15 that was chaired by Alessandri (Gil 1966:89; Gómez 2004:101–102). The military welcomed Alessandri's commitment to presidentialism and took a keen interest in the drafting process. In a statement to the drafting committee, General Mariano Navarrete reminded its members that the objective of the military intervention of 1924 had been to stamp out the corrupt practices of the parliamentary regime and warned them that the military would not accept any outcome other than the restoration of presidentialism (Donoso 1976:274, 280). Pressured like this, it is not surprising that the committee promptly produced a draft constitution restoring presidentialism.

The conditions surrounding the drafting and enactment of the new constitution were unpromising. The constitution was drafted under the auspices of a government closely watched by the military. It was approved in a hastily convened referendum boycotted by the main political parties and in which less than half of those eligible to vote participated. The Conservative Party opposed presidentialism, fearing that the new regime would become a breeding ground for populists and demagogues. The party was also strongly against the separation of church and state proposed by the new constitution. The Radical Party, which had come into prominence during the defunct parliamentary regime, also opposed presidentialism. Even the just then established Communist Party rejected presidentialism, despite its misgivings about the virtues of parliamentarism (Donoso 1976:282, 283). The only parties in favor of the restoration of presidentialism were the small left-leaning Democratic Party and the old pro-Balmaceda Liberal Democratic Party. The rejection of presidentialism by the leading political parties is not surprising. In their experience, strong presidents were associated with electoral intervention, political patronage, and hostility toward the congress. They also feared that the enthusiastic endorsement of presidentialism by the military was prompted more by their authoritarian inclinations than by their commitment to constitutional democracy. Ibáñez's behavior during the Figueroa administration and during his elected dictatorship (1927–31) suggests that the political parties had a point. Thus, from the perspective of the parties, presidentialism was tantamount to political suicide.

The overriding objective of the drafters of the new constitution was the restoration of presidentialism. The drafting process thus concentrated almost exclusively on the rules governing the powers of the president and of the congress. Concern with this issue led them to focus on the separation of powers, thus indirectly strengthening the position of the judiciary. The rest of the constitution—with one or

two exceptions—followed almost word for word the 1833 Constitution (Gil 1966:88–128; Silva Bascuñán 1963:2:60–62).¹

Under the new constitution executive power was vested in the president, who was the head of the government and chief administrative authority. The president was elected to a six-year period by direct popular election and could not stand for reelection. Cabinet members were appointed by the president and were directly accountable to him. They could not be removed from office by the congress on political grounds. The president also had broad regulatory powers to implement legislation. Presidential power was strengthened by the major role assigned to the president in the legislative process. The president had exclusive power to initiate bills in financial and administrative matters and had a broad power to veto legislation. He was also given a form of guillotine privilege to ensure the speedy approval of legislation. Moreover, the president was entitled to convene the congress into session that would last six months and set its agenda.

Although the president was meant to play a dominant role in the political system, the role assigned to the congress was no less important. The congress had two chambers: the chamber of deputies and the senate. Members of the congress were directly elected through a system of proportional representation. The chamber of deputies, representing about 30 electoral districts, was composed of 150 deputies elected for a 4-year term. The senate had 50 members elected for an 8-year term, 5 representing each of the 10 provincial groupings. Members of the congress were not allowed to hold cabinet or other government posts, thus underlining their independence from the executive. Bills could generally originate in either chamber and members of the congress could initiate bills on most matters, except for those reserved for the president. Although the congress did not have the power to remove cabinet ministers on political grounds it had several means available to control members from the other branches of the state. The chamber of deputies was charged with the task of scrutinizing executive action and making representations to the president on any matter arising from the exercise of his office. To this effect, the chamber of deputies had broad powers to set up committees of inquiry. The congress also had the power to impeach the president, cabinet ministers, the Supreme Court and court of appeals judges, the comptroller general and other senior officials.

In contrast with the 1833 Constitution, the new constitution formally recognized the principle of judicial independence and conferred upon the courts exclusive jurisdiction in criminal and civil cases, explicitly enjoining the president and the congress from exercising

judicial functions. The Supreme Court, made up of 13 judges, was the governing body of the judiciary. As a court of cassation its main function was to review decisions by courts of appeal to ensure that the law was correctly applied. The purpose of the cassation powers was to achieve uniformity in the interpretation of the law. The constitution also gave the Supreme Court the power to declare a law inapplicable in particular cases, as violating the constitution. Declarations of inapplicability could only refer to specific sections of the relevant law and never to an entire act. A declaration of inapplicability had no binding effect beyond the immediate case in question.

The new constitution reaffirmed the civil and political rights already recognized by the 1833 Constitution. Thus, it recognized the principle of equality before the law and basic freedoms such as freedom of expression, assembly, and association. It also introduced several provisions reinforcing the right to physical liberty and gave constitutional status to the right of habeas corpus and to the principle that there should be no criminal penalty without prior legal authority. In the area of religious freedom, the constitution also introduced important changes. Under the old constitution, Catholicism was recognized as the religion of the state and the offer of public worship by other religions was forbidden (Guerra 1929:38). The constitution brought about the separation of church and state and guaranteed freedom of worship and religious freedom.

The protection of property rights was the object of close scrutiny as some members of the drafting committee advocated the introduction of a clause to allow the expropriation of agricultural land. Despite a lengthy debate on this point, the property right clause finally approved was not significantly different from that of the 1833 Constitution (Avila 1971:88). It provided that no one could be deprived of property except by judicial decree or by an expropriation decree on grounds of public utility determined by the law. Full compensation had to be paid prior to taking possession of the property. A reference to the social function of property was introduced as a gesture toward the members of the drafting committee who advocated a more radical approach to property rights (Guerra 1929:12-132). Thus, Article 10 (10) provided that the exercise of the right of property was subject "to the limitations or rules demanded by the maintenance and advancement of the social order and, to that end, the law may impose obligations or servitude of public policy in favor of the general interests of the state, the health of the citizens, and public welfare." Over the years, this reference to the social function of property provided the basis for validating several laws and regulations that restricted the scope of property rights.

A major innovation of the constitution was the establishment of a system of proportional representation. Article 25 called for the introduction of an electoral system that would yield a proportional representation of the views of all political parties. To give effect to this provision, the legislature adopted the system designed by Victor d'Hont and introduced in Belgium in 1899. As it turned out, the d'Hont system seemed to have been especially designed to favor large established parties—Conservative, Liberal, and Radical—and to under-represent smaller parties (Parrish et al. 1970:257).

Labor Regulation

In 1924 Alessandri proposed to the congress a legislative package, regulating aspects of labor relations. This proposal was a belated acknowledgment that workers' organizations had a role to play in the political system. Indeed, it was submitted to the congress more than a decade after the labor movement had established itself as a force within the political arena. The congress, under pressure from the military, approved this legislative package in 1924. Several years later, in 1931, Ibáñez consolidated labor and social security legislation into a single Labor Code. Both Alessandri and Ibáñez endorsed the new legislations, as they sought to achieve the same objectives: containing labor unrest and eliminating the political influence of Marxist and anarchist groups within the union movement. But Ibáñez went one step further. He established a network of state-controlled unions and attempted to transform them into a political movement that would back his administration. His objectives became clear in 1930 when, after rigging the congressional elections, he assigned 14 seats in the chamber of deputies to members of the *Confederación Republicana de Acción Cívica* (CRAC), the umbrella organization under which the state-sponsored unions had been established (Urzúa 1984:31).

The Labor Code, though ostensibly designed to extend rights to workers and their organizations, was in fact deliberately designed to fragment unions and insulate them from the influence of left-wing parties. It prohibited the establishment of confederations of union—thus instantly turning the powerful FOCH into an illegal organization. Provisions on the right to form unions were exceedingly formalistic and restrictive. Unions could be established only by private sector workers and only if they worked in enterprises employing at least 25 persons. Workers' freedom of association was thus severely restricted.

Provisions on collective bargaining and strikes were also restrictive. The Code set out in detail the main components of individual and

collective contracts of employment, leaving little room to negotiate. The provisions of the Code determined minimum holiday entitlement, dismissal procedures, family allowances, and minimum wages. Although there was some room to negotiate pay levels and fringe benefits, anti-inflation legislation had the effect of further restricting the scope of collective bargaining (Angell 1972: 64; Morris 1966:20). The Code also set out detailed and complex procedural steps to deal with disputes. These steps had to be meticulously followed before a strike could be called. Participation in an illegal strike was a criminal offense, punishable by up to 60 days in prison. The Ministry of Labor had the power to also cancel the registration of unions involved in illegal strikes.

While the Code placed in the exercise of labor rights a stifling array of procedural obstacles, the government was given sweeping powers to repress and contain labor unrest. A provision in the Labor Code also gave the government the power to break strikes whenever a strike was deemed to pose a threat to public health or general economic welfare. Under this provision, the minister of labor could bring a strike to an end by issuing back-to-work orders (*decretos de reanudación de faenas*) that required workers to return to work and to submit their dispute to compulsory arbitration. While arbitration was pending, the enterprise concerned was placed under the administration of a government appointed official, who was often a military officer (Yávar 1972).

Incipient Import Substitution

In addition to the introduction of a framework to regulate labor relations, there was a determined effort during this period to diversify the economy so as to reduce the excessive dependence on nitrate. The first indications that the elites were searching for a new economic policy became apparent shortly after the outbreak of the First World War. Although the war caused a brief surge in the demand for nitrate because of its use in the manufacture of explosives, it also led to a sharp decrease in the value and quantity of imports. The restriction of imports gave a boost to local manufacturing. The end of the war, however, marked the beginning of a more determined search for a policy to make the economy less vulnerable to the volatility of world commodity markets (Palma 1985:322). Between 1914 and 1929, various measures were introduced to stimulate domestic production. Tariff rates were raised and new fiscal policies were introduced to make the state less dependent on export taxes. A progressive income tax was established and several indirect taxes were introduced (Drake

1989:05; Mamalakis 1976:113). Besides, during this period, successive currency devaluations made imports less attractive, thus further stimulating domestic production (Palma 1985:322).

Ibáñez endorsed this economic policy shift and complemented it with an ambitious program of institutional reform. His administration introduced a modern system of statistical reporting and financial controls designed to improve the efficiency of public administration. It also established several institutions, including the Central Bank and the Office of the Comptroller General, that greatly strengthened the capacity of the state to formulate economic policy and promote economic growth, (Drake 1989:92; Palma 1985: 323). Ibáñez's efforts to revamp the economy were strengthened by the reappearance of copper as the country's main mining export. As noted in chapter 2, Chile dominated world markets in the mid-nineteenth century, but by 1910, however, its share of world copper production had dropped to a mere 4 percent (Mamalakis 1976:40). However, because of the abundance of nitrate revenue, the decline of copper was hardly noticed. In the early 1900s, however, American investors successfully revived copper mining and by the 1920s the value of copper exports had become equal to that of nitrate. By 1932, copper had overtaken nitrate to become the country's main export.

The policies launched by Ibáñez had a positive impact on the economy. Between 1927 and 1929, industrial production and building activities underwent significant expansion (Ellsworth 1945:4-5). The Great Depression, however, had a devastating impact on the economy. Contemporary reports indicate that Chile was the country worst affected by the Great Depression (Palma 1985:328). In 1932, the value of exports and imports dropped to about 20 percent of their 1929 value; unemployment increased from 6,000 in 1929 to 55,000 in 1932. Thus, not surprisingly, despite Ibáñez's efforts to overhaul the economy and improve the efficiency of state institutions, his administration was blamed for the consequences of the Great Depression, and, in 1931, it was swiftly removed from office.

The onset of the Great Depression cut short Ibáñez's term in office. Yet, had he been allowed to remain in office, it is unlikely that his project to transform the union movement would have been successfully achieved. Although CRAC-affiliated unions had a respectable following of approximately 50,000 members, he was unable to gain the trust of union leaders, as his policies were aimed at suppressing, rather than empowering, workers. Indeed, although he encouraged the establishment of unions loyal to the government, he violently repressed independent, communist, and left-leaning unions. Ibáñez's

behavior toward political parties was also contradictory. Though he was a severe critic of political parties, he did not attempt to replace them. Instead, he successfully manipulated the old established parties and even persuaded them in 1930 to accept a scheme to rig the congressional elections. The scheme involved nominating as many candidates as there were seats available, thus making the election unnecessary. Needless to say, he vetted the names of the candidates. As Haring notes, the leaders of the old established parties went along with this astonishing electoral fraud because they feared that an open and fair contest would bring about a resurgence of social unrest (1933:198). This travesty of the democratic process enabled Ibáñez to handpick a tame congress, but he could not count on the loyalty of his docile parliamentarians. Indeed, as soon as his administration began to confront serious economic difficulties, even the parliamentarians who had benefited from the electoral fraud turned their back on him and joined those who demanded his resignation (Nunn 1970:156).

Conclusion

After the Civil War, the reputed flexibility of the elite was put to test and was found wanting. Under the self-styled parliamentary regime, the congress occupied a prominent place within the political system. Yet, instead of becoming a focus of serious political deliberation and a forum to further the process of democratization, the congress remained little more than a debating club of the economic elite. It was an urbane and sophisticated assembly, but it showed little or no concern for the plight of the emerging middle class, the mining and industrial proletariat, and rural workers. The regime that emerged after 1891 also failed to make good use of the abundant revenue generated by nitrate exports, focusing instead on satisfying the short-term appetites of the groups represented in the congress. Thus, not surprisingly, by mid-1920s, as nitrate revenue became unstable and the political system collapsed, there followed nearly a decade of political and economic instability during which a succession of civilian and military governments unsuccessfully attempted to restore presidentialism, resolve the economic crisis, and forge an alliance with organized workers in mining and manufacturing.

The instability that followed the collapse of the constitution in 1924 is not surprising. The majority of political parties rejected presidentialism either because they associated it with authoritarianism and arbitrary government, or because they were reluctant to give up the privileges they had enjoyed during the parliamentary period. Moreover,

the mix of authoritarian and populist policies implemented by successive administrations during these chaotic years was short-lived, as it did not enjoy widespread support and was swept away by the instability prevailing in the world economy. The main reason for the failure of these policies was that they sought to subdue the emerging social forces rather than acknowledge them as equal interlocutors in the political process. Yet, as the contents of the second part of this book show, the policies and institutions devised during this period provided the inspiration for policies that, in the late 1930s, gave new impetus to political and legal developments. Thus, the new constitution, discredited because of its association with the military, acquired unexpected legitimacy during the subsequent four decades. The failed attempts to diversify the economy provided solid foundations in the 1940s for the development of a relatively successful policy of import substitution. Labor regulation, despite its rough edges, provided the framework for the development of a lively and heavily politicized labor movement. Yet, all these policies flourished only after the political system gave voice and power to the parties and groups that hitherto had been forcibly excluded. It was thus that party democracy came into being.

Part II

Party Democracy

We should not search for a single set of circumstances or a repeated series of events that everywhere produces democracy. Nor should we look for actors having democratic intentions, seeking to discover how and when they get chances to realize those intentions. We should look instead for robust recurrent causal mechanisms that combine differently, with different aggregate outcomes, in different settings.

Charles Tilly, *Contention and Democracy*, 9

Chapter 4

Relative Autonomy—Politics and Economics

Coalition Politics

Political Realignment 1932–38

Arturo Alessandri's main achievements were his success in restoring confidence in the economy and his imposition of discipline on the armed forces. His success in these two areas brought about a realignment of political forces that facilitated the emergence of a consensus on economic policy, which, in turn, resulted in the consolidation of the constitutional regime.

Alessandri succeeded in restoring economic confidence by imposing strict fiscal discipline and by offering selected incentives, complemented by strategically targeted employment creation programs. He imposed strict controls on public expenditure, sharply raised taxes, and successfully eliminated the enormous deficit caused by the Great Depression. The introduction of special incentives to stimulate construction brought about a building boom that helped to drastically reduce unemployment. Between 1932 and 1935 unemployment was reduced from 129,000 to a mere 8,000 (Ellsworth 1945:23–32). These achievements were complemented by his determination to restore army discipline. He removed from office most of the senior officers involved in political conspiracies hatched during and after the Ibáñez administration. The purge of the armed forces was relatively easy, as the military was weak and deeply divided, as evidenced by the four chaotic military administrations that followed the collapse of the Ibáñez administration. Moreover, since public opinion blamed the military for the economic consequences of the Great Depression, Alessandri's purge of the army enjoyed widespread support.

Alessandri did not scrupulously respect the constitution. He violently repressed strikes and imprisoned scores of union leaders and left-wing politicians. As he did not entirely trust the army, he also encouraged and supported the activities of the Republican Militia, a 15,000 strong paramilitary organization established by right-wing sympathizers in 1932 to resist the short-lived Socialist Republic. The Republican Militia worked in partnership with Alessandri, thus creating a buffer between the military and the newly established civilian administration. Under these conditions, the government was able to undertake a major restructuring of the military purging Ibáñez supporters and restoring army discipline. After the military was safely returned to barracks, the Republican Militia was disbanded and their arms handed over to the government (Deutsch 1999:147-155; Gómez 2004:148; Joxe 1970:72).

Despite his lack of concern for constitutional niceties and his harsh treatment of trade unionists and left-wing politicians, Alessandri, in the end, did respect basic political freedoms as evidenced by the opening of the political system and the major realignment of forces that took place toward the end of his administration. The main beneficiaries of this realignment were the left-wing parties and the union movement. Shortly after Alessandri's election, there emerged in 1933 a new Marxist party, the Socialist Party, led by an assortment of middle-class social democrats, anarchists, retired left-wing military officers, and intellectuals (Drake 1978:139-151). What united this heterogeneous group was their rejection of the pro-Moscow orientation of the Communist Party. They were also open to forming alliances with other parties. Although, initially, the electoral strength of the Socialist Party was negligible, it soon acquired a solid working-class base made up of the remnants of the legal unions established by Ibáñez. The establishment of the Socialist Party was followed in 1936 by the creation of a new labor confederation—the *Confederación de Trabajadores de Chile* (CTCH)—that brought together socialist- and communist-controlled unions. Meanwhile, the Radical Party became more responsive to the demands of the middle classes and began to distance itself from the right-wing parties and the Alessandri government. These events led, in 1936, to the establishment of the Popular Front, an electoral alliance that included the Radical, Socialist, and Communist Parties (Stevenson 1942:57-71). The Popular Front was the first alliance between a middle-class party and parties representing working-class constituencies. Its political importance was underscored by the fact that the CTCH was also recognized as a member of the Popular Front (Drake 1978:177).

In 1938, Pedro Aguirre, the Popular Front candidate, won a narrow victory in the presidential elections. Aguirre's program was ambitious: it called for sweeping economic reforms, including a radical revision of the tax laws, the introduction of national economic planning, and strict controls over foreign investment (Stevenson 1942:83-85). The Popular Front administration, however, did not have the political strength to implement such a radical program. Its main achievement, however, was that it put in place an economic policy that became the basis for the development of a system of coalition politics that lasted just over a decade. During this period the Radical party presided over two further administrations. One led by Juan Antonio Ríos (1942-46), elected with the backing of the Socialist and Communist Parties and a faction of the Liberal Party, and the other led by Gabriel González (1946-52), elected with the vote of the Radical and Communist Parties. The coalitions that voted these administrations into office soon collapsed, to be replaced by an endless round of shaky alliances in which every party represented in the congress had the opportunity to form part of the government. In order to understand the institutional consequences of this process, it is necessary to explain the nature and limits of the economic policy consensus.

Import Substitution

Import substitution, as noted in the preceding chapter, had been tried before. During the 1920s several administrations were forced to develop import substitution policies in response to the instability and eventual collapse of revenue from nitrate exports. The Aguirre administration, however, launched a systematic policy of import substitution. It used a variety of instruments to stimulate domestic production, such as tariffs, import licenses, quotas, multiple exchange rates, and production subsidies. But the key institution driving the import substitution policy was the *Corporación de Fomento de la Producción* (CORFO), a state development corporation established during the Aguirre administration. CORFO was entrusted with the task of drawing up a strategy to ensure balanced growth. It was given broad powers to implement policies, including the establishment of industrial and commercial enterprises. CORFO also acted as a development bank channeling financial resources to the private sector. CORFO took its entrepreneurial role seriously. It assumed direct control of 6 industrial enterprises and had equity interests in 24 more during its first 4 years (Muñoz 1968:107). As the government did not interfere in its day-to-day activities, CORFO soon developed a reputation for

technical and managerial efficiency. Its popularity within the business community stemmed largely from the fact that it did not seek to replace the private sector, but merely to complement and support it (Ellsworth 1945:93-94).

The new economic policy had the backing of all the major parties represented in the congress, the leading business associations and organized labor. Its scope and limits were defined during the political bargaining that led to the approval of the CORFO bill. The government had proposed that CORFO should be given broad powers to promote projects in every sector of the economy and that its activities should be funded through domestic savings. The business community welcomed the idea of state support to key sectors of industry, but opposed the notion that CORFO should have a free hand to intervene in every sector of the economy (Cavarozzi 1975:120). Instead, it proposed that CORFO should circumscribe its activities only to the manufacturing sector and, in particular, that it should have no involvement in the agricultural sector. The business community also rejected the proposal to fund CORFO through domestic taxes. Instead, it proposed the introduction of a 15 percent tax surcharge on copper exports. Moreover, in order to ensure that CORFO did not run out of control, it demanded that five seats on CORFO's board should be reserved for representatives of the leading business associations (Menges 1966:357). As the Conservative and Liberal Parties sided with the business community, the government had no choice but to give in to these demands.

CORFO was thus barred from intervening in two crucial economic sectors: agriculture and large scale copper mining. The surtax on copper exports became a guarantee that CORFO would not extend its entrepreneurial activities to this strategic sector, controlled at the time by U.S. mining companies. The agricultural sector, inefficient and in desperate need of modernization, was also excluded from CORFO's purview. The exclusion of the agricultural sector from the import substitution policy had devastating effects. Between 1932 and 1952, agricultural output dropped by 16 percent and, consequently, the government had to divert scarce foreign exchange to compensate for the food deficit. It has been estimated that about 65 percent of food imports between 1945 and 1959 could have been produced domestically (Thiesenhusen 1966:9). As one observer has noted, while governments were busy implementing import substitution policies in manufacturing, a rapid process of import desubstitution was taking place in the agricultural sector as the country was importing agricultural produce that it could have produced at home (Behrman 1977:27).

The exclusion of the agricultural sector from the scope of CORFO's activities was combined with a reaffirmation of the long-standing policy of denying union rights to agricultural workers.

Reluctant Democrats

The consensus on economic policy, as embodied in the approval of the CORFO bill, provided the basis for a succession of heterogeneous coalition governments between 1941 and 1952. All these coalitions were led by the Radical Party and, as I explain in the chapter that follows, they transformed the strong regime into a hybrid that had many features of a parliamentary regime. These coalition governments also contributed to legitimize constitutional procedures, as they were all duly elected and they respected the political authority of the congress. Yet, at the outset, neither the right-wing nor the left-wing parties fully accepted the implications of participating in a democratic system.

That the right-wing parties readily accepted Aguirre's victory in the presidential elections, despite the fact that their candidate had been defeated by the narrowest of margins—50.26 percent against 49.33 percent—may suggest a strong commitment to constitutionalism and the democratic process. On close inspection, however, their reason for conceding defeat was that they had no alternative. They could not have relied on the military to prevent the Popular Front from taking office, as following Alessandri's purge, the military was weak and divided. Moreover, Ibáñez, without whom any military conspiracy would have failed, had supported the Popular Front candidate—albeit at the last minute. In any event, the Right did not trust the military as the policies implemented by the succession of short-lived military administrations in the late 1920s and early 1930s had a distinct antioligarchic orientation. The political position of the right-wing parties was also vulnerable. In the 1930s two new political movements emerged: the *Movimiento Nacional Socialista* (MNS), a fascist-inspired organization; and the *Falange Nacional*, a youth group with left-wing tendencies that had broken away from the Conservative Party (Deutsch 1999:145-146). Although neither group posed an immediate threat, their very existence had a moderating influence on the right-wing parties, and hence their decision to opt for the path of constitutionalism.

In any event, by accepting the verdict of the polls, the right-wing parties were risking little (Gómez 2004:177). They controlled the majority of seats in the congress and were implacable in their opposition to every initiative of the Aguirre administration. Their approval

of the CORFO bill was indeed an exception to their obstructionist parliamentary strategy. Apart from paralyzing the congress, they encouraged and condoned military conspiracies against the government (Joxe 1970:78-80) and launched a vicious propaganda campaign depicting the Popular Front as an assortment of mental and physical degenerates, enriched bureaucrats, and Moscow-bought communists (Super 1975:82). They also attempted to distance the president from the Marxist parties by depicting him as a genuine democrat unable to govern because of the disruptive influence of communists and socialists.

In November 1940, the right-wing parties, claiming that the government was unable to guarantee free and fair elections, threatened to boycott the general elections due to take place the following March. The electoral boycott was a fundamental challenge to the constitutional order. The government was thus forced to make concessions that included a commitment to repress strikes in the countryside and to disband unions in the state sector. The government also agreed to hand over to the army control over law and order on the day of the election. After securing these concessions, the Right called off the boycott. The outcome of the general elections of 1941 explains why the Right was keen on the boycott. In these elections the Popular Front parties achieved a spectacular victory, gaining control of the majority of seats in both chambers of the congress. This victory, however, was of no use as by then, worn out by internal strife, the Popular Front had effectively collapsed. The death of President Aguirre later in 1941, after only half of his term completed, dashed any hope of reviving the Popular Front coalition. It was only after the demise of the Popular Front that the right-wing parties began actively to participate in broad coalition governments (Stevenson 1942:113-121).

The unease of the right-wing parties toward the new democratic regime was matched by a similar attitude among most of the leaders of the Socialist and Communist Parties. Some were uncomfortable with the idea of forming alliances with bourgeois parties, while others regarded the policies implemented by the coalition governments as not sufficiently radical. Despite these misgivings, they vigorously promoted the interests of their electoral constituencies and fought hard to expand the boundaries of the political system—as evidenced by the persistent attempts to secure the unionization of agricultural workers. Yet, these efforts were spoiled by their dogmatic policies toward the union movement. In this area, the overriding objective of the Socialist and Communist Parties was to eliminate each other's influence among organized workers so as to become the sole representative of the mining and incipient industrial proletariat. In pursuit of this

objective, each party made full use of its occasional influence in government coalitions to undermine the other, thus weakening the labor movement as well as the political regime.

The Popular Front won the presidential elections in 1938, only two years after its establishment. Because of its meteoric rise to political prominence, its roots were shaky. The Radical Party's decision to form an alliance with the Marxist parties was based largely on short-term electoral calculation, as they had come to realize that in any future alliance with the Right they were destined to play a secondary role. The Radical Party's shift to the left, however, was never fully endorsed by party patriarchs, especially by the large landowners from the province of Concepción. The socialists, many of whom had been involved in military conspiracies after the fall of Ibáñez and had supported the short-lived military administrations of 1932, disliked the slow pace of the government's decision-making process. Besides, they never fully accepted the leadership of the Radical Party, as they believed that the coalition should have been led by Marmaduke Grove, a socialist who enjoyed enormous popular appeal. The enthusiasm of the communists for the coalition was qualified by the fact that the decision to enter into alliances with what they characterized as bourgeois parties had been prompted by a shift in the policy of the Third International. It had not been a decision of the rank and file. Their commitment to the success of the Popular Front was thus half-hearted, subordinated as it was to its unquestioned loyalty to the dictates from Moscow (Drake 1978:175-181).

The fragile foundations of the Popular Front coalition were further undermined by the intense competition between the Marxist parties to enhance their influence among organized workers. Until the early 1930s, the Communists Party's popularity among workers in mining and manufacturing was virtually unchallenged. The establishment of the Socialist Party in 1933 posed an unexpected threat to the communist hegemony among organized workers. This threat was compounded by the fact that the socialists had a much wider electoral appeal than the communists and they repudiated the latter's unquestioned loyalty to the international communist movement. Despite their rivalry, communists and socialists jointly sponsored the establishment of the CTCH. Initially, union leaders benefited from their close relationship with the Marxist parties, as it created political opportunities that only a few years earlier would not have been possible. Yet, the continuous bickering and competition between socialists and communists had devastating consequences for the union movement. The socialists resented the communists' decision not to accept cabinet

posts in the Aguirre administration, interpreting it as an opportunistic move designed to give the communists the chance to strengthen their influence among working-class constituencies without assuming responsibility for the failings of the government. The communists, for their part, lost no opportunity to discredit the socialists, even when their criticism involved challenging key government policies. Thus, when the socialist minister for development went to Washington to seek financial assistance to compensate for the fall in copper and nitrate prices, the communists strongly criticized him, insinuating that the Socialist Party had sold out to imperialism (Faundez 1988:66). The animosity between the two parties grew to such an extent that in December 1940, the socialists withdrew from the Popular Front, though not from government. The socialists claimed that they were withdrawing from the coalition because it was heavily influenced by the Communist Party, a party that espoused policies contrary to the national interest (Stevenson 1942:109).

The feud between the Marxist parties was so intense that in 1946 the Socialist Party provoked a split within the CTCH in order to make itself more appealing to the government of the day and thus gain representation in the cabinet. Later on, in the same year, when the communists took up cabinet posts in the new González administration, they took their revenge and used their influence in the new administration to discredit the socialists and enhance their position within the union movement. The communists were unable to fulfill their objectives as shortly thereafter they were expelled from the cabinet and outlawed on the grounds that they constituted a menace to democracy and state security. Thus, at one time or another, both socialists and communists made use of their influence within the labor movement to further their short-term political objectives. In the process they weakened the labor movement and undermined their own position within the political system.

End of Coalition Politics

Between 1932 and 1952 there were important advances in the democratization process. The number of workers belonging to unions rose from 55,000 to a little over a 250,000 (Correa et al. 2001:78) and union leaders were able to exercise some influence on public policy, especially during the early days of the Aguirre administration (1938–41). Moreover, between 1940 and 1952, the share of labor in domestic income rose slightly from 42 percent to 45 percent, although those who benefited were mainly white-collar workers and workers in the

mining industry (Mamalakís 1976:212). The rate of literacy increased from 56 percent to 75 percent and the percentage of the population registered to vote rose from just over 9 in 1932 to 18 in 1952. The party system, however, was weak and fragmented. The number of parties represented in the congress increased from 11 in 1934 to 19 in 1953. The fragmentation of the political parties, prompted by the dynamics of the system of coalition politics, reached such a level that, by the early 1950s, the Radical Party—which represented a respectable 22 percent of the vote—was unable to find partners for the presidential elections of 1952 (Urzúa 1986:51, 86). The problems of the political system were replicated on the economic front also.

By the early 1950s, although the manufacturing sector had expanded, the agricultural sector had not. Between 1932 and 1952, agricultural production in fact declined by 16 percent, while the index of industrial production between 1932 and 1952 increased by 126 percent and total production rose by 59 percent (ECLA 1949:264). The decline of agricultural production was compensated by an increase in imported foodstuffs, which, in turn, diverted scarce, foreign exchange from industrial development projects. These problems were made worse by the fact that, after the end of World War II, there was a sharp drop in the demand for copper, which intensified the pressure on the balance of payments. These factors unleashed an inflationary process that, by the end of the 1940s, had begun to run out of control. The rate of inflation increased from an annual average of 15 percent between 1940 and 1946, to 21 percent between 1947 and 1951. After 1952, inflation continued to increase, reaching record levels of 56 percent in 1953 and 84 percent in 1955 (Faundez 1988:55).

The main factor causing inflation was the inefficiency of the agricultural sector. The sharp fluctuations in earnings from copper exports after 1945 considerably worsened the situation. Unable to control the economy, President González (1946–52) began to increasingly resort to repression, with the result that during his administration the country was in a state of emergency for nearly half of his term of office. The main target of repression was the union movement in urban and mining areas, as well as agricultural workers seeking to form unions. Persistent reliance on emergency measures eroded the legitimacy of the regime and the credibility of the party system. Indeed, because presidents did not have stable backing in the congress, they were often forced to implement policies diametrically opposed to those on which they had been elected. Thus, President Aguirre, who was elected on a platform that promised political rights and better standards of living for the working class and the poor, ended up reaffirming a policy that

denied basic political and trade union rights to agricultural workers. Likewise, President González, also elected on a left-wing platform and with the enthusiastic support of communists, soon abandoned his political program and put forward legislation that repressed the union movement, prolonged the exclusion of agricultural workers from the political system, and outlived its main ally, the Communist Party (Blasier 1950:371-373). Given these circumstances, it is not surprising that, by the early 1950s, the Radical Party, hitherto the traditional leader of electoral coalitions, was unable to persuade any of the other major parties to form an alliance for the presidential elections to come. These circumstances provided an opportunity for the indefatigable General Ibáñez to make a successful bid for the presidency on a populist platform that promised a strong government that would forever rid the country of the scourge of politics.

Market Failure and Political Liberalization

The weakness and fragmentation of the political parties that brought coalition politics to an end also shattered the broad consensus on economic policy. Thus, during the 1950s two successive administrations sought to shift the economy toward the market. But, in the absence of a broad political consensus, these efforts encountered multiple obstacles. The tight incomes policy that accompanied market-based policies was strongly resisted by the parties of the left and by the union movement. Indeed, the struggle for higher wages contributed to strengthening of the union movement and galvanizing of the solidarity between blue- and white-collar workers. The shift toward the market failed also because it did not have firm support from the business community. While industrialists dreaded the consequences of an open commercial policy, landowners did not even contemplate the possibility of modernizing their activities and working under market discipline. The strong resistance to market-orientated policies was met partly by repression, but largely by measures of liberalization that included lifting restrictions on union activities and electoral reform. Under the shadow of an ailing economy political liberalization had the effect of radicalizing the electorate. Thus, by the early 1960s support for the right-wing parties had plummeted and the overwhelming majority of the electorate supported the center parties and left-wing parties that advocated radical change. Political change, however, was no longer achievable through the system of coalitions that had characterized party democracy.

Neutralizing Populism

By 1952, political and economic conditions had seriously deteriorated: social tension was high and inflation was rapidly eroding income gains. That the political system managed to avert a major crisis was, ironically, largely due to General Carlos Ibáñez. Relying on the same rhetoric that he used in the 1920s, he vowed to eliminate political corruption, sectarianism, and inefficiency, all evils that he attributed to the prevailing system of party democracy. His electoral campaign caught the public imagination, enabling him to win a decisive victory with 47 percent of the vote, and thus marking the end of the electoral hegemony enjoyed by the Radical Party since 1938. His administration was erratic, somewhat corrupt and, often, showed little concern for the principle of legality. Yet, it provided an outlet for the political ambitions of the military, thus helping to preempt military intervention. In this way, the Ibáñez administration greatly contributed, albeit inadvertently, to strengthening of the political system and to legitimization of the constitution.

During the 1940s, the military became restless as successive administrations resorted to emergency measures that placed public order in the hands of the armed forces. While reliance on the military provided a guarantee that presidents would not abuse their power, it also had the effect of reinforcing the view within the military that politicians could not be trusted to run the country. Thus, it is not surprising that, after Ibáñez's electoral victory, two political movements emerged from within the military: *Por un Mañana Auspicioso*, PUMA (For a Better Tomorrow) and *Línea Recta* (Straight Line). PUMA came into existence immediately after Ibáñez's victory. Its objective was to ensure that the congress ratified the General's victory. *Línea Recta* was established late in 1954 (Joxe 1970:80-81). Its objective was to ensure that the government did not depart from the nationalist principles on which it had been elected (Loveman and Lira 2000:154-155). *Línea Recta* and PUMA were not rivals. Their membership overlapped and consisted mainly of middle-ranking and senior military officers. These two organizations attracted remarkably little political attention despite the fact that under the constitution members of the armed forces were barred from engaging in any form of political deliberation. It was not until 1956 that serious questions were raised in the congress about the constitutional propriety of these organizations (Loveman and Lira 2000:178). The reticence of politicians to openly question the political activities of military officers reflects to some extent the weakness of the party system during the early years of the Ibáñez administration.

Yet, their reticence could also be attributed to the fact that Ibáñez used these organizations to underpin the constitutional legitimacy of his government, thus directly contributing to strengthening of the democratic process. Although there is little doubt that most members PUMA and *Línea Recta*, as well as many of Ibáñez's civilian supporters, would have preferred a military government, Ibáñez was unwilling to abandon the democratic road. His electoral victory was political vindication after his humiliation in 1931 when, after the collapse of his government, he was forced to flee the country. Moreover, when Ibáñez was elected he was 75 years old and unlikely to have any interest in overturning the constitution that he had so enthusiastically supported in 1925.

Ibáñez, however, took good care of the interests of the military. Indeed, during his administration military officers were appointed to key cabinet posts, including defense, interior, foreign affairs, economics, education, labor, and public works. Retired military officers were also appointed as ambassadors and to other public posts, such as the major of Santiago. These appointments were part of a calculated effort by Ibáñez to neutralize the political ferment within the armed forces (Fernández 1996:241-245, 253).

In Search of the Market

Ibáñez soon abandoned his populist stance. Chronic inflation and low levels of economic growth were the reasons why he diverted from his original objectives. His administration thus concentrated on fighting inflation by means of a market-oriented policy that sought to liberalize the economy and reduce excessive state intervention. After experimenting with a variety of economic measures, he put forward a comprehensive stabilization program that called for drastic cuts in public expenditure, substantial liberalization of foreign trade, major increases in the levels of taxation, and an overall reduction of state intervention in the economy. But his attempt to tackle inflation through economic liberalization was supported neither by the private sector nor by the unions (Ffrench-Davis 1973:29-35). Landowners resisted attempts to impose realistic levels of taxation on agricultural enterprises, while industrialists deeply resented the withdrawal of state subsidies. Unions also strongly resisted Ibáñez's stabilization program, as it restricted employment opportunities and increased direct and indirect taxes (Sierra 1969:61-71).

Popular resistance against market-based policies prompted a brief strategic alliance in the congress between the Marxist parties and the

Christian Democratic Party (CDP). This alliance led to the repeal of the 1948 State Security Act, thus lifting the ban on the Communist Party and easing state control over union activities. It also brought about a major electoral reform that made vote buying more difficult. These changes had the effect of breaking the landowners' stronghold in rural areas, thus enabling the CDP and the Marxist parties to mobilize voters in the countryside. The cumulative effect of these changes brought about a sharp increase in electoral registrations, rising from 18 percent in 1952 to 21 percent in 1958 and 35 percent in 1964 (Borón 1971b:47, 51). Political liberalization did not, however, prevent efforts to stabilize and liberalize the economy. They continued under Jorge Alessandri's administration (1958-64). Alessandri, son of Arturo, and prominent businessman, also ran on an anti-party platform. During the first half of his administration, he excluded political parties from any involvement in the appointment of his cabinet. Alessandri did not, however, seek to eliminate the party system. After all, although he ran as an independent, he was the candidate of the right-wing parties, and both he and members of his family had close links with the Liberal Party. According to Alessandri, the economic problems affecting the country had their origin in the misconceived interventionist policies of the 1940s. Accordingly, his objective was not to eliminate politics or politicians, but to reorient the state so that it could play a positive role in the economy. His aim was to ensure that state intervention would further market relations rather than undermine them. He wanted politicians to take seriously the constraints imposed by the market economy on the policy process. That is why he refused to allow political parties any involvement in the appointment of his cabinet, insisting, instead, that his cabinet would be made up of technically qualified individuals, rather than people whose sole qualification was their membership in a political party. The Conservative and Liberal Parties accepted this departure from practice with some reluctance. In any event, all the ministers appointed by Alessandri were prominent professionals or leading business managers with close links to one or the other right-wing parties.

Alessandri's technocratic approach to governance proved unsustainable. By mid-term, as his market-oriented reforms began to flounder, he was forced to seek support from the Radical Party in exchange for cabinet posts; thus he momentarily revived the style of coalition politics that had prevailed in the 1940s. His economic policy sought to release the market from excessive state intervention and to keep inflation under control. Accordingly, he introduced a strict incomes policy and after slightly increasing public investment to reactivate the

economy, he sharply reduced tariff barriers, introduced incentives to promote exports, and enacted a new foreign investment code. His expectation was that trade liberalization would improve the competitiveness of domestic firms and would stimulate investment. He also expected foreign investment and foreign loans to further stimulate the economy. His expectations, however, did not materialize: imports grew faster than expected and foreign investors did not respond to the new liberal regime. Moreover, as inflation once again ran out of control, he had to abandon his strict incomes policy. Thus, by the end of his administration the rate of inflation stood at 45 percent, that is, 12 percent higher than when he took office in 1958; foreign direct investment did not significantly increase, yet foreign debt trebled; and, contrary to his expectations, the share of the state in public investment increased (Ffrench-Davis 1973:48-50; Stallings 1978:88).

Discredit of the Market

The attempt to shift the economy toward the market was unsuccessful. During the 1950s, GDP per capita grew at an annual average of 1 percent, that is half of the average rate of the 1940s. Moreover, during the second half of the decade industrial production registered negative growth rates, while the agricultural sector was still unable to satisfy the demand for foodstuffs. Export revenue also registered disappointing levels of growth, and expectations of massive new investment in mining were not fulfilled. In addition, while inflation was kept within manageable levels, its underlying causes were not eradicated. The failure of these policies discredited the market and had a major impact in shaping political options.

One of the shortcomings of the market-based policies implemented in the 1950s was that they excluded the agricultural sector. Indeed, it is remarkable that Alessandri's administration did nothing to liberalize the agricultural sector despite its commitment to the market. Thus, it is not surprising that agricultural production continued its steady decline while the import bill for foodstuffs consistently rose. In 1956 food imports were 9 percent of total imports, by 1962 their share on the import bill had risen to 22 percent (Mamalakis 1976:131).

Alessandri's neglect of agriculture stemmed largely from the fact that large landowners were unwilling to exchange state protection for the uncertainty of market forces. In the early 1950s, landowners had fiercely resisted Ibáñez's attempt to introduce market discipline. Therefore, not surprisingly, Alessandri did not wish to antagonize them. During the second half of his administration, and in response to pressure

from the Alliance for Progress, a U.S.-sponsored foreign-aid program, he timidly began to take steps toward addressing some of the problems of the agricultural sector. One of the most pressing problems was land concentration, which ranked as one of the highest in the world. In 1955, 4 percent of landholders owned 81 percent of all farmland, while a large number of smallholders (*minifundistas*) barely scraped a living on 2 percent of irrigated land (Thiesenhusen 1966:10). The scope of Alessandri's land reform was, however, limited. It envisaged the expropriation of agricultural properties that had either been abandoned or were so poorly exploited that they could be deemed abandoned. Yet, despite its limited scope, landowners strongly opposed Alessandri's land reform. The powerful *Sociedad Nacional de Agricultura* (SNA) objected to the bill, especially to the clause that allowed for deferred compensation in the event of expropriation. The *Consorcio Agrícola del Sur* (CAS), another influential association of landowners, also objected to the deferred compensation clause, claiming that it was a first step toward the abolition of property rights (Kaufman 1972:64-66).

Alessandri's land reform was approved by the congress, but only after a bitter debate that exposed serious differences within the private sector and created considerable tension between the right-wing parties and the business community. The Conservative and Liberal Parties were aware that, unless there was some change in the countryside, they would become politically irrelevant (Kaufmann 1972:60-61). They supported Alessandri's bill as a necessary evil. Landowners were naturally disappointed, and many felt that this was an unacceptable betrayal by their right-wing allies. But landowners also had a grudge against the associations representing industrialists as the latter had refused to join them in their campaign against the agrarian reform bill. They blamed Alessandri for this lack of solidarity as he had at one time been president of a leading association of industrialists, the *Confederación de la Producción y del Comercio*. Thus, by the end of the Alessandri administration, relations between the business community and right-wing political parties reached an all time low (Pereira 1994:278-280). The Alessandri administration thus succeeded in discrediting the market and seriously denting the political base of the right-wing parties.

Labor and the Political Process

The role of organized labor in the political process is generally regarded as one of the most distinctive features of the period of party democracy. Indeed, many observers regard the incorporation of organized workers into the political system as one of the main factors that contributed

to the consolidation of democracy after 1932 (Rueschemeyer et al. 1992:184-185). While the prominence of the union movement during this process is undeniable, their incorporation into the political process was only partial. Unions were both courted and severely repressed. In 1938 they were part of government; ten years later repressive legislation imposed severe restrictions on workers' freedom of association. But the union movement was resilient, as evidenced by the fact that in the 1950s it became once again an important actor in the political process. This section examines the contradictory roles of the union movement during the years when party democracy prevailed.

Denial of Rights to Agricultural Workers

Advances in the process of democratization during this period were largely offset by the persistent refusal to extend rights to agricultural workers. This refusal was largely a consequence of the inordinate power and influence of the landed oligarchy. The historical record shows that large landowners, supported by the Conservative and Liberal Parties, strongly opposed extending constitutional and legal rights to agricultural workers. But landowners and right-wing parties were not alone in the stance they took. Indeed this policy had the support, albeit grudging, of the coalition governments in which the Radical Party and the Marxist parties were partners. Thus, the exclusion and repression of agricultural workers cannot be easily divorced from the wider process that led to the consolidation of democracy. The following paragraphs offer a brief overview of the various stratagems used to deny rights to agricultural workers.

The first attempt to organize rural workers took place in the early 1920s under the leadership of FOCH, the powerful confederation of manufacturing and mining workers. It found a receptive audience, particularly among rural workers in parts of the Central Valley close to mining sites (Affonso et al. 1970:1:17). Alarmed by these developments the SNA requested Arturo Alessandri, in May 1921, to take measures to stop FOCH's activities. Alessandri's response was ambiguous. It reaffirmed his administration's commitment to law and order in the countryside, but reminded landowners of the need to improve social and economic conditions of rural workers (Wright 1982:149). The landowners, who feared that FOCH activities in the countryside would create a powerful alliance between urban and rural workers, did not heed the president's plea. Instead, taking the law into their own

hands, they used force against peasants who sought to form unions. Despite this, the number of agricultural workers belonging to unions reached 5,000 in 1925. By the late 1920s, however, military intervention and political repression brought this phase of agricultural unionization to an end (Wright 1982:149).

The unionization of agricultural workers acquired new impetus in the 1930s, during Arturo Alessandri's second administration. In accordance with the provisions of the just then enacted Labor Code, agricultural workers began to register new unions. The Ministry of Labor, complying with the provisions of the Code, registered these unions. Although the number of unions was small, the registration process was sufficiently widespread to prompt serious concern among landowners. Once again, the SNA requested the government to immediately stop the registration process, claiming it was illegal. The government's legal advisors disagreed as, in their view, the Labor Code authorized the unionization of all workers, including agricultural workers, in enterprises employing more than 25 persons (Affonso 1972:45). The president, however, disregarding the views of his minister and legal advisors, instructed the Ministry of Labor to suspend union registrations. As unions could not be legally established without government intervention, the president's order effectively denied the right of unionization to more than one-third of the country's labor force.

This misguided policy was reaffirmed and further developed by Presidents Aguirre (1938-41), Ríos (1942-46), and González (1946-52). On the surface, it seems surprising that Aguirre should have given in to the landowners' demands. After all, the Popular Front coalition had been elected on a platform that envisaged improving conditions in the agricultural sector. Yet, Aguirre's policy is not surprising, as the prevailing governance pact protected the interests of landowners. The issue of the unionization of agricultural workers did not, however, disappear from the political agenda. It was revived in 1946 when the Communist Party, as a member of the coalition that had supported the González administration, spearheaded a new drive to organize agricultural workers. The president, however, once again gave in to the landowners, brought the process to an end, and shortly thereafter expelled the communists from government (Carrière 1981:41-164). In 1947, he introduced legislation to regulate the unionization of agricultural workers. This new law, presented as a device to promote unionization, had the opposite effect. It imposed strict conditions on the establishment and operation of unions. Agricultural unions could be established only in enterprises employing more than 20 workers. Union members had to be over 18 years of age, in employment at the relevant enterprise for more

than 1 year, and at least 10 of the would-be members had to be literate. The requirement that unions could be established only in estates employing more than 20 workers effectively excluded more than 85 percent of agricultural workers. Moreover, the literacy requirement was also a serious obstacle to unionization, as illiteracy in rural areas was about 35 percent. The law also included provisions that prohibited strikes and required compulsory arbitration. Given the features of this law, it is not surprising that, during its 17 years in force, only 24 agricultural unions were established, of which less than half were able to carry out their function (Affonso 1972:53-55). Discrimination against agricultural workers continued for 20 years more, until 1967, when the law finally acknowledged that, under the constitution, they had the same rights as workers in other sectors of the economy.

Overcoming Labor Regulation

Workers in the manufacturing and mining industries and in the public sector fared better than agricultural workers. Nonetheless, they had to contend with labor regulation that had been especially designed to discourage the exercise of union rights. As explained in the preceding chapter, the rules on unions, collective bargaining, and strikes suggest that the main objective of the Labor Code was to contain and fragment the labor movement. A special concern of labor legislation was to ensure that unions concentrated solely on representing the interests of their members and did not become involved in politics. In practice, the consequences of labor law were mixed: while on the one hand, the law undoubtedly contributed to shaping union structures and practices, on the other, it was unable to prevent the emergence of a highly politicized union movement.

The relatively low levels of unionization during this period are partly attributable to the restrictive provisions of the Labor Code. Indeed, until the early 1960s, the rate of unionization stood at only 10 percent of the workforce. It was only between 1965 and 1973 that the rate of unionization sharply increased, first to 20 percent in 1970 and then to 30 percent in 1973 (Sader 1973:37). The Code required a minimum of 25 workers for the establishment of plant unions and prohibited the creation of unions across enterprises or in the public sector. Despite these restrictive provisions, workers who were not formally allowed to form unions did establish organizations, which, though legally not unions, performed the same functions and were acknowledged as genuine representatives of their members' interests. Such was the case of the association of white-collar municipal workers, the association of

blue-collar municipal workers, the association of central government employees, and the association of public sector workers (U.S. Department of Labor 1969:33). Likewise, the Code's provisions prohibiting the establishment of labor federations and confederations were also ignored. National labor confederations were some of the oldest institutions of the labor movement. The first national federation of unions, the FOCH, was established in 1909, long before the law even acknowledged the existence of unions. In 1936 another labor confederation was established, the CTCCH, and finally in 1953, yet another confederation, the *Central Unica de Trabajadores* (CUT), emerged. All these national confederations played a major role in national politics, although, under the terms of the Code, they were illegal. The CTCCH was a member of the Popular Front coalition. The CUT, for its part, acquired enormous political influence as it represented about 75 percent of unionized workers (U.S. Department of Labor 1969:33). It should be noted that many of the unions affiliated to the CUT were also illegal, as was the case of the association of central government employees and the association of public sector workers. The Code's elaborate provisions on strikes also proved ineffective as they were so complex and formalistic that, in practice, they were largely ignored. Indeed, as more than 50 percent of strikes were illegal, the distinction between legal and illegal strikes became meaningless (Jetswaart 1978:292-293; Loveman 1979:266).

The Labor Code's objective of depoliticizing the union movement was further undermined by the interplay between the limited the scope of its provisions on collective bargaining and the governments' attempts to take tough measures to control inflation. Indeed, as unions at the local level virtually had no bargaining power or capacity to press for wage increases, they naturally sought the assistance of other unions and political parties. Thus, the limited scope of the collective bargaining system operating within a highly inflationary context had the effect of instantly transforming local demands into national struggles, for it was at the national level that union leaders could find solution to their demands for higher wages (Angell 1972:36; Barrera 1979:40; Morris 1966:18-19). The politicization of wage demands served to reinforce the political prominence of the CUT during the late 1950s and throughout the 1960s.

Unions and Political Parties

While some of the provisions of the Labor Code had the unintended effect of politicizing the union movement, the political prominence of

unions during the late 1930s and early 1940s was largely due to their close links with the Marxist parties. These links date back to 1917, when the Communist Party, known at the time as the Socialist Workers' Party (*Partido Obrero Socialista*), took over the leadership of the FOCH. Shortly thereafter, the FOCH issued a manifesto calling for the abolition of capitalism (Angell 1972:59). During the first Ibáñez administration (1926-31), the FOCH was severely repressed as the government sought to break the ties between the unions and political activists, especially Marxists. By 1931, when the Ibáñez administration collapsed, FOCH membership had plummeted from nearly 80,000 in the mid-1920s, to a few thousand members (Valenzuela 1979:567).

In the early 1930s, the reconstitution of the labor movement began in earnest, and, by 1936, the Socialist and Communist Parties joined forces to support the establishment of the CTCH, which became a member of the Popular Front coalition, and, for all practical purposes, was an extension of the Marxist parties. Thus, when the Popular Front coalition won the elections of 1938, communists and socialists could convincingly claim that working-class support for the new government was largely due to their tight control over the CTCH. The close relationship between the CTCH and the Marxist parties gave their leaders some influence on policy decisions, especially during the early days of the Aguirre administration (1938-41). Yet, on balance, this relationship had disastrous consequences for the labor movement. Although unionization in the 1940s amounted to only 10 percent of the workforce, the CTCH represented the vast majority of organized workers. Its political influence was thus crucial, especially because it represented the powerful unions in the mining and manufacturing sectors. This influence was magnified, as at the time, the number of unionized workers was high in relation to the size of the electorate. In the 1940s, while the number of registered voters was roughly half a million, total union membership was 250,000. Thus, through their control of the CTCH, the Marxist parties had a solid electoral base that made them attractive partners in government coalitions. This fact was candidly acknowledged by President González (1946-52), not long before he launched a major repression against the union movement (Urzúa 1968:151). On balance, however, the close relationship between the CTCH and the Marxist parties was negative. Bitter competition between communists and socialists over the leadership of the labor movement, as well as over their respective roles in coalition governments, contaminated the union movement. In 1946, this rivalry brought about the division of the CTCH into two confederations, one controlled by the communists and the other by the socialists

(Drake 1978:279-281). Thus, only ten years after the establishment of the CTCH, the unity of the labor movement was shattered, leaving workers with no effective organ to voice their interests.

The labor movement soon recovered from the debacle of the late 1940s. After patient work, done largely by white-collar workers, the labor movement came together in 1953 under the umbrella of a new confederation, the CUT. Leaders of the CUT had been at the forefront of workers' struggles at a time when internal divisions paralyzed the Socialist Party and the Communist Party was severely restricted by the legal ban. The undisputed union leader at the time was Clotario Blest, a devout Catholic and a fiercely independent white-collar worker. Having learned a bitter lesson from the 1940s upheaval, Blest was determined that unions should not be used to further the electoral ambitions of any political party. Initially, his determination to keep political parties at arm's length proved successful. Eventually, however, the Communist and Socialist Parties managed to remove Blest from office and thus, once again, the interests of the union movement were subordinated to the interests of the political parties.

Ironically, when the communists and socialists reasserted control over the movement their objective was to curb the radicalism of the CUT. Indeed, after narrowly losing out on winning the presidency in 1958, the Marxist parties became aware that CUT radicalism would undermine their bid for the presidency in 1964. Yet, for the Marxist parties getting rid of Blest was easy, they soon discovered they were no longer the only political force among organized workers. In the past, the Radical Party had gladly played the role of the center party without attempting to challenge the influence of Marxist parties among workers in mining and manufacturing. In the early 1960s, however, they faced the challenge of the CDP, a party determined to change the mould of politics and to create its own base among organized workers and the urban poor. The challenge posed by the CDP disconcerted the Marxist parties and prompted an interesting and unusual public debate between the leadership of the Socialist and Communist Parties (Halperin 1965:144-158). The communists were keen to include the CDP into a broad political alliance for social and economic reform. The socialists were strongly opposed to any form of alliance with the CDP on the ground that it was a bourgeois party firmly on the side of capitalism and, as such, uninterested in pursuing meaningful social and economic change. Underlying their opposition was their awareness that an alliance would be led by the CDP and that they would be relegated to a subordinate position. But beyond electoral calculations, the Marxist parties were threatened by the CDP because of its enormous

popular appeal and its determination to undermine their influence within the labor movement.

End of Party Democracy

Consequences of Electoral Mobilization

Party democracy brought about a large expansion of the electorate. From 1932 to 1964, the electorate expanded from 10 percent of the population (half a million people) to 35 percent (just under three million) (Borón 1971b:47, 51). A major factor accounting for this increase was the extension of the vote to women. The liberals of the nineteenth century had completely neglected the political rights of women. Worse, in 1884, as liberals sought guarantees to ensure the secrecy of the vote, they endorsed a law explicitly excluding women from voting. This is the situation that prevailed until 1935, when women were given the vote, but only in municipal elections. It was not until 1949 that the legislature finally extended full voting rights to women (Borón 1971a:409).

The belated recognition of political equality places the achievements of the period of party democracy in perspective and also contradicts the view that the period of coalition governments constituted the heyday of democracy. The late extension of political rights to women is revealing of cultural mores as the provisions of the 1925 constitution on the right to vote were gender-neutral. Given the political influence acquired by unions between 1938 and 1949, the exclusion of women during this period is astonishing as, throughout the time that working-class organizations were struggling to establish a political identity, women had been actively involved in the emerging union movement. By 1912, one-third of factory workers in Santiago were women. They actively participated in strike action and belonged to unions affiliated to the FOCH (Hutchinson 2001:5, 47, 67, 74-76; Lavrin 1989). It thus seems that while male-dominated unions were willing to support women's struggles at the union level, they had no interest in helping them secure the extension of the franchise. At the wider political level the Marxist parties also neglected women's rights (Rosenblatt 2001). Indeed, as the political strength of the Marxist parties was largely determined by their influence within the union movement, they neglected electoral mobilization altogether. In fact, during the time that the Marxist parties were active in government coalitions, the size of the electorate declined from 10 percent of the population in 1938 to 9 percent in 1949 (Borón 1971b:51). The

expansion of the electorate began only after the extension of the franchise to women in 1949 and acquired new impetus after the electoral reforms of 1957.

Electoral registration of women proceeded slowly. The proportion of eligible women that actually registered to vote rose slowly during the 1950s, from 27 percent in 1952, to only 42 percent in 1961. It was only in 1964 when mobilization intensified, that 77 percent of women eligible to vote registered and 74 percent of those who were registered exercised their rights (Borón 1971a:429). The main party promoting the registration of women was the CDP. The Marxist parties were slow to respond, as they feared that women would support the traditional parties. Their fears were not groundless. In 1952, most women supported the populist alternative offered by Carlos Ibáñez. In 1958 and then again in 1964, the majority of women voted in favor of Alessandri and Eduardo Frei, respectively. It was only after 1964, that the Marxist parties managed to get a respectable share of women's vote.

A Divided Majority

The main beneficiaries of the expansion of the electorate were the CDP and the two Marxist parties. Alessandri's electoral victory in 1958 in fact marked the electoral decline of the right-wing parties. By the late 1950s, the right-wing parties represented less than one-third of the electorate, while, on the eve of the 1964 presidential elections, the combined electoral strength of the CDP and Marxist parties was easily more than half of the electorate. The massive swing to the left raised fears among right-wing parties that Salvador Allende, the perennial Marxist candidate, would win the presidency. To avert this possibility, they attempted to form an electoral alliance with the ailing Radical Party, which had moved to the right after being displaced from the center by the CDP. Yet, the continuous electoral growth of the Marxist left, particularly in rural areas, caused such panic among Conservatives and Liberals that they abruptly terminated their alliance with the Radical Party, and sought instead an alliance with the CDP. Even though Eduardo Frei, the CDP candidate, unequivocally rejected the offer, the right-wing parties ordered their members to unconditionally support him. Thus, the fear of Marxism forced the right-wing parties to take a humiliating decision that would have been unthinkable in the early days of party democracy.

The right-wing parties' decision to unconditionally support the CDP proved disastrous. As predicted by Francisco Bulnes, a prominent Conservative Party member who had opposed the decision, the

right-wing parties lost the loyalty of their traditional supporters (Pereira 1994:282). Indeed, in the congressional elections of 1965, the electoral support of the Conservative and Liberal Parties was reduced to 5 percent and 8 percent, respectively, thus virtually wiping out their representation in the congress. These bleak electoral prospects led to the dissolution of these parties and to the creation of a new party, the National Party, which included former right-wing supporters and an assortment of Far Right nationalist groups that in the past had supported Ibáñez.

As the electoral strength of the Right declined, support for the CDP and the Communist and the Socialist Parties increased sharply. This trend suggests that there might emerge a reform-minded coalition of parties that would finally tackle the persistent economic problems that previous administrations had failed to resolve. This expectation was not altogether unreasonable, as the two Marxist parties and the CDP drew inspiration for their economic policies from the same source: the United Nations Economic Commission for Latin America and the Caribbean. They both agreed that purely market-based economic policies would not resolve the country's economic problems. They also agreed that the persistent inflationary process was caused by a structural imbalance within the economy. Accordingly, they called for the modernization of the agricultural sector through an agrarian reform that would significantly restructure property relations in the countryside and at the same time would recognize the political and social rights of agricultural workers. They also believed that the state should have a greater involvement in the production and marketing of copper in order to secure a fairer and more stable share of revenue from copper exports. Their expectation was that the reform of the agricultural sector would generate sufficient financial resources to revive the economy. Both Marxist parties and the CDP also called for a substantial redistribution of income to expand the domestic market and to bring about greater social justice. Yet, despite the policy convergence, relations between the Marxist parties and the CDP seriously deteriorated, and by the early 1960s they were involved in a persistent feud. In addition to competition for organized workers, two other factors conspired to divide them. One was the hostility of the Catholic Church toward Marxism. As it regarded Marxism as an atheist ideology, it was difficult, if not impossible, for Catholic parties to form alliances with Marxist parties, and even to vote for a Marxist candidate. Indeed, it was only in the late 1960s, when a group of left-wing parliamentarians resigned from the CDP, that Catholics began to feel free from political alliances with Marxists (Smith 1982:126-178).

The other, and more lasting, reason that kept the progressive parties divided was the covert intervention by the United States in the electoral process. At the time, the United States' main policy objective in the region was to isolate Castro's Cuba. Hence, the possibility that a Marxist should win the presidential elections in Chile was a source of serious concern. Therefore, Washington had a strong interest in adding fuel to the fire of dispute between the CDP and the Marxist parties. Thus, during the 1964 presidential elections, the United States covertly financed a campaign in the local media, depicting Salvador Allende as undemocratic and as a puppet of the Soviet Union (Hersh 1982). Although Eduardo Frei, the CDP candidate denied having had any involvement in this campaign, he benefited from it, as it enabled him to win the election by a comfortable margin. Not surprisingly, when Frei took office in 1964 relations between the CDP and the Marxist parties became bitter and were to deteriorate even further over the subsequent nine years.

Conclusion

Consensus on economic policy in the late 1930s made possible the consolidation of party democracy. Although initially neither the right- nor the left-wing parties were fervent democrats, by the early 1960s, the authority and legitimacy of the constitution was beyond dispute. But the consensus on economic policy had serious limitations. It did not address the inefficient and socially backward agricultural sector and it restricted workers in the exercise of their rights. Consequently, the political system remained static from 1932 to 1952. Moreover, while the consensus on economic policy was successful in securing political stability, it was not so in promoting economic growth or even in containing inflation. By the early 1950s, party democracy was in disarray. It was rescued, albeit unintentionally, by Carlos Ibáñez, who, capitalizing on widespread popular discontent, managed to keep the constitutional system alive. The economic crisis diverted Ibáñez from his populist objectives and paved the way for two successive attempts to implement market-based economic policies. These policies failed, as they were resisted by the unions, center and left-wing parties, and even by prominent members of the private sector. Because attempts to implement these policies were accompanied by the progressive liberalization of a political system that had significantly expanded the electorate and lifted restrictions on trade union activities, a process of political radicalization began to take place. It crushed the electoral support of the right-wing parties and transformed the CDP and the

Marxist parties into dominant players within the party system. Thus, by the early 1960s the party system had undergone a major transformation. Political parties were focused in their objectives, and their ideologies were coherent. But they had also become more rigid and unwilling to form broad electoral coalitions. The union movement, for its part, was united, but the political parties had again asserted control over their leadership, and its independence was under threat. Business associations, which in the early days of the Popular Front had embraced the consensus on economic policy, were rapidly losing faith in the ability of the party system to represent their interests. Moreover, they were divided as the modest agrarian reform law enacted during the final days of the Alessandri administration had exposed serious divisions within the private sector. It was thus that, by 1964, party democracy gave way to radical democracy.

Chapter 5

Governance and Accountability

Introduction

Governance had some peculiar features under party democracy. The framers of the constitution intended to establish a strong presidential regime. In practice, however, the regime that emerged was a hybrid between presidentialism and parliamentarism, in which the political parties had a say in the making and unmaking of cabinets. Yet, although the autonomy of the president was significantly curtailed, there was, at the same time, a dramatic expansion of the regulatory powers of the executive in all areas of public policy, especially in matters concerning economic regulation. The expansion of the powers of the executive, however, was not done exclusively by the president. It was largely the outcome of concerted action by the president and the congress. Moreover, this process was carried out with little or no concern for the constitution or legal procedures, thus belying the general perception that legality was one of the main attributes of governance under party democracy.

The objective of this chapter is to unravel the maze of these seemingly contradictory features. The first section explains how the political parties tamed presidentialism and why, despite the enormous expansion of executive power, leading politicians believed that the office of the president needed further strengthening. The second section examines the process that led to the expansion of executive powers in the areas of price controls and state security. The final section focuses on the legality review procedure administered by the Office of the Comptroller General (*Contraloría*) and explains how it came to be regarded as an effective restraint on the exercise of executive power.

Taming Presidentialism

Reviving Parliamentarism

The main objective of the drafters of the 1925 constitution was to establish a strong presidential regime, based on the 1833 constitution. Accordingly, executive power was vested in the president, who was the head of government and chief administrative authority. The president was elected for a six-year period by direct popular election and he or she could not stand for reelection. Cabinet members were appointed by the president and were directly accountable to him. They could not be removed by the congress on political grounds. Members of the congress were not allowed to hold cabinet posts, and this emphasized their independence from the executive. The regime established by the constitution was thus unambiguously presidential. In practice, however, the party system transformed it into a hybrid that had many features of the old parliamentary republic.

Political parties during this period had a say in the composition and stability of cabinets. Members of political parties could not be appointed to the cabinet without the agreement of their party. Likewise, they could remain in office only as long as their parties supported the government. An early acknowledgment that presidents could not afford to ignore the views of the parties in the congress came from none other than President Arturo Alessandri, who, in the 1920s, had been a leading proponent of presidentialism. Addressing the congress in 1936, he admitted that, although the constitution gave him exclusive power to choose his cabinet without intervention by the congress, his administration had always sought to ensure that those appointed to the cabinet were acceptable to the parties controlling the majority of seats in the congress "as if we still lived under a parliamentary regime" (Donoso 1976:336). Alessandri's approach was adopted and further developed by the Aguirre, Ríos, and González administrations. Initially, President Aguirre tried to assert his constitutional prerogative to appoint and remove ministers, but he did not have the support from his own party. Thus, in the end, after the Radical Party instructed its members to withdraw from the cabinet, President Aguirre had no choice but to accept their resignations. President Ríos, who was more concerned with the survival of his administration than with the integrity of the presidential regime, actively sought the support of political parties in exchange for cabinet posts. His views on the matter are clearly expressed in his statement to the congress: "I hope for and expect the support of all political parties and I am willing in exchange to acknowledge such support with posts in the cabinet" (Ríos 1943:iv).

President González followed a similar policy. Indeed as he had only obtained plurality of the vote and it fell upon the congress to choose between him and the runner-up, he was forced to do a deal with the Liberal Party. In exchange for their support in the congress, the Liberals were given three cabinet posts (Loveman 1976:124).

The intense participation of political parties in the making and unmaking of cabinets undoubtedly contributed to the invigoration of the system of coalition politics. However, it also brought about permanent cabinet instability that significantly weakened the role of the president within the political system (Abbott 1951:450-451). Between 1942 and 1952, cabinets lasted an average of six months. The Aguirre administration (1938-41) had 44 ministers, the Ríos administration (1942-45) had 84, the González administration (1946-52) had 73, and the Ibáñez administration (1952-58) had 75 (Valenzuela 1994:128). The mindless tussle for cabinet posts also brought about a dangerous fragmentation of the parties. The prize of a seat in the cabinet encouraged dissident factions in every major party to set up miniscule parties. Factionalism was encouraged and promoted by the president of the day, who generally rewarded leaders of small factions with cabinet posts. However, their period in office was invariably brief, as coalitions were shaky and splinter groups in other parties were ready to replace the incumbents. Thus, cabinet instability and the fragmentation of the party system seemed to go hand in hand.

Demanding a Stronger President

As the party democracy period drew to a close, the perception of leading politicians was that the executive was weak and that if improvements in the quality of governance were to be made, a fundamental redesign of the office of the presidency was required. This perception is surprising, given that in the 1940s—as explained in the section that follows—an enormous concentration of power on the executive had been taking place. It seems, however, that what lent credence to this perception were the disappointing results of the economic policies implemented in the 1950s and the surge of popular mobilization in the early 1960s. Thus, reflecting the view that not all was well with governance, Jorge Alessandri, just before leaving office, submitted to the congress a constitutional amendment designed to strengthen the powers of the president (Alessandri 1964). Although the amendment stood no chance of approval and was, in fact, not approved, it provided Alessandri with the opportunity to formally express his opinion about the weaknesses of the political system. This amendment merits

attention, not only because it contains Alessandri's views, but also because his views were shared by Eduardo Frei, his successor. Indeed, shortly after taking office in 1964, Frei proposed a constitutional amendment—which was also later rejected—that in many respects was similar to Alessandri's proposal (Frei 1964).

The constitutional amendments proposed by the two presidents were in agreement on the fundamental point that it was necessary to strengthen the powers of the president in order to revitalize the political system. According to Alessandri, the office of the presidency had to be strengthened because only presidents were capable of safeguarding the interests of the nation as they had a proper perspective on the common good of the nation. The congress, according to Alessandri, lacked such perspective because petty regional interests dominated it. Alessandri also believed that it was indispensable to strengthen the powers of the president in order to contain and channel the growing demands for social and economic change (Alessandri 1964:1158). Frei, who in 1964 was about to launch a massive program of social and economic reforms, shared Alessandri's view that it was necessary to strengthen presidential powers. However, his objective was different. He regarded a strong presidency as indispensable, not to contain, but effectively to respond to demands for social and economic change. Indeed, what Frei sought was a mechanism that would provide incoming administrations with broad powers to implement their political programs, thus circumventing delay and obstruction by the congress (Frei 1964:280). Thus, Alessandri and Frei agreed, albeit for different reasons, on the need to shift the balance of power in favor of the president.

The argument in favor of strengthening the presidency was based on the view that the congress consistently undermined the president. This view, however, is surprising, as throughout the 1940s congress had seldom refused to expand the powers of the executive. Even in the 1950s, after the demise of the system of coalition governments led by the Radical party, the congress had continued to behave sensibly toward the executive. Indeed, despite his rebuff of political parties, Alessandri successfully secured congressional approval for his major legislative initiatives (Hughes 1971:62–64). Moreover, on at least six occasions the congress approved laws delegating broad legislative powers on matters ranging from the restructuring of the civil service, to the establishment of a new foreign investment regime, tax reform, and the development of a comprehensive legal framework for a new housing policy (Evans 1970a:144). Frei also secured congressional approval for the most important components of his program, even though his party never had an overall majority in the congress (Agor 1971:137).

An area where the congress did in fact disrupt government plans was public expenditure. Here, members of the congress had considerable scope to propose legislation that could derail public expenditure programs and undermine policies designed to contain inflation. Thus, not surprisingly, the rules governing public finance and expenditure were a continuous source of dispute between the executive and the congress. Under the 1833 Constitution, the congress had often created disruption to government policy by delaying the approval of the annual budget. Indeed, President Balmaceda's opponents had successfully used this tactic in the 1890s. The 1925 Constitution introduced a provision to remedy this problem. It provided that in the event of delays in the approval of the budget, the current budget would automatically extend for one more year. The constitution, however, did not set clear rules regarding who was entitled to initiate legislation authorizing public expenditure. As a consequence, members of the congress, through parliamentary motions, incessantly introduced legislation to increase public expenditure, thus disrupting government control over public finance. In 1943, a constitutional amendment attempted to resolve this problem. It provided that only the president could initiate legislation to establish new posts or to increase salaries in the public sector. The 1943 amendment, however, did not clearly define the responsibilities between the president and the congress. While the amendment did not allow members of the congress to introduce bills raising salaries in the public sector, it did not prevent them from introducing bills calling for pay increases in the private sector. Thus, members of the congress regularly introduced legislation providing for mandatory pay increases for workers in the private sector at rates generally higher than those set by the government for public sector workers. This practice undermined the government's efforts to control inflation, as it encouraged public sector workers to demand further pay increases (Alessandri 1964:1161). Moreover, as members of the congress were also allowed to introduce bills on matters concerning social security, there developed a chaotic social security system with a variety of special regimes for selected groups of workers (Borzutzky 2002:45–69). This problem was not resolved until 1970 when congress approved a constitutional amendment that gave the president exclusive legislative initiative on matters concerning public expenditure (Evans 1973:33–170). At the time, this amendment was strongly criticized on the ground that it was establishing a presidential dictatorship.¹ This criticism, however, was misplaced for this amendment merely gave effect to the principle that the executive, whether in a parliamentary or in a presidential regime,

should have control, as well as responsibility, for the management of public finance.

It is undeniable that despite the enormous concentration of power on the executive, successive presidents found it increasingly difficult to implement their programs. Yet, contrary to the assessment of both Alessandri and Frei, these difficulties did not stem mainly from congressional obstruction. In the 1940s, when the electorate was small, presidents had a good working relation with the congress, although not necessarily with their individual parties. Yet, as explained in chapter 4, even during the 1940s presidents did not have full control over the political agenda because of the constraints imposed on them by the limits of the import substitution policy. Nevertheless, during the 1940s, the congress and the president shared common objectives: maintaining economic and political stability. That is why presidents could always find parties in the congress that would endorse their legislative proposals. Parties, though, on the whole, faithful to their ideologies, enjoyed considerable flexibility, as their constituencies were small and relatively stable. In the late 1950s and early 1960s, however, as electoral participation expanded to include nearly all the adult population and organized labor became more militant, the political dynamics changed. Political parties lost their flexibility as they could not easily postpone or abandon the aspirations of their constituencies or the promises made in their electoral manifestos. As parties began more seriously to promote the interests of their constituencies, their opposition to government policies became more forceful, which brought about an increase in political mobilization. Although Alessandri and Frei managed to secure approval of their legislative programs, the difficulties they faced in their implementation was not due to the formal powers of the congress, but to fundamental changes in political behavior. Tinkering with the constitution would not have resolved this issue.

Expansion of Executive Powers

The transformation of the presidential regime into a hybrid between presidentialism and parliamentarism enabled presidents to establish good working relations with the congress. So stable were the relations that during this period the congress rarely refused to delegate powers to the executive. The powers granted to the executive by the congress were often exorbitant, sometimes unconstitutional, and generally not subject to any form of judicial control. Moreover, in addition to seeking delegated power from the congress, the executive frequently further

extended these powers through executive decrees or regulations. This section examines how the expansion of executive power came about in two key areas of policy: price controls and state security.

Price Controls

The economic crisis of the late 1920s and early 1930s brought about the establishment of several mechanisms to regulate the economy. Prominent among these was a system of price controls that soon developed into a comprehensive instrument of economic regulation. It gave government officials extensive powers, including the power to requisition goods and production facilities, to set production targets, and even to expropriate these enterprises if targets were not met.

The price of food became a major political issue in the early years of the twentieth century, as the process of urbanization accelerated. Between 1875 and 1895, the market for commercial agriculture doubled, and it doubled again in 1920 (Wright 1982:100). The Great Depression complicated matters, as the collapse of nitrate revenue seriously disrupted the supply of foodstuffs and other basic consumer goods. Thus, by the early 1930s various administrations began experimenting with mechanisms to control the price of basic consumer goods. The mechanism that proved most durable was Decree Law 520 of 1932 (DL 520). DL 520 established the Prices and Subsistence Agency (PSA), which was given broad powers to regulate the production, distribution, transport, as well as import and export of any basic consumer good. The PSA could fix prices for basic consumer goods and set output targets for enterprises producing these goods. It could also restrict the number of distribution outlets and impose import and export restrictions on essential consumer goods (Talesnik 1940:73; Von Brunn 1972:68-73). DL 520 also gave the PSA broad enforcement powers. It could, without prior judicial authorization, request the assistance of the police to enforce any of its decisions (Talesnik 1940:71-72). In the event of noncompliance, the PSA could either levy fines or requisition basic consumer goods and sell them directly to the public. It could also order the expropriation of enterprises that did not meet production targets set by the PSA. The activities of the PSA were not subject to any form of judicial control, with the exception of fines and sanctions that involved imprisonment. The only control exercised over the PSA was the legality review administered by the comptroller general, which, at the time, was mostly ineffective.

Given the exorbitant powers of the PSA, it is not surprising that upon the restoration of democracy in 1932, the business community

raised questions about the constitutionality of DL 520, which was one of nearly 700 decrees enacted by one of the four *de facto* administrations that ruled the country between June and September 1932. Under the terms of the constitution, Decree Laws were invalid, as they had not been approved by the congress. But the possibility of challenging the constitutionality of DL 520 was preempted when, in the same year, the Supreme Court held that Decree Laws enacted by *de facto* administrations could not be challenged solely on the ground that they had not been enacted in accordance with the procedures prescribed by the constitution (Aylwin 1952:210; Silva Bascuñán 1963:3:440). After this decision, the business community turned to President Alessandri and requested him to repeal the Decree (Talesnik 1940:72). The president responded promptly, appointing a committee of prominent lawyers to examine these allegations. The committee's view was that DL 520 was unconstitutional. Yet, the president did not repeal it. Instead, over the years, DL 520 was the object of several amendments and it not only validated, but also significantly expanded the scope of the powers of the executive and transformed the original price control mechanism into a comprehensive system of economic regulation (Talesnik 1940:72, 98).

Having failed to secure the repeal of DL 520, business associations turned their attention to its implementation. Their concern stemmed from the tendency of the executive to continuously stretch the powers of the PSA beyond the limits set by DL 520 (Aramayo 1964:113-114). These concerns came to a head in 1945 when the PSA issued a decree requiring business enterprises to make contributions to fund clothing and foodstuffs for the poor (Soto 1972a:63). Several business associations made strong representations to the government about the legality of this decree. Realizing the legitimacy of the grievances of the business community, the government appointed an interdepartmental committee to defuse the situation. The committee was to draft regulations that were meant to clearly define the jurisdiction of the PSA.

The new regulations, however, gave rise to even greater controversy, as instead of clarifying the PSA's jurisdiction they expanded it. While under DL 520, the PSA could requisition essential consumer goods when they were not sold at the price fixed by the government, the new regulations dramatically expanded the scope of these powers. The regulations authorized the PSA to take over the administration of enterprises involved in the production or commercialization of any basic consumer good if it deemed that this measure was necessary to ensure adequate and prompt distribution of such goods (Aramayo 1964:108; Makluf 1973:160-161). The new regulations outraged the

business community and prompted the leading business associations to demand their immediate withdrawal. (Soto 1972a:65-68). The under-secretary for economics, who had chaired the committee that drafted the regulations, conceded that the regulations did stretch the powers of the PSA beyond the limits set by DL 520 and promised that they would be amended. As the regulations were not amended, a group of parliamentarians sought to impeach the minister of economics for abuse of power (Soto 1972a:69-70). The motion of impeachment, however, failed, as it did not secure enough votes in the congress (Aramayo 1964:115). In 1945, however, the congress impeached the comptroller general on several grounds, one of which was that he had failed to object to the legality of these regulations. Yet, a few years later, the congress enacted legislation that retrospectively validated both DL 520 and the controversial regulations (Soto 1972a:183). During the next two decades, successive governments made ample use of the price control mechanism. They also occasionally used the broad requisition powers (Santa María and Alessandri 1944). After 1945, however, as I explain in the section that follows, the comptroller general imposed some restraints on the exercise of these powers (Santa María 1972:25).

State Security

The expansion of executive powers in the area of price controls went hand in hand with the expansion of powers in state security. This process was carried out with little concern for basic rights guaranteed by the constitution. Under the constitution, the use of emergency powers was vested primarily in the congress. Only in exceptional circumstances was the president authorized to use these powers without the consent of the congress. The powers of the congress and the president in this area were briefly as follows: the restriction or suspension of certain constitutional rights could only take place with the approval of the congress through special emergency laws (*leyes de facultades especiales*). These laws could be enacted only in exceptional circumstances to safeguard the security of the state. In the event of serious domestic unrest, the congress was also empowered to declare one or more areas of the country in a state of siege. The president, for his part, also had the power to declare a state of siege in case of domestic unrest, but he or she could do so only when congress was not in session. In addition, the president could declare a state of siege in the event of external aggression and a state of public alert (*estado de asamblea*) in case of war (Mera et al. 1978).

The powers of the president under a state of siege were strictly regulated by the constitution: he or she could transfer persons from one district to another and could detain them in their homes or in locations other than prisons. Special emergency laws, on the other hand, could have a wider scope. These laws could suspend the right of assembly and restrict personal liberty and freedom of the press, but could only remain in force for a maximum of six months. The constitution also provided that emergency measures could not undermine the jurisdiction and authority of ordinary courts or restrict the right of habeas corpus. These constitutional safeguards, however, were largely ineffective.

After the restoration of democracy, governments made extensive use of emergency powers. Between 1932 and 1957, the congress approved ten emergency laws and presidents declared a state of siege on at least ten occasions (Caffarena 1957:22). Most of these special emergency laws were in force for the maximum allowable time of six months, so altogether, they had the effect of suspending or restricting basic constitutional rights for nearly five years (Silva Bascuñán 1963:2:363). The first emergency law of this period, approved in 1933, became the model on which subsequent emergency laws were based (Estévez 1949:396). It contained broad provisions restricting personal freedom beyond the limits allowed by the constitution. It gave administrative authorities the power to order house searches and to place individuals under surveillance and house arrest without intervention by the courts (Caffarena 1957:122). In 1937, a newly enacted State Security Act introduced additional restrictions on civil and political rights. Although this act was only meant to target subversive activities within the military, its tentacles extended beyond its original objective. As well as severely punishing anyone who incited the armed forces to disobey orders or encouraged others to disturb public order, the act gave broad powers to the president to order the dissolution of any organization which, in his view, aimed to disrupt social order or used flags or emblems of a revolutionary nature. The State Security Act of 1937 was a prelude to the much tougher law, the State Security Act of 1948. This Act banned the Communist Party and relegated its leaders to remote parts of the country. Party members were disenfranchised and banned from employment in the public sector (Estévez 1949:408-445). The anticommunist focus of the 1948 Act was warmly welcomed in Washington, as it was consistent with the emerging cold war ideology. Indeed, there is evidence to suggest that the adoption of the 1948 State Security Act was forced upon the government as a condition for Chile to become eligible for American foreign aid (Faundez 1988:74-75).

The 1948 Act was as much against organized workers as it was against communism. Indeed, it is arguable that the anticommunist provisions of the act made its antiunion provisions acceptable to moderate members of the congress. The act curtailed the right to strike. Under the Labor Code the president had sweeping powers to break strikes and broad powers to issue decrees known as back-to-work decrees (*decretos de reanudación de faenas*), whenever a strike posed a threat to public health or to the economy. Once these decrees were issued, workers had to immediately report to work while the dispute was submitted to compulsory arbitration. The State Security Act of 1948 further expanded the power of the executive to break strikes. It gave the president the power to issue back-to-work decrees in the event of strikes in the public sector or in industries deemed to be vital for the economy. Moreover, and consistent with the trend of excluding the judiciary, labor law decisions taken by the executive under the act were not subject to review either by labor courts or by any other court (Cabrera 1971:246-247). The antiunion provisions of the 1948 Act were strictly enforced and they had a more lasting effect on the legal system than its anticommunist provisions.

The expansion of powers in the area of state security also brought about the development of new legal concepts. One of these was the introduction in 1942 of the so-called emergency zones by law No. 7,200. The enactment of this law was prompted by a decision by the Third Inter-American Conference of Foreign Ministers following Japan's attack on Pearl Harbor. This decision called for hemispheric solidarity and cooperation to combat Axis political influence in the region. Under this law, the president could declare emergency zones in case of external aggression, foreign invasion, or sabotage against national security. This law was plainly unconstitutional, as it gave the president exclusive power to determine the existence of an emergency and to take measures to deal with such an emergency without any involvement by the congress. During the parliamentary debate, the government acknowledged that the bill was inconsistent with the constitution, but claimed that its enactment was necessary because of the international situation. It also argued that it was unlikely that, in practice, this law would affect individual liberties and political freedoms because it addressed mainly military matters of an operational nature. In any event, according to the government, these restrictions were temporary, as the new law would remain in force only for six months (Caffarena 1957:138).

As it turned out, however, the concept of emergency zones soon acquired a life of its own and became the instrument for repressing

and containing labor and other forms of political mobilization. As ever, the act significantly expanded the notion of emergency zones. Under its regulations, military officers in charge of emergency zones were given broad powers not only on military matters of an operational nature, but also on civil matters. The military commander had the power to control the movement of persons and goods to and from the zone, and his decisions were binding on all persons found within it. The powers given to military officers were unconstitutional and they contravened the government's assurance that the new law was meant to address only military matters of an operational nature (Schweitzer 1972:144).

The transformation of the six-month emergency zone provision into a permanent policy instrument was a complex process that involved several cross-references from one law to another and one regulation to another. The emergency legislation adopted after 1942 (Laws No. 8,837, 1947 and No. 8,940, 1948) retained the concept of emergency zones and sought to validate it by invoking as precedent Law No. 7,200 and its regulations, although neither this law nor its regulations were in force. In any event, this process of lateral validation was flawed, as both the law and the regulations invoked were manifestly unconstitutional. Moreover, the emergency legislation enacted after 1942 extended the application of emergency zones to matters of internal security (Mera et al. 1978:43). The evolution of the emergency zones mechanism entered a new phase in 1948 when law No. 8,960 gave the president the power to suspend the implementation of emergency zones decrees 15 days before any congressional election (Estévez 1949:445). The bizarre notion that an emergency could be suspended and reactivated suggests that emergency powers were used as an ordinary instrument of governance rather than as a device to deal with genuine national emergencies (Caffarena 1957:137).

The expansion of the emergency zone mechanism continued well into the 1950s. In 1958, a new State Security Act (Law No. 12,927, Section 31) revived the notion of emergency zones under the name of "state of emergency." Under the act, the president could only declare a state of emergency in order to protect the external security of the state. Not surprisingly, this restriction did not last long. Only two years after its approval, the congress amended it to authorize the president to declare a state of emergency in case of a public calamity. Although the objective of the amendment was to enable the government to deal with the consequences of a major earthquake, this new provision was regularly used to maintain public order. The notion of public calamity was also interpreted broadly to include any threat to

economic and political stability (Mera et al. 1978:54). The state of emergency powers thus became a powerful instrument to contain popular discontent, to break strikes, and to respond to any breakdown of law and order (Schweitzer 1972:164).

Restraining the Executive—the Contraloría

As noted above, the expansion of powers of the executive was carried out with little or no concern for constitutional or legal procedures. While the congress was willing to adopt state security legislation that was clearly unconstitutional, the executive behaved as if its regulatory powers were equal in status to ordinary legislation and thus interpreted them expansively to further increase its powers. Moreover, because the main objective of the expansion of powers was to enable the executive to handle economic and political emergencies, courts were consistently sidelined. While in the area of economic regulation, judicial review of administrative action was invariably ruled out, in the area of state security the role of the courts was kept to the minimum. The exclusion of courts from involvement in these areas of public policy reinforced the view among the political elite that executive action was unassailable and infallible. This process weakened the judiciary and had a lasting impact on the relationship between the political process and the legal system. I explore this issue in the chapter 6. In this section, I examine the role of the legality review procedure administered by Contraloría that was often regarded as an adequate substitute for judicial review.

The Legality Review Procedure: Background

The Contraloría was established in 1927 as part of a package of measures recommended by Edwin W. Kemmerer, a professor of economics from Princeton University hired by the government to advise on monetary, fiscal, and banking reform. The Contraloría's main objective, as envisaged by Kemmerer, was to support the enforcement of the new legislation on public finance. Its main tasks were to draw up public accounts and to monitor public expenditure (Drake 1989:103). The government accepted Kemmerer's proposals for the Contraloría, but introduced one important change. It gave the Contraloría authority to rule on the constitutionality and legality of government decrees. In this respect, the Chilean Contraloría is different from similar

agencies established during this period, also upon the recommendation of Professor Kemmerer, in other Latin America countries such as Colombia, Perú, Bolivia, and México (Drake 1989:104). The Contraloría was set up as an autonomous agency. The president with the consent of the senate appointed its chief officer, the comptroller general. In 1943, a constitutional amendment reinforced the independence of the Contraloría. It elevated it to the rank of a constitutional organ and gave the comptroller general the same security of tenure as enjoyed by members of the Supreme Court. Only the congress, through impeachment proceedings, could remove the comptroller general from office (Silva Cimma 1969:367-383). Between February 1932 and January 1967, there were five comptroller generals. The first three served six years each and the last two—who had close links with the Radical Party—served seven and eight years, respectively (see appendix D).

The objective of the legality review procedure was to ensure the consistency of government decrees, regulations, and other administrative acts with the terms set by the constitution and the law (Silva Cimma 1968:284). This procedure had several unusual features. First, unlike judicial review of administrative action, which takes place after administrative decisions are taken, the legality review procedure takes place before. Second, the agency in charge of carrying out the review was part of the central system of public administration, but independent from the government. Third, although the legality rulings of the Contraloría were not strictly binding, governments willingly complied. Despite these unusual features, over the years, this review mechanism became enormously important and played a critical role in shaping administrative practice.

The Contraloría was required to review all government decrees (*decretos supremos*) and regulations as well as other government orders and instructions within a fixed term of 30 days. The Contraloría could either approve or reject the decree in question. Only decrees approved by the Contraloría could take effect. In cases where the Contraloría objected to the legality of a particular decree, the decree in question was returned to the issuing agency with reasons for the decision. The issuing agency had three alternatives: first, it could accept the Contraloría's views and make the required changes; second, it could respond to the Contraloría's objections by offering further arguments or by supplying further information on the specific matter at issue; and third, it could override the decision of the Contraloría by means of a special presidential decree (hereafter, *decreto de insistencia*). The decision to issue this type of decree was not taken lightly: *decretos de*

insistencia had to be countersigned by all the members of the cabinet, and the Contraloría was required to forward it to the chamber of deputies. This referral provided the opposition with the opportunity to further scrutinize the government's decision.

The number of decrees subject to the legality review procedure was enormous, reaching approximately 200,000 per year in the 1960s.² To avoid overloading the Contraloría and to prevent excessive delay, the comptroller-general was allowed to exempt certain categories of decrees from the legality review procedure. The decrees so exempted amounted to approximately one-third of the total decrees issued each year. Moreover, in some areas of public policy—such as price and exchange controls—government decrees were allowed to take effect before the Contraloría ruled on their legality. Despite these measures, the legality review procedure imposed a heavy workload on the Contraloría. It also slowed down the administrative process, although complaints about bureaucratic delays did not single out the legality review as the main problem.

The legality review procedure was introduced in 1927 (Silva Cimma 1969:367-383). During its first 20 years, the Contraloría was largely ineffective, as it rarely challenged the legality of government decrees and, when it did, its rulings were either overruled or ignored. However, as the system of party democracy consolidated, the authority of the Contraloría within the political system increased and so did the efficacy of the legality review procedure. Two events account for these changes. First, in 1943 the Contraloría was elevated to the status of a constitutional organ and second, in 1945, the congress impeached the comptroller general for failing to adequately scrutinize the legality of government decrees. Taking notice of these events, the Contraloría significantly expanded the scope of its review powers. At the same time, government compliance with the legality rulings of the Contraloría dramatically improved.

There was, however, considerable confusion regarding the nature and limits of the legality review procedure. Initially, the Contraloría characterized its review powers as a formal jurisdictional check that was not concerned with the policy underlying the decrees under review. This characterization seemed appropriate, as the Contraloría had to distinguish its role from the policymaking role of the administration. After 1945, however, although the Contraloría significantly expanded the scope of its review powers, it did not attempt to develop an alternative conceptual framework. Although the expansion in the scope of legality review did not affect all areas of administrative practice in the same way and the legality review was not applied consistently, it

gave the Contraloría enormous power to shape the form and content of administrative action. Interestingly, however, these developments went largely unnoticed as both lawyers and politicians continued to regard the legality review procedure as a formal jurisdictional check and showed no interest in examining the Contraloría's practice. It was not until 1970, during the short-lived Allende administration, that observers finally realized that this obscure mechanism gave the Contraloría an inordinate amount of power (Soto 1977). This section explains how this improbable mechanism of control came to play such an important role and examines the factors that account for its success during the party democracy period.

A Narrow Approach: 1927-45

During its early years, the Contraloría displayed extreme deference toward the executive branch and, consequently, its approach to the legality review procedure was narrow. The Contraloría sought to ensure that the statute invoked as the basis for the decree was in force; that it granted the powers that the official issuing the decree purported to exercise; and that the official was acting within the time limits prescribed by the statute. Under this approach, the Contraloría did not inquire into the merits or the timing of the decision. In local legal parlance, the legality review was not concerned either with the "convenience" (*conveniencia*) or "timing" (*oportunidad*) of government decisions (Humeres 1971:209-211; Silva Cimma 1968:362).

This narrow approach to the legality review procedure is, on the surface, appealing. The following example illustrates this point. As noted in the preceding section, the Labor Code (Article 626) authorized the minister of labor to break strikes and order workers to return to work whenever, in his view, the strike "posed a threat to public health or general economic welfare." Under these decrees—known as back-to-work decrees (*decretos de reanudación de faenas*)—the government took over the administration of the relevant enterprise until the conflict was resolved. In order to safeguard the interests of the parties to the conflict and to secure the prompt resolution of the underlying conflict, the minister was also required to set in motion a conciliation procedure. Back-to-work decrees were thus conceived of as exceptional measures that temporarily suspended the right to strike. An interesting question raised by these decrees was whether the review powers of the Contraloría extended to the government's judgment as to whether or not the strike "posed a threat to public health or general economic welfare." Until 1945 the Contraloría took the

view that the assessment as to whether the strike posed a threat to public health or economic welfare fell exclusively within the jurisdiction of the executive, as this was a matter that concerned the "convenience or opportunity" of the decree.³

The Contraloría applied the same approach to the review of decrees in the area of price controls. The government had established a rent control scheme and had invoked as the basis for its authority a statute that gave the president the power to fix prices for essential commodities in the "general interest." This decree was arguably illegal as it was doubtful whether the enabling statute allowed the government to extend the system of price controls to the area of housing. The Contraloría, however, did not object to the legality of this decree because, in its view, only the government had the power to decide whether the extension of the price control scheme in the way proposed by the government was in the general interest.⁴

Comptroller General's Impeachment

Despite the Contraloría's extreme deference, the executive did not take the legality review seriously. Indeed, in order to circumvent it, the executive adopted the practice of issuing *decretos de insistencia* before forwarding the decree to the Contraloría. This anticipatory breach of legality—known locally as *decretos nonatos*—made the legality review redundant. Notwithstanding their manifest illegality, the number of *decretos nonatos* enacted between 1932 and 1942 was staggering: 116 between 1932 and 1937 (Alessandri administration); 65 between 1938 and 1941 (Aguirre administration); and 24 in 1942, the first year of the Ríos administration (Macías 1946:55).

During this period, the Contraloría also became involved in a series of disputes with the executive, all of them concerning public expenditure. In the mid-1930s, as the country faced serious economic problems, governments often exceeded the expenditure limits set by the annual budget. The Contraloría regularly objected to this practice, but was consistently overruled by the executive. Extensive use of *decretos de insistencia* enabled successive administrations to spend without any regard for the limits set in the budget. This situation prompted the congress in 1943 to adopt a constitutional amendment that expressly enjoined the government from overriding the Contraloría on matters relating to public expenditure. The amendment, however, allowed the government to spend up to 2 percent in excess of the amount provided for in the annual budget, but only in the event of national emergencies or natural disasters. As already noted, the 1943

amendment also elevated the Contraloría to the status of a constitutional organ and strengthened its independence from the executive.

The first indication that the congress was serious about strengthening the independence of the Contraloría and about ensuring the efficacy of the legality review procedure came in 1945, only two years after the approval of the constitutional amendment, when it impeached Agustín Vigorena, the serving comptroller general. Ironically, Vigorena—a distinguished lawyer and sometime dean of the University of Chile Law School—became the first victim of the constitutional amendment, although he had been one of its most enthusiastic supporters.⁵

Proponents of the impeachment claimed that the comptroller general had failed to fulfill his duty to control the legality of government decrees. In connection with so-called back-to-work decrees, they claimed that the comptroller general had merely rubber-stamped them because he had not required the government to produce evidence that the strikes in question did in fact endanger public health and general welfare. A similar allegation was made in connection with a decree that established a rent control system. In this case, the proponents of the impeachment claimed that the Contraloría should have ascertained whether the action by the government was “in the general interest,” as required by the enabling legislation. In his defense, the comptroller general argued that the decision as to whether the “general interest” required the enactment of back-to-work decrees fell exclusively within the jurisdiction of the administration.⁶ The government, according to the comptroller general, was the sole judge as to whether the general interest required issuing a back-to-work decree. On this question, the government had absolute discretion and, accordingly, the Contraloría could not substitute its view of the general interest for that of the government.⁷ The comptroller general made a similar argument in response to the allegation that he should have been stricter in the scrutiny of the decree that established the rent control scheme. According to the proponents of the impeachment, the rent control scheme constituted unlawful expropriation because it exceeded the powers delegated by the enabling statute. In his defense, the comptroller general argued that the Contraloría could not question the government’s interpretation because the enabling statute had given the president the power to fix prices for essential commodities whenever this course of action was required by the “general interest.” As a consequence, claimed the comptroller general, it was for the president and not for the Contraloría to judge whether a particular measure was required.⁸

The impeachment of the comptroller general posed a fundamental challenge to the way presidents had interpreted the scope of their regulatory powers. Its message to the executive was unambiguous: congress, though willing to delegate broad powers to the executive, was determined to ensure that presidents would not abuse these powers. Its message to the Contraloría was also clear: it called for a more comprehensive scrutiny of the legality of government decrees. Not surprisingly, the impeachment brought about a sharp reaction from President Juan Antonio Ríos (1941–45), who described it as unconstitutional and hinted that he would not accept its outcome.⁹ Leading figures in the senate strongly objected to the president’s response, describing it as irresponsible and a threat to the constitutional order.¹⁰ In the end, however, the president—who at the time was terminally ill—gave in and accepted the decision of the congress.

Legality Review Transformed

The impeachment of the comptroller general was a turning point, marking a shift in the Contraloría’s interpretation of its legality review powers. It transformed the legality review from a rubber-stamping device that governments either took for granted or could safely ignore, into a procedure that both the executive and the congress had to take seriously. The transformation of the legality review procedure was, however, gradual. The two administrations after Ríos, the González (1946–52) and Ibáñez (1952–58) administrations, though by no means scrupulous in the exercise of their regulatory powers, abandoned the practice of issuing *decretos nomatos* to circumvent the legality review procedure (Gil 1966:96). By the mid-1950s, compliance with legality review rulings increased and governments were reluctant to resort to *decretos de insistencia* to overrule rulings of the Contraloría. Indeed, as Silva Cimma reports, from 1956 to 1959, the executive did not issue a single *decreto de insistencia* (Silva Cimma 1968:368). The reluctance of the executive to overrule the Contraloría continued well into the 1960s. Between 1964 and 1969, the Contraloría reviewed, on average, approximately 200,000 decrees per year and raised objections to the legality of about 10 percent of them. The overwhelming majority of these decrees were amended by the government and subsequently approved by the Contraloría. During this period, the number of *decretos de insistencia* issued each year was rarely more than ten.¹¹

After the impeachment, the Contraloría expanded the scope of the legality review procedure also to include, in certain cases, a review of

the facts invoked by the executive as the basis for its administrative decisions. However, this process was somewhat erratic, as in some areas of administrative practice, the Contraloría applied strict criteria, while in other areas was more lax. In the two policy areas singled out in the impeachment proceedings—labor law and economic regulation—evidence suggests a major shift, as evidenced by the review of Contraloría underwent a major shift, as evidenced by the review of back-to-work decrees. As will be recalled, in his defense before the congress the comptroller general had argued that the review powers of the Contraloría did not extend to the minister's interpretation as to whether a particular strike endangered the health or welfare of the nation. After 1945, however, the Contraloría extended the scope of the review to include this component of back to work decrees (Oneto 1971:143; Yávar 1972:94). The Contraloría applied this broad interpretation of its review powers even to the review of back-to-work decrees issued under Article 38 of the State Security Act of 1958. This act gave the president sweeping powers to break strikes in the event of stoppages of industries or enterprises of fundamental economic importance. According to the Contraloría, its review powers extended to the president's identification of the enterprises that fell within the broad criteria set by the act. Applying this approach, the Contraloría ruled that the president could not invoke Article 38 to end strikes in the agricultural sector since production units in this sector were not commercial or industrial enterprises.¹² It also ruled that the government could not invoke Article 38 to bring to an end a strike affecting a large chain of privately owned shoe-shops (Oneto 1971:148). In all these cases, the decisions were based on the Contraloría's interpretation of broad, open-ended legal standards that, before 1945, were beyond the limits of the legality review procedure.

The Contraloría's approach to the interpretation of the powers of the executive in the area of economic regulation also changed. In 1962, the Contraloría prevented the Alessandri administration from relying on its requisition powers to secure the enforcement of price controls. The law authorized the requisition of essential consumer goods when, as a consequence of market disruptions, they failed to reach consumers. Under the statute, wheat and flour were classified as essential consumer goods and were thus subject to price controls. The government, in 1962, set an official price for wheat, but millers refused to process the wheat because, in their view, the official price for flour was too low. The government responded by ordering the requisition of all the wheat in possession of the mills. The Contraloría, however, objected to the legality of this order on two grounds: first, that the

wheat already purchased by and in possession of the millers was no longer considered essential consumer goods within the scope of the requisition statute; and second, that the government had failed to provide evidence that marketing and distribution channels for wheat had been disrupted (Soto 1973:253-255).

While the cases mentioned above show that the Contraloría had shifted its approach, some cases point in the opposite direction. In 1952, the Contraloría refused to challenge the government's interpretation of a provision in the constitution that authorized public expenditure beyond a certain level when there arises "a situation that cannot be postponed" (*necesidad impostergable*). According to the Contraloría, only the president was allowed to interpret the meaning of this phrase because only he could determine the convenience and timing of government decisions (Fiamma 1977:194). Likewise, where the law authorized the president to take emergency measures in the event of a public calamity, the Contraloría often acknowledged that this was a matter that fell exclusively within power of the executive and, consequently, was not within the scope of the legality review (Silva Cimma 1968:284). This somewhat erratic practice explains why the Contraloría was unable to develop a coherent conceptual framework of its review powers. Indeed, although after 1945 the Contraloría significantly expanded the scope of the legality of the Contraloría procedure, it continued to characterize it as a jurisdictional check that had no bearing on the underlying policy. Thus, in 1968 it described it as a logical exercise (*juicio lógico*) that involved a judgment about the consistency between the letter of the law and the text of the proposed decree.¹³ Although the Contraloría also acknowledged that its review powers extended to government's findings of facts, it did not provide any indication regarding the standard of review. That is, it did not indicate whether it would carry out an independent review of the findings of fact (*de novo* review), or whether it would apply a less demanding standard, such as the reasonableness standard. In general, however, after 1945 the Contraloría moved consistently toward an expansive interpretation of its legality review powers.

Explaining Compliance

The conceptual weakness identified above did not, however, affect the efficacy of the legality review procedure. In routine administrative decisions, the Contraloría did not need to apply a test of legality beyond a purely formal check: that is, a jurisdictional check that sought to ascertain whether the statute invoked as basis for the decree was in

force; whether it vested the administrative agency with the powers it purported to exercise; and whether the agency or official was acting within the time limits fixed by the statute. The shaky conceptual foundations of the legality review procedure became obvious in decisions involving complex and controversial forms of state intervention, such as price controls, requisitions, and labor regulation. In these areas, the Contraloría often applied an expansive approach that significantly encroached on the government's capacity to respond to real or perceived public policy concerns. Yet, this expansive approach did not undermine the efficacy of the legality review either, as evidenced by the willingness of the executive to comply with the legality rulings of the Contraloría and by the absence of any major conflict with the executive. Two factors, both political, explain the surprisingly high level of compliance: first, governments did not, on the whole, abuse their power because they could always count on the congress to provide them with new regulatory powers; and second, governments took the legality review seriously because after the impeachment they came to regard the Contraloría as a proxy for the congress.

As explained in the preceding section, throughout the 1940s the congress acquiesced to a dramatic expansion of regulatory powers in key areas of public policy such as economic regulation and state security. As a consequence, the government had vast regulatory powers and did not need to abuse them. Indeed, during this period the executive only rarely used its draconian regulatory powers, such as the power to requisition essential consumer goods or to take over the administration of enterprises that failed to comply with government regulations (Santa María and Alessandri 1944). During the 1950s, as the fight against inflation occupied center stage, congress continued to delegate extensive regulatory powers for the implementation of comprehensive stabilization policies. Thus, the knowledge that the congress was there as a last resort to seek wider regulatory powers made it easier for the executive to accept the legality rulings of the Contraloría. The legislative evolution of back-to-work decrees illustrates this point. As will be recalled, after 1945 the Contraloría's interpretation of the provision in the Labor Code regulating back-to-work decrees imposed restraints on the executive. Yet, these restraints were circumvented, as several new laws approved by the congress gave the government increasingly wider powers to issue back-to-work decrees. Thus, apart from the provision in the Labor Code of 1931, there were three other laws that gave broad powers to the government to issue back-to-work decrees: the State Security Act of 1958, Salary Readjustment Law of 1966, and the Agrarian Reform Law of 1967

(Oneto 1971:178-179, Von Brunn 1972:65-66). These new laws did not repeal the original provision of the Labor Code, but they complemented it so that if the government wanted to end a strike, it was almost certain that its decision would be consistent with one or other of the four provisions that regulated back-to-work decrees.

The efficacy and success of the legality review thus depended largely on the moderation of the policies of the executive and on the willingness of the congress to expand the powers of the executive. These circumstances explain why governments only rarely resorted to *decretos de insistencia* to overrule the views of the Contraloría. *Decretos de insistencia* generally prompted a debate in the congress that called into question the government's integrity and its commitment to the principle of legality. As governments were keen to avoid such negative publicity, they generally avoided resorting to them. However, as the system of party democracy began to wither and relations between the congress and the executive became acrimonious, the efficacy of the legality review procedure also declined. Indeed, by the early 1960s, as governments began to implement policies that required more extensive state intervention, the executive found it more difficult to get legislation approved by the congress. At the same time, governments began to increasingly resort to their regulatory powers to implement their programs of economic and social reform. This process culminated in the 1970s when, as chapter 9 explains, the confrontation between the executive and the Contraloría exposed the fragile foundations of the legality review procedure.

The legality review procedure, despite its peculiar features and conceptual shortcomings, made an important contribution to governance. It kept the executive within the bounds of its delegated powers, and it inculcated in the executive the habit of giving reasons for its decisions. It also reinforced transparency in decision making as the exchanges between the government and the Contraloría were published, and therefore both the congress, and the public, had a reliable source to monitor government action.

The legality review procedure was successful, but only insofar as congress and the executive shared a common outlook. Because during the second half of party democracy such common outlook did exist, the legality review procedure fulfilled the crucial function of underpinning the congress in its role of making the government accountable. After 1964, however, as governments began implementing controversial structural reforms and major disagreements emerged between the congress and the executive, the legality review procedure as a device to restrain the executive became increasingly ineffective.

Conclusion

The taming of presidentialism brought about a hybrid political regime with many of the features of the old parliamentary regime. Under the new presidential regime, political parties exercised decisive influence in determining the composition of cabinets. In this respect, the regime that emerged after 1932 did not meet the expectations of the drafters of the constitution. Yet, this hybrid regime did not prevent the emergence of a strong executive. Indeed, during this period the powers of the executive underwent considerable expansion, as the party system was unwavering in its support of the executive's search for economic and political stability. The process that led to the concentration of power in the executive revealed a ruthless style of governance, reminiscent of that employed by the ruling elite in the nineteenth century. Governance was carried out with little regard for constitutional and legal procedures. As presidents appeared to have no misgivings about expanding their influence through self-propelled regulatory powers, congress was always willing to grant new powers or to retrospectively validate the president's constitutional delinquencies. As party democracy began to give way to radical democracy, this comfortable arrangement between presidents and the congress came to an end, thus prompting some leading politicians to demand a further strengthening of the office of the president. However, the rapidly diminishing capacity of the political system to resolve the pressing economic problems stemmed from the changing political context rather than from the presidency's weakness.

A remarkable feature of this period was that, despite the ruthless style of governance, the legality review procedure administered by the Contraloría greatly contributed to the restraining of the executive. The legality review procedure also served to consolidate the practice that executive agencies should give reasons for their decisions. The long-standing reputation of the political system as one that closely observed the principle of legality is due largely to the success of the legality review procedure. In many respects this reputation was well deserved, despite the fact the conceptual foundations of the legality review procedure were weak and the *Contraloría's* practice of it often erratic. Indeed, in some areas of public policy, the legality review procedure only superficially concealed a long-standing ruthless style of governance. For these reasons, the legality review procedure could not fill the void created by the absence of an adequate system of judicial review of administrative action.

Chapter 6

The Supreme Court

Introduction

As noted in chapter 5, the party democracy period witnessed an enormous concentration of power in the executive, which gave presidents extensive discretionary powers. Accordingly, courts were consistently and explicitly denied a role in controlling the legality of executive action. In the absence of effective judicial review, the president and the congress came to regard legislation and administrative decisions as politically infallible and legally unassailable. However, the exclusion of the judiciary from key areas of public policy was not brought about only by collusion between presidents and the congress. It was partly self-imposed, as the Supreme Court, almost invariably, was willing to defer to the political branches of the state.

Given these circumstances, the decision of the Supreme Court to keep a low political profile is not surprising. Yet, despite this, the Court did play an important role in the development of the political and legal systems. As head of the judiciary, it kept a tight rein on lower courts, thus contributing to the safeguarding of the independence and integrity of the judiciary. It also zealously defended the constitutional prerogative of courts as the only organs vested with "judicial power" and, thus, consistently undermined attempts by the political branches of the state to establish independent administrative tribunals. Despite its reputation for passivity, the Court also displayed a surprising capacity for judicial activism as it attempted to fashion legal remedies for individuals aggrieved by government decisions. However, the Court's contribution to the development of the political and legal systems had important limitations. Its efforts to preserve its monopoly over judicial power alienated the political organs of the state, while failing to resolve the issue of administrative justice. Its measures to

enforce discipline within the ranks of the judiciary were not carried out with due respect for the autonomy of lower court judges and made a travesty of its powers under the constitution. Moreover, the Court's attempts to restrain the executive were clumsy and inconsistent and, consequently, did little to enhance the confidence of politicians in the judiciary. But perhaps the main failing of the Court was that its challenging of government action was purely negative. Indeed, on the rare occasions that the Court challenged the government, it did so by mechanically invoking the sanctity of property and contract. As a consequence, instead of contributing to develop a consensus on the scope and limits of state action, it merely relied on private law principles to oppose administrative action. Thus, not surprisingly, this approach to legal reasoning reaffirmed the widely held view among politicians that neither the Supreme Court nor the rest of the judiciary could be trusted with delicate issues of public policy.

This chapter explains and assesses the role played by the Supreme Court during the party democracy period. It is divided into four sections. The first offers background on the Court and explains, in general terms, the Court's approach to legal reasoning. The second section examines the role of the Court as guardian of the constitution. The third section discusses the role of the Court as custodian of judicial power. The fourth section examines how the Court responded to the absence of judicial review of administrative action.

Background

History

The Supreme Court was established in 1824, but the structure of the judiciary, as it stood during the party democracy period, dates back to the second half of the nineteenth century. Some observers regard the old lineage of the court system as a reason that explains the country's attachment to constitutionalism and legality (Bravo 1976:108; Estévez 1949:322-323; Illanes 1966:272; Radtke 1964:94-96; Roldán 1913:483-484). Although throughout most of its history the Court tried to keep a low profile, it was not always sheltered from political controversy. As noted in chapter 2, in 1868 there was an attempt to impeach four members of the Supreme Court. It was prompted by allegations made against Manuel Montt, president of the Court and former president of the republic. The chamber of deputies approved the impeachment, but the senate rejected it. After the Civil War there was another attempt, which was abandoned after the congress

approved a general amnesty law.¹ Government policy toward the judiciary underwent a marked change after 1891. President Balmaceda's policies had alerted the local elite about the political importance of courts. In his attempt to expand and modernize state institutions, Balmaceda significantly increased the number of courts and judicial personnel. Between 1882 and 1891 lower courts more than doubled, from just over 40 to 90 (De Ramón 1989:15). After the Civil War, nearly 80 percent of the judges appointed by Balmaceda were removed from office (De Ramón 1989:38). From then on and until the collapse of the parliamentary republic in 1924, political parties closely influenced judicial appointments, and thus, the composition of the judiciary began to reflect the dominant groups within the congress.

Judges appointed between 1890 and 1920 were largely conservative. Indeed, nearly 75 percent of those who openly acknowledged political affiliation were members of the right-wing Conservative or Liberal Parties, while only 18 percent belonged to the reformist-orientated Radical Party. As political parties began to play a role in judicial appointments, corruption and inefficiency became a major problem (De Ramón 1989: 34-36). Judges in rural and mining areas often used their office to obtain financial gain or political advantages (Angell 1972:18; Gill 1966:128; Guerra 1928:129, 1929:452). It is therefore not surprising that one of the objectives of the military movement that brought about the end of the parliamentary republic in 1924 was to cleanse and reform the judiciary. General Ibáñez, however, was characteristically clumsy and heavy-handed in the implementation of this objective. Instead of achieving judicial independence and enhancing the probity of courts, his policy brought about a split within the Supreme Court and generated enormous political controversy. As a consequence, Ibáñez gave up his attempt at judicial reform, but not before removing from office several senior and lower court judges (De Ramón 1989:35; Vergara 1931). Ibáñez's policies, deeply resented by politicians led, in 1933, to another attempt to impeach the Supreme Court. This time the allegation against the members of the Court was that they had failed to defend the integrity of the judiciary against Ibáñez's arbitrary policies.² Once again, the impeachment failed, but from then on, the Supreme Court appears to have made every effort to keep a low political profile.

The system of judicial appointments for senior members of the judiciary was not a source of political controversy. The president appointed the members of the Supreme Court and Court of Appeals from lists submitted to him by the Supreme Court. As the scope for political manipulation under this system was limited, it did not create

much friction (Fruhling 1980:13–14). This method of appointment, however, guaranteed that those holding senior judicial posts were acceptable to the political elite. As a result, lower court judges who happened to sympathize with either the Socialist or Communist parties would never reach the upper echelons of the judiciary.

Throughout this period, one of the main concerns of the Supreme Court was lack of resources. The Court constantly reminded the executive and the congress that the shortage of resources undermined the quality of judicial services and was a threat to the independence of the judiciary. The amount allocated to the judiciary in the annual budgets was, on average, about half of one percent of the total budget. From 1925 to 1964, the amount assigned to the judiciary only once exceeded one percent of the annual budget (1947 = 1.07 percent) (Rodríguez 1964:72). Since more than 90 percent of the judiciary's budget was spent on salaries, there was little scope for expanding or modernizing court facilities. Indeed, the money available hardly covered the costs of maintaining the existing infrastructure (Rodríguez 1964:73). The congress, however, never seriously debated the financial plight of the judiciary. The relative poverty of the judiciary contributed, albeit perversely, to the safeguarding of its independence. Jobs in the judiciary were not highly sought after because salaries and career prospects were bleak. Political parties were thus not under great pressure from their members to lobby for jobs within the judiciary. Indeed, even an obscure career in the lower grades of the civil service offered more rewards—and less work—than a career in the judiciary.

Legal Reasoning and the Supremacy of Legislation

The Supreme Court's extreme deference to the political branches of the state had its roots in the prevailing legal culture. The respect displayed by courts toward the legislature and the content of legislative enactments are undoubtedly related to the all-embracing definition of law contained in the opening section of the Civil Code. Law, according to this definition, is "a manifestation of the sovereign will, which, expressed in the manner prescribed by the constitution, orders, forbids or permits." The Civil Code also explicitly excludes custom as a source of law and rejects the notion of binding judicial precedents. The paramount role that the code assigns to the legislature is underscored by the fact that at the time of its enactment in 1857, there was no judicial review of legislation and consequently there was no agency

with the power to determine whether a particular law was indeed "expressed in the manner prescribed by the constitution."

The rules on legal interpretation also contributed to keeping judges at a safe distance from politics (Cánovas 1970:139). These rules, set out in the Civil Code, are extremely formalistic (Articles 19–24). They endorse a textual approach to legal interpretation and explicitly discourage any attempt to inquire into the spirit or objectives of the law. The interpreter is expressly forbidden to restrict or to expand the scope of a particular norm, even if the objective is to avoid harmful consequences that could arise from applying a strict textual method of interpretation. Over the years, the Supreme Court relied on these principles of interpretation to distance itself from the social and political consequences of its decisions. Whenever its decisions were criticized, the Court pointed out that judges had a duty to apply the law as they found it and they could not make the law. If court decisions were disappointing it was because the laws were bad, not because of the courts' failings. Thus, according to the Supreme Court, legal progress does not depend on the courts, but on the executive and the legislature.³ The Court's views about the sanctity of positive law are illustrated in a statement made in response to a charge that, during the 1940s, it had failed to fulfill its role as guardian of the constitution: "If laws cannot be malicious because they are made by the Congress, and aimed at the common good; that is, the well-being of the common people; neither can the judiciary be malicious when it applies such laws."⁴ The Court underscores this point when it refers specifically to the charge that it had failed to accept challenges to the constitutionality of the 1948 State Security Act that banned the Communist Party and severely restricted union activities: "[I]f there was a valid law and the government requested the courts to apply it, the courts had no choice but to apply it."⁵

The Court's views about the supremacy of legislation were occasionally expressed with an enthusiasm that went beyond the limits of legal positivism, as illustrated in its written defense in the impeachment proceedings of 1933. The promoters of the impeachment in the chamber of deputies alleged that during the Ibáñez administration in the 1920s, the Court had failed to protect the independence and integrity of the judiciary. During the impeachment debate, parliamentarians defending the Court argued that it should not be held to account, even though its behavior may have been morally objectionable, because, at the time, the Court had no choice but to comply with the law.⁶ The Court did not appreciate this type of support. It strongly rejected the characterization of its behavior as morally wrong. The

Court claimed, instead, that its behavior was morally unimpeachable precisely because it had acted in conformity with the letter of the law.⁷ The Court's argument thus rejects the traditional legal positivist view regarding the separation of law and morality suggesting instead that positive law determines the content of moral principles.

Guardian of the Constitution

Given the Court's views on the supremacy of legislation and its approach to legal interpretation, it is not surprising that it did not properly fulfill its role as guardian of the constitution. The 1925 Constitution gave the Supreme Court the power to review the constitutionality of legislation, but the introduction of this procedure had little impact, as the Court almost invariably declined to use its newly acquired power (Carvajal 1940:149). Recently compiled statistics show that between 1925 and 1946, almost 90 percent of judicial review cases brought before the Court were dismissed, and this trend continued until the demise of the constitution in 1973 (Valenzuela 1991:160). Two examples of the way the Court approached its role as guardian of the constitution follow.

Delegated Legislation

The 1833 Constitution contained a clause that allowed the congress to delegate legislative power to the president. In 1925, however, after careful consideration, the committee drafting the constitution explicitly excluded this clause from the new text. It was thus clear that those who drafted the constitution regarded the delegation of legislative powers as unacceptable (Evans 1970a:112). The congress, however, did not take notice of this change and continued delegating legislative power. The question as to the constitutionality of this practice soon reached the Supreme Court. It was raised in 1932 in connection with proceedings involving a dispute over mining rights (Carvajal 1940:157-158). The complainant in this case asked the Court to declare unconstitutional a presidential decree that purported to have the force of law by virtue of a previous delegation of power by the congress. The Court, however, refused to rule that this decree was unconstitutional because, in its view, the practice of delegating legislative power was essentially a political matter and, as such, not within the scope of its review powers. According to the Court, compliance with constitutional rules relating to the legislative process was "dependent upon political and social factors which in every respect are alien

to legal reasoning," and, consequently, it was not for the Court to tell the congress and the president how they should interpret the constitutional rules governing the legislative process.⁸ In this Opinion, the Court, however, was careful to point out that it remained fully committed to the protection of individual rights.⁹ An opportunity to test this commitment arose in 1949 in connection with the enforcement of the State Security Act.

Civil and Political Rights

The State Security Act of 1948 banned the Communist Party and cancelled the electoral registration of its members, consisting of approximately twenty-five thousand citizens (Blasier 1950:371-373). René Frías, a communist lawyer affected by these measures, challenged the act as inconsistent with the constitutional provisions that regulated the right to vote.¹⁰ Three articles of the constitution dealt with the right to vote. Article 7 established the requirements: nationality, age, literacy, and registration. Article 8 dealt with the grounds for suspension of this right: physical or mental incapacity or indictment for a serious criminal offense. Article 9 provided that the right to vote was lost upon conviction for a serious criminal offense or loss of nationality. As membership in a political party was not a ground for disenfranchisement, Mr. Frías argued that the 1948 Act was unconstitutional.

The Court acknowledged that, under the constitution, membership in a political party was not a ground for disenfranchisement, but concluded, nonetheless, that act was consistent with the constitution. Its conclusion was based on a narrow textual interpretation of Article 7. According to the Court, the grounds for the loss of the right to vote set out in this Article were merely indicative, not exhaustive. Had the constitution intended these grounds to be exhaustive, Article 9 would have been drafted in a different way. Instead of stating, "the status of citizen with the right to vote is lost . . ." it should have stated that the status of citizen with the right to vote can only be lost in the specified cases. Thus, according to the Court, the constitution did not preclude the legislature from adding new grounds for disenfranchisement in addition to those explicitly mentioned by the constitution. This odd reasoning made a travesty of the principle of constitutional supremacy as it transformed the constitution into little more than a voluntary code of conduct that the legislature was free to supplement, revise, or ignore, depending on circumstances.

It could be argued that in the Frías case, the Court was wise not to accept the challenge to the constitutionality of the State Security Act as

the case was politically sensitive and raised an issue about which there was no disagreement between the congress and the president. Yet, even if this cynical argument were accepted, it must be noted that the Court was reluctant to uphold individual rights even in cases where the president and the congress were at odds. A case decided by the Court in 1936 denying a petition of habeas corpus illustrates this point.

The case involved the interpretation of the powers of the president during a state of siege. As explained in chapter 5, the power to authorize the use of emergency powers was vested in the congress. The president, however, was exceptionally allowed to declare a state of siege, but only if the congress was not in session. As the power granted to the president was an exception to the general rule, the constitution also contained a provision that set out the procedure to follow in the event that the state of siege declared by the president was still in force when the congress reconvened. This provision, however, was poorly drafted and it led to conflicting interpretations. It reads as follows: "[I]f the state of siege declared by the president has not expired when the congress resumes its session, the declaration issued by the President of the Republic will be regarded as a government bill."¹¹ According to the government, a state of siege declared by the president remained in force until the congress explicitly revoked it. The alternative view—favored by the congress—was that as soon as congress reconvened, the state of siege declared by the president would lapse.

In 1936, a major controversy erupted between the president and the congress over the interpretation of this clause. While this controversy was in progress, a man arrested under the state of siege provisions after the congress had reconvened, petitioned for a writ of habeas corpus on the ground that the state of siege had lapsed. The Court of Appeals of Valparaíso granted the writ, but, on appeal to the Supreme Court, denied it (Caffarena 1957:75–77). In its Opinion, the Court endorsed the president's position without even mentioning that what was at issue was a fundamental constitutional right. Moreover, the Court's reasoning suggests that, in its view, presidential decrees can never be struck down, even if they are manifestly inconsistent with the constitution.

The Court's reluctance to make use of its review powers and its lack of concern for individual rights were noted by Karl Lowenstein, an eminent contemporary observer. Upon examining the enforcement of security legislation, Lowenstein concluded that "[I]t cannot be ignored that Law 6,026 and some of the more recent emergency measures permit considerable restrictions on constitutionally granted individual rights. There is, however, no record of objections by the courts on

grounds of unconstitutionality." (Lowenstein 1944:372) This view is corroborated by the findings of a well-respected local observer who in an exhaustive review of the case law of the Supreme Court during the 1930s and 1940s, found that the Court almost invariably opted to uphold the powers of the president rather than the rights of the individual (Caffarena 1957:221–227).

Custodian of Judicial Power—the Complaint Proceeding (*recurso de queja*)

Background

The behavior of the Supreme Court as custodian of judicial power contrasted sharply with its behavior as guardian of the constitution. While as guardian of the constitutions the Court was cautious, deferential, and formalistic, as head of the judiciary and custodian of judicial power, it was not restrained either by legal formalities or deference toward the political branches of the State.

As head of the judiciary, the Supreme Court had overall responsibility for the administration and management of all judicial services (Illanes 1966:277). Thus, it had enormous influence over appointments, promotions, and career development of judges. It also had disciplinary power over judges. In the exercise of this power the Supreme Court could act either on its own initiative or at the request of a party in a summary proceeding called "complaint proceeding." Under this proceeding, judges who did not fulfill their duties or who abused their powers faced disciplinary sanctions that included warnings, censures, fines, and even temporary suspension from office. Over the years, the Court (eventually with the acquiescence of the legislature) transformed the complaint proceeding into a form of cassation, thus distorting its original objectives while, in the process, making a travesty of its main function as a Court of Cassation. The Court also interpreted widely its jurisdiction under the compliant proceeding, to include any tribunal or body that exercised judicial power. That is, any tribunal—whether or not formally part of the judiciary—entrusted with the task of deciding disputes brought to it by parties. In doing so, the Supreme Court openly challenged the legislature's attempt to establish administrative tribunals that were not within its supervisory powers. The following paragraphs explain how these changes came about, and assess their implications.

One of the main responsibilities of the Supreme Court was to impose uniformity and coherence on the activities of lower courts. To