

3-1-1976

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Recommended Citation

Eugenio Velasco, *Special Lecture Series—The Allende Regime in Chile: An Historical and Legal Analysis: Part I*, 9 Loy. L.A. L. Rev. 480 (1976).

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THE ALLENDE REGIME IN CHILE: AN HISTORICAL AND LEGAL ANALYSIS: PART I

by *Eugenio Velasco*

This is the first part of a series of three lectures delivered at the Loyola Law School in the Spring of 1975 by the first Distinguished Professor in Residence, Professor Eugenio Velasco Letelier. The next two parts will be published in the succeeding issues of the Law Review.

Professor Velasco, an authority on Civil Law, was Director (1958-1963) and Dean (1965-1971) of the University of Chile School of Law. In addition, he was Chilean Ambassador to Algeria and Tunisia from 1963 to 1965. In 1970 he was elected to the Chilean Academy of Political and Social Science, and shortly thereafter became Professor Emeritus at the University of Chile. In addition to his academic role, Professor Velasco is a practicing lawyer, and also has served as judge pro temp on the Chilean Supreme Court.

The purpose of the lectures was to give the American legal community an understanding of the political and legal structures in Chile that helped produce the world's first democratically elected Marxist President and then could not adequately respond to the situation which developed there, leading to his violent removal from office before the end of his constitutional term. In his review of the Chilean legal institutions, Professor Velasco tries to show how the constitutional stalemate of 1973 came about and why, for many Chileans, there seemed to be no alternative at that time to a military uprising in order to avoid civil war from breaking out. In this tragic situation there are lessons to be learned about political action and legal institutions; lessons that transcend the Chilean experience.

Shortly after completing these lectures Professor Velasco returned to Chile to practice law and to continue to write and do research on important legal issues.

In the last five years few countries in the world have been in the press more often than Chile. There are two fundamental reasons for this. First, because it is the only country in the world that freely and democratically elected a Marxist president and second, because of the violent

manner in which that President was removed from office prior to the expiration of his constitutional term. This terrible, anguished experience occurred in a country with the longest and best established democratic tradition in all of Latin America.¹ When, in September 1973, the Congress of Chile was dissolved by the military junta it was one of the oldest congresses in the world.

I.

The basis of Chile's constitutional and juridical life is the political Constitution of 1833, which was in effect for almost one century, until 1925.² It was based upon the proposition characterized as "Liberty within Order." Even though the Constitution's provisions appear today to be anachronistic, it clearly accomplished a certain historical mission. The Constitution contained legal norms adequate to impose peace, order, and stability in place of the collective indiscipline and continuous change that had characterized the period which preceded it. Moreover, in the early years, its application and interpretation were carried out by an exceptional politician, Diego Portales, whose style and influence were maintained for many years in Chilean life.

The Constitution of 1833 was designed to combine the elements of a presidential and parliamentary regime. Without a doubt, however, the presidential order clearly predominated over the parliamentary order from 1833 to 1871. The President was elected by an indirect electoral system, similar to that in the United States, and suffrage was rather limited. He had such extensive powers under the Constitution that he was transformed into a temporary but absolute monarch.

1. Chile was the first South American country to achieve a stable political organization and a continuous democratic tradition which served as the basis for its progress during the nineteenth century. As a consequence of Napoleon's invasion of Spain in 1810, Chile took the opportunity to form its first national government. Immediately thereafter the government convened a national congress which was inaugurated on July 4, 1811, a date chosen especially to give homage to the independence of the United States.

2. Many important constitutional analysts have thought that the 1833 Constitution was not replaced in 1925, but only modified. While the Constitution of 1833 was not modified prior to that time, between 1851 and 1861 a very visible change in the social and cultural evolution of Chile occurred. The influence of the Catholic Church and the Clergy became weakened as did the influence of the aristocracy, almost an entirely land-owning class. At the same time, another class began to rise in importance through the exploitation of mining resources and the exportation of Chilean goods. This class, because of its growing economic power, acquired political influence. Philosophically, the political ideas of this class were liberal.

The legislative power, which after 1871 grew to equal the presidential power,³ was divided into two houses: a Senate and a House of Representatives. The Congress had, as in the English parliamentary system, power to approve the national budget and to establish the size of the military forces. Cabinet ministers were responsible to the Congress and after 1873 they could no longer hold executive or legislative positions simultaneously. After 1873, Congress was strengthened to the point where it could limit the power and authority of the executive, as was demonstrated convincingly in 1891 by its refusal to pass the budget laws.⁴

3. In 1871, a forty-year period of conservative predominance ended with the election of the first liberal President. The Liberal Period lasted until the Revolution of 1891. The success of liberalism gave rise to the Radical Party, which stemmed from the left wing of the Liberal Party. Eventually, the Radical Party became the strongest and most influential one between 1938 and 1960.

Of course, the terms "liberal" and "radical" must be understood in their historical context. The terms should not be confused with the same terms that are used today in the United States. In the nineteenth century liberalism had two important characteristics: respect for individual liberty and economic freedom. In contrast to the Conservative Party, liberals were progressive. When the left wing of the Liberal Party separated from it, it was called the Radical Party because at that time its ideas, especially those dealing with religious freedom, were in fact radical. Today the Radical Party is the equivalent of the European social democratic parties.

During the Liberal Period, the liberals tried to secularize the public institutions. This effort produced a bitter struggle over theological questions between the liberals and the traditional Catholic conservatives. The major questions were about the establishment of lay cemeteries, because only Catholic cemeteries existed; the civil marriage, because the only valid one was that performed according to canon law; the compulsory instruction of Catholicism in state schools; and government control of examinations in private schools.

4. This signified a breaking between the executive and legislative powers. The Navy revolted in support of the Congress which had deposed the President for having violated the Constitution. Both sides believed they were defending Chile's constitutional and democratic way of life. Civil war broke out at the end of President Balmaceda's term, with his forces being defeated. Balmaceda, who had been granted asylum in the Argentinean Embassy, committed suicide on September 18, 1891, the last day of his presidential term. A new period in Chile's political life started. Today, Balmaceda is considered by all Chileans as one of their greatest presidents.

It is impossible to fully analyze the complex causes that led to the Revolution of 1891, but it appears clear that they were of an economic, social, and political nature. But the struggle was expressed concretely in the Congress' refusal to pass the Budget Law for 1891.

We have said that the Constitution of 1833 contained important rules that allowed the existence of a type of parliamentary regime, but the respect for the executive and the tradition of a strong and authoritarian government made these rules ineffective. The attempt to put them into practice was, undoubtedly, one of the reasons for the war between the President and the Congress. Since the Congress won the Revolution, the parliamentary faculties began to be fully applied, with evident exaggeration, as it always happens in these historical changes, and a period of real parliamentarism began.

However, due to the lack of conditions necessary for this system (such as disciplined

Under the Constitution, the juridical⁵ and legal progress of the country was remarkable. In 1855 the Civil Code was adopted. It was a magnificent legal work, drafted mostly by Andres Bello, one of the most outstanding literary and legal personalities in South American intellectual history. It was inspired fundamentally by the Napoleonic Code, but it contained many original ideas. In its time—the end of the nineteenth century—the Civil Code was considered to be the world's most perfect code based on Roman Law. Many Latin American countries used it, and continue to use it, as a model for their legislation. Others have simply adopted it as their own.

This code is still in force in Chile with substantial modifications, especially in those portions dealing with inheritance and family law. It is, obviously, of individualistic inspiration, reflecting the ideas prevailing at the time of its elaboration and approval—respect for private property, complete freedom of contract, and absolute legal respect for an individual's freedom of choice. As a consequence, the role of the state was simply to create and maintain the ground rules within which these principles could operate.

Between 1865 and 1885 several very important laws were passed, including a commercial code, a penal code, a mining code, a judiciary act, and a law establishing civil marriage and a civil registry for births and deaths. Civil marriage and the civil registry were part of the victory of liberalism in the theological struggles occurring during this period. Years later, at the beginning of the twentieth century, the Codes of Civil and Criminal Procedure were approved. They are still in force, but, of course, with modifications.

II.

At the beginning of the twentieth century, the first labor movements, inspired by the ideas of European socialists, had already begun. The

and well-organized political parties that would allow political stability, constitutional rules about the closing of the parliamentary debate and the President's faculty of dissolving the Congress to call for new elections) made Chilean parliamentarism imperfect and unproductive. Let us remember that, with respect to this, the Constitution of 1833 was not modified after the Revolution.

The excess in the practice of the Congress' attribution of control of the Executive, led to a permanent rotation of censured ministers, that made impossible any serious government work. It is, obviously, a period that did not contribute to the progress of Chile.

5. The judicial power was dependent upon the executive power. The President nominated judges in accordance with the Council of State, which was composed of ministers and functionaries appointed by the President. It was the Executive's duty to supervise the administration of justice and good behavior of judges.

leftist political parties, such as the Radical and Democratic Parties, began to emphasize social problems; thus, Marxist ideas surfaced.

The political life, which until then generally had been reserved for the aristocracy and the high middle class, became clearly democratized. Despite opposition by these groups, Arturo Alessandri, a brilliant politician, was elected President of the Republic in 1920. His platform called for the improvement of the economic and social conditions of the working class. He was supported primarily by the middle class, which shared his position, and, of course, by the proletariat, although they had only recently started voting.

After Alessandri was elected, the Congress, exercising its powers to the extreme, practically prevented him from governing. The resulting discontent spread to the armed forces, which were poorly paid and which had supported Alessandri's platform. In September 1924, the armed forces, for the first time in Chile's history, directly intervened in politics. They demanded that Congress approve bills which had been pending for a long period of time. These included laws on labor contracts, social security, and worker's compensation; a court for arbitrations and conciliations; and laws dealing with labor unions, cooperative organizations, social security for private employees, and higher wages for the armed forces and the civil service.⁶

Although the armed forces supported the Alessandri program, Alessandri believed that they would not relinquish power. Therefore, believing his presidential authority to be destroyed, he tendered his resignation to the Congress. Congress, rather than accepting it, agreed to allow him to leave the country for six months. Alessandri left and a military junta was formed; it dissolved the Congress and quickly accepted President Alessandri's resignation. A few months later, however, another junta asked Alessandri to resume his functions and to finish out his constitutional term. He accepted the invitation to resume power, but under several conditions, two of which were very important. First, Alessandri demanded that the military forces return to their barracks and fully respect civilian power. Second, as part of Alessandri's goal to end the parliamentarian system that had caused such a tremendous upheaval, he demanded that he be permitted to appoint a Constituent

6. This new legislation signified a profound change in the social and economic development of the country. In later years, the various bills were gathered into a Labor Code. This code was followed by a collection of numerous laws, with clear socialistic influences. These laws allowed state intervention in the economic and social life and frequently contradicted the traditional codes, previously mentioned.

Assembly to draft promptly a new constitution. Alessandri returned in March, 1925.

A new constitution, widely approved in a national plebescite, became effective on September 18, 1925. This Constitution, still in force, at least theoretically, re-established a clear presidential regime with a strong executive power, in which the ministers were of the President's exclusive confidence and freely appointed by him. It did not, however, modify Congress' power to impeach ministers and even the President for certain defined infringements. It established the separation between church and state and a complete freedom of conscience and worship; it gave to private property the character of "social function" indicating its corresponding limitations; it attempted to make the political parties important and tended towards greater democratization of the political life; it enlarged and improved individual rights; it set up an independent judiciary with the attributes of a third state power; and it reasserted that the armed forces were essentially obedient to the government and politically neutral. It also established that the President was to be elected by direct vote for a six-year term and, as before, could not be re-elected for the following period and that Congress would be formed by two houses: a Senate with forty-five members, representing nine senatorial districts, and a House of Representatives, whose members represented congressional districts in proportion to population.

All elections were direct. The President had to obtain an absolute majority, that is, half of the votes cast plus one, and in the event that none of the candidates obtained the majority, Congress had to choose the President from between the two candidates who had received the highest number of votes. An autonomous election tribunal was created to supervise presidential and congressional elections and to resolve any problems that might arise in connection with them.

As soon as the new Constitution was approved, elections were called to choose Alessandri's successor. Prior to the election, Alessandri again resigned because of problems with his Minister of War, Carlos Ibáñez. Thus, a constitutional anarchy was produced, in which several elections, coups d'état, and government juntas succeeded each other. This period ended in 1932 when, once again, Arturo Alessandri was elected President. His main objectives during his second administration were to put public finances in order, to consolidate and improve the social advances of his first period,⁷ and to re-establish in Chile the full validity of its

7. These included enactment of a law on preventive medicine, which sought to detect in workers the beginnings of chronic disorders such as syphilis, tuberculosis, cancer, heart illness, and diseases caused by their work.

democratic and legalistic traditions, thereby definitely ending military participation in Chile's political life. In this effort, he even collaborated with the so-called "Republican Militia." This group, formed by citizens possessing the most varied ideas, received weapons and military training from the government in an attempt to prevent new insurrections by the armed forces. It was voluntarily dissolved in 1933 because of a belief that it was no longer necessary to ensure constitutional stability.

III.

Meanwhile, new social restlessness had increased enough to surpass Alessandri's reforms. It was a time of open talk about socialist ideas, about economic development, and about new social structures. The Communist and Socialist Parties reached a certain significance in political life; as in Europe, a Popular Front based on the Radical Party was organized. At that time, the Radical Party was the strongest party in the country and had aligned itself with democratic socialism. With the support of other leftist forces, including communists and socialists, it promoted the candidacy of Pedro Aguirre, a radical lawyer and professor, who defeated the candidate of the rightist forces. Thus the period of radical government began, which lasted until 1952.⁸

During the Radical Period the incorporation of the middle class into high political positions occurred. The government came under their control in a solid and stable manner. This middle class had a great social awareness. It was cultured and progressive, and was comprised mainly of employees, professionals, teachers, owners of small- and medium-sized factories, traders, farmers, and independent craftsmen. It was what the Marxists call the "petite bourgeoisie" and it was this group which opened up new ways of progress for the country.⁹

Additionally, during this period very important transformations in Chilean life took place. The task of a rational industrialization of the country was started. Until then Chilean industries had produced only raw materials for export. Great state companies were created in

8. President Aguirre died while in office and the same misfortune befell his successor. Only the third of the radical presidents, González Videla, finished his term.

9. I will always remember the opinion about this that I personally heard from Fidel Castro while visiting Cuba in 1970, a few weeks before Chile's last presidential election, when Castro considered Allende's triumph improbable. He said that the Chilean case was unique in South America and could not be compared to any other, because Chile was governed by an honest, cultured, and progressive bourgeoisie that respected the rules of the game.

order to promote this task: the *Corporación de Fomento de la Producción* (a corporation to promote production), that even today is the dynamic force in the economic development of the nation; the *Empresa Nacional de Electricidad* (National Electric Company), that built an enormous network of installations throughout the territory in order to make use of hydraulic power and provide electricity for the country; the *Empresa Nacional de Petróleo* (National Oil Company), that discovered and now exploits oil deposits in the south; the *Compañía de Acero del Pacífico* (Pacific Steel Company), that established a large steel industry to take advantage of Chile's iron and coal mines. An important popular housing plan was initiated, fundamental reforms were made in the traditional legal codes, and social laws were improved and made stronger.

The last of the radical presidents, who was the first one to have members of the Communist Party as ministers, violently broke with the communists because he thought they had betrayed their own government. Worn out by the years in power and the natural discontent that people feel when their aspirations are not fully satisfied, and hurt by a tenacious campaign against it, radicalism lost its strength and prestige. However, as time passes, it becomes clear that the radical governments were very productive and significant, and, in Chile, are now given the respect which they were denied in their time.

IV.

With the decline of radicalism, General Carlos Ibáñez was elected President in 1952. His government lacked ideological definition and responded only to his personal charisma. He governed indiscriminately with collaborators from the left and the right, but he strictly followed the Constitution and the laws, which is important to note in view of the fact that he had served as President during the short period of anarchy in the early 1930's. At that time, he was a virtual dictator.

In 1958, Arturo Alessandri's son, Jorge Alessandri, became President with the backing of the right, even though he prided himself on being independent. Actually, he only represented the right in a relative way; he did not belong to a political party and he won the election because of his personal prestige, his attractive personality, and the enthusiasm that his father's memory still stirred. It is generally agreed that with no other candidate could the right have won the presidency. His term started with an independent cabinet in which no party had official representation. However, he was later forced to form a political

government with official participation of rightist parties and, for a period, of the Radical Party. The latter agreed to participate in the government under the condition that important changes in tax legislation and land reform would be promoted. A short time thereafter these reforms became a reality.

During Jorge Alessandri's presidency, a very important housing plan was developed and a special type of savings and loan association was created for this purpose. It attempted to concentrate private capital in order to use it in building, thus reinforcing programs of state institutions that had the same purpose. Additionally, a land reform law was approved. It marked a great advance, containing rules that later allowed President Frei to make even more progress in this area.

Nonetheless, social questions continued to acquire importance. The Marxist parties had grown and they now were an important force in the political life. The Christian-Democrat Party, born from the old Conservative Party, but with new social and economic concepts added to authentic Christian principles, had become very strong. The once powerful Radical Party seemed to have diminished, yet remained important. All parties agreed on the necessity of introducing fundamental reforms in the socio-economic structures of the nation. But while the Marxists had as their objective the establishment of a Marxist dictatorship, the other parties wanted to make the reforms within the democratic system, with existence of political parties, periodic elections, and freedom. It is not an exaggeration to say that two thirds of the nation—the middle class and the proletariat—were conscious of the fact that the democratic tradition, constitutional stability, and complete political freedom in which the country was developing were not sufficient to eradicate the poverty existing in vast low-income sectors and could not promote real economic advancement.

In 1964, the rightist parties backed the Christian-Democratic candidate Eduardo Frei. Frei governed only with his own party, which had high representation in Congress. His government achieved remarkable success in the political, social, and economic progress of Chile. He increased the land reform process, promoted educational plans and lowered the illiteracy rate, took great steps towards the industrialization of the country, institutionalized many community organizations that gave participation to men and women in social and political structures, nationalized some foreign companies, and bought fifty-one percent of the shares belonging to the large North American copper companies. In the international field he established diplomatic relations with the socialist countries.

Frei also obtained the approval of an extremely important constitutional amendment by which the concept of private property was modernized and the requirements for its expropriation were changed to allow the passing of a new land reform law. Legislative initiatives dealing with certain economic and social matters were given only to the Executive, thus permitting a balanced programming of the country's development. The delegation of limited legislative faculties to the President was authorized. The right to vote was granted to citizens over eighteen years of age and to illiterates; with this, the electoral body was enlarged and Chilean political life was democratized even more. A constitutional tribunal was created to supervise the constitutionality of the law-forming process and to resolve discrepancies that, in relation to it, could arise between the executive and legislative branches. Further, the President was given clear authorization to call a national plebiscite in case a project calling for constitutional amendment was rejected by Congress.

V.

Frei's term of office expired in 1970. Three candidates ran to succeed him: Jorge Alessandri, backed by the right; Radomiro Tomic, ex-ambassador to the United States, supported by the Christian-Democrats; and Salvador Allende, in his fourth candidacy, backed by the Popular Unity, a coalition of Communist and Socialist Parties (both of them Marxist-Leninist, the first one in the Moscow orthodox line and the second, in its largest sector, closer to Fidel Castro's ideology or Maoism), and other leftist parties such as the recently divided Radical Party.

From the start of the campaign it was evident that none of the three candidates would obtain the absolute majority and that the final selection would be left to Congress. Some Christian-Democratic senators and some from MAPU, a small offshoot of Christian-Democrats backing Allende, introduced a proposed constitutional amendment to be approved before the election. Their intention was to establish a second runoff, as in France, between the top two candidates in the voting, instead of having Congress choose between them. It seemed a logical, just, and democratic solution. Had it been carried out, the destiny of Chile could have been different and the institutional drama that the nation has experienced might have been avoided.

But political passions and the desire to obtain the presidency at any price made the two political extremes coincide in opposing the reform.

The rightist parties that backed Alessandri were sure they would get the highest number of votes, in which case they would demand that tradition be maintained and Congress elect him President. Alessandri himself said that "constitutionally in Chile, the only person who can be elected is the one who has obtained the first relative majority." The Marxists took the same stand because they too thought their candidate would get the first relative majority and they intended that Congress carry on the tradition. Such extreme passions were reached, that when General Schneider—at that moment Commander-in-Chief of the Chilean Army, and later assassinated by a fascist group of the extreme right—insisted on the military's complete lack of involvement in politics and emphasized that its only duty was to insure respect for the Constitution, a Constitution that clearly allowed Congress to elect freely between the first two majorities, he was strongly criticized by supporters of Alessandri. Thus, the constitutional amendment was born dead.

In the election, Allende obtained 36.2 percent of the votes, Alessandri 34.9 percent, and Tomic 27.8 percent; therefore, Congress had to elect the President. It followed the tradition and elected Allende with the votes of his followers and the Christian-Democrats. However, the Christian-Democrats, the strongest party, as a condition to voting for Allende, demanded and got a constitutional amendment designed to prevent the Marxist minority from taking advantage of its power to end the democratic and free regime that existed in Chile.

To conclude, I think it is useful to stress that Chile's democratic, legalistic, and libertarian tradition had reached high levels of efficiency and effectiveness which are difficult to find in other Latin American countries and developing nations on other continents. Having overcome the brief period of abnormality between 1924 and 1932, this tradition was revived with greater strength. Within that context, coups d'etat and military interventions, so frequent in other Latin American countries, made no sense. The Chilean armed forces were proud of their professionalism. They repeatedly showed it and talked about it. Even the Marxist parties in every electoral campaign took special care to adhere to the postulates of democracy and legality, even though in their political plans they contemplated the dictatorship of the proletariat and the necessity of finishing with so-called "bourgeois legality."

Thus, in 1970, Chile was the most politically advanced country in Latin America. It could be said that its political structure seemed almost a contradiction in view of its relatively under-developed economy. The same could be said about its cultural level, manifested by

a low illiteracy rate, no higher than ten percent, which was closer to that of industrialized countries than that of other developing nations.

I would like to summarize this collective thinking by quoting an ex-Rector of the University of Chile and a member of the Socialist Party. Humorously talking about Chile's legalistic tradition, he said: "[I]n order for Chile to have a revolution or a coup d'etat, it is absolutely necessary that a law authorizing it be passed."

