

# THE CHILEAN MILITARY: LEGALISM UNDERMINED, MANIPULATED, AND RESTORED

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## Resumen

Este artículo sostiene que, en los últimos treinta años, la inclinación por el constitucionalismo, el legalismo y el profesionalismo que caracterizaron a las Fuerzas Armadas de Chile fue sucesivamente erosionado, manipulado y restaurado. Durante el gobierno de Allende (1970-73) estos factores fueron minados por la interrupción del consenso político y económico y por un aumento de la politización de las fuerzas armadas. Entre 1973 y 1990 el legalismo de los militares fue manipulado por el general Pinochet para mantenerse en el poder. Desde 1990 ha habido una vuelta lenta al profesionalismo que las caracterizaba en un pasado, influida especialmente por el encarcelamiento en 1995 del General Contreras en una cárcel civil, el retiro de la escena política del General Pinochet en 1998 debido a su detención en Gran Bretaña y por el "Nunca Más" del General Cheyre en el 2003.

## Abstract

The article argues that, during the last 30 years, the commitment of the Chilean armed forces during the 1960's to constitutionalism, legalism, and professionalism has been successively undermined, manipulated and restored. During the Allende government (1970-73) it was undermined by the breakdown of political and economic consensus and the increasing politicization of the armed forces. Between 1973 and 1990 the legalism of the military was manipulated by General Pinochet in order to establish and maintain himself in power. Since 1990 there has been a slow return to the earlier professionalism of the military, marked in particular by the 1995 imprisonment of General Contreras in a civilian jail, the removal from the political scene of General Pinochet in 1998 because of his detention in Great Britain, and the "Never Again" speech of General Cheyre in 2003.

PALABRAS CLAVE • Chile • Militares • Legalismo • Pinochet • Constitucionalismo • Profesionalismo

My first visit to Chile took place forty years ago in July 1963. I had already visited Brazil from which I came away predicting that there would be either a Marxist-led revolution or a military coup within 6 months- a prediction that established my reputation at Princeton as a political prophet when the 1964 military coup took place in April 1964. I came to Chile from Argentina where, when I asked about Argentine political parties, I received a lengthy answer on the comparative strength of the *Azul* and *Rojo* groups in the Argentine army. It was thus a relief for someone who had done a Master's thesis on French politics to find in Chile a functioning multiparty democracy in which the role of the armed forces was never mentioned. During subsequent visits to Chile over the next several years, including a period of six months teaching at the Catholic University in 1967, at a time when military coups were taking place in many other Latin American countries, my Chilean interlocutors rarely mentioned the armed forces and when they did, they insisted that Chile was

different from the rest of Latin America because its armed forces were legalistic, constitutionalist, and professional. We knew of course, that the military had intervened in politics in the 1920's, and early 1930's, but the only works in English on the Chilean military (North, 1966; Hanson, 1968) confirmed their adherence to the clause in the 1925 constitution which described the military as apolitical (*no deliberantes*).

This began to change in 1969 with the so-called *Tacnazo*, the brief revolt of the Tacna armored regiment, led by General Roberto Viaux. In the following year, Alain Joxe's book on the armed forces which analyzed the Chilean military as an important pressure group reminded students of politics that the military were never completely removed from politics (Joxe, 1970). In the Allende years that followed the military became more and more politicized, and finally when they seized power on September 11, 1973, it seemed that the argument for Chilean exceptionalism had been based on an illusion.

Even after the return to civilian rule in 1990, the reluctance of the military to accept civilian authority seemed to demonstrate that the Chilean armed forces were no more constitutionalist than those in the rest of Latin America. Is Brian Loveman correct in including Chile among the Latin American countries in which the armed forces are a "fourth branch of government" (Loveman, 1993: 398)? Is it still necessary when discussing Chile, to put adjectives like "protected" before- or quotation marks around, - the word, democracy, as Loveman does in his most recent book (Loveman, 1999: 206 and 215)? Thirty years after the 1973 coup, have the armed forces still not returned to their earlier tradition of professionalism?

This article argues that in the 1960s the Chilean military shared with country's political culture a strong commitment to legalism, professionalism, and constitutionalism. After describing the ways in which that commitment was undermined during the Popular Unity period by the breakdown of the political and economic consensus, and the increasing politicization of the military, it argues that the armed forces carried out the 1973 coup in the name of constitutionalism after the Supreme Court and Congress had declared that the Allende government had violated the constitution. The next section of the article describes the methods used by General Pinochet to manipulate legal and constitutional norms to establish and maintain himself in power, until, as a result of the provisions of the 1980 constitution adopted under his direction, he was defeated in the 1988 plebiscite. Finally, it will examine the period since 1990 in order to demonstrate that the subordination of the military - particular the army - to legal and constitutional norms was a gradual process with two notable turning points, the imprisonment of General Contreras in October 1995 and the detention of General Pinochet in October 1998. The paper will conclude that, although the issue of human rights violations remains as a possible source of military-civilian tension, the armed forces have now returned to the tradition of legalism and constitutionalism which characterized the military culture of Chile before 1970.

## LEGALISM UNDERMINED

Speculation about a possible military intervention began early in 1970 when a three-way split among the candidates for the presidency suggested the possibility that Salvador Allende might receive the largest vote and that in accordance with tradition the Congress might choose him as president in the constitutionally mandated runoff between the two leading candidates. Early in the

1970 presidential campaign, the army commander-in-chief, General Rene Schneider, made a public statement that the army would respect the results as long as the constitution was observed. My own pre-election interviews with military men at the time of the 1970 presidential election confirmed that they believed that as long as Allende observed the constitution the armed forces would not take action against him.

During the Allende period, the military became more and more involved in politics. Despite the fact that General Carlos Prats, Schneider's successor after his murder, continued to insist on military neutrality, the armed forces, like the rest of society, became increasingly politicized and polarized, losing the "hermetic" character that Chileans had described to me earlier in answer to questions about their role. Allende went to great lengths not to alienate the military, cultivating the friendship of General Prats, giving the army special responsibilities in the frontier areas, and involving them directly in his government in late 1972- an action which had the ironic result of further politicizing the military. The generals only began to conspire actively, however, in 1973 when increasing violence, runaway inflation, and I would also argue, an educational reform proposal that threatened to indoctrinate their children in Marxism had undermined what Alain Rouquie has called "the strange and almost miraculous magic involved" (Rouquie, 1986: 120) in the submission of armed soldiers to unarmed civilians. Even then it took declarations by the Supreme Court in June, and by the Congress in August that Allende was violating the constitution to provide a justification for the coup that would satisfy their legalistic mindset. In their minds at least, the constitutional tradition was being defended rather than undermined.

Social scientists have produced many explanations for the wave of military coups that swept over Latin America between 1964 and 1976. Ten years ago, I reviewed and criticized explanations, such as modernization theory, *dependencia*, and Guillermo O' Donnell's bureaucratic authoritarianism as simplistic and reductionist (Sigmund, 1993). In the case of Chile there were more obvious explanations. The breakdown of the Chilean democracy was attributable to a politically and ideologically driven crisis of legitimacy- because of which the left, the right, and the military no longer accepted the system of *convivencia* that had maintained Chilean constitutionalism and legalism for so much of its history. The military leaders who saw their monopoly of the instruments of coercion challenged and national security threatened by economic collapse violated the constitution in the name of constitutionality -but only when they were sure of civilian support and a quasi-legal justification (they also intervened because of their fear, intensified by the educational reforms, that the Popular Unity government intended to establish a Marxist totalitarian state).

## LEGALISM MANIPULATED

The puzzle for observers at the time was why the junta did not do what observers like myself, convinced of their legalism and professionalism, had predicted - outlaw the Marxist parties and hold new elections in which it was very likely that Eduardo Frei Montalva, once more eligible to run, would win. One explanation would be the intensity of the polarization that had convulsed Chile that made it impossible for the military to recognize the left as legitimate participants in democratic politics. Another would be the general revulsion of the military leaders against the political elite- especially the Christian Democrats- which they believed was responsible for the breakdown of

democracy. General Leigh and others spoke about the need to eradicate “the cancer” of Marxism that presumably would require a long-term process of purification of the country. Yet it is an indication of legalism and constitutionalism that a committee was appointed shortly after the coup to write a new constitution, and a few years later, in 1978, General Gustavo Leigh was removed as head of the Air Force by Augusto Pinochet because he had criticized the lack of progress toward constitutionalism and civilian government.

By that time Pinochet had successfully manipulated the Chilean system to establish a façade of legality, which he used to centralize power in his hands. The ministries were divided among the armed services and the junta named Augusto Pinochet as its president, with the initial understanding that the presidency would rotate among the service. Despite its declared intention to restore the “institutionality” which had broken down, the junta suspended the civilian courts, began to legislate through numbered decree-laws, and declared “a state of siege in time of war” as provided in the 1925 constitution, ignoring the constitutional provision that the state of siege could only be declared by Congress. The courts upheld the actions of the junta and when Pinochet visited the Supreme Court on September 25<sup>th</sup>, he reasserted his intention to restore the constitutionalism and legalism which had been violated by the Allende government (Sigmund, 1978: 250-251). Over the next several years the committee preparing the new constitution moved very slowly producing only four constitutional clauses by 1976.

In June 1974 the junta named Pinochet as Supreme Head of the Nation, thus permanently ruling out rotation of the presidency, and it pronounced itself the “constituent power” so that it could amend the constitution by decree while reiterating its respect for the independence of the judiciary “in the exercise of the powers granted by the law and constitution” (Sigmund, 1978: 272). While legislative decisions were taken by unanimity in the junta, Pinochet succeeded in centralizing power in his hands, while maintaining the fiction of legality. When he removed General Leigh, for example, he cited a legal provision providing for retirement of commanders because of inability to exercise their functions. He also reached far down in the Air Force hierarchy of generals to appoint a sympathetic officer as his successor and followed this with a plebiscite to maintain a façade of popular approval.

In Argentina after the 1976 coup the armed forces became feudalized with the branches, competing with one another, and creating separate agencies of intelligence and repression. In Chile, however, the DINA, the National Intelligence Directorate, under Manuel Contreras was directly under Pinochet’s control, and in 1978 when Contreras appeared to have established a degree of independence Pinochet removed him and reorganized the intelligence service. Pinochet also maintained the legal forms of the Promotion Committees that made recommendations on promotion and retirement of officers, but was able to control their decisions from behind the scenes (his methods are described in Arriagada, 1986). Within five years, none of the generals involved in the coup was still in active service and all the rival services were subordinate to his authority. The military gradually turned over the ministries to civilians, although there was usually a vice-minister from the armed services. A distinction was made between those military men working in government and those on active duty in the service, and the two roles were kept separate. Pinochet continued to praise the armed forces as “non-deliberating” in accordance with the Chilean constitutional tradition, while manipulating the military hierarchy to his own advantage.

The most obvious example of the manipulation of the legalist tradition was the writing and adoption of the 1980 constitution. In 1978, Pinochet announced at Chacarillas that a constitution would be adopted in 1980. A draft constitution proposed two years later by the Constitutional Committee was completely rewritten by Pinochet appointees to assure his continuation in power. He had hoped that it would provide for him to continue as president for 16 years but the constitution's authors opted for two 8-year terms, subject to a plebiscite in 1988 (Cavallo, 1997; Barros, 2002). Again a façade of legality was maintained with a popular vote to ratify the constitution, and even a single opposition rally. The constitution was approved by a 2 to 1 majority, a vote that also approved the election of Pinochet as “constitutional” president of Chile.

The constitution provided a continuing legal and constitutional foundation for Pinochet's power. The executive was separated from the junta-as-legislature so that another army general replaced Pinochet on the junta as the army representative. Pinochet and the other current service commanders were exempted for the compulsory four-year retirement rules of the new constitution, and its transitional clauses provided that if the 1988 plebiscite was defeated, he would remain as commander of the army until 1998. In addition, the constitution established a National Security Council with a military majority which could meet at the request of any of its members to consider matters of national security and was authorized to direct public statements to other parts of the government. The constitution also established nine appointed senators, four of them from the military services, who were intended to guarantee a conservative majority in the senate.

The constitutional state of emergency was lifted in 1983, and the first public protests against the regime took place, but it was restored in March 1984 when the protests seemed to threaten Pinochet's power, and a more drastic state of siege was declared in November. When he was urged by Chileans and foreigners to hold earlier elections, Pinochet was able to appeal to the timetable prescribed by the constitution. The army was used to restore order in some of the demonstrations but the police (*Carabineros*) were the principal agents of repression- and even of assassination.

The 1980 constitution that had kept Pinochet in power with the full support of the armed forces also provided that he must submit his continuation in power to a popular vote in 1988. The court established by the constitution ruled that access to the media must be offered to the opposition before the plebiscite, and the *Concertación* for the No, the alliance of opposition parties, effectively and successfully used television “spots” to encourage a negative vote on the extension of Pinochet's term. When it became clear that he would be defeated, the other chiefs of the armed forces refused to allow Pinochet to cancel the vote, insisting on the observation of the constitutional provisions.

The transitional provisions of the constitution gave Pinochet and his supporters ample time to produce legislation to substantially limit the power of any succeeding civilian government. Negotiations between Pinochet's supporters and the opposition reduced the number of military representatives on the National Security Council to half its membership, and added seats to the senate thus diluting the voting power of the appointed senators, but the military was guaranteed a minimum budget, and an election law that exaggerated the voting power of the right was adopted.

## LEGALISM RESTORED

The process of transition to civilian rule was slow and gradual. The constitution itself contained the so-called “authoritarian enclaves”, also called *leyes de amarre*, which limited democratic and civilian rule. Pinochet remained as commander of the army, and army intelligence took over the functions of the National Intelligence Center, the intelligence agency of the military government. The courts accepted an amnesty, declared by Pinochet in 1978 for the political crimes, “committed by both sides” before that date, although there was debate as to whether there could be judicial investigations of cases covered by the amnesty. Because of the appointed senators, the government of Patricio Aylwin did not have a majority in the senate, despite its victory in the popular vote. It also seemed that the powers of the National Security Council might provide a base for the opposition to undermine the government. And military budget provisions, including a secret law (*ley reservada*) providing 10% of the foreign exchange earned by copper exports for military purchases limited the government’s ability to use copper revenues to finance electorally more rewarding social legislation.

The most important obstacle to the reestablishment of constitutionalism and civilian rule was the issue of legal prosecution of human rights violations during the dictatorship. A second was Pinochet’s ability to use his control of the army to resist any threat to his power.

The first example of Pinochet taking such action occurred in December 1990 with the revelation of a financial scandal involving commissions to General Pinochet’s son relating to an army insurance scheme - the so-called “Pinocheques.” As the Congress began to investigate the case there were rumors that Pinochet was ready to offer his resignation to President Patricio Aylwin. Instead Pinochet issued a call to quarters (*ejercicio de enlace*) of the army which some saw as a prelude to a military rebellion. Behind the scenes negotiations, following congressional statements defending democracy, and a public expression of support of Pinochet by the army, produced an agreement on the treatment of the son. The fact that the negotiations were not carried out through regular institutional channels has been seen by Gregory Weeks as an indication of the inability of the government to establish institutional control over the military (Weeks, 2003: 72), but such negotiations are common in politics in Chile and elsewhere. While there was an implicit threat to legality and constitutionalism, the problem was resolved through the political process, at a time when in neighboring Argentina, there were open rebellions against civilian rule.

The human rights issue emerged in March 1991 with the report of the Rettig Commission on the 2,279 dead and disappeared during the military government. President Aylwin convened the National Security Council, and the military branches responded publicly criticizing the report for not recognizing that Chile had been involved in a war against subversion. The report, written by respected public figures, some of them favorable to the Pinochet government, forced those who had been in denial to recognize the atrocities. It also highlighted weaknesses in the judicial system that led to proposals for judicial reform, many of which were adopted in later years. There were calls for the repeal of the 1978 amnesty but the appointed senators allied with the Right in the Senate made this impossible. Aylwin’s proposals to amend the constitution eliminating the appointed senators, creating a civilian majority in the National Security Council, and giving the president power to remove armed forces commanders before the end of their four year terms, also failed because of the opposition majority in the Senate.

President Aylwin, rather than the military leaders, had called the National Security Council into session to deal with the Rettig report, but in 1992 the military representatives called it into session to deal with a formal accusation by the Congress against three Supreme Court members. The Council's vote on whether to send a formal message on the subject was evenly split between the civilian and the military members and no message was sent. This was the last and only time that the military leaders exercised their power to call the Council into session (Weeks, 2003: 83).

In 1993, the check scandal involving Pinochet's son reemerged when the possibility of military men being called to testify led Pinochet to convene the Council of Generals to discuss the issue of judicial investigations of the military. Pinochet assembled a force of uniformed black beret (*boinas negras*) Special Forces in front of the Defense Ministry and the army was put on a state of alert. Again private meetings resulted in an agreement on the treatment of human rights cases, including provisions that officers would testify in private, and that a special prison would be built for military men convicted for human rights crimes.

Weeks' discussion of the confrontation argues that the special concessions, made to the military at that time "did not augur well for the future of civilian supremacy" (Weeks, 2003: 90). Aylwin tried unsuccessfully to work out an overall legislative solution to the human rights issue, and announced, unconvincingly, that the transition to civilian rule had been completed. However the real turning point in civilian military relations took place early in the administration of Aylwin's successor, Eduardo Frei Ruiz-Tagle, the prosecution and sentencing of Manuel Contreras, the former head of Pinochet's intelligence agency, for his involvement in the murder of Orlando Letelier, Allende's Defense Minister, in September 1976.

The prosecution of those responsible for the murder of Orlando Letelier in Washington in 1976 had been a prerequisite for improved relations with the United States and the case had been in the courts since 1991. When Contreras' sentence of seven years imprisonment was upheld by the Supreme Court in May 1995, there was a prolonged civilian-military crisis over his going to prison. Contreras had support from many military men and he used various ruses, including ill health, to avoid prison but in October he entered the special prison that had been built for the military. Pinochet and the military argued that this was a special case and not a precedent for future prosecutions but for the first time the civilian judicial system had prevailed over military resistance. Weeks again points out that there was a quid pro quo involving a pay raise and an end to the check scandal (Weeks, 2003: 107), but two military men, Contreras and his assistant, Pedro Espinoza, had been sentenced by civilian courts and were serving sentences in a civilian prison. Besides the concessions to the military, other factors that worked for the triumph of legality were the opposition of the Organization of American States and the United States to an unconstitutional change of government, and the improved relationship between Frei's Minister of Defense and the Armed Forces (Fuentes, 1999).

The most important advance in restoring respect for constitutionalism, legality, and civilian control of the military was the constitutionally-mandated retirement in March 1998, of Pinochet as commander in chief, followed by his detention in October by Scotland Yard in London. Frei appointed as his successor Ricardo Izurieta, the general with the lowest seniority among the five possible candidates prescribed by the constitution, Izurieta's only involvement with the Pinochet regime had been a brief period as undersecretary of war in 1989 during the transition period. His appointment

also initiated the application to the army commander of the four-year limit prescribed by the constitution.

Pinochet took his constitutionally-authorized lifetime seat in the Senate in March 1998, but not before he was accused by a group of Christian Democrats and Socialists of violating the constitution, citing in particular the 1991 and 1993 threatened revolts. After intense lobbying by the government, the accusation was defeated, but the resistance to his presence in the Senate persuaded him not to participate actively in its work. In addition, the precedent had been established that Pinochet was subject to constitutional procedures.

In October 1998 in response to an extradition request by a Spanish court for human rights violations Scotland Yard arrested Pinochet. His detention lasted 17 months and during that period important changes took place in the politics of Chile. The courts began to reinterpret the 1978 amnesty so that it would not apply to those whose bodies had not been found, arguing that they were victims of a continuing crime of “aggravated kidnapping.” In the December 1999 presidential elections, the entire issue was removed from political debate as a result of the agreement of both left and right that Pinochet should be returned to Chile and his fate decided by Chilean courts. Between August 1999 and June 2000 a dialogue on human rights, sponsored by the Minister of Defense and including both military representative and human rights advocates produced an agreement by the military to make special efforts to find the remains of the disappeared. Most important, when Pinochet returned in March 2000 after being released by the British government on humanitarian grounds, he was immediately subject to judicial procedures. In August 2000, the Supreme Court approved the lifting of his senatorial immunity. In March 2001, the charges against Pinochet were narrowed to the accusation of knowingly failing to prosecute military crimes, and in July 2001 his case was “temporarily” postponed because, the court held, General’s mental condition did not make it possible for him to defend himself in a trial. In July 2002, the Supreme Court ruled that Pinochet’s mental condition was “irreversible” (Weeks, 2003: 159).

In the meantime, Ricardo Lagos, a member of the Socialist Party who had participated in the Allende government, had taken office as president immediately following the return of Pinochet. With Pinochet no longer an obstacle, relations between the government and the army continued to improve, and by 2002 Lagos was able to appoint as Minister of Defense Michelle Bachelet, the daughter of an Air Force General who had died while imprisoned for opposition to the 1973 coup. When General Izurieta’s term was completed, Lagos appointed General Juan Cheyre as commander. Cheyre had not served in the Pinochet government and after taking office he announced his intention to assure that the army would remain “essentially obedient, no deliberative, and outside party politics [*no partidista*]” (Weeks, 2003: 151). In June 2003, Cheyre made a landmark speech acknowledging the violations of human rights by the military and pledging that they would never again (*nunca más*) take place.

Weeks concludes his study declaring that although there is no reason to expect large-scale military intervention in the future, Chile has only partially achieved civilian control over the military, and that if the military’s “salient interests” (which he does not define) are threatened “intervention will be considered not just necessary but patriotic” (Weeks, 2002: 160). He does not believe that the military will agree to the abolition of their appointed senators, and he quotes a statement by a conservative writer that the mission of the armed services to defend the historic constitution “not



simply the written text” cannot be left to political parties and politicians, concluding that “by its nature this mission of the Armed Forces is both prior to and above the Law” (Weeks, 2003: 161, quoting an article by Bernardino Bravo Lira in *Estudios Públicos*). Yet since the book was completed, there has been renewed discussion of abolition of the appointed senators, the Cheyre speech has been given, and the thirtieth anniversary of the 1973 coup has been marked by media explosions and criticism of the 1973 coup which would have been unthinkable a few years earlier.

There is no doubt that the armed forces in Chile are still able to exert a variety of pressures on civilian policymakers. But this is true of many pressure groups. What I hope has been demonstrated by this paper is that the Chilean armed forces-especially the army- can no longer exert the threat of a rebellion or coup to extract concessions from the civilian government- and that to a considerable degree they have returned to their earlier tradition of professionalism, legalism, and constitutionalism. And there is considerable evidence that in this respect Chile is no longer an exceptional case in Latin America.

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