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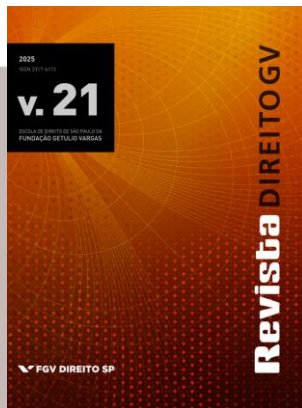
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LA ECONOMÍA POLÍTICA DEL CRÉDITO: LA UNIDAD POPULAR Y EL BANCO CENTRAL DE CHILE (1970-1973)

A ECONOMIA POLÍTICA DO CRÉDITO: A UNIDADE POPULAR E O BANCO CENTRAL DO CHILE (1970-1973)

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ABSTRACT

This Article analyzes the political economy of credit, drawing on emerging legal scholarship that questions the neoclassical economic view of money as a neutral tool and central banks as institutions in charge of price stability, operating solely on technical grounds. In stark contrast, the experience of Chile's socialist Unidad Popular government (1970-1973) is a case where the attempt to transform the sources of monetary creation and assert public control over credit and the banking system received intense opposition that tested the limits of legality. The Chilean path to socialism envisioned a revolutionary transformation within the framework of the rule of law. Early successes in reshaping the monetary structure—leveraging private law mechanisms such as freedom of contract, private property rights, and the legal powers granted under the presidential system—ultimately precipitated a constitutional crisis, foreshadowing the military coup on September 11, 1973. In revisiting this pivotal period, this paper draws on the insights of a constitutional theory of money that emphasizes its political dimensions and the crucial role of law in shaping the economic and social orders.

Keywords: Law & Political Economy; Central Banks; money and credit; constitutional theory of money

RESUMO

Este artigo analisa a economia política da governança do crédito, baseando-se na emergente literatura jurídica que desafia a perspectiva econômica neoclássica do dinheiro como uma ferramenta neutra e do Banco Central como instituição responsável pela estabilidade de preços que opera exclusivamente com base em critérios técnicos. Em claro contraste, a experiência do governo socialista da Unidade Popular no Chile (1970-1973) ilustra a intensa oposição às suas tentativas de afirmar o controle público sobre o crédito e o sistema bancário, ações que frequentemente testaram os limites da legalidade. O caminho chileno para o socialismo vislumbrava uma transformação revolucionária dentro do marco do Estado de direito. Os primeiros sucessos na reconfiguração da estrutura monetária—aproveitando mecanismos do direito privado como a liberdade contratual, os direitos de propriedade privada e os poderes legais

concedidos pelo sistema presidencial—acabaram por precipitar uma crise constitucional, prenunciando o golpe militar de 11 de setembro de 1973. Ao revisitar este período crucial, este trabalho destaca as dimensões políticas da política monetária e o papel essencial do direito na formação das ordens econômicas e sociais.

Palavras-chave: Direito e Economia Política; Bancos Centrais; monetário y crédito; teoria constitucional do dinheiro

RESUMEN

Este artículo analiza la economía política del crédito, apoyándose en la literatura jurídica emergente que cuestiona la perspectiva economicista y neoclásica del dinero como una herramienta neutral y al banco central como la institución responsable de la estabilidad de precios que solo opera bajo criterios técnicos. Por el contrario, la experiencia del gobierno socialista de la Unidad Popular en Chile (1970-1973) es un caso en el que el intento de transformación de las fuentes de creación monetaria buscando el control público sobre el crédito recibió una intensa oposición que puso a prueba los límites de la legalidad. El camino chileno hacia el socialismo pretendía una transformación revolucionaria dentro del marco del Estado de derecho. Los primeros éxitos en cambiar la estructura monetaria—aprovechando mecanismos de derecho privado como la libertad de contratación, el derecho de propiedad privada y las competencias del sistema presidencial—finalmente derivaron en una crisis constitucional, que antecede al golpe militar del 11 de septiembre de 1973. Al revisitar este período, este trabajo sigue el camino de una teoría constitucional del dinero que destaca sus dimensiones políticas y el papel esencial del derecho en la configuración de los órdenes económicos y sociales

Palabras clave: Derecho y Economía Política; Bancos centrales; dinero y crédito; teoría constitucional del dinero

INTRODUCTION

Law and money are essential institutions that help us understand our modern way of life. Even when both are invisible, they make social life possible, and "like the air we breathe," we use them persistently for living. For instance, money grants membership to capitalist societies, while law is the infrastructure for human action and value creation. Interestingly, both institutions are commonly viewed as abstract and neutral devices that enable individuals to define and pursue their interests and goals free from arbitrary interference from others. Neither money nor law claims a distinctive ontology other than being a means to an end, notwithstanding their close connection to political power. Constitutional law defines

what public authority is and presupposes that the rule of law acts as a check on political will, and political theorists have long postulated that money constitutes “the blood of the state” (Johnson, 1966; Desan, 2008, 2014). Faced with a political crisis, money markets fluctuate, investment freezes, and the law becomes a field of dispute affecting competitive economies.

Despite money’s political and legal core (Eich, 2022), monetary policy has been insulated from democratic will by being delegated to independent central banks (CBI). Inflation, which refers to the rise in the overall price level, was a prevalent issue faced by most economies during the twentieth century and is often linked to the excessive monetization of government debt, a concept that Milton Friedman referred to as the “printing press phenomenon” (Friedman, 1990, p. 254; Bernanke, 2003). Thus, since the 1990s, the CBI has become the global standard for good governance, with its primary mandate to maintain price stability, which is essential for market economies (Bodea and Garriga, 2022; Moschella, 2024). Therefore, now experts, mostly economists, are the ones in charge of monetary policy. This institutional transformation overlooks the political nature of money and is dominated by a neoclassical, barter-based narrative, in which money appears as something exogenous to the market or as a neutral veil under which the real economy takes place.¹

In this Article, I explore the politics of money creation and its institutional governance, drawing inspiration from the emerging legal scholarship that examines the relationship between money and constitutional orders (Desan, 2015, 2017, 2024; Feichtner, 2016; Pistor, 2019) and others who work on recovering money’s lost relation with authority and its role as a public good (Ricks, 2018; Feinig, 2022; Monnet, 2024). In this endeavor, I revisit the experience of the Unidad Popular's socialist Government (1970-1973) and its policy of controlling credit and the banking system as an example of the inherent relationship between money and the political and legal-constitutional order. The *Chilean Road to Socialism*, as the political experience under the Unidad Popular government was known, promised a structural transformation of the economy while maintaining its commitment to the rule of law and political freedoms, which Chilean society revered as significant accomplishments. In its social revolutionary endeavors, the socialist government had a successful beginning. By the end of the first year of government, not only had the nationalization of copper and the agrarian reform been accomplished, but more than 90% of the banking system was also under state control. Those who believed the Chilean rule of law was “an astonishingly elastic one” (Debray, 1971, p. 44) were proved right by achieving these milestones. Notwithstanding, in the Chilean case, the change in monetary governance, which was necessary to create a new economy, is one of the critical issues that explain the constitutional crisis that preceded the overthrow of Allende's government on September 11, 1973.

¹ This metaphor comes from J.S. Mill and is linked with classical and neoclassical economics account of money, see Nigel Dodd, *The Sociology of Money. Economics, Reason and Contemporary Society* 3 (1994); or as Christine Desan explains to the “conventional creation story” (2013, p. 24).

The constitutional theory of money provides a theoretical framework to understand the significance of this case study. The Chilean experience in attempting to change the monetary legal arrangements extends beyond geographical borders, primarily because the current understanding of money has devalued its connection to political authority, legal order, and the State. Unlike the narratives for which money is a “thing” external to market relations because it is used only to overcome the inconveniences of barter, for a constitutional theory, money itself is analyzed as a legal construct (Desan, 2013) that becomes “a project collectively engineered and orchestrated to create liquidity” (Kreitner, 2012; Moudud, 2018). This change in the approach towards money is revealing of its place as a constitutive element of society. It explains how shifts in the ability to create money influence its mode of governance and the economies that emerge from it, as shown by Christine Desan’s work in both England and the United States (Desan, 2013).

I employ historical and legal analysis of primary sources, including constitutional texts, legislation, decrees, and judicial decisions from the relevant period, as well as a secondary literature review on Chile’s political and economic history. Qualitative analysis of key legal documents, speeches, and policy debates offers valuable insight into this critical period on how legal mechanisms were employed and contested in the pursuit of this revolutionary change in monetary arrangements.

This Article proceeds as follows: Part I briefly portrays Chile's political economy structure before 1970 to explain the Government's economic strategy and the place of money and especially credit, had for Allende's political project; Part II describes the monetary governance of the banking system in place and the institutional role played by key state agencies such as the Central Bank, to change the credit structure and acquire most of the private banking system; Part III explains the legal struggles prompted by the nationalization of the banking system which ultimately precipitated a constitutional crisis, foreshadowing the military coup on September 11, 1973. The tragic ending of this so-called ‘socialist experiment’ is well known, and there is an extensive literature about the period. Still, the lessons in terms of monetary governance, along with the legal aspects of nationalizing the banking system, remain to be duly examined.² Revisiting this period, during which the government utilized credit to reimagine the economy, sheds light on the political dimensions of money and highlights the pivotal role of law in shaping social and economic orders.

1. The political economy of the Democratic Republic: fragile stability and the promise of development

² A recent study argues from an economic viewpoint that hyperinflation was caused by the economic mismanagement of the government. It covers different policies, dividing his analysis in two: the short-term program and the structural transformations, and in passim refers to the banking system highlighting the fact that was financed by the Central Bank or by “money printing” and therefore, contributing to the inflationary tendency (Edwards, 2024).

The period between the 1930s and 1973 is known as the Democratic or Middle-Class Republic (Ruiz-Tagle, 2021; Rodriguez Weber, 2017) due to the ongoing legal reforms that expanded citizenship and the state-sponsored policies that supported the creation of a nascent middle class under the Constitution of 1925. This constitutional order enshrined a presidential system with a vigorous executive that granted extraordinary powers to the President of the Republic as head of State and Government (Heise, 1996 [1960]; De Vylder, 1976) and a robust political party system. Furthermore, the constitutional framework allowed the State to become an active economic agent and drive productive activities following the ideas of developmentalism (ECLAC) or what is known as "development from within" (French-Davis, 1973), where the State fostered national industries, not only by private investment aid but also directly by state-owned companies.

The State structure grew steadily during these years, creating new agencies such as the Economic Development Agency (*Corporación de Fomento de la Producción*, CORFO) in 1939, the State Bank of Chile in 1953, Office for Industry and Commerce (*Dirección de Industria y Comercio*, DIRINCO) in 1960, Agrarian Reform Corporation in 1962, Copper Corporation and the National Planning Office in 1967. In these productive and redistributive functions, the state's participation in the economy at the time was one of the largest (if not the largest) in Latin America (Bitar, 1979, p. 36). For instance, government expenditure in 1964 represented 36% of GNP, and by 1970, it had increased to 47%. As the former Director for the National Planification Office during Allende's government, Gonzalo Martner, describes, before 1970, the "Chilean State was largely interventionist, regulator, benefactor and investor," controlling 30% of the national product and 75% of national investment (Martner, 1984).

Nonetheless, the nation's economic growth was largely contingent upon copper exports, which were predominantly controlled by two United States companies until their nationalization in 1971. This sector contributed approximately 75% of the country's foreign exchange (Guardia et al., 1979, p. 12). On the other hand, even as an emerging industrial sector developed, it remained strongly dependent on foreign capital (Seers, 1972; Griffith-Jones, 1981, p. 120). By the end of the 1950s, the state-led redistributive economic model was showing signs of slowing down and was under scrutiny, as illustrated in the works of two renowned economists. The first one, written by Jorge Ahumada (1958), an academic and a close adviser to former President Eduardo Frei Montalva (1964-1970), was entitled "Chile's Comprehensive Crisis," which included –but was not limited to– the capitalist economic system. The second one, written by Aníbal Pinto—a well-known economist, academic, and left-leaning intellectual—denounced the country's frustrated development (1959), highlighting the country's clashing features between a robust political system and a feeble economic structure.³

During the second half of the 1960s, Chile's GDP grew at an average rate of 3.8% while the rest of Latin America had a growth average of 5.5%, and between 1967-70, the economic growth fell to

³ Nowadays, the idea that an internal contradiction between political and economic development deeply stressed the Chilean social order well before Allende's government has become commonplace.

2.8%. National production in agriculture was slower than population growth. Spare productive capacity and idle use of resources led to poor economic growth rates, a shortage of essential goods, and a need to import basic goods (Alaluf et al., 1972, p. 479). In 1970, an assessment of industrial productive capacity showed that over 25% was underused (Griffith-Jones, 1981, p. 122), which led to higher unemployment. Following Bitar's study (1979), the Chilean economic system was not responsive to the workers' redistributive demands. Inflation was a distinctive feature of the economy, and just before Allende took office, between 1965 and 1970, the consumer price index grew an average of 26% (Griffith-Jones, 1981, p. 117). Price instability made investments more expensive and riskier, explaining in part their low levels. Private investment operated through a reactive and restricted dynamic, responding positively only to a significant increase in demand for certain products, typically those that met the needs and wants of people who could afford them, but not the demand for essential goods. Instead, surplus revenue financed the consumption of luxury goods and the acquisition of real estate and foreign currency, which do not create any added value (Alaluf et al., 1972, p. 479). Therefore, the Chilean capitalist system appeared inefficient and, most importantly, unjust since it was structured to respond to the needs and wants of a small minority of the wealthy.

The clash between a feeble productive system, poor growth, and an organized labor force contributed to rising social unrest, as shown by the spike in strikes during the sixties (see Bitar, 1979, p. 33, 34). Indeed, Hirschman's remarks after visiting Chile during the sixties to study the inflationary problems are foretelling: "If the revolution ever comes to Chile, it will not be without warning" (Hirschman, 1965 [1963], p. 295). The atmosphere at the time –in the region, in particular– was inviting change to come, creating a “pre-revolutionary context” (Lechner, 1988).

The 1970 presidential election took place in the middle of this zeitgeist. The UP's Program – approved by the political parties in December 1969–was based on an extended understanding that Chile's underdevelopment was due to structural flaws of the capitalist system.⁴ Its core purpose was to seek "an end of the imperialist's domination, monopolies, and the landowner's oligarchy." Allende's first Minister for Economic Affairs, Pedro Vuskovic, was one of the leading designers of the Government's Economic Program and explicitly linked the Program and the economic strategy to their assessment of the Chilean economy (Griffith-Jones, 1981, p. 119):

"The principal task in formulating our economic policy is translating the basic lines of Popular Unity's Program into concrete ways of running the economy. The Program emerged from an analysis of the Chilean experience, that is, of an increasing subordination to foreign economic interests, an increasing concentration in the ownership of the means of production, and therefore, increasing

⁴ This statement was also shared with the centrist Christian Democratic Party, and it is comprised in R. Tomic's Program as a candidate in 1970 (BITAR, 1979, p. 29).

control of basic areas of the economy by powerful and monopolistic national interests, and an increasing concentration of national income in the hands of a few."

As mentioned above, Vuskovic summarizes the complex state of economic and social affairs, identifying the causes of the country's ongoing instability and under-development in its international dependence, wealth concentration, and monopolistic structure, all of which are interconnected. The monopolistic structure boosted the concentration of wealth and income in a few hands, creating inequalities "like those of a feudal society" (Seers, 1972), dividing the country into two: modern Chile, inhabited by less than one-fifth of the population, and the rest (Gil, 1967, p. 312).

Inflation was a widespread feature of the Chilean economy during the twentieth century. Two primary schools of thought on inflation "which crossed their swords in Latin America" (Pinto, 1973) emerged: the monetarist orthodoxy, which sees inflation as a matter over the quantity of money and its circulation, mainly caused by fiscal and monetary authorities; and the structuralist perspective developed by J. Noyola, O. Sunkel and A. Pinto under the ECLAC's framework of Latin American economic thought (ECLAC, 2016). The structuralist school views this phenomenon as the clearest symptom of a problem in the economic and political structure: increasing demands from the people, limited stock of essential goods and low productivity (Pinto, 1973).⁵ Instead of using monetarist solutions like restricting public expenditure and raising interest rates, the focus was on changing the structural foundations of the economic system, such as production. Similarly, the Program explicitly affirmed, "Structural changes resolve the struggle against inflation...we will control prices and stop inflation by immediately *setting up the new economic structure*" (emphasis added, Griffith-Jones, 1981, p. 123).

The Program included a 'new economy' system that was reorganized and divided into three sectors: social (state) property, privately owned, and mixed property. The Unidad Popular considered it possible to restructure the economy under the legal principles framed by the liberal Constitution of 1925. The *Chilean Road to Socialism's* uniqueness was precisely its confidence that a revolutionary change was possible under the country's legal structure and its commitment to the rule of law and political freedoms, which the Chilean society revered as significant accomplishments (Vylder, 1976, p. 36; Bitar, 1979, p. 56). Hence, during the thousand days of the socialist experience, political forces turned their struggles into legal arguments that tested the boundaries of the law and challenged the principles of legality.

2. Reimagining the economy and the control of credit through law

⁵ Interestingly, Moss' critical study points out that the majority of the "new class of Marxist technocrats" that occupied the main economic positions in Allende's government had worked for the ECLAC (MOSS, 1973, p. 52) which is known for its studies in dependency and structuralism.

In mainstream economic theories, the primary function of money is to enable market exchange. Money acts as an intermediary between production and the market without interfering with the real economy, including production and employment. In this way, money becomes a neutral veil because it is the product, not the source, of market relations. This neutrality supports the quantity theory of money, which holds that changes in the circulation of money have a proportional effect on prices but none on the real economy (Lucas, 1996). In contrast, the UP viewed the banking system as particularly important due to its power to create money through credit. Reversing the logic of money as a neutral veil, access to credit was seen as a crucial element in stimulating production and fostering development. In fact, using credit as a monetary policy tool was a common practice even before 1970. Still, as documented by Mamalakis, it became the “pivotal instrument in irreversibly changing the ownership pattern in favor of the state by providing CORFO with the financial resources required to transfer ownership to the government” (1976, p. 110).⁶

During much of the period of the Democratic Republic, money was closely tied to social relations of credit and debt, some backed by the state and others promoted by the government, comprising an endogenous process. Its political power remained hidden behind the banking system, which increased wealth concentration and hindered economic growth. The corporate governance of private banks clearly reflected the power elites controlling money and credit, as the same people who controlled large companies also sat on banking boards and governing bodies (Leiva; Gutierrez, 1971). For instance, the Matte group –one of the oldest and most significant economic groups to this day– owned *Banco Sudamericano*, and directors of *Banco de Chile*, the leading private bank, also served on boards of various other corporations (Collyer; Sinay, 1971, p. 580).

By 1970, the banking system landscape included the State Bank (*Banco del Estado*), established in 1953, twenty-one private commercial banks (eleven of which were regional), and five foreign banks. The Central Bank, founded in 1925, had a mixed capital structure, as reflected in its governing board composition. The banking system was under the supervision of the Bank Superintendence (*Superintendencia de Bancos*, hereinafter SB) (Inostroza, 1979, p. 276). Despite the number of existing banks, this ownership structure had become a specific economic problem (Inostroza, 1979, p. 279), mainly due to credit concentration. One study highlights a telling figure: in 1969, 1.3% of the debtors received around half of the banking credits (Griffith-Jones, 1981, p. 120). Another study shows that in 1971, 116 corporations —representing 0,005% of all corporations—received 84% of the banking credits, while the remaining 33.000 corporations received only 16% (Leiva; Gutierrez, 1971). The corporate governance of private banks favored their own companies through credit allocation. Then, the same private capital, both foreign and national, controlled the financial and productive sectors. Under

⁶ CORFO is an institution created in 1939 to promote industrial planning, financing, and development; as a state agency under the Ministry of Economic Affairs (Law N° 6.640, DFL N°211 1960), it had the authority to grant loans, financial assistance, and productive and commercialization activities.

such an economic landscape, banks do not act as merely as neutral intermediaries between savings and investments but as power hubs within the economic structure.

To regain control over the process of the domestic creation of money and sever the ties between financial power and monopolistic companies, the "financial system, in particular, the private banks and the insurance companies," should be included as part of the social (state) area of the economy (hereinafter 'APS'). President Allende stated when announcing the plan to the country, "Only by putting the Banks in the hands of the People—throughout the Government which represents their interests—can we accomplish our Program." (Allende, December 10th, 1970). However, it was more than just a problem that ownership change could fix. It required an institutional structure to manage monetary policy effectively and promote development. Therefore, the plan was even more ambitious, aiming not only to transfer the banking sector to the APS of the economy but also to restructure the entire banking system under a three-bank model to streamline credit allocation to specific productive sectors. The Central Bank would oversee foreign commercial exchange financing and manage credit to large state corporations. Credit to agriculture, long-term debts, and savings should be handled by the State Bank (*Banco del Estado*). Lastly, private banks that had become state-owned or controlled would merge into a National Bank of Chile (*Banco Nacional de Chile*), which would be responsible for providing short-term loans for industry and business (Von Brunn, 1972). Alfonso Inostroza, former President of the Chilean Central Bank during the Allende government, details the various reforms involved in the plan. Regarding the Central Bank, for example, it included establishing a new Monetary Group appointed by the Government with expanded powers to formulate and implement monetary policy, mainly to fund the social property sector and manage the country's foreign debt (1979).

This institutional aspect of the banking policy plan was never implemented, despite the government's success in acquiring most national and foreign private banks. Managing money and credit was crucial for short-term economic policies designed to enhance the population's purchasing power, on the assumption that such measures would not lead to inflation, as prices were considered relatively stable or cost-determined (Griffith-Jones, 1981, p.130). Instead, the goal was to stimulate an increase in productive output, and therefore, the control and assignment of credit played a significant role.⁷

The Unidad Popular government had a successful first year. Not only had the nationalization of copper and agrarian reform been accomplished, but most of the banks were under state control by the end of 1971. Allende's speech to celebrate his first anniversary addressed the Government's impressive achievements, which went far beyond increasing production to a genuine attempt at changing the whole property structure: "We control more than 90 % of the private banking system; sixteen banks, the most powerful ones such as *Español*, *Sudamericano*, *Crédito e Inversiones*, *Banco de Chile*, have become

⁷ For a critical assessment of the short-term economic policy, in particular highlighting the deficit of its "kaleckian" approach, see Griffith-Jones, 1981.

Chilean assets of the people. More than seventy of the strategic companies have been seized, taken over, or become state-owned corporations. *We are now owners.*"

To the surprise of many, the country faced radical economic and property structure changes without hampering political rights or contravening the existing legal order. The right of private property granted by the Constitution of 1925 declared that the State could deprive no one of its ownership "but by a general or special law authorizing expropriation for reasons of public utility or in the social interest, as qualified by the legislator" (Article 10 N°10). Therefore, Congress's approval was required to pursue expropriation measures. Nonetheless, the Executive only pursued the legislative path for the nationalization of copper, which Congress approved unanimously in 1971 through Law N°17.450. Besides constitutional law, the government employed other legal strategies to implement the ambitious Program and establish the APS.⁸ Administrative law paved the way for the confiscation of strategic private companies for the country's development. First, an old regulation, DL (Decree) 520 of 1932, was enforced for companies designed to produce and distribute essential goods. In addition, alternative processes of requisition or intervention allowed the State to control the management of those companies through a decree of 'resumption of operations.' Private law institutions, such as property and freedom of contract, were the vehicle for the direct acquisition of property by purchasing shares and rights directly by the State, for example, in the case of banking. Political debate and legal discussions contesting this policy flooded the public sphere –newspapers, radio, and political speeches—as expected in any democratic system.

A few weeks after Allende took office, the President announced to the nation through radio and television the plan to implement a new banking and credit policy. On December 30, 1970, he explained the two principles behind this policy reform: the democratization of credit to expand access to small and medium-sized businesses and its decentralization from the Santiago capital.⁹ Furthermore, along with the offering of a public acquisition of shares, he anticipated the government's intention to submit a bill for the nationalization of the banking system:

"The Government offers to purchase private bank shares from Monday, January 11 to January 31st. The State Bank and its agencies throughout the country will make the option according to the following conditions:

The shares will be valued *at the average price traded on the Stock Exchange during the first half of this year*. This procedure is similar to the one used for paying property taxes. It is worth noting that *the Banking Nationalization Bill will consider a lower price.*

⁸ For a detailed description of the legal instruments used, see von Brunn (1972) and Novoa (1977).

⁹ "A strong redistribution of credit will be promoted, making it easily and quickly accessible to sectors that banking institutions have so far neglected. Its decentralization will be promoted so that regions and provinces have greater resources and a higher capacity for decision-making in their own areas. It is worth noting that as of September 30th of this year, seventy percent of the credit was placed in Santiago".

...The Government's offer is for the entirety of *each shareholder's shares*, not for a part of them . . . Notwithstanding the above offer, and to safeguard the country's interests from now on, the Superintendence of Banks will appoint inspectors in each institution."

The message was clear: if you don't sell to the State within this period, we will confiscate your shares under worse conditions. The blunt seriousness of the plan meant that, in the meantime, all banks would be scrutinized by the SB.¹⁰ The opposition publicly condemned this share purchase program, framing it as a deliberate political strategy to restrict financing for right-wing political parties and the independent press. Moreover, they considered the entire buying process as a blackmailing scheme in which the threat of confiscation "was enough to panic many shareholders into selling out" (Moss, 1973, p. 64). Still, there was no way to prevent shareholders from exercising their property rights and using their freedom of contract—especially when the prices offered were convenient, and the alternative was liquidation or keeping worthless stocks (De Vylder, 1974, p. 158).

Indeed, the government's offer was favorable: after Allende's election, share values depreciated, so the average price estimate would be based on the period when prices were higher. Likewise, the terms were advantageous regarding the payment date compared to those under the mentioned nationalization bill. The purchase structure set a maximum of 10,000 *escudos* in share value to be paid in "Adjustable Savings Certificates" issued by the Central Bank to all holders, which could be cashed upon demand;¹¹ the next segment, covering amounts between 10,000 *escudos* and 50,000 *escudos*, would receive 40,000 in Adjustable Savings Certificates, which could be cashed two years after the operation. Finally, those who hold more than 50,000 *escudos* in bank shares would be paid over a seven-year period at 5% annual interest instead of the fifteen-year period specified in the bill.

The buying process involved three major executive agencies: CORFO (*Corporation for Development*),¹² the State Bank of Chile, and the Central Bank. The latter controlled the entire process, provided a specific line of credit to cover the purchase, and had a leading role in this new

¹⁰ Following the announcement, sixty state officers from the Superintendencia were appointed to supervise all bank activities (El Siglo, January 6th, 1971).

¹¹ The Adjustable Savings Certificates (*Certificados de Ahorro Reajustables*, CAR) were credit titles issued by the Central Bank of Chile, by virtue of Article 37 j) D.F.L. 247 of 1966. According to Inostroza, these instruments had "exceptionally attractive conditions for private investors" such as "a 7% interest rate, biannual payment of interest and principal readjustability of both according to the annual variation in the Consumer Price Index (CPI), exemptions from tax on their interest and readjustments and the possibility of immediately reselling the certificate to the Central Bank" (Inostroza, 1979, 288).

¹² Article 25 (Law N° 6.640, DFL N°211 1960) detailed the Council's attributions that included "To carry out, in accordance with the results referred to in the studies of the previous paragraph, production or trade trials on the scale and with the aids deemed convenient"; "To assist in the manufacture in the country or the importation of machinery and other elements for production"; "Propose and assist the adoption of measures designed to increase the consumption of national products or to obtain a greater participation of Chilean interests in industrial and commercial activities"; "To study the means of general financing of the plan for the promotion of production or of, particular financing of the different works contemplated therein and to grant loans in the manner indicated in Articles 29 and 30". The legality of these broad faculties was upheld by the General Comptroller.

banking structure (Inostroza, 1979, p. 295). Following its broad mandate to foster the country's economic development, the Central Bank at that time operated more like a development bank under a comprehensive view of monetary policy, that legally included the management of credit: "to promote the orderly and progressive development of the national economy and credit, while avoiding inflationary or depressive tendencies, to allow the best use of the country's productive resources" (Article 2).¹³

Almost two weeks after the President's announcement, the Central Bank's Board discussed the loan request from CORFO, and it was approved by the majority with two directors (Bulnes and Vinagre) voting against it, and the other two abstaining (Barahona and Yarur). Then, CORFO's Administrative Council¹⁴ issued an order to the State Bank of Chile to purchase shares from private banks willing to sell under the favorable conditions set by the government. CORFO's council ratified the decision by a majority, since five of its 21 members voted against it (representatives from the National Society of Agriculture, Industrial Development Society, Institute of Engineers of Chile, Chilean Chamber of Commerce, and the Association of Exporters) (El Mercurio, January 19, 1971). The Central Bank, as the leading institution, launched an advertising campaign to promote the purchasing of shares, which the General Comptroller validated and issued a legal opinion confirming the campaign remained within its capacities (La Tercera de La Hora, February 1971).

In terms of effectiveness, the strategy was successful. By the end of 1971, the State controlled most of the national commercial banks, held 47% of the shares in Banco de Chile (the leading private bank), and managed operations of many others under the *Superintendencia's* control (Inostroza, 1979:289). Regarding foreign banks, they independently negotiated with the government and reached separate agreements. One of the critical issues in those negotiations was maintaining credit lines, which was agreed upon by European banks but rejected in most cases by U.S. banks (Inostroza, 1979, p. 291). The agreements had some common features, such as previous audits conducted by a team organized by the SB and Central Bank, payments spread over five to seven years, a maximum interest of 6%, and

¹³ Article 2 of the second Organic Law of the Central Bank of Chile, D.F.L. 106, published on July 28, 1953. This new law gave the Bank a monopoly on banknotes and coins. In addition to establishing its autonomy and indefinite duration, this law formalized what the Bank was already doing de facto, declaring that its purpose was to promote development.

¹⁴ By 1971, the Administrative Council was composed of 30 members; 21 of them represented the public sector and nine other private interests. Pedro Vuskovic, Allende's Minister of Economy, presided, as well as other Undersecretaries (e.g., Economy, Transportation, Mining, Agriculture), the President of the Central Bank at the time, Alfonso Inostroza, and the President of the State Bank of Chile, Alban Lataste. On the other hand, the Executive Committee was composed of the following members:

Vice- President, Kurt Dreckmann L.; General Manager of Corporation for Development, Dario Pavez B.; Vice-President of the Corporation for Agrarian Reform, David Baytelman; Vice-President of the Agricultural Development Institute, Adrián Vásquez; Undersecretary of Agriculture, Eduardo Montenegro A.; Agricultural Manager of the Corporation for Development, Francisco González; President of the State Bank, Albán Lataste; Executive Director of the SAG, Juan Diemer J. Other representatives were in the process of being appointed (Farmers, Agricultural Societies and Agricultural Cooperatives).

jurisdiction governed by Chilean courts. The exception was the Bank of Brazil, a state-owned bank with extensive transactions in Chile and the State Bank. Due to the country's strategic importance to Chile's commercial interests, the government decided to grant a special statute to the Bank, making it easier to conduct business with this country (Inostroza, 1979, p. 290). Overall, the government's cost for compensation was about US\$16 million (Inostroza, 1979, p. 291).

The rapid progress achieved by the government in acquiring bank shares rendered the bill to Congress unnecessary. The chosen strategy to circumvent Congress's approval was due to political calculations, as the UP had no majority in the chambers (Inostroza, 1979, p. 286), but also for economic reasons. As a study shows, the credit available in 1971 was unprecedented, with an increase of 123.5% compared to the previous year, and the primary agent of this credit expansion was the Central Bank (Cossio, 1972, p. 295).

As De Vylder eloquently describes, the results of the first year of government were 'spectacular' (p.77): an increase in real wages, consumption levels, and other social indicators. Even with its success, the process of buying shares opened the door to legal contestation that undermined the policy's legitimacy. Highlighting this fact, the leading newspaper, *El Mercurio*, in its editorial about Allende's first year in government, critically reminded that the coalition in government acted as if most of the electorate supported it (September 4, 1971).

3. Legality under stress: The institutional struggles on the road to the coup

Under a constitutional theory of money, this institution that mobilizes value within societies is legally defined. However, this period also highlights the constraints on redesigning its governance. In fact, because money is closely linked to power, politics, and the economy, changes in monetary governance by the legal system itself may contribute to producing uncertainty in Keynesian terms and affect the intended economic outputs (Moudud, 2018). The literature of the period, particularly among left-leaning intellectuals, often overlooked the importance of legality for the Chilean socialist revolution (Lechner, 1972). A notable exception is Allende's leading legal advisor and Head of the *Consejo de Defensa del Estado*, Eduardo Novoa Monreal, who served as the government's legal expert. Like many others at the time, he believed that by winning the presidential election, the instrumental character of the law could pave the way for a socialist society and economy and, at least initially, that the Program was achievable under the existing constitutional order as it entrenched a robust presidential system that granted the Executive more powers and capabilities than Congress.¹⁵

¹⁵ "The UP is committed to the legality principle because the Chilean constitutional and legal systems are flexible...Moreover, under the Constitution, the Executive has more powers and capacities than Congress". (Novoa, 1970). Novoa was known for his harsh critique of what he considered a class-based justice system, in particular the jurisprudence of the Supreme Court, but still had confidence that law could be used to accomplish the Program.

Considering how the political system worked at that time, the size of the state apparatus, and the existing bureaucracy for planning and managing the economy, it was not unreasonable to believe in the flexibility of legality or in the idea of an "evolving revolution" that uses the law to accomplish social change (Von Brunn, 1972, p. 53). As Rodríguez Elizondo—the Head of the legal department at CORFO—wrote back in 1971, the successful banking process demonstrated "the plasticity of the Chilean legal framework" (Rodríguez Elizondo, 1971). Régis Debray, a French philosopher and journalist, observed the Chilean experience firsthand and shared a similar assessment. By 1971, he noted that the progress made "would not have been possible had not the rule of law proved to be more malleable than expected...it is a corset, of course, but an astonishingly elastic one" (Debray, 1971, p. 48).

The "*Via Chilena al Socialismo*," challenged the common belief that a *legal revolution* is an oxymoron. Yet, the radical change in the sources of money creation from 1970-1971 tested the limits of the legal corset, in Debray's words. The legal and constitutional order became the primary battleground for advancing the creation of a new economic order. A genuine lawfare was displayed during the thousand years of the Unidad Popular. History teaches us how this ended and confirms that the elasticity of the rule of law is not boundless. Tragically, in this case, the corset fell apart and was shattered by the military coup. Nevertheless, before its demise, the legal struggle spearheaded by Allende's banking plan was on every institutional front: Congress, Supreme Court, Council for the Defense of the State (*Consejo de Defensa del Estado* or *CDE*), General Comptroller's Office, Antitrust Commission, and finally, the Constitutional Court. The fact that Allende never submitted the promised bill created distrust in the opposition, particularly the Christian Democratic Party (see Arriagada, 1974, p.140).

Immediately after the President's announcement to the nation, Deputy Marino Penna Miranda of the Christian Democratic Party filed a request before the Comptroller's Office to evaluate the legality of the purchase. He argued that the legal authority for this action resided in the board, not the Vice President of CORFO, making the mandate to the State Bank of Chile for buying the shares null and the purchases void. In this case, the Comptroller's Office issued a report on February 26, 1971, indicating that the Vice President had exceeded his authority. However, the act was considered valid, as the Council approved it on January 18 of the same year. Therefore, all CORFO's actions for acquiring banking shares were deemed lawful under Chilean law.

The Chamber of Deputies appointed a special commission to investigate the transaction of bank shares involving state agencies on January 26, 1971. Waldo Ortúzar, the chief prosecutor of the Antitrust Commission, was invited to share his views on the matter. In his opinion, antitrust regulations applied not only to private institutions but also to public ones and the Antitrust Commission had jurisdiction to review the legality of these state actions. Under Article 173 of Law 13.305, actions by

CORFO were considered illegal, as only a law could legitimize a state monopoly.¹⁶ His opinion greatly influenced the special commission, which referenced it along with the constitutional impeachment filed by the right-wing National Party against the Minister of the Economy, Pedro Vuskovic, for his role in the nationalization of banks (*El Mercurio*, September 9, 1971).¹⁷ The special commission concluded that the process of purchasing bank shares violated antitrust regulations, with an 11-to-2 vote in favor (see Agüero, 2022, p. 63). Additionally, its report indicated that the issue needed to be regulated by law, identified specific actions by the Central Bank as illegal (such as the advertisement campaign already validated by the General Comptroller), and contested the price offered by the government because it doubled the current price per share (see *El Mercurio*, January 19, 1971).

Afterward, a group of deputies and other shareholders of Banco de Chile separately requested that the Antitrust Commission analyze whether the nationalization of the banking sector violates antitrust regulations (specifically those outlined in Law 13.305, Title V). In this dispute, the CDE defended the legality of the state's acquisition, arguing that the Antitrust Commission lacked jurisdiction to review the government's actions, a position also upheld by the Antitrust Commission. The legal dispute reached the Supreme Court, which reversed the decision by overturning its own jurisprudence, holding that the executive branch's actions could not be subject to judicial review for violating the principle of separation of powers, and ordered the subject to be thoroughly reviewed and decided by the Antitrust Commission (Agüero, 2022 p. 64).

However, the main dispute arose between the Executive and Legislative, the two political branches. Since the government had failed to submit a bill to Congress, lawmakers from the Christian Democracy Party, Juan Hamilton and Renán Fuentealba, proposed a constitutional reform initiative to establish the promised three economic sectors and regulate the creation of the social (state) sector. This bill explicitly supported the government's goal to incorporate industries and services of strategic importance or with significant concentrations of power into state ownership or management. Nonetheless, it also expressed disapproval regarding the Unidad Popular's legal strategies. They believed the process should involve Congress passing a law that would "allow the people—through their representatives in the Chamber of Deputies and the Senate, or, in the event of a disagreement between the Parliament and the Executive, directly through a plebiscite—to resolve this matter." The bill included amendments to Article 10, No. 10, which regulates property as a constitutional right, and Article 44 of the Constitution, which identifies the issues that should be a matter of law. It defined the economic sectors and explicitly listed which strategic activities would fall under state control, excluding banks. Furthermore, it stipulated that a law must authorize the transfer of any company from the private to the social sector, outlined provisions for workers' participation in corporate governance, repealed D.L. 520

¹⁶ "Only by law may the monopoly of certain industrial or commercial activities be reserved for fiscal institutions, semi-fiscal entities, publicly administered autonomous organizations, or municipal bodies".

¹⁷ Around twenty impeachments were filed against ministers and public officers of the UP Government.

of 1932, and included a transitional provision that declared null and void all acts and contracts executed by the state for the acquiring rights and shares in private companies from the date when the bill was submitted, that is, October 14, 1971. The proposed legislation placed the government in a difficult position; without a majority in Congress, if approved, the choice was untenable: either abandon the Program or act outside the law.¹⁸

In the lead-up to the Full Congress's approval of the bill on February 19, 1972, several lawmakers asserted a strategy aimed at forcing the government to hold a referendum in order to advance its Program. The constitutional framework granted the President the authority to oppose a bill or constitutional reform approved by Congress. In the case of a law, he could veto the entire initiative or part of it, or suggest additional provisions for the bill through additive vetoes. Under these circumstances, Congress would need a two-thirds majority to override the presidential veto. Despite this, the opposition argued that the two-thirds quorum did not apply to cases of constitutional reform, claiming that a simple majority could surpass the veto. Therefore, the only remaining way to resolve this dispute was through a referendum.

Just two days after Congress ratified the bill by majority vote,¹⁹ President Allende publicly asserted that he would exercise his presidential powers to submit both suppressive and additive vetoes. The President of the Christian Democratic Party, and one of the two drafters of the bill, Mr. Renán Fuentealba, expressed his surprise at the President's announcement. Aligning with the theory anticipated by the opposition, in his view there were no other options but to approve the bill as it was or to call for a plebiscite: "on this matter of constitutional reform, it is only applicable the Congress' majority or the plebiscite... the Constitution grants no jurisdiction to the Constitutional Court on this matter" (El Mercurio, February 25, 1972).

Despite Fuentealba's opinion, the President submitted the vetoes to Congress on April 6, 1972. The government's remarks on three specific clauses of the bill are of critical importance. Firstly, they proposed adding a list detailing the corporations the Executive intended to nationalize. Secondly, the banking sector, which was excluded from the bill, was clearly included within the social area of the economy. Lastly, the government issued a veto to eliminate the transitory article that invalidated the State's acquisition of banking shares. In Allende's opinion, without the veto, the bill would effectively undermine the Executive's legal authority. Consequently, he asserted that "the Government cannot

¹⁸ As a matter of fact, five days after Hamilton-Fuentealba submitted their proposal, the Executive also submitted a legal reform on the same matter (but not a constitutional reform proposal) in which declared that corporations valued in less than 14 million escudos would remain in the private area of the economy.

¹⁹ The reform to the property right (Article 10 N°10) was approved by the 136 attending members, and the one that declared the nullity of state actions after October 14th, 1971, was approved by 103 votes and 33 votes against it. El Mercurio, February 20th, 1972.

accept that the legality of its actions is called into question, and that those actions are to be retroactively annulled."

The clash of powers was unavoidable. Not surprisingly, Congress rejected the Executive's veto by a majority and sent the bill for enactment. For the Executive, Parliament could only override the President's vetoes to maintain its original proposal with a two-thirds majority vote of its members. Otherwise, President Allende warned that he would "once again petition the Constitutional Court to ensure that Congress properly applies the provisions outlined in our Fundamental Charter." Opposition lawmakers considered this to be an assault on the very essence of the constitutional system. In their view, the President had only two choices: either to approve the bill as ratified by the full Congress or to call for a referendum, an additional mechanism for resolving interpretive conflicts among political branches incorporated by the 1970 constitutional reform. Senator Hamilton, for example, accused the government of adopting a stance that was "[...] twice unconstitutional because it appeals to an incompetent Tribunal and proceeds from a partial enactment of the constitutional reform bill; it is undemocratic, depriving the people, the bearers of power and the solution, of the opportunity to express themselves regarding the divergences between the Executive and the Congress, effectively replacing the will of millions of Chileans with that of a Court that represents the President of the Republic."

The last legal venue to hear the dispute was the recently inaugurated Constitutional Court. President Allende filed a claim before the Constitutional Court on May 12, 1973, just a few months before the coup d'état. He argued that Congress had violated the Constitution by submitting the approved constitutional reform bill to the Executive despite requiring the concurrence of both Chambers and two-thirds of the Senators' or Deputies' votes to override the President's veto (Articles 108 and 54, paragraph 2). In turn, Congress questioned the Constitutional Court's jurisdiction to address the matter, arguing that the Court could only review issues related to the lawmaking process, not constitutional reforms. In their opinion, the Constitution differs from ordinary law because "[the Constitution] is bounded by natural law and by the principles of legitimacy enshrined and accepted by civilization." Furthermore, they declared that if the Constitutional Court were to consider itself competent to adjudicate on the matter, according to Article 4 of the Constitution, "its ruling is null and void, and no one is legally obligated to comply with it." This open and public dissent from a group of lawmakers against the authority of the Constitutional Court marked an unprecedented and alarming event for a nation that takes pride in its commitment to legality and the rule of law. However, in retrospect, it could only signify the profound institutional crisis the country was experiencing.

By the end of May 1973, the Constitutional Court declared itself incompetent to decide the conflict. The majority opinion, issued on May 31st of that year, was cast by the ministers appointed by the Supreme Court, Retamal and Bórquez, along with Silva Cimma, who included a concurring opinion. Minister Jacobo Schaulson, appointed by the government, advocated declaring the request inadmissible rather than incompetent to keep open the possibility of dialogue among the political branches and a

future adjudication by the Court. Finally, Minister Veloso, also appointed by the government, delivered the dissenting vote that defended the Constitutional Court's jurisdiction to adjudicate the matter. The Court's 'decision not to decide' was the prelude to the September 1973 institutional breakdown.

Conclusion

The Chilean case of the early 1970s and its attempt to change the existing monetary legal system challenge the current understanding of what money is and how it works. Unlike narratives that portray money as a “thing” external from market relations, the Chilean experience is a reminder of the contested nature of money, the power behind credit allocation, and its constitutive role in social orders.

The Unidad Popular's economic policymaking is pivotal to grasping the bonds between the banking system, law, and power. As the constitutional theory of money suggests, shifts in the ability to create money influence its mode of governance and the economies that emerge from it. Much as the market is better understood as a socially embedded institution rather than an autonomous or natural order, money too is a product of a distinctive mode of governance that, in the words of Desan, “can be structured in ways democratic or dictatorial. For good or ill, it is designed by those using it. Likewise, it is susceptible to redesign that changes the way it circulates and the exchange it enables” (2016). In this case, the democratization of credit and its decentralization from Santiago, the capital city, were necessary to create a new economy that would tackle the country's underdevelopment and inflationary problems. The legal disputes and contestation sparked by this restructuring of credit and banking are untenable under the idea that monetary policy is neutral or that credit allocation is a purely technical matter with no winners or losers.

In his book about the political theory of money, Eich argues that we are currently in a “monetary interregnum,” a period where the model of a depoliticized monetary authority is dead, yet an alternative has not emerged (Eich, 2022). Drawing from the constitutional theory of money, this article explores a historical example of transformation in the sources of money creation that shows promise for recovering a different collective project through which value is assigned and produced. It also discusses the challenges faced by the Chilean experience in attempting to establish a socialist economy. In this sense, the roots of a constitutional theory of money can be traced to the writings of Nozick and his legal analysis. Just a year after Allende took office, he published an article entitled “The Difficult Path of Legality,” in which he highlighted the complexities of the legal order and the open hostilities faced by the government. He denounced the “opposition's strategy to entirely restrict the legal avenues available to President Allende, rendering him completely impotent.” The latter was most evident in the public acquisition of the banking system, which resulted in a series of legal disputes at various levels. Therefore, this serves as a cautionary tale about the stakes involved in this endeavor, raising important questions. For instance, the legal strategy employed by the government succeeded in transferring

ownership from private to public hands. In doing so, the government reclaimed its ability to mobilize resources via credit, thus modifying the economic structure. The figures are revealing: data from the Central Bank's operations along with the Treasury show that by 1970, these accounted for 55.1% of new money issuance, rising to 92.1% by 1973. Nonetheless, the path chosen opened the gates to the lawfare before the coup, not only making the legal nature of monetary governance visible, but also producing uncertainty and fear.

On the other hand, the transfer of ownership was not enough to resolve the political dispute over credit. In the Chilean case, the need for a regulatory framework to reorganize and coordinate the credit system in line with the different areas of production may have hindered its long-term goals from the start. Alberto Baltra—an economist, former Minister of Economy, and member of the Radical Party—highlights the mismanagement of the newly nationalized banks, which continued to operate under the same private company logic (Baltra, 1974 p. 54). Finally, it raises questions about the legal nature of monetary arrangements and of the role of law at critical junctures. Often, the politics involved in the creation of a new economy were disguised as legal disputes over the meaning of certain core institutions: the validity of the civil mandate in the case of CORFO's purchasing procedure, what constitutes a monopoly, the prerogatives of governmental action in the case of the Antitrust Commission, the rules that guide the lawmaking process in Congress, and the scope of the Constitutional Court's jurisdiction. The legality of the government's actions was tested at each turn, on every front. The fight over legality was especially intense regarding credit because, rather than being an invisible veil that allows real economic activity, it is a fundamental part of the capitalist infrastructure defined by law. Law is then the chain that either highlights or conceals the relation between money and power.

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