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LAW AND SOCIAL TRANSFORMATION: THE CHILEAN EXPERIMENT*

VICTOR NKIWANE**

I INTRODUCTION

The victory of the Unidad Popular Party (UP) led by Salvador Allende in the Chilean general election of September 4, 1970 which led to the unfolding of political, economic and social processes never experienced anywhere before has attracted extensive interest, study and debate amongst supporters and opponents of Allende alike. There is one major reason for this interest. For the first time in Latin American and World history a self-declared Marxist and an alliance of parties based on Communist — Socialist unity took over by democratic elections the administration of state affairs in a capitalist and dependent economy,¹ with the avowed intention of transforming the economy into a socialist one. Even more interesting was the declaration that the transformation would take place with full respect to democracy and the existing politico-legal institutions.

The subsequent barefaced interventions of the United States government agencies and multinational enterprises against the UP government,² the democratic and pluralistic character of the regime and the advancement of the working class struggles during the 1000 days the regime lasted, the treason of the plotting generals and the sadistic brutality which struck down the Chilean people all serve to explain and justify the interest in the process that took place.³ Both champions of the changes that occurred and the opponents of those changes are generally agreed that September 4 1970, ushered in a period that threatened the stability of Chile's hitherto existing political institutions and hence all its economic and social relations.⁴

However, most of the explanations of why the processes that unfolded after 1970 in Chile failed have tended to be somewhat simplistic, rarely going beyond the role of US imperialist intervention or the criminality of the military leaders. On the extreme right-wing the events are seen as the inevitable consequences of Marxist attempts to subvert democracy in order to establish a "totalitarian

* This paper is the author's edited dissertation submitted in partial fulfilment of the LL.M. degree at the University of Warwick in September 1988.

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¹ Smimow, G. *The Revolution Disarmed: Chile, 1970-1973*.

² For a detailed and systematic account of US and corporate activity during Allende's era see: *Subversion in Chile: A Case Study in US Corporate Intrigue in the Third World*, ITT CIA. See also, Fortin, C. "Law and Economic Coercion as Instruments of International Control." In Ghai Y. Luckham R and Snyder F (eds): *The Political Economy of Law — A Third World Leader*.

³ Smimow, G. op. cit. note 1 p.1

⁴ Smimow, G. Ibid. p.4.

state".⁵ Yet even though all but the extreme right wing explanation are correct, they do not tell the whole story. They are only a partial explanation of the demise of the UP government and suffer from the problem of overplaying the rôle of external and internal enemies without questioning the methods and tactics with which Allende sought to defeat those enemies and transform Chile. The democratic and peaceful nature of the regime and its strict adherence to legality are all unquestioningly seen as virtues of the regime.

There is no doubt, of course, that general Pinochet betrayed that very word of honour so hallowed within the military, but one must recognize that he did so with the whole army behind him and in alliance with all other state institutions which while proclaiming respect for the law and the constitution took part in the plot to destroy the same. That US imperialism acts in its own interests, real or imagined, is well known and should have been known to UP. Even the armed forces' behaviour was nothing unusual since it was in conformity with the culture of armed forces not only throughout Latin America, but in any country where the established system is threatened. What should have been known and was obvious to Allende and his colleagues cannot fully explain the collapse of the regime. As Smirnow has pointed out:

"In all social processes, and especially revolutionary ones, there is constant interaction between the opposing forces; one sector's errors spur the energies of the antagonist, tactical weaknesses end up strategic weaknesses and a theoretically fallacious programme leads inevitably to its defeat in practice."⁶

This does not suggest that the actions of imperialism in Chile were unimportant, but merely an argument that important as they were they were not fundamental and therefore ultimately not decisive.⁷

It is important to note that the strategy adopted by Chile was in contradistinction to the pattern of socialist transformation in Eastern Europe and Cuba. It is therefore important to examine the theoretical assumptions that led Allende and UP to adopt legality as the only and correct road to socialism.⁸ In so doing it is important to identify some of the errors and fallacies in the strategy and determine the extent to which they contributed to the failure of the Allende experiment.

⁵ Moss, R: *Chile's Marxist Experiment*. In a staggering example of a failure to understand the process that took place in Chile the author argues that responsibility for the bloody coup lies with "... Dr. Allende and his fellow-Marxists who pursued plans for the seizure of total power to the point at which the opposition despaired of restraining them by constitutional means." See at p.(iv). Even more astounding is Labin's unsubstantiated claim that during his last months Allende, in order to remain in power relied on "... illegality, extortion, intimidation, fraud, threats and brute force." See p.42 Labin, S " *The Crime of Resistance*."

⁶ Smirnow, G op cit note 1, p.4 firmness.

⁷ It seems correct to argue that had the Chilean road to socialism succeeded the US would have intervened openly, but as it turned out its intervention has indirect and not decisive.

⁸ For a comprehensive summary and criticism of these assumptions see Snyder, F.G. "Law and Development in the Light of Dependency Theory", in (1980) 14/3 L. & S.R esp. pp 732 et. seq.

The Chilean attempt to create socialism through the institutional road raises interesting but complex issues on the role of law in social change, and in this context, the extent to which law can be used in the transition to socialism. Although many works have been written on the subject of law and social changes, particularly by the law and development movement, the brainchild of American academics, most of the works are unhelpful because of too many false assumptions about law and the lack of a full appreciation of socio-economic dynamics in the operations of law. Too often the law is portrayed as the all-powerful instrument overriding all other socio-economic forces and operating independently from class relations and class conflicts.⁹ In order to avoid such pitfalls this analysis of the Chilean experience will not focus exclusively on law but attempt to show how other political and socio-economic developments undermined or curtailed altogether the role of law.

It has been correctly suggested by some commentators that the transition to socialism comprehends the following developments *inter-alia*:

"... the winning of political power by socialists, the consolidation of that political power through the control of the state apparatus and ideological hegemony and the transformation of the relations of production by fundamental changes in the economy."¹⁰

A fundamental question which arises regarding the developments envisaged above is the role played by law. The developments that took place in Chile between 1970-1973 provide an opportunity to partially answer this fundamental question.

II PROBLEM IDENTIFICATION, THEORETICAL AND ANALYTICAL APPROACH

In order to put the debate on the role of law in the transition to socialism in its proper perspective it is instructive to begin by relating the Marxist view of law, the state and social transformation. The fundamental point made by Marx is that no class gives up its power and privileges without a struggle and therefore it is only through violent revolution that the working class can overthrow the capitalist state and establish a workers' state.¹¹ A corollary to this is that change in society is determined by the economic base and as law is part of the super

⁹ See for example Seidman R B, who argues that "... in spite of its manifest limitations, it is still the most available instrument of social change" in *The State, Law and Development*.

¹⁰ Chai Y, Luckham R & Snyder F (eds.) *The Political Economy of Law*, p.727.

¹¹ This is the theme that runs throughout Lenin's work, *The State and Revolution*, where he quotes extensively from Marx and Engels in order to re-assert the Marxist perspective on the state.

structure it cannot be decisive in effecting change from capitalism to socialism.¹² On the period of transition to socialism Marx argued thus:

“... between capitalist and communist society lies the period of the revolutionary transformation of the one into the other. Corresponding to this is also a political transition period in which the state can be nothing but the *revolutionary dictatorship of the proletariat*.¹³

The violent nature of the transitional period is stressed by Lenin who wrote:

“The petit-bourgeois democrats, those sham socialists who replaced class struggle by dreams of class harmony, even pictured the socialist transformation in a dreamy fashion not as the overthrow of the exploiting class, but as the peaceful submission of the minority to the majority which has become aware of its aims.”¹⁴

Further Lenin wrote :

“In reality, this period inevitably is the period of an unprecedentedly acute form, and consequently, during this period the state must inevitably be a state that is democratic *in a new way* (for the proletariat and the property-less in general) and dictatorial *in a new way* (against the bourgeoisie).”¹⁵

The writings of Marx and Lenin quoted above have caused serious theoretical and practical problems about law and state in the period of transition with some critics suggesting that Marx and Lenin were guilty of marginalizing law and the state. However, Lenin did make it clear that the state (and law) are necessary in the transitional period but that the bourgeoisie have to be subjected to the will of the proletariat through force and new laws. The point Lenin is simply making is that: “... the working class cannot simply lay hold of the ready-made state machinery and wield it for its own purposes.”¹⁶

At the time of the writing of these works the worst forms of capitalist oppression were in existence in Europe and with a franchise based on property the working class had virtually no alternative to violent revolution. This is not to suggest, however, that today there is an obvious alternative. It must be pointed

¹² The interpretation of this view has been a matter of controversy in spite of Engels' attempt to clarify the point in his letter to Bloch, J. See Engels, F “Determinants of Legal Development: The Economic Element” in Ghai, Luckham & Snyder, op cit note 10 p.41.

¹³ Quoted in Ghai, Luckham & Snyder, Ibid. pp.727-8.

¹⁴ Lenin, V “The State and Revolution” in *Selected Works Vol. 2* pp.254-55.

¹⁵ Lenin, V Ibid. p.262.

¹⁶ Lenin, V Ibid. p.263.

out also that Lenin did not suggest that the state operates through force all the time. The extent to which force is relied upon is determined by the ideological hegemony of the ruling class.¹⁷

From the foregoing arises the problem of determining the role of legality in the transition in the modern national state where the government purporting to be committed to the building of socialism has achieved part of state power through elections, as in the case of Chile. Obviously the government in seeking to capture the other branches of state power cannot simply resort to violence. There is no doubt that legality, democracy and human rights are achievements of mankind and therefore should not be lightly dismissed. However, what is clear is that an unwavering commitment to legality in the transition period is suicidal and will lead to the transition being aborted, probably in the most bloody fashion as in Chile. On the other hand any transition to socialism worthy of the name must involve an extension of popular democratic control of the state and society as well as democratic freedom of speech and assembly.¹⁸ These are the opposing perspectives and some writers have suggested that a compromise between the two extremes may be the answer.¹⁹

Lukacs²⁰ and Balibar²¹ suggest that law is marginal as an effective instrument of change, but can be better used as an ideological weapon. Lukacs in particular warns against waging the class struggle (except selectively) with bourgeois weapons on bourgeois terrain.²² The question of legality or illegality becomes a question of tactics to be resolved on the spur of the moment "... one for which it is scarcely possible to lay down general rules as decisions have to be taken on the basis of *immediate expediencies*".²³ The commitment to legality and the attainment of the bourgeois state weakens the struggle of the working class. To view the state as the object of the struggle rather than as the enemy, he argues, is to go over to bourgeois territory and lose half the battle before it has begun.²⁴

¹⁷ This point is made by Balibar who in interpreting Lenin asserts that: "In Lenin's definition the essential factor is not repression or repressive violence... He does not claim that the state operates *only* by violence, but that *the state rests on the relation of forces between classes*..." [author's emphasis] See Balibar, E "What is State Power?" in Ghai, Luckham & Snyder, op cit note 10 p.741.

¹⁸ Petras, F G & Fitzgerald, F T: "Authoritarianism and Democracy in the Transition to Socialism" (1988) 15/1 *Latin American Perspectives*, p.93.

¹⁹ Petras & Fitzgerald, Ibid. p.93.

²⁰ Lukacs, G. "Legality and Illegality" in Ghai, Luckham & Snyder, op cit note 10 pp.746-7.

²¹ Balibar, E op cit note 17 pp.739-744. See esp. pp.740-1 where he argues that, "... it is impossible to make room for the standpoint of the class struggle inside the bourgeois legal conception of the state ..."

²² Lukacs, G op cit note 20, p.729.

²³ Lukacs, G Ibid. p.747. In advocating for the simultaneous use of legal and illegal methods he argues that: "Where one or the other of the two methods is used exclusively, or predominantly, even though within restricted areas, the bourgeoisie will be able to maintain the fiction in the minds of the masses that its system of law is the only system." pp.747-9.

²⁴ Lukacs, G Ibid. p.746.

In the next sections I examine how the Marxist perspective outlined above relates to the events that took place in Chile under a leadership committed to Marxism, but strongly adhering to legality.

III 'THE CHILEAN ROAD TO SOCIALISM' — THE LEGAL ROAD

The strategy and tactics of the UP were based on two assumptions:

"... that in Chile it was possible for the working class parties to achieve a degree of state power via an electoral path and that they could then use this power within a framework of pluralism, legality, parliamentary democracy and non-violence to transform peacefully a capitalist society into a socialist one."²⁵

The U.P. leaders found a marxist justification for their programme in two brief statements; one by Marx and the other by Engels. First was Marx's declaration at the Hague conference of the First International that:

"I do not deny that there are nations like England and America and if I know your institutions at all Holland, where the working class could achieve their ends by peaceful means"²⁶

and secondly in Engels' critique of the Erfurt programme that:

"It is possible to imagine that the old society could evolve peacefully towards the new society in countries where popular representation concentrates into its hands *all power and where according to the constitution they do what they want* from the moment in which they have behind them the majority of the nation."²⁷ [my emphasis].

The UP argued that Chile was making history by breaking a new way towards socialism. In romantic and self-congratulatory language Allende, in his first message to Congress summarized it as :

"... a revolutionary way, the pluralist way, anticipated by Marxist classics, but never before put into practice... Chile is today the first nation to conform to the second model of a transition to a socialist society."²⁸

While one can understand Allende's enthusiasm on the occasion it is difficult to understand how, as will be shown, this "second model", contained in brief and unelaborated statements was thought to override the bulk of the teachings of

²⁵ Roxborough I, O'Brien P & Roddick J. *Chile: The State and Revolution*. p.71.

²⁶ Quoted in Roxborough, O'Brien & Roddick Ibid. p.71.

²⁷ Quoted in Roxborough, O'Brien & Roddick Ibid. p.71.

²⁸ Roxborough, O'Brien & Roddick, Ibid. p.71.

Marx, Engels and Lenin outlined above that: a transition to socialism requires the destruction of the bourgeois state and its replacement by a workers' state.

It is not that Allende and the UP did not have some justification for taking the view they took. Allende and his supporters believed that Chile possessed certain characteristics which made it possible to initiate the "second model": namely, the long history of parliamentary democracy and political tolerance, flexibility in the institutional and legal system, the constitutional and professional position of the armed forces—in marked contrast to the rest of Latin America, and the existence of mature and disciplined working class organizations all seemed to lend some justification to their perspective.²⁹

Of particular importance to the UP strategy was the fact that the President seemed to enjoy greater powers than the legislature. Constitutionally he could control certain actions of the Congress, for example, preventing a new law from coming into effect if he obtained the support of one third plus one of either of the two branches of parliament.³⁰ Within the economy, and this was crucial to the economic strategy, the President could either through interventions or requisitions order nationalizations of industries against the wishes of Congress. However, as pointed out by Novoa,³¹ President of the State Defence Council under Allende, these powers had serious limitations in practice. He points out that these powers were largely suitable not for a society moving towards socialism, but for a society which did not want to be changed. The President could reduce legislative activity and stop new laws going through, but could not obtain new laws which would modify the system. All the powers therefore led to the maintenance of the status quo, because for a government wishing to effect revolutionary changes the powers were worth nothing since all they did was to prevent profound structural changes from being carried out.³² In the next section it is demonstrated how in practice Allende had to use all his ingenuity to effect important parts of his programme.

The UP strategy for the conquest of state power was based on an unscientific definition of state power. The process was supposed to be an incremental one—having acquired part of the state through elections the UP over time would gradually gain the other portions, i.e. the judiciary, the legislature, the armed forces and the bureaucracy. As is pointed out by Roxborough, O'Brien and Roddick:

"The bourgeois state was not seen as a totality whose ultimate justification was the defence of the bourgeois interests, but as a conglomeration of bits and pieces each of which could, if

²⁹ For a somewhat exaggerated account of some these justifications see, Graces, J.E. "Chile 1971: A Revolutionary Moment" in Medhurst, K (ed.) *Allende's Chile*, sep. pp.28–32.

³⁰ Novoa, E "The Constitutional and Legal Aspects of the Popular Unity Government's Policy" in Zammit, J (ed.) *The Chilean Road to Socialism*, p.28.

³¹ Novoa, E Ibid. p.29.

³² Novoa, E Ibid. p.29.

captured by the Left, either be used against capitalist interests directly, or at the very least neutralized."³³

It was for this reason that the Communist Party could argue on 12 August 1973, just one month before the coup, that:

"... the interests of the developing revolutionary process are not in conflict with the existence of professional armed forces in our country that operate on the basis of the constitution."³⁴

It was this view of the state apparatus which accepted bourgeois ideology at face-value which proved fatal.

Since the UP had committed itself to legality it meant that politically the strategy towards socialism would have to be in stages. This meant that the first and most important stage was the winning of an electoral majority. Since UP had come to power with 36% of the electoral votes it was crucial that this percentage be increased. In the drive towards electoral majority the UP programme emphasized not only the multi-party, but also the multi-class nature of the coalition which, according to Allende:

"... corresponded to the interests of all those who earn their living by work: workers, professionals, technicians, artists, intellectuals and employees ... and small and medium-sized entrepreneurs."³⁵

This policy meant the forging of an alliance with the middle classes, whose mouth-piece was the Christian Democratic Party, which from being a liberal party, had by the time of the coup virtually joined forces with the ultra right-wing "Nazi-style" Nationalist Party. An alliance with the middle classes could only be made possible by maintaining the parliamentary and constitutional legality of the country.³⁶ From a Marxist perspective this was a serious misjudgment, because there is no such thing as a homogeneous middle class. The failure to make the elementary distinction between the impoverished middle strata, such as minor officials, white collar workers, small traders and small peasants, who could have been won over and the relatively better off strata who cling to their privileges ferociously obsessed by the fear of being dragged down to the material and social level of the "poor" and impoverished elements,³⁷ showed serious limitations in the UP theoretical analysis. This meant that the UP policies were bound to be inconsistent and populist in an effort to win the electoral numbers game.

³³ Roxborough, O'Brien & Roddick, op cit note 25, p.73.

³⁴ Roxborough, O'Brien & Roddick, Ibid. p.73.

³⁵ Roxborough, Ibid. p.

³⁶ Raptis, M. *Revolution and Counter-Revolution in Chile*, p.15.

³⁷ Raptis, M Ibid., pp.78-9.

The economic strategy was largely influenced by the political strategy, the main policy being the nationalization of foreign and large national monopolistic firms and industries. The policy was summed by Pedro Vuskovic, Minister of Economic Affairs, who stated that "... economic policy is subordinate, in its context, shape and form, to the political need to increase UP's support".³⁸ With the aim of increasing electoral support among the middle and working classes, the economic policies initiated were aimed at increasing consumption, that is, full utilization of Chile's underutilized industrial capacity, increases in wages as well as general income distribution to the poorer sectors.

From the foregoing it can be seen that the most important aspect of the Chilean road to socialism pursued by the UP was to win an electoral majority. It was thought that once electoral majority was secured then the capture of state power and other vital institutions and the real building of socialism would begin. The programme was therefore narrow in scope. In the next section some of the policies effected within the context of legality are pursued and related to their impact on the whole problem of law and the transition to socialism.

IV CONSTRAINTS IN THE INSTITUTIONAL ROAD

The Political Constraints:

In order to understand the exact parameters under which Allende and the UP sought to implement their programme, it is necessary to start with the 1970 electoral victory by the UP and the circumstances under which Allende assumed office. Allende's historic and unexpected victory was a narrow one. He obtained only 36.2% of the vote, with the Conservative Nationalist Party and the Christian Democratic Party securing 34.9% and 27.9% respectively.

Since he had failed to secure the absolute majority as required by the constitution, it was left to the right-wing dominated Congress to elect the president of its choice out of the two leading candidates. Previously, Congress had operated under a convention by which it had always elected as President the candidate with the highest vote, but in the 1970 election it broke with tradition and insisted that Allende sign a "Statute of Guarantees" before it could elect him as president. This "blackmail" effectively required Allende to promise respect for the bourgeois state and all its institutions and pledge his commitment to its survival. The guarantees which Allende consented to after initial resistance were far-reaching and showed the determination of the right-wing parties to prevent Allende from exercising real state power. In terms of the statute Allende had to ensure the following:

- 1) the continuation of the existing political system together with constitutional guarantees of individual freedom;
- 2) the existing legal system would remain;

³⁸ Roxborough, O'Brien & Roddick, *op cit* note 25 p.79.

- 3) the armed forces and the police were to continue to guarantee peace;
- 4) the independence of the educational system from ideological orientations and the autonomy of the universities;
- 5) the continuing independence of the trade unions and social organizations;
- 6) the press and the mass media were to be free from state intervention.³⁹

The statute meant that Allende had to leave intact all those instruments which the bourgeoisie had evolved to defend its class interests. The timing of the statute was also perfect, for it came after an abortive attempt by extreme right-wing groups to kidnap the constitutionalist Commander-in-Chief of the Army, General Schneider, which was intended to precipitate a crisis and incite the army to intervene before Allende could assume office. In the event, the plot failed though Schneider was fatally wounded. As a result, the right-wing parties sought less risky measures to control Allende, hence the Statute of Guarantees. Thus, the Christian Democratic Party took full advantage of the situation created by the closeness of the victory in order to improve its own position in coming battles between the ruling class and UP by altering some of the rules of the game.⁴⁰ One writer points out that the contents of the Statute of Guarantees was never revealed to the ordinary members of UP, because of the potential damage it had on Allende's credibility in the eyes of his popular base.⁴¹

In retrospect, one can understand why Allende put so much emphasis and energy on the task of securing an electoral majority. He hoped that an electoral majority would enable him to change the composition of Congress and untie the legal noose around his neck. The best opportunity, and perhaps the only one during his entire term of office occurred in April 1971 when the UP coalition parties obtained 51% of the vote in municipal elections with Christian Democrats and Nationalists dividing the rest. Two things have to be borne in mind in this connection. First, the Chilean constitution had been amended under the previous Christian Democratic government led by Frei to provide for plebiscites in cases of deadlocks between the President and Congress. Secondly, the UP election manifesto had called for the abolition of the two chamber (Chamber of Deputies and Senate) legislature and its replacement by an unicameral Popular Assembly. It would have been wholly within the norms of constitutional practice

³⁹ Roxborough, *Ibid.* p.104.

⁴⁰ Camejo, P "Allende's Chile: Is it Going Socialist?" in Evans, L (ed.) *Disaster in Chile: Allende's Strategy and Why it Failed*. p.33.

⁴¹ Gonzalez, M "Chile 1972-73: The Workers United." in Barker, C (ed.) *Revolutionary Rehearsals*, p.46. On the Statute Gonzalez makes an unfair conclusion when he argues that: "Its existence renders cynical and hollow the assertions by some Communist Party theorists, that UP had captured part of state power from which to mount an assault on the remaining institutions of the state. In fact, the Statute was a promise not to enact any fundamental transformation of Chilean society". See p.46. Even though the signing of the Statute can be seen as a tactical blunder Allende was not "selling out" as Gonzalez seems to suggest but merely buying time.

for Allende to interpret the election results as a mandate to constitutionally implement the constitutional policies of the UP.

In order to achieve the plebiscite constitutionally, Allende could have drafted a law abolishing the two chamber legislature in favour of a Popular Assembly. Such a law would no doubt have been rejected emphatically by Congress thereby paving the way for the President to call for a plebiscite. The UP would have then, using the April majority as its political base, launched a massive campaign educating the voters on the issues at stake. In the climate of April 1971 when the opposition was still divided the UP had reasonable chances of either retaining its majority or even increasing it, as one writer suggests.⁴²

As it turned out the Socialist party in the coalition saw possibilities and pressed Allende to call for a plebiscite, but Allende with the full backing of the dominant Communist Party preferred to exercise caution, because he was still convinced of the possibility of a coalition with the Christian Democrats. This was one of the crucial blunders of the UP, because the favourable conditions of April 1971 were never to occur again. In particular, three conditions that existed at the time need to be mentioned here. Firstly, most of the electorate was behind the UP. Secondly, the opposition had not recovered from the September defeats and were still divided on the best way of confronting Allende, one faction favouring violent confrontation and the other still hoping to recapture its electoral majority. Thirdly, and perhaps most important, the military groups favouring a coup still remained very weak following the abortive 1970 coup.⁴³

It is of course difficult to predict what would have happened had the UP decided on the plebiscite, but within the narrow parameters under which the UP had to implement its political programme it seems to have been a gamble worth taking. Moreover, in the event of failure the worst that could happen is what actually happened.

Constraints in the economic programme: the case of nationalization:

Being anti-imperialist and anti-monopolistic in character the UP programme called for the nationalization of foreign-owned companies and some nationally-owned monopolistic enterprises. This is one area in which legality was stretched to the limit with the owners of enterprises fighting the government in the courts as well as in the streets. Some of the legal battles were still unresolved at the time of the coup.

The first and the only move to transform the economy which was not met by resistance was the nationalization of American-owned copper companies. In fact this was a popular move which received unanimous approval of Congress and the Senate. No group in Chile openly opposed it. Allende took full advantage of this situation and affectively nationalized the companies without compensation

⁴² Sweezy, P & Magdoff, H (eds.) *Revolution and Counter-Revolution in Chile*, p.14.

⁴³ Smimow, G op cit note 1 p.13.

by insisting that compensation could only follow after the deduction of all profits in excess of 12% over the previous fifteen years.

The nationalization of other enterprises proved more difficult. A list of ninety firms was drawn and submitted to Congress which promptly turned it down. There was thus no direct legal road and so the government was forced to resort to a number of expediences. One such expediency used was government purchase of controlling shares in an enterprise. This is how, for example, banks were acquired.

Perhaps the best illustration of the government's ingenuity in seeking to overcome the legislative block was the use of the famous (or notorious, depending on one's class position) Decree-law 520. This was legislation passed by the short-lived Socialist Republic of Marmaduke Grove in 1932. This legislation had never been repealed and was exhumed by Allende's lawyers three weeks after he had come to power and had immediately been used to expropriate a textile firm, a move which took the opposition by surprise.⁴⁴ The decree authorized, via a state organ:

"... the intervention of the central power in all industries producing basic necessities which infringe on the norms of functioning freely established by the administrative authorities."⁴⁵

Under the wide and vague powers in this statute the state could intervene in an enterprise under a number of conditions including labour disputes, price speculations, holding back supplies or not maintaining normal production. This law did not provide for nationalization as such, but provided for government control of enterprises that were not operating in the national interest. This was achieved by the appointment of a government *interventor* who replaced the board of directors and made decisions on the day-to-day operations of the enterprise.⁴⁶

Another form of acquisition which placed the government in an untenable position and made it vulnerable to attack from the opposition about its commitment to legality was the use of "action from below".⁴⁷ This occurred when workers either by taking spontaneous action or through encouragement by radical sections within and outside the UP occupied factories and/or demanded the government take over control from the owners. However, it is important to state here that social conflicts which enabled the government to intervene under Decree-law 520 were occurring in precisely those industries which the government had envisaged for inclusion in the social sector and it was the involvement and commitment of the industrial working class which made this possible.⁴⁸ Such

⁴⁴ Ietswaart, II "The Allende Regime and the Chilean Judiciary" in Ghai, Luckham & Snyder, op cit note 10 p.767.

⁴⁵ Debray, R *Conversations with Allende*, p.48.

⁴⁶ Novo, A "The Political Economy of the Allende Regime" in O'Brien, P (ed.) *Allende's Chile*, p.56.

⁴⁷ Novo, A *Ibid.* p.56.

⁴⁸ Smimow, G op cit note 1 p.39.

initial interventions were followed by expropriations thereby enabling the social sector of production to grow.

In spite of the opposition the government was able by a variety of means including intervention, nationalization, requisitioning, stock purchase and workers' seizures to create a substantial area of social property.⁴⁹

The legality or otherwise of many of the interventions developed into bitter wrangles between the government and the owners of the enterprises. The courts were soon drawn into the conflict and were quick to show their class position. In some cases the government's efforts to expand the social property area were defeated. One such case was the attempt to buy up the largest paper firm in Chile, the *Cia Manufacturers de Papeley Cararbones*, where the private sector outbid the government and bought up a majority of the shares.⁵⁰ The determination of the private sector to control this enterprise was based on concrete material and ideological reasons. Since the firm was the largest paper firm in Chile, they were aware that a government takeover would have led to a cut in the supply of paper to anti-government newspapers which would have deprived them of a very powerful weapon in fighting the government.

The position of the Comptroller-General, who acted as a kind of guardian of the constitution in deciding whether or not presidential decisions contravened the constitution proved a very powerful weapon for the bourgeoisie. In particular, he had to decide whether or not the intervention or requisitions by the government were legal. Heleen Letswaart argues that the Comptroller-General accepted the first requisitions where the factual base of them could not be questioned by "reasonable" people.⁵¹ In this connection she points out that in the initial stages people were still a lot more reasonable, because at the time the UP threat was perceived as temporary and therefore controllable.⁵² The panic and departure from conventional behaviour appeared later when the bourgeoisie realized the threat to their interests. Thus on June 29, 1971 the Comptroller of the Republic declined to certify the requisition order on *Manufactura Yurur, SA*, one of the largest textile consortia with a monopoly of various products holding that:

"The occupation of an industry, constituting as it does a punishable offence, does not authorize nor make viable the requisition of the establishment in question."⁵³

Throughout 1971 and thereafter the Comptroller systematically defended employer interests through the rejection of all demands for requisitions. And on

⁴⁹ Roxborough, O'Brien & Roddick, op cit note 25 p.90. A detailed table of the major interventions and nationalisations in the first year of the UP is contained on pp.90-93 of the same work.

⁵⁰ Roxborough, Ibid. p.90.

⁵¹ Letswaart, H op cit note 44 p.767.

⁵² Letswaart, II Ibid. p.767.

⁵³ Smimow, G op cit note 1 p.50.

8 September 1971 the Nationalist Party presented the first constitutional charge against the Minister of the economy Pedro Vuskovic, alleging that the requisitions he ordered "...are illegal and constitute a flagrant violation of our Constitution and prevailing laws."⁵⁴

While the battles of nationalization, requisitions and interventions were raging, the judiciary did not remain on the sidelines for long. Starting initially, from a defensive stand the judges became increasingly involved in the day to day struggles which culminated in the unprecedented exchange of letters between the President and the Supreme Court where the latter made clear its positivistic and pro-capitalistic stance. In the initial stages when owners of expropriated properties went to court, the battles were fought on the technical question of jurisdiction, with the government arguing that the judiciary had no jurisdiction over government "acts of authority", and the judiciary asserting that it had.⁵⁵ The insistence by the judiciary was a marked deviation from previous practice.

The judiciary showed its determination and power of defending the system through the granting of the so-called "measures of preservation" to owners of requisitioned or intervened enterprises. Such preservation measures, intended to prevent the disappearance or deterioration of the object of a lawsuit during proceedings began in June 1972. This took the form of summary proceedings which enabled a judge to decide a case within a few days. Under this process, one could ask, in relation to the enterprise as a whole, for measures like the appointment of a special co-intervenor who had to agree to most of the day to day management decisions; freezing of bank accounts; the prohibition on the government appointed manager from hiring or dismissing personnel and to move any goods without the approval of the court.⁵⁶ When a full range of the measures was applied this could paralyze the whole enterprise, a result which was detrimental to the economy and tended to compliment the tactics of the bourgeoisie which was determined to sabotage the economy.

The obvious bias shown by the courts in dealing with actions against requisitions and interventions by the state was pointed out by Allende in his letter to the Supreme Court of 12 June 1973. He noted for example, the limitations and lack of speed and efficacy in the criminal process when the courts were called to repress common crimes, especially in the poorer areas without adequate fencing and other means of protection and, on the other hand, the zeal and promptness of many judges in ordering preventive measures requested by business managers who used the penal action of usurpation as a pretext to invoke the Code of

⁵⁴ Smimow, G Ibid. p.40.

⁵⁵ Ietswaart, H op cit note 44 p.768. By holding that the *Tribunal de Comercio* (Administrative Tribunal) had jurisdiction to hear and decide on complaints against expropriations and interventions made by government the Supreme Court ensured that the courts were part of the struggle and whose side they were on soon became clear.

⁵⁶ Ietswaart, H Ibid. p.769.

Criminal Procedure⁵⁷ and thus challenging the legitimate action of the administrative authority.⁵⁸ Allende's frustration with the actions of the judges was evident when he stated that:

"Some judges carried away by enthusiasm not uncommon in the interpretation of the precept in question, have been able to extract from it a meaning and scope so excessive that the interventors are not only prohibited from carrying out legal acts like cashing cheques, making purchases or sales or similar activities, but they are also prohibited from entering the premises of the industry they are supposed to carry out their duties. This highly dubious constitutional fantasy creates difficult situations which are certainly damaging to the economy of the nation and to the enterprises concerned."⁵⁹

At the time Allende wrote his letter to the Supreme Court, up to thirty enterprises were subject to preventive measures.

In defence of the new and novel interpretations which the courts were attaching to existing legislation to defeat the actions of the government the Supreme Court in its reply argued:

"Plaintiffs, seeking urgent action by the courts, invoke new concepts to counteract other concepts — also new — which the government invokes as a base for its actions. Hence, the judge must tune in to this new juridical development with justifiable intellectual and professional interest."⁶⁰

What is evident throughout the exchange between the President and the Supreme Court is a full commitment by the latter to use its full powers to ensure the continuation of the status quo. For example the Supreme Court made it clear that its concern was not the political and social events taking place, but the protection of private property which it claimed still enjoyed full "protection under the Constitution and many Codes",⁶¹ from "usurpers of property" who acted in a lawless, arbitrary and criminal manner.⁶² In a typical positivistic and conservative interpretation of their function they asserted that:

⁵⁷ This article allowed individual complaints to be made in exceptional cases and empowered the courts to issue restraining orders against defendants whose actions were being challenged. Instead of it being applied as an exceptional remedy the courts simply applied it as an everyday remedy to restrain duly authorised government officials.

⁵⁸ *Official Communications from Allende to the President of the Supreme Court*, 12 June 1973, in Ghai, Luckham & Snyder, pp.774-5.

⁵⁹ Allende, *Ibid.* p.775.

⁶⁰ *Letter from the Supreme Court to President Allende*, 24 June 1973 in Ghai, *Y op cit* note 10 p.787.

⁶¹ Supreme Court, *Ibid.* p.787.

⁶² Supreme Court, *Ibid.* p.791.

"The argument put forward by Your Excellency is that through legal interpretation, legal norms can be broadly adapted to the new social and political realities of the nation. However, this thesis is wrong because it misconceives the proper function of legal interpretation. For legal interpretation cannot be used to abrogate an existing law. This is a task which falls on the Legislative Branch."⁶³

Needless to say the Supreme Court knew perfectly well that Executive attempts to change the existing laws at the time were being frustrated by the Legislative Branch it was referring to.

Describing the events discussed above Debray wrote during Allende's rule that :

"The principal objects of these disputes are whether this bill is legal, whether the nationalization decree is or is not within the powers of the Executive, whether the workers had inadvertently misinterpreted an article of the Constitution in throwing out a bankrupt factory owner. From top to bottom of the administrative hierarchy, from one end of the country to the other, the front of the stage is occupied by an interminable wrangle, its terms, provisions of the legal code, verdicts in the lower courts, grounds for a decision, counter-charges and appeals."⁶⁴

The unreality of the whole drama is exposed by Debray when he states further that:

"The key word in all these disputes, deliberately inflated to the dimensions of a national drama by the bourgeoisie and its means of communication, is not Revolution, or Justice, or Liberation, or Proletariat, but Legality, the tabu term, the obsessional *leitmotif*, and the visible stake."⁶⁵

The legal wrangles described above were a manifestation of the struggle for power that was taking place within the state in Chile. Behind those legal wrangles, however, lay the real battle for power which knew no bounds of legality to be solved only through force. Debray observes that in the struggle for power, the game is not entirely above board in the bourgeois camp: "Foul blows are allowed but not officially counted in the score; a blind eye is turned to them."⁶⁶ Some of these foul blows included the employment of thugs by the bourgeoisie to terrorize leaders of working class organizations, a fact never acknowledged by the right-wing press. What is now clear in the case of Chile is that the path from

⁶³ Ibid.

⁶⁴ Debray, R op cit note 45 p.13.

⁶⁵ Debray, R Ibid. p.13.

⁶⁶ Debray, R Ibid. p.44.

polite hatred to open hostilities turned out to be much shorter than either side had imagined. This open hostility was to gain full expression in October 1972 when there occurred a confrontation between the bourgeoisie and the working classes of a degree and intensity never experienced before in the history of Chile.

V LEGALITY TAKES THE BACK-SEAT: THE OCTOBER BOURGEOIS INSURRECTION AND ITS RESULTS

In an earlier section it was noted that the authors of the UP economic programme envisioned a carefully controlled revolution from above whereby the structural changes necessary to pave the way for socialism were to be carried out legally using the instruments created by the bourgeoisie and the powers granted by the state. The successful implementation of this programme was dependent on a carefully controlled and phased revolutionary process. This was also crucial if a successful alliance with the middle classes was to be secured. We thus see a delicately balanced strategy of economic and political change. In this strategy, Peter Winn argues that the UP saw the role of the "masses", that is workers, peasants and *pobladores* as being: "... to provide political and social support when called on, but otherwise to wait patiently the advances and benefits of the revolution from above".⁶⁷ What became clear as the events unfolded was that Allende's triumph had a different meaning to his mass base than it had to the politicians and planners of the UP. The triumph which the UP seemed to underestimate led to:

"... the unleashing of a revolution from below, which sometimes coincided or complimented, but increasingly diverged from the legalistic and modulated revolution from above."⁶⁸

The other development envisioned by the UP was that in due course its appeal to the middle classes would increase and an alliance with them would be forged. It was thought that by confining leftist attacks to the "monopolies" the co-operation or neutrality of the smaller and medium-sized entrepreneurs would be secured.

In the period between the assumption of office in October 1970 and October 1972, the government relied essentially on the legitimacy of its origins and the legality of its actions to take sections of economic power from imperialism and the big Chilean bourgeoisie. The bourgeois parties on their part, having failed to prevent Allende becoming President by precipitating a political crisis which would have brought in the armed forces, extracted concessions via the Statute of Guarantees, allowed Allende to come to power, withdrew in good order and set out to devise ways of mounting a campaign to stop the advance towards socialism.

By October 1972 the battle lines were drawn. The government, having

⁶⁷ Winn, P *Weavers of Revolution: The Yur Workers and Chile's Road to Socialism*, p.140.

⁶⁸ Winn, P *Ibid.* P.140.

enjoyed initial economic successes, found itself increasingly on the defensive. There was a downward plunge in the economy with inflation reaching record levels and a serious shortage of basic consumer goods. The big capitalists who controlled distribution were using their capital for speculation so that hoarding and scarcity of basic goods became daily provocations to the workers.⁶⁹ The bourgeoisie saw all this as providing the ideal opportunity for a decisive confrontation in which they would exert their full economic power, assisted by the institutions they controlled and their political representatives. They believed that a combined offensive would create shortages, chaos and tear Chilean society apart. The assumption by the bourgeoisie was that the resulting panic would either force Allende to resign or oblige the army to overthrow the government, or better still, leave him in power to impose the necessary austerity measures that would have completely alienated him from his popular base and led to his resounding defeat in the Congressional elections of March 1973.⁷⁰

The events which not only embarrassed the government, but nearly caused its collapse, began on 9 October when the Truck Owners confederation, embracing some 169 unions of truck owners across the country announced an indefinite strike. This was not a matter to be taken lightly because the confederation was responsible for the transportation by road of more than half the country's fuel, raw materials, ocean cargoes and foodstuffs. The confederation members ranged from owners of several tons of heavy modern trucks to the pathetic possessor of a single broken-down vehicle with several years on the road. Smimow, points out that Vilarin, the leader of the confederation had managed to buy up everyone in the business with the help of generous donations from the CIA, a fact later shown by the US Senate investigating committee.⁷¹ This strike did not take place in isolation. On 13 October the Retail Trade and Small Industry Confederation, Taxi Drivers Union, Production and Trade Confederation of Small Industry and Artisans all declared a national stoppage in support of the truckers' association. On the same day the Association of Manufacturers (SOFOFA) representing middle and big industry agreed to halt their activities indefinitely. The opposition parties then unanimously declared their support for the strike and instructed their members to participate fully in it.

The government was aware that the truck owners' strike was a decisive test of its whole policy by the bourgeoisie. Its response was to use the weapon it had used until then — the powers of the President. A further weapon, within the institutional powers of the President to control an important section of public framework, though being employed for the first time, was the use of the armed forces' constitutional subordination to the President of the Republic. In line with this, the Ministry of the Interior declared a state of emergency in thirteen provinces including Santiago, thereby placing them under military rule. Although the country was now divided between two irreconcilable camps, the army, at the time, still retained some neutrality and could therefore be used as an arbiter in the situation. From that time the armed forces' role in society was

⁶⁹ Smimow, G op cit note 1 pp.65–6.

⁷⁰ Gonzalez, M op cit note 41 p.55.

⁷¹ Smimow, G op cit note 1 p.68.

strengthened although its role was never clearly defined and the protagonists struggled for its support. On the UP policy in this struggle Smirnow argues that:

"In that struggle the politico-institutional road thesis revealed its dialectical limitations of tactical strength and strategic weakness, resulting from its strict self-confinement within the prevailing constitutional and legal margins of action."⁷²

It became clear from this early stage that in the final analysis the role of the armed forces would be decisive in the settlement of the conflict.

The state of emergency declared by the government did not stop the bourgeois insurrection — instead it was spreading. On 18 October bus and taxi-bus owners started an indefinite national strike. On the same day strikes were called by bank employees, physicians, lawyers, dentists, merchant marine officers, some high school students and University of Chile professors.

The strike by the employers (or the bosses' strike) which had been called in order to paralyze the government unleashed a movement and reaction whose consequences they had not anticipated. Before the strike most of the working class initiatives had been carried out largely in response to the UP calls and had remained within the disciplined character which the UP insisted on. However, their reaction to the bosses' strike took a completely different turn. The various working class organizations took immediate steps to maintain the transport system by seizing all available vehicles; kept the factories open by taking them over and running them and ensured the supply of food and necessities by forcing shopowners to open their shops.⁷³ In describing the reaction of the workers Smirnow states that:

"Within a few days most of the country's industries were in the hands of their workers: faced with the employer lockout, they showed in practice that the production process did not need bosses."⁷⁴

The working class was showing that its consciousness, maturity and organization represented a much stronger barrier to right-wing insurrection than legality which the government relied on. Of particular importance here is that the workers, in responding to the strike, overran all the UP limitations with respect to the size of enterprises to be taken. Even the discussions on the number of enterprises to be incorporated in the social production area became superfluous. In this event the legal and institutional road was being overtaken by the events which the bourgeoisie had set in motion because at this stage it was no longer up to Congress or the Executive to determine the social and economic relations in the country.

⁷² Smirnow, G Ibid. p.71.

⁷³ Gonzalez, M op cit note 41 p.55.

⁷⁴ Smirnow, G op cit note 1 p.72.

It is clear that during the period described above legality took a back seat. The government was virtually a spectator in the arena of class struggle and was trying desperately to reassert itself. Faced with a strike by airline pilots on 31 October and the refusal of lorrymen to end their strike Allende invited several army generals to his Cabinet. The announcement of a joint UP — military Cabinet on November 3 was made simultaneously with an address to the workers by Allende “thanking them for acting in support of the government and asking them to return to work and to restore the factories to their owners.”⁷⁵ It was in this tense climate that the Minister of the Economy announced the New Economic Plan proposing the return of 123 of the seized factories to their owners, including the one belonging to one of the most active opponents of the government, the textile factory owned by the powerful Yurur family, which ironically, the government had earlier attempted to nationalize but had been frustrated by the Comptroller-General. However, in this instance, the workers made it clear that they would have none of it and a series of demonstrations forced the government to abandon the plan. Paradoxically, in the March 1973 Congressional elections the working class was still strongly behind Allende for the UP increased its vote to 44% causing another set-back to the right-wing parties.

The October insurrection set the limits to which legality could be relied upon in the transition to socialism. The struggle had moved into the streets, factories and other places of work where victory by either the bourgeoisie or the workers could only be won by arms.⁷⁶ While Allende and the influential forces within the UP still insisted that the pace of change was determined in parliament, neither the bourgeoisie, nor the working class had any such illusions. It was no longer a question of whether or not the struggle should be allowed to happen, it was only its outcome that was in issue.

Although the hostility towards the government was now evident and the Right was openly calling for the army to intervene to stop Allende and there was open economic sabotage by the bourgeoisie, Allende still allowed Congress to pass without veto, the Arms Control Law. The Act was passed purportedly to disarm “all armed groups”, in practice it was used only against armed working class groups although there were many other armed right-wing groups at the service of the bourgeoisie. This law which was administered by the army was used to mount pre-emptive searches and raids to destroy any signs of organized mass resistance which might have resisted the coup. The government in this case became a prisoner of its own laws. When the military finally moved in, there could only be sporadic and ill-organized resistance whose consequence is well known — more than 30 000 workers and peasants butchered within the first 12 months from the day of the coup.

⁷⁵ Gonzalez, M op cit note 41 p.61.

⁷⁶ Sweezy, P & Magdoff H op cit note 42 p.17.

not find an excuse for toppling the regime.⁸² It was this premise which not only discouraged the working class from arming itself against the bourgeoisie, but also led to its disarming through the use of the Arms Control legislation.

Related to the above misconception was the UP idealistic view of the state. Despite the many attempts by the opposition to undermine the stability of the regime, often by street violence there was the deliberate promotion of the illusion that a peaceful road to socialism in the conditions of Chile was possible and was in fact being travelled. This myth was promoted in spite of the fact that throughout Allende's period the capitalist state (the army, police, courts, Congress and governmental bureaucracies) remained intact. Peter Camejo criticizes this aspect of UP policy and argues that:

"The notion that a ruling class can be defeated by placing enough pieces of paper in the ballot box is a rejection of the Marxist view of the state."⁸³

Perhaps the most fatal of all illusions by the UP was the myth about the constitutional and professional position of the armed forces. It has been argued by some writers that in maintaining that the Chilean armed forces had always respected the constitution and would support the legal government, Allende was falsifying history.⁸⁴ They assert that it was the armed forces themselves who invented the constitution via a series of military dictatorships between 1924 and 1932 mounted to solve the economic crises caused by world-wide depression after the first world war. Moreover there is adequate evidence to show that for more than 20 years before the coup the armed forces had been becoming less "Chilean" and more of a local police force for American imperialism.⁸⁵ Thus even if it is true to say that there had been no major military intervention for several decades, it is important to realize that throughout that period the army had served an order, the capitalist state and system, which until the time of Allende had never been seriously threatened.

The UP policy towards the army appears to have been inspired by a combination of fear and naivety. The fear was indeed real because any ill-timed confrontation would no doubt have resulted in a right-wing inspired coup. However, it would appear in retrospect that if the UP was committed to serious changes in Chilean society it would have sooner or later to confront the problem of the military. To simply wish away the problem or pretend that it did not exist as the UP leadership appeared to do could not have been an answer. On the level of naivety was the attempt to patronize, flatter or pressurize this or that general who seemed to have been "won" or "winnable", a policy worked out at summit "level".⁸⁶ Describing this tendency Michael Raptis writes that:

⁸² Evans, L op cit note 40 p.13

⁸³ Camejo, P Ibid. P.47.

⁸⁴ Roxborough, op cit note 25 p.187.

⁸⁵ Roxborough, Ibid. For details of the extent of US involvement in the Chilean armed forces, see pp.187-8.

⁸⁶ Sweezy & Magdoff, op cit note 42 p.16.

"Allende in particular delighted in this dangerous game; he overestimated the effectiveness of his own personal charm and his personal relationships with the leaders of the army and *carabineros*."⁸⁷

It was for this reason that whenever there was a crisis Allende immediately looked to the armed forces. No thought was given to popular calls for the creation of a loyalist peoples' militia.

There are those who decry what happened in Chile as a brutal and unjustifiable assault on democracy by a group of capitalists and military officers aided by the US. They thus argue that:

"... the fact that Popular Unity remained within the confines of legality was one of its virtues; the essence of the Chilean process was that it was peaceful, that is, parliamentary transition to socialism."⁸⁸

While one cannot question UP's commitment to legality on the assumption of power and adherence to it in the initial stages, there can be no doubt that ultimately legality was a source of weakness rather than strength for the regime. In the events culminating in the 1972 insurrection where the struggle overflowed the bounds of legality it did not make sense to insist on a parliamentary road to socialism.

It could be argued that the Chilean experience does not provide an answer to the question whether Marxist economic and social reconstructions of society can be achieved within the pluralistic-constitutional system because the Chilean experiment did not pose the question fully. It is argued, within this view, that we do not know whether given a majority in the Congress the Chamber of Deputies, which Allende did not achieve, a Communist party could construct socialism by constitutional means.⁸⁹ Related to this is Bitar's persuasive argument that the reason for the fall of Allende was not the use of the institutional road but the method of implementation employed.⁹⁰ While one must acknowledge the strength of these arguments, it seems speculative and naive to argue that if Allende had won say, 54% of the vote or more instead of 44% the outcome would have been somehow different. The struggle in Chile had gone beyond the stage where the game is fought in terms of electoral numbers and parliamentary majorities. There is no doubt that a parliamentary majority would have helped speed up nationalization and reduce the delaying tactics of the Comptroller-General. The important point, however, is to note that the UP party was able to carry out most of its economic programmes and at times the working class took

⁸⁷ Raptis, M op cit note 36 p.81.

⁸⁸ Roxborough, op cit note 25 p.264.

⁸⁹ Medhurst, K op cit note 29 p.194.

⁹⁰ Bitar, S op cit note 77, esp. pp.228-235. For a summary and comment on Bitar's arguments see: Harris, R: "Marxism and the Transition of Socialism in Latin America" in (1988) 15/1 *Latin America Perspectives*, pp.29-30.

the struggle beyond the limits set by the government. Surely a socialist government cannot fight capital flight, hoarding and economic sabotage by the bourgeoisie by using parliamentary majorities.

VII CONCLUSIONS

Although the Chilean experiment was a tragic failure, it should not be trivialized as just another bourgeois reformist experiment. The events already described prove otherwise — if only due to the efforts of a developed and well organized working class movement. Within the first year in power the UP achieved successes never experienced before in establishing a substantial sector for social production, increase in production, better wages and improvements in the standards of living. All these were achieved largely within the institutional-legal framework, showing that the legal order can be used to some extent in effecting certain changes in the economy that are socialist orientated.

An important lesson that can be drawn is that the Chilean case does show that it is possible for left-wing parties to win elections in liberal democratic systems and that it is correct and proper for these parties to contest elections where it is possible to win. To do otherwise leaves the arena exclusively in the hands of the bourgeoisie. What went wrong in Chile therefore occurred after and not before Allende's election in 1970. It is not inconsistent with Marxist theory to argue that the case of Chile proves that in the fight for socialism it is not only violence that is appropriate and effective, if we qualify this by adding that, in the transitional period the issue is not to avoid violence but to be prepared to use it as and when it becomes necessary. To be found completely impotent when the forces of reaction descend as in the case of the UP amounts to a betrayal of Marxist-Lennist principles.

There is no doubt that Allende's commitment to legality was genuine and based on what he sincerely perceived to be the prevailing conditions of Chile. Indeed the commitment to legality did open the door to the state system for worker's parties to legitimize their demands in institutional terms and it also put important tools into the hands of the popular movements. On the other hand the same commitment to legality, "... barricaded the movement within the iron ring of a body of laws and mechanisms planned and elaborated precisely for the subjection of the dominated classes to bourgeois hegemony."⁹¹ The UP does not appear to have adequately addressed this contradictory aspect of legality.

While it is important to recognize that democracy and personal freedoms are an essential ingredient of a truly socialist transition, democracy must not be seen as a good in itself. It is important to realize that the procedures and institutions of a parliamentary electoral system do not operate independently of class conflict, class relations and imperial penetration.⁹² To assume that the shared values of democracy and legality override partisan class interests provides

⁹¹ Smimow, G op cit note 1 p.161.

⁹² Petras, J & Fitzgerald, F T, op cit note 18 p.106.

enemies with the opportunity to organize extra-legally and leads to a policy that seeks to win over the opposition through compromises and concessions, a policy that only emboldens the opposition to make more demands. Allende failed to take advantage of the April election victory by calling for plebiscite because he still hoped to win over the middle classes. As it turned out, the demands of these classes were ever-increasing, including the humiliating concession Allende had to make in 1972 to persuade the truck drivers to call off their strike.⁹³ This danger is recognized by Lukacs who warns that:

"Whether or not the resistance of the bourgeoisie takes the form of open counter-revolution or of covert acts of sabotage, it is a naïve illusion to imagine that it can be disarmed by making some sort of concession to it . . . "⁹⁴

This statement can be supported, in the case of Chile, by the fact that even after Allende had made crippling concessions by signing the Statute of Guarantees, the right-wing parties and the press continued to attack and undermine his regime.

It is not suggested that Allende should have abandoned legality altogether, but rather that he should have found alternative sources of power to strengthen his base. This could only have been achieved, it seems, by a stronger alliance with and clear guidance to his popular base — the working class and peasants who were consistently loyal to him. The failure to recognize that his popular base and the impoverished middle strata was the only force necessary and sufficient to advance towards socialism has been criticized by many writers.⁹⁵ It is important to note that it was this very group that saved Allende from certain downfall when the bourgeoisie went on the offensive in 1972.⁹⁶ Although the organizations of the workers that emerged during that time could not have been an alternative to the state, they nevertheless showed that they were the strongest threat to the bourgeoisie and not the laws Allende sought to pass through Congress nor the army he relied on.⁹⁷

A major weakness in the use of law to build socialism is that it falls into the danger of being used to impose revolution from above. Throughout the three years of Allende's rule the UP sought to ensure that the spontaneous movements of the working people fell within the rather bureaucratic practices of the party and government. As a result, an important opportunity of building a dual power was

⁹³ In order to persuade the truck drivers to return to work Allende had to agree to invite the military into his cabinet and further, undertook not to take action against the strikers who had caused irreparable damage to the economy by their illegal actions.

⁹⁴ Lukacs, *G* op cit note 20 p.748.

⁹⁵ See for example Raptis, *M* op cit note 36 and Smimow, op cit note 1.

⁹⁶ By keeping the economy functioning the workers proved that they were capable of running the economy on their own behalf but it was not their task to find a political solution. That was a task for Allende which he ultimately failed to fulfil.

⁹⁷ Certainly in the case of Chile law was not the "...most available instrument to induce social change."

missed. The leader of the Christian Left recognized this when he attested after the events of October 1972 that:

"... the advances in working class consciousness don't seem to have reached their political leaders. The base is far richer than the leadership. The CUT and the CORDONES are far more effective at their level than UP at the political level. . . If the Social power [of UP support] were to be organized in a co-ordinated way at the factory and regional level, and into organs of defence, the situation would move forward and be unstoppable."⁹⁸

The argument that the UP's chief source of strength lay in the legitimacy of its origin and the legality of its actions was only valid as long as the army remained divided. As it turned out, Allende did nothing to maintain or sharpen this division and ally himself with loyalist forces. It was left to the bourgeoisie to unify the armed forces and eventually incite them to topple the government. The events that occurred after Allende's victory in 1970 leading to the murder of the Commander-in-Chief of the armed forces General Schneider were early indications of divisions in the armed forces and Allende should have worked at maintaining them to his advantage rather than rely on the myth of the army's respect for the Constitution and professionalism. Some elements within the UP tried to do this but Allende was quick to suppress them.

In the final analysis, Allende's failure to strengthen his popular base or even effectively neutralize the armed forces left him helpless in the face of the power of the bourgeoisie still controlling the markets, economy, the press and other state and non-state institutions of power and, even more important, the support of a well-equipped modern army. The result could not have been otherwise.

The main reasons for failure can be traced to the strategy and policy of the UP throughout. Smirnow has aptly summed it up as having been:

"... one of extreme strategic prudence which finally settled for indefinite postponement of the working class' historic objectives, including those partly envisaged in the UP government's programme. It was a prudence dialectically complemented by extreme tactical adventurism in projecting goals it had neither the necessary forces nor the indispensable alliances to implement. This line, blindly applied to the very end of the government and the key echelons of Popular Unity, led as if down a deep slope to the ideological and organizational disarming of workers dedicated to the revolutionary process."⁹⁹

98 Quoted in Gonzalez, M op cit note 41 p.64. The Christian Left was one of the smallest left wing parties who, while supporting Allende had declined to join the cabinet when the military was brought in.

99 Smirnow, G op cit note 1 p.162.

Yet in spite of the above weaknesses in the UP strategy, there can be no doubt that between 1970 and 1973 popular power had developed to such a level that the bourgeoisie had to do away with democracy in order to suppress it. Since the UP government could not play this role, it being resolutely committed to legality and democracy, it too had to be done away with. General Pinochet came and did the "dirty job" and is still doing it today — 15 years on. So much for the "temporary death of Chilean democracy" hallowed by right-wing governments and writers at the time of the bloody coup.



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