

Abstract

"The Chilean Concept of Property Rights From the Liberal Era to the Neoliberal Era"

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This paper addresses the concept of private property rights in Chile over the last one and a half centuries, from the Liberal Era to the Neoliberal of the military government under Augusto Pinochet. Central to the exploration is the posture and evolution of the liberal conceptions of property rights, which are contrasted with the property rights conceptions of competing schools of thought. This study is necessarily limited in scope to the national level, with an emphasis on constitutional law. The time period is divided into three epochs: the Liberal Era (1852-1925), the Interregnum (1925-1973), and the Neoliberal Era (1973-1989). Within each era, the study begins with an exposition of the constitutional status of property rights, demonstrated by reference to scholarly debate and reaction within the circles of constitutional legal study. Supplementing the legal viewpoints are representative samples of debate and polemic in both political and economic literature, with an emphasis on the proponents and partisans of liberal property rights. The research was limited to books in print, scholarly journals, and microfilms from the Georgetown University Lauinger Library and the Library of Congress, both in Washington, D.C.

The introduction to the paper begins with an exposition of what Jenney terms the liberalism/corporatism issue of Latin American studies: whether or not institutions like liberal property rights have any place in Latin American societies. The academic orthodoxy's emphasis on corporatism is juxtaposed with the liberal visions of Peruvian Hernando de Soto. Chile was chosen for this study primarily because of its relatively strong liberal tradition and because of the neoliberal character of the Pinochet government. In the body of the paper few conclusions are made in regard to the liberalism/corporatism issue, as the main objective of the paper is to show what exists in the way of property rights philosophy and debate, rather than to make generalizations about which worldview was dominant. The conclusion is somewhat more speculative, identifying trends that suggest that dominant property rights conceptions in Chile have see-sawed between liberal and corporatist poles. Jenney sees the Pinochet regime's neoliberal vision of property--as well as that of moderate detractors--as occupying a middle ground between the liberal conceptions of the previous century and the corporatist conceptions that dominated the Interregnum period of the middle Twentieth century.

The Chilean Concept of Property Rights
From the Liberal Era to the Neoliberal Era

by

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Submitted to Professor Roberto Esquenazi-Mayo

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I. INTRODUCTION

This paper addresses the concept of private property rights in Chile over the last one and a half centuries, from the Liberal Era to the Neoliberal Era of the military government under Augusto Pinochet. Central to the exploration is the posture and evolution of the liberal conceptions of property rights, which are contrasted with the property rights conceptions of competing schools of thought. This study is necessarily limited in scope to the national level, with an emphasis on constitutional law. The time period is divided into three epochs: the Liberal Era (1852-1925), the Interregnum (1925-1973), and the Neoliberal Era (1973-1989). Within each era, the study begins with an exposition of the constitutional status of property rights, demonstrated by reference to scholarly debate and reaction within the circles of constitutional legal study. Supplementing the legal viewpoints are representative samples of debate and polemic in both political and economic literature, with emphasis on the proponents and partisans of liberal property rights. The research was limited to books in print, scholarly journals, and microfilms from the Georgetown University Lauinger Library and the Library of Congress, both in Washington, D.C. Magazine and newspaper articles and editorials are only cited where they appear in those books. A thorough review of the property rights debate in Chilean periodical literature could be the fruitful topic of future explorations.

Before the topic of the Chilean property rights tradition can be properly explored, it is crucial to address the relevance of such a search to an issue that provokes much debate and discussion in that special concentration of human sciences known as "Latin American area studies", namely the liberalism/corporatism issue. A short exposition of that issue will help the reader put the search at hand into historical and philosophical perspective, as well as provide some working definitions of key terms and concepts.

The academic orthodoxy

The title of a recently republished collection of essays edited by Howard J. Wiarda presents one of the larger questions of our particular area study: Politics and Social Change in Latin America: Still a Distinct Tradition?¹ Reformulated, the question shakes the very *raison d'être* of the field; is the totality of Latin American culture, owing as it may to a special, perhaps idiosyncratic, historical development, different enough in either kind or degree from other cultures (such as one derived primarily from Anglo-American traditions) to justify a separate concentration of the human sciences? For Wiarda and contributing authors like Glen C. Dealy, Richard M. Morse, and Fredrick B. Pike, the answer to these questions is a qualified "yes". A wide variety of historical, sociological, and economic explanations have been proposed to account for such differences in cultural reality, and many, such as the long history of Spanish colonialism, Max Weber's theories on religious psychologies, and André Gunder Frank's dependency model,

should be familiar to students in the field.

Perhaps inevitably, elements of normative theory have accompanied descriptive theory from the very beginning. Debate over normative theory existed long before the Americas entirely conquered, as evidenced by the famous 16th century debate between Bartolomé de las Casas and Ginés de Sepúlveda over the proper policy of the Spanish crown with regard to the indigenous peoples of the Western hemisphere. More recently, normative debate has flourished in fields like "development economics". Within the circles of both positive and normative debate, scholars have put forth the thesis that it is inaccurate, if not pejorative, to describe facets of Latin American culture as "underdeveloped". This thesis follows logically from the idea that a significantly (if not fundamentally) different set of laws and dynamics (within the postulates and models of the human sciences) may be at work south of the Río Bravo². For Wiarda and many of his colleagues, the recent transition of many Latin American nations to nominally democratic forms of government seems ephemeral³, giving rise to unwarranted hopes (both inside and outside of academia) that Latin American countries are joining the ranks of Western-style liberal⁴, pluralistic democracies⁵:

However, many scholars are unsure whether Latin America can remain democratic; the present may be just another cycle in the long history of periodic cycles, and after a time, the region will return to authoritarianism. Moreover, even if Latin America remains democratic, it will most likely be in its own distinctive Rousseauian forms (top-down, authoritative, corporatist, and organic) rather than as an imitation of the U.S.-style Lockean liberalism.⁶

For Wiarda and others, the historical dominance in Latin America of corporatist traditions, which are described as "Catholic, organic, corporate, stratified, elitist, authoritarian, hierarchical, and patrimonialist to the core"⁷, explains the failure of past attempts to graft "liberal-democratic-capitalist" institutions⁸ onto Latin American societies. Against the medieval Spanish legal and political tradition of the *Siete Partidas*, the neo-Thomistic natural law of Francisco Suárez, and the pervasive influence of Machiavelli, liberal institutions descended from the Protestant Reformation and the Enlightenment⁹ are considered to have failed miserably.

If it can be said that the liberal idea sank to the bottom of a corporatist Latin American pond, it cannot be said that it created no ripple. Argentine historian José Luis Romero, writing about Latin American independence leaders like Simón Bolívar, Antonio Nariño, and Francisco de Miranda (as well as Chilean Camilo Henríquez), asserts the significant influence of liberal models on their thinking, especially the North American constitutional model.¹⁰ As is well known, philosophy was rarely converted successfully into practice. Romero cites statement of the rejection of such models, which were regularly deemed unsuitable for the region:

Para Hispanoamérica, pues, el modelo político norteamericano fue una ideología radical.

Y como tal fue defendido o combatido. No, por cierto, objetando su calidad jurídica y política, sino por creer que solo se justificaba en una sociedad como la que constituía los Estados Unidos, optimamente predispuesta para una democracia republicana y federal.¹¹

In almost all countries, the attempted institution of liberal constitutions after independence was resisted (usually militarily) and defeated by the forces of the traditional (corporatist) order.¹² Even so, liberalism was far from stillborn, and most countries experienced a lengthily liberal "era" during the middle to late nineteenth century. Indeed, Romero comments that "[e]n el campo de la interpretación de la realidad social de cada uno de los países de Latinoamérica, la oposición entre autoritarismo y liberalismo constituye la clave durante un largo período después de la emancipación política."¹³ One further testimony to the power of the liberal idea was the pragmatic adoption of many of its tenants into conservative political thought, tempering ultramontane and anti-republican strains. It should be noted, however, that the success of liberal *institutions* (as opposed to ideas) is a different matter. While liberal ideas may have dominated the literature and rhetoric of the day, institutions such as universal suffrage, rule of law, free trade and property rights may or may not have taken firm rooting in Latin American soil.

In the early twentieth century, liberalism began to fade as the dominant political ideology in Latin America. Undermined earlier by authoritarian versions of Comtean liberal positivism¹⁴ and now attacked on every front by hostile ideologies, the liberal idea was largely lost in political flux. In a section entitled "El liberalismo en retirada", Romero names the most influential of the attacking ideologies: "arielismo", inspired by José Enrique Rodó's *Ariel*, which attacked U.S.-style liberal utilitarianism; neoromanticism, which criticized what it saw as liberal plutocracy; aristocratism, which accused liberalism of destroying necessary social hierarchies; nationalism and the pro-Spanish "hispanidad" movement, which objected to "yanqui" imperialism; fascism/national-socialism; and various strains of marxism and social democracy.¹⁵ Many of these "isms" also had populist appeal, giving them a political edge over individualistic liberalism in an age of mass movements.

The authors of the Wiarda text, having reviewed the region's historical framework thus far, do not believe that Latin American culture will accept liberal institutions anytime soon.¹⁶ In addition to delivering a grim prognosis for liberal, pluralistic democracy in the near future of Latin America, Wiarda further suggests that "as the tendencies toward bureaucracy, statism, and concentration grow in the United States and other industrialized nations," these countries may have much to learn from Latin American models of social and political development.¹⁷

Property rights in a corporatist world

Private property rights are useful to a study of liberalism because they form the bedrock foundation of classical liberalism. Other institutions, such as limited government, rule of law, free markets, and pluralistic democracy, find their roots in a respect for well-defined, transferable, and inalienable property rights. As well, property rights form the knife's edge in distinguishing between the myriad liberal political philosophies.¹⁸

In dealing with property rights in Latin America, most scholars are quick to moderate, if not to reject entirely, liberal definitions and functions associated with those rights:

The Latin American concept of private ownership is also important, for it holds that property, as defined in nearly all of the twentieth-century constitutions, is a social function and no longer the absolute right asserted by the older liberal philosophies. Property is understood to be a privilege granted to the individual so long as it is useful to society.¹⁹

Authors of the Wiarda text like Richard M. Morse are clear in emphasizing that "Lockean atomism, unbridled laissez-faire and unqualified obeisance to rights of the sovereign individual"²⁰ fall well outside the bounds of dominant social and political philosophy in the region.²¹ Glen C. Dealy summarizes what he sees as the conception of individual rights derived from Catholic political doctrine: "Where the common good of the Earthly City takes precedence over the particular interest, individuals per se can have no inalienable rights. Individual rights may conflict with the attainment of the goals of the political order and must therefore be qualified."²² A last comment by Wiarda further illustrates the potential elusiveness of liberal property rights in Latin America:

...there is widespread acceptance even at the constitutional level of Duguit's "social function of property" theory. It is society or the state that retains the rights to sub-soil natural wealth, not the individual property holder. Similarly, since the good of the whole social organism takes precedence over that of any individual part of it, the state may confiscate or expropriate private property...²³

In addition to demonstrating the challenge of our task, this presentation of the corporatist conception of property rights should also serve as an important caveat to scholars searching for liberal institutions in Latin America: the appearance in a document or secondary source of terms like "right" or "private" should never be automatically assumed to convey the liberal meaning.

Toward a new Latin American liberalism?

One recent challenge to the thesis that liberal institutions are misplaced in Latin America is that of Peruvian economist Hernando de Soto, whose 1989 book The Other Path: The Invisible Revolution in the Third World²⁴ became a continent-wide best-seller. In a study of the gigantic informal (black market) sector of the Peruvian economy, de Soto and a team of researchers from the Lima-based Instituto Libertad y Democracia (ILD) discovered that poor people turned to the informal sector after being shut out of the formal sector by neomercantilist regulations. He found the entrepreneurial capitalist spirit to be alive and well in the small industries of Peruvian shantytowns and slums. Further, democratic elections (which were absent in Peru's government from 1968 to 1980) were regularly held in the informal sector, and a kind of common law (consisting of "extralegal norms") had evolved to suit the needs of the informal sector. Most significantly, however, de Soto attempts to debunk many common sociological generalizations about Latin America:

We are able to see that it was not that in Peru we had markets and they failed because culturally we Latin Americans aren't made for markets--we have a more family-oriented philosophy, or we're just better at the guitar than work. It was actually that the law was very hard to overcome--it was an obstacle... The problem is the law, and the law is something identifiable that you can change. If the problem were purely cultural, then you are in trouble because how do you change your culture?²⁵

De Soto also challenges the idea that Latin Americans have already tried economic liberalism and found it to be not only a developmental failure, but a root cause of both foreign exploitation and domestic material inequality. Mario Vargas Llosa summarizes the ILD's position on this notion: "Peru never had a market economy, and that it is only now, because of the black market, beginning to get one--a savage market economy, but a market economy nevertheless."²⁶

Drawing an extensive comparison between the modern Peruvian state and 18th century European mercantile states, de Soto argues that his country and his people are ripe for liberal institutions. While agreeing with the academic orthodoxy that pluralistic party politics and economic liberalism exist only in the rhetoric of politicians speaking to foreigners, de Soto is firm in pressing his normative claim: "What is needed is to make the transition from a system in which individuals are subordinated to the aims of the state, to one in which the state is at the service of individuals and the community."²⁷

Property rights in a liberal world

The centrality of property rights to the liberal order is clear in The Other Path, which is primarily dedicated to legal reform: "the extralegal system shows us that what Peruvians want, first and foremost, is firm property rights, reliable transactions, and secure activities."²⁸ As seen before, however, the term "property rights" alone is insufficient in the Latin American context to convey liberal inalienability.²⁹ De Soto, in distinguishing between his conception and the traditional interpretation of the Peruvian legal framework, writes:

Thus, by property rights we mean all those rights, both personal and real, which confer on their holders inalienable and exclusive entitlement to them--in other words, the power to enjoy them freely, to dispose of them freely, or to use them to the exclusion of all others.³⁰

As this paper is not intended to be a philosophical piece on the parameters of inalienability, let it suffice to say that the definition of property rights in The Other Path fits comfortably within the liberal tradition of John Locke, James Madison, and the French Declaration of the Rights of Man and the Citizen. In conclusion, it is private property rights, so defined, that this paper seeks to document within the record of Chilean history.

II. THE LIBERAL ERA³¹

The Constitution of 1833

The right of private property guaranteed to Chilean citizens in Article 12, Paragraph 5 of the Constitution of 1833 (see Appendix A) was, according to the letter and spirit of that document, a natural and inviolable right, subject to only two limitations: the preferential rights of third parties as determined by judicial sentence, and the utility of the state, defined rather narrowly by most of the constitutional scholars and critics of the liberal era. There was very little contention over this basic concept throughout the Nineteenth Century among liberals and conservatives, a fact which is perhaps remarkable in light of their occasionally violent struggles over other issues.

Considerably more controversy was raised with regard to the absolute and inalienable rights to specific pieces of property, especially land, which had been granted to individuals by virtue of primogeniture and to religious orders by virtue of Church vocation since the colonial era. Known collectively as "mayorazgos", these legal linkages of persons to property were abolished in the more liberal 1828 Constitution, but were reinstated by Article 162 of the 1833 document by the conservative "pelucones" who wrote it. Routinely denounced by liberal reformers throughout the first quarter century of the Republic's history, the "mayorazgos" were abolished July 14, 1852 by a law redacted by the famous Venezuelan expatriot writer Andrés Bello and signed by President Pedro Montt. Property rights thus took on a fully liberal conception. For an excellent and detailed treatment of the long history of the debate over mayorazgos, see Ricardo Donoso's *Las ideas políticas en Chile*.³² As well, Jaime Eyzaguirre notes that the destruction of the mayorazgos, which was extended to recently organized territories and provinces, resulted in the diffusion of the right of property to many new owners, especially in the Southern regions.³³ For the remainder of the century, there was general consensus among both conservatives and liberals regarding the posture of private property rights in the Constitution--until the introduction of the "social question" around the turn of the century. Nevertheless, there was far from universal agreement about exactly how to justify or ground a constitutional right to property. The nuances of various legal interpretations will be explored here, while the economic rationales for property rights will be dealt with below in the section entitled "Economic liberalism".

Alcibiades Roldán, a professor at the University of Chile writing in 1924, presents the reasoning and intent behind the inclusion of the inviolable right of property of "comunidades" in the 1833 Constitution, observing that "[e]l término 'comunidades' se refiere a las órdenes eclesiásticas regulares, no a las corporaciones ni a las sociedades." He provides some historical context from the politically tumultuous 1820's:

En 1824 se había dictado un decreto supremo, en el cual se dispuso, entre otras cosas, que

todo convento menor que de prelado a lego contuviera menos de ocho individuos profesos debía cerrarse.... A fin de prevenir en el futuro medidas de aquella clase, se redactó el precepto constitucional en la forma antes indicada.³⁴

Roldán continues his analysis of the Constitution, examining the limitation to the right of private property imposed by "la utilidad del Estado." He notes that "utility" is not the same as "necessity"--as a strict interpretation of the latter would have almost anarchical implications.³⁵ He then details somewhat the conditions necessary for constitutionally legitimate expropriations of private property. Expropriation, which was not to be carried out for reason of fiscal need, was to be done by virtue of a law. A question arises with regard to the rule of law, as Roldán notes that laws mandating expropriation may be formulated both in general and individual terms. The notion that a law may designate by name specific parties to be affected, rather than prescribing general conditions of application, is counter to the rule of law as defined by some classical liberals, most notably Hayek, in *The Constitution of Liberty*. Roldán also lists other procedural conditions required for expropriation, including those detailed in Articles 139, 140, and 141, which are less controversial.³⁶

On a normative line, Alcibiades Roldán is a proponent of a strong constitutional right to property, although he seems to have no preference as to the means of grounding such a right:

Las Constituciones garantizan de un modo especial este derecho, considerándolo una de las bases del orden social. Sin detenernos a examinar el fundamento que se le atribuye, sea desde el punto de vista filosófico, sea desde el punto de vista económico, baste recordar que, según las ideas generalmente admitidas, la misión esencial del Estado consiste en resguardar, junto con la libertad de las personas, el derecho de propiedad.³⁷

The "social function" of property, which will dominate later conceptions of property rights in Chile, is distinctly absent in Roldán's view, as that right is seen by him as a real right that a human being has over a material thing, "para gozar y disponer de ella arbitrariamente, no siendo contra la ley o contra derecho ajeno."³⁸

Another constitutional scholar, and a doctrinaire liberal from the period, is Jorge Huneeus Zegers. Mario Correa Saavedra, reviewing the thought of Huneeus, demonstrates the strong, and somewhat religious natural rights orientation that colored his legal philosophy:

El derecho existe como condición necesaria de la existencia del individuo--escribía--y no hay poder humano, por elevado que sea, que pueda sobreponerse a aquello que emane de la voluntad superior: la del Supremo Creador.... "reconociendo que los derechos materiales del individuo existan con anterioridad a toda ley humana, los asegura, los afianza en buenos términos, y así como la fianza es una obligación accesoria que supone una principal, así las garantías que se crean a favor de un derecho, presuponen la

existencia de éste."³⁹

As far as the positive law regarding property contained in Article 12, Paragraph 5 of the 1833 Constitution, the comments of Huneeus are in agreement with those of Roldán. He points out that the inviolability of property of "corporaciones" and "sociedades anónimas" is erroneously maintained by another scholar, a Sr. Carrasco Albano, and he explains in response that while such entities may be granted rights according to the civil and commercial codes, "aquellas no son personas naturales, i no pueden, por lo tanto, tener derechos naturales."⁴⁰ He concurs with Roldán in citing historical reasons for the extension of the natural right of property to "comunidades" only in the sense of religious orders.

Like Roldán, Huneeus deals at some length with the limitations to private property contemplated by the regime of expropriation contained within the Constitution, with his primary concern centering on the issue of whether or not expropriation in the name of state utility may be carried out for the benefit of smaller divisions of the Chilean body politic, such as municipalities. He finds the question to have already been answered in practice in the affirmative, but it is interesting that the issue surfaces in the Chamber of Deputies as late as 1872. The Deputies represented maintained that almost all state projects--such as railroad construction--involve the concentration of benefits in some areas over others, and that a strict interpretation of state utility would render almost all such projects unconstitutional. Arguing that these projects do stem from valid state utility, the Deputies reject the extreme requirement of utility.⁴¹

Perhaps the most outstanding and well-known figure of Chile's Liberal Era is José Victorino Lastarria, political philosopher and author of many works, including the legal treatise Elementos de derecho público: constitucional teórico, positivo i político, in which Lastarria expounds both positive and normative positions in regard to constitutional law. In a discourse on law that begins by finding grounding in human nature and man's need for self-fulfillment, Lastarria offers "el sistema liberal", as opposed to systems of "fuerza física i moral", as the best base for human development. He finds that the form of law that complements such a system is that based on the guarantee of individual liberty, and from such guarantees is derived the liberal state with its particular, limited, use of power and force. He also makes a distinction between natural rights and obligations and positive rights and obligations, which necessitate the existence of a political constitution. In this argument, Lastarria does not mention the right of private property by name, but instead writes more generally about the human activities of commerce and industry.⁴² Later in the treatise, however, in his treatment of positive law aspects of amendment 152 to the Chilean Constitution of 1833, he affirms the natural right to property assumed in guaranteeing intellectual and inventive property rights, even if the exclusive right to such creations is only temporary, writing "la Constitución no hace otra cosa que reconocer el derecho natural que el hombre tiene tanto para aplicar su inteligencia i su actividad para apropiarse la materia...".⁴³ In this way, Lastarria joins the other constitutional scholars of his day in attesting to the underlying natural rights doctrine on which private property in the Liberal Era stood. In the Interregnum period, we

will see still other assessments of the status of property rights in the 1833 Constitution, as we investigate the viewpoints of the 1925 reformers.

Economic liberalism

In the historiography of Nineteenth Century Chile, the term "economic liberalism" came to be synonymous with the name of Jean Gustave Courcelle-Seneuil, a French economist who was invited in 1855 by the Chilean government to teach economics at the National Institute. An ardent free-trader or "librecambista", Courcelle-Seneuil was influential in Chile long after his 1863 departure, mainly because of the diffusion of his thought and theory by students like Miguel Cruchaga and J. Zorobabel Rodríguez. In the following excerpt, Leonardo Fuentealba Hernández introduces Courcelle-Seneuil's approach to comparative economic systems (those of liberty and authority) and his conception of property rights, which was both secular and utilitarian:

De la solución que se dé al problema de la libertad y de la autoridad deriva un verdadero sistema de propiedad, que fija al Estado y los particulares sus atribuciones y derechos. Courcelle-Seneuil rechaza la concepción absoluta e inviolable de la propiedad, que se funda en la religión o en el derecho natural. Ella no resuelta de las leyes constitutivas del hombre, sino de simples conveniencias sociales. Sólo existe como el medio más eficaz de imprimir al trabajo toda su fuerza creadora. El mejor fundamento del derecho de propiedad reside así en la utilidad social antes que en la justicia o interés del individuo.⁴⁴

In the preface to his Tratado teórico i práctico de economía política, Courcelle-Seneuil explains that his goal is to present the art aspect and the science aspect of economics separately, to show economic institutions like private property "no como hechos permanentes, necesarios, de todos los tiempos i de los lugares," and various systems of economic organization "como condiciones de apropiación que no siempre habian existido i que no existian en todas partes, que podian ser o no ser, que tenian un mecanismo particular, ventajas e inconvenientes."⁴⁵ As mentioned above, the possible varieties of economic systems, distinguished by their respective means of appropriation of wealth, are mapped out in his treatise between the poles of authority and liberty. His chief examples of authority-based systems are the kind of traditional society economies that operated in the kingdoms and empires of the ancient world. In describing modern societies, in which both systems exist with reasonable comfort, he recognizes that many essential services cannot be provided by liberty of contract--indeed, one of these is the enforcement of contracts. Another service is the protection of individual property:

No obstante, la libertad del trabajo i el derecho de propiedad permanecen garantidos, determinados i limitados por la autoridad social, bajo cuyo imperio los contratos

establecen i modifican cada dia... [e]s así como los dos modos de apropiacion de las riquezas co-existen o han co-existido en todas las sociedades que conocemos..."⁴⁶

The use of a bi-polar dichotomy between liberty and authority was highly influential among the Chilean economists who were his students, as were his normative prescriptions, which included a radical system of free banking inspired by the Scottish system of the previous century.

One economist who demonstrates the decisive impact of Courcelle-Seneuil's thinking is Miguel Cruchaga, who employs the liberty-authority model in his Estudio sobre la organización económica y la hacienda pública de Chile. It appears that his primary concern with the institution of private property in Chile is in details such as the persistence of the mayorzagos, and he cites writers like Gustavo de Beaumont to show that the intransferability of aristocratic properties was also a problem in developed European nations such as Great Britain.⁴⁷ As well, Cruchaga is concerned with the contemporary legal processes surrounding inheritance, which "se prolonga demasiado la incertidumbre sobre la propiedad y se perjudica así el régimen económico general del país."⁴⁸ Another work of interest by Cruchaga is his translation and adaption of French economist Jean Jacques Rapet's Manual de moral i de economía política, para el uso de las clases obreras, which in spite of its pedagogical title contains a rather profound Socratic conversation on economics. As the book was originally written for French readers, Cruchaga's main achievement seems to have been to convert Rapet's imaginary town of Mirebeau into a Chilean analogue intended to appeal to the common man:

La proteccion de la propiedad favorece a todos, a los que tienen poco como a los que tienen mucho.... ya un simple cultivador que produce trigo o un zapatero que hace zapatos, todos necesitan de esa proteccion de su propiedad, todos deben gozar de lo que ganan como precio de sus servicios. No se puede proteger el desarrollo del trabajo sin proteger la propiedad; si los hombres no pudieran gozar del fruto de sus servicios solo trabajarían lo necesario para satisfacer sus necesidades mas apremiantes i las sociedades volverían a los tiempos de atraso.⁴⁹

Thus Rapet's sage Doctor of Mirebeau was distributed in Chile, though the actual appeal of this book or its thesis among the working classes is another matter entirely.

A matter of controversy for Chilean economic liberals was the issue of free banking, in spite of ardent defenses of free banking by Courcelle-Seneuil, Zorobabel Rodriguez, and others. As most Nineteenth Century liberals had embraced state education as a necessary public good, many suggested that central banking was also a public good, and they criticized the extreme liberal positions. Political science scholar Julio Bañados Espinosa, in his discussion of banking organization in Letras y política, describes how the issue of private property rights influenced the debate. Indeed, he bases his own support for central banking on a desire to maintain the integrity of private property, the "piedra angular de una sociedad culta", which he sees as sensitive to

fluctuations in money markets.⁵⁰ Rather than finding, as the ultraliberals did, that free banking provides the most stable conditions for money and property, Bañados Espinosa cites several sources in support of central banking. Quoting a M. Lemaître, he concludes:

"Las operaciones de los bancos de emisión, pudiendo menoscabar a todos los propietarios por las variaciones perpétuas del valor del signo de cambio, reclaman la atención del legislador; porque la primera necesidad de las sociedades es garantizar la vida y la propiedad de los ciudadanos. No es aplicable en este caso la doctrina de dejar hacer y dejar pasar...."⁵¹

Economist Guillermo Subercaseaux, who wrote prolifically in the first half of the Twentieth Century about the economic doctrines of the Liberal Era, was himself a moderate liberal whose ideas were profoundly impacted by his more doctrinaire predecessors. Adopting the liberty-authority model, he argues for the necessity of a proper balance between the two extremes. Professing the utility of private property, Subercaseaux writes:

...La existencia *del derecho de propiedad privada*, como el medio indispensable de estimular la iniciativa individual al trabajo.

Sin derecho de propiedad que estimule la adquisición, no hay actividad individual que persiga la producción motivada por el interés económico privado. El derecho hereditario es un complemento del derecho de propiedad.⁵²

Nevertheless, he is critical of the absolute individualism and rejection of certain benefits of authority that he finds in the writings of French liberals like Frederic Bastiat, and even in the writings of Courcelle-Seneuil and students like Cruchaga and Zorobabel Rodríguez.

In this section we should mention the nationalist economic philosophy that competed with the free trade ideology throughout the Liberal Era. Economic nationalism gained increasing credibility and influence toward the close of the Nineteenth Century, as the heavy foreign influences in the nitrate industry began to arouse criticism. Within the literature of this school, Francisco Encina's *Nuestra inferioridad económica chilena* stands out, but the rhetoric of President José Manuel Balmaceda, one of the key political actors of the nitrate era, is most useful here in illustrating the nationalist orientation on property rights, which went beyond a simple desire for domestic private ownership of productive means. Jaime Eyzaguirre quotes Balmaceda at length from an 1889 pronouncement regarding the nitrate industry:

El monopolio industrial del salitre--agregó--no puede ser empresa del Estado, cuya misión fundamental, es sólo garantizar la propiedad y la libertad. Tampoco debe ser obra de particulares, ya sean éstos nacionales o extranjeros, porque no aceptaremos jamás la tiranía económica de muchos ni de pocos. El Estado habrá de conservar siempre la

propiedad salitrera suficiente para resguardar con su influencia la producción y su venta..."⁵³

This pronouncement by Balmaceda was a precursor to the increasing predominance of economic nationalism, both in classrooms and in practice, as the Chilean state throughout most of the next century took on more responsibility for and control over means of production.

Guillermo Subercaseaux, writing about economic doctrines and Chilean politics, finds that those liberals who reject the ideas of economic nationalism are in fact *conservatives*, while those who advocate protectionism now represent progressive, change-accomodating liberalism:

*En una República democrática de la época contemporánea son partidos propiamente conservadores todos los que defienden las bases de la libertad individual, de la propiedad privada y de la libertad contractual, principios que sirven de fundamentos a las organizaciones liberales de la época presente; y son partidos reformistas los que se esfuerzan en modificar las bases existentes en el orden económico y social.*⁵⁴

The irony of this statement will be apparent to any reader who is familiar with Chilean history and politics of the Nineteenth Century. After waging an ideological and political war for much of the century against the highly protectionist regime under the conservative "pelucones", and after converting many conservatives, such as José Manuel Irrazábal and Zorobabel Rodríguez, to the liberal worldview, liberalism, and its defense of property, was now considered reactionary. For Subercaseaux, the spirit of reaction of liberalism was demonstrated by the tendency to label all other viewpoints categorically (and he would say incorrectly) as "socialist":

*Para Zorobabel Rodríguez eran socialistas todos los que no comulgaban en el credo liberal individualista, y libre-cambista; y hasta los proteccionistas mismos (Cap. XXVI. *Tratado de Ec. Política*. Valp. 1894) caían dentro del gremio. Pero, en realidad, la política social poco o nada tiene de común con la escuela socialista propiamente tal. La Iglesia Católica, bajo el pontificado de León XIII, se inclina también en contra de la antigua política liberal individualista...*⁵⁵

We notice here the perpetual problem of point-of-view. The use of the label "socialist" by economic liberals was probably not seen by them as reactionary in any sense, and they probably did not see themselves as reacting to anything. Indeed, as the views of Courcelle-Seneuil and Cruchaga indicate, theirs was an attempt to *progressively* rid their nation of policies, and invasions of private property, that represented coercive, authoritarian direction of the means of production.

The "social question"

With the close of the Nineteenth Century, the dominance of liberalism in Chile began to wane, a situation illustrated above in the discussion of economic nationalism. Whereas liberalism had usually played the role of the "progressive" ideology compared with conservatism, it was now seen by many as a reactionary ideology that failed to produce new answers to the new problems of the industrial and mining working classes. Approaches to the solving the "social question" varied widely, even within the same political party. Such was the case with the Radical Party. In the polemic regarding the "social question", Radical Senator Enrique Mac Iver stood out as a defender of the liberal, individualist conception of property rights against the newer conceptions proposed not only by socialists, but by other Radicals like "social question" maverick Valentín Letelier. The Mac Iver-Letelier rift that arose during the 1900 convention of the Radical Party resulted in a majority favoring the more "progressive" programs of Letelier, but Mac Iver nevertheless maintained visibility in the political scene, perhaps because of his vocal and ardent individualism. Eliodoro Yáñez, a Liberal Senator at the time who would later take part in the framing of the 1925 Constitution, dedicates much of the space of La autoridad y la libertad en la Constitución política del Estado to Mac Iver's philosophy, including a treatment of the property rights issue as debated in a 1912 Senate meeting. In his presentation of Mac Iver, Yáñez begins by noting the difficulties that Senator and Minister of Public Works Pedro García de la Huerta had experienced while trying to build a system of irrigation canals. There was considerable resistance to the project on the part of farmers, and this led the above-mentioned debate concerning property rights.

For his part, Senator Yáñez entered that debate on the side of state interests, declaring that the right of property, although strongly entrenched in the Constitution, could not be so construed as to prevent the progress of the country:

El derecho de propiedad no puede ser nunca el derecho de no hacer nada, el derecho de detener el progreso, sino por el contrario, el deber de contribuir a este progreso y al desarrollo del interés del país y del bienestar de sus habitantes.... En una palabra, el derecho de propiedad no puede ir más allá del derecho ajeno ni más allá del bien público.⁵⁶

Further, Yáñez took the position that the agricultural project was indeed a case of public utility, in which individual initiative and organization would not be adequate.

Mac Iver responded, noting that Yáñez' position on the right of private property was the prevalent one of their day, and that such a position was profoundly socialist and contrary to the philosophy of property contained within the Constitution of 1833:

El derecho de propiedad nuestro es un derecho tal como se entendía en 1833, tal como lo definen los juriconsultos, no diré los antiguos, sino los que no pertenecen a la escuela

socialista: es el derecho de usar de las cosas arbitrariamente, es un derecho que no se basa en que produzca el bien social, es un derecho que no se resuelve, ni se rescinde, ni se anula, porque en un caso particular o general no consulte el bien social.⁵⁷

In the emotional piece of rhetoric that followed, Mac Iver attacked the new conceptions of state utility, arguing that the 1833 document only allowed expropriations made in virtue of immediate, direct utility such as railroads and lighthouses. He described how opportunistic majoritarian political decision-making had replaced the old conception of utility, and he complained that in the new Chile, respect for individual property was clearly on the decline:

...se ve que ciertas ideas se van ensanchando en tal forma que nadie puede saber qué es su propiedad, o mejor dicho, si su propiedad tiene alguna garantía. Mi hogar, la casa donde nací, que construyeron mis abuelos, puede desaparecer el día de mañana en razón de la conveniencia de abrir una calle, de instalar un circo de fieras, etc. ¿Qué le importa a la utilidad común mis tradiciones, mi cuna? Nada.⁵⁸

Eliodoro Yáñez, as noted before, was not in agreement with Mac Iver, and in his commentaries he adds that while property rights may have had a more absolute character for the framers of the Constitution, it was evident that times had changed and demanded a more flexible interpretation. He also presents the prudent regulation of the exercise of property as a way of diffusing the "social question", a "medio práctico de dar una base sólida y conveniente al movimiento de transformación social y combatir las tendencias comunistas que amenazan los cimientos de la sociedad moderna..."⁵⁹

Valentín Letelier, in an essay entitled "Los pobres", argues that Chilean politics, and the Radical Party in particular, must find ways to genuinely represent the interests of the working class and co-opt somewhat the agenda of socialism, "para quitarle su carácter revolucionario, conservándole su tendencia orgánica."⁶⁰ He criticizes the old liberal philosophy for satisfying itself with the equality of citizens under the law. Although he praises the many liberal reforms of the legal system, he argues that extreme material inequality results in a situation where the poor do not have access to that system or its services, such as legal advice. In general, he finds that free trade regimes, based on Mac Iver-style individualism, place the poor at an unsurmountably disadvantaged position vis-a-vis other economic actors. Regarding liberal advances in property rights, especially the abolition of the mayorazgos, he writes, "Si [todos] carecen de recursos para hacerse propietarios ¿qué perjuicio les trae la subsistencia de las propiedades inalienables?"⁶¹

The socialist idea in Chile had roots early in the Nineteenth Century, in the persons of Francisco Bilbao and Santiago Arcos, who founded the Sociedad de Igualdad in 1850. Arcos, in his 1852 "Carta a Francisco Bilbao", combines the characteristic liberal affinities for liberty of conscience, religion, and trade, with strong egalitarian language regarding the plight of the poor in Chile, "[E]s necesario quitar sus tierras a los ricos y distribuirlas entre los pobres.... Es necesario

distribuir todo el país, sin atender a ninguna demarcación anterior...". His project for the redistribution of property, while at times somewhat vague, is based on a reparcelization of land-leases designed to destroy the extensive land monopolies existent since the colonial period:

Prometer pagar a la Nación durante 50 años el uno por ciento del producto de la suerte poseída—es decir por cada cien pesos que se sacará de la propiedad que la República le entrega, pagará un peso a la República.

Habitar la suerte de tierra o dejar sobre ella un ciudadano que la habite.

Cercar la propiedad y mantener sobre ella el ganado que se le ha entregado, o aumentar por algún trabajo el precio de la propiedad en caso de enajenar el ganado recibido.⁶²

Although he does not specifically discuss private property rights in the letter to Francisco Bilbao, his exposition of the plan includes an important element of social function approaches, namely the idea that property should be tied to the use thereof. The early socialism of Arcos and Bilbao, modified by a half-century of "scientific" socialist ideas, emerged in the Twentieth Century in its modern, mainly Marxist form. One of the younger members of the Sociedad de Igualdad at the time Arcos wrote, Luis Emilio Recabarren, later became one of the principal founders of the Chilean Communist Party.

Socialist historical models influenced the writing of many Chilean historians and social commentators who sought to assess the Liberal Era. Alberto Edwards Vives, author of the famous historical treatise La fronda aristocrática and a defender of traditional Chilean society, describes a four-stage process of historical evolution that has its roots in the religious spirit of the society. He sees the changes in the traditional order first brought about by secular liberalism as eventually leading to athiestic, nihilistic, communism. In the original order, there is a right of "propiedad de toda clase (feudal, eclesiástica, burguesa) inviolable y sagrada por derecho divino", which is transformed by liberalism so that "sólo la propiedad burguesa (pecuniaria) es inviolable, por derecho natural" in the second stage.⁶³ The third stage is one in which "la propiedad función social utilitaria no es ya de derecho natural (socialismo)", and the end result of the fourth stage is "negación de la propiedad (comunismo)".⁶⁴ Although he does not favor any of the developments, Edwards Vives demonstrates the imprint of "progressive" historical thinking.

Guillermo Subercaseaux deals at length with the political economics of socialism in both Historia de las doctrinas económicas en América y en especial en Chile and Cuestiones fundamentales de economía política teórica. His thesis on the "social question" is that of a moderate liberal:

Se ha comprendido muy bien que sin caer en los inconvenientes del socialismo, o sea sin abandonar las bases capitales de la libertad individual y de la propiedad privada que inspiran la vida económica moderna, puede y debe el Estado intervenir en favor de las

clases obreras y pobres, en general.⁶⁵

He sees in the socialist program the mirror opposite of the excesses of extreme individualist liberalism, with socialists in the position of favoring authority over liberty with a kind of religious zeal. Subercaseaux, confronting "ese pesimismo aterrador con que [los socialistas] condenan las instituciones de la propiedad privada,"⁶⁶ writes with optimism that society, "sobre la base de la libertad individual y la propiedad privada, sin destruir su base, con ilusiones socialistas, pueden aún progresar mucho en materia de mejorar las condiciones de vida del pueblo, sobre todo en los países nuevos como los de la civilización americana."⁶⁷ As Subercaseaux was writing well into the Twentieth Century, it is clear that socialist answers to the "social question", which first appeared in the Liberal Era, would continue to challenge Chilean classical liberalism, and indeed, Chilean society as a whole, throughout the Interregnum period that followed.

III. THE INTERREGNUM

The Constitution of 1925

It is difficult to speak of "the" Constitution of 1925, because the document of September 18, 1925 has been modified many times since it was first promulgated. Legal scholar Eduardo Novoa Monreal notes in regard to property rights that there were ten successive modifications effected through 1971.⁶⁸ Within the history of those changes, there was significant debate over the meaning of the constitutional guarantee of private property, especially in the preparation of the version codified by Law No. 16.615, of January 18, 1967 (see Appendix D). First, however, we should examine the debate that took place in the Congressional Subcommission of Constitutional Reform that led to the original 1925 version (found in Appendix B).

Mario Góngora notes that, compared with the issue of progressive taxation on rents, "[l]a inviolabilidad del derecho de propiedad fue un tema más batallado."⁶⁹ He lists the proponents of the "social function" legal theory of property rights, a theory that for many of the Chilean writers cited in this paper is synonymous with the name of French theorist Leon Duguit. The social function adherents from the Subcommission included: Radical Ramón Briones Luco, Enrique Oyarzún, Juan Guillermo Guerra, Democrat Pedro Nolasco Cárdenas, and Communist Manuel Hidalgo. Góngora also lists the proponents of the natural and absolute right to property: Conservative Romualdo Silva Cortés, Vidal Garcés, Liberals Luis Barros Borgoño, Domingo Amunátegui Solar, Guillermo Edwards Matte (in a more moderate sense), and Eliodoro Yáñez ("no obstante su aura de liberal 'avanzado'").⁷⁰

In Estatuto constitucional del derecho de propiedad en Chile, Enrique Evans de la Cuadra reproduces some of the original minutes from the Subcommission sessions beginning May 12, 1925 on the right of private property in order to illustrate the main issues that were debated by the members. Ramón Briones Luco, developing the argument for the social function of property, conceded that "la propiedad es absolutamente necesaria para el progreso de la Nación y el aumento de la riqueza pública", but held that the members of the Subcommission "deben contemplarse algunas disposiciones que limiten los latifundios." The recorder of the minutes noted also the redistributive aspect of his position: "Expresa que es partidario no sólo de gravar la propiedad que no se cultiva, sino también de ir a la subdivisión de ella con el objeto de que quede en poder del mayor número de individuos."⁷¹ Enrique Oyarzún was recorded as attempting to modify the semantics of the Briones Luco position, indicating that property itself did not have a social function, but that the *exercise* of the right of property did have a social function.⁷² Later, Oyarzún questioned the phrase from the 1833 Constitution "salvo el caso en que la utilidad del Estado...", suggesting that "utilidad social" would be a more inclusive concept. Although he was in favor of consecrating further limitations on the exercise of property rights, Oyarzún expressed "acuerdo en la cuestión fundamental de mantener la inviolabilidad del derecho de propiedad."⁷³

Manuel Hidalgo pointed out that the Constitution of 1833 and liberal ideas from the time of the French Revolution were outdated, holding that social reality dictated a social function for property rights, and that the state "debe atender a una organización económica que asegure a cada individuo y a su familia lo necesario para su vida y para su desarrollo integral."⁷⁴ The recorder for the session also noted that Juan Guillermo Guerra was strongly in favor of limiting the latifundios, and in this agreed with Briones, Oyarzún, and Hidalgo. Guerra also reaffirmed the social function argument, stating that they all agreed that property "debe estar más subordinada al interés social que lo que lo estuvo antes."⁷⁵

On the side of the natural and inviolable right of property, Luis Barros Borgoño was recorded as taking issue with Guerra, suggesting that any modification of the right to private property would result in instability and loss of needed foreign capital and investment. Romualdo Silva Cortés agreed, expressing that in his opinion, the text of Article 12, Paragraph 5 of the old Constitution should not be modified in any way.⁷⁶ His defense of natural rights was clear:

Expreso que no se trata de lo que se llama una función social; sino de un derecho natural. Se trata de una prolongación de la personalidad humana.

El derecho de propiedad existió antes de la formación de los Estados. Se trata de algo que el hombre necesita poseer con derecho estable y que dure, para el alivio y bienestar y la satisfacción de necesidades del individuo y de la familia.⁷⁷

Eliodoro Yáñez agreed with Barros Borgoño regarding the sensitivity of business stability and foreign credit, and he agreed with Silva Cortés that among the constitutional principles should remain "la inviolabilidad del derecho de propiedad sin distinción alguna, y sin más limitación que los casos de expropiación que la Constitución contempla en términos claros y explícitos."⁷⁸ In this way, he conceded to Oyarzún that the exercise of the right of property could be limited, and in a later session he made clear his rejection of the old Roman conception, which gave to the property owner "el derecho de usar y abusar," noting that society as a whole (not just individuals) had a right against the abusive exercise of individual rights to property.⁷⁹ Mario Góngora, writing about the ideas of Eliodoro Yáñez, notes his economic reasoning in opposing the forced subdivision of uncultivated property: "El libre juego de las leyes económicas y el estímulo al trabajo y la producción son los medios más seguros de crear el interés de cultivar la tierra y aumentar el área aprovechable de trabajo." Further, Góngora notes the progressive element in the property rights philosophy of Yáñez: "para que esa evolución [social] se opere en forma útil y justa es indispensable resguardar fuertemente el derecho de propiedad, para que sobre esta base se efectúen las transformaciones del porvenir."⁸⁰ Domingo Amunátegui Solar, arguing for the strict maintenance of inviolability, added that "la verdad es que hasta hoy no se han inventado en las sociedades modernas ningún otro sistema que permita el progreso de la comunidad."⁸¹ Guillermo Edwards Matte, in a proposed redaction, noted the consensus of the Subcommittee:

Todos están de acuerdo en reconocer la inviolabilidad del derecho de propiedad; están todos de acuerdo también en que no se puede privarse a los ciudadanos de este derecho sino en virtud de expropiación por el Estado, previo el pago de la indemnización correspondiente; pero están igualmente de acuerdo todos en que la propiedad tiene que experimentar restricciones y cumplir deberes que le impone la sociedad y como consecuencia de ser ella fundamento de la acción social que le da origen.⁸²

Luis Barros Borgoño, adapting the consensus expressed by Edwards Matte, wrote the article in its final form, which was signed by President Arturo Alessandri. Writing a prologue to a 1929 edition of liberal economist Miguel Cruchaga's Estudio sobre la organización económica y la hacienda pública de Chile, Alessandri discusses the property rights concept embodied in the 1925 Constitution. He does state that said document maintains the inviolability of property as a necessary condition of economic development and production, but he also embarks on an extended listing of the new social projects of the Chilean state, resting on "el criterio científico moderno, que hace de la propiedad una función social, se encontró la ecuación salvadora que armoniza el interés particular con el bien de la comunidad...."⁸³ For Alessandri, there is apparently no conflict between the social function of property (and the significant number of new state responsibilities) and its inviolable nature, and he feels comfortable agreeing with Cruchaga that "[t]odo aquello que [sic] no dé estabilidad y fijeza a la propiedad perjudica a la economía nacional."⁸⁴

Summarizing what he feels were the significant changes between the 1833 and 1925 Constitutions, Evans de la Cuadra believes that the substitution of "utilidad pública" for "utilidad del Estado", as well as the inclusion of the phrase regarding "el mantenimiento y el progreso del orden social", are evidence of a distinct change in philosophy, and that these phrases reveal "la presencia relativamente activa del concepto de 'bien común' con preeminencia sobre el 'interés individual' en [el] ordenamiento institucional."⁸⁵ Mario Góngora asserts however, that in spite of the limitations on the exercise of property rights placed in the 1925 Constitution, the authors were able to avoid "el concepto 'peligroso' de 'función social'. "⁸⁶

Eloy Benedetti Benedetti, comparing the Chilean Constitution with other Latin American constitutions in his 1942 book Los derechos individuales y sociales, discusses the content of the first three paragraphs of Article 10, Paragraph 10, noting both the continuity of liberal inalienability of property rights and the inclusion of language that only *appears* to impose restrictions on those rights in the pursuit of public and social goods:

La tendencia individualista se manifiesta en el inc. 1.º, que garantiza "la inviolabilidad de todas las propiedades, sin distinción alguna". Bajo el influjo de la misma orientación, el inc. 2.º designa a la sentencia judicial y a la expropiación por utilidad pública, como los dos únicos medios que pueden privar a una persona de su dominio. A este respecto, se ha sostenido, con buenas razones, que la sentencia judicial no es capaz de despojar a nadie de

su propiedad: porque las resoluciones judiciales sólo son declaratorias de derechos preexistentes.⁸⁷

In support of the idea that judicial pronouncements do not really represent a violation of property rights, Benedetti notes that under civil law, when a piece of property is taken from a person, it is because a tribunal has determined that that person never in fact owned that property.⁸⁸ In spite of wording in the third paragraph indicating that the exercise of property rights must submit to laws and limits demanded by "el mantenimiento o el progreso del orden social" and by "los intereses generales del Estado, de la salud de los ciudadanos y de la salubridad pública", Benedetti asserts:

Desde luego, la Carta chilena no acoge... el concepto de la propiedad función social; únicamente se consignan limitaciones a su ejercicio, mas no se imponen obligaciones sociales a su titular.⁸⁹

Benedetti bolsters his thesis by citing the redactor of the precept, Luis Barros Borgoño, as holding that property rights in the document are only limited in their exercise.⁹⁰ On the normative side, Benedetti is a proponent of "social function of property" legal doctrine, and he names as its principal propagators Auguste Comte and Leon Duguit. As such, he is critical of the kind of natural right to property supposed by the writers of liberal constitutions:

...no creemos que la propiedad privada sea un derecho natural, intangible e inherente a la persona humana; más bien la concebimos como un hecho de carácter histórico, que sólo merece la protección estatal en la medida en que sea útil a la colectividad... Una gran falla de la doctrina clásica de los derechos individuales, radica en su imposibilidad de crear limitaciones a la propiedad privada.⁹¹

His concern with what he sees as a lack of limitations on property in Article 10, Paragraph 10 of the 1925 Constitution yields a clear judgement on his part that said document is grounded in the liberal natural rights tradition.

Alejandro Silva de la Fuente concurs in his analysis of the Constitution of 1925, but enters the debate as a defender of its liberal nature and as an opponent of attempts to further reform the concept of property rights. Against claims that the property rights theory embodied is a source of conflict, he maintains that the principles of the Chilean document (like the Declarations of Rights of the French Revolution) "no han impedido cierta evolución en la aplicación de aquel derecho". Silva de la Fuente states that the only persons who believe that the principles engender conflict are those who say that "la propiedad es el robo"—property is theft.⁹² In this way, he denies the existence of a middle ground of a social function of property that would require greater limitations on property rights than those available in the Constitution of 1925:

Y queda el inconveniente de debilitar el principio fecundo de la inviolabilidad de la propiedad, de permitir acaso en lo futuro interpretaciones de carácter socialista que, evidentemente, no entran en las ideas de los señores miembros de la subcomisión. Se complican las cosas sin objeto, o por satisfacer aparente y vagamente sujestiones peligrosas.⁹³

Silva de la Fuente bolsters his defense of property rights with an appeal to the economic utility of private property and "libertad de trabajo", as well as to the idea, perhaps Lockean in origin, that property is grounded in labor, commenting that such a doctrine "no puede ser más respetable." He also maintains that Luis Barros Borgoño, as well as President Arturo Alessandri, had similar conceptions.⁹⁴ The economic utility argument resurfaces in dealing with the issue of further reform, in which he denies the usefulness or desirability of proposed addenda such as "el Estado propenderá a la división de la propiedad y a la constitución de la propiedad familiar". In response, he states:

La división de la propiedad se verifica espontáneamente, económicamente.... El progreso económico irá dejando las cosas en su lugar, sin intervención del Estado, salvo casos excepcionales.⁹⁵

Contrary to the positive assessment of Benedetti and Alessandri that it is a firm guarantor of a liberal natural right to property, other authors writing about the 1925 Constitution have emphasized its social function character and described it as embodying reforms that were perceived by landowners as threatening to their livelihoods. Thomas Wright, in Landowners and Reform in Chile, traces the history of the Sociedad Nacional de Agricultural from 1919 to 1940, and he paints a picture of reluctant support on the part of landowners for the modifications of 1925:

[Alessandri's proposal] would legitimize the 1924 labor laws and future social reforms by explicitly declaring the state's social responsibilities and establishing a social interpretation of property rights. Rather than openly opposing or rejecting Alessandri's initiatives, which many privately viewed as dangerous, the rightist forces collaborated in the formulation and ratification of the new constitution, hoping to moderate it in the process.⁹⁶

As well, John Johnson writes in an essay entitled "Atrincheramiento político de los sectores medios en Chile" that the 1925 Constitution represented "derrota para los propietarios", and that the middle class had moved away from "su anterior posición extrema de laissez faire."⁹⁷

As noted earlier, the concept of property rights contained in the 1925 Chilean Constitution was only the first step in a long evolution spanning the period of the Interregnum, as newer social forces and ideologies made their impressions on the nation's politics. At the risk of generalizing,

it can be said that the trend in national politics from the 1920's until the coup d'etat of September 11, 1973 was decidedly statist. The greater involvement of the Chilean state in the economy was promoted and defended by widely differing strains of political ideology. Two of these viewpoints, Christian Democracy and Socialism, will be dealt with more fully in the sections below entitled "Christian Democracy, Liberation Theology and Catholicism" and "Unidad Popular", respectively. In preparation for the presentation of the 1967 Constitutional reform, it will be helpful to examine scholarly assessments of the concept of property rights within Chilean society during the period.

Thomas Wright, who described above the reluctant support of landowners for the 1925 reforms under President Arturo Alessandri, chronicles their ideological sympathies throughout much of the Interregnum. He points out that landowners often found their interests being used as a political gambit by politicians of the Chilean right, who were seeking to stave off mass mobilization through cooperation, concession, and preemptive reform: "if the social order could be reinforced by the creation of family farms, rightist politicians might modify landowners' property rights."⁹⁸ Within the Sociedad Nacional de Agricultura (SNA), the faction favoring the laissez-faire line, exemplified by Conservative Héctor Rodríguez de la Sotta (whose philosophy will be explored in depth in the section on Catholicism), was usually a minority, as it was within the larger conservative establishment. Instead, the majority view, represented by Jaime Larrain, displayed a combination of "progressive" rhetoric and pragmatic willingness to compromise.⁹⁹ The SNA was not, however, willing to give in to the more radical proposals of the left. Wright includes an example of SNA tactics during the 1939-1940 land reforms of the Ibáñez Popular Front government:

Secure in the knowledge that the rightist-controlled Senate would tolerate no additional weakening of property rights while the Popular Front was in power, the SNA took no active public role in the defeat of the Socialist agrarian reform bill or the government's bill to tax uncultivated land--both of which it opposes. However, the SNA reacted vigorously to the Marxist-fostered rise of demands for land, which it perceived as... 'actions against property rights on the part of extremist elements who openly preach the complete socialization of land.'¹⁰⁰

Wright also describes SNA tactics in the face of the reform-oriented Christian Democratic government that came to power with the election of Eduardo Frei Montalva in 1964. Prior to the 1964 election, the right supported preemptive reforms in expropriation such as Law 5604, but the SNA was concerned that without the leadership of President Jorge Alessandri, "agricultural property rights would be in grave jeopardy."¹⁰¹ Indeed, Wright notes that "the PDC's lack of firm commitment to capitalist private property frightened the upper and comfortable middle classes".¹⁰² Wright also notes that the SNA by the late 1960's represented a broader segment of the agrarian population than ever before, and that the property rights issue was emphasized in SNA rhetoric because it "affected the whole spectrum of rural entrepreneurs."¹⁰³

James Petras, writing about Chilean society in the 1970 book Politics and Social Forces in Chilean Development, downplays the role of the property rights issue considerably compared with Wright. He emphasizes what he sees as a historically close relationship between business and the state in Chile, and punctuates his assessments of Chilean corporatism with statements such as "Chilean industrialists are not the free-wheeling, risktaking adventurers of Schumpeterian fame"¹⁰⁴ and "[t]here are no 'Corn Law' proposals coming from the industrial elite in sight for Chile."¹⁰⁵ About right-wing support for state enterprises during the Popular Front years, Petras writes "[t]he Right, not taken in by its own 'free enterprise' ideology, agreed to formal declarations about property serving a social function."¹⁰⁶ Petras' book centers its focus on the role of the Chilean governmental bureaucracy as a key social player and as representative of the middle class. In presenting the feelings of bureaucrats and small landowners regarding property rights, he attempts to gauge middle class support for the more radical reforms proposed by the Communist Party (CP) in the late 1960's:

Because government employees do not have a direct stake in the ownership of property they are probably less susceptible to the private-property mystique, which occasionally overcomes concern for democratic rights. The self-employed property owners, who were less inclined than other owners to outlaw the CP, have relatively little to fear in the way of property loss, since the Communists have often stated that they would not expropriate the holdings of small businessmen.¹⁰⁷

Although the contrasting assessments of Wright and Petras regarding the appeal of the pro-property rights philosophy and rhetoric in both the middle class and the wealthier groups are probably due to the differing focuses of their works, the comparison serves as a warning against making generalizations for Chilean society as a whole when setting up the backdrop for the constitutional reforms of the 1960's.

The presentation of the constitutional reforms returns us to Enrique Evans de la Cuadra and his book Estatuto constitucional del derecho de propiedad en Chile. As he is primarily concerned with the changes in the right to property effected in the 1967 Law No. 16.615, Evans de la Cuadra does not dedicate much space to his analysis of Law No. 15.295 of October 8, 1963 (see Appendix D). He summarizes the modifications as dealing mainly with changes in requirements for prior payment of indemnities in the process of expropriation. Abandoned or poorly exploited lands, "los predios rústicos," had to be previously compensated, but at only ten percent of their values, with the remainder payable within a fifteen-year period. Further, expropriations made "para obras públicas de urgente realización" could take possession of private property before judicial resolution had determined the amount of indemnity.¹⁰⁸

Chilean lawyer Alberto Yurac Soto published a thesis in 1966 presenting the proposed modifications to the 1925 Constitution promulgated by the Frei administration, and summarizing the main objectives of the reforms, which make the social function "la base de la regulación del

derecho de propiedad y de la expropiación". Further, to the former interests of the state are added:

los nuevos de mejor aprovechamiento de las fuentes y energías productivas en beneficio colectivo y de elevación de las condiciones de vida del común de los habitantes. De esta forma se identifican las causales actuales de expropiación con otras que en el texto vigente sólo autorizan para imponer limitaciones al derecho de dominio.¹⁰⁹

It is interesting to note here that Yurac Soto considers the original Constitution of 1925 to have embodied the social function theory, as property was conceived "no tanto como un derecho sino más bien un deber del propietario."¹¹⁰ Such a statement, which Yurac Soto supports with a quotation from the then President Alessandri, may conflict somewhat with the statements of many of the scholars mentioned above, as well as those of the 1925 Subcommittee members. In any case, the social function intent of the Frei reforms is more clear.

In a detailed and lengthy exposition, Evans de la Cuadra reviews the process and debate that produced Law No. 16.615 of 1967, beginning with the sessions of the Comisión de Constitución, Legislación, Justicia y Reglamento of the Chilean Senate and ending with approval of the law by President Frei on January 20, 1967. Some of the most interesting and informative debate recorded occurred in the Senate on April 11, 1966. Frei's Minister of Justice, Pedro J. Rodríguez, began with a summary entitled "El Derecho de Propiedad Privada. Lo que era y lo que es." Reviewing the history of the right of property from Roman law until the contemporary period, and noting the development of that right in other nations of the world (as well as in Chile), Rodríguez maintained that the demands of modern society have imposed upon private property "un contenido muy diverso y distinto al concebido con criterio individualista", and stated that among the goals of the government were: "dar acceso a la propiedad a miles de ciudadanos, para asegurar la estabilidad social, contribuir a mejorar las condiciones de los campesinos y estimular la producción agrícola."¹¹¹ The statist element of the proposal was expressed with the phrase "a mayor poder del Estado corresponde una propiedad más limitada y circunscrita."¹¹² Another key concept was that the limits to property were defined as being internal to the right of property:

Este conjunto de deberes y responsabilidades del propietario, que armoniza los intereses del dueño y de la sociedad, puede decirse que constituye la llamada función social de la propiedad, la que de este modo configura los límites internos del derecho, los que tiene por su propia naturaleza y esencia.¹¹³

Among the Senators present, Communist Volodia Teitelboim spoke as a representative of the Frente de Acción Popular (FRAP) on behalf of his colleagues Ampuero, Chadwick, Corbalán, and Luengo, in favor of the proposed reforms. He downplayed the radical nature of his party's ambitions in regard to private property:

Es falso que los comunistas, que los marxistas seamos contrarios a toda forma de propiedad. Al revés: precisamente atacamos al régimen capitalista y el sistema semifeudal del campo, porque impiden el acceso a la propiedad a todos y hacen de ésta el privilegio de una minoría, condenando a la miseria a la inmensa mayoría, a vivir despojados de toda forma de propiedad.¹¹⁴

Teitelboim summarized his views on the social function theory of property embodied in the legislation, saying "la declaración sobre la función social de la propiedad aunque limitada, es positiva."¹¹⁵ Senator Ampuero expressed his idea of social function in the modern world: "en nuestros días, hablar de derecho de propiedad sin hacer referencia expresa al objeto de ella, me parece poco menos que razonar en el vacío."¹¹⁶

Benjamin Prado, representing the views of Christian Democratic Senators, noted the importance of changing the phrase "la inviolabilidad de todas las propiedades, sin distinción alguna" to "el derecho de propiedad en sus diversas especies", as well as the status of inviolability of property rights:

No es un mero cambio de frase. Hoy todo un sentido y una nueva visión de la propiedad en esa enmienda. Lo que ahora garantizará la Constitución no es la propiedad en sí, sino el derecho mismo a ella... ahora el derecho de propiedad, como todos los otros derechos garantizados por la Constitución, no será absoluto e inviolable.¹¹⁷

Senator Durán of the Radical Party also declared that his party's members would vote in favor of the reforms. The maverick of the older property rights tradition was National Party Senator Francisco Bulnes Sanfuentes, who had the agreement of the liberal and conservative Senators with his objections to the proposal. One objection was that the government could have simply amended the Constitution in order to give itself more flexibility in matters of expropriation. The other main objections derived from their opinion that the proposal,

hacia ilusoria la garantía constitucional del derecho de propiedad, al permitir que la ley fijara libremente las reglas para determinar el monto y condiciones de pago de las indemnizaciones por expropiación, e incluso comprometía la supervivencia misma del régimen de propiedad privada, al autorizar al legislador para reservar al Estado el dominio exclusivo de cualquiera especie de propiedad.¹¹⁸

Bulnes and his colleagues were defeated in the Commission vote, 36 to 4. Bulnes had another chance to defend the right of private property, before the full Senate, where he supported that right with a variety of arguments. They included philosophical reasons ("él es una de las bases fundamentales de la civilización occidental cristiana"), historical reasons ("donde desaparece la

propiedad privada... el ser humano pasa a ser un esclavo del grupo gobernante"), economic reasons ("[e]ntre propiedad privada y propiedad del Estado no hay alternativa"), and reasons of legal pragmatism ("el actual No. 10 del artículo 10 de la Carta Fundamental nos parece satisfactorio").¹¹⁹ In spite of the efforts of Senator Bulnes, Law No. 16.615 passed, and the Constitution was reformed again, adhering closely to the Frei administration's proposals.

Evans de la Cuadra, writing about the nature of the reform with an emphasis on positive law criticism, concludes that the 1967 version limits the legislature to those social functions enumerated in that version, because it begins with the expression "La función social de la propiedad comprende...". He points out that although the framers may have intended to give the legislature freer reign in determining the limits of the social function, positive law requires that such an intention is made clear and concrete.¹²⁰

To finish with the presentation of the most important modifications of the Constitution of 1925, mention should be made of Law No. 17.450, passed July 16, 1971 by Salvador Allende's socialist government, which made licit certain nationalization procedures, "que el Estado podía utilizar para adquirir el dominio exclusivo de recursos naturales, bienes de producción u otros... de importancia preeminente para la vida económica, social, o cultural del país."¹²¹ We will take another look at Law No. 17.450 in the section on "Unidad Popular".

Christian Democracy, Liberation Theology and Catholicism

The birth and prodigious growth of the Christian Democratic movement in Chile in the Twentieth Century led to debate and polemic over what sort of society best corresponded with the Christian ideal of social justice. The Roman Catholic Church, despite some growth in the number of Chilean Protestants in this century, remained the center of faith for an overwhelming majority of Chileans, and it is primarily from the tenants of Church doctrine that the Christian Democratic philosophy takes its inspiration. The Christian Democratic philosophy is also referred to sometimes in Chile as "communitarianism", "comunitarian socialism", "social Christianity", or "progressive Catholicism". The outstanding figure of this movement throughout much of the Twentieth Century was Eduardo Frei Montalva, President of the Republic from 1964 to 1970. Although much of Frei's writing and speeches were written for popular consumption, it is possible to discern in his words a vision of property rights, a vision of Christian Democrats as "ni comunistas, ni capitalistas": "Es muy respetable el derecho de propiedad, pero tanto más respetable es el derecho del pueblo de Chile de alimentarse del suelo en que vive."¹²² Writing about his own brand of "anti-communism", Frei states:

este "anti comunismo" rechaza las persecuciones policiales, la mentira de los egoismos que se disfrazan con el nombre de Patria, Orden y otras palabras gastadas por aquellos que colocan a la propiedad absoluta antes que al hombre, el orden antes que la libertad, el

privilegio y la tranquilidad de su clase frente a la clase de los desposeídos...¹²³

Frei and the Christian Democrats, in commanding the 1967 reform of the Constitution of 1925, were able to put into law their fundamentally corporatist vision of the social function of property rights. There is perhaps no better presentation of the Christian Democratic philosophy on that issue than Law No. 16.615.

Another matter altogether, and the subject of some conflicting visions in Chile, is the question of how well the Christian Democratic conception of property rights is grounded in the property rights philosophy of the Roman Catholic Church. Although he is not a Christian Democrat, Eduardo Novoa Monreal, in *El derecho de propiedad privada*, reviews the basic elements of Church property philosophy from the sacred scriptures, the writings of the early Church fathers, the Canonical and Scholastic literature, the works of St. Thomas Aquinas, the papal encyclicals, and the works of Twentieth Century Christian writers like Manuel de Ketteler, G. Rénard, L. Trotabas, E. Mounier, Lino Rodríguez Arias-Bustamante, P. Rutten, and the "[d]estacados paladines de la propiedad comunitaria", Julio Silva Solar and Jacques Chonchol. Especially with reference to the pre-Twentieth Century Church sources, Novoa emphasizes discord between writers, and even discord within writers' own works, on the issue of the nature of private property, and he admits to no distinct consensus. After speculating on why there is no consensus, Novoa argues in conclusion that because it is not the mission of the Church to determine the form in which human societies and states regulate the use of material goods by their members,

los cristianos tienen plena libertad para decidir frente a las variadas alternativas que se les presentan para una mejor organización política, social, económica y jurídica de la sociedad en que viven y, en especial, para escoger el régimen de propiedad que les parezca socialmente más conveniente. Serán, por ende, los proyectos y teorías sociales y, sobre todo, las experiencias sociales y económicas las que podrán inclinarlos hacia una opción concreta.¹²⁴

In another text, Novoa Monreal briefly discusses the appearance of the expression "social function" in the encyclical *Mater et Magistra* and, more recently, Pope John Paul II's talk of "la 'hipoteca social' de la propiedad", judging that these references place modern Catholicism within a general global consensus on the idea that property and the exercise of property rights comprehend both powers and duties, according to the principle that private interest should be subordinated to the general interest.¹²⁵

The appearance of liberation theology in Latin America, often dated to the 1968 Medellín meeting of the Latin American bishops, is a late development compared with the Christian Democracy movement, but its adherents appeal to many of the same elements of Catholic doctrine regarding social justice. Peruvian Gustavo Gutiérrez, whose name is at this point

synonymous with liberation theology, conveys his Christian vision of class conflict in the English version of A Theology of Liberation, "an opposition of *persons* and not a conflict between abstract concepts or impersonal forces." He certifies the importance of property within this conflict with a passage from Pope John Paul II, who is quoted here as writing "[t]hus *the issue of ownership or property* enters from the beginning into the whole of this historical process".¹²⁶

Clarifying what is meant by the kind of *socialism* advocated by liberation theology, Gutiérrez cites the "Letter to the Peoples of the Third World" in Between Honesty and Hope: Documents from and about the Church in Latin America in saying that liberation theologians "refer to the progressive radicalization of the debate concerning private property. The subordination of private property to the social good has been stressed often."¹²⁷ Citing other liberation theology sources, he makes his point somewhat more strongly:

...difficulties in reconciling justice and private ownership have led many to the conviction that "private ownership of capital leads to the dichotomy of capital and labor, to the superiority of the capitalist over the laborer, to the exploitation of man by man.... The history of the private ownership of the means of production makes evident the necessity of its reduction or suppression for the welfare of society. We must hence *opt for social ownership of the means of production*."¹²⁸

In regards to the advent of the socialist Allende government in Chile in 1970, Gutiérrez records some of the positive reactions of Chilean clergy and Catholic worker groups, as well as the solidarity of priests from the other Latin American nations.¹²⁹

Héctor Rodríguez de la Sotta, Conservative politician and director of the Sociedad Nacional de Agricultura during the 1930's, has written two books that deal primarily with the theme of private property rights: O capitalismo o comunismo: o vivir como en Estados Unidos o vivir como en Rusia (1952), and a follow-up work, La propiedad privada del capital (1959). Large portions of both are dedicated to Church conceptions of property rights, but it is in the former that he reviews the body of Catholic teaching on property. Drawing largely on the works of jurist and theologian A. Wermeersch, S. J. of the Gregorian University of Rome, Rodríguez de la Sotta deals with the same texts as Novoa, save for the Twentieth Century writers. His point of view, influenced by that of Wermeersch, reflects a strong Church defense of a natural and inviolable right to property in the same sources where Novoa found discord: the early Church fathers¹³⁰, St. Thomas¹³¹, and the encyclicals of Popes Pius IX, Leo XIII, Pius XI, and Pius XII¹³². Nevertheless, in Chapters Two and Three he does point out limitations on property rights that are maintained by the various sources. Against the claims of social Christianity, he writes: "demostré en mi libro que tal régimen no existe y que jamás la Iglesia ha pretendido crear un régimen económico social cristiano, porque no es ésa su misión."¹³³ In spite of his emphasis on Church defenses of absolute and inviolable property rights, and his strong rejection of Christian Democratic claims to Church doctrine, Rodríguez de la Sotta is careful not to mix Catholicism

and economics:

Aclaremos bien este punto. Yo no propongo ninguna solución *como católica*. Por el contrario, sostengo que la Iglesia no propone, ni pretende proponer, ningún régimen económico determinado y sólo ha dictado normas generales de justicia, aplicables a todos los regímenes conocidos o que pueden idearse por el futuro.

El régimen capitalista, de propiedad privada del capital, lo propongo en nombre de la ciencia económica...¹³⁴

Beyond the question of Church views on property, and as can be guessed from the preceding quotation, Rodríguez de la Sotta is a staunch defender of liberal capitalist property rights from an economic point of view. His schooling in economics is largely, though not exclusively, that of the liberal Austrian economist Ludwig von Mises. Indeed, his thesis on the compared economic systems of capitalism and communism appears to be directly borrowed from Von Mises:

El dilema queda restringido así, a elegir entre los dos únicos regímenes económicos posibles, en el estado actual de nuestra civilización: capitalismo o colectivismo, es decir, régimen económico de la propiedad privada del capital o medios de producción; o régimen económico de la propiedad colectiva del capital o medios de producción. No hay, ni puede haber término medio...¹³⁵

A historical parallel should be noted here between the dichotomy of capitalism and collectivism employed by Rodríguez de la Sotta and the dichotomy of liberty and authority employed by Courcelle-Seneuil and his followers. In the remainder of *O capitalismo o comunismo*, Rodríguez de la Sotta explores various "middle road" approaches to economic organization, especially those proposed by social Catholics like Georges Hourdain and Jean Brêthe de la Gressaye, pointing out how in each one, the lack of either one of two "engines" of production causes society to grind to a halt. In capitalism the engine is personal interest rewarded by the security of property rights, whereas in collectivism the engine is force: "la coacción, el látigo, la muerte."¹³⁶ His argument at times seems to be directly aimed at Eduardo Frei: "el lema, tan repetido por los católicos progresistas, 'ni comunismo, ni capitalismo', económicamente no tiene sentido."¹³⁷ The only moderation of the two poles that he feels would have a chance of survival (without reverting eventually to either of the extremes--and he is pessimistic about the possibility of middle road regimes reverting to capitalism) is a form of "capital-laborismo" of the kind proposed by Louis Salleron, which proposes "accidental" as opposed to "substantial" reforms designed to promote worker access to capital, and which he explores in his fourth chapter. A superficial examination of social and political change in Chile during the Interregnum period would undoubtedly overlook the liberal property rights position of persons like Héctor Rodríguez de la Sotta--indeed, as

Thomas Wright noted, it was a minority position within the Conservative Party. It is nevertheless interesting, and pertinent to the task of this paper, to represent a liberal dissent in our treatment of the growing influence of the Christian Democrats in the Interregnum period.

Unidad Popular

The socialist government of President Salvador Allende, which began in 1970 and lasted until the military coup d'etat of September 11, 1973, attempted to achieve massive changes in the structure of property in Chile. In spite of the wide latitude provided for state expropriation of private property by the Christian Democratic government's modification of the Constitution, Unidad Popular leaders found themselves restricted by the law in their attempts to create a new property regime. This primary policy goal of the Allende government, described by Eduardo Novoa Monreal (who participated in that government as a functionary), involved the definition and creation of three different economic areas, as well as a heavy emphasis on the state:

Una de ellas, el APS [Área de Propiedad Social], en manos del Estado, será la dominante. Otra, el Área de Propiedad Privada [APP], permitirá la subsistencia de propiedad privada, y una tercera, el Área de Propiedad Mixta, permitirá al Estado incorporarse a las actividades económicas de los particulares.¹³⁸

In the government's platform, it is clear that the creation of the APS entails widespread nationalization and state expropriation of private property in many areas of the economy, ranging from copper and nitrates to cement and paper. Nevertheless, the platform suggests that the Área de Propiedad Privada will be large ("[e]stas empresas en número serán la mayoría") and that the absorption of the large private monopolies that dominated Chilean markets will be beneficial to smaller businesses. Further, the platform elucidates what its framers see as the relationship between their central planning schemes and the APP:

Las empresas que integran este sector serán beneficiadas con la planificación general de la economía nacional. El Estado procurará las asistencias financieras y técnicas necesarias a las empresas de esta área, para que puedan cumplir con la importante función que desempeñan en la economía nacional, atendiendo el número de las personas que trabajan en ellas, como el volumen de la producción que generan.¹³⁹

It would appear from this statement that formulation of the APP did not contemplate even the kind of watered-down liberal property rights that were part of earlier governments' agendas, but rather, a system of state capitalism.

For the Área de Propiedad Mixta, the planners explored various kinds of intermediate

methods of organization between the outright state direction of industry of the APS and the limited, subsidized private direction of business of the APP. For samples of the many approaches that were considered during this period, as well as comparative analysis, a good source is Participación para una nueva sociedad, the product of a 1972 seminar held in Valparaíso by some influential Chilean intellectuals. One of the most popular and widely-discussed elements of "participation" proposals is that of "autogestión" or, defined generally, workers' self-management or direction of the means of production, which is contrasted both with Stalinist central direction and with liberal capitalism. Rolando Molina Reyes uses Tito's post-1950 Yugoslavia as an example of this kind of socialism, which allowed small farms to be privately owned and operated for profit.¹⁴⁰ Eugenio Ipinza, discussing a variation that he calls "co-gestión", cites as models the welfare state social policies of Willy Brandt's Germany, Denmark, Sweden, and other northern European states. As well, he criticizes the Marxist conception of unresolvable conflict between labor and capital, suggesting that "el capital y el trabajo no son enemigos sino socios de la empresa, y que el trabajo puede crear capital para sí."¹⁴¹ José Garrido Rojas, an engineer, names as the originator of the "autogestión" idea Yaroslavo Vanek, writing,

Sostiene este autor que "el conjunto de trabajadores que tiene derecho exclusivo de controlar y dirigir las actividades de la empresa, no tiene como tal, la propiedad de los capitales que usa, en el sentido tradicional de la palabra 'propiedad'. Quizás el término 'usufructus' el derecho de usar los frutos de los bienes materiales, sea el más apropiado." Más adelante Vanek señala: "Los sistemas económicos de participación pueden estar basados, a su vez, en la propiedad del capital, tanto privado como social..."¹⁴²

However, Garrido Rojas, in reviewing the process of expropriation used by the Corporación de Fomento de la Producción and other agencies under the Allende government, finds himself in agreement with Yugoslav official Krste Crunskoski--"el contenido esencial de la autogestión es la destrucción de la propiedad privada."¹⁴³ He also makes a bid in defense of private property, concluding that if Chile is wary of adopting such foreign models, "se tenderá a lograr eficiencia económica y satisfacción de los deseos de quienes creen que la propiedad privada es importante, que en Chile son muchos y de todos los grupos sociales."¹⁴⁴ On another front, Chileans like economist Mario Zañartu and Claudio Orrego Vicuña accuse the Marxist socialists of being "propertarist", because their obsession with state expropriation of property detracts from what they see as the more revolutionary autogestión proposals of the communitarian Christian Democrats.¹⁴⁵

The Allende government's property reform projects were in some ways aided by developments in constitutional law such as Law Number 17.450 of July 15, 1971, which Eduardo Novoa Monreal sees as "la única de alcances verdaderamente revolucionarios dentro del sistema legal chileno", because it provided constitutional authority for state nationalization of resources regardless of previous contracts or franchise agreements, and without interference from the

judiciary. He adds to his exposition of Law Number 17.450 what he depicts as the demise of "liberty of contract" in Chile:

Este desarrollo progresivo, aunque lento y limitado, de algunos conceptos jurídicos básicos, puede apreciarse también en el cambio que se opera en otro principio jurídico fuertemente ligado a la noción liberal-individualista de propiedad privada, que es la llamada "libertad contractual", más conocida en el ámbito jurídico como "autonomía de la voluntad". Dicha libertad contractual... ha ido sufriendo sucesivas contracciones.¹⁴⁶

Novoa clarifies his assertion that the Unidad Popular had substantial constitutional authority for actions that limited private property by writing "aquellas modificaciones legitimaron y reafirmaron, en todo lo sustancial, las leyes utilizadas por el gobierno del Presidente Allende."¹⁴⁷ Elsewhere, Novoa admits that the socialist government faced structural resistance, much of it from the legal system:

La legislación chilena está fuertemente condicionada por una vasta red de preceptos de índole tradicional, inspirada en las ideas liberal-individualistas del siglo pasado... Para el Código Civil, el Código de Comercio y el Código Penal, el sistema socio-económico se rige por "las leyes naturales de la economía", y sus reglas suponen la libre iniciativa y una industria preponderantemente, si no exclusivamente, privada. La verdad es que se han dictado en las últimas décadas leyes con inspiración social... pero éstas no son bien conocidas ni bien estimadas por juristas y jueces....¹⁴⁸

Legal difficulties were compounded immensely by political rifts, many of which stemmed from the unwillingness of Christian Democrats in the Congress to agree to the more radical and rapid reforms proposed by the Unidad Popular government. Sergio Bitar notes an example of these difficulties in the passing in Congress of a February 1972 constitutional amendment that greatly restricted the Executive branch's latitude for creating a social sector. Indeed, the quarrel that resulted between the Executive and Legislative branches made it unclear whether the amendment had survived Allende's veto. The new restrictions, which may have served to weaken the effect of Law Number 17.450, included:

(1) manufacturing enterprises were left outside the social area and their inclusion in this sector could only be brought about by passing a separate law for each expropriation or requisition; (2) the legal powers of the state to buy stock in private companies were abolished; (3) all state acquisitions of private firms subsequent to October 1971 were nullified; and (4) the general practice would be to turn over the ownership and management of all socialized firms to their workers.¹⁴⁹

This interbranch quarrel is further chronicled in detail from a mainly Christian Democratic point of view in 1970-1973 La lucha para la juricidad en Chile, and it can be seen how questions of unconstitutionality, posed by the increasingly hostile opposition in Congress, plagued the Allende government incessantly until its demise.

Writing about other social and economic obstacles to government planning, Bitar notes the increasing confrontations with industry, as well as the development of a substantial parallel economy, or black market. This parallel economy, which Bitar sees as resulting from "the deliberate actions of the economic elite", "was a new mode of functioning of the Chilean capitalist system, a way of evading the transformations and reproducing the old income structure."¹⁵⁰ Further, Bitar notes that the Unidad Popular government wrongly assumed that expropriation and nationalization would destroy the political capital and influence of the Chilean "bourgeoisie", which actually seemed to increase as a result of government actions:

Their attack on the government and its program, emphasizing the ideological axiom that property is a requisite for liberty, gradually increased its scope of operation to medium owners and then to small.... Another widespread assumption was that the increase in the profits of medium and small entrepreneurs, derived from the economic expansion, would guarantee their neutrality. Yet, even when their earnings were greatest, they worried that their ownership of productive means was insecure.¹⁵¹

Bitar and others, like James Petras above, point out that smaller property owners actually had nothing to fear from the socialist government, and that strategic errors, such as the failure to publish a list of firms to be expropriated,¹⁵² was key in attracting these owners to a mainly right-wing property cause. The appeal of property rights arguments, which perhaps was limited under previous regimes (according to authors like Petras)--even under the reform-oriented Frei administration--grew immensely with the perceived threat of Unidad Popular policy.

IV. THE NEOLIBERAL ERA

The Constitution of 1980

While there is considerable disagreement over what the content of a constitutional right to individual private property *should be*, Chilean scholars from many different political orientations agree that a primarily liberal conception of property rights has been written into the 1980 Constitution crafted by the Pinochet government. In their *Teoría de la Constitución*, Francisco Cereceda Cumplido and Humberto Nogueira Alcalá write that the strong ideological content of the Constitution derives from the ideologies of National Security and neoliberal capitalism. On property they write:

A través del capitalismo neoliberal como fundamento se fortaleció el derecho de propiedad privada (artículo 19 No. 24 de la Constitución), se disminuyó el rol del Estado como promotor del bien común, estableciendo al Banco Central como un verdadero poder económico (artículo 97 de la Constitución), y se restringió el alcance de los derechos económicos y sociales en relación a la Constitución de 1925.¹⁵³

Enrique Ortúzar Escobar, one of the guiding forces in the crafting of the 1980 Constitution and a proponent of the neoliberal government, writes in 1976 about the relationship of property rights and political freedom that is to be contained in the 1980 document, as well as the nature of the social function of property:

La iniciativa particular no puede existir, y menos tener la proyección que el desarrollo del país requiere, sin fortalecer el derecho de propiedad, tan gravemente conculcado por el régimen anterior.

El derecho de propiedad es, además, el fundamento de todas las libertades públicas.

No hay ni puede haber libertad política, si el estómago de las personas depende de la voluntad omnimoda del Estado.

Junto con fortalecer el derecho de propiedad, la futura Carta reconocerá que la propiedad cumple una función social que obliga a emplearla en el fin que le es natural y en armonía con los intereses colectivos.¹⁵⁴

Having placed the right of property first before the social function, he concludes by briefly addressing the issue of expropriation and the right of the expropriated property owner to a prompt and just indemnity according to law, which is to be determined in cases of conflict by the *Tribunales Ordinarios de Justicia*. Another sympathetic voice, writing in the somewhat

pedagogical manual Comprendamos nuestra Constitución: un resumen al alcance de su mano, is that of lawyer Arturo Marin V. Marin states that as a person has a right to buy or acquire goods, that person "debe tener también derecho a mantenerla en su poder, a conservarla y no perderla por imposición unilateral de la autoridad", subject of course to expropriation conditional to payment of a fair indemnity.¹⁵⁵

In Una salida político constitucional para Chile, the authors, who are interested in reforming the social function of property as outlined in the 1980 document and in neoliberal philosophy, make their estimation of the new Constitution clear by comparing the conception of property contained therein with that found in the Constitution of 1925:

La efectiva función social de la propiedad privada, que fue uno de los poquísimos avances de la Constitución del 25, hoy día eso se limita, pues entre los capítulos se elimina la elevación de las condiciones de vida del común de los habitantes; y, como causal de expropiación, se termina con el interés social. Dos, sin duda, de las materias más importantes en que se basaba el reclamar y obtener la función social de la propiedad.¹⁵⁶

Álvaro Briones R., a Chilean writer living in México, includes a comparative note on the 1925 Constitution in La economía es política. He asserts that the 1980 Constitution is firmly grounded in neoliberal thought, as shown by its definition of the right of property, "que se ve despojado de toda conotación que implique subordinación al progreso del orden social, como había dispuesto la Constitución de 1925."¹⁵⁷

Constitutional scholar Juan Eduardo Figueroa Valdés, in Las garantías constitucionales del contribuyente en la Constitución Política de 1980, goes into considerable detail to demonstrate the extent to which private property rights are established in the 1980 document. For Figueroa, the key issues affecting the status of property are taxation, retroactivity of laws, and respect for contract-laws, or "contratos-leyes". Studying the issue of taxation, he attempts to determine what level of taxation would be considered confiscatory, and therefore unconstitutional. He reviews Article 19 Paragraph 26, remarking that it represents one of the important innovations of the Constitution in terms of constitutional guarantees regarding taxation.¹⁵⁸ The text of that line reads:

La seguridad de que los preceptos legales que por mandato de la Constitución regulen o complementen las garantías que ésta establece o que las limiten en los casos en que ella lo autoriza, no podrán afectar los derechos en su esencia, ni imponer condiciones, tributos o requisitos que impidan su libre ejercicio.

Figueroa then reproduces parts of the debate held by the Comisión de Estudio de la Constitución in various sessions from 1975 to 1978, in which he quotes members like Jaime Guzmán Dinator, Enrique Ortúzar Escobar, and José L. Cea Egaña. The members of that body were concerned

with defending the right of property against confiscatory levels of taxation, and attempted to adjust the wording of Article 19, Paragraph 26 to convey that concern without naming specific rates of taxation. Ultimately, they decided that it would be left to the Supreme Court to determine the constitutionality of taxation levels. Figueroa proceeds to reviewing four instances of Chilean Supreme Court jurisprudence since 1962, noting that in three, the Court found the taxation in question to be constitutional. In a 1982 case, however, the Court determined that "[t]ributo equivalente al 85% de las sumas que deban pagarse por el Fisco a título de indemnización, o restituciones mutuas, es confiscatorio".¹⁵⁹

Figueroa engages in similar treatment of the issue of retroactivity of taxation laws, reviewing classical and newer legal theories, regulations in the Chilean Civil Code, the debate within the Comisión de Estudio de la Constitución, and in national jurisprudence, concluding:

...ni el legislador ni el juez pueden dar efecto retroactivo a la ley cuando afecta al derecho de propiedad garantizado en la Constitución, fundándose en la doctrina de los derechos adquiridos y de las meras expectativas.¹⁶⁰

A similar investigation into the relationship between taxation and contract-laws yields, in Figueroa's opinion, a firm defense of the rights of economic actors utilizing contract-laws. He sees this liberty as being effectively based in the Constitutional guarantee of private property rights:

...la validez legal de la institución de los contratos-leyes resulta una realidad incuestionable, encontrándose incorporada a nuestro ordenamiento jurídico constitucional de manera implícita a través de la consagración de la garantía constitucional de propiedad... si el Estado modifica unilateralmente lo convenido en virtud de un contrato-ley, el particular... estaría facultado para solicitar la protección jurisdiccional a través del recurso de inaplicabilidad por inconstitucionalidad.¹⁶¹

The constitutional issue concerning the recourse of legal protection provided by the constitution as a guarantee of individual rights has already been introduced tangentially in Figueroa Valdés' treatment of taxation and confiscation above. In El recurso de protección: orígenes, doctrina, y jurisprudencia, legal scholar Eduardo Soto Kloss describes in detail eighteen representative case histories involving the recourse of protection in respect to private property rights. This "amplio abanico de situaciones jurídicas" is designed to give the reader a wide variety of examples of the use of this recourse. He illustrates the proliferation of such cases with the following statement:

Si se hiciera un recuento de todos los recursos de protección de que han conocido las Cortes de Apelaciones del país, y la Corte Suprema como jurisdicción de alzada, no cabe

duda que una gran cantidad de ellos, si no la mayoría, han recaído en amparo o salvaguarda del derecho de propiedad.¹⁶²

In Constitución y desarrollo social, constitutional law professor Paulino Varas Alfonso of the University of Chile adds a historical element to the discussion of the right to legal recourse in defense of private property rights. He begins his essay by tracing the history of the recourse of protection back to Liberal Era legal scholar Jorge Hunneus, who favored the firm establishment of legal recourse as defined in Article 143 of the Constitution of 1833. He then lists the individual rights that are to be guaranteed by recourse, which include the right to private property contained in Article 19, Paragraph 24. Presenting empirical evidence of the use of recourse (as outlined in Article 20 of the 1980 Constitution) in the Appellate Court of Santiago between 1977 and 1988, Varas Alfonso declares in conclusion that "¡El sueño de Hunneus se ha cumplido con creces!"¹⁶³

The property rights issue surfaces in regards to the privatization of lands affected by the expropriations enacted by the prior governments, especially Allende's Unidad Popular. In Estado, neoliberalismo y política agraria en Chile 1973-1981, Patricio Silva describes the process by which agricultural lands previously expropriated were given over by the military junta to private ownership and management. He demonstrates the element of social utility involved in the government's privatization policy, maintaining that the object of privatization was *not* to return the land to the original owners to do as they pleased, and also notes that many of the recipients of land reform expropriations were able to hold onto them:

El régimen militar sólo devuelve la tierra a aquellos agricultores que habían demostrado ser los más eficientes, al no aceptar las peticiones en este sentido hechas por empresarios agrícolas, cuyos predios habían sido expropiados bajo las casuales de mal explotación o abandono... Como vimos, los ex-asignatarios de la Reforma Agraria lograron retener más de la mitad de la tierra perteneciente al antiguo Sector Reformado, mientras que la tierra restituida a sus antiguos propietarios alcanzaría a un tercio.¹⁶⁴

In addition to the economic function of land parcelization, Silva explains that privatization as carried out had a political purpose. In granting ownership of land to the "campesinos", the government hoped to extinguish leftist sentiment among small farmers, "utilizando el vocabulario oficialista, lo que intentaba impedir era la 'infiltración comunista' en el seno del campesinado."¹⁶⁵

The principle of subsidiarity in relation to state power is defined by the "Declaración de Principios del Gobierno de Chile" of March 11, 1974, which declares "al Estado... le corresponde asumir directamente sólo aquellas funciones que las sociedades intermedias o particulares no están en condiciones de cumplir adecuadamente..."¹⁶⁶ That concept, so defined, forms one of the philosophical pillars of the juridical order envisioned by the creators of the 1980 Constitution. The authors of the 1974 Declaration relate at length the necessity of rights of private property in a society based on subsidiarity:

...sería inútil admitir la iniciativa de los particulares en el campo económico, si no se reconoce conjuntamente el derecho de propiedad privada, tanto sobre bienes de consumo como sobre medios de producción.... Su forma natural es la propiedad individual, pudiendo aceptarse también como expresión de ella la propiedad en común, en cuanto sea libremente pactada y mantenida.¹⁶⁷

While one of the principal benefits to be derived from this regime of subsidiarity is economic and political liberty for individuals, the military government is clear both here and in discussion of concepts like the general common good ("el bien común general") in presenting an element of social function. The consecration of the right of private property "debe ir acompañada de la exigencia jurídica de que él se ejerza teniendo en cuenta la función social que le es inherente."¹⁶⁸

Writing about the philosophy of the military junta in Liberalismo económico y costo social, as outlined in the "Declaración de Principios del Gobierno" of March 1974 and the "Objetivo Nacional del Gobierno de Chile" of December 1976, Andrés Sanfuentes argues that the position of the junta, being based in the principle of subsidiarity, relies on a liberal conception of property rights:

...el Gobierno al establecer el principio de subsidiaridad como la base de la organización económica de la sociedad tiene que aceptar la libre iniciativa de los actores económicos como su mecanismo de funcionamiento. Sin embargo, opta por asociar la propiedad privada individual con la libre iniciativa como el fundamento de la organización económica. Este aspecto aparece claramente expresado en la propiedad privada como un derecho básico, que se deriva de la concepción del hombre y la sociedad. La propiedad privada individual es su forma natural, mientras la propiedad en común solo "puede aceptarse" bajo algunos requisitos.¹⁶⁹

The considerable confusion engendered in the attempted classification of the property rights philosophy of the Pinochet government owes in part to the fact that political theories and doctrines, like those concerning subsidiarity, often lack well-defined boundaries. Further confusion regarding the definition of subsidiarity will be illustrated later in this paper, with the presentation of Francisco Cereceda Cumplido's normative theory. Critics of the military government suggest that the confusion of definitions may owe at least in part to an attempt to disguise the liberal nature of its philosophy. A group of social scientists residing in Chile and writing under the pseudonym "P. Bule" contributed an essay to the 1979 book Chile at the Turning Point: Lessons of the Socialist Years, 1970-1973 entitled "Elements for a Critical Analysis of the Present Cultural System", in which they contrast their concept of freedom with the new conception of the junta:

Today, under the slogan of "national unity," an official opinion that is obligatory for all is codified *de facto* (by force). It walks on well-known soil, although demagogic prudence dictates that it shall not be made explicit: the old notion of private property. Those who share in the unrestricted defense of *established* private property are members of the community. Those who seek to modify its distribution or to socialize *access* to it are enemies. As in the days when suffrage was restricted to those possessing property, we have returned to distinguishing between two classes of citizens. Real freedom is in fact restricted to private owners (the privatization of economic power); the remainder have only to work and obey.¹⁷⁰

However unsympathetic the treatment, the quotation by P. Bule is further evidence of the centrality of the concept of private property rights in both official doctrine and in normative debate.

One of the greatest testaments to the influence of the liberal property rights philosophy in Chile since 1973 is the abundance of material written about the philosophy of liberalism by its detractors and reformers. In books like Del liberalismo al capitalismo autoritario from the Instituto Latinoamericano de Doctrina y Estudios Sociales (ILADES)¹⁷¹ and Liberalismo económico y costo social¹⁷², the authors, many of them economists, have found themselves addressing and criticizing the doctrines of thinkers like John Locke and Friedrich Hayek. Historian Mario Góngora, writing about the notion of the state in Chilean history, suggests that because the state has traditionally been an affirmation of Chilean nationality and the common good, the imposition of Milton Friedman-style economic liberalism is an error of "constructivismo racionalista", or critical rationalism. He cites an interview with Friedrich Hayek in El Mercurio from April 19, 1981, in which Hayek points out the limiting nature of the evolutionary cultural process and says that Friedman's school tends to teach rational constructivism.¹⁷³ Arturo Fontaine, economist and proponent of the neoliberal socio-economic philosophy, responding to Góngora, concedes this point regarding Chicago-school positivism, but suggests that other liberal schools of thought (including the Austrian school of Hayek and Ludwig von Mises, the public choice school of Kenneth Arrow and James Buchanan, and other schools) may be more compatible with the Chilean notion of the state.¹⁷⁴

It is interesting to note here some parallels in philosophy: between today's neoliberal positivists and Nineteenth Century Comteans, and between today's "spontaneous order" liberals and Nineteenth Century Spencerian evolutionary positivists. Further, there is a parallel between the Liberal and neoliberal eras in regard to a key imported commodity--technocratic and intellectual capital in the form of liberal economists. The similarities between Courcelle-Seneuil's librecambistas and Milton Friedman's "Chicago Boys" are unmistakable. A major difference between the two periods is the absence of natural rights justifications for property. There is a strong tendency in Twentieth Century Chile (and elsewhere) to argue for or against property rights on utilitarian grounds. The dominance of utilitarian thinking in the field of normative

economics has thus made economic arguments ubiquitous in the property rights debate--so much so that it is no longer effective to separate "economic liberalism" from other bodies of liberal thought, as was done in this paper for the Liberal Era.

In legal studies, notably in the prolific works of Chilean expatriot Eduardo Novoa Monreal, the issue of property rights is central to the exploration of comparative legal systems. Novoa, in treatises such El derecho de propiedad privada¹⁷⁵ and Derecho, política y democracia: un punto de vista de izquierda¹⁷⁶, employs his erudition in legal theory to provide an international scope to his writing, using Chile as an example of the difficulties involved in bringing about a socialist legal order in societies dominated by "conservative" legal systems based on liberal individualism. In his effort to promote a "revolutionary" socialist legal system, he notes the pervasiveness of the liberal tradition of the French Declaration of the Rights of Man and the Citizen--even in the face of newer "social function" doctrines appearing in the early Twentieth Century, exemplified by scholars like Leon Duguit and by political constitutions like that of the 1919 German Weimar Republic. Further, he notes that jurists in almost all modern legal systems are prejudiced toward liberal interpretations of justice ethics, a situation he refers to as "un escamoteo de los juristas".¹⁷⁷ Just as economists and historians find themselves addressing the new generation of classical liberal thought, so does Novoa, noting that liberal conceptions of law are not "ideas añejas, de liberales manchesterianos de otras épocas, que no se sustentan en el mundo actual." To illustrate this point, he summarizes Hayek's views on law:

Hayek concluye que corresponde al mercado la creación de un orden espontáneo, que ha de reconocerse un derecho de propiedad infinito y que el Estado no puede limitar ese derecho individual ni alterar el orden propietario ya establecido.¹⁷⁸

Although Novoa believes that the liberal conception of inalienable individual property rights is a holdover from earlier stages in an evolutionary (a better adjective might be "dialectical") development of law, his statements serve as further testimony to the influence of that conception in Chile's Neoliberal Era.

Looking forward

On the normative side of constitutional scholarship, especially in anticipation of the return to democratic government in 1989, a debate began regarding reform of the 1980 Constitution. Writers like Francisco Geisse and José Antonio Ramírez Arrayas, reviewing the neoliberal philosophy embedded in the Constitution, describe their principal concern: "la Carta de 1980 no consagra los derechos económicos sociales y culturales de las personas, que... son los que configuran una democracia material a diferencia de la democracia meramente formal."¹⁷⁹ They argue that constitutional rights to social-economic goods (such as work, sindicalization of labor,

social security, and health) are only nominal in the 1980 document, while they believe that recognition and protection of such rights in a democracy require an active role for the state.

Francisco Cereceda Cumplido, contributing an essay entitled "Constitución, pluralismo, y justicia contitucional" to Constitución y desarrollo social, describes his conception of "economic pluralism", in which the Constitution would guarantee economic activities of a variety of labor-ownership relationships, in which he includes "privada, social, mixta, estadual, etc." In so doing, he redefines economic liberty as a decentralization of economic power, which refers not only to state power (which would be congruent with the liberal conception), but to the economic power of persons or "groups". Following this kind of thinking is a reevaluation of the role of property and its relationship with liberty: "no siempre coincide que el titular del poder económico es el dueño o propietario, sino que lo tiene quien efectua la gestión de esa propiedad, por lo que no basta garantizar en la Constitución el derecho de propiedad para que haya libertad económica."¹⁸⁰ Cereceda Cumplido compares the notion of subsidiarity as promulgated in Article 10 of the neoliberal 1980 Constitution with his own conception, redefining subsidiarity as including an obligatory role for the state as a guarantor of a minimum quality of life for citizens. He argues that the Constitution of 1980, as well as the Constitution of 1925, could and should be interpreted according to his definition:

Es verdad que del Art. 10 de la Constitución de 1980 pudieran desprenderse parecidas obligaciones, si se lo interpreta como una disposición normativa, pero sus autores le han dado el carácter más de principios y valores, que de claros deberes para el Estado.¹⁸¹

In a more pedagogical manner, the publication La Constitución y la democracia en las proposiciones del "Grupo de los 24" explains the position of one group of reform activists with regard to property. This point of view employs a collective meaning for the social function of property, and emphasizes the significant role of the state. It is interesting to note in this regard that the language of their statement appears to have been borrowed from the post-1967 amended Constitution of 1925. Their statement begins with the words "La ley debe establecer el modo de adquirir la propiedad, de usar, gozar y disponer de ella..." and maintains that the social function of property comprehends "cuanto exijan los intereses generales del Estado, la utilidad y la salubridad pública, el mejor aprovechamiento de las fuentes de energías productivas en el servicio de la colectividad...". The ability to nationalize resources and property in this statement also includes "la conveniente distribución de la propiedad y a la constitución de la propiedad familiar", and while it is stated that expropriations should only be carried out in virtue of law, there is no mention of compensation to the owners of private property.¹⁸²

Other writers, including the contributors to the Instituto Chileno de Estudios Humanísticos' Una salida político constitucional para Chile, have supported their ambitions for reform by reviewing the bulk of Western political tradition. In contrast to the liberal "Estado de Derecho" in the tradition of the French Declaration of the Rights of Man and the Citizen or a

Hayek-style "Constitution of Liberty", they propose the "Estado Social de Derecho", citing the Constitutions of the Federal Republic of Germany and of Spain in 1978. The right of private property and its social function are described accordingly:

En este mismo orden de ideas, se interviene la concepción clásica del derecho de propiedad que ya no es una simple función social que fue el correctivo introducido por la democracia liberal, sino que la socializa cuando el interés de la sociedad así lo reclama y se proclama, con solemnidad, que se reserva para el Estado la propiedad de las riquezas básicas.¹⁸³

Looking forward to a post-junta democratic regime, Chilean economists debated the future role of property rights. In *Orden económico y democracia*, authors from diverging viewpoints expounded their philosophies on private property. Edgardo Boeninger points out the importance of the issue, writing "resulta indiscutible que en Chile ha desarrollado una extrema sensibilidad en torno de la materia, situación que se ha configurado por lo demás cada vez que el ejercicio de este derecho ha sido efectivamente cuestionado."¹⁸⁴ Boeninger, a critic of the extremes of neoliberalism and socialism, elucidates a position that he feels is a politically practical middle road for Chilean democracy--a position that could be called "economic pluralism", emphasizing a balance between socialist equity and neoliberal economic efficiency. While admitting that "el control estatal de los medios de producción conduce inevitablemente a la dictadura" and "la propiedad privada es indispensable para la preservación de la libertad y la democracia", he believes that only "la progresiva mayor vigencia del principio de igual libertad" will be viable in Chile's future. He outlines three main strategic options to achieve such a system. The first, which he sees as presenting difficult challenges, is to achieve changes in the nature or conception of the right and exercise of property. Comparing this to elements of the Chilean Christian Democratic philosophy "cuya énfasis está en la sustitución del lucro y la competencia por la solidaridad y la cooperación", Boeninger warns that this approach involves a problem of social evolution on the one hand and a problem of economic efficiency (derived from "gestión en el manejo de organizaciones complejas") on the other.¹⁸⁵ Second, he addresses the option of disconnecting property and management, with the double goal of expanding "social" control and minimizing state political control (in the interest of efficiency), using the British Broadcasting Corporation as an example.¹⁸⁶ Boeninger expresses a reserved liking for this kind of "stakeholder" approach, warning that in this scenario the definition of private property remains yet unresolved and that in the case of the BBC, there was a national consensus regarding the autonomy of that company vis-a-vis the state.

The third option, which he favors most (and sees as compatible with the first two), is that of diffusing access to property ownership, seizing the opportunity created by the financial insolvency of large investment groups in the wake of the 1982-83 recession.¹⁸⁷ He justifies the redistribution of assets and ownership of public stock by asserting that property "es una institución

social y en ningún caso un derecho personal intangible que preserve a sus titulares de todo riesgo...". He argues that this "capitalismo popular", which would involve guarantees of credit to the new buyers of stock and the opening of previously family-owned companies to public stock, would be aimed at creating the kind of relatively widespread ownership seen in countries like the United States. He also feels that such an alternative could help diffuse the political conflict surrounding property, "a condición de que el derecho de propiedad y la iniciativa privadas estén firmemente consagrados." The essays in Orden económico y democracia by moderate liberals Roberto Zahler and Joseph Ramos share this policy goal of diffusion of private property ownership according to an essentially liberal plan.

Gonzalo Daniel Martner, from a socialist point of view, adds to the debate in Orden económico y democracia. He suggests state control of strategically selected, preferably capital-intensive industries, including state direction of medium- to long-term investment. This management is to be effected by a professional "tecno-burocracia" and modified through the influence of worker and consumer groups. Worker election of representatives to boards of directors is proposed as a way of avoiding statist autocracy in these industries. Although he concedes some room for developing an effective and socially useful private sector through the legitimization of capital gains, consumption would be taxed to encourage savings and investment, and legislative regulations would be imposed to guarantee worker participation in managerial decision-making. Martner does not discuss the concept of private property in depth, but it is clear that he intends a purely "social" definition along classical Marxist lines.¹⁸⁸

In their contributing essay to the book, Arturo Fontaine Talavera and Francisco Pérez Mackenna describe the status of property from a neoliberal perspective. For these authors, the existence of a "social market economy" is dependent upon secure rights of private property. Their argumentation is based upon the idea that the social function of property is only exercised through the uninhibited working of the price system:

La propiedad privada ha de tener una función social. En la economía social de mercado ello se logra, respecto de los medios de producción, en la medida en que el sistema de precios empuja a los dueños a utilizar sus haberes en beneficio de la comunidad. Las personas por sí mismas serán las llamadas a juzgar si un bien o servicio las beneficia o no.¹⁸⁹

For Fontaine and Pérez, who cite works by liberal economists like Armen Alchian, Ludwig von Mises, and Miguel Kast, the social benefits of a market economy based on private property are primarily derived from the entrepreneurial function of the owners of property. The entrepreneur plays a key role in the economy by adjusting production methods and investment strategies through risk assessment based on information relayed via the price system. State interference in the price system or the ownership of private property limits the effectiveness of the entrepreneurial function. As well, Fontaine and Pérez suggest that a solid tradition of respect for

private property is a powerful stimulus to savings and investment. The threat of expropriation (including the indirect expropriation of savings by inflation) thus diminishes the social utility of private property, at the same time causing political destabilization. The general policy solution espoused by these authors is strategic privatization of remaining state enterprises in order to maximize private participation, as well as maintenance of a regime of minimal taxation and regulation.¹⁹⁰

In his contribution to the book, Hernán Errázuriz provides what could be seen as a moderate liberal approach, which sees private property as the basis of a democratic society that seeks to promote human dignity, creativity, and liberty. In attempting to define the role of property in the Chilean democratic order, he emphasizes private property rights while reserving a significant area of interference for the state in the economy:

- i) Reconocer a los ciudadanos el derecho a la propiedad privada, entendimiento que ésta es una condición para que la persona se desarrolle integralmente según sus capacidades y aptitudes. La propiedad privada resguarda la intimidad a que los individuos tienen derecho y constituye en elemento de recompensa a sus esfuerzos productivos.
- ii) Reconocer que los derechos humanos son anteriores a los del Estado, lo que envuelve jerarquizar la iniciativa particular... Esta circunstancia no debe ser obstáculo para que el Estado, cuidando el bien común, establezca los marcos de relaciones para resolver conflictos entre los individuos y... entre éstos y la sociedad.
- iii) Reconocer a la empresa privada la función de motor principal del desarrollo... que no debe ser obstáculo para una importante acción del Estado....¹⁹¹

He suggests that an appropriate area of interference of the state is in worker-owner relations, but that this should be limited to insuring fair wages and access to information, rather than participation in "gestión propiamente productiva".¹⁹²

Any attempted classification of the normative positions within the field of legal and economic scholars presented as either "liberal" or "corporatist" will be confounded by several factors. One of those factors, mentioned earlier, stems from the vagueness of definitions of key words and concepts, some of which, like "social", are notorious in political theory for their intransigence. What one Chilean economist sees as "social" will be seen by another as "individualistic". The point of the presentation of widely diverging viewpoints is to show the variety of positions in post-1973 Chile regarding private property rights: liberal, corporatist, socialist, and heterodox. Another factor is that our survey cannot treat the complex thoughts and theories of these individuals in a short space. On closer inspection, even self-proclaimed proponents of neoliberal doctrines may share important values with communitarians. Lastly, it is perhaps impossible to say whether or not a selected individual's philosophy is entirely representative of that of a group of individuals, let alone of a kind of government.

V. CONCLUSION

Originally, I thought that the conclusion to this paper would say much more than it actually will. In the introduction I spent quite a bit of space outlining the liberalism/corporatism issue, and I half expected that an exploration of the Chilean concept of property rights might resolve somewhat conclusively the role that liberal property rights had played in Chile's post-colonial history. At last, however, my primary conclusion is one that I could have deduced almost a priori, without the extensive collection of historical data and intellectual context that I have accumulated. That conclusion is basically that the concept of property rights is an important and crucial factor in the social and political change of Chile. Further, the specifically liberal tradition of property rights--although generally superceded by the social function theories of Leon Duguit and others for much of the middle portion of the Twentieth Century--had political and intellectual adherents throughout the period in study. Yet, it could be charged that this conclusion is in fact a way of saying practically nothing. If, as I suggest in the introduction, inviolable and inalienable property rights form the knife's edge in distinguishing between liberal and corporatist social systems (as well as between the myriad liberal philosophies), then property rights are crucial to the understanding of any political change in any place at any time. Also, it can be argued that having a small number of adherents in no way constitutes significance for a particular philosophy. If Conservative Héctor Rodríguez de la Sotta is a lone voice of mid-Twentieth Century liberalism, then his inclusion in a paper on social change is merely a source of trivia. Lastly, it can be argued that Chile is largely unrepresentative of other Latin American nations for a variety of reasons--some of which, like its lengthy Liberal Era and the neoliberal philosophy of the Pinochet regime, made it attractive for this particular study.

Nevertheless, I feel that there is reason to believe that the liberal conception of property rights has played a significant role in the history of Chile in the last century and a half. Within the realm of constitutional law, the right to private property began in the Liberal Era as a natural right, inviolable and absolute, in Article 12, Paragraph 5 of the Constitution of 1833. While the land linkages and monopoly grants known as "mayorazgos" were arguably a conservative and corporatist holdover from the colonial period, the reform of 1852, which resulted in Article 162, created a system of natural liberal property rights. While Liberal Era figures like Jorge Huneeus Zegers and José Victorino Lastarria defended property from a natural rights point of view, a later commentator from the period, Alcibiades Roldán, had no preference as to the grounding of property rights, as long as they were guaranteed by the constitution. One possible grounding for property rights that soon became dominant was the utilitarian justification of political economy of the imported French free-trade economist Jean Gustave Courcelle-Seneuil and his students like Cruchaga and Zorobabel Rodríguez. I would argue here that although economic nationalism had been a conservative tradition, and although socialism had early precursors in the thought of Santiago Arcos and Francisco Bilbao, it was initially the shift in emphasis among liberals from natural rights to economic utility that undermined the absolute and inviolable right to property.

As the study of political economy was influenced first by nationalism and then by socialism, property rights for many Chileans began to acquire a social function. Indeed, much of the significant transformation occurred before Leon Duguit's "social function" ideas became prevalent. Attacks on liberal orthodoxy had already been made by proponents of economic nationalism and protectionism like Guillermo Subercaseaux, Francisco Encina, and nitrate era President José Manuel Balmaceda, and by liberal commentators like Julio Bañados Espinosa, who cites limitations on free banking as necessary to the preservation of a stable property regime. Although it is only dealt with briefly in this paper, the issue of free banking would be a fruitful one for any person studying key conflicts within Chilean liberalism of the Nineteenth Century. By the beginning of the Twentieth Century, the institution of private property had begun to figure into the "social question". While the absolute and inviolable nature of property rights found its defense in the person of Radical Senator Enrique Mac Iver, fellow Radical Valentín Letelier and moderate liberal Eliodoro Yáñez represented those who were willing to embrace the social function of property, especially when faced with the threat of communist revolution.

The various sources I utilized in researching the Interregnum, almost without exception, described Article 10, Paragraph 10 of the Constitution of 1925 as embodying the social function of private property. The ten successive modifications of that conception during that period served to both progressively expand state powers of expropriation, as well as to minimize the required compensation paid to the owners of expropriated property. North American students of Chilean constitutional history may at this point be tempted to make a comparison with the concept of property contained in the United States Constitution of 1789. An obvious distortion will result if one views the unchanged text of our Commerce and Contracts Clauses and Fifth Amendment as proof that Chile has undergone a vastly more radical redefinition of property. At root is the fact that Chile's Constitution contains positive rights along the lines of the French Declaration of the Rights of Man and the Citizen--requiring constant redefinition--while those in the U.S. Constitution have been phrased negatively. A careful review of American constitutional jurisprudence and interpretation would probably reveal that the two systems have had much in common in the Twentieth Century.

Returning to the Interregnum analysis, it is interesting to note in the use of Catholic doctrine by both the Christian Democrats and the partisans of Liberation Theology, something of an appeal to natural rights within the framework of social justice. Héctor Rodríguez de la Sotta and Eduardo Novoa Monreal explore Catholic teaching for definitive dogma on property, but they ultimately rely on economic justifications for the liberal capitalist property regime and the revolutionary socialist regime, respectively, that each endorses. In the sphere of political action during the Frei and Allende years, it is clear that the perceived threat to private property posed at first by the Christian Democratic reforms, and then more convincingly by events under Allende's Popular Unity regime, played an important role in the breakdown of Chilean democracy. In spite of the shared use of social function conceptions by Christian Democrats and the various kinds of socialists of the era, it is perhaps inaccurate to include the socialist versions under the name

corporatist, as communitarian exponent Mario Zañartu expresses in his denunciations of socialists as "propietarios".

Although the revision of private property rights by the Pinochet government in the Constitution of 1980 reversed the growing corporatization of those rights during the Interregnum period, it should not be concluded that they contemplated anything like a return to the natural rights doctrine of the Liberal Era. Also, despite the remarkable parallels between the economic intelligentsias of the two periods, and the rhetorical and theoretical value placed on private ownership and exercise of property, important remnants of social function remained, from the land parcelization methods described by Patricio Silva to elements of Fontaine and Pérez's exposition of the "economía social de mercado." If I had to place the Neoliberal Era conception of property (that of the government and its moderate detractors like Edgardo Boeninger) on a time spectrum between an arbitrary extreme liberal pole of 1868 (a year of liberal banking reforms) and an arbitrary extreme social function pole of 1971 (Law Number 17.450), I might place it around 1925.

At last, I will make no attempt to say whether Chile, based upon its tradition of property rights, has a fundamentally liberal or corporatist system, except to say that if Chile today is considered corporatist, I doubt that there are very many truly liberal states left in the world.

Appendix A

The Constitution of 1833

The text of Chapter V, Article 12, Paragraph 5 of the Chilean Constitution of 1833 appears reproduced in: Enrique Evans de la Cuadra, Estatuto constitucional del derecho de propiedad en Chile (Santiago: Editorial Jurídica de Chile, 1967), 11-2.:

...la inviolabilidad de todas las propiedades sin distinción de las que pertenezcan a particulares o comunidades y sin que nadie pueda ser privado de la de su dominio, ni de una parte de ella por pequeña sea, o del derecho que a ella tuviere, sino en virtud de sentencia judicial: salvo el caso en que la utilidad del Estado, calificada por una ley, exija el uso o enajenación de alguna; lo que tendrá lugar dándose previamente al dueño la indemnización que se ajustare con él o se avaluare a juicio de hombres buenos.

Appendix B

The Constitution of 1925

The text of Article 10, Paragraph 10 of the Chilean Constitution of September 18, 1925, appears reproduced in: Enrique Evans de la Cuadra, Estatuto constitucional del derecho de propiedad en Chile (Santiago: Editorial Jurídica de Chile, 1967), 12.:

ARTÍCULO 10: "La Constitución asegura a todos los habitantes de la República, No. 10: La inviolabilidad de todas las propiedades, sin distinción alguna.

Nadie puede ser privado de la de su dominio, ni de una parte de ella, o del derecho que a ella tuviere, sino en virtud de sentencia judicial o de expropiación por razón de utilidad pública, calificada por una ley. En este caso, se dará previamente al dueño la indemnización que se ajuste con el o que se determine en el juicio correspondiente.

El ejercicio del derecho de propiedad está sometido a las limitaciones o reglas que exijan el mantenimiento y el progreso del orden social, y, en tal sentido, podrá la ley imponerle obligaciones o servidumbres de utilidad pública en favor de los intereses generales del Estado, de la salud de los ciudadanos y de la salubridad pública".

Appendix C

Law Number 15.295

Law Number 15.295, of October 8, 1963, modifying Article 10, Paragraph 10 of the Chilean Constitution of 1925, appears reproduced in: Enrique Evans de la Cuadra, Estatuto constitucional del derecho de propiedad en Chile (Santiago: Editorial Jurídica de Chile, 1967), 27-8.:

N.º 10.º La inviolabilidad de todas las propiedades, sin distinción alguna.

Nadie puede ser privado de la de su dominio, ni de una parte de ella, o del derecho que a ella tuviere, sino en virtud de sentencia judicial o de expropiación por razón de utilidad pública, calificada por una ley. En este caso, se dará previamente al dueño la indemnización que se ajuste con él o que se determine en el juicio correspondiente. El Juez podrá autorizar la toma de posesión material del bien expropiado, después de dictada la sentencia de primera instancia, cuando se trate de expropiaciones para obras públicas de urgente realización o de predios rústicos, y siempre que sólo se hubiere reclamado del monto de la indemnización y se dé previamente al dueño el total o la parte de ella a que se refiere el inciso siguiente, ordenadas en dicha sentencia.

Sin embargo, si con el objeto de propender a la conveniente división de la propiedad rústica se expropiaren, por causa de utilidad pública, predios rústicos abandonados, o que estén manifiestamente mal explotados y por debajo de las condiciones normales predominantes en la región para tierras de análogas posibilidades, deberá darse previamente al propietario el diez por ciento de la indemnización y el saldo en cuotas anuales iguales dentro de un plazo que no exceda de quince años, con el interés que fijará la ley.

Esta forma de indemnización sólo podrá utilizarse en conformidad a la ley que permita reclamar de la expropiación ante un Tribunal Especial, cuya decisión sea apelable ante la Corte de Apelaciones respectiva, y que establezca un sistema de reajuste anual del saldo de la indemnización con el objeto de mantener su valor. No podrán iniciarse ni efectuarse nuevas expropiaciones indemnizables a plazo si existe retardo en el pago de los créditos provenientes de anteriores expropiaciones realizadas en conformidad al inciso anterior.

En la Ley de Presupuestos se entenderá siempre consultado el ítem necesario para el servicio de dicho créditos, y sus cuotas vencidas servirán para extinguir toda clase de obligaciones a favor del Fisco. La Tesorería General de la República pagará las cuotas vencidas más reajuste e intereses contra la presentación del título correspondiente.

El ejercicio del derecho de propiedad está sometido a las limitaciones o reglas que exijan el mantenimiento y el progreso del orden social, y, en tal sentido, podrá la ley

imponerle obligaciones o servidumbres de utilidad pública en favor de los intereses generales del Estado, de la salud de los ciudadanos y de la salubridad pública.

Appendix D

Law Number 16.615

Law Number 16.615, of January 18, 1967, modifying Article 10, Paragraph 10 of the Chilean Constitution of 1925, appears reproduced in: Enrique Evans de la Cuadra, Estatuto constitucional del derecho de propiedad en Chile (Santiago: Editorial Jurídica de Chile, 1967), 8-9.:

Artículo 10

Sustitúyese el No. 10, por el siguiente:

10.º El derecho de propiedad en sus diversas especies.

La ley establecerá el modo de adquirir la propiedad, de usar, gozar y disponer de ella y las limitaciones y obligaciones que permitan asegurar su función social y hacerla accesible a todos. La función social de la propiedad comprende cuanto exijan los intereses generales del Estado, la utilidad y la salubridad públicas, el mejor aprovechamiento de las fuentes y energías productivas en el servicio de la colectividad y la elevación de las condiciones de vida del común de los habitantes.

Cuando el interés de la comunidad nacional la exija, la ley podrá reservar al Estado el dominio exclusivo de recursos naturales, bienes de producción u otros, que declare de importancia preeminente para la vida económica, social o cultural del país. Propendará, asimismo, a la conveniente distribución de la propiedad y a la constitución de la propiedad familiar.

Nadie puede ser privado de su propiedad sino en virtud de ley general o especial que autorice la expropiación por causa de utilidad pública o de interés social, calificada por el legislador. El expropiado tendrá siempre derecho a indemnización cuyo monto y condiciones de pago se determinarán equitativamente tomando en consideración los intereses de la colectividad y de los expropiados. La ley determinará las normas para fijar la indemnización, el tribunal que conozca de las reclamaciones sobre su monto, el que en todo caso fallará conforme a derecho, la forma de extinguir esta obligación, y las oportunidades y modo en que el expropiador tomará posesión material del bien expropiado.

Cuando se trate de expropiación de predios rústicos, la indemnización será equivalente al avalúo vigente para los efectos de la contribución territorial, más el valor de las mejoras que no estuvieren comprendidas en dicho avalúo, y podrá pagarse con una parte al contado y el saldo en cuotas en un plazo no superior a treinta años todo ello en forma y condiciones que la ley determine.

La ley podrá reservar al dominio nacional de uso público todas las aguas existentes en el territorio nacional y expropiar, para incorporarlas a dicho dominio, las que sean de propiedad particular. En este caso, los dueños de las aguas expropiadas continuarán usándolas en calidad de concesionarios de un derecho de aprovechamiento y solo tendrán derecho a la indemnización cuando, por la extinción total o parcial de ese derecho, sean efectivamente privados del agua suficiente para satisfacer, mediante un uso racional y beneficioso, las mismas necesidades que satisfacían con anterioridad a la extinción.

La pequeña propiedad rústica trabajada por su dueño y la vivienda habitada por su propietario no podrán ser expropiadas sin previo pago de indemnización.

Y por cuanto la observación del Presidente de la República no fue acogida y la Contraloría General de la República en dictamen No. 3633 fechado el 14 del presente, coincidiendo con la opinión del Ejecutivo concluye que corresponde promulgar el texto que antecede; por tanto, promúlguese y llévase a efecto como ley de la República y ténganse por incorporadas sus disposiciones a la Constitución Política del Estado, como lo manda el artículo 110 de este cuerpo legal.

SANTIAGO, dieciocho de Enero de mil novecientos sesenta y siete.--EDUARDO FREI MONTALVA.--Pedro J. Rodríguez G.

Appendix E

The Constitution of 1980

The text of Article 19, Paragraph 24, of the Chilean Constitution of ¹⁹⁸⁰~~1833~~ is reproduced in: Jay A. Sigler, et al., "Chile," in ed. Albert P. Blaustein and Gisbert H. Flanz, Constitutions of the Countries of the World (Dobbs Ferry, New York: Oceana Publication: 1991), 99-101.:

24.º El derecho de propiedad en sus diversas especies sobre toda clase de bienes corporales o incorporeales.

Sólo la ley puede establecer el modo de adquirir la propiedad, de usar, gozar y disponer de ella y las limitaciones y obligaciones que deriven de su función social. Esta comprende cuanto exijan los intereses generales de la Nación, la seguridad nacional, la utilidad y la salubridad públicas y la conservación del patrimonio ambiental.

Nadie puede, en caso alguno, ser privado de su propiedad, del bien sobre que recae o de alguno de los atributos o facultades esenciales del dominio, sino en virtud de ley general o especial que autorice la expropiación por causa de utilidad pública o de interés nacional, calificada por el legislador. El expropiado podrá reclamar de la legalidad del acto expropiatorio ante los tribunales ordinarios y tendrá siempre derecho a indemnización por el daño patrimonial efectivamente causado, la que se fijará de común acuerdo o en sentencia dictada conforme a derecho por dichos tribunales.

A falta de acuerdo, la indemnización deberá ser pagada en dinero efectivo al contado.

La toma de posesión material del bien expropiado tendrá lugar previo pago del total de la indemnización, la que, a falta de acuerdo, será determinada provisionalmente por peritos en la forma que señale la ley. En caso de reclamo acerca de la procedencia de la expropiación, el juez podrá, con el mérito de los antecedentes que se invoquen, decretar la suspensión de la toma de posesión.

El Estado tiene el dominio absoluto, exclusivo, inalienable e imprescriptible de todas las minas, comprendiéndose en éstas las covaderas, las arenas metalíferas, los salares, los depósitos de carbón e hidrocarburos y las demás sustancias fósiles, con excepción de las arcillas superficiales, no obstante la propiedad de las personas naturales o jurídicas sobre los terrenos en cuyas entrañas estuvieren situadas. Los predios superficiales estarán sujetos a las obligaciones y limitaciones que la ley señale para facilitar la exploración, la explotación y el beneficio de dichas minas.

Corresponde a la ley determinar qué sustancias de aquellas a que se refiere el inciso precedente, exceptuados los hidrocarburos líquidos o gaseosos, pueden ser objeto de concesiones de exploración o de explotación. Dichas concesiones se constituirán siempre por resolución judicial y tendrán la duración, conferirán los derechos e impondrán

las obligaciones que la ley exprese, la que tendrá el carácter de orgánica constitucional. La concesión minera obliga al dueño a desarrollar la actividad necesaria para satisfacer el interés público que justifica su otorgamiento. Su régimen de amparo será establecido por dicha ley, tenderá directa o indirectamente a obtener el cumplimiento de esa obligación y contemplará causales de caducidad para el caso de incumplimiento o de simple extinción del dominio sobre la concesión. En todo caso dichas causales y sus efectos deben estar establecidos al momento de otorgarse la concesión.

Será de competencia exclusiva de los tribunales ordinarios de justicia declarar la extinción de tales concesiones. Las controversias que se produzcan respecto de la caducidad o extinción del dominio sobre la concesión serán resueltas por ellos; y en caso de caducidad, el afectado podrá requerir de la justicia la declaración de subsistencia de su derecho.

El dominio del titular sobre su concesión minera está protegido por la garantía constitucional de que se trata este número.

La exploración, la explotación o el beneficio de los yacimientos que contengan sustancias no susceptibles de concesión, podrán ejecutarse directamente por el Estado o por sus empresas, o por medio de concesiones administrativas o de contratos especiales de operación, con los requisitos y bajo las condiciones que el Presidente de la República fije, para cada caso, por decreto supremo. Esta norma se aplicará también a los yacimientos de cualquier especie existentes en las aguas marítimas sometidas a la jurisdicción nacional y a los situados, en todo o en parte, en zonas que, conforme a la ley, se determinen como de importancia para la seguridad nacional. El Presidente de la República podrá poner término, en cualquier tiempo, sin expresión de causa y con la indemnización que corresponda, a las concesiones administrativas o a los contratos de operación relativos a explotaciones ubicadas en zonas declaradas de importancia para la seguridad nacional.

Los derechos de los particulares sobre las aguas, reconocidos o constituidos en conformidad a la ley, otorgarán a sus titulares la propiedad sobre ellos;

Endnotes

1. Howard J. Wiarda, ed., Politics and Social Change in Latin America: Still a Distinct Tradition?, 3rd ed. (Boulder, San Francisco, Oxford: Westview Press, 1992).
2. For those whose perspectives have been formed in the realm of "U.S.-style Lockean liberalism" (see inset quotation on page 2), the Río Bravo may be better known as the Río Grande.
3. In 1991, with the election of President Aristide of Haiti, there was much commentary regarding the fact that every nation in the Western Hemisphere (except for Castro's Cuba) had a democratically elected government. As the fate of Aristide seems to demonstrate, rejoicing may still be somewhat premature.
4. Regarding the use of the word "liberal" and its derivatives, it should be noted that the word is used here to describe a subset of the range of liberal political philosophies, which commonly hold that: 1) The individual is the basic unit of society, and that 2) individual well-being (however defined) is the ultimate measure of the worth of societal action, whether political or not. In this way, it is the opposite of corporatism/communitarianism, which treats society as a unified organism in which the well-being of the whole.
Some further refinement of the term "liberal" is necessary because of the wide spectrum of political philosophies encompassed by the word, especially as used in the U.S. in this century. "Liberalism" as used in Latin America and Europe (and in this paper) measures individual well-being primarily in terms of individual "liberty", or freedom from state coercion. Other strains of North American liberalism, such as welfare statism or social democracy, measure individual well-being primarily according to standards other than individual liberty, such as material welfare (some versions approach the boundaries of corporatism and communitarianism). The American reader may recognize the "liberalism" used in this paper as "classical liberalism", "market liberalism", or "economic liberalism". The use of the terms "Lockean liberalism" and "laissez-faire" in the Wiarda text buttresses this definition somewhat.
5. In distinguishing the two kinds of democracy that evolve under corporatism and liberalism, Glen C. Dealy, one of the contributors to the Wiarda text, uses the terms "monistic" and "pluralistic", respectively. In the essay entitled "The Tradition of Monistic Democracy in Latin America", he defines monistic democracy as "the centralization and control of potentially competing interests... an attempt to eliminate competition among groups in their pursuit of wealth, power, prestige, or whatever men may aspire to within a country. In contrast, pluralistic democracy refers to "the representation and propagation of a plurality of interests... support for the concept of competition among groups in their pursuit of wealth, power, prestige, or whatever..." (p. 42).
6. Howard J. Wiarda, preface to Wiarda, ed., Politics and Social Change, viii.
7. *Ibid.*, 315.

8. Among these institutions are usually included: the rule of law, constitutional limitations of governmental power, institutional barriers to governmental power (such as federalism or separation of powers), and an independent judiciary charged with the protection of political rights and civil liberties (especially property rights).
9. With regard to the Enlightenment, however, these authors find the illiberal (and perhaps anti-liberal) Rousseauian notions of the "general will" to be adequately represented in modern Latin America.
10. José Luis Romero. Situaciones e ideologías en Latinoamérica (Buenos Aires: Editorial Sudamericana, 1986), 89.
Romero also cites the influence of: Adam Smith and freedom of commerce ideas on sectors hurt by imperial monopoly (pp. 35, 73); Locke and English Whig parliamentarianism (p. 89); and, the French Declaration of the Rights of Man and the Citizen (p. 89).
11. *Ibid.*, 108. 121?
12. Romero summarizes the period of Chilean "anarchy" (defended later by liberals like José Victorino Lastarria) during the 1820's: "Se verían [larges luchas] en Chile, en la crisis que transcurrió entre 1823 y 1830, a lo largo de la cual se dictó la constitución unitaria de 1823 y luego la constitución federal de 1826, que no llegó a tener vigencia", *ibid.*, 121.
13. *Ibid.*, 43.
14. Miguel Jorrin and John D. Martz, Latin American Political Theory and Ideology (Chapel Hill: The University of North Carolina Press, 1970).
Jorrin and Martz point out that there were significant differences in positivist philosophy. Two main schools were those of Auguste Comte and Herbert Spencer. They note that Chilean liberal José Victorino Lastarria favored Spencer, and that certain elements of Comte's positivism have an authoritarian, rather than liberal, perspective.
15. Romero, Situaciones e ideologías, 167-71.
16. Glen C. Dealy is perhaps the most vehement on this point. Writing about U.S. policy in Central America, he stated: "America's heavy reliance upon an image of pluralistic government effectively places its national security interests on a political vision outside of the range of... philosophical and pragmatic possibility." (Glen C. Dealy, "Pipe Dreams: The Pluralistic Latins", in Wiarda, ed., Politics and Social Change, 294).
17. Wiarda, preface to Wiarda, ed., Politics and Social Change, .ix.
18. For example, the history of liberalism includes many branches that sought either to greatly limit the inalienability of private property rights or to abolish them altogether. The obvious example would be social-democracy, but another strain would be left-anarchism, which uses (abuses perhaps) Pierre Proudhon's famous maxim "property is theft", and which nonetheless belongs to the broad school of limited-government liberalism.

19. Miguel Jorrián and John D. Martz, Theory and Ideology, 205.
20. Richard M. Morse, "Toward a theory of Spanish American Government", in Wiarda, ed., Politics and Social Change, 125-6.
21. Regarding the political philosophy of John Locke, many scholars have argued that Lockean philosophy does not create a system of inalienable rights to property, against which society or other individuals may never legitimately press positive claims. This may serve to make Locke more compatible with corporatist/communitarian philosophies. (For a detailed exposition of this thesis, see: A. John Simmons. The Lockean Theory of Rights. Princeton: Princeton University Press, 1992, especially Chapters 5 and 6.)
22. Glen C. Dealy, "The Tradition of Monistic Democracy in Latin America", in Wiarda, ed., Politics and Social Change, 53-54.
23. Wiarda, "Law and Political Development in Latin America"; in Wiarda, ed., Politics and Social Change, 220.
24. Hernando de Soto, The Other Path: The Invisible Revolution in the Third World (New York: Harper and Row, 1989).
25. Idem, "The Free Market Path to Third World Development", in Cato Policy Report, vol. xx. (Washington, D.C.: Cato Institute, 1991), 6.
For the sake of clarity, I should mention that de Soto does not include criminal activities, such as narcotics traffic, in his definition of informal activities, although both groups are technically illegal.
26. Mario Vargas Llosa, foreword to De Soto, The Other Path, xvi.
Vargas Llosa also provides some insight into the difficulty of bringing about economic liberalism under an authoritarian regime (such as that of Chilean dictator Augusto Pinochet): "The economic liberalism they can bring about--or rather impose from above--will always be relative and will always be weighed down, as in Chile and Argentina, by a complimentary lack of political freedom... it is precisely political freedom that permits the evaluation, perfection, or rectification of any measure which does not work in practice... No dictatorship can really be liberal in economic matters, because the basic principle of economic liberalism is that it is not the politically powerful but the independent and sovereign citizens who have the right to take action--to work and sacrifice--to decide in what kind of society they are going to live" (ibid.).
Writing about "Whatever Became of the 'Southern Cone Model'?" (in David E. Hojman, ed., Chile After 1973: Elements for the analysis of military rule (Liverpool: The University of Liverpool, 1985), 9), Laurence Whitehead begins with a 1982 quotation by Milton Friedman: "the [Chilean] free-market policy will not last unless the military government is replaced by a civilian government dedicated to political liberty." This statement, from the spiritual dean of the "Chicago Boys", supports Vargas Llosa's contention, as does the recent scholarship of moderate Chilean liberals such as those from the Instituto Latinoamericano de Doctrina y Estudios Sociales (ILADES). See, for example, ILADES, Del liberalismo al capitalismo autoritario (Santiago: Salesianos, 1983).

27. De Soto, The Other Path, 244.
28. Ibid., 247.
29. It should be noted here, however, that liberal property rights can be grounded in sources other than metaphysically derived "inalienable" individualism. Friedrich Hayek, one of the most influential classical liberal scholars of this century (in Latin America, as well), made no such claims: "We have up to this point represented those guaranties of individual freedom as if they were absolute rights which could never be infringed. In actual fact they cannot mean more than that the norman running of society is based on them and that any departure from them requires special justification." (F.A. Hayek, The Constitution of Liberty (Chicago: The University of Chicago Press, 1960), 217.)
30. De Soto, The Other Path, 159.
31. The year 1852 was arbitrarily chosen to mark the beginning of the Liberal Era in Chile because among the many available criteria, it seemed most pertinent to this study, as 1852 was the year in which the "mayorazgos" were abolished and property rights took on a fully liberal character.
32. Ricardo Donoso, Las ideas políticas en Chile (Buenos Aires: Editorial Universitaria de Buenos Aires, 1975).
33. Jaime Eyzaguirre, Historia de las instituciones políticas y sociales de Chile, 6th ed. (Santiago: Editorial Universitaria, 1984).
34. Alcibiades Roldán, Elementos de derecho constitucional de Chile, 3rd ed. (Santiago: Imprenta Lagunas, 1924), 154-5.
35. Ibid., 155.
36. Ibid., 156-7.
37. Ibid., 153-4.
38. Ibid., 154.
39. Mario Correa Saavedra, Jorge Huneeus Zegers: imagen, pensamiento, acción (Santiago: Editorial Andrés Bello, 1969), 117.
40. Jorje Huneeus, La Constitución ante el Congreso (Santiago: Imprenta de "Los Tiempos", 1879), 54.
41. Ibid., 56-7.
42. José Victorino Lastarria, Elementos de derecho público: constitucional teórico, positivo, i político, 3rd ed. (Gante: Imprenta de Eug. Vanderhaeghen, 1965), 56.

43. Ibid., 464.
44. Leonardo Fuentealba Hernández, Courcelle-Seneuil en Chile: errores del liberalismo económico (Santiago: Prensas de la Universidad de Chile, 1945), 23-4.
45. J.G. Courcelle-Seneuil, Tratado teórico i político de economía política, 3rd ed., trans. by J. Bello (Paris, Mexico: Librería de Ch. Bouret, 1879), ix.
46. Ibid., 257-8.
47. Miguel Cruchaga, Estudio sobre la organización económica y la hacienda pública de Chile (Madrid: Editorial Reus, 1929), 294.
48. Ibid., lv.
49. J.J. Rapet, Manual de moral i de economía política: para el uso de las clases obreras, trans. by Miguel Cruchaga (Valparaíso: Imprenta del Comercio, 1860), 90.
50. Julio Bañados Espinosa, Letras y política (Valparaíso: Imprenta de "La Patria", 1888), 107.
51. Ibid., 108.
52. Guillermo Subercaseaux, Cuestiones fundamentales de economía política teórica (Santiago: Imprenta Universitaria, 1948), 120.
53. Jaime Eyzaguirre, Instituciones Políticas, 145.
54. Guillermo Subercaseaux, Los ideales nacionales: ante el doctrinarismo de nuestros partidos políticos históricos (Santiago: Imprenta Universitaria, 1918), 6.
55. Idem, Historia de las doctrinas económicas en América y en especial en Chile (Santiago: Imprenta Universitaria, 1924), 85-6.
56. Heliodoro Yáñez, La autoridad y la libertad en la Constitución política del Estado (Paris: Editorial de "Le Livre Libre", 1928), 82-3.
57. Ibid., 83-4.
58. Ibid., 85.
59. Ibid., 87-8.
60. Valentín Letelier, "Los pobres", in Hernán Godoy Urzúa, Estructura social de Chile (Santiago: Editorial Universitaria, 1981), 273.

61. Ibid., 279-80.
62. Santiago Arcos, "Carta a Francisco Bilbao", in Hernán Godoy Urzúa, Estructura social, 211.
63. Alberto Edwards Vives, La fronda aristocrática: historia política de Chile, 7th ed. (Santiago: Editorial del Pacífico, 1972), 122.
64. Ibid., 123.
65. Guillermo Subercaseaux, Doctrinas económicas, 84-5.
66. Ibid., 77.
67. Idem, Cuestiones fundamentales, 153.
68. Eduardo Novoa Monreal, El derecho de propiedad privada (Bogotá: Editorial TEMIS, 1979), 147.
69. Mario Góngora, Libertad política y concepto económico de gobierno en Chile hacia 1915-1935 (Santiago: Instituto de Historia, Pontificia Universidad Católica de Chile, 1986), 22.
70. Ibid.
71. Enrique Evans de la Cuadra, Estatuto constitucional del derecho de propiedad en Chile (Santiago: Editorial Jurídica de Chile, 1967), 14.
72. Ibid.
73. Ibid., 16.
74. Ibid., 15.
75. Ibid.
76. Ibid.
77. Ibid., 16.
78. Ibid., 16-7.
79. Ibid., 19.
80. Góngora, Libertad política, 22.
81. Evans de la Cuadra, Estatuto constitucional, 17.

82. Ibid., 21-22.
83. Arturo Alessandri, prologue to Miguel Crucega, Estudio sobre la organización económica y la hacienda pública de Chile (Madrid: Editorial Reus, 1929), xxxviii.
84. Ibid., lv.
85. Ibid., 13.
86. Góngora, Libertad política, 23, n. 10.
87. Eloy Benedetti Benedetti, Los derechos individuales y sociales (Santiago: Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile, 1942), 89.
88. Ibid., 89, n. 107.
89. Ibid., 90.
90. Ibid., 90, n. 108.
91. Ibid., 86-7.
92. Alejandro Silva de la Fuente, Cuestiones constitucionales: 1924-1947 (Santiago: Editorial Tegalda, 1948), 84.
93. Ibid., 85.
94. Ibid., 84.
95. Ibid., 85.
96. Thomas C. Wright, Landowners and Reform in Chile: The Sociedad Nacional de Agricultura 1919-1940 (Urbana, Chicago, London: University of Illinois Press, 1982), 42.
97. John Johnson, "Atrincheramiento político de los sectores medios en Chile", in Hernán Godoy Urzúa, Estructura social de Chile (Santiago: Editorial Universitaria, n.d.), 363-5.
98. Wright, Landowners and Reform in Chile, 39.
99. Ibid., 79-81.
100. Ibid., 138.
101. Ibid., 182.
102. Ibid., 190.

103. Ibid.
104. James Petras, Politics and Social Forces in Chilean Development (Berkeley, Los Angeles, London: University of California Press, 1970), 66.
105. Ibid., 61.
106. Ibid., 100.
107. Ibid., 144.
108. Evans de la Cuadra, Estatuto constitucional, 29.
109. Alberto Yurac Soto, Proyecto de reforma constitucional propuesto por el Presidente Eduardo Frei Montalva (Santiago: Facultad de Ciencias Jurídicas, Políticas, y Sociales de la Universidad Católica de Chile, 1966), 22.
110. Ibid., 26.
111. Evans de la Cuadra, Estatuto constitucional, 175.
112. Ibid., 176.
113. Ibid., 177.
114. Ibid., 197.
115. Ibid., 201.
116. Ibid., 203.
117. Ibid., 208-9.
118. Ibid., 220-1.
119. Ibid., 366-368.
120. Ibid., 405-6.
121. Novoa Monreal, El derecho de propiedad privada, 152.
122. Eduardo Frei, El pensamiento de Eduardo Frei, ed. Oscar Pinochet de la Barra (Santiago: Editorial Aconcagua, 1982), 123.
123. Ibid., 69.

124. Novoa Monreal, El derecho de propiedad privada, 94-5.
125. Idem, Derecho, política y democracia (Bogotá: Editorial TEMIS, 1983), 88.
126. Gustavo Gutiérrez, A Theology of Liberation, rev. ed., trans. and ed. by Sister Caridad Inda and John Eagleson (Maryknoll, New York: Orbis, 1988), 158.
127. Ibid., 66.
128. Ibid.
129. Ibid., 66-7.
130. Héctor Rodríguez de la Sotta, O capitalismo o comunismo: o vivir como en Estados Unidos o vivir como en Rusia (Santiago: Editorial Jurídica, 1952).
131. Ibid., 27.
132. Ibid., 33.
133. Idem, El derecho de propiedad privada del capital (Santiago: Editorial Universitaria, 1959), 14.
134. Ibid., 20-1.
135. Idem, O capitalismo o comunismo, 10.
136. Ibid., 76-7.
137. Idem, El derecho de propiedad privada, 15.
138. Novoa Monreal, Derecho, política y democracia, 122.
139. Gonzalo Martner, ed., El pensamiento económico del Gobierno de Allende (Santiago: Editorial Universitaria, 1971), 24-5.
140. Rolando Molina Reyes, "La participación laboral en la estructura industrial marxista", in Alfredo Alcaino Barros, et al., Participación para una nueva sociedad (Santiago: Ediciones Portada, 1972), 107-8.
141. Eugenio Ipinza, "El camino de la participación: un recuento en el mundo occidental", in Alcaino Barros, et al., Participación, 114.
142. José Garrido Rojas, "Participación en la gestión económica", in Alcaino Barros, et al., Participación, 127-8.

143. Ibid., 128.
144. Ibid., p. 131.
145. Mario Zañartu and Claudio Orrego, Socialismos, propietarismo, y liberación del pueblo (Santiago: Instituto de Estudios Políticos, 1971).
146. Novoa Monreal, Derecho, política y democracia, 140-1.
147. Ibid., 168.
148. Idem, ¿Via legal hacia el socialismo? El caso de Chile, 1970-1973 (Caracas: Editorial Jurídica Venezolana, 1978), 88-9.
149. Sergio Bitar, Chile: Experiment in Democracy, trans. Sam Sherman (Philadelphia: Institute for the Study of Human Issues, 1986), 93.
150. Ibid., 132.
151. Idem, "The Interrelationship between Economics and Politics", in Federico G. Gil, et al., eds., Chile at the Turning Point: Lessons of the Socialist Years, 1970-1973, trans. John S. Gitlitz (Philadelphia: Institute for the Study of Human Issues, 1979), 116-7.
152. Ibid., 117.
153. Francisco Cereceda Cumplido and Humberto Nogueira Alcalá, Teoría de la Constitución, 2nd ed. (Santiago: Cuadernos Universitarios, 1990), 280.
154. Enrique Ortúzar Escobar, La nueva institucionalidad chilena (Santiago: Instituto de Ciencia Política, 1976), 15.
155. Arturo Marin V., Comprendamos nuestra Constitución: un resumen al alcance de su mano, 2nd ed. (Santiago, n.p.: 1988), 46.
156. Patricio Aylwin, et al., Una salida político constitucional para Chile (Santiago: Instituto Chileno de Estudios Humanísticos, 1975), 104.
157. Álvaro Briones R., La economía es política (Santiago: Editorial Aconcagua, 1987), 165.
158. Juan Eduardo Figueroa Valdés, Las garantías constitucionales del contribuyente en la Constitución Política de 1980 (Santiago: Editorial Jurídica de Chile, 1985), 203.
159. Ibid., 219.
160. Ibid., 236-7.
161. Ibid., 254.

162. Eduardo Soto Kloss, El recurso de protección: orígenes, doctrina y jurisprudencia (Santiago: Editorial Jurídica de Chile, 1982), 40.
163. Paulino Varas Alfonso, in William W. Van Alstyne, et al., Constitución y desarrollo social. (Editorial Jurídica EDIAR-CONOSUR, 1988), 22.
164. Patricio Silva, Estado, neoliberalismo y política agraria en Chile 1973-1981 (Amsterdam: Centro de Estudios y Documentación Latinoamericanos, 1987), 308-9.
165. Ibid., 308.
166. Soto Kloss, El recurso de protección, 490.
167. Ibid., 491.
168. Ibid.
169. Andres Sanfuentes, in Mario Zañartu, ed., Liberalismo económico y costo social (Santiago: Ediciones Aconcagua, 1976).
170. P. Bule, in Federico G. Gil, et al., eds., Chile at the Turning Point: Lessons of the Socialist Years, 1970-1973, translation by John S. Gitlitz (Philadelphia: Institute for the Study of Human Issues, 1979), 364.
171. ILADES, Del liberalismo al capitalismo autoritario.
172. Zañartu, ed., Liberalismo económico y costo social.
173. Mario Góngora, Ensayo histórico sobre la noción de estado en Chile en los siglos XIX y XX (Santiago: Editorial Universitaria, 1986), 268-9.
174. Ibid., 328-9.
175. Novoa Monreal, El derecho de propiedad privada.
176. Idem, Derecho, política y democracia.
177. Ibid., 70.
178. Ibid., 17-8, n. 7.
179. Francisco Geisse and José Antonio Ramírez Arrayas, La reforma constitucional (Santiago: CESOC, 1989), 49.
180. Francisco Cereceda Cumplido, in William W. Van Alstyne, et al., op. cit., 38.

181. Ibid., 39.
182. Grupo de Estudios Constitucionales, La Constitución y la democracia en las proposiciones del "Grupo de los 24" (1985), 65-6.
183. Patricio Aylwin, et al., Una salida político constitucional para Chile (Santiago: Instituto Chileno de Estudios Humanísticos, 1985), 30.
184. Edgardo Boeninger, in Edgardo Boeninger, et al., Orden económico y democracia. (Santiago: Centro de Estudios del Desarrollo, 1985), 42.
185. Ibid., 46.
186. Ibid., 46-7.
187. Ibid., 47-49.
188. Gonzalo D. Martner, in Edgardo Boeninger, et al., op. cit., 111-14.
189. Arturo Fontaine Talavera and Francisco Pérez Mackenna, in Edgardo Boeninger, et al., op. cit., 155.
190. Ibid., 154-6.
191. Hernán Errázuriz, in Edgardo Boeninger, et al., op. cit., 228.
192. Ibid., 223.

Bibliography

- Acuña Ramos, Rolando. La Constitución de 1925 ante la Comisión de Constitución, Legislación, Justicia y Reglamento del Senado. Santiago: Editorial Jurídica de Chile, 1971.
- Alcaino Barros, Alfredo, et al. Participación para una nueva sociedad. Santiago: Ediciones Portada, n.d.
- Aylwin, Patricio, et al. Una salida político constitucional para Chile. Santiago: Instituto Chileno de Estudios Humanísticos, 1985.
- Bañados Espinosa, Julio. Letras y política. Valparaíso: Imprenta de "La Patria", 1888.
- Benedetti Benedetti, Eloy. Los derechos individuales y sociales. Santiago: Facultad de Ciencias Jurídicas y Sociales de la Universidad de Chile, 1942.
- Bitar, Sergio. Chile: Experiment in Democracy, translation by Sam Sherman. Philadelphia: Institute for the Study of Human Issues, 1986.
- Boeninger, Edgardo, et al. Orden económico y democracia. Santiago: Centro de Estudios del Desarrollo, 1985.
- Briones, Álvaro R. La economía es política. Santiago: Editorial Aconcagua, 1987.
- Cereceda Cumplido, Francisco, and Humberto Nogueira Alcalá. Teoría de la Constitución, 2nd ed. Santiago: Cuadernos Universitarios, 1990.
- Collier, Simon. Ideas and Politics of Chilean Independence: 1808-1833. Cambridge: Cambridge University Press, 1967.
- Correa Saavedra, Mario. Jorge Huneeus Zegers: imagen, pensamiento, acción. Santiago: Editorial Andrés Bello, 1969.
- Courcelle-Seneuil, J.G. Tratado teórico i práctico de economía política, 3rd ed., translated by J. Bello. Paris, México: Librería de C.H. Bouret, 1879.
- Cruchaga, Miguel. Estudio sobre la organización económica y la hacienda pública de Chile. Madrid: Editorial Reus, 1929.
- Donoso, Ricardo. Las ideas políticas en Chile. Buenos Aires: Editorial Universitaria de Buenos Aires, 1975.
- Edwards Vives, Alberto. La fronda aristocrática: historia política de Chile, 7th ed. Santiago: Editorial del Pacífico, S.A., 1972.

- Evans de la Cuadra, Enrique. Estatuto constitucional del derecho de propiedad en Chile. Santiago: Editorial Jurídica de Chile, 1967.
- Eyzaguirre, Jaime. Historia de las instituciones políticas y sociales de Chile, 6th ed. Santiago: Editorial Universitaria, 1984.
- Figueroa Valdés, Juan Eduardo. Las garantías constitucionales del contribuyente en la Constitución Política de 1980. Santiago: Editorial Jurídica de Chile, 1985.
- Fontaine Aldunate, Arturo. Más allá del Leviatán: hacia el resurgimiento de la libertad individual. Santiago: Editorial Universitaria, 1980.
- Fontaine Talavera, Arturo, and Pérez Mackenna, Francisco. Pautas para la confección de una política económica: una visión pro economía social de mercado. Santiago: Centro de Estudios del Desarrollo, 1984.
- Frei, Eduardo. El pensamiento de Eduardo Frei, compilation by Oscar Pinochet de la Barra. Santiago: Editorial Aconcagua, 1982.
- Fuentealba Hernández, Leonardo. Courcelle-Seneuil en Chile: errores del liberalismo económico. Santiago: Prensas de la Universidad de Chile, 1945.
- Geisse, Francisco, and José Antonio Ramírez Arrayas. La reforma constitucional. Santiago: CESOC, 1989.
- Gil, Federico G., et al, eds. Chile at the Turning Point: Lessons of the Socialist Years, 1970-1973, translation by John S. Gitlitz. Philadelphia: Institute for the Study of Human Issues, 1979.
- Godoy Urzúa, Hernán. Estructura social de Chile. Santiago: Editorial Universitaria, n.d.
- Góngora, Mario. Ensayo histórico sobre la noción de estado en Chile en los siglos XIX y XX. Santiago: Editorial Universitaria, 1986.
- _____. Libertad política y concepto económico de gobierno en Chile hacia 1915-35. Santiago: Instituto de Historia, Pontificia Universidad Católica de Chile, 1986.
- Grupo de Estudios Constitucionales. La Constitución y la democracia en las proposiciones del "Grupo de los 24", 1985.
- Gutiérrez, Gustavo. A Theology of Liberation, rev. ed., trans. by Sister Caridad Inda and John Eagleson. Maryknoll, New York: Orbis, 1988.
- Hayek, F.A. The Constitution of Liberty. Chicago: The University of Chicago Press, 1960.
- Hojman, David E., ed. Chile After 1973: Elements for the Analysis of Military Rule. Liverpool:

Centre for Latin American Studies, The University of Liverpool, 1985

- Huneus, Jorje. La Constitución ante el Congreso. Santiago: Imprenta de "Los Tiempos", 1879.
- Instituto Latinoamericano de Doctrina y Estudios Sociales. Del liberalismo al capitalismo autoritario. Santiago: Salesianos, 1983.
- Jorjín, Miguel, and John D. Martz. Latin American Political Theory and Ideology. Chapel Hill: The University of North Carolina Press, 1970.
- Lastarria, José Victorino. Elementos de derecho público: constitucional teórico, positivo i político, 3rd ed. Gante: Imprenta de Eug. Vanderhaeghen, 1965.
- Marín V., Arturo. Comprendamos nuestra Constitución: un resumen al alcance de su mano, 2nd ed. Santiago, 1988.
- Martner, Gonzalo, ed. El pensamiento económico del gobierno de Allende. Santiago: Editorial Universitaria, 1971.
- 1970-1973: la lucha por la juricidad en Chile. N.P., 1974.
- Monteón, Michael. Chile in the Nitrate Era: The Evolution of Economic Dependence, 1880-1930. Madison: The University of Wisconsin Press, 1982.
- Novoa Monreal, Eduardo. Derecho, política y democracia. Bogotá: Editorial TEMIS, 1983.
- _____. El derecho de propiedad privada. Bogotá: Editorial TEMIS, 1979.
- _____. ¿Via legal hacia el socialismo? El caso de Chile, 1970-1973. Caracas: Editorial Jurídica Venezolana, 1978.
- Ortúzar Escobar, Enrique. La nueva institucionalidad chilena. Santiago: Instituto de Ciencia Política, 1976.
- Petras, James. Politics and Social Forces in Chilean Development. Berkeley, Los Angeles, London: University of California Press, 1970.
- Rapet, J.J. Manual de moral i de economía política: para el uso de las clases obreras, translated by Miguel Cruchaga. Valparaíso: Imprenta del Comercio, 1860.
- Rodríguez de la Sotta, Héctor. O capitalismo o comunismo: o vivir como en Estados Unidos o vivir como en Rusia. Santiago: Editorial Jurídica, 1952.
- _____. La propiedad privada del capital. Santiago: Editorial Universitaria, 1959.

- Roldán, Alcibiades. Elementos de derecho constitucional de Chile, 3rd ed. Santiago: Imprenta Lagunas, 1924.
- Romero, José Luis. Situaciones e ideologías en Latinoamérica. Buenos Aires: Editorial Sudamericana, 1986.
- Sigler, Jay A., et al. "Chile." In Constitutions of the Countries of the World, ed. Albert P. Blaustein and Gisbert H. Flanz. Dobbs Ferry, New York: Oceana Publications, 1991.
- Silva, Patricio. Estado, neoliberalismo y política agraria en Chile 1973-1981. Amsterdam: Centro de Estudios y Documentación Latinoamericanos, 1987.
- Silva de la Fuente, Alejandro. Cuestiones constitucionales: 1924-1947. Santiago: Editorial Teguolda, 1948.
- Soto, Hernando de. The Other Path: The Invisible Revolution in the Third World. New York: Harper and Row, 1989.
- _____. "The Free Market Path to Third World Development", in Cato Policy Report, vol. XX. Washington, D.C.: Cato Institute, 1991.
- Soto Kloss, Eduardo. El recurso de protección: orígenes, doctrina y jurisprudencia. Santiago: Editorial Jurídica de Chile, 1982.
- Subercaseaux, Guillermo. Cuestiones fundamentales de economía política teórica. Santiago: Imprenta Universitaria, 1948.
- _____. Historia de las doctrinas económicas en América y en especial en Chile. Santiago: Imprenta Universitaria, 1924.
- _____. Los ideales nacionalistas ante el doctrinarismo de nuestros partidos políticos históricos. Santiago: Imprenta Universitaria, 1918.
- Univeridad de Chile, Facultad de Ciencias Jurídicas y Sociales. La Constitución de 1925 y la Facultad de Ciencias Jurídicas y Sociales. Santiago: Universidad de Chile, 1951.
- Van Alstyne, William W., et al. Constitución y desarrollo social. Chile: Editorial Jurídica EDIAR-CONOSUR, 1988.
- Wiarda, Howard J., ed. Politics and Social Change in Latin America: Still a Distinct Tradition?, 3rd. ed. Boulder, San Francisco, Oxford: Westview Press, 1992.
- Wright, Thomas C. Landowners and Reform in Chile: The Sociedad Nacional de Agricultura, 1919-40. Urbana, Chicago, London: University of Illinois Press, 1982.
- Yáñez, Heliodoro. La autoridad y la libertad en la Constitución Política del Estado. Paris: Editorial "Le Livre Libre", 1928.

Yurac Soto, Alberto. Proyecto de reforma constitucional propuesto por el Presidente Eduardo Frei Montalva. Santiago: Facultad de Ciencias Jurídicas, Políticas y Sociales de la Universidad Católica de Chile, 1966.

Zañartu, Mario, ed. Liberalismo económico y costo social. Santiago: Ediciones Aconcagua, 1976.

Zañartu, Mario, and Claudio Orrego. Socialismos, propietarismo y liberación del pueblo. Santiago: Instituto de Estudios Políticos, 1971.