Special Lecture Series—The Allende Regime in Chile: An Historical and Legal Analysis: Part II

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I. INTRODUCTION

Salvador Allende assumed the Presidency of Chile on November 3, 1970, and set for himself the task of transforming the socio-economic structure of Chile. This transformation was to be achieved not by enacting new laws, but by taking advantage of existing legal rules, a process later called the "theory of legal loopholes." An examination of this practice, however, will make it evident that these were not real loopholes, but open violations of the laws and institutions of the country, and that they occurred in spite of a constitutional amendment which was ratified in order to avoid them.

A. Allende's Platform and Election

Allende's platform consisted of the Popular Unity (UP) program. The program was not Marxist, but was a point of coincidence between Marxist and non-Marxist groups. It was based on the so-called social democratic position. In fact, this program professed to assure the "expansion of democracy" and to guaranty respect for the legal system, individual rights, the rights of trade unions, political parties, including the opposition, and the free and periodic political elections contemplated in the Constitution and laws.

In the economic field, the Popular Unity program aimed at the construction of an "area of social property" formed by (1) companies that already belonged to the state, (most of which had been created during preceding radical governments), (2) certain privately owned companies which were to be legally expropriated, including foreign owned companies which exploited the basic wealth of the country—copper, nitrates, iron, iodine and coal, banks, insurance companies, the great national monopolies, and, in general, all those activities that condition the economic and social development of the country, such as the production of electricity; transportation by rail, air and sea; means of communication; the production, refining and distribution of petroleum; the steel industry; the cement industry, the petro-chemical and chemical industries, and the cellulose and paper companies.
The UP program also contemplated an area of “private property” in industry, mining, agriculture and professional services. The UP program said that the majority of all companies would fall within the area of “private property” and that the government would give them financial and technical assistance.

The democratic, non-Marxist tendencies of the Popular Unity were constantly reiterated by Allende during the presidential campaign and during the first months of his government. Thus, it was not strange to find many points of contact between the Popular Unity program and that of the Christian Democracy, which also propitiated fundamental changes in the social and economic structures of the country within a complete democratic constitutional and libertarian framework.

Despite his program, many people feared an Allende victory. The facts were that the candidate of the UP who had obtained the largest plurality in the general election was a declared and fervent Marxist and that his fundamental backing came from two Marxists-Leninist parties which were more powerful than their weak democratic allies. These gave rise to and fermented a great fear that the professed program of the Popular Unity would be surpassed in practice and that the executive power would be used by Allende in violation of the Constitution and the laws to establish in Chile a Marxist-Leninist dictatorship, putting an end to the democratic system which seventy-five percent of the Chileans wished to preserve.

To many Chileans, then, a clear danger existed that the will of the majority would be subverted by the violation of the Popular Unity program. Yet Allende had in fact won a plurality of the popular vote, and by tradition claimed that he must be elected President by Congress. To satisfy his claim and, at the same time to prevent the feared usurpation, the Christian Democratic Party—the single most powerful party in the Congress, and the party whose votes would decide the election, there proposed a solution within the Chilean constitutional and democratic traditions. They agreed to vote for Allende, thus assuring his election as President of the Republic, but only on condition that the Popular Unity and Allende agreed to introduce substantial constitutional reforms designed, or so it was believed at the time, to insure the survival of the democratic regime.

An amendment to the Constitution was promptly approved and widely accepted. Called the “Democratic Guarantee amendment” it, among other things, recognized and guaranteed as individual rights the free exercise of political rights within a democratic and republican system,
and provided for access to the media by political parties.\textsuperscript{1} This amend-
ment was approved by the Senate, after the popular election in which
Allende achieved the first relative majority, but before the Congress had
elected him President. Thus, when these reforms were adopted, Al-
lende was still a senator. He voted in favor of the constitutional
amendment and during the October, 1970 congressional session in
which the amendment was approved, he stated:

I have come here to point out through my favorable vote, the
people's decision, that when they become the government, they will
make the democracy of our country more ample and profound. . . .
I have come here to say that these reforms must be understood not
only as principles established by the Constitution but also as a moral
obligation in the eyes of our own conscience and of history.

A few months later President Allende was interviewed by Regis
Debray, the French writer and journalist who had been captured with
Che Guevara's guerrillas. Allende told Debray, in answer to a question
regarding the constitutional amendment, that he had accepted it because

\textsuperscript{1} The Democratic Guarantee Amendment, as it was called, provided in its most im-
portant aspects the establishment of individual rights. These included: “The free prac-
tice of the political rights within the democratic and republican system” and the right
of citizens to organize political parties; the right of a political party to have access to
the mass media, owned or controlled by the state; the right to organize, establish, and
maintain newspapers, magazines, periodicals, and radio broadcasting stations; the free
importation and commercial distribution of books, printed materials, and magazines. It
also guaranteed the individual right to freedom of education with it being established
that “the education given through the national system will be democratic and pluralistic
and will not have any official partisan orientation,” that the state and private universities
recognized by the state are juridical persons possessing academic, administrative, and
economic autonomy, and that “the admission to the university will depend solely on the
candidate's suitability.” Furthermore, the amendment provided that the hiring and pro-
motion of professors and researchers was to depend solely on their capacity and ability,
that the academic staff is “free to present their subject matters according to their ideas,
within their duty of introducing to the student body the necessary information about dif-
ferent doctrines and principles, including those with which they disagree, and that “the
university students have the right to express their own ideas.” Finally it was expressly
recognized that the people had the right to work, including a right to organize trade
unions and to declare strikes and the right to “active participation in the social, cultural,
civic, and political and economic life, for the purpose of achieving a complete develop-
ment of the human being and his real incorporation into the national community.” In
order to do this, community organizations such as centers of mothers, neighborhood
groups, unions, cooperatives, and others were given the character of juridical persons,
which enabled them to choose their own governing boards through free and secret elec-
tions. It was expressly mentioned that the “armed forces would be composed of the
army, navy, air force, and police; institutions essentially professional, disciplined, obe-
dient and non-deliberative.” The size of these institutions could only be set by law and
the officer corps of the armed forces and the police force could only be drawn from
their own professional academies.
his election was only possible with those guarantees, and because "in that moment the only important thing was to assume the government." This entire interview clearly indicates that his approval had been just a matter of political strategy and would not inhibit his government. In any case, Allende assumed the Presidency of Chile on November 3, 1970.

B. Legal Loopholes Theory

1. In General

Allende had been advised by one of his advisors, a professor of law, that it was possible to transform the socio-economic structures in Chile without enacting new laws, just by taking advantage of existing legal rules.

Among these were some law-decrees issued during the short-lived Socialist Republic which existed in 1932 during the "anarchy period." One of these laws, later modified and completed by constitutional governments, allowed the requisition of products or basic goods in a temporary and transitory form when abnormalities in the production process made it necessary for the public interest. For example, if a factory had in stock vital products that were very scarce in the market, they could be requisitioned and sold to consumers. It is true that these provisions, seldom used, had no adequate regulation and were imperfect, but the purposes for which they were created were clear. However, taking advantage of these rules, the Popular Unity government requisitioned in hundreds of occasions not only the products, but the producing companies themselves. Moreover, these requisitions were not for short transitory periods, as required by law, but were permanent, demonstrating the intention of the government to incorporate the companies into the "area of social property." In this way, a very serious juridical conflict was created since a legal procedure established to permit the temporary requisitioning of certain products was being used as a means of dispossessing owners of their factories for the purpose of incorporating the companies into the "area of social property."

In a similar way, the same legislation allowed government "intervention" into the management of a company, even in agriculture, when a labor conflict paralyzed it, and when this paralysis seriously affected the national economy. The "intervention" meant that the government appointed an "intervenor" whose task was to manage the enterprise temporarily while he looked for the quickest possible solution to the labor conflict. The law established that the intervention ended when the
conflict was resolved. This rule had been applied several times by preceding governments in connection with strikes which due to their magnitude and nature had caused national problems.

As in the case of government requisitions, the Popular Unity government used this “loop-hole” to transfer factories from the “private area” to the “social area.” The government accomplished this by appointing intervenors who did nothing to resolve the labor problems, thereby allowing the interventions to become permanent and indefinite. The companies thus intervened were considered definitively transferred to the social area, exactly the same as those companies which had been requisitioned.

In some instances small groups of Marxist workers provoked disturbances, pleaded the existence of a labor conflict, and asked for government intervention, which was immediately provided. These abuses led to such extremes that often the newspapers published reports that the government was studying the incorporation of certain companies into the social area, and within a few days a group of laborers would occupy buildings or take over the premises and the government would immediately intervene. For example, in May, 1971, the Minister of the Economy announced in a speech to the country the decision of the Popular Unity government to incorporate the large textile industries into the social area, but made no reference to a bill dealing with this matter as was constitutionally mandated. Hours later, groups of workers in the country’s eight largest textile factories “took over” the buildings. The next day the Minister visited the premises which had been “taken over” and announced that “since there [was] a paralysis of work and, as a consequence, there [would] be an inadequate supply of textiles for the population,” it would be legal to intervene. Thus, as had been previously decided, the UP government was able to accomplish a transfer of the factories to the social area. From a legal point of view it is evident in these cases of intervention that there existed not only the abuses and arbitrariness described above, but also a serious violation of the law by the government because of its passive attitude and because of its failure to fulfill its constitutional duty to maintain public order and to respect the rights of citizens.

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2. Towards the end of the Popular Unity government, interventions were made without even the excuse of a labor conflict.

3. For this reason the House of Deputies, exercising one of its constitutional powers, impeached one of Allende’s ministers, the Minister of the Interior, accusing him, among other things, of being responsible for a serious violation of the constitutional duty imposed on the President of the Republic and exercised by him through the Minister of
2. The Agrarian Reform Law

The system of takeovers was especially serious in the agricultural sector. There, the Popular Unity used the Agrarian Reform Law passed during President Frei’s administration and which was still in effect to transfer ownership of agrarian lands to the area of “social property.” Sometimes it was the farmers themselves who, by their actions, were responsible for a takeover. But increasingly it was extremist political elements, who had nothing to do with agriculture, who took over farms, pushing out the owners and settling on the farms as rebellious occupants. Though the government condemned these acts publicly, it did nothing to prevent them or to return the property to the owners. On the contrary, because there was now a serious labor conflict, the government intervened in the farm.

To see how the Agrarian Reform Law was illegally and arbitrarily applied by the government, it is necessary to understand how the law, which I believe was an important social advance, was designed to operate.

To facilitate the complex and difficult process of agrarian reform the law contained a series of articles that gave a large number of faculties to the organization charged with carrying out the law, “CORA,” the Land Reform Agency. Obviously, it was understood that these extensive faculties had to be exercised in good faith within the spirit of the law.

The only requisite necessary for the legal expropriation of a farm was a decision to this effect by CORA’s board of directors based on one of the causes enumerated in the law. The amount to be paid for the expropriated land was its assessed value as determined for property tax purposes. Any improvements, such as houses, accessory buildings of all types, fences, irrigation works, orchards and crops, were provisionally assessed by CORA. After depositing five to ten percent of the combined value of the land and improvements in the proper tribunal, CORA could then take actual possession of the expropriated farm. The remaining value was to be paid by special long-term bonds.

The same law created special Agrarian Courts as well as Agrarian Courts of Appeal. These courts were comprised of representatives from the judiciary, and technicians from special technical state organizations and from private agricultural institutions. The technicians were appointed by the Interior of maintaining juridical order and social peace and the respect for the rights of citizens. The impeachment was approved and the Minister was removed, but the government did not change its attitude.

4. CORA: Corporación de la Reforma Agraria.
pointed by the executive from a list of submitted names. The expropriated owners were permitted to present complaints to these courts about the cause of the expropriation, the provisionally assessed value of the improvements, and could also demand their right to a “reserve;” that is, a piece of land that the owner was to be allowed to continue to work. All these “trials” were to take place after CORA had taken physical possession of the farm.

How did the UP government break these rules and apply them in fraudulent ways, leaving the owners without any possibility of making effective use of their rights? First, in the most absurd and crude way; the government, by not issuing the decrees appointing the members, did not establish the Agrarian Courts. Thus, the courts had no real existence and the requests or complaints presented by expropriated owners could not be processed. Second, the rules were applied in a distorted way, and in combination with guided “takeovers,” evidenced bad faith. This made it impossible for the owners to bring the actions contemplated by the law. For example, after a “takeover,” the farm was intervened on the excuse that a labor conflict existed. The administration of the farm was transferred to the “intervenor” who did nothing to solve the non-existent problem. Several months after the “takeover,” the expropriation of the farm was decided upon. This frequently occurred with respect to farms which were clearly not subject to expropriation because they were either too small (less than 80 “basic” hectares) or they were a “reserve” of a farm previously expropriated during the Frei administration. Furthermore, the assessments for the improvements was ridiculously low.5

As I said, almost always the owner’s complaints were not acted on because the corresponding Agrarian Court had not been formed. When it was, the owner was called to CORA’s offices and informed that his farm had been taken over by CORA and handed over to the farmers. The owner was then advised that it would take two or more years for trial, and even if he were to win, the situation would be so consolidated that the judgment would be practically impossible to execute without provoking serious and violent conflicts. For this reason CORA suggested that it would be better for him to agree to a prompt arrangement. The frightened owner would then accept any sort of proposal. During a period of time it became commonplace that owners by their own “free”

5. I professionally handled cases in which the farmhouses, barns, and buildings, irrigation works, fences, farmworkers' houses, and all fixtures were assessed at 45,000 escudos, which at that time was approximately $50.00.
will handed over their farms to CORA in exchange for the security of keeping a piece of land or their house.

3. Nationalization of Banks

The nationalization of the private banks is another example of the government's incredible arbitrariness and illegality.

The Popular Unity program contemplated the expropriation of private banks in order to reorganize and incorporate them into the "social area." The purposes of the nationalization of the banks were to initiate a new credit policy that would benefit the small- and medium-sized companies through a reduction of interest rates, and to redistribute credit in favor of large sectors usually neglected in the financial market.

According to the Constitution, a specific law had to be passed to accomplish this purpose. On December 30, 1970, a few weeks after Allende had assumed the Presidency, he announced in a nationally televised speech that he had decided to send a bill to Congress to nationalize the banking system. However, this bill was never sent to Congress; throughout Allende's administration, members of the opposition in Congress consistently demanded introduction of the bill. But in place of this initiative the government used an illegal and tortuous procedure to nationalize the banks. The method chosen utilized pressure and blackmail, "intervention" and since the banks involved were public stock companies, purchase of shares sufficient to gain inside control.

Through the Superintendency of Banks, a state institution charged with supervision of the normal functioning of the banks, measures designed to "asphyxiate" the banks were adopted. For example, in the first six months of 1971, such an excessive reduction of the interest rate was ordered that the banks lost many millions of escudos. Immediately thereafter the government ordered the withdrawal of all state deposits from private banks; it is not difficult to imagine how serious this was for the banks. At the same time, in order to establish a type of state co-administration of all the banks, the Superintendency nominated permanent delegates in all banks to check the correctness of, and to control, all transactions involving certain amounts of money. Prior to this, control had always been achieved through periodic revisions. By a strange

6. After a short time, the Central Bank revoked the authority of private banks to operate in the lucrative foreign exchange market. In Chile, for many years, private individuals could buy or sell foreign currency only through the banks and only with a special official authorization.
coincidence the Superintendency began to discover frequent irregularities in the transactions and high penalties were assessed. This practice reached such an extreme that during the first six months of 1971 six banks had to pay penalties equivalent to 25 percent of all profits gained by all private banks during the preceding three months. Shortly, thereafter, several banks were "taken over" by employees who demanded that the banks be nationalized. Given this excuse and others, such as improper administration, the Superintendency misused its legal powers by intervening in several banks.

Concurrent with these actions, the Allende government ordered the Corporation to Promote Production (CORFO) to use its funds to purchase bank shares. As CORFO was a state institution, this maneuver was alleged to be in violation of Chilean anti-monopoly law. The anti-monopoly legislation, which was passed to prevent the existence of private monopolies, allows state monopolies only when formed pursuant to specific enabling legislation. A public prosecutor, charged with enforcing the anti-monopoly provisions, initiated a complaint against CORFO because of its unauthorized purchase of bank shares. Under the law, the prosecutor's complaint was to be heard by an Anti-Monopoly Commission Court composed primarily of high officials of the administration. However, the Commission declared it did not have jurisdiction to hear the case. On appeal to the Supreme Court, the decision was reversed, and the Commission was ordered to take jurisdiction and decide the substantive issues. To prevent this, the government ordered the Commission members not to appear at the sessions; thus, the Commission had no quorum. The Court was never convened during the Allende administration.

By all these synchronized illegal means, the government achieved its objective of expropriating private banks without Congress' consent and without sending a bill as it had promised. A year after all these strategies had begun, 15 banks were in the government's hands and the government owned the majority of the shares in the remaining eleven.

4. Nationalization of Television Stations

According to the Constitution and laws of Chile, only the State and the universities recognized by the State were authorized to establish television stations. The law that regulated telecommunications expressly authorized three universities to maintain television stations: the University of Chile, which belongs to the State; the Catholic University of Santiago; and the Catholic University of Valparaiso. In addition
there was the National Television Channel, which had been established during Frei’s Presidency. This was the only channel which in fact reached nearly the entire country. The others, while authorized to establish channels throughout the country, had not done so for economic reasons. This channel was not only forbidden to adopt a political position but also had to be objective in its reporting, and had to respect the right of all political parties to make use of its facilities pursuant to regulations. Under Allende, the National Channel, in violation of the existing rules, was turned into a political voice of the Marxists. It broadcast only news that was of interest to the government, distorting it as it pleased and even rudely attacking opposition parties.7

Protests, even in Congress, were futile. And even though these violations of law were used as the grounds for impeachment of the Minister of the Interior, the situation remained unchanged. During the impeachment debate, it was established that the National Channel was “monopolitical”; i.e., it only expressed the Marxist political position. It had been used to attack and impute crimes to opposition deputies without allowing them a “right to respond” as required by law. The National Channel had refused to broadcast communications of opposition parties as required by law. Instead, it gave extended coverage to all news concerning extreme leftist and revolutionary groups, which were not legally established political parties. Finally, it openly attacked the Church and even different ethnic groups residing in Chile which it did not consider devoted enough to the government.

The state-owned University of Chile Channel, whose authorities, predominantly non-UP, had been freely and democratically elected by the university community, was “taken over” by a group of workers who rebelled against the legitimate managers and began broadcasting under the control of extremist leaders. Their programs were even more partial, abusive, and derogatory than those of the National Channel. At first, these “occupiers” refused to broadcast the official news of the university; later they refused to permit university officials to enter the building in which the station was located. This situation continued for almost a year; the complaints and actions presented to the government were ineffectual. The government did not respond to protect the rights of its own university, simply because the station’s legal authorities were not UP militants.

7. The national newsreel (noticiero) became known as the “menticiero,” which is a play on the verb mentir, to lie.
In 1973, the authorities of the University of Chile decided to bring a criminal action against the occupying workers. The court ordered that the premises be restored to the legitimate authorities and forbade the occupants to broadcast. However, the executive refused to provide the assistance of public force to carry out the court's decision.  

During the "take over," doubting it would ever recover its channel, the University of Chile decided, in exercise of its legal right, to establish another channel elsewhere. The work was done quickly and secretly. In July 1973, the University of Chile officially began broadcasting. Two days later, under orders of the Intendente of Santiago, the police raided the new station, destroyed its installations, and arrested 34 students and employees. The official explanation given was that the channel was illegal since the university had not requested government authorization. The government also stated that for the same reason, the installations had been requisitioned in order to prevent the channel from transmitting. This was done despite the fact that the law expressly provided that the universities could establish and maintain television stations without any governmental authorization.

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8. Only at the end of August, 1973, a few days before the military coup, did Allende's last Minister of the Interior, a lawyer and professor at the law school who attempted to stop a great number of illegalities, give the channel back to the university. When it was returned, its installations had been practically dismantled and it could not transmit for several months.

9. As a lawyer for the university, I presented a petition of "habeas corpus" in favor of the 34 persons under arrest. It was immediately granted and the same day the Court of Appeals of Santiago ordered their unconditional release.

With the frankness and objectivity that I am utilizing, I must make clear that the permanent and continuous illegalities of the UP government and its reluctance to carry out many judicial sentences did not occur in the area of criminal justice, especially in regard to personal freedom and human dignity. The case I referred to above is a good example of how the "habeas corpus" petition was an efficient tool to defend these rights and how the government obeyed it and carried it out immediately. The excesses, outrages, and even deaths that occurred were committed by extremist revolutionaries but never by government agents. In this area, the government may have been too passive to enforce respect for many rights violated by other citizens, but as far as I know—and I consider myself well informed—during Allende's government the administrative institutions and the police maintained Chile's juridical and legal tradition of respect for the individual and his rights and freedom. If any exception can be found, it is only the case that confirms the rule.

After my petition of "habeas corpus" was granted, I presented a criminal complaint against the Intendente of Santiago and other important authorities for the crimes of breaking into the University of Chile's television station, the arbitrary arrest of 34 persons, and the destruction of the channel's transmitting equipment. Days before the military coup, all of them had been legally charged with these crimes.
The channel belonging to the Catholic University of Santiago was the only important one that was not controlled by the Marxist forces. Because of this, it reached an extremely large audience. It was the only means to hear opinions or information other than that given by the government. The authorities of the Catholic University decided to expand their channel to other provinces, exercising the legal right to do so. Nevertheless, their decision clashed with the government's policy, and resulted in the government's jamming the transmission of the channel in Concepcion, Chile's most important southern city. This caused meetings of protest, the instigation of criminal proceedings, and the death of one individual. Still, it was impossible to alter the course of the government. The decision of the UP to maintain the monopoly over telecommunications and thus disseminate distorted and biased information, was unbreakable. Other measures against freedom of information were subtle, clever, and dangerous, but they were equally illegal and signified a great threat to the freedom of information guaranteed by the Constitution.\textsuperscript{10}

10. I will refer to a measure that, if it had been maintained any longer, would have meant the disappearance or bankruptcy of all the newspapers and television channels opposed to the UP government.

To understand this measure, it is necessary to explain that Chilean institutions of public administration, the semifiscal entities, and the state companies created by CORFO, whose administration is rigorously controlled by the state (even if large portions of their capital are private) cover a fundamental sector in the economic life of the country. Because of this, previous governments had always taken special care to see that their official publications and propaganda were adequately distributed in all the public media. Think, for example, about the large amounts of money usually spent by the Internal Revenue Service in official communications and instructions published throughout the country. The same is true of the numerous social security institutions and important state companies, such as the National Oil Company (ENAP), the National Electricity Company (ENDESA), etc., with respect to the same type of advertisements and of the substantial advertising of the companies created and controlled by CORFO. This sector had greatly expanded due to the considerable number of private companies that had been illegally and arbitrarily transferred to the "social area" by means of "requisitions" and "interventions."

This decisive and fundamental sector of the economy, given its real economic potential, received precise orders to make its publications and all its advertising exclusively through the radio stations, newspapers, and television channels that supported the government. They also were subject to an emphatic prohibition against spending one cent in the newspapers, radio, and television stations not devoted to the UP.

Further, the private companies that had been "requisitioned" or "intervened" began to spend enormous amounts of money, frequently disproportionate and ruinous to their financial possibilities, in advertisements, propaganda, and even economic assistance for the news media devoted to the government.
II. CONSTITUTIONAL BREAKDOWN

In this section I shall examine a few aspects of the legal struggle which occurred in Chile and which are of great judicial and constitutional importance. In doing so, I believe it will be clear that Allende had decided, in a calculated and premeditated manner, to violate the constitution in order to achieve the goal of Marxist domination of power. In so doing, he employed a number of legal strategisms which not only created juridical problems, they also played a large role in the breakdown of the legal system in Chile and in the chaos which this produced in the period just before the military coup.

A. Decrees of Insistence

In Chile a public institution called the Contraloría General of the Republic was established by the Constitution and was almost a fourth state power. It was completely autonomous and its essential duties were to exercise preventive control over the legality of executive acts and to supervise and approve expenditures of public funds in accordance with the law. In order to carry out its first duty, every decree dictated by the President, and all administrative resolutions of the public agencies had to be sent to the Contraloría for its analysis and approval prior to being officially promulgated. In the event the Contraloría considered the decrees of resolutions illegal, it rejected and remanded them, thereby rendering them unenforceable. However, there were exceptions to this general principle, one of which was that in extraordinary cases where there was an evident urgency for the enforcement of the decree, the Contraloría could permit the immediate execution prior to its approval. It was clearly understood, however, that the decree would become void if the Contraloría later rejected it. The maximum period for passing on a decree was one month; and normally this period was not exceeded. There were occasions, however, where time was clearly of the essence. In certain emergencies, for example a strike in an important public service such as public transportation, where there would be legal grounds for the appointment by the President of an intervenor to act quickly to keep the service operating and to resolve the conflict, it would be practically impossible to proceed through the normal channels of review.

The Chilean law provided a solution for certain serious disagreements between the executive and the Contraloría concerning the legality of a supreme decree which the executive considered as the solution to the urgent problem. In these extreme situations, i.e., when the executive
and the Contraloría disagreed about the legal interpretation of a decree, the decision of the executive was to prevail provided a new decree was issued, signed this time not only by the President but by all his ministers as well, insisting that the Contraloría approve the decree, and permit its enforcement. This new decree was called a “Decree of Insistence.” By its very nature the Decree of Insistence was exceptional and its sole objective was to provide a solution in certain cases of conflict of interpretation. In these instances the Contraloría could not reject the Decree of Insistence, but had to send an official document containing all records of the matter to the Chamber of Deputies. If the Chamber determined that the executive had violated the law and that the Contraloría was correct, it could then initiate impeachment proceedings against a minister, some of them, or the President himself. The Chamber could also conclude—as happened frequently in the past—that the problem was not really clear and that the executive properly insisted on the decree because of the seriousness and urgency of the situation. In this case, no action had to be taken, and the records were simply filed. This system functioned efficiently for many years. It was always used rationally by previous governments and never produced any serious difficulties. However, it was utilized by the Allende government to complete its illegal requisitions and “interventions” of factories, mines, shopping centers, and farms. Because these requisitions and interventions had to be carried out within the existing institutional system, the executive had to dictate the respective “requisition” or “intervention” decrees and send them to the Contraloría. Under Allende’s government, every time the Contraloría rejected one of these decrees for being illegal, which occurred with increasing frequency, the President and his ministers issued a Decree of Insistence forcing the Contraloría to approve it. This became a more or less habitual form of administering the country. It was evident that this procedure, marginally legal at best, was being abused, since it is inconceivable that this exceptional legal institution was intended to permit the executive systematically to violate the law.11

11. The problem gradually worsened. In April, 1973, the Contraloría had rejected as illegal hundreds of decrees of requisitions affecting important factories based on the adherence of their managers to the empresorial strike of October, 1972. The President then ordered that just one Decree of Insistence be issued forcing the Contraloría to approve all the decrees that had been rejected as being illegal. There were very strong protests from the members of the Congress and from the opposition press, but to no effect. Some suggested the possibility of impeaching the entire cabinet. This was not done because it was thought that it would only make more acute the crisis between the executive and the legislature. There were voices heard still calling for good sense and prudence. This situation obviously led to tension between the government and the Con-
B. Breakdown of the Judiciary

The Constitution of 1925 categorically established the judiciary as a state power and, therefore, autonomous, independent, and supreme with respect to the administration of justice. According to our system whereby the public force depends on the executive branch, the law establishes that the administrative agents who represent the President in the political subdivision of the country, that is, intendentes and governors, "should provide the public force necessary to execute the decisions of the judiciary without inquiring into the substance of the decisions nor whether they are just or not."

In many of the cases analyzed previously, those dealing with "requisitions," "interventions," and simple "take-overs" of companies, factories, mines, farms, and even apartment buildings, the people affected turned successfully to the courts. Many judgments were obtained ordering the return to their legal owners of factories or estates illegally requisitioned or intervened. In the case of "take-overs," the return was also ordered and sometimes the invaders who had committed crimes such as usurpation, kidnapping, or trespass were convicted and sentenced. To carry out these sentences, the assistance of the public force was indispensable, but the official requests of judges asking for this assistance were not obeyed and generally were not even answered. The judges and the affected parties themselves brought these facts to the attention of the Supreme Court, which pointed out the illegality to the executive, but to no avail.

This situation naturally produced a great deal of tension between the judiciary and the executive. This increased even more when the Supreme Court became the target of severe criticism from UP political leaders and the leftist press. In very explicit and base terms, the Supreme Court was accused of opposing and sabotaging the "revolutionary process" with their "bourgeois class justice."

The judiciary's protests to the executive, that sentences could not be executed because of the government's failure to act, became very intense and heated. In October, 1972 the Supreme Court sent an official letter to the President informing him of "the absolute necessity of instructing
his cabinet to instruct in turn their subordinates to adhere strictly to the
decisions that, in the exercise of their constitutional attributions, ema-
nate from the ordinary courts of justice.” In this letter the Supreme
Court also called on the President to instruct his subordinates to show
the judiciary the courtesy which it deserved. But a few months later the
Intendente of Santiago declared to the press that he would not provide
the public force for the return of any of the intervened companies
pursuant to the judgments, because this “could cause serious incidents
and public disturbances.” At the same time, the Minister of the Interi-
or sent a “confidential memo” to all the intendentes and governors
ordering them not to exercise the public force to carry out any judgment
unless the Minister himself considered it convenient.

The conflict became even more intense and in May, 1973, the Su-
preme Court sent an emphatic official letter to the President directly
mentioning “the breakdown of the legal order in the country.” In one
paragraph the Court stated:

This Court must protest to you, as it has done innumerable times in the
past, about the illegal acts of the administrative authorities who are
illicitly interfering with the proper exercise of judicial power, and who
are preventing the police force from carrying out criminal sentences
duly emanating from the criminal courts, when, according to the laws,
these sentences should be carried out by said force without any ob-
stacles. These acts signify a decided obstinacy in rebelling against the
judicial sentences and a total lack of concern about the alteration that
these attitudes and omissions have produced in the juridical order.
All of this no longer means a simple crisis of state under the rule of
Law, as was manifested to you in our previous letter, but a peremptory
or imminent rupture of the country's legality.

This time the President answered with a long and harsh letter in
which he made serious charges against the Supreme Court for some of
its decisions and accused it of partiality and insensibility with respect to
the claims of the poor while efficiently taking care of the cases of the
rich. Regarding the execution of juridical sentences, his theory was that
the government, as “warrantor of peace and public order,” should
analyze each case and make its own judgments on the merits as to
whether or not it would grant the assistance of the public force to carry
them out.

The Supreme Court replied in furious and sarcastic terms. It said,
for example:

The President has undertaken the task, specially difficult and painful
for him since he only knows the Law through hearsay, of determining
for this Supreme Court the rules for the interpretation of the Law, a
duty which in the matters entrusted to it, belongs exclusively to the
judiciary and not to the executive.

In another paragraph it added that “until now, it has not been noticed
that Your Excellency has used his presidential authority and influence
where he could and should, in order to stop the abusive publicity.”

The President returned the official letter without answer, due to the
“disrespectful and inappropriate terms in which it was written.” The
Supreme Court replied that “the action of the President of the Republic
of returning the letter to this Tribunal is unacceptable, since the problem
affects two State Powers of equal constitutional importance, between
which there is no subordination.”

This was the definite breakdown between both powers. It was July,
1973. Two months later, the military coup would take place.

C. Circumvention of the Plebiscite

I now wish to turn to the last stage of the desperate fight for the
defense of legality in Chile. This particular problem led to the rupture
between the executive and the legislative power. With this crisis, the
Allende government suffered a definitive institutional collapse and, in
the final irony, dug its own grave. This crisis was produced over the
handling of the constitutional amendment dealing with the three areas of
the reformed economy.

It was evident that the only way of legally forming a “social area” was
by expropriating private companies and paying just compensation for
them. This required a congressional enactment; as previously noted,
the UP program itself admitted this. But no expropriation bills were
ever sent to the Congress, except one to nationalize the great American-
owned copper mining companies—a bill unanimously approved by
Congress. In all the other cases, the Allende regime preferred requisITIONS
and interventions.

It was indisputable that constitutionally and legally the only acceptable
manner to permit that transfer of companies from the “private area” to
the “social area” was through the law. However, because the govern-
ment had in fact used non-legal means, the opposition wished to reaff-
irm the principle of the rule of law through an explicit and detailed
amendment to the Constitution.

In one more attempt to find a solution to the daily increases of
illegality, the Christian Democratic party, through two of its senators—
one of whom, Senator Fuentealba, was violently deported by the military
government—proposed a constitutional amendment. The objective of this amendment was to establish very clearly the form and procedures for transferring companies to and from the social area.

The Christian-Democratic proposal, which also contained provisions dealing with the participation of workers in the administration of their companies, was approved with minor modifications by a substantial majority of the Congress. In compliance with the constitutional requirements, after being separately approved by both Houses, the amendment had to be ratified by the Congress in Plenary Session. This occurred, by a large majority, at the beginning of 1972. But at that time a very heated public debate had started in which the executive announced it would veto the amendment and advocated the theory that Congress needed a two-thirds vote in order to override a presidential veto.

It is useful to recall now my earlier explanation about the constitutional amendment approved in 1970, during Frei's presidency, in which a national plebiscite was clearly established and regulated as a solution in case of a dispute between the legislature and the executive over constitutional amendments. Logically, that amendment did away with the previous clause that required a two-thirds vote by the Congress to override a presidential veto. The President now had an alternative in the case of a disagreement: he could call a national plebiscite. Nevertheless, the President and the UP leaders maintained, through unintelligible arguments, that the previous clause was still in force.

At the beginning of Allende's term, he boasted that he was not worried about the great congressional majority which opposed him, because he was backed by the people and, therefore, if he called a plebiscite, he could make all the constitutional reforms he desired. In the interview granted to Debray, to which I referred before, in response to a pessimistic question by the French journalist who thought that in Chile "bourgeois democracy was untouched," Allende stated:

We have said that we will take advantage of certain aspects of the present Constitution in order to open the way for a new one: the people's constitution. Why? Because in Chile we can do it. We will introduce a bill and the Congress will reject it; we will then call a plebiscite. For example: if we propose doing away with a bicameral congress and the Congress rejects it, we will call a referendum and we will win it. Well, that finishes the two Houses and we will have a single House as we proposed. Who are the people going to elect to that House? Their representatives, I suppose . . . .
A year and a half later the government unconditionally refused to call a plebiscite. It is clear that Congress maintained that the only constitutional resolution to the definite rejection of the presidential veto was the plebiscite. Thus, before the veto was even sent to Congress one could see a very serious constitutional problem arising.

The negotiations in search of a solution began anew. The Minister of Justice, ex-Dean of the Law School of the University of Concepción and a member of the P.I.R. party that fought within the government to avoid excesses and arbitrary actions, was asked by the President to negotiate an understanding with the Christian Democrats so that the veto would be approved by the Congress. When the understanding had been achieved, Allende, pressured by the extremists in his government, retracted his Minister's authority and put an end to the negotiations. This caused the withdrawal of the P.I.R. from the UP government.

The government then sent to Congress a much more defiant and obstinate veto than the one that had served as the basis for the Minister of Justice's discussion with the Christian Democrats. Predictably, the Congress, after a prolonged debate, rejected the veto by a large majority; however it fell short of two-thirds. According to the explicit text of the Constitution, the President upon receiving Congress' official communication of its rejection of the veto, had to call a plebiscite within a specified number of days. If the President failed to call a plebiscite within that time, he was automatically required to promulgate and publish the amendment approved by Congress.

Thus, at the beginning of 1973 public tension reached a new high. The opposition challenged the President and the UP to lay aside its legal subtleties and call a plebiscite. The opposition said that it was now the people's turn to resolve the conflict. Allende stubbornly refused.

The President then decided to submit the conflict to the Constitutional Tribunal. This Tribunal, at the end of May, 1973, declared itself—correctly in my opinion—without subject-matter jurisdiction because it was not authorized by the Constitution to entertain this type of question.

The constitutional period for calling a plebiscite had expired and Allende had not called it. Constitutionally, he was then obliged to promulgate the amendment, but he refused to do so. He then proceeded on a strange course, not authorized by any clause in the Constitution: he issued a decree promulgating portions of the constitutional amendment. These portions were with respect to matters upon which the President and the Congress had not been in dispute. The Contraloría rejected the decree as illegal, holding that as the time for calling a
plebiscite had lapsed, the President had no alternative but to promulgate the entire amendment approved by Congress. It was July, 1973, and President Allende reiterated his decision not to promulgate the complete amendment.

At this time, in addition to the President's stand, we must point out that "take-overs" of factories and companies were occurring on a daily basis; that social, institutional, and economic chaos was present everywhere; that social indiscipline had reached incredible extremes and that daily life lacked the most elementary sense of security. For example, with increasing frequency the streets were full of thousands of public workers whose only task, it seemed, was to parade around in state-owned vehicles of all types, screaming insults and threats against everyone who did not applaud the government. As a natural reaction to all of this, many street demonstrations in opposition to the government occurred, calling for the President's resignation.

During this same period, the violent breakdown between the government and the judiciary had recently taken place; there had also been frequent and serious difficulties with the Contraloría, culminating with the battle over the constitutional amendment just mentioned. The President's refusal to promulgate the constitutional amendment led to the breakdown between the presidency and the legislature, the latter being the most genuine and direct representative of the people, particularly because the overwhelming majority of its members had been elected only four months before.

On August 22, 1973, the House of Deputies, which according to the Constitution is the only branch of Congress charged with supervising the executive, approved by a great majority a lengthy resolution concerning the government. This resolution analyzed all the illegalities and abuses committed by the government up to, and including, its failure to promulgate, as required by the Constitution, the amendment approved by the Congress. This resolution ended by stating, among other things, that its purpose was to make clear to the President, to his cabinet, to the members of the Armed Forces and to the national police force, the serious breach in the constitutional and legal order which the previous mentioned facts and circumstances implied; to make clear to the same persons and institutions that because of their oath of loyalty to the Constitution and the laws, and, in the case of the Armed Forces and police because of the nature of their institutions, it was their obligation to put an immediate end to all situations which violated the Constitution and the laws, for the purpose of restricting Government actions to legal means and to
assure the constitutional structure of our country and the essential basis of democratic life among Chileans.

Allende replied in a “Declaration to the Country,” in which he accused the opposition of “formally exhorting the Armed Forces and the Police Force to adopt a deliberative position before the Executive and to break their duty to obey the Government.” With respect to himself, he insisted that he had respected the law and swore that “together with the people, he would, without vacillation, fulfill his obligations.”

A few days later, on September 11, 1973, Allende was removed from office by the military forces.