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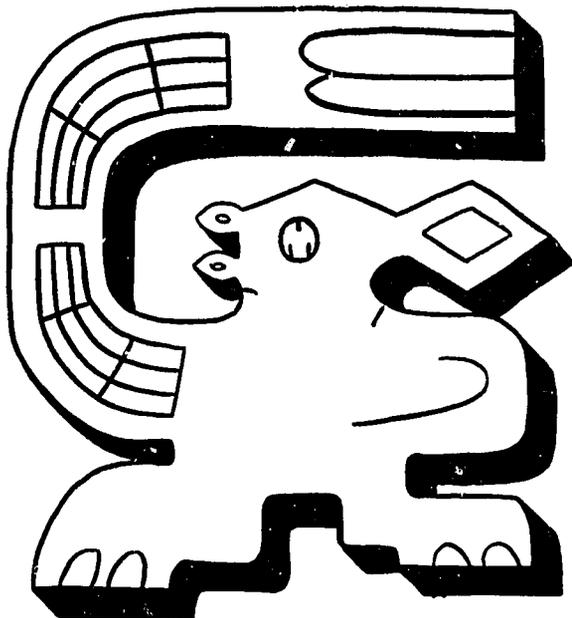
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Expropriation in Chile Under The Frei Agrarian Reform

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INTRODUCTION

According to a lengthy and detailed message presented to the Chilean Congress by President Eduardo Frei in 1965 in support of a new agrarian reform bill, it had become "urgent and imperative" to enact and implement an "authentic and effective agrarian reform" in order to terminate a system of tenure over land and water resources which was "retarding the general economic, social and political development of the country."¹ This land tenure structure was characterized by the concentration of land and water resources in a few hands, with the bulk of the rural population having little if any land at its disposal; the monopolization of credit and other services by the large landowners; an inadequate and insufficient use of land resources; and a paternalistic labor system which abused the peasant and prevented the development of a vigorous rural middle class. It was directly responsible for the stagnation of agriculture and cattle production, as well as other social and economic problems which had long been present in the rural areas of Chile.

Extensive data were cited in the message to support this picture.² Among the more relevant, it was pointed out that out of a total of 345,000 rural families involved in agricultural work, 185,000 owned no land whatsoever. The remaining 160,000 families owned—many without a secure title—150,959 farm units of which 117,047 (77.5%) represented only 4.9% of the agricultural land in Chile. At the other extreme, 3,250 units, or 2.2% of the total, each over 1,000 hectares, represented 68.8% of the total of agricultural land.³

Over the years, this structure resulted in inefficiency and low productivity in the agricultural sector, which in turn placed great stresses on the Chilean economy and society. Thus, for the period 1939-1965, agricultural production was increasing at a rate of 2% per annum,

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1. Eduardo Frei and Hugo Trivelli, "Mensaje del Ejecutivo al Congreso Proponiendo la Aprobación del Proyecto de Ley de Reforma Agraria," in Antonio Vodanovic, *Ley de Reforma Agraria* (1967), p. 9. Translations by Philip Hazelton.

2. Most of these data were derived from: Interamerican Committee for Agricultural Development (ICAD), *Chile: Tenencia de la Tierra y Desarrollo Socio-Economico del Sector Agrícola* (1966), 405 pp.

3. Eduardo Frei, *supra* note 1 at 7-10.

while population grew at an annual rate of 2.26%.⁴ Agricultural imports, as a consequence, increased steadily during this period, constituting a serious drain on Chile's foreign exchange earnings. While in 1939 there was a favorable balance in the value of agricultural exports and imports—24 million dollars vs. 11 million dollars—by 1964 Chile was exporting only 39 million dollars of agricultural products and agricultural imports had ballooned to 159 million dollars. Furthermore, 122 million dollars of these imports represented products which can be produced in Chile, such as wheat, milk, butter, sugar and others. This low level of efficiency is illustrated by the fact that while in 1964 slightly less than 30% of the active population in Chile was employed in agriculture, this sector contributed only 8-10% of the annual gross national income produced in the country.⁵

In addition, the traditional land tenure and use patterns were held by President Frei as being primarily responsible for the low living standards of the rural population and the social problems thereby resulting. These included unemployment and disguised employment, the high rate of illiteracy (36% vs. 11% in urban areas), inadequate housing and sanitation, undernourishment, and the high rate of rural-urban migration—between 1940 and 1960, approximately one million people migrated from rural areas into the cities.⁶

These, of course, are problems that have repercussions in the urban population and affect the entire social and economic welfare of the country. "Agrarian reform is indispensable because without a radical change in the present system of landownership and without a substantial increase in agriculture and cattle production it is impossible to think of growth and accelerated expansion of industry, services, and other business. Unless agriculture is improved and expanded, all other sectors of our economy will be unable to develop adequately."⁷

In this article, an attempt will be made to analyze the function of agrarian reform legislation in changing the social and economic structures in the rural areas of Chile. The role of law in the process of change is usually neglected, even though the legal structures of the developing countries will, to a very large degree, set the framework within which the policies and means leading to economic and social change must operate.⁸ As Friedman puts it, "No major social change occurs or is put into effect in a society which is not reflected in some kind of change in its laws."⁹

4. *Id.* at 6.

5. *Id.* at 8 and 10.

6. *Id.* at 10-11.

7. *Id.* at 11.

8. See Pedro Moral Lopez, *Temas Juridicos de la Reforma Agraria y del Desarrollo* (1968) pp. 91, for a very interesting and useful study of the relationship between legal institutions and the process of agrarian reform.

9. Friedman, "Legal Culture and Social Development" 4 *Law and Society Review* 29 (1969).

Chile's ongoing attempt to reform its land tenure system provides an illustration of the ways in which a social and cultural context may both shape and be shaped by legal institutions. Chilean Agrarian Reform Law 16,640 of 1967—particularly its expropriation provisions—also supplies an important Latin American example of the process by which policy considerations and values concerning land reform are translated into legal objectives and means—institutions, rules, powers—to reach the objectives, as well as of the actual functioning of these legal means.

DEVELOPMENT OF LAND TENURE STRUCTURES IN CHILE

As in most Latin American nations, the present Chilean tenure structure originated in the Spanish colonial system and was reinforced after the establishment of the Republic.

Contrary to some notions, the Spanish Crown itself did seriously attempt to curtail the abuses of the *encomienda* system, under which Indian labor was "entrusted" to Spanish colonizers, to regulate the land grants (*mercedes*) by subjecting them to conditions of possession and use similar to the United States homestead acts, to guarantee access to water, pasture and wood by declaring these public goods for the common use, and finally to protect Indian lands by establishing Indian reserves and *ejido* or common village lands.¹⁰

According to Phelan, the prevalence of conflicting standards and ambiguous goals prevented subordinates from enforcing all of the laws and gave them a voice in decision making without jeopardizing the centralized control of their superiors.¹¹ To Heise, this situation "determines the formation—in all of Spanish America—of a proud, aristocratic class."¹² This class was very independent from state power, conscious of its rights, and, in practice, devoted to making sure that its interests would prevail.

In Chile, as elsewhere in Latin America, the colonial bureaucracy proved unable or unwilling to effectively control the *encomenderos* and land grantees. At the same time, economic factors began to motivate a push for larger holdings. A large migration of settlers, from southern Chile into the central zone, occurred between 1577 and 1600; consequently, the number of land grants as well as the usurpation of Indian land increased substantially. Moreover, the institution

10. Jaime Eyzaguirre, *Historia de Chile* (1965), vol 1 pp. 113-115. See also Jose Maria Ots Capdequi, *España en America: Las Instituciones Coloniales* (2d ed. 1952) pp. 47-50.

11. Phelan, "Authority and Flexibility in the Spanish Imperial Bureaucracy," 5 *Admin.Sc.Quarterly* 47 (1960).

12. Julio Heise Gonzalez, *Historia Constitucional de Chile* (1954) cited in Gonzalo Figueroa, *El Origen de la Propiedad Agricola en Chile* (Universidad de Chile, 1968, mimeogr.) at 12-14.

of *mayorazgos* (lands granted in primogeniture) further solidified the large *fundos*. By 1700 almost all available cultivable land had been distributed throughout central Chile and south to Talca and Concepción. As a result, land prices rose throughout the 18th century, and land became treasured not only for what it could produce, but for speculative purposes as well.¹³

When independence finally arrived in the early 19th century, it resulted in no sense from a social revolution or even a process of "decolonization," but was merely an alteration of political ties, substituting local creole rule for European rule.¹⁴ Nevertheless, ideology played an important role in the movements for independence and in the subsequent development of the new nations. The creole leaders of the revolutions were influenced by the French (and to a lesser degree, the American) revolution and the prevalent ideologies of the times. These new ideas represented the emergent bourgeois-capitalist societies against the remnants of feudal, static structures; among the main new principles were those of economic liberalism and individual rights. These principles were reflected in legal norms which guaranteed equality under the law, freedom of contract, and private property rights.¹⁵ However, their result was "an exaggerated emphasis on private property and liberty of contract, similar in effect to the exaggerated individualism of nineteenth century England and America."¹⁶

Particularly important was the concept of individual or private property rights, a concept formally incorporated into that most influential of nineteenth century legal documents, the Napoleonic Code, which was in turn the model for most Latin American civil codes.¹⁷

Thus, Article 582 of the Chilean Civil Code reads as follows: "Ownership is the real right in a corporeal thing to enjoy it and dispose of it arbitrarily, provided no other law or right is violated."¹⁸

While the final phrase of the cited article would allow the application of almost any restriction, civil law jurists or legal scholars have nonetheless traditionally considered that ownership provides absolute, exclusive and perpetual rights.¹⁹ In effect, and in rural areas at least, these concepts have provided legal protection to individual property

13. Jaime Eyzaguirre, *supra* note 10 at 264.

14. James Becket, "Land Reform in Chile," *J. of Inter-American Studies* 5 (1963) p. 181.

15. John Merryman, *The Civil Law Tradition* (1969) p. 18; see also, W. Friedmann, *Legal Theory* (1944) pp. 44-45.

16. Merryman, *supra* note 15, p. 18.

17. Friedmann, *supra* note 15, pp. 44-45.

18. Theron O'Connor, "Some Aspects of the Development and Erosion of the Right of Private Ownership in the Civil Law System," (Seminar paper, University of Wisconsin 1968) p. 14. Translation by author.

19. *Id.* at p. 14.

rights (*haciendas, fundos*) against almost any attempt aimed at their restriction.

Whatever the reasons which led to the adoption of these legal rules concerning ownership, and whatever the objectives of these rules, the fact remains that during the balance of the nineteenth century and well into the twentieth, the Chilean landed class did extend its holdings and power.

The effects of independence were particularly burdensome to native Indian communities. Even such legal reforms as the proclamation of equality before the law, for instance, were used against them, as Lambert points out: ". . . When the Indians' special status that sealed their inferiority was abolished, so was a meticulous legislation which, although discriminatory, aimed at protecting these inferiors against excessive exploitation by the colonists."²⁰

Throughout the nineteenth century, wholesale usurpation or absorption of Indian lands and other small holdings by the *hacendados* was accomplished, often through means either patently illegal or of dubious legality, including such practices as debt peonage.²¹ This process "gave to the landowning oligarchies a measure of absolute local power that would have exceeded even the dreams of the conquistadors."²²

Generally speaking, the almost unrestricted power of the landed oligarchy lasted until well into the twentieth century. Around 1920, however, certain countries, (e.g., Mexico), started what Morse labels Latin America's "truly 'National' Period." New political regimes, social programs, and cultural statements began to emerge and to evince a new preoccupation with historical realities and needs.²³

Chief among these programs were the processes of agrarian reform, receiving their legal rationalization from the concept of "the social function of property," which posited that ownership involved obligations as well as rights; among these obligations was to use the property for the common welfare, under penalty of losing some or all of the rights.²⁴

PREVIOUS ATTEMPTS AT AGRARIAN REFORM

With the election of President Arturo Alessandri in 1920, Chile entered a new era, marked by the gradual erosion of the political power

20. Jacques Lambert, *Latin America, Social Structures and Political Institutions* (1969) p. 56.

21. David Weeks, "The Agrarian System of the Spanish American Colonies," 23 *Journal of Land and Public Utility Economics* 9-22 (1947).

22. Richard M. Morse, "The Latin American Heritage," in Louis Hartz, ed. *The Founding of New Societies* (1964) p. 167.

23. *Id.* at 169.

24. *Supra* note 18, pp. 20-22.

of the landed oligarchies and the emergence of urban and industrialist elites, more modern in outlook than the traditional landlords, though often intimately related to or allied with the landed class.²⁵ This shift or sharing of political power also represented an awareness that new legal responses were required to satisfy or at least palliate the growing social and economic demands of the less favored classes. The pressures for change resulted in 1925 in the promulgation of a new constitution, which provided the legal framework for the moderate social legislation enacted in the following years.²⁶

Included in the new constitution were provisions that established somewhat clearer limitations on private property rights and committed the state to look after the proper division of property and the formation of family homesteads.²⁷ The most relevant section of the 1926 Constitution reads:

No one shall be deprived of his property, or any part of it, or any right he might have to it, except by judgment of a court of law or by expropriation for reason of public utility declared by law. In such case, the owner shall be previously indemnified either by agreement with him or by judgment of a court of law.

The exercise of the right of property is subject to the limitations or regulations required for the maintenance and progress of the social order and, furthermore, the law may impose obligations or servitudes of public utility in favor of the general interests of the State, the welfare of the people, and public health.²⁸

The requirement of prior compensation for any condemnation

25. Terry McCoy, "Agrarian Reform in Chile, 1962-1968: A Study of Politics and the Development Process" (Ph.D. Dissertation, University of Wisconsin, 1969) pp. 15-16. See also, William Thiesenhusen, *Chile's Experiment in Agrarian Reform* (1966) p. 23.

26. Alejandro Silva Bascuñan, *Tratado de Derecho Constitucional* (1963) Vol. II, pp. 51-58.

27. McCoy, *supra* note 25 at 16. The subcommittee in charge of discussing and drafting the new provisions was bitterly split between a small faction that would do away with the principle of individual property altogether, and a larger faction that would retain the relevant section of the 1833 Constitution untouched. The final result emerged from the urging of Alessandri, who personally directed the subcommittee, and who based his position on the writings of Leon Duguit. See O'Connor, *supra* note 18 at 26-27, and Bascuñan, *supra* note 26 at 272-274.

The relevant clause protecting private property rights in the 1833 Chilean Constitution, Article 10, Section 5, reads as follows [cited *supra* note 14]:

"No. 5—The inviolability of property of all kinds, whether belonging to individuals or communities. No one shall be deprived of his property or any part thereof, however small, or of any right therein, except by virtue of a judicial decision, or when the interest of the state, declared by law, requires the use or condemnation thereof; but in this case proper indemnification to be determined either by agreement with the owner or by valuation made by a jury of competent men shall be previously made.

28. O'Connor, *supra* note 18 at 27. Translation by author.

process was retained in almost identical form from the 1833 Constitution; nevertheless, the last clause represented a very important legal innovation. By subjecting the exercise of property rights to the "social order," and empowering subsequent legislation, for reasons of the common welfare, to impose limitations and obligations on property rights, the new constitution opened the way for a series of new laws. The Water Code, the General Law on Constructions and Urbanization, and others under which property rights were limited, would probably not have been possible prior to 1925.²⁹

The new constitution also signaled that the hacienda or latifundio should somehow be restricted, and that the family farm should be promoted.³⁰ To this end, Law 4.496 of 1928 established the *Caja de Colonización Agrícola* (Agricultural Colonization Bank) to carry out land redistribution and settlement activities.³¹ The *Caja* was to colonize virgin land, and to purchase land in the open market for subsequent resale under long term mortgages. It also had limited expropriation or eminent domain powers, but those were never exercised. After initial financing, the *Caja* was to operate with the mortgage payments of the colonists.³²

The *Caja's* efforts were not particularly successful. By 1962, when it ceased to exist, it had settled only 4,206 families in the entire country. It failed primarily because of inadequate government financing, the requirement of paying cash for properties acquired, and inflation, which made the outstanding mortgages practically worthless. Moreover, its process for selecting beneficiaries made it very difficult for farm laborers to qualify.³³

Under increasing pressure from both the Chilean peasantry and the Alliance for Progress to implement a land reform, a new Agrarian Reform Law, No. 15.020, was enacted by the Chilean Congress and signed by President Jorge Alessandri in November 1962. Under this law, the *Caja* was eliminated and two new agencies, the *Corporación de Reforma Agraria* (CORA), and the *Instituto de Desarrollo Agropecuario* (INDAP) were established, with new and better defined powers and functions.

CORA was made solely responsible for carrying out land reform in Chile; given its own credit department for new colonists; and empowered to acquire or expropriate land for its subsequent subdivision into small family farms (*parcelas*) and *huertos* (garden plots), to re-group *minifundios*, and to establish cooperatives. INDAP was to pro-

29. Enrique Evans de la Cuadra, *Estatuto Constitucional del Derecho de Propiedad en Chile* (1967) pp. 13-14, 25.

30. Becket, *supra* note 14 at 196.

31. Thiesenhusen, *supra* note 25 at 33.

32. Becket, *supra* note 14 at 196.

33. Thiesenhusen, *supra* note 25, at 34-36.

vide supervised credit and assistance to established colonists and other small farmers. In addition, it was charged with operating government experiment stations. Both agencies were to be semi-autonomous, but under the administrative umbrella of the Ministry of Agriculture.³⁴

Lands used by CORA for the reform were to be obtained from purchases at public auction, direct purchases from the landowners, contributions of public lands from the government, or expropriation, which is the means of particular interest here. Law 15.020 had very elaborate provisions regarding the categories of expropriable land,³⁵ but did not supply clear criteria as to when or under what circumstances expropriation should be exercised.

At any rate, existing constitutional provisions forced CORA to pay in cash the full value of any property expropriated before that property could enter CORA's possession.³⁶ This requirement severely limited the potential application of Law 15.020, since it is simply impossible to compensate expropriated landowners under these conditions and still have a land reform that will benefit a significant number of landless peasants.³⁷ CORA, of course, could still enter purchase agreements with landowners in which instalment payment procedures were voluntarily stipulated. Quite obviously, landowners would only do so when it was to their advantage.³⁸

A plethora of exceptions to expropriation, as well as procedural

34. *Id.* at 37-45.

35. Martin Kent, "Expropriation under the Venezuelan and Chilean Land Reform Acts" (Seminar paper, University of Wisconsin, 1967) pp. 8-9.

36. Thiesenhusen, *supra* note 25 at 39-40. A new constitutional amendment was adopted in 1963 which permitted deferred compensation (10 percent in cash and the balance in equal annual installments to be paid over a period not to exceed 15 years) for expropriation of properties that were abandoned or manifestly poorly exploited. The new amendment, however, stipulated that deferred compensation could only be applied when the law provided judicial review of the expropriation action as well as a procedure to annually readjust the unpaid balance in accordance with the rate of inflation. The required new legislation was never enacted; consequently, this amendment was never implemented, and was replaced in 1967 by a much broader amendment. See Pedro Moral Lopez, *supra* note 8 at 68 and 70.

37. Jacques Chonchol, "Razones Económicas, Sociales y Políticas de la Reforma Agraria," in Oscar Delgado, ed. *Reformas Agrarias en America Latina* (1965) p. 121.

38. However, once Frei introduced his land reform program to the Congress, which included a proposed constitutional amendment to allow deferred compensation, CORA was able to reach "negotiated" agreements with landowners with terms much more favorable to the goals of agrarian reform. This was made possible by the threat of the proposed land reform bill, under which the terms of compensation were not nearly as favorable to the landowners as those they could obtain through negotiated settlements. From January 1965 through June 1967, when the new law was enacted, CORA was able to negotiate the acquisition of 478 landed estates, covering over one million hectares. See German Lührs, "Expropiaciones bajo las Leyes 15020 y 16640" (Seminar paper, University of Wisconsin, 1969).

complexities in Law 15.020, made the expropriation process cumbersome and time-consuming. Furthermore, CORA's determinations were subject to judicial review by a special agrarian court, whose decisions were in turn appealable to the overloaded regular court system.

The most generous estimate of land distribution under the Jorge Alessandri government (up to May 1964) was that CORA had effected 1,354 land divisions totalling 51,442 hectares. Most beneficiaries had yet to receive a land title to their new *parcela* or *huerto*.³⁹

In short, Law 15.020 fell into the pattern of Latin American land reform laws so aptly described by Thomas Carroll: "Land reform laws are invariably long, complicated, and detailed. This makes their implementation very difficult."⁴⁰ The law was badly drafted, provided too many safeguards to landlords, had too limited objectives (small family farms), did not solve the issue of prior compensation, and was poorly implemented.

Nevertheless, Law 15.020 served a very useful function. The mere fact that a land reform agency had been organized proved immensely valuable to President Frei's program after 1964.

THE NEW AGRARIAN REFORM LEGISLATION: LAW 16,640 OF 1967

In November 1965 the Frei Government submitted for approval by the National Congress an agrarian reform bill to supplant Law 15.020 of 1962. Over a year in the drafting, the proposed bill represented the result of lengthy and careful study, and the participation of distinguished agronomists, sociologists, economists, farmers, and lawyers.⁴¹

Frei's campaign had criticized the Alessandri land reform as not going beyond a colonization program, and had promised more comprehensive reform programs. There were several reasons for this prominence of agrarian reform: the economic stagnation in the agrarian sector; the failure of the Alessandri government to make any headway against this problem; and finally, the growing political awareness and independence of the peasantry.⁴² The first clear statement of reform goals was contained in the message which Frei presented to Congress along with the new reform bill.

According to this document, the basic objectives of the bill were

1. ". . . to provide thousands of families, capable of working it, with their own land. . . . [and] thus fulfill their ancient desire to be

39. Thiesenhusen, *supra* note 25 at 42.

40. Thomas F. Carroll, "The Land Reform Issue in Latin America," in Albert O. Hirschman, ed., *Latin American Issues: Essays and Comments* (1961) p. 198.

41. Eduardo Frei, *supra* note 1 at 5.

42. McCoy, *supra* note 25 at 48-49.

owners of the land they work, providing them with the chance to improve themselves and to contribute to the progress of the greater national community.

2. ". . . [to make] substantial improvement of agricultural productivity.

3. ". . . to bring about an effective and authentic improvement in the conditions of [the] rural population by integrating them into the national community and into the country's social, cultural, civic, and political activities."⁴³

The conceptual underpinning of the first objective was that of "extending" and "perfecting" property rights by providing them with a "social sense" which would permit their full exercise. The second objective, of course, was based on economic and pragmatic considerations, but the basic rationale for the agrarian reform was clearly derived from the idea of "social function" of ownership, as well as from the more progressive teachings of the Catholic Church:⁴⁴ ". . . Limitations of ownership should be founded on an adequate technical base, such that an effective and profitable redistribution may be carried out, while respecting the property rights of those who are already exercising these rights with social awareness. Property should be maintained and respected. However, it should be socially regulated. No property rights should be allowed to exist which, in their implementation, damage the common wellbeing and rights of the community. When this happens it means that the basic principle of the primacy of the general wellbeing over the rights of the individual is not being adhered to, impelling the State to reorganize, regulate, and redistribute those rights, in order to prevent their abuse.

"The agrarian reform will guarantee and respect the property rights of those persons who meet the social functions these rights demand. The social functions are: not to have accumulated vast properties, to have adhered to the existing social legislation, to have included the peasants in the benefits acquired from the land, and to have created conditions of stability, justice, and well-being."⁴⁵

No attempt will be made to analyze all the elements that played a role in the variation of the means-goals of the agrarian reform process during the Frei government (nor have those elements been documented well enough to permit anything beyond reasoned speculation).

Certain variables, however, can be identified as important factors in this process. One, of course, was the lack of a unified agrarian reform policy in the Christian Democratic Party (PDC). While Frei

43. Eduardo Frei, *supra* note 1 at 12-14.

44. McCoy, *supra* note 25 at 63.

45. Eduardo Frei, *supra* note 1 at 13.

and his followers (the so-called *oficialista*, or official, sector within PDC) were proclaiming a goal of individual family farms, members of the *tercerista* and *rebelde* wings of PDC were talking in terms of "communitarian" farms and similar concepts, and many of the PDC members charged with drafting a new law and with its subsequent administration belonged to the latter sectors.

The voluntary establishment by the Chilean Church in 1963 of land distribution programs on many of its rural landholdings also seems to have been influential. INPROA, the institute organized by the Catholic church to undertake its land distribution programs, had experimented with the *asentamiento* type tenure patterns that were later adopted by the government. Moreover, members of the INPROA staff were among the first technicians recruited by the Frei government to help run the agrarian reform.⁴⁶

Another factor in this process probably was the experience gained by CORA between 1965 and the promulgation of the law in 1967, which seemed to indicate that an *asentamiento* stage was required. Also, the PDC needed the support in the Senate of both the Communist and Socialist parties in order to pass the land reform law, so their viewpoints were probably influential.

In January 1967, the Chilean congress amended Article 10, Section 10 of the 1925 Constitution, a crucial prelude to action on Frei's new bill, particularly as regards the question of deferred compensation.

While the 1925 version of Article 10 did allow for some expropriation of private property for reasons of public utility, it also stipulated that the compensation for said property was to be determined by the courts, using the commercial value as a basis. Moreover, it required the payment of this compensation in full before the expropriating agency could enter into possession of the property.

The 1967 amendment effectively removed these limitations by extending the expropriation power of the government over all properties not meeting their "social function," by providing that the basis for compensation was to be the property tax valuation, and finally, by permitting that this compensation be paid over a period of up to thirty years. The amendment also stipulated that new expropriation procedures and norms could be established by law, thus facilitating the quick-taking of expropriated properties.⁴⁷

46. Thiesenhusen, *supra* note 25 at 23.

47. Relevant sections of Article 10 read:

"When the interest of the national community should require, the law shall be empowered to reserve in the State the exclusive dominion of natural resources, productive goods, or others which might be declared of preeminent importance for the economic, social, or cultural life of the country. It will also favor the proper distribution of property and the establishment of family property.

No one shall be deprived of his property except by virtue of the general or

In short, the constitutional amendment opened the way for translating the agrarian reform policy of the Christian Democratic government into law. Several months later, Agrarian Reform Law No. 16.640 was enacted by Congress, and it was put into effect on July 29, 1967.

Law 16.640 is a very ambitious statute. Notwithstanding other very important and complementary new statutes and programs improving the status of rural labor, extending rural education, and providing credit and technical assistance to small holders, the heart of the new agrarian reform program depended and still depends on this law. It was supposed to provide for cheap, quick, and efficient redistribution of farm-estates among landless *campesinos* and for nationalization and reallocation of water rights. These and other measures provided by the law were to be the chief legal mechanisms for ending the stagnation in agricultural and cattle production, and integrating nearly 3 million *campesinos* into the social, economic, and cultural life of the country.⁴⁸

Consequently, Law 16.640 is very complex and lengthy; its official text—160 pages of small type—contains 357 excruciatingly detailed and legalistic articles which, in addition, cross-refer to each other and to articles in other laws. It is a difficult law to understand and to explain. Nevertheless, it is a "good" law: complete, thorough, and with the basic legal means to achieve a substantial agrarian reform.

In addition, Law 16.640 has spawned a vast number of complementary statutes, regulatory decrees, and other legal regulations, resolutions, and the like. A complete summary and analysis of all these legal provisions is impossible here. Our purpose here is limited to the examination of that basic legal mechanism on which the rest of the agrarian reform process depends: the acquisition or expropriation of rural properties for the purpose of redistribution.

Nevertheless, it may be useful at this time to provide a brief summary of some of the major components of the Chilean agrarian reform.

special law which authorizes expropriation for the cause of public utility or social interest declared by the Legislator. He who is expropriated shall have a right to indemnization which amount and condition of payment shall be determined by taking into consideration both the social interests and those of the individual. The law shall determine the norms for fixing the indemnity, the court which shall have jurisdiction of appeals as to the amount fixed, which in every case shall pass judgment according to the law, the form of extinguishing the obligation, and the conditions and means by which the expropriator shall take physical possession of the expropriated property.

As to the expropriation of landed estates, the indemnity shall be equivalent to the current assessment for the territorial tax, plus the value of improvements not included in the assessment, and may be paid part in cash and the balance in payments not to exceed 30 years, all in the form and condition determined by the law." (Cited and translated in O'Connor, *supra* note 18 at 29-30.

48. Eduardo Frei, *supra* note 1.

Contrary to many other land reforms, expropriated properties are not immediately redistributed to the landless *campesinos*. Rather, an intermediary stage is followed; this consists of the *asentamiento* system, a contract arrangement under which eligible *campesinos* are settled on the expropriated properties for a three to five year period. During this time, ownership of the land is retained by CORA, the land reform agency, and all or most of it is operated on a cooperative basis, following national agricultural development plans. Day to day management of the *asentamiento* is conducted by an administrative committee elected by the members (*asentados*) from among themselves. Supervision of and assistance to the committee is provided by CORA technicians. This role tends to diminish as the *campesinos* develop more experience. Most of the economic and social inputs—credits, seeds, fertilizers, machinery, etc.—are provided by CORA, while the *campesinos* provide the labor. At the end of each year, a balance is made, and after the costs, credits and other shares pertaining to CORA are deducted, the balance is distributed among the *asentados*.

The main objectives of the *asentamiento* are to train the *campesinos* to manage their own farms, to maintain full production during the first crucial years after expropriation, and to encourage the *asentados* to maintain a cooperative type of operation once the land is distributed to them.

The *asentamiento* period also serves as a means of testing the capacity of the *asentados*. These are graded each year, and once the three year period has elapsed, only those who meet the required minimum point score will be eligible to receive land titles to the property.

The type of title distributed depends upon the decision of the eligible *asentados* as to the future status of the land assigned to them. Thus, if they decide that all of the land is to be operated in a cooperative, then the property title goes to a cooperative whose members are the prior *asentados*. Alternatively, they may decide to divide the entire property into individual parcels, in which case each will receive a title, or to adopt a mixed system under which the cooperative will receive title over part of the land, while the rest will be divided as individual parcels, each with its title, among the *asentados*. The last system appears to be the most common to date.

In any case, the beneficiary must pay for his share of the land over a 30 year period, during which he is subject to many conditions and obligations. These include restraints on alienation, inheritance restrictions, and the like.

THE PROCESS OF EXPROPRIATION UNDER LAW 16,640

A major obstacle to agrarian reform processes in other countries—and in Chile under Law 15,020 of 1962—has been the complexity and

excessive length of expropriation procedures. Law 16.640 was supposed to provide a quick-taking expropriation procedure which would permit the adequate planning of agrarian reform projects, such as land distribution and cooperatives, and shorten the period during which the property, because of the insecurity of the landowner, would remain unproductive. Under this procedure, the landowners were to receive adequate judicial protection of their rights, particularly as regards compensation of their expropriated lands. If any conflicts should arise they would not in most cases postpone the taking of possession by CORA, so that it could proceed with its land settlement programs.⁴⁹ Application of the provisions, however, brought forth problems not foreseen by the drafters of the law.

For purposes of clarity and organization, the process has been divided into different categories, but with few exceptions, they are all interrelated and contain both substantive and procedural elements.⁵⁰ Procedures are summarized first, and the more important legal considerations and complications are detailed later.

1. *The Expropriation Procedure as of 1970*

A branch office (one of 12 Zonal Offices of CORA) conducts field studies (soil, production, etc.) and gathers other socio-economic data on an area or specific property which is potentially expropriable, and reports to the CORA central office in Santiago.

The head office, after further studies by the Technical and Legal Directorates, prepares an expropriation decree and submits it to the *Consejo* of CORA for approval, which requires a majority vote of the *Consejo*.⁵¹ The decree must contain all basic information about the expropriated property, including its location, its property tax roll number, the legal grounds for its expropriation or acquisition, and the form of compensation. Notice of the decree must be provided to the affected parties, both through personal delivery and through publication in the *Diario Oficial* (Official Gazette).

Once the decree is published, Law 16.640 prohibits, under civil and penal sanctions, all acts which tend to destroy or reduce the value of the land and its accretions.⁵²

49. *Id.* at 27.

50. The author is indebted to German Lührs for many portions of the following evaluation of the expropriation process under Law 16.640. Conversations with various CORA officials were also of much help.

51. The *Consejo*, or Council of CORA, is made up of the following persons as stipulated by Law 16.640: the Minister of Agriculture, the Executive Officer (*Vice-Presidente*) of CORA, the Executive Officer of INDAP, one *campesino* representing the beneficiaries of CORA's programs, one *campesino* representing the *Comités de Asentamiento* (Land Settlement Councils) and two delegates named by the President of the Republic.

52. Nevertheless, there are no provisions preventing the owner from strip-

Provided he acts within thirty days of publication, an affected landowner can oppose the decree either by petitioning the *Consejo* to reconsider its decision, or, under certain circumstances, by challenging it before a Provincial Agrarian Tribunal. Judicial review by the Agrarian Tribunal usually prevents CORA from taking possession of the property until a final judgment is issued.

CORA assesses the expropriated land and the improvements (this assessment must be approved by the *Consejo*), and deposits at the Superior Civil Court with jurisdiction that part of the compensation that must be paid in cash, in accordance with CORA's own determination.

At this time, CORA is legally entitled to take possession of the property and may request the use of public force if so required. Nevertheless, if at this time there are unharvested crops on the farm, CORA will postpone possession until the end of the agricultural year so that they can be harvested by the owner. CORA can, in most cases, still decide to take possession, provided it indemnifies the owner in cash for any damages, or allows him to enter the property to harvest the crops.

These are the basic steps in expropriating a rural property for the purpose of agrarian reform. More often than not, however, CORA does not follow the entire legal procedure to its end, but rather negotiates an agreement with the landowner to save both CORA and the landowner much time and expense.

2. *Private Lands Subject to Acquisition and Redistribution; Grounds for Expropriation, Exceptions and Reserves*

If a fairly substantial agrarian reform is to be accomplished, quite obviously as much land as possible must be made available for distribution. The legal classification under which privately owned properties are subject to expropriation, as well as the various criteria that condition their acquisition, provide a fairly accurate measure of the potential reach of any agrarian reform.⁵³

Causes for subjecting properties to expropriation in Chile are:

(a) Excess size. All rural properties larger than eighty basic irrigated hectares (BIH) in size, regardless of the efficiency of operation.

ping the farm of movable or personal property such as cattle or machinery. About the only power CORA has to prevent the removal of this type of property is the provision that such goods must be compensated in cash. By bargaining with the owners over the value of these goods, CORA has managed, in most cases, to prevent the stripping of necessary implements from the expropriated farm. See Michael Lyon, "The Agrarian Reform Law of Chile: A Description of Its Basic Elements" (Mimeograph, ICIRA, 1968), p. 42.

53. Law 16.640 also made available to CORA most lands in the public domain or owned by government agencies, and which were susceptible to agri-

Only the portions exceeding the BIH are expropriable. However, *all* the properties of any given owner are added together for this purpose.⁵⁴

(b) Voluntary transfers. Properties voluntarily offered to CORA which are necessary for carrying out a reform program.⁵⁵

(c) "Corporate" ownership. With certain exceptions, such as small cooperatives, and land reform settlements, all farms owned by corporations or other "legal persons."

(d) Pending cases. Properties over which expropriation proceedings were pending at the time Law 16.640 came into effect.

(e) Unauthorized subdivisions. Properties originally larger than eighty BIH which were subdivided after November 4, 1964 in order to avoid the agrarian reform.

(f) Low productivity. Abandoned or poorly exploited farms of any size.⁵⁶

cultural use. With the exception of lands owned by welfare agencies, which have to be compensated under the same term as private property, all other public lands are to be transferred gratis to CORA. Certain public lands are exempted from these provisions. By the time Law 16.640 was promulgated most public lands had already been transferred to CORA, so they will not be the subject of further discussion.

54. The number of hectares equivalent to 80 basic irrigated hectares varies throughout Chile. The conversion to the equivalent areas in the different zones of Chile is performed through coefficients provided in a set of tables contained in Article 172 of the law. These tables were generally based on productivity—that is, in any one region, as many hectares would be equivalent to 80 BIH as were necessary to approximately be as productive as 80 irrigated hectares in a particular area of the province of Santiago. According to Lyon, however, ". . . there were deviations from the productivity criterion because of political pressure and certain policy reasons. For example the south of Chile does not have the tenancy problems in the acute form found in the central region, nor is its production as inefficient. To obtain the votes of Congressmen from the south, the hectares in an hrb [basic irrigated hectares] in that region were greater than the criterion of productivity would justify." Lyon, *supra* note 52 at 10.

55. Strictly speaking, such acquisitions are not expropriations but simple purchase agreements. However, they are categorized as "expropriations" by the law in order to subject them to evaluation, compensation, and other conditions. Thus CORA is prevented from purchasing properties at market value, but at the same time is given some flexibility in acquiring otherwise non-expropriable properties. Moreover, the provision encourages landowners who fear expropriation to offer the land to CORA voluntarily, as it provides better compensation terms than most of the other expropriation provisions.

56. Properties smaller than eight hectares as of November 1964 will only be subject to this provision three years after the publication of the law. Subsequent regulation, according to Article 1(a), would provide the criteria for determining the minimum economic, technical and social conditions which must be met in order that a property not be classified as "poorly exploited." Nevertheless, Article 1(a) also states that there is always a presumption of poor exploitation when a landowner cultivates less than 80 percent of the normal irrigable area, or 70 percent in the case of dry land, or when he violates one or more of certain specified labor law provisions at least twice during the two-year period preceding the expropriation resolution.

Minifundia, or properties too small for economic exploitation, are also subject to expropriation, but only for the purpose of land concentration projects.⁵⁷ There are other grounds for expropriation, such as absentee ownership and location within a land reclamation or irrigation project, but these have seldom if ever been applied. Table 1 shows the number of times each of these potential causes for expropriation was used in 1967-69.

The major reasons for the frequent use of "excess size" expropriations are the simplicity of application and the fact that judicial review over them is very restricted. Most other grounds for expropriation are more difficult to establish and are subject to much more thorough judicial review, particularly "low productivity" expropriations. The growth of the "declarations of abandonment or inadequate exploitation" attached to excess size expropriations is probably due to the promulgation of Regulation 281 of July 1968, which contained the rules for determining abandonment and inadequate exploitation.

Once Cora developed experience with these regulations, it became advantageous to attach the declaration to the excess size expropriations, as it has the effect of reducing the cash payment from 10 percent to 1 percent. Moreover, this declaration is also not reviewable by the courts.⁵⁸

At the same time, the increasing number of farms voluntarily

57. The reassignment will be either in the form of a family farm, or a share of a cooperative farm. Few, if any, minifundia have been expropriated to date.

58. Regulation No. 281 of 1968 established very elaborate technical, economic, and social conditions that a landowner has to meet in order that his property not be classified as "poorly exploited." These conditions include the following broad criteria:

(a) *Technical and Economic Criteria.*

- (1) The utilization of natural resources;
- (2) Administration and farm management practices.

(b) *Social Criteria*

- (1) Housing, education and other services provided to the laborers;
- (2) Salary and wage scales; and
- (3) Compliance with labor and welfare legislation.

These criteria are in turn subdivided into many detailed conditions or factors (48 in total) for which a table of points was established. The maximum total of points that can be achieved is one thousand. In order to escape the poorly exploited classification, a property has to achieve a point total of at least 500 points, of which at least 300 have to come from the economic and technical criteria (out of a maximum of 600), and 200 from the social criteria (out of a maximum of 400).

The burden of proof that the required point score and other conditions established by the law have been achieved or complied with lies with the landowner (Article 9 of the regulation, and Article 1, Section (c) of Law 16.640 of 1967).

Regulation 281, as well as several other laws, decrees and regulations which affect the application of Law 16.640 can be found in Antonio Vodanovic, *Recopilación de Leyes, Decretos con Fuerza de Ley, Reglamentos y Decretos Agrarios Posteriores a La Ley 16.640, Sobre Reforma Agraria* (1968) pp. 285.

offered to Cora probably indicates a realization by landowners that they run the risk of being expropriated, and might as well offer their farm voluntarily and obtain the corresponding better terms. For CORA this method signifies a more rapid acquisition of lands for its programs.

Table 1. Number of Properties Expropriated and Legal Grounds Used in CORA Expropriations, July 1967-December 1969

Expropriation Dates	Excess Size		Low Productivity	Unauthorized Subdivisions	Corporate Ownership	Voluntary Transfers	Transitory Articles	Subtotal	No Data Available	Total No. of Expropriations
	A ¹	B ²								
July '67 - Dec. '67	61	7	1	4	12	4	8	87	19	106
Jan. '68 - June '68	26	3	2	—	5	34	15	85	4	89
July '68 - Dec. '68	30	19	—	—	15	53	14	131	—	131
Jan. '69 - June '69	29	20	1	5	5	56	2	118	13	131
June '69 - Dec. '69	16	47	—	7	8	54	4	136	47	183
TOTALS	152	96	4	16	45	201	43	557	83	640

Source: Compiled by German Lührs and Joseph R. Thome, from unpublished data of CORA, *Dirección de Planificación y Control*.

¹ By reason of excess size alone.

² Excess size plus declaration of abandonment or inadequate exploitation.

Some rural properties are either specifically or potentially excluded from expropriation. Subject to various conditions or limitations, Law 16.640 specifically exempts those rural properties smaller than eighty BIH; family farms (that area of land, operated personally, which allows a family group to live and prosper due to rational use of the land); experimental farms; and those used for timber operations.

Also, the President of the Republic can exclude properties through special decrees: those with soil rehabilitation or improvement plans approved by the Ministry of Agriculture, as well as vineyards who bottle their own wines and satisfy other stringent conditions.

Law 16.640 also grants some expropriated landowners the right to retain a portion of the affected property. This "reserve right" *only* applies to expropriations effected in "excess size" and "corporate ownership" cases. In the latter instance the right applies only when the property is owned by a "personal association" (e.g., limited liability partnerships), and when certain other conditions are satisfied.

The basic reserve right is 80 BIH or the equivalent; however, if compliance with very stringent conditions regarding productivity and labor relations, etc., can be demonstrated by the landowner, the reserve will be extended to 320 BIH. The reserve right is computed by taking into account *all* the rural properties owned by the expropriated landowner. Thus, it can only be used once. There are no known cases in which the 320 hectare reserve has been granted.

On lands voluntarily offered, the amount retained depends on the bargain the landowner can strike with CORA. Although no specific data are available, it is obvious that in most cases the reserve retained by the landowner will equal at least eighty BIH.

3. Compensation Schemes

Latin American nations usually cannot afford to base the compensation of expropriated properties on their market value or to pay for them in cash, and still have an agrarian reform that will benefit a large number of the landless campesinos.⁵⁹ Moreover, agrarian reform implies much more than the purchase and resale of real estate; it also involves a redistribution of wealth and power, and paying in cash or basing payment on market value is inconsistent with this objective.⁶⁰

In Chile, regardless of the particular grounds for an expropriation, compensation to any expropriated landowner is limited to the amount of the current appraisal of the land for property tax purposes, plus the market value of new "improvements" not included in the appraisal, both determined as of the date of the expropriation decree for the particular property.⁶¹ Furthermore, "improvements" incorporated into the expropriated property subsequent to November 4, 1964—the date Frei took office—are to be compensated in cash. This provision tries to prevent a reduction in investments by landowners fearing expropriation.

There are, however, differences in the form of compensation according to the grounds for the expropriation. When the acquisition is based on excess size, "corporate" ownership, or voluntary offers to

59. Julio Silva Solar and Jacques Chonchol, *El Desarrollo de la Nueva Sociedad en America Latina* (1965), p. 139. Cf. K. Karst, "Latin American Land Reform: The Uses of Confiscation," 63 *Michigan L. Rev.* 327-372 (1964).

60. Thome, "The Process of Land Reform in Latin America," 1968 *Wis. L. Rev.* 9-22.

61. In 1969 the Chilean Supreme Court ruled that the amounts of the "current appraisal" of the land plus the market value of new improvements are to be determined as of the date CORA makes the initial deposit of the quota that has to be paid in cash, rather than at the time of the expropriation decree, as had been CORA's practice. *In re Enrique Covarrubias*, Supreme Court of Justice, June 6, 1969, *Revista de Derecho y Gaceta de los Tribunales*, Volume LXVI, No. 4, Part 1, June 1969, p. 78.

CORA, the landowner is paid 10 percent in cash and the balance in twenty-five-year Class "A" bonds.⁶² Nevertheless, if CORA can show that a property so acquired was either abandoned or inadequately exploited, then the form of compensation is the same as for properties expropriated because of abandonment or poor exploitation: 1 percent or 5 percent in cash respectively, with the balance in thirty-year Class "C" bonds. (As explained, an expropriation on grounds of abandonment or poor exploitation per se gives the landowner recourse to judicial review, not available under other grounds, and may delay the process for years; also, CORA prefers to acquire properties through amicable settlements with landowners, rather than following the entire expropriation process to its lengthy and costly conclusion.)

The remaining types of land acquisition also have different forms of compensation, ranging from 100 percent cash for minifundia farmed personally by the owners to 1 percent in cash and the balance in thirty-year bonds for lands subject to the jurisdiction of the Law of Southern Property. Because of their rarity, they are not discussed here.

4. *Judicial Review—The Agrarian Tribunals*

Law 16.640 established one trial agrarian tribunal in each province (for a total of twenty-five) and ten appeal agrarian tribunals. These have exclusive jurisdiction over all conflicts arising from application of the law, particularly questions of expropriation. Each trial tribunal has one judge and two agronomists, while the appeal tribunals are staffed by two regular appeal judges and one agronomist.

This special court system was a conscious attempt to keep all land reform conflicts out of the regular civil court system, which is notoriously slow and conservative. To get the expropriated properties into CORA's possession as quickly as possible, Law 16.640 stipulates that there are *no* appeals from judgments of the Agrarian Appeal Tribunals. Furthermore, the technical expertise of the members of the agrarian tribunals, and their concentration on agrarian reform conflicts, together with special procedural rules, were supposed to ensure a more rapid process while guaranteeing the basic rights of affected individuals.⁶³

62. The three classes of bonds, "A," "B," and "C," are amortized in 25, 5, and 30 annual quotas respectively. Each of the three classes is divided in two series. An expropriated owner receives 70 percent in bonds of the first series, which are readjusted annually in accordance with the official consumer price index, and 30 percent in bonds of the second series, which are not readjusted to reflect inflation. Each annual amortization quota, which follows the 7/3 proportion, shall include a three percent interest return on the nominal value of the bonds. As regards the first series, the nominal value is increased for this purpose by 50 percent of the readjustment figure cited above. The bonds are not negotiable, but can under certain conditions be used to purchase stocks or to satisfy tax bills or public assessments.

63. Eduardo Frei, *supra* note 1 at 28-29.

In practice, however, these goals have not been fully achieved. The Supreme Court, for instance, was quick to accept jurisdiction over land reform conflicts where the landowners claimed that the transitory articles of Law 16.640 were unconstitutional even though these cases were being heard before Agrarian Tribunals. Although the Court in these and most other cases found that the applications of Law 16.640 did not violate the constitution, nevertheless the appeals did postpone the taking of possession of the affected properties by CORA.⁶⁴

The goal of obtaining more technical and relevant judgments through the use of agronomists as judges has not worked well either. The agronomists, faced with the procedural complexities of a trial, have tended to unhesitatingly follow the lead of the judicial members of the tribunals.

Nor has the goal of a quick trial been attained. The principle that makes all trial proceedings in Chile extremely slow has not been eliminated from the supposedly summary proceedings of the agrarian courts: judges are passive; they only act when petitioned to do so by one of the parties. While it was foreseen that an entire process before the agrarian court would only take thirty-two days, in reality it is more likely to last several months or even years.⁶⁵

For reasons already discussed, CORA usually uses excess size and voluntary offers as expropriation grounds, both of which are rarely susceptible to judicial review by the Agrarian Tribunals. The bulk of the judicial review by the Tribunals, then, involves other matters which are not so important and which do not interrupt the taking of possession by CORA. These include claims that CORA assigned a compensation scheme different from that stipulated by law, that the required reserve right was not granted, and that the assessment by CORA of the "improvements" was erroneous.

Findings from the province of Valparaíso show that relatively few expropriations result in cases before the Agrarian Tribunals. Of the twenty-six expropriations in Valparaíso between July 1967 and March 1969, only six were contested in these courts.⁶⁶

64. See, for example, *In re Alamos Iqualt*, Supreme Court of Justice, January 4, 1968, *Revista de Derecho y Gaceta de los Tribunales*, Volume LXV, No. 1, January to March 1968, Part 2, p. 2; *In re Violeta Grebe*, Supreme Court of Justice, January 12, 1968, *Id.*, at 45; and *in re Alberto Guzmán* January 20, 1968, *Id.*, at 78. These cases refer to transitory articles 2 and 3 of the Law 16.640, which deal with properties over which expropriation proceedings under Law 15.020 were pending as of the date Law 16.640 was enacted. For a case where the Supreme Court found the application of the transitory articles unconstitutional, see Judgment of August 14, 1968, cited in *Derecho y Legislación de Reforma Agraria*, No. 1 (Santiago: ICIRA, 1969), p. 102.

65. Lührs, *supra* note 38 at 2.

66. *Id.* at 21.

5. *Taking of Possession*

Clearly the drafters of Law 16.640 tried to minimize the time period between the decision to expropriate and the actual taking of possession of an affected property.⁶⁷ The Law provided that CORA could take possession of a property after depositing with a Civil Court that part of the compensation that must be paid in cash, but as noted, this goal has not been achieved, at least in those cases where the landowners decided to "fight" the expropriation.

Although no exact data are available on the length of expropriation processes, a fair idea can be obtained by comparing the date of the expropriation decree for each property and the date of the organization of an *asentamiento* on it. Table 3 shows that very few of the properties expropriated under Law 16.640 had reached the *asentamiento* stage by October 1968. CORA, as of this time, was still concentrating on constituting *asentamientos* on those properties expropriated under Law 15.020 between January 1965 and June 1967. Yet, as Table 2 demonstrates, 208 of the 478 properties so expropriated were as of October 1968, still waiting for the constitution of an *asentamiento*.

Some of these delays in taking possession can be traced to CORA itself. CORA has often waited until almost a year (the maximum period allowed by the law) after the date of the expropriation decree before depositing the amount required for taking possession. This was probably due to scarcity of funds, though the endemic inflation in Chile may also have played a role—the longer payment of a fixed cost can be delayed, the cheaper it becomes. CORA officials admit that it has often taken a long time to set the necessary valuation figures, particularly as regards "improvements." This may have been due to a shortage of sufficiently trained personnel, or to extended negotiations with affected owners.

Many of the difficulties with quick-taking, however, are the results of legal loopholes in Law 16.640. CORA could not take possession until it deposited with the Superior Civil Court the required cash compensation (1-10 percent of the valuation), and until the judge ordered the inscription of title in CORA's name at the appropriate Registry of Property. Landowners, aided by the conservative nature of most civil court judges in Chile, were quick to object to CORA's deposit on the grounds that valuations were incorrect. Many judges accepted these complaints for consideration, which then became subject to regular civil court procedures, notorious for their complexity and length. In many cases, appeals to higher courts occurred. Not until a final judgment was made could CORA enter possession of the property.⁶⁸

67. Eduardo Frei, *supra* note 1 at 28.

68. Informe de la Comisión de Agricultura y Colonización del Estado.

TABLE 2. Pending Expropriation Processes Under Law 15.020
January 1965—June 1967) as of October 30, 1968
(*Asentamientos* not yet organized)

Length of Cases	Pending Number of Cases	Number of Settled Cases (<i>Asentamientos</i> Organized)	Total Expropriations Under 15.020
Under 6 months	19		
Over 6 and less than 12	19		
Over 12 and less than 18	8		
Over 18 and less than 24	59		
Over 24 months	103		
TOTALS	208	270	478

Source: Compiled by J. R. Thome and Hector Mora from unpublished data provided by CORA, *Dirección de Planificación y Control*.

TABLE 3. Expropriations under Law 16.640 (July 1967 through
October 1968): Length of Time from Expropriation
Decree to Constitution of *Asentamiento*.

Length of Process	Number of Expropriation Cases	Cases where <i>Asentamiento</i> Organized	Cases where <i>Asentamiento</i> not yet constituted
Under 6 months	89	11	78
Over 6 and less than 12	111	8	103
Over 12 and less than 18	20		20
Over 18	—	—	—
SUB TOTAL	220		
No Data	28		
TOTAL	248	19	201

Source: Compiled by J. R. Thome and Hector Mora from unpublished data provided by CORA, *Dirección de Planificación y Control*.

In the face of such problems, the Government introduced an amendment to Law 16.640. It was passed, and Law 17.280 of January 17, 1970 substituted new Articles 39, 40, and 41 for the original ones in Law 16.640. Among many important changes, the new articles provide that the deposits will be made at the appropriate Municipal Treasuries rather than at the Civil Courts; that in the absence of any tax assessment on the land, CORA will set its own assessment for the purpose of determining the deposit (subject to subsequent tax assessment by Internal Revenue Service); that CORA can obtain the inscription of titles of expropriated properties by presenting the necessary documents at the Registry of Property, rather than doing this through a judge; and that after complying with the above conditions CORA can enter possession of its own accord, and can request and obtain the assistance of the local public authorities. In addition, the new Article 41 provides that possession is no longer to be delayed by the existence of unharvested crops and establishes a new compensation scheme to

Cited by German Lührs in "Proyecto de Ley Modificatorio de la Ley 16.640." (ICIRA unpublished report, 1969).

take care of this situation.

Finally, the new Law establishes that all expropriations pending at the time of its enactment are subject to its provisions, thus enabling CORA to start all over again, under better conditions, to acquire possession of properties in the process of expropriation.

It is too early to determine the effects of the new amendment although they certainly seem to close many loopholes. In any case more recent data show that CORA has improved its internal administrative procedures and is now moving faster in expropriating properties and organizing asentamientos.⁶⁹

CONCLUSIONS

A substantial agrarian reform—that is, one that effectively redistributes rural properties among landless campesinos and integrates the peasant class into the social, political and economic life of the country while at the same time maintaining adequate production levels—is a very complex and difficult process. At the very least, it involves much more than an adequate eminent domain or expropriation process—certainly the political will to complete the process, the efficiency of the administrative machinery charged with implementing the law and the amount of resources, both financial and technical, available for the program, are among the other factors which are at least as important in determining the success of an agrarian reform process.

Nevertheless, expropriation is the basic legal mechanism on which the rest of the agrarian reform process depends. Far too many “land reforms” have been doomed to failure by constitutional provisions or legislation which did not allow or provide for efficient and broad ranging expropriation processes. Three examples come immediately to mind: the Colombian land reform law of 1961, the Peruvian law of 1964, and the Chilean law of 1962.

If an expropriation process, at least in Latin America, is to provide the legal framework necessary for a substantial agrarian reform, it must at least:

- (1) make the bulk of privately owned rural property subject to expropriation;
- (2) establish a compensation scheme of deferred or long-term payments based on a valuation other than market price; and
- (3) have a quick-taking procedure which enables the reform agency to obtain possession of the land in the shortest time possible, while at the same time providing affected landowners with adequate legal remedies.

In Chile, the expropriation process as established by Law 16.641

69. Corporación de Reforma Agraria (CORA), *Reforma Agraria Chilena 1965-1970* (1970) pp. 36, 45, and 48.

and its regulatory decrees and implemented by CORA, has more or less satisfied the first two of the minimum "legal conditions." However, the procedure for taking possession of expropriated properties has not proven to be nearly as expeditious or uncomplicated as planned. As we have seen, certain legal formalities established by Law 16.640 have, with the cooperation of the courts, been utilized by landowners to suspend the taking of possession for months and even years. Moreover, CORA itself has in the past contributed to such delays through its administrative practices.

Consequently, it cannot yet be said that Chile is in the process of a massive or substantial agrarian reform. On the other hand, it is certainly much more than a mere colonization program or one of token expropriation and redistribution.

In the five and one-half years (January 1965 through July 14, 1970), since the present agrarian reform process was initiated, CORA has expropriated 1,319 properties with an area of nearly 3.5 million hectares. Approximately one third of this area is found in the three most populated and important provinces of Chile: Santiago, Valparaíso, and Aconcagua. During this same period, some 29,000 peasant families have been settled in 910 asentamientos, covering 3 million hectares of previously expropriated land. And by August 1, 1970, approximately 500,000 hectares of these asentamiento lands had been distributed, under either cooperative or individual titles, to 5,668 peasant families who had terminated their asentamiento period.⁷⁰ Much of the activity in organizing asentamientos and distributing titles occurred in 1970, probably reflecting both better procedures and the pressures of the upcoming presidential race.

Moreover, according to official government figures, agricultural and cattle production in the whole country has been increasing at the cumulative rate of 3.8% since 1965, well above prior rates and certainly contrary to the oft-expressed fears that agrarian reform usually results in a short-run drop in production.⁷¹ The costs of this agrarian reform process, which include much expensive infrastructure, are not yet clear, although some estimates go as high as \$10,000 per family.⁷²

While this activity represents a vast improvement over previous colonization and land reform programs in Chile, it nevertheless falls far below the goal of 100,000 families promised by Frei during his electoral campaign. Part of the blame for this slower than anticipated land distribution can be attributed to legal and administrative bottlenecks which became evident once Law 16.640 began to be implemented.

70. *Id.*

71. División de Agricultura, Oficina de Planeamiento Nacional, as cited in *El Mercurio, International Edition for June 1-7, (1970).*

72. *El Mercurio, Pagina Economica, International Edition for May 25-31, (1970).*