

LAWYERS: FROM THE STATE TO THE MARKET

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ABSTRACT

Lawyers have played a paramount role in the history of Chile. Since the mid eighteenth century they cultivated a strong relationship with the state, filling the majority of the highest offices. This relationship lasted until the first decades of the twentieth century. Throughout the twentieth century this linkage between lawyers and the state has lost strength, becoming very nebulous in the second half of the century. While the linkage between lawyers and the state has lost its former importance, the relationship between lawyers and the market has turned into a paramount issue to understand the current features of the legal community. This thesis, therefore, suggests that lawyers have transited from the state to the market. The methodology I have employed to bolster this statement is, following some sociology of professions' trends, to examine the relationships between lawyers and the legal education, lawyers and other professions, lawyers and the legal profession, and lawyers and the state. The thesis is divided in three chapters. In Chapter One I review how the linkage between the legal community and the state was created and why were lawyers so important for the state. Chapter two examines the peak of this relationships and the causes of its falling. Finally, Chapter three deals with the new scenario for the legal community in the market. The main intellectual contribution of this thesis is to explore a field up to this point unexamined: the history of lawyers in Chile; to suggest a formula to embrace the changes experienced by the legal community in Chile: from the state to the market; and to provide an analytical framework to understand these changes.

PREFACE

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Introduction.

Few professions, if any, have received more attention than law. Even though the study of professions is fairly new, law already has a generous bibliography that gathers some of the finest authors in sociology and economics as well as scholars from all over the world.¹

In the Chilean case, lawyers have been strongly tied to the history of the nation. It is not an exaggeration to state that, in some periods, they wrote the main lines of that history. Surprisingly, the topic has not incited the attention of scholars at all. The bibliography about lawyers is extremely scarce and frequently related to the history of legal studies or, at best, constrained to some historical period.² The answer of the question about this scarcity of intellectual works would be, doubtless, a great topic for a thesis, nevertheless, not for this one. In the case of this thesis I just note the scarcity of information as an excuse in advance for some voids and lacks of precision throughout it.

¹ In general see Abel (1988) (1989); Baldwin & McConville (1979); Blankenburg & Schultz (1995); Bogus (1996); Clark (1999); Dezalay & Garth (1997); Falcao (1998); Heinz & Lauman (1997); Galanter & Palay (1997); Glendon (1994); Gilson (1984); Griffiths (1986); Hadfield (1999); Halliday (1987); Kronman (1993); Lynch (1981); Parsons (1958); Pérez Perdomo (1981a) (1981b); Posner (1993); Ramsey (1993); Suchman (1994).

² See González (1954); Lowenstein (1970); Urzúa (1992). An exception can be found in Bravo (1998).

The aim of this thesis is to contribute to the study of lawyers in Chile. Of course this work is not an attempt to fill the lack of research about lawyers in Chile; its commitment is humbler. The aim of this thesis is twofold: it attempts first to provide a description of the changes experienced by lawyers throughout the last three centuries in Chile and, second to provide a theoretical framework to understand these changes. Accordingly, the changes are described under the formula **from the state to the market** and the explanation of such changes attempted through the review of the relationships between (1) **lawyers and the legal education**, (2) **lawyers and other professions**, (3) **lawyers and the legal profession** and, (4) **lawyers and the state**. Because some of the preceding terms are used in different ways by different authors, I will begin with a discussion of how I will define them for the purposes of the present study.

The word *lawyer* itself is highly vague and, therefore, confused. When using such a term one can be referring to at least three different categories: first, **law graduates** or **jurists** (Pérez Perdomo, 1981a) who are entitled to practice the legal profession; second, law graduates who practice some occupation related to legal issues (e.g. judges, prosecutors, attorneys, law teachers, law researchers), I call them **legal professionals**; and third, law graduates whose main occupation is advocacy, that is representing “the interests of another in court or outside... (with) the exclusive right to draft and sign pleadings” (Falcao, 1988, 401). If we add to the former tasks legal counsel we have what I call a **practicing lawyer**.

One of the ways to overcome this vagueness is by establishing my own typology in order to make operative the expression *lawyer* to the commitment of this work. Thus, throughout this thesis I use basically three expressions to cope with the vagueness of the term, namely: *lawyer*, *legal profession*, and *legal community*.

By *lawyer* I understand any law graduate entitled to work as attorney.³ I have preferred *lawyer* to *jurist* because, in Chile, the latter is used to name prestigious law teachers. I use *legal profession* when referring to those lawyers who work as practicing lawyers. Finally I use *legal community* when dealing with lawyers in general, regardless whether they are or not engaged in legal practices.

Although they are covered by this typology I have excluded the judicial professions from my study. That exclusion has two reasons: first, the functions carried out by the judiciary do not fit the scope of this work and, second, unlikely for lawyers, there is an extensive bibliography about the Chilean judiciary. Therefore, the need is less urgent.⁴

I use the expression *from the state to the market* as a wide formula to describe the changes experienced by the legal community in Chile. Both terms *state* and *market*

³ As I review later, in the Chilean case, that means almost every law graduate.

⁴ For a good history and analysis of the Judiciary as well as for bibliography see Peña (1993). See also Valenzuela et al. (1991), Vargas et al. (2001), Vaughn (1993).

precise a brief explanation. I use *state* to refer to the managing of the public issues, either political or social (Arendt, 1998 [1958]). I have called the realm of public issues, the public sphere. Therefore lawyers in the public sphere basically means the participation of lawyers in the managing of public issues from the state. In the case of the *market*, I use the term meaning the practicing of the legal profession. In this regard, I refer to lawyers in the market to mean the involvement of lawyers in the practice of the legal profession.

The very core of this thesis is to argue the transition of lawyers from the state—or the public sphere- to the market. A caveat is required in regard to this point. I am not referring to a holistic transition; neither every lawyer worked managing public issues before nor every lawyer is a practicing lawyer today. I am rather alluding to a change in the definition or image of lawyers (Abbott, 1988).⁵ Until the first half of the twentieth century people conceived lawyers as servants of the state, especially as politicians. Today we think about lawyers as a profession oriented by the needs of individuals and, increasingly, corporations.

I argue that what has changed is the **jurisdiction** of lawyers. I borrow the use of the term jurisdiction from Abbott. According to him:

(T)he central phenomenon of professional life is...the link between profession and its work, a link I shall call jurisdiction. To analyze professional development is to analyze how this link is created, how is it anchored by formal and informal social structure, and how the

⁵ Still another way to say it is that I am referring to ideal types (in the Weberian meaning of this expression) of lawyers (Weber, 1968, 19-22).

interplay of jurisdictional links between professions determines the history of the individual professions themselves (1988, 20).

Until the early twentieth century, lawyers had a kind of *universal jurisdiction* in the public sphere.⁶ No other profession was able to compete in this realm. That jurisdiction became seriously threatened in the second half of the twentieth century with the rise of other professions and the change of the model of the state among other factors. As a consequence, the jurisdiction of lawyers became specialized toward legal issues in the public sphere. Conversely, the jurisdiction of lawyers in the market has become more important and it has not been threatened yet. Nevertheless, the increase in the number of lawyers has made the legal profession more competitive.⁷

In addition to the description of this change experienced by the legal community this thesis provides a theoretical framework to explain such a change, using two models. Abbott conceived the first in his book *THE SYSTEM OF PROFESSIONS* (1988). The second was created by Burrage, Konrad & Hannes (hereinafter Burrage et al.) in their article *An actor-based framework for the study of the professions* (1990).

I have already alluded to jurisdiction; this is the key issue in Abbott's report about professions. To address Abbott's model it is necessary to understand that, for him

⁶ Of course this jurisdiction was only in regard to other professions. Historically Chilean politics have allowed a lot of non-professional participants. An example in the composition of the Congress between 1833 and 1891 can be found in Marcella (1973).

a fundamental fact of professional life (is) interprofessional competition...It is the history of jurisdictional disputes that is the real, the determining history of professions (1988, 2).

Therefore, from Abbott's work I draw my first relationship: lawyers and other professions.

The second model I use to develop a theoretical framework is the one created by Burrage et al. (1990). According to these authors professions must be studied by examining their relationships to four actors: practicing professionals, state, users and universities (Ibid. at 207). From this scheme I have derived the three remaining relationships of lawyers: lawyers and legal education, lawyers and the legal profession and, lawyers and the state. Let me now briefly address these four relationships and their importance for the study of the Chilean legal community.

Lawyers and the Legal education.

Knowledge can be considered as a "core generating trait" of professionalism (Halliday, 1987, 29), the "cognitive basis" that legitimates the professional claims for jurisdiction.⁸ In the case of lawyers, from the twelfth century, their professional

⁷ When dealing with the competition among lawyers in the market I use the expression *internal competition*. In the case of the competition of other professions in the public sphere I use *external competition*.

⁸ According to Larson:

once the academic system has risen as the recognized monopolizers of cognitive legitimation, the university provides the best justification of the claim for an institutional market: monopolizing training is important, but monopolizing it at the university level brings a built-in legitimation of monopoly in terms of cognitive superiority (1977, 48).

knowledge came from the university (Berman, 1983, 123). The *formal knowledge*⁹ (Freidson, 1986, 3,4) provided by university training allowed lawyers the access to the highest positions of the state as a kind of enlightened bureaucracy in the early republic. Therefore there is a fairly clear linkage between the university education of lawyers and their wide participation in the public sphere. The relationship between legal education and lawyers' jurisdiction, however, plays in two contradictory ways. In eighteenth and nineteenth century put lawyers closer to the public sphere. Later, in the twentieth century moved them farther away from the realm of the public focusing lawyers to the market.

In order to explore this phenomenon, I review the history of the legal education in Chile from the creation of the University of San Felipe in 1758; the first Chilean university entitled to provide legal education, until the last reforms of the 1990s. Each chapter of this thesis contains a section focused on the legal education. In these sections I examine the main features of the legal education in Chile, paying attention especially to the teaching methodology and the contents of the law's curriculum. Thus, throughout this work I examine the successive criticisms and reforms experienced either in the curriculum design or in the teaching methodology of the legal studies as a way to understand the changes in the image of lawyers in these 250 years.

⁹ I examine the term in Chapter one

Lawyers and other professions.

As I hold throughout this thesis, until the second half of the nineteenth century lawyers had not interprofessional competition. Other than theology, law was the only significant profession provided by the university. And until the early twentieth century legal studies were the most demanded. In such a scenario it was not strange that the state resorted to lawyers to organize and manage the country, they were the main linkage between the society and the knowledge provided by universities, an enlightened elite par excellence.

The jurisdictional disputes only arose in the second half of the twentieth century, especially from the sixties. A new model of development and to managing the state needed a bureaucracy able to lead the state. That time lawyers saw their former hegemony threatened by new professions, especially sociology and economics. Although in the Chilean case there were not explicit jurisdictional disputes a very telling case of lawyers' feeling about the loss of jurisdiction on the public sphere and an attempt to recover it can be found in the so-called crisis of the legal system in the sixties and first years of the seventies. I review that crisis in Chapter II.

Lawyers and the Legal Profession.

The legal profession is the link of the legal community to the market. The aim of this thesis is to assert that the evolution of the legal profession has moved in the opposite direction of lawyers in the public sphere. Thus, the beginning of the legal profession was quite modest. In general, a law degree was worthier as a source of social prestige than as a source of income. Chile was a poor country, with an agrarian economy and a wide majority of its population was poor and illiterate people incapable of demanding legal services. The rise of the legal profession is related to the exploitation of nitrates in the last twenty years of the nineteenth century and a general increase of the country's trade and wealth. This rise has been especially vigorous in the last thirty years, fostered by the economic growth and the increase in the number of lawyers.

From the last years of the nineteenth century, the legal profession achieved the traits of a liberal profession. Therefore, practicing lawyers worked independently from their clients and without specialization, almost as family doctors do. I argue that the legal profession began to lose their liberal traits in the last three decades of the twentieth century. New forms of practice derived from the economic growth of the country and, later, from economic globalization, have led lawyers to specialize job. In

addition, the neo-liberal policies of the military regime of Augusto Pinochet (1973-1989) included the opening of the university system and, therefore, an explosive growth of the legal education's supply.¹⁰ This growth fostered an increase in the number of lawyers and, therefore, eliminated one of the clearest features of the legal profession in Chile: its small size. The increase of the internal competition has also modified the liberal nature of the legal profession, encouraging new patterns of legal practice such as corporate in-house counsel, law firms and legal clinics. I examine this in Chapter III.

As lawyers have lost power in the public sphere they have won a strong position in the market. Lawyers are today an essential gear of business and legal relationships in general. This phenomenon is not only related to the increase of lawyers, but also to a tendency to move social conflicts from the state to the judiciary (Blankenburg, 2000; Halliday, 1987; Vargas, 2001).

Lawyers and the State.

Every profession is linked to some extent with the state. It is the state that guarantees some monopoly professions required to achieve economic, social and

¹⁰ From five laws schools in 1981 to forty in 2000. See Chapter III.

political rewards.¹¹ In the case of law in Chile, this linkage occurred very early and it was very strong. In this regard, not only did the state guarantee lawyers the monopoly on the legal practice from the very beginning but it also provided them substantial room in the managing of the country.

From the last decades of the colonial period, the legal community had a central role in the managing of public issues. That role has led Chilean historian Sol Serrano to name law “the profession of power” (1994, 178). As I already noted, this thesis explores how lawyers got that hegemonic position and how it was gradually weakened. A good deal of the explanation of lawyers’ dominant position in the public sphere is related to their privileged education and the lack of external competition. Two other factors must be added to the former explanation. In the first place, until the first decades of the twentieth century there was a close relationship between the legal community and the aristocracy, the group that dominated Chilean politics until the 1920s. Secondly, the independence and the new government set up a model of state which heavily trusted in law as a sufficient tool to guarantee the social and economic progress of the country.

¹¹ This characterization of professions corresponds to the Weberian tradition in the sociology of professions (Macdonald, 1995). As Abel states:

(f)or Max Weber and others in his theoretical tradition...analysis [of professions] begins with the sphere of distribution. The central question is how actors seek and attain competitive advantage within a relatively free market –one constructed by the state but dominated by private producers. The goals are economic rewards and social status, which is partly a consequence of wealth and partly its legitimating (1989, 15).

Alongside the loss of intellectual prestige and the arriving of external competition suffered by the legal community in the twentieth century, the latter factors were also affected. Both the relationship between the legal community and the aristocracy (and the relationship between the aristocracy and the political power) and the model of the state changed. In the case of the first with the incorporation of the middle class to legal studies and, in the case of the second, with the Great Depression of the thirties and, later, with the *global planning*¹² (Góngora, 1981). The combined effects of all these changes damaged substantially the privileged position of lawyers in the public sphere.

All of the former four relationships can be embraced by a more general phenomenon: the specialization that springs as a consequence of social work's division in modern societies¹³ (Durkheim, 1997). In this regard, so wide a jurisdiction as lawyers had in Chile is only feasible when the public issues are not specialized. Once they become, new expertise is necessary. I argue that in the Chilean case this specialization became critical with the Great Depression; I think this event marked the turning point for the legal profession.

¹² I explain the global planning in Chapter II

¹³ Using Durkheimian expressions in societies with high volume and moral density (1997, 306).

The specialization of work has also produced effects in the market. Although lawyers still hold a monopoly in the market of legal services, the deep economic and social changes experienced by Chile in the twentieth century has led to an increasing specialization in the work of practicing lawyers. Therefore, I suggest that to understand the legal community today, we have to turn to the market. The legal profession has become the most relevant element of the legal community. Moreover, the legal profession must be thought without affective connotations such as the compromise of lawyers with the justice, their commitment to social service, their disinterestedness and so on¹⁴, but rather as a group of self interested individuals who own a monopoly on an extremely sensitive issue.

The thesis is divided into three chapters, each containing two sections: *legal education* and *the legal community*, which cover the relationships between lawyers and other professions and between the legal profession and the state. The first chapter covers from the creation of the University of San Felipe in 1758 to the creation of the University of Chile in 1843. Its main purpose is to explain how the link between lawyers and the state was born as well as give some information about the practice of the legal profession in this period.

¹⁴ This kind of approach has been explored by the Functionalist approach in the sociology of professions. See in general Barber (1963); Carr-Saunders & Wilson (1951); Durkheim (1997), Parsons (1958).

The second chapter embraces the period between the creation of the University of Chile and the military regime that began in 1973. The aim of this chapter is to show the peak of the relationship between lawyers and the state and its falling. In addition I review how the market became an attractive option for the legal community. Since this chapter covers the longest period of the thesis, I have also added a brief sketch of the economic, social and political features of Chile throughout that period.

The third chapter covers from 1973 to 2000. Here I am interested in examining the consequences of the neo-liberal policies carried out by the military regime for the legal community. I argue that such policies generated effects both in the market and in the public sphere for lawyers. In the market they produced an enormous increase in the size of the legal community and contribute to make legal issues more complex and specialized. In the public sphere they meant the displacement of lawyers by economists. Finally I briefly speculate about some consequences of the globalization for lawyers in Chile.

Before beginning, I would like to point out some limitations of this thesis. First of all, as I have already noted, the information about lawyers is extremely scarce in Chile. Thus, a good deal of this thesis has been written relying on information about lawyers and legal systems in other countries, and, sometimes, based on anecdotic

information. This is especially valid for the last chapter. Therefore, an attempt to collect more empirical information to support these conclusions still is required.

Secondly, this thesis is an attempt to study the legal community in Chile in the last 250 years, provide a wide formula to cover the changes experienced by the legal community and a theoretical framework to understand such a changes. All of this by using some approaches close to sociology of professions and, sometimes, others related to law and economics. This goal is extremely ambitious and, I am afraid, not completely accomplished in the following pages. In this regard I prefer to think this thesis as a first effort to examine a complex and vast realm still unexamined. Thus, I do not aspire to fill the lack of research about lawyers in Chile but rather to provide some coordinates to orient forthcoming works.

CHAPTER I

KNOWLEDGE AND JURISDICTION. (1758-1843)

The especial information which lawyers derive from their studies insures them a separate rank in society, and they constitute a sort of privileged body in the scale of intellect.
Alexis de Tocqueville

During the first two centuries of the history of Chile, the number of lawyers was extremely small.¹⁵ The first lawyer who arrived to Chile was Antonio de las Peñas in 1549. According to González, during the second half of the sixteenth century and the whole seventeenth there were no more than two or three lawyers in Chile. The number of lawyers increased slowly during the first half of the eighteenth century. In 1705 there were four lawyers; in 1713, five lived in Santiago; in 1727, nine, two of them ecclesiastics; in 1729, 10, but not all of them practiced the legal profession (González, 1954, 73, 74).

¹⁵Besides the local circumstances of Chile it seems the scarcity of lawyers was not unusual in the poor countries of Latin America in this period. In the case of Venezuela, for instance, Perez Perdomo has reported that at the beginning of the eighteenth century there were no lawyers in Caracas (1981a). This scarcity was probably influenced by the decision of the Spanish crown in 1509 prohibiting the pass of lawyers to the new world. The restriction was not always respected. However, in the case of the establishment of lawyers in villages or cities, conquerors and its inhabitants quickly asked the king for new restrictive laws (González, 1954, 23-25). As González has suggested the latter could have two explanations, first to avoid the excess of litigation promoted by lawyers (the explicit argument of the solicitors), but also the mistrust of the conquerors about the

In addition to the prohibition of the Spanish crown (see supra note 1), some local factors may explain the small number of lawyers in Chile. First, those who wanted to pursue a legal career had to go to the University of San Marcos in Lima (Peru) to obtain the required degree to practice as a lawyer (Medina 1928, Vol. I, 3). The travel and maintenance costs for Chilean students were extremely expensive. Second, from the founding of the country in the first half of the sixteenth century to the second half of the seventeenth century, Chile was a “country of war” (Góngora, 1981, 5), without the economic and social conditions needed to accumulate wealth. (Jocellyn-Holt 1992, 33). Being so, it can be supposed that lawyers did not constitute a basic need during the first two centuries of the colonial period in Chile.¹⁶

The second half of the seventeenth century constituted a period of significant growth and reform to Chilean society. The long and fierce War of Arauco, which consumed its energies and resources during the first century and impeded the generation of economic and social conditions required to accumulate wealth, was finally controlled. The controlling of the war, the availability of workers and an earthquake that occurred in Peru in 1687 that affected the wheat plantations, permitted the flourishing of an agrarian economy based on the *hacienda*. (Collier & Sater, 1996, 10,11).

role of lawyers and law in the management of daily issues and therefore the exercise of the power. (Loc. cit)

¹⁶ González has reported that ten years after their establishment in Santiago, the ministers of the Real Audiencia in Santiago, sent a communication to the king communicating him the scarcity of lawsuits in Chile. This lack of litigation was still visible in 1780 (1954, 75)

The end of the war also produced effects in the structure of society. As Jocelyn-Holt states, during the first two centuries the divisions within the Chilean society were only determined by race or military rank (1992, 33). With the arrival of peace and economic growth, the Chilean society became more stratified and complex. From this complexity emerged the leading elite that later led the process of independence. (See Jocellyn-Holt, 1992; Edwards 1936; Eyzaguirre, 1973)

During the eighteenth century, the most significant event for the Latin-American colonies was the arrival of the Bourbons to the throne in Spain. In the case of Chile, all the transformations experienced during the former century were fuelled by several policies of the enlightened government of the Bourbons¹⁷ (Jocellyn-Holt, 1992, 45-67), especially in the reign of Charles III¹⁸ (1759-88) (Bravo, 1994, 52-103).

In broad terms, during the Bourbonic period, Chile obtained great commercial, administrative, and territorial autonomy. Alongside this autonomy and economic growth, a major change occurred in the education system during the second half of the century, the establishment of the University of San Felipe in 1758; the first university in Chile entitled to provide law degrees.

¹⁷ Among them, the foundation of new villages beginning in 1739, the reform of the army, the *estanco del tabaco* in 1753, (state tobacco monopoly) and the University of San Felipe in 1758 (Bravo, 1994, 52)

As stated in the introduction, the aim of this chapter is to examine the legal community from the second half of the eighteenth century to the first half of the nineteenth century. It is during this period, I argue, that the legal community began to play a significant role in the history of Chile. Therefore, the main concern of this chapter is to show that: (1) lawyers constituted the main linkage between society and formal knowledge¹⁹ in the colonial period, and (2) that this linkage allowed the legal community to play a significant role in the shaping of the state. In this regard, the legal community and the state had historically in Chile a double linkage. First the legal profession was organized from the state; and second, the legal community provided a significant bolster in the ideological support of the new republican state and its organization after the revolution of the independence.

To examine the latter, I consider in the following the relationship between lawyers and the university (Legal Studies: The Provision of Formal Knowledge); the relation between lawyers and the legal profession, and the linkage between lawyers and the state (Lawyers and the State).

¹⁸ Some examples of these reforms are the professionalism of the army, the improvement of the administrative system and the control of commercial relations (Jocelyn-Holt, 1992, 44-65)

¹⁹ I will use the expression formal knowledge in the sense assigned by Freidson, which means knowledge rationalized in the Weberian meaning of this word. In Freidson's words: "formalized into theories and other abstractions, on efforts at systematic, reasoned explanations, and on justifications of the facts and activities believed to constitute the world" (1986, 3,4). I do not

Legal Studies: The Provision of Formal Knowledge.

Before the opening of the University of Chile in 1843, two periods can be distinguished in legal education in Chile. The first embraces the two centuries between the founding of the country and the establishment of the University of San Felipe (1747); and the second covers from its establishment to the creation of the University of Chile in 1843.

As it has been said, before the University of San Felipe, legal studies had to be carried out abroad, generally at the University of San Marcos in Peru. During the existence of the University of San Felipe, this was the only institution entitled to confer law degrees in Chile.²⁰ The University of San Felipe provided legal education and conferred degrees from its foundation until 1813, when the Instituto Nacional was created and began to provide legal education instead of the University of San Felipe. Legal education returned definitively to the university only in 1879, over three decades after the founding of the University of Chile.

address here the problem of the epistemological base of formal knowledge in the case of law. For a good discussion see Halliday (1987, 28-55).

²⁰ Along with the University of San Felipe, the Real Convictorio de San Carlos and some other colleges also provided legal education. However the University had to examine the students of all remaining educational institutes (Gonzalez, 1954, 157-160).

The following paragraphs refer to the legal education at the University of San Felipe, the changes experienced with the foundation of the Instituto Nacional, and the study of National and Procedural Law carried out first through the institution of *Práctica Forense* and later in the *Real Academia Carolina de Leyes y Práctica Forense*.

Legal Education in the University of San Felipe and the Instituto Nacional.

As stated earlier, before the opening of the University of San Felipe (hereinafter USF) in 1758, there were no legal studies in Chile. Until this date, the existing universities were “pontifical universities”²¹ therefore they could only provide degrees in Arts and Theology. (Dougnac 1999, 29)

The founding of the USF, a royal university that could provide “profane studies” such as the legal studies, was the result of the *Cabildo de Santiago’s* (Municipal Council of Santiago) claims asserting that the lack of a royal university in Chile excluded Chilean people from the ecclesiastic and secular offices that required the possession of a title. (Bravo, 1992a, 44). In addition, the authorization of the Spanish crown to establish a royal university was closely related to the arrival of the

²¹Pontifical means under the Pope protection. According to Bravo, there were two pontifical universities in Chile, the University of Santo Tomas, founded in 1622 by the Dominicans in Santiago and the Colegio Máximo de San Miguel established in 1623 by the Jesuits also in Santiago. Another institution that conferred degrees under the tuition of Jesuits was the Seminary of Concepción (Bravo, 1992a, 40, 44).

Bourbons to the Spanish throne in the beginnings of the eighteenth century and their reformist process. (Jocellyn-Holt, 1992, 43-67)

The license to establish a royal university was granted by Phillip V in 1738. Due to the complexities involved in the organization of the University, from the construction of the building to the recruiting of professors (the former were recruited in 1756), the USF was not ready until 1757 and studies did not begin until the following year (Bravo, 1992a, 52-62). The USF initially had four disciplines, Canons and Law, Medicine, Theology and Philosophy or Arts.²² Later other courses were included such as Rhetoric and one concerned with the explanation of Saint Thomas' doctrine (Medina, 1928, Vol. I, 19).

The statutes of the University of San Marcos regulated the USF. According to them, the provision of cathedras was accomplished through an oppositions contest consisting of a 24 or 36-hour lección.²³ Some of the cathedras were life-term appointed, some for four years and the remaining for three. (Ibid. at 110) The statutes also regulated the degrees conferred by the university; these were *bachiller*, *licenciado*, and *doctor*. The former required the approval of three courses and an exam called 33 questions; licenciados were required to give a public dissertation and a 24-hour lección; the degree of doctor was in general conferred along with the license. (de Avila, 2000a, 30)

Similarly to the other royal universities established in Latin America during the Colonial period, the USF followed the University of Salamanca in its model of legal education. The University of Salamanca centered the formation of lawyers in the study of the glossed and commented Justinian Roman law, and the study of the Pontifical Canon Law of the Corpus Juris Canonici (de Avila 2000b, 35). Both Roman law and Canon Law constituted the most significant elements of the *ius commune*²⁴ (Salinas 1999, 113).

Until 1819, the study of law in the USF embraced four cathedras, two of them, “Prima de Canones” and “Decreto” belonged to Canon Law and the two remaining, “Institutes” and “Prima de Leyes” to Roman law (de Avila 2000a, 29). This plan of studies lasted until the creation of the Instituto Nacional in 1813 (Ibid at 36).

In the study of the Canon Law, Prima de Canones covered the *Decretals*, and Decreto, the work of Gracian: *Concordia Discordantium Canonum*. (Salinas 1999, 115) The Roman Law courses covered the *Justinian Institutiones*, and a piece of the *Digesto*, the *Infortioratum* (Book XXIV, title 3, to XXXVIII) (de Avila 2000b, 36).

²² Here it must be emphasized that to pursue Arts or Philosophy constituted a common requisite for Law, Theology, Medicine and Mathematics. In this regard, Philosophy cannot be seen as an individual specialty but as a preparatory set of courses.

²³ A lección was a dissertation on a topic randomly assigned 24 or 36 hours before the speech.

²⁴ By *ius commune* I understand the law cultivated and divulged by European jurists through their cathedras in European universities from the XI century until the XIX and in Spanish America from the XVI century to the XIX. The foundations of *ius commune* were Roman and Canon Law and its commitment was to become a universal law, a common law superior to other local laws (Bravo, 1989, 7).

Along with these basic sources, the bibliography used in these courses probably embraced the Institutes commented by Vinnio and Heineccius and the works of Fagnani with regard to Prima de Leyes; (de Avila 2000a, 29; González 1954, 120) and the works of Bernardo Van Spen and Selvagio in the case of Canon Law. (Salinas 1999, 115,116)

The lack of courses related to the study of the Spanish --then national-- law is not as curious as appears today. On the one hand, as González has suggested, the study of law was not oriented directly toward the preparation of professional lawyers (1954, 123). The professional formation was, later, the objective of The Real Academia Carolina de Leyes Práctica Forense, founded in 1778. On the other hand, as Bravo has stated, from its birth as a country in the middle of the sixteenth century to the codification of law in the late nineteenth and the early twentieth century, Chile was under the influence of the *ius commune* (1998, 93). Under the dominion of *ius commune*, the application of the law was roughly left to the discretion of the judge and only barely bound to the written law.²⁵ (Bravo, 1992b, 169, 171) In this regard, even to practice the legal profession, the knowledge of the national law was not so necessary.

With regard to the methodology employed in the USF, and later in the Instituto Nacional, the duration of the studies was four years. A piece of Canon and Roman

²⁵ Bravo has suggested that the process of codification implied a transition from the judicial discretion [arbitrio judicial] to legalism (1998).

Law was covered in each year. As in the other Latin American Universities, the methods of teaching were scholastics,²⁶ and (Góngora 1978, 42) classes were probably taught in Latin.²⁷ The USF had three mechanisms of teaching: *lecciones or lectures, conferences* and *24-hour lecciones*. In the case of the former its character was expositive and consisted of one hour of dictating followed by an oral explanation by the teacher,²⁸ and thirty minutes of questions by the students (González, 1954, 139; de Avila 2000b, 30; Mellafe et al, 1993, 32). *Conferences* and *24-hour lecciones* both required a more active role of the students (Medina 1928, Vol. II 110-114). In *conferences*, the student prepared an exposition of some conclusions that he presented to the complete academic community, students and teachers. The *24-hour lecciones* consisted of oppositions prepared by the students on a topic released 24 hours before the contest (González 1954, 139-141).

The University of San Felipe worked normally until 1813. When the Instituto Nacional (hereinafter IN) was established,²⁹ which unified the existing institutions of basic and superior education in one. The IN assumed the docent functions of the USF, with only the examination of the students remaining to the latter, and later, in

²⁶ Nevertheless, as I examine, probably the *lecciones* (one of three methods of teaching) constituted an exception to the former.

²⁷ Although the statutes of the University of San Marcos, that also ruled the USF, contained no explicit rule in this regard, the language of law in Europe was the Latin. Further, both the doctoral thesis and the 24-hour *lecciones* were written in Latin (González 1954, 140).

²⁸ According to the constitution LVII, title VI of San Marcos University's regulations, the teacher was expected to read during the entire year, except only for vacations and holydays (Quoted in González, 1954, 139).

²⁹ The establishment of the Instituto Nacional had two goals, first to improve the quality of public education in Chile, and second to reshape education to meet the European ideals of progress and Enlightenment (Medina 1889, 5).

1823, just the conferral of academic degrees³⁰ (Bravo 1992, 79). The situation remained this way until the establishment of the University of Chile.

In 1819, the legal studies curriculum was modified. Beginning in this year, legal studies in the IN embraced two courses, one of “Natural Law, *Ius Gentium* (International Law) and Political Economy” and the other of Canon Law, National Law and *Práctica Forense*. Both replaced Roman, which was suppressed, and Canon Law (Amunátegui 1889, 370). The length of studies was now three years and, as stated earlier, the law degrees were conferred by the USF.

Following Góngora, the reform of legal curriculum can be understood as a late product of the Enlightenment introduced in Spanish America by Spanish officials and ecclesiastics and the transition from a scholastic and humanistic education toward one focused on encyclopedic knowledge of the natural world. (Góngora, 1975, 191) The next passage illustrates the former:

(T)he national State, which encouraged the vernacular language, also insisted on the systematic study of national law (both Spanish and Spanish American), the knowledge of which had previously been acquired merely through practice. Roman law, which traditionally had been conceived as a ‘formative’ discipline *par excellence*, was relegated to a purely propaedeutic function. The Enlightenment almost entirely abandoned the idea of humanist ‘formation’ of the student in all subjects, and sought instead to impart an encyclopedic knowledge of the natural world. (Loc. cit)

³⁰ The granting was only a ceremony without any requirement other than a certificate from the rector of the IN (Amunátegui, 1889, 472).

Along the same line, Amunátegui argues that one of the reasons leading to IN's creation was the scholasticism that impregnated the studies in the USF (1889,2).

In 1828, the Government authorized the opening of a new institution of basic and superior studies, the Liceo de Chile founded by Jose Joaquín de Mora.³¹ Along with the Liceo de Chile, the Colegio de Santiago where Andrés Bello³² was teacher accomplished the real renovation of legal education in Chile. The former included in its program Natural and Constitutional Law, Political Economy, Canon Law and reincorporated Roman law. In the latter, Bello taught universal legislation, including the principles of Civil Law, Criminal Law and Constitutional Law. (Mellafe et al, 1993, 46). Later, in 1832, the IN emulated this trend, introducing the following curriculum: first year, *Ius Gentium* and Rhetoric; second year Principles of Universal Legislation and Rhetoric; third year, History and Elements of Roman law³³ and Political Economy; fourth, National law Institutions and History and Elements of the Ecclesiastical Public Law and Canon Institutions; fifth year, National Institutions Law. (Amunátegui, 1889, 478,479)

The Real Academia Carolina de Leyes y Práctica Forense.

³¹ Jose Joaquín de Mora was a Spaniard liberal jurist, politic and writer who also founded the first review of intellectual discussion in Chile (Mellafe et al, 1993, 46).

³² Andrés Bello was the most renown intellectual in Chile, and one of the most significant of Latin America, during the nineteenth century. He lived in Chile from 1829 to his death in 1865. During his stay in Chile, his main works were the redaction of the Civil Code (Bello is appointed as its author) and the organization of the University of Chile (he was its first rector).

As noted earlier, the USF only gave courses in Canon and Roman law, the basis of the *ius commune*. Therefore, even after the founding of the IN and the modifications of the curriculum, two dimensions of legal practice remained excluded: Spanish Law and Procedural Law. Both gaps were filled, first through the institution of “Práctica Forense”, and since 1779, more systematically by the Real Academia Carolina de Leyes y Práctica Forense

The *Práctica Forense* consisted of a four-year period of apprenticeship in the office of a lawyer and participation in tribunals to hear judicial procedures. The institution was devoted to three tasks: first, reading and studying of judicial files; second, studying of legal texts and famous authors; and third, practicing in the art of litigation (González 1954, 171-173). Once the period of training was concluded, a commission formed by three lawyers had to examine the student to check the sufficiency of his knowledge.

The *Real Academy* was founded in 1779 as a policy of the *Real Audiencia* (the highest court in Chile at the time) to assure a satisfactory preparation of the increasing number of lawyers (González 1954, 169). The *Real Audiencia* ruled that participating in academic activities of the *Real Academia* replaced accomplishment of the *Práctica Forense* (Bravo, 1994, 101). These activities were divided into “Tribunal Exercises” and “Royal Law Exercises” (González, 1954, 180). Tribunal Exercises were oriented toward training in procedural issues through

³³ The study of Roman law embraced the study of Civil Law (Amunátegui, 1889, 566).

simulated trials, and Royal Law exercises consisted of dissertations about royal legislation, especially, the Partidas and the Nueva Recopilación de Castilla (Ibid. at 181).

The Real Academy worked normally until the Revolution of Independence. From 1811 the Real Academy was almost completely paralyzed, and its activities ceased in 1815 (Salinas 1999, 132). As a result, the study of both National Law and Procedural Law were included in the program of the IN established in 1819 (Serrano 1994, 169). In 1832, due to conflicts between the rectors of the IN and USF, the Real Academia Carolina de Leyes y Práctica Forense was reorganized under the name Academy of Práctica Forense. Finally in 1851, the Academy of Práctica Forense was suppressed and the contents of Procedural Law were included in the curriculum of legal studies in the IN (de Avila 1979, 55).

The Outcome of Legal Education.

From 1757 to 1843, the USF conferred more than 1,000 degrees (Bravo 1992, 75). As Serrano has stated the USF oriented, in fact, its studies toward theology and law. In the same regard, Bravo has stated that in the USF, besides theology only legal studies had truly significance (1992a, 73).³⁴

³⁴ According to Serrano, between 1757 and 1839, the students who only began to pursue studies and those who obtained degrees total 620 in philosophy, 569 in theology, 526 in law, 38 in medicine and 40 in mathematics (1994, 31).

Both the USF and the IN were quite irregular in the quality of the education provided. The USF suffered financial problems almost endemically that affected the regularity and quality of its courses (González, 1954; Medina, 1928; de Avila 2000a). In his history of the IN, Amunátegui says that “in its latter days the USF resembled a ruinous house, its courses had no students and only the rector’s election gave it some life” (1889, 3).

The significant reforms introduced to the curriculum of the IN suggest, at first glance, an improvement in legal education. However de Avila has pointed out that, in fact, they were not (de Avila 2000b, 39). He asserts that the lack of professors to teach the courses (only two), the disorder carried out by the period of independence, and the merely symbolic function of the University in conferring degrees without examination damaged the quality of the legal education.

As Bravo (1994, 75) and Amunátegui (1889, VII) have suggested, regardless of the deficiencies of their studies, both the USF and the IN prepared the men that constituted the elite of the country during the second half of the eighteenth century and the first half of the nineteenth. Among them can be cited Jose Gregorio Argomedo and Juan de Dios Vial del Rio, the first two presidents of the Supreme Court; Juan and Manuel Egaña and Manuel de Salas, probably the main ideologists of the independence and the first years of the Republic; the first minister Diego

Portales; and the Presidents of the Republic Fernando Errázuriz, Francisco Antonio Pinto, Jose Tomas Ovalle and Manuel Montt (Bravo, 1992a, 77).

As noted earlier, the USF and later the IN were basically focused on the formation of lawyers (Serrano, 1994, 32; Bravo, 1992a, 75). My impression here is that during the period embraced in this chapter, the legal community constituted the main bridge between the formal knowledge provided by universities and society.³⁵ This and the relationship between the legal profession and the Chilean aristocracy³⁶ help to understand the importance of lawyers during this period.

It must be recalled that until the second half of the nineteenth century, Chile was an almost completely agrarian nation. Out of the 800,000 inhabitants registered in the census of 1812, only 36,000 lived in the main cities (Serrano, 1994, 35). Besides this, the creole aristocracy had only a few professionals within its ranks, almost all of them lawyers. In such an environment the possession of a university degree had an extraordinary symbolic value.³⁷ As I examine later, this appears fairly clear in the Revolution of Independence and in the organization of the Republic.

³⁵ As stated earlier the other profession was theology. Nevertheless, during the nineteenth century, this profession lost any relevance in the public sphere.

³⁶ Until the first half of the twentieth century law was the preferred profession of the aristocracy (Serrano, 1994). During the colonial period, law was the only profession pursued by the few aristocrats who looked for a university title.

³⁷ With regard to the prestige of the cognitive basis of lawyers during the colonial period, González states:

...until the sixteenth century it was fairly frequent that the Cabildo de Santiago turned to the lights of lawyers when it was in a difficult resolution issue. Such as, the *regidores* showed the recognition of the superior training and knowledge of lawyers, to which should be addressed the correct answer of their decisions in such issues (González, 1954, 72).

(A)nd as it was certainly the lawyer, the most erudite person in the corporation (the cabildo), it was usually the person in charge to draft letters and memoirs the cabildo should release to the Chilean and Spanish authorities (id. 295).

As Berman has suggested, the western legal tradition is the result of three ingredients: the discovery of Justinians' Digest, scholasticism and the university. (Berman, 1983, 123) According to this author they are "...the principal social characteristics of Western legal science in its formative period in the late eleventh and twelfth centuries, especially as they were influenced by universities" (Berman, 1977, 939). Therefore, from the twelfth century the legal community in the western world is almost indiscernible from the university.³⁸ This historical feature provided a special status to the knowledge³⁹ held by lawyers and allowed them to penetrate into several functions beyond the legal practice or the judiciary.

In short, regardless of its deficiencies, university education provided the legal profession a superior kind of knowledge that made lawyers the best candidates to fill, first the administrative needs of the Bourbonic state, and later the needs of the rising republic. I examine this in the next section.

The Legal Community.

As stated at the outset, the number of lawyers was insignificant in Chile until the second half of the eighteenth century. The founding of the USF allowed a gradual but

³⁸The Anglo-Saxon world, however, is an exception to this general tendency. In this regard, Clark states "(I)n England, Australia, Canada, and the United States (...), it was not until the second half of the twentieth century that university law school education replaced apprenticeship as the dominant avenue to legal careers" (1999, 25).

³⁹ About the cognitive status provided by university training see Larson (1977, 48).

continuous increase in the size of the legal community.⁴⁰ My impression is this increase in the number of lawyers permitted them begin to play an extremely significant role in the history of Chile. A close relationship between the legal community and political power, I argue, characterizes this role. In the following I describe the genesis of this relation.

On Becoming a Lawyer.

Social Prestige

Regardless of the ambivalent position of the Spanish Crown toward the legal profession (see supra note 1), lawyers seem to have possessed great social prestige in Spanish America during the colonial period.⁴¹ In Chile, during this time, lawyers were the objects of special considerations, such as exemption from the obligation to participate in the army, to go to war and the prohibition from carrying weapons among others (González, 1954, 262). Besides the former considerations, other signals such as the number of law students, the number of lawyers who did not practice the profession,⁴² the solemnity of the final exam, the obligation imposed on lawyers to participate in the ceremony of reception of the

⁴⁰ González reported that in 1760, 14 lawyers practiced their office; 19 in 1789 (however, beside these, there were several others that did not practice); and 33 lawyers out of 77 in 1797 practiced the legal profession (1954, 74).

⁴¹ See, for instance, Perez Perdomo (1981, 69-71).

⁴² This seems to be very frequent not only in Latin America, but also in Spain. In this country was coined the expression *abogado de secano* (dry land lawyers) to designate those lawyers who did not practice the profession but used it only to obtain or increase their social prestige (Perez Perdomo, 1981a, 77).

highest authorities, or the public notification of the title's reception provide evidence of this social prestige. In addition to these characteristics it must be recalled that, in this period, only the superior stratum of the society frequented the university.⁴³ In this regard, as noted before, a university title was probably not coveted as a source of income as much as a source of social prestige.

Requirements and Prohibitions.

The requirements and prohibitions to become a lawyer were a manifestation of the importance granted to the legal profession in Spanish America. In the case of Venezuela, Pérez Perdomo refers to some of them: the condition of legitimate or natural fatherhood of a known father and purity of blood of the candidate, his fathers and grandfathers (1981a, 67). In the Chilean case these requirements were positives and negatives: the former were age, bachelor's degree in Law and Canons, and a period of legal practice.

With respect to age, Chile followed the Siete Partidas. This code established a minimum age of seventeen years.⁴⁴ In the case of the degree, as stated earlier, from the twelfth century, the legal profession was strongly linked to the university. In the Chilean case, a bachelor's degree, issued by the USF or another university

⁴³ A little explanation is required here. To say that only the aristocracy frequented the university does not mean that mainly professionals formed the leading group. As Serrano has reported, the majority of the members of the dominant class were traditionally traders and landowners (1994, 177).

recognized by the Spanish government was required to become a lawyer. Finally, as noted before, the practice was carried out first in the office of an attorney, then in the Real Academia Carolina de Leyes y Práctica Forense and finally in the Academy of Práctica Forense.

In the case of negative requisites or prohibitions, the law degree was forbidden to women, the insane, those with a lack of memory, and the blind. The title was also blocked to spendthrifts and those whose were accused in a trial of adultery, betrayal, perjury or homicide. Finally Moors, Jews, Indians, Blacks, heretics and their children and grandchildren could not be lawyers.

The requirement to provide enough information about the life and family of the candidate was introduced in 1778. This was accomplished by presenting two respectable witnesses who testified about the “irreproachable behavior of the candidate and purity and honesty of his cradle” (González, 1954, 232). Everyone who fulfilled the requirements had to take a solemn exam and take an oath in the Real Audiencia. After that, the fresh lawyer was introduced to other lawyers and to employees of the tribunal. Then, the lawyer was ready to begin his legal practice.

⁴⁴ This information comes from Gonzalez (1954, 235). Cfr. Barrientos who states that the age in the Partidas was 20.

The Legal Profession.

From the very beginnings the State granted to the legal profession a monopoly on legal practice. Therefore, both lawyers and judges⁴⁵ needed a degree in Canons or Law to practice their profession.⁴⁶ The Revolution of Independence did not alter this monopoly. In addition to this protection, the exclusive jurisdiction of lawyers was increased in issues related to the administration of the State. For example, in 1837, legal studies constituted a requirement for applying for the job of number officer (*oficial del número*) of the Internal Affairs, External Relations and Justice secretaries (Guzmán, 1988, 25).

The work of lawyers was strongly regulated since the very beginning. A gross body of norms ruled not only the requirements and prohibitions to become a lawyer, but also their relation to clients, especially the form of fees and their behaviors in courts, the form of written presentations, their language in allegations and their costumes in courts among others things (Gonzalez, 1954, 253-286).

⁴⁵ As is well known, in this period the only jurisdictional tribunal in Chile was the Real Audiencia. Its ministers had to be lawyers with the exception of the President. The president of the Real Audiencia was the governor of the country (Bravo, 1994, 132-137). This situation is not odd. Until the eighteenth century the Real Audiencia had a very broad competence to hear issues related to the administration of the colonies (Ibid at 53).

The legal practice in Chile was fairly weak during the period embraced in this chapter. Two circumstances seem to show this: first, the number of lawyers who did not practice the profession (González, 1954, 74) and, second, some documents such as the letter to the Spanish Monarch sent by the Real Audiencia in the second half of the sixteenth century (see supra note 16) or the letter sent by the bishop Francisco de Salcedo to Felipe IV claiming lack of correspondence between wages of the judges and small amount of work (González, 1954, 75).

In addition to the private practice of lawyers, during the colony, the Cabildo de Santiago numbered two, and later, four lawyers. Two of them worked as general counselors and the others as defendants of its causes. Two other State institutions devoted to the free legal assistance of poor people and Indians employed lawyers: *Los abogados de pobres* and *Los abogados de indios*.

Lawyers and the State.

In Spanish America, lawyers were considered as servants of the state , in this regard Góngora states:

(U)niversities had been founded in the Indies for the very specific purpose of training priests for the missions, canons for the cathedrals,

⁴⁶ González reports some punishments to those who practiced the legal profession without title (1954, 233-235).

lawyers to plead before the *Audiencias* and one or two doctors of medicine; in short, servants of Church and State. (1975, 187)

Along the same line, García, based on Konetzke, points out:

the monarchs empowered the emergence of a professional central bureaucracy, directly accountable to them, vested with unprecedented political and administrative powers. University-educated legal professionals, called *letrados*, played a predominant role in this bureaucracy (1998, 1276).

This feature put lawyers near the political power from the very beginning (Bravo 1994, 163). In fact, until the creation of the institution of *Regentes* during the government of Charles III, the *Real Audiencia* in Chile had extremely wide jurisdiction in non-judicial issues, counseling and controlling the government (Bravo, 1994, 53).

As noted earlier, alongside the *Real Audiencia*, the *cabildo* usually resorted to lawyers' advice when facing difficult issues. Later, during the first decades of the Republic, lawyers were considered the natural candidates to fill public offices and exert political power. Referring to the latter, Serrano pointed out:

(D)uring the first two decades the governments resorted to the best personnel they had available to the highest offices, the majority were lawyers, and they gave great importance to the formation of new generations of lawyers (1994, 153).

The former situation, I argue, resulted from the fact that, besides theologians, law trained people were the only significant professionals during the colonial period (Serrano, 1994, 168; Bravo, 1992a, 73). In this regard, again, my impression is they should have been the main linkage between the knowledge provided by the

universities and the society. This situation allowed the legal community to achieve a wide jurisdiction on public issues beyond mere legal practice.

During the period embraced in this chapter two paramount circumstances illustrate the linkage between the legal profession and the public sphere. The first is the Revolution of Independence and the second is the organization of the Republic. In the first, I argue, lawyers acted as ideologists of the revolution⁴⁷; in the second, as organizers of the Republic.

The Revolution of Independence.⁴⁸

In broad lines, Latin America's revolutions of independence seem to have been the result of two causes: the conditions of bourbonic administration and Napoleons' invasion of Spain (Felstiner, 1970, 5). In the case of Chile, two other components must be added, the existence of a consolidated Chilean aristocracy and the Enlightenment as an ideology.

There is some consensus among historians today about the influential role of the Chilean aristocracy in the Revolution of Independence from Spain⁴⁹ (see supra

⁴⁷ Here I use the term ideologists in the same meaning that Mannheim attributes to intellectuals, namely: "social groups whose special task it is to provide an interpretation of the world for that society" (1936, 9).

⁴⁸ See, in general, Collier (1967); Collier & Sater (1996); Edwards (1936); Felstiner (1970); Eyzaguirre, (1973); Jocellyn-Holt, (1992); Villalobos (1961)

⁴⁹ In a very eloquent form Collier states:

note 48). This aristocracy obtained its economic and social consolidation during the eighteenth century and become the most significant actor in the political arena.

During the second half of the eighteenth century the Bourbon administration introduced several reforms in Latin American colonial government. These reforms were part of a general policy begun early in the century that focused on recovering Spain's power in America (Jocelyn-Holt, 1992, 43). In Chile, the former reforms were focusing on reducing the power of the Chilean aristocracy. Examples of this are the increase of the taxes or the exclusion of Creoles from the high public appointments⁵⁰ (Collier, 1967, 18, 19). In addition to these reforms, between 1780 and 1810, the administrative system supported by the Spanish crown progressively showed deficiencies in economic, political, and social areas that ultimately affected the interests of the Creole aristocracy (Jocelyn-Holt, 1992, 130), the group that later pushed forward the revolution of the independence.

Up to this point, the economic conditions and the prominent role of an early formed leading group –the Creole aristocracy- help to explain the genesis of the Revolution of Independence. However, another element must be added to understand the Revolution of Independence: the Enlightenment.⁵¹

(W)ith certain exceptions it was from the ranks of the Creole aristocracy that the leadership of the Chilean revolution was later to be drawn. No picture of the revolution which ignores this basic fact can be said to be accurate. (1967, 7)

⁵⁰ Paradoxically these reforms benefited the elite. However, their importance must be noted in the bolstering the self-consciousness of the leading group. (See Jocelyn-Holt, 1992).

⁵¹ Unfortunately this is not the place to examine the enlightened ideas. For a magnificent exposition, see Cassirer (1951).

The Bourbons had favored penetration of enlightened ideas into Latin America since their arrival to the crown, but especially since Charles III (see Bravo, 1994). However, as Jocellyn-Holt suggests, the version of the Enlightenment they introduced into Latin America was partial and highly instrumental to the Bourbon administration's commitments (1992, 101). Later, a more radical version of the enlightened ideas was introduced this time by some Creoles from the elite. A good example of this is the case of the lawyer Jose Antonio de Rojas who acquired during his stay in Europe several books prohibited in Chile and brought them into the country. The books filled sixteen boxes and included works by Rousseau, Montesquieu, Helvetius, d'Holbach, Raynal and Robertson. (Amunategui, 1876, quoted in Collier, 1967, 35). The new version of the enlightened ideas introduced modernity and fostered the most significant principles of the republican order⁵² (Collier, 1967, 3).

Lawyers played a substantial role in the introduction⁵³ and, overall, the spreading of this new version of the Enlightenment. In this regard, they acted as catalysts in the linkage between the ideology behind the independence movement and the elite -the group that commanded the Revolution of Independence. Naturally, I am not suggesting here that every lawyer or only lawyers brought about this new ideology.

⁵² A seminal version of the penetration of these ideas can be observed in the political reforms embraced in the program of the Junta of 1810. In this regard, Collier states: "(T)he Creole leaders had specific political reforms in mind, and a set of basic theoretical ideas with which to justify their revolution" (Collier, 1967, 64).

⁵³ However, lawyers were not the only vehicles of the penetration of the enlightened ideas. Alongside them Collier has reported the contraband trade of French and North American vessels (Collier, 1967, 38,39).

Instead my aim is to argue that lawyers constituted an astonishing percentage of the minority interested in the enlightened ideas and capable to understand them. In this regard, Edwards pointed out: “almost every learned person of the revolution was a lawyer, used to the study and to the legal practice” (1936, 24).

The former situation was not related to a special capability of the legal community but rather with the fact that, as examined before, besides theology, law was the only significant profession in the colonial period. Therefore they constituted an enlightened elite capable of understanding and transmitting the foundations of a new and revolutionary ideology. The words of González bolster this conclusion:

(W)hen the revolution came, lawyers were the best-qualified candidates to criticize the former regime and to build the new legal formulas on which the organization of the nation would be based (González, 1954, 78).

In addition, as I noted before, the legal community kept a close relationship with the leading group that allowed them to permeate these ideas.

An examination of the lawyers who promoted the revolutionary movement also seems to support the former statements. The vast majority of the pro-independence ideologists were lawyers, among them were Juan Martínez Rozas, Juan Egaña, Mariano Egaña, Bernardo de Vera Pintado, José Gregorio Argomedo, Gaspar Marín, José Miguel Infante, Fernando Errázuriz, Francisco Antonio Pérez, Francisco

Antonio Pinto, Manuel de Salas, Manuel Rodriguez, Javier and Vicente Larraín Salas⁵⁴ (loc. cit.).

The Organization of the Republic.

When independence was obtained in 1818, the first challenge for the new creole government was the political problem “understood not anymore as a problem of legitimacy, but as one of government” (Jocellyn-Holt, 1992, 225). According to Collier and Sater, the period covered between 1818 and 1830 can be called “the quest for political order” (1996, 46).

From 1818 to 1823, Bernardo O’Higgins, the main leader of the Revolution of Independence, commanded the first new government. During his fifth year in power O’Higgins tried to pass a new Constitution that allowed him to stay ten more years. Added to the dictatorial character of his government, this attempt constituted the final blow to the regime. During 1823, his government was brought down. Within the next seven years, several attempts to organize the country were tested; the constitutional tests of these years provide a good proof of these attempts. Therefore, in addition to the Constitutions of 1818 and 1822, the country experienced the Constitution of Juan Egaña (1823), the federalist attempts (1825 and 1827) and the Constitution of 1828. (Eyzaguirre, 1966)

⁵⁴ A caveat can be useful regarding this point. I am not stating that lawyers were in general bolstering the Revolution of Independence. Probably, several lawyers were realists. My concern is

The next decade, known as the conservative settlement (Collier and Sater, 1996, 51), constituted a period of fairly strong order commanded by the figure of Diego Portales. During this decade the Republic was consolidated (Edwards, 1936; Bravo, 1994).

Beyond the lack of order of the former period⁵⁵ and the scepticism of Portales about the possibilities attributed by the main intellectuals of this period (e.g. Mariano Egaña, Manuel de Salas) to the law⁵⁶ (Bravo, 1994, 199), the challenge that underlied every attempt was the quest for order and the legitimation of the republican regime. Law was the tool used to legitimise the new regime. Therefore, at the discursive level at least,⁵⁷ the law was used as an argument to emphasize the differences between the new regime and the Spanish past which was identified with the use of force. As Jocellyn-Holt states referring to this feeling:

...it is thought the moment when Chile can liberate itself, can proclaim itself as a nation founded not anymore in violence, but in the law, has arrived (Jocellyn-Holt, 1997, 83).

only to show that among the ideologists of the revolution the great majority of them were lawyers.

⁵⁵ In Chilean historiography this period is commonly known as “the Anarchy” (see for instance Edwards ([936], Eyzaguirre [1973] and Collier [1967]). Recently Jocellyn-Holt has offered a divergent interpretation claiming that, beyond some instability and permissiveness, an equilibrium existed throughout the entire period guaranteed by a “military-oligarchical condominium” (1992, 239).

⁵⁶ This statement requires a little explanation; Diego Portales (probably the most studied figure in Chilean history) felt a deep respect for legal knowledge and the law. Nevertheless as a politician and man of action, he recognized that sometimes circumstances made necessary to move further away from the text. Guzmán has resumed Portales’ thought in the Ciceronian maxim *salus populi suprema lex esto* (Guzmán, 1988, 33).

⁵⁷ In fact, the liberal speech, derived from the Enlightenment and the American and French revolutions, claimed by the successive governments until the 1840s was only a fragile costume for a strong regime nearer the dictatorship (see Jocellyn-Holt, 1997).

Lawyers were the only professionals trained to work toward the provision of an institutional framework able to legitimize and to organize the new regime (de Avila, 2000a, 31). This statement must be understood in the context of the rationalism prevailing during the nineteenth century (Serrano, 1994, 45). Within it, law was considered a sufficient condition to guarantee the progress and welfare of the country. As Heyse has pointed out: “it was believed that laws were enough to make virtuous and happy nations” (1960, 23). Along the same line, Collier and Sater state:

(T)he new politicians of the 1820s generally believed that legislation on its own was effective: good laws, above all good constitutions would automatically work wonders. A definite strand of utopian optimism was attached to the new wave of patriotic sentiment: the national future, it was felt, was bound to be luminous⁵⁸ (1996, 41).

In addition to the role endorsed to the law, the hegemonic involvement of lawyers in the organization and administration of the state⁵⁹ (Edwards, 1936, 49; Serrano, 1994, 153; Bravo, 1992a, 136; 1998, 97) is the result of three causes. Let me insist on them. First, the privileged position of the legal community in the system of professions, granted by the lack of external competition (i.e. other professions). Secondly, the intellectual prestige of the legal knowledge and the social prestige of

⁵⁸ These tendencies would crystallize during the second half of the nineteenth century in the process of codification. As I examine in the second chapter, codification reflected an aim to achieve a rational law able to rationalize social life. Referring to the latter Pérez Perdomo has stated:

(F)rom the new manner of legislating were expected great social benefits. These benefits can be summarized in the rationalization of the social life. The political stability, the economic progress and the good social order would be the result of a good legislation (1984, 9).

⁵⁹ An examination of the most relevant politicians, ministers and statesman of the period shows an astonishing amount of lawyers, among them: Juan Egaña, Manuel de Salas, Jose Ignacio Eyzaguirre, Manuel Carvallo, Juan de Dios Vial, Gabriel de Tocornal, Mariano Egaña, Santiago Echeverz, Manuel Jose Gandarillas, Carlos Rodriguez, Agustin de Vial, Juan Francisco Meneses,

the legal community. Finally, the third cause lies in the urgency for a bureaucracy able to manage the needs of the new State. Intertwined these circumstances made lawyers the perfect candidates for one of the commitments of the enlightened elite that arrived to the power: the rationalization of the State, and from it, of the society⁶⁰ (Serrano, 1994, 63).

* * * *

As stated earlier, from the very beginning, the legal community had a special relationship with the state in Chile. I think that at least three factors explain this relationship that would remain until the second half of the twentieth century (Bravo, 1998, 96). First the early establishment of Law as a university profession allowed lawyers to recover their cognitive basis with a special prestige. This special knowledge and the lack of competition guaranteed by the state made lawyers by far the most significant sector of the intellectual elite of Chile during the second half of the eighteenth century and the first of the nineteenth century.

Jose Vicente Bustillos, Jose Miguel Infante, Jose Antonio Rodriguez Aldea, Francisco Antonio Pinto and Santiago Muñoz Bezanilla (Bravo, 1994, 279).

⁶⁰ A complementary explanation has been offered by Bravo. According to this author, the predominance of lawyers involved with public issues was a widespread phenomenon in Latin America after the revolutions of independence; as such the author refers to a “lawyers culture.” To Bravo, besides the technical ability of lawyers, the explanation lies in the fact that, before the codification, both the administration and the Law were basically the same in the distinct countries.

The second factor refers to the relationship between law and the aristocracy. Law was the only profession considered worthy by the aristocracy (Serrano, 1994, 168-178). This situation combined with the role of the aristocracy in the Revolution of Independence and the organization of the Republic contributed to transform lawyers into the perfect candidates to participate in the public sphere. The amount of lawyers that worked from 1758 to 1843 as congressmen, ministers and intellectuals seems to bolster this conclusion.

The third factor rested in the role attributed to law for the newcomer governments. As noted before, law was considered as sufficient condition to “make virtuous and happy nations” (Heyse, 1960, 23).

In the preceding pages I have tried to trace back the linkage between lawyers and the State, arguing that, in broad terms, three images of lawyers depict their relationship with the State and public issues: counselors, ideologists and organizers of the new regime. Nevertheless, some note of awareness is needed here. I am claiming neither that during the period embraced in this chapter every lawyer accomplished functions related to the public sphere as counselors, ideologists or organizers of the State, nor that the majority of lawyers did so. Instead I am stating that law as a career was linked to the public sphere, especially to the State. In this

In this regard, the juridical Romanist formation was a valid credential in the whole Castellano-Portuguese juridical area (1992, 136).

regard, from the very beginning, the jurisdiction of lawyers was strongly linked not only to the legal practice but also to the State and public issues.

In sum, during the period covered in this chapter, the legal profession acquired a “public profile.” This probably led Serrano to characterize law as “the career of power” (1994, 168). As I argue in the next chapter, this image will remain for a long time after the factual linkage between the legal profession and the public sphere became, slowly but increasingly, blurred.

CHAPTER II

THE JURIDIFICATION⁶¹ OF LAWYERS 1843-1973

All that is solid melts into the

air.

Karl

Marx

During the nineteenth century and the first half of the twentieth century a law degree was a highly valued good. Social prestige, political power and wealth were commonly associated with lawyers (Aylwin et al, 1999; Bravo 1998; Galdames, 1936; Serrano, 1994;). By the 1960's, however, there was a widespread feeling that a crisis was affecting the legal community. Some of the most common claims referred to the fact that lawyers had been displaced from the public sphere and they were an obstacle for the development of the country. According to a survey about prestige of professions undertaken between 1970-71, law was in the eleventh place out of fifteen professions considered in the survey (Schiefelbein & McGinn, 1974, 78). Other survey undertaken in 1972 to low income population found that a 52 percent of the surveyed held negative judgments about lawyers (Cheetham et al., 1972, 100). What happened then with the legal community in this period? Paraphrasing Thomas Mann it can be stated that so many things began to happen that are still occurring.

⁶¹ The expression *juridification* is used here to refer to the process by which the legal community becomes focused toward a narrow understanding of the legal phenomenon, losing the grip of public issues. Law is no more the "politic profession" nor are lawyers the statesmen *par excellence*. As I try to show, in this period the *image* –and also the reality- of lawyers began to change from the public sphere to the market

During the period covered in this chapter Chile experienced several substantive changes. With respect to this thesis only some of them need to be emphasized.

From 1831 to 1891 Chile had a presidential regime, characterized by the strong power exerted by the Presidents of the Republic and the weak attributions of the Congress (Kinsbruner, 1973, 113). The aristocracy was the leading group that managed the political and economic issues of the country (Jocellyn-Holt, 1997, 23-39). In general the parties (Conservative, Liberal, Radical and National) had no significant differences among their ideologies but the “theological question”⁶² (Collier & Sater, 1996, 123). Therefore, generally speaking, this was a period of political stability⁶³ and economic growth (Eyzaguirre, 1979, 403).

Around 1880 the economy had a significant change triggered by the exports of nitrates. Until then Chile had been predominantly an agrarian nation. Between 1880 and 1930 the exports of nitrates was the most significant area of the Chilean economy, giving the state an enormous and increasing source of wealth⁶⁴ (Meller, 1998, 24).

⁶² The more progressive parties bolstered the separation of church and state, the abolition of the church fuero, secularization of cemeteries, and lay marriages (Kinsbruner, 1973, 113).

⁶³ Even though there were several subversive attempts (see Jocellyn-Holt [1992; 1997]; Villalobos [1992]), compared with the remaining Latin American countries Chilean government was fairly stable.

⁶⁴ On the peak of nitrates' exploitation, the taxes on the nitrates become 60 percent of the national income (Eyzaguirre, 1973, 404).

In the social sphere, there were significant changes, the traditional landowner aristocracy incorporated new members who had made their fortunes in trade and mining⁶⁵ (Eyzaguirre, 1973, 383). Along with the changes in the aristocracy, from the second half of the nineteenth century, there was a development of an incipient middle class formed by artisans, low-grade military personnel, and public officers among others (Villalobos, 1993, 287-289). Finally, the economic growth, especially the mining activity in the north of the country, modified the profile of lower class, introducing in its ranks a significant number of *obreros*⁶⁶ (Ibid. at 290).

The sanguinary Revolution of 1891 finished with the presidential regime establishing a parliamentary regime that lasted until 1924. In this period the power of the President was sensibly diminished⁶⁷ and the faculties of the Congress invigorated. The aristocracy kept the management of the country (Eyzaguirre, 1973, 406) and political parties became the main actors of the public sphere. Even though the leading parties were not significantly different in their aspirations, the parliamentary period was marked by relevant political and social changes (Kinsbruner, 1973, 119).

⁶⁵ Villalobos refers to this process as “the merge of aristocracy and bourgeoisie” (1993, 284).

⁶⁶ I use the term obrero referring to those workers who practiced wages labors different from agriculture.

⁶⁷ Referring to the weak role of the President, Aylwin et al point out:

(P)residents reflected the nature of this time. They were generally moderated and conciliatory personalities, occasionally elected as transactional candidates because they were a warranty to everybody (1999, 40).

The economy of the country was still supported by exports of nitrates⁶⁸ and the economic policies were dominated by the *laissez-faire* ideology and an open economy.⁶⁹ During these years, the state gained substantive revenues granted by the exports of nitrates that allowed a significant economic growth and the increase of the public bureaucracy.⁷⁰ Along with the mining, the First World War and the scarcity of manufactured products bolstered an incipient industry. However its economic relevance was small (Aylwin et al, 1999, 43,44).

In regard to social issues, the merged aristocracy became richer and the life-style of its members more luxurious. During the first two decades of the twentieth century growing urbanization as well as an incipient industrialization, a wide bureaucracy, and an improved system of education bolstered the development of a strong middle class that played a paramount role in the following decades (Cerde 1998, 111; Collier & Sater, 1996, 285). In the case of the lower class the most relevant event is the beginning of the *social question (cuestión social)*. The social question refers to the several, and usually bloody⁷¹, struggles triggered by the working class' miserable situation (Villalobos, 328-331). The combined action of the middle and the lower class brought about significant social reforms. In 1920 the lower class for

⁶⁸ As Collier and Sater state: "for forty years *salitre* almost single-handedly propelled the economy and supported the Chilean government (1996, 169).

⁶⁹ The liberalization of the economy was a early decision after the independence. Between 1855 and 1863 the French economist Jean Gustave Courcelle-Seneuil advised the government "schooled a whole generation of liberal economic theorists, including Miguel Cruchaga Montt and the talented Conservative Zoroabel Rodríguez" (Collier and Sater, 1996, 74; see also Kinsbruner, 1973, 105). The hegemony of the liberal tendencies ceased dramatically with the Great Depression of 1929.

⁷⁰ According to Jocellyn-Holt around the 1920s, the number of public officers increased its size nine times compared to 1880 (1998, 25).

the first time led its candidate, Arturo Alessandri, to the presidency of the republic, ceasing the complete hegemony of the aristocracy in the government.

From 1925 to 1973, the government was again presidential.⁷² The Constitution of 1925 significantly diminished the attributions of the Parliament and strengthened the presidential powers (Eyzaguirre, 1973, 425). A number of trends appeared: a stronger development of leftist parties⁷³ (Kinsbruner, 1973, 120-159), especially Socialist and Communist, a highly visible social orientation of the different governments, the predominance of the middle class in politics⁷⁴ (Collier and Sater, 1996, 237; Eyzaguirre, 1973, 422) and a progressive involvement of government in the economic management of the nation⁷⁵ (Meller, 1998, 47-60).

In the economic sphere, the Great Depression of 1929 devastated the Chilean economy.⁷⁶ The impact of the Depression abruptly ceased the relatively laissez-faire

⁷¹ The most dramatic were the meat strike (300 dead and 70 injured) and the massacre of Santa María School (around 1,500 dead).

⁷² From 1925 to 1932 Chile lived a period of militarism and anarchy characterized by the presence of military in the government (Carlos Ibañez del Campo, Marmaduke Grove, Arturo Puga, Bartolomé Blanche) and several short administrations (Manuel Trucco, Juan Esteban Montero, Carlos Dávila, Bartolomé Blanche). The stability returned in 1932 with the second government of Arturo Alessandri (Collier & Sater, 1996, 226).

⁷³ In this period five Presidents were elected with the vote of the leftist parties (Arturo Alessandri [1932-38], Pedro Aguirre Cerda [1938-41], Juan Antonio Ríos [1942-46] Gabriel González Videla [1946-52] and Salvador Allende [1970-1973]) (Collier & Sater; 1996, Aylwin et al. 1999).

⁷⁴ Some historians have called this period the "Mesocratic Republic". Seven of the eight presidents that governed Chile from 1932 to 1973 belonged to the middle class (Collier & Sater, 1996; Aylwin et al. 1999).

⁷⁵ The peak of the intervention was reached under the government of Salvador Allende.

⁷⁶ According to the *World Economic Survey 1923-1933* issued by the League of the Nations, Chile was the nation most devastated by the Great Depression (Collier & Sater, 1996, 223). Supporting this statement Meller exhibits the following statistics:

(T)aking as reference the average of the years 1927-29, the economic situation in 1932 (the worst year of the depression to the Chilean Economy) it was the following: the GDP fell by the 38,3 percent; the level of exports and imports fell by 78.3 percent and 83.5 percent respectively; the per-capita GDP fell around 60

policies, triggering a strong involvement of the state in the economic issues⁷⁷ and a new pattern of development, *the inside oriented development*, which encouraged the growth of the national industries as a way to prevent future economic shocks.⁷⁸ This pattern of development remained until the 1970s. Even though mining (turned from the nitrates to the copper) remained as the main source of wealth, the industry and the commerce experienced a significant growth. In the case of the agriculture, the regime of landowning hindered an efficient use of the land.⁷⁹ In the second half of the twentieth century this was the main argument for the agrarian reform.

As noted earlier, in the social area, this period represented the hegemony of the middle class not only in politics, but also in almost every aspect of social life (Aylwin et al, 1999, 246). The success of middle class was supported by the process of progressive industrialization and urbanization⁸⁰, the extension of education and the growth of the public administration. Another significant feature of this period was the greater prominence of women in the professions, the arts and even in public life

percent; the exports of copper and nitrates fell roughly 70%; and the international prices of this products fell around 60 percent and 70 percent respectively (1998, 48).

⁷⁷ The Chilean economy changed from an open model to a highly protected economy.

⁷⁸ In 1939 was created a national corporation from the development of the industry, CORFO (Production Promotion Corporation). CORFO bolstered the birth of the main public industries: ENDESA (National Company of Electricity) (1944), CAP (Pacific Steel Company) (1946), ENAP (National Company of Petroleum) (1946), and IANSA (National Sugar Refinery Company) (1950).

⁷⁹ According to Collier and Sater:

(A) study in 1939 revealed...that less than one percent of all agricultural properties occupied approximately 68 percent of the land. At the other end of the spectrum, 47 percent of land-holdings consisted of plots of less than five hectares, an area too small to be economically viable (1996, 266).

⁸⁰ Only from 1940 did more than 50% of the population lived in urban areas (Meller, 1998, 56). In the second half of the twentieth century, the country experienced a fast process of urbanization; in 1970 32 percent of the population lived in the capital.

(Collier & Sater, 1996, 286). Finally, in regard to the lower class, as a result of industrialization plans and improved possibilities of education there emerged a growing group of specialized workers who assimilated the customs of the middle class (Aylwin et al, 1999, 180). Even though the conditions of the lower class were improved, the migration from country to city and the resulting urbanization created several problems, and living conditions of large segments of the lower class were very precarious.

As a result of the tremendous changes in the Chilean political, economic and social features, the legal community also experienced deep transformations. I suggest that these transformations are the loss of jurisdiction of lawyers in the public sphere and an increased involvement of the legal profession in the market. As noted in the introduction, this thesis attempts to provide a framework to understand these transformations. In the following pages my aim is to show that these transformations are the result of the weakening of the intellectual prestige of the legal knowledge -- the cognitive base of law, the arriving of other professions, especially those related to the social sciences, the changes experienced in the management of the state from 1930, and the increase in the number of lawyers. The weakening of the cognitive basis was the result of a narrow understanding of the legal phenomenon, the *dogmatic paradigm*, which progressively professionalized the legal studies and moved the legal community away from the public issues and put it closer to the market. The arriving of other professions can be explained by appealing to the changes experienced by Chile from the 1920s and the new paradigms of

development based in an “expert knowledge” different from the one taught in the schools of law. The change in the way the state was managed appealed to a new bureaucracy, but this time composed by other professions than law. Finally, the growth in the number of lawyers can be explained by resorting to the increase in the supply of law schools and the economic advantages attached to the legal profession.

This chapter is divided in two sections. The first copes with the legal studies, examining the weakening of its cognitive base and the successive reforms experienced by the legal curriculum and teaching methodology. The second section deals with the legal community, and attempts to show the loss of jurisdiction of lawyers in the public sphere and the increasing participation in the market of the legal profession.

Legal Studies: The Leopard’s Fate.

The following section attempts to summarize and explain the successive reforms that legal studies experienced in the curriculum and teaching methodology⁸¹ during the period covered in this chapter. To carry out this commitment I have identified four stages that allow systematizing the numerous reforms of the period. The first,

⁸¹ In general I use the curriculum and teaching methodology of the University of Chile. Two reasons bolster this decision; first until the mid-fifties the curriculum of the University of Chile was mandatory

Codes' Dominion, includes the time from the founding of the University of Chile to the reform of 1902. The second, Beyond the Codes, covers from 1902 to 1920. The third goes from 1920 to 1960. Finally, the fourth, Lawyers as Social Architects⁸², covers from 1960 to 1973.

Codes' Dominion.

The creation of the University of Chile in 1843 did not alter either the number of schools or the USF's plans of studies. Therefore, in the beginning, the University of Chile counted five schools: Law and Political Sciences⁸³, Medicine, Mathematical and Physical Sciences, Philosophy and Humanities, and Theology.⁸⁴ From these five schools the only consolidated was Law and Political Sciences. Due to the number of students, professors and graduates, Law and Political Sciences became by far the most significant school of the University (Bravo, 1992a, 129).

for the remaining universities. Second, during the sixties the School of law of the University of Chile was the most involved with the process of reform.

⁸² The idea of lawyers as social architects is the Chilean parallel of the Law and Development movement idea of lawyers as social engineer. See Trubeck (1972) and Tamanaha (1995).

⁸³ During its history the University of Chile School of Law has had three names. First, from the foundation of the USF to 1842 Faculty of Canons and Laws; second from 1842 to 1927 Faculty of Law and Political Sciences; finally from 1927 until today Faculty of Law and Social Sciences.

⁸⁴ The founding of the University of Chile obeyed to one of the commitments of the state, namely to cultivate and foster the sciences and the humanities in the country. As a project of the state, every school has its own purpose. In such regard, Humanities should lead the primary schools, the study of the language, literature and national statistics; Mathematics was related to the geography and the natural history of Chile, and also to the construction of buildings and public infrastructure in general, Medicine was concerned with the study of epidemic and endemic diseases that affected Chile and Law and Theology the study of the issues commissioned by the government (Mellafe et al, 1993, 70).

The University of Chile adopted the program of legal studies approved for the IN in 1832. During the second half of the nineteenth century, however, several reforms were brought about. Thus, the curriculum experienced transformations in 1844, 1848, 1851, 1863, 1866, 1872, 1884 and 1887. In general, these reforms were limited to the incorporation within the curriculum of the newly enacted codes⁸⁵ (e.g. Civil Code, Commerce Code, Criminal law Code, etc.). Two consequences can be noted from the former: first the study of law turned to the study of national law; and second, this emphasis led to a strong professionalization of legal studies. In the following paragraphs I examine the significance of the codification to the legal studies.

As Schipani has suggested, among other characteristics, the Latin American codes of the nineteenth century were strongly connected to the preparation of lawyers (1992, 61). In the Chilean case, the introduction of codes promulgated during the second half of the nineteenth century and the beginning of the twentieth century⁸⁶ modified not only legal studies; but also, the manner judges decided cases and finally the role of lawyers⁸⁷ (Bravo, 1998).

⁸⁵ Nevertheless there were significant exceptions; among them, in 1844 the difficulty of the exam to obtain the degree of licentiate was considerably increased (Serrano, 1994, 169). A second relevant exception is the reform of 1851 by which the *Academy of Law and Práctica* Forense was dissolved and replaced by a cathedra called *Práctica* Forense.

⁸⁶ Civil Code (1855), Commercial Code (1865), Criminal Code (1874), Civil Procedure Code (1903), Criminal Procedure Code (1906)

⁸⁷ In the view of Bravo one of the most significant ideas of the Enlightenment, reflected in the codification, was to restraining the power of judges, linking their decisions to the written law more than to equity (1992, 157). Probably the best manner to illustrate the former is the well-known phrase of Montesquieu: *"The Judge is the mouth that pronounces the words of the law"* (1989 [1748], 163). The change was not so immediate and probably took until the beginnings of the twentieth century to be completed (Bravo, 1998). Once accomplished, however, this change has had

Until the beginning of the nineteenth century, the dominant law in the Civil Law tradition world was the *ius commune*. The process of codification initiated in Europe in the beginnings of the eighteenth century and expressed through the three “great codifications”: French, Prussian, and Austrian, finished seven centuries of hegemony of *ius commune* in Europe and three hundred in Spanish America (Bravo, 1992b, 85-89). In the case of Spanish America the process of codification must be understood in the context of the revolutions of independence, the birth of the new states and the exaltation of national law (Ibid. at 92).

The significance of the changes introduced by the process of codification in the study of law can be summarized in the statement of French law teacher Jules Bougnet: “I do not teach civil law. I do not teach but the Code of Napoleon” (quoted in Bravo, 1992a at 149). In this regard, the axis of legal studies began to move from the study of doctrine in general, Roman and Canon Law to the study of the national laws contained in codes. As Bravo has asserted, the study of law (as a discipline) and laws (as normative corps) became almost synonymous (1998, 90). This change implies that the *exegesis*⁸⁸ becomes the predominant manner to teach law and the juridical literature was limited to the description and analysis of the codes. The legal

deep resonance in the work of judges, producing what has been called the “bureaucratization or mechanization of the judiciary.” According to de Ramón, the latter would be the base of the conservative nature of the Chilean judiciary (1989, 10). I would suggest, finally, that the conservative nature of the Chilean judiciary has had deep effect in the way lawyers practice their profession.

⁸⁸ The exegetic school born in France as a result of the promulgation of the Code of Napoleon in 1804. The purpose of these members was basically to discover the literal meaning of each article and concord it with another intertwined dispositions (Salerno, 1992, 228).

phenomenon, therefore, began to be understood using a *dogmatic paradigm* (Squella, 1998, 44-46). This is still today the manner that law is mostly taught and practiced in Chile.⁸⁹

To Squella this dogmatic paradigm had deep effects in the comprehension of law. He examines four of these effects. First, the idea that law, as a discipline, has only legal rules as its object of knowledge; second, is understood that the function of the knowledge is the practical dimension –i.e. the application— of legal rules more than its analytical dimension; third, it is prevalent the idea that the work of the jurists is concerned only with identification, exegesis and comment of the legal rules and not, instead, with their historical or sociological characteristics; and fourth, the former features produce an isolation of legal studies regard the remaining social sciences (1988, 44-46). The dogmatic paradigm was related to a change in the relevance of the statutory law in the comprehension of law. Therefore, if under the validity of the *ius commune* the sources of authority were the judges and the doctrine, under the applicability of the system of interpretation contained in the Civil Code⁹⁰, the main actor was the legislator and his vehicle the statutory law. As Merryman has noted this change is strongly related to the inheritance of French Revolution and the

⁸⁹ See Squella (1988, 35). This dogmatic paradigm can be embraced within one of the features of the American legal culture that Peña has called “a fetichistic attitude before the law” (2001, 3).

⁹⁰ The Chilean Civil Code contains in the first paragraph (De la ley) of the Preliminary title some rules of interpretations valid not only to this code but to the whole laws. In broad terms, the significance of these rules is that only recognizes the legislator the ability to explain and interpret in a general and mandatory manner the law. The judicial decisions only reach the case in which they were pronounced.

underlying ideology of French codification⁹¹ (1969, 15). Thus, behind the dogmatic paradigm, it is possible to distinguish the idea of separation of governmental powers sustained by authors such as Montesquieu; and, also --and more directly related to the legal studies, the rationalistic idea that legislation can be complete, coherent, and clear.⁹² Intertwined, both ideas made codes the repositories of law and, therefore, the natural object of legal studies.

In the realm of legal studies some examples of the new primacy assigned to the codes are the transformation experienced by the course of "Derecho Civil" (Civil law) in 1856, which became one called Código Civil (Civil Code) and two decades later, the courses of "Derecho Penal" (Criminal law) converted in Código Penal (Penal Code), and "Ordenanza de Minas" (Mining Ordinance) in Código de Minería (Mining Code). The codification also had effects in the intellectual production of the law school. While in the first decades of the law school, there were works with widespread dissemination in Latin America⁹³, the legal literature of the last quarter of the nineteenth century was focused basically on the explanation of national laws⁹⁴ and, therefore, only significant to Chile.

⁹¹ Here it must be remembered that in Spanish America, the process of codification carried out during the second half of the nineteenth century was strongly influenced by the method and technique employed by the redactors of the Napoleonic code (Salerno, 1992, 219).

⁹² In this regard, Squella has stated that the prevalent conception in Chile considers the juridical ordering as complete, coherent and precise (1988, 40).

⁹³ Some examples are the Civil Code (adopted by Colombia, Panama, Ecuador and Salvador); IUS GENTIUM PRINCIPLES and ROMAN LAW INSTITUTIONS (Andres Bello); INSTITUTIONS OF AMERICAN CANONICAL LAW (Justo Donoso); CONSTITUTIONAL PUBLIC LAW ELEMENTS (Jose Victorino Lastarria) and POLITICAL ECONOMY (Juan Gustavo Courcelle-Seneil).

As stated earlier, the study of the Codes was accomplished following the exegetic method (see supra note 88). In the Chilean case, this basically meant two things. First, the study of the law was the study of codes. Second, the study of codes was carried out through the logical and historical explanations and grammatical analysis of the articles embraced in the respective code, following the order in which these articles were presented in the code, regardless of any general theory or fundamental principles that underlie such rules (Bascuñán, 1954, 70).

Beyond the Codes: The Reform of 1902.

In 1902 a substantial reform led by Valentín Letelier⁹⁵ and sponsored by some prestigious professors of the Law School of the University of Chile⁹⁶ was brought about.⁹⁷ This reform can be traced back to 1889. In that year, Letelier had put forth a

⁹⁴ The most important work of this period Explanations of Chilean and Compared Civil Law written by Luis Claro Solar between 1898 and 1927 clearly reflected the former.

⁹⁵ Valentín Letelier was one of the most noted intellectuals of his age. He had not only studies in Law (he taught Administrative Law in the University of Chile), but also a deep foundation on sociology (in fact, he can be called the first legal sociologist in Chile) history and philosophy. During his life, Letelier was teacher, lawyer, writer, diplomat, deputy and rector of the University of Chile (Galdames, 1937).

⁹⁶ Among these professors were Julio Bañados, Eugenio Hostos, Alejandro Alvarez, Benito Salgado and Juan Antonio Iribárrren.

⁹⁷ The claims for an improvement in the level of legal studies had begun in the early years of the last quarter of the nineteenth century within the same School of Law. The grievances, in general, were oriented toward the professionalization of the studies and the excessive attention to the newly enacted codes. Referring to the latter Galdames stated:

(H)ere it was thought that the university existed only to form professionals; and everything that did not uphold directly or indirectly this commitment it was useless, and even harmful (1937, 131).

In the same regard, in 1901, Alejandro Alvarez, one of the most famous professors of these times denounced the stagnation of the legal studies compared with other disciplines (quoted in Bravo, 1992a at 176,177). In addition, the level of the legal studies was, apparently, not very high. In this regard, in 1867 the Appeals Court complained about the lack of knowledge of the students that should be examined by this court to obtain the law degree (Mellafe et al. 1993, 91).

plan of reform for the University of Chile Law School that contained the basic ideas that would motivate the forthcoming reform efforts until the beginning of the 1970s. These ideas were the importance of the development of systematic, scientific principles of law to replace the exegetic methods and the importance to relating legal theory to social phenomena (Lowenstein, 1970, 84). Inspired by the same aim, Iribárrren pointed out:

(T)he myopia of conceiving of law as only legislation and codes carries teaching to the extreme of pedestrian interpretation of written rules. **“Beyond the codes”** must be the new hallmark of teaching in our school (quoted in Ibid. at 85. Bold added).

The reform proposed not only the modification of the curriculum, but also the transforming of the teaching methodology used in the legal education. In this regard, Salgado called for the replacement of a teaching methodology that encouraged passivity and memorization for one based on a *Socratic method* that allowed classroom dialogue between professor and students and the independent thought of students⁹⁸ (Salgado quoted in *Metodología de la Enseñanza del Derecho*, 1970 at 11,12).

The reform led by Letelier and brought about in 1902, did not achieve the totality of its purposes; however, it did introduce some transformations in legal studies. In the case of the curriculum two modifications must be considered. First, the modification of the courses called “code” by courses called “law” (e.g. Civil Code-Civil law;

⁹⁸ So far I know this was the first attempt in Chile to introduce the active Socratic teaching method in legal studies. Before the 1960s this method was never employed in Chile.

Criminal Code-Criminal law). Beyond the modification of name, and following the aim of the reformers, this change was oriented to alter the manner law was taught by shifting from an exegetic approach to a “systematic or scientific” approach (Bascuñán, 1954, 70). This new approach had two features. First the attempt to systematize the study of law within a theoretical framework determined by the underlying principles of the regulation and the historical background of the institutions and, secondly the establishment of relationships between law and other disciplines.

In addition to the approach, the second change in the curriculum was the introduction of several new socially oriented courses. Thus, Public Finance, Legal Medicine, Labor Law and Industrial and Agricultural Law were added to the curriculum. Finally, the reform also attempted to include a wide array of optional courses.

With regard to methodology, as noted before, the current teaching methodology was characterized by a passive role of students, classes that consisted basically of lectures, and examinations based on memorization of legal texts. The reform did not bring about any significant change in this regard. The *Socratic method* claimed by Salgado was only used in the sixties. The first relevant modification in the methodology occurred in 1917 with the establishment of the first *seminar*.⁹⁹ As

⁹⁹ The seminars were conceived as small internal institutions within the Law Faculty. The teaching method attempted through the seminars consisted of small groups of students, led by a professor,

Lowenstein has suggested this last modification was the final step of the reform movement of 1902 (1970, 87).

As stated earlier the reform did not achieve all its commitments.¹⁰⁰ Several reasons help to explain this; these are at least four. First, a good deal of the reformers – significantly Letelier and Alvarez— were very influenced by their experiences in Europe or their knowledge about the manner legal studies were carried out in this continent. Most of the European ideas, however, were not widely understood in the conservative Chile of the nineteenth century and raised a strong resistance.¹⁰¹ A second cause of the relative failure of the reform was the endemic lack of full-time faculty in the Chilean schools of law¹⁰² (Lowenstein, 1970, 88). The third cause can be found in the fact that optional courses were never created. The fourth cause, as Galdames has suggested, rested in the lack of disposition of teachers. It was very unlikely that the mere modification of name and program of courses produced

with the aim of researching and analyzing a monographic topic during a period of collective work favoring the participation and research of the students, as well as the communication between these and the leading professor (*Sistema de Enseñanza*, 1970, 28).

¹⁰⁰ A proof of this is that the reform movement arisen in the 1960s had a similar diagnosis of the state of the legal education. I will examine this in the next pages.

¹⁰¹ A good example of this can be found in the grievances and complaints provoked by a discourse on the need of a university in reform pronounced by Letelier in the award ceremony of the University of Chile in 1888 (Galdames, 1937, 151).

¹⁰² Probably a good deal of the explanation of this situation rested in the low wages of the university professors. In this regard, in 1845, the minister of justice Antonio Varas stated:

(T)he professor of the most significant part of law (Civil Law) has a lower wage than the last officer of a ministry. It is believed that a professor who must have make special studies about what he teaches, who must hold a social position, can decently sustain himself with less than a copyist earns? (Quoted in Serrano, 1994 at 134).

Nevertheless, it must be recalled that in the aristocratic and feudal university tradition, from which Chilean universities derive, the professor's position was not a salaried but an honorary position, an important way of acquiring prestige (Lowenstein, 1970, 109; Pérez Perdomo, 1981a).

significant improvements if the same professor of the eliminated course gave the one that replaced it¹⁰³ (1937, 175).

1920-1960

The years between 1920 and 1960 were the scenario of numerous changes in the Chilean society. I have already referred to some of them. In the case of university the main change was a movement toward a model based on investigation and teaching¹⁰⁴ (Mellafe et al., 1993, 115-164). Until the sixties, however, legal studies were an exception of the former movement. Accordingly, during these years, the five existing schools of law¹⁰⁵ kept a predominant tendency toward professionalization (Bascuñán, 1954, 81; Figueroa, 1974, 87, 88). In general, the research was quite modest and carried out through seminars at the universities of Chile and Concepción (Fuenzalida, 1965, 69). One exception of the former, however, was the creation, within the School of Law of the University of Chile, of three research institutes: the Penal Sciences Institute in 1935, the Chilean Institute of Legislative

¹⁰³Galdames tells the case of a professor of Natural Law, who referring to the modification of his course told his students:

(B)eginning the next year this course will be named Philosophy of Law, but you should not imagine that something is going to change; even if they change the label of the bottle, the liquid will remain the same (1937, 175).

¹⁰⁴ The Organic Law of University enacted in 1879 regulated a model of university oriented predominantly to the formation of professionals. This situation lasted until the Statute of 1931 which mandated a university more oriented to investigation and teaching.

¹⁰⁵ These were the schools of law of the University of Chile (one in Santiago and one in Valparaíso), the Catholic University (one in Santiago and one in Valparaíso) and University of Concepción School of Law. All of them were under the supervision of the University of Chile.

Studies in 1940, and the Legal and Social Sciences Historical Bibliographical Institute in 1946¹⁰⁶ (Mellafe et al, 1993, 169).

With respect to the legal literature, as in the former period, this period also was concerned with the national law using predominantly a legalistic approach¹⁰⁷ (Bravo, 1992, 211). The difference with the former period rested not in the nature of the works but in the amount. The founding of the Editorial Jurídica de Chile in 1945 provided great support to the publication of legal works¹⁰⁸ (Mellafe et al., 1993, 170).

In this period there were several reforms in the legal studies' curriculum (e.g. 1924, 1926, 1928, 1929, 1930, 1931, 1934, 1935, 1937, 1947). Most of them consisted only in incorporating or modifying courses.¹⁰⁹ As Lowenstein commented in 1970: “with the exception of the reforms of 1902 and those today, the word reform can be seen as practically synonymous with curricular change” (1970, 147). In the following paragraphs I summarize the most significant modifications introduced in this period, then I focus my attention on the reform movement of the sixties.

¹⁰⁶ In broad lines, however, all of them but Juridical and Social Sciences Historical Bibliographical Institute fit a model of investigation based on the dogmatic paradigm.

¹⁰⁷ Some of the most famous examples are DE LA RESPONSABILIDAD EXTRA CONTRACTUAL EN EL DERECHO CIVIL CHILENO (Arturo Alessandri, 1943); TRATADO DE LAS CAUCIONES. (Manuel Somarriva Undurraga, 1943); MANUAL DE DERECHO CIVIL DE LAS FUENTES DE LAS OBLIGACIONES. (Ramón Meza Barros, 1966); LA COSA JUZGADA FORMAL EN EL PROCEDIMIENTO CIVIL CHILENO (Hugo Pereira Anabalón, 1954); MANUAL DE DERECHO PROCESAL (Mario Casarino Viterbo, 1967); MANUAL DE DERECHO PENAL (Raimundo del Río Castillo, 1947); CURSO DE DERECHO COMERCIAL: QUIEBRAS (Raúl Varela, 1965); TRATADO DE DERECHO CONSTITUCIONAL (Alejandro Silva Bascañán, 1963)

¹⁰⁸ According to Pacheco, in 1953, the Editorial Jurídica de Chile had edited 170 books with a total of 150,000 volumes (1953, 212).

In 1924, the *Junta de Gobierno* approved a regulation (D.S. N° 3.655) for the Law School of the University of Chile. The most relevant issue was the regulation of degrees and titles that law schools could confer and their requirements. The degrees were *Bachiller* and *Licenciado* and the title was *Doctor en Ciencias Jurídicas* or in *Ciencias Sociales y Económicas*. In the case of *bachilleres*, the requisites were to approving the exams of the third year, a written thesis and an oral exam on a topic assigned seven days before the examination. In the case of *licenciados*, the students should approve the former exam and also the exams of the last two years of the curriculum (4th and 5th). Finally, the title of doctor required the degree of *licenciado* and a year more of studies of three or four topics related to the selected specialty, a thesis, and an oral exam¹¹⁰ (Bascuñán, 1954, 70,71).

In 1934 professor Arturo Alessandri Rodríguez¹¹¹ led the second important reform. The new regulation had a marked professional aim. Thus, according to the university decree N° 541 that approved the modification, the Law School would only confer the degree of *licenciado*, the degrees of *bachiller* and *doctor* were suppressed; the Supreme Court conferred the title of lawyer; the organization of the curriculum was completely rigid; and there was a hegemony of Positive Law

¹⁰⁹ Examples of the former are the incorporation of Introduction to the Study of Law in 1928 and the regulation of the *Práctica Forense* in 1929

¹¹⁰ Despite this careful regulation, until today no law school in Chile offers a doctoral program.

¹¹¹ Arturo Alessandri was arguably the most famous lawyers and teachers of the twentieth century in Chile. Alessandri was dean of the Law School of the University of Chile, a prestigious lawyer, and

courses¹¹² (Bascuñán, 1954, 77). Alongside this trend of professionalization, another significant feature of legal studies was a tendency to form “encyclopedic lawyers.”¹¹³

The last plan of studies was the introduced in 1947. In general this plan lasted until the reform of the sixties. As I examine, this reform attempted to introduce several and deep modifications within the legal studies. Nevertheless, after the failure of the latter reform, the plan of studies approved in 1947 has remained in its broad lines in most law schools.¹¹⁴

The Reform of the Sixties: Lawyers as Social Architects.¹¹⁵

The reform of the sixties must be understood within a wide context of reforms of legal studies carried out in Latin America during the same decade (Paolinelli, 1973,

the writer of several books of law that still today are a mandatory reference for lawyers, scholars and students.

¹¹² Here, the expression Positive Law courses refers to these courses related to the study of normative sources such as the codes or the Constitution. The curriculum embraced 24 courses: of them, 17 were related to special laws (e.g. Civil Law, Commercial Law, Labor Law, Criminal Law, etc); one referred to Comparative Law; three to economic and financial issues; one to Legal Medicine; one to Introduction to Law; and the remaining to General History of the Law (Bascuñán, 1954, 77).

¹¹³ Here, the expression encyclopedic refers to the idea that legal studies should cover as much subject matter as possible. Within this commitment, all positive law should be dealt with somewhere in the law student’s career (Lowenstein, 1970, 147). Nevertheless, the encyclopedic character also aspired to provide a humanist foundation. Combined these two features of the legal education –professionalization and humanist formation- the result was a formalistic, rhetorical and largely unspecialized instruction (Falcao, ,401).

¹¹⁴ I examine this in the next chapter.

¹¹⁵ “*lawyers will have to be the architects of the new society*” (Minute N° 14 Declaración de Principios sobre Formación Jurídica. Facultad de Derecho Universidad de Chile (quoted in Mayorga, 1970 at 20).

81). This wave of reforms was closely related to the Law and Development movement,¹¹⁶ and strongly supported by the Ford Foundation through its International Legal Center. In the case of Chile, the reform was also bolstered by the Instituto de Docencia e Investigación Jurídica (Fuenzalida, 1997, 229,230). With respect to this section, my commitment is only to examine how the reforms put in effect during these years affected the plan of the legal studies (curriculum and methodology).

The reforms in Chile were bolstered by a widespread feeling about a “crisis of law” in the nation and preceded by several conferences of Latin American law schools¹¹⁷. The crisis comprised several elements, according to Fröling these were:

(F)irst the notion that there was a widening gap between law on the books and law in reality...second....there existed serious contradictions between the central legal system inspired by the European codification movement of the nineteenth century and the regulatory rules enacted after the 1930s. The third element was

¹¹⁶ The Law and Development movement was born in the United States in the sixties. Its main focus was the relationships between the legal system and the progress; “the use of law to change society” (Merryman et al, 1979, 3). Even though the relation between law and society has been stated from the nineteenth century, the originality of the law and development rested in the proposal of study the former relation in a “comprehensive and systematic way” (ibid. at 5). The foundations of the movement can be traced back to the work of Max Weber and the relationship between modern law and economic development. The emphases of the movement, therefore, were set in the relationship between predictability of law and the growth of market economies. In addition to the former, the Law and Development movement stressed the relationship between modern law and development. Thus, law is conceived as a constraint of the state required to guarantee a pluralist, liberal-democratic movement. These assumption transformed lawyers into the natural agents of development, and therefore the need to modify a legal education considered formalistic and traditionalistic. As Trubeck pointed out:

(L)awyers who work in such traditions, (the legal tradition of the third World) it is argued, see law as a body of relatively sacred and immutable principles which are applied to social life through highly formal or ritualistic techniques. The core conception argues that legal development must begin forcing Third World lawyers to redefine their concepts of law and its social functions (1972, 10).

¹¹⁷ Mexico (1959), Lima (1961), Santiago (1963) and Montevideo. (1965) After the movement it was a fifth conference in Córdoba (Argentina) (1974)

widespread discontent with the Latin American legal education system (1998, 239).

With respect to the discontent with the Chilean legal education the reforms tried during this period can be basically understood as the attempt to leave the current dogmatic paradigm and try one closer to the prestigious social sciences (Peña, 1994, 90). Professor Gonzalo Figueroa Yáñez synthesized the main features of the Chilean teaching of law in the following subjects: a) the content of studies, the structure of the curriculum, the methodology of teaching, and the forms of evaluation were fairly similar in the five existing law schools. b) The hegemonic approach to law was generally positivist and with an encyclopedic aim. c) The teaching of law was strictly oriented toward professionalization. d) The curriculum was rigid and the courses annual. e) Almost all professors were hourly teacher.¹¹⁸ f) The methodology was determined basically by the conference class or lecture method. g) The evaluations were basically tests oriented toward the memorization of the contents of the class and codes; the form of the exams was oral. h) Finally, the research activity in the faculties was extremely scarce and reduced to the seminars¹¹⁹ (1974, 87, 88).

¹¹⁸Lowenstein has reported that in 1961 there were no full time teachers at any Chilean law School. In 1968, the University of Chile had 19 full-time and 10 half-time teachers of a total staff of 167. In the school of law of the University of Concepción 37 of 64 of the faculty were full-time. In the University of Valparaíso there were 4 full-time, 4 half time and 2 with complete time (“dedicación exclusiva”, this mean they can only work for the university) on a faculty of 58. Finally the Catholic University of Chile had 3 full-time teachers and 3 half time teachers. The standard full-time appointment signified six hours per day at Concepción and seven and one-half hours per day in the University of Chile (1970, 111).

¹¹⁹ Research activity has been always extremely weak in the Chilean schools of law. In the case of the students, until today, it is basically reduced to the presentation of a thesis in the last year of the studies or after finishing the studies depending on the university. In the case of the teachers, Peña has suggested that, historically, in Chile there has not been a real academic community in the law schools. Instead the great majority of law teachers are high-value professional lawyers that dedicate just a marginal piece of their time to teaching (1994, 94).

The first modifications of the process of reform began in the School of Law of the Catholic University of Valparaíso in 1961 and were devoted to putting legal studies closer to the study of other social sciences. According to Cuneo & Figueroa, the reasons for these modifications were not related to some theoretical framework, but rather to a practical objective, namely the reversion of the crisis that affected law and the legal profession (1971, 120). The modifications included the incorporation of courses from other social sciences such as economics and sociology. Since the commitment was to familiarize the student with “living law”¹²⁰ (Ibid. at 121), practical courses were included in the curriculum. The idea of practical courses was to allow students to apply knowledge taught in theoretical courses. The experience, however, was not successful, the incorporation of new courses overloaded academic obligations of students (theoretical classes were in the morning and practical in the afternoon, producing in fact a full working day to students). In addition, teachers were not capable of making the linkage between the theoretical issues and their application (Cuneo & Figueroa, 1971, 122).

The remaining schools of law followed this trend with more or less emphasis. Thus, in the case of the University of Chile and the University of Concepción, the first reforms of the period date from 1966 and they were accomplished by modifying the curriculum including courses related to other social sciences, and by

¹²⁰The expression “living law” can be traced back to the transformation of the American jurisprudence brought about by the realist movement during fifty years between 1880 and 1930 and that modifies the roots of jurisprudence: legal reasoning and legal authority. In such regard, there is a rejection of the idea of law in a formalistic manner, stressing the manner law is applied (Speak, 1987).

incorporating practical courses in the same regime to the Catholic University of Valparaíso. Both the University of Chile and the University of Concepción achieved similar results to the University of Valparaíso (Bascuñán et al, 1973, 97-132).

In the very beginning of the seventies, a more systematic attempt of reform was tried. This time the reform began in the School of Law of the University of Chile and it was focused on curriculum, methodology of study, and mechanisms of evaluation (Convención de Reforma de Estudios de Derecho, 1970). In broad terms, the main ideas were to introduce flexibility to the curriculum, allowing the specialization of the students;¹²¹ the rejection of the conferences as the dominant pattern of classes, establishing instead some active modalities; and the creation of new forms of evaluation more suitable to the new methodology.

In the case of the University of Chile the most important modifications were the following: 1) the new departmental structure, 2) a flexible curriculum, semester courses and a credit system, 3) “active classes”¹²², 4) the creation of a system of tutors to orient students in the new flexible curriculum, 5) the attempt to make wider the investigation, including the living law, 6) the creation of juridical clinics¹²³ (consultorios jurídicos) to favoring the clinical teaching of law, 7) the replacement of

¹²¹The original idea was to allow variable degree of option regard the 75 percent of the curriculum, remaining the 25% rigid (Bascuñán et al, 1973, 104).

¹²² The active classes merged the theoretical and the practical classes of the former methodology.

¹²³ The juridical clinics are groups of fifth-year students, led by a teacher, devoted to paying legal assistance to poor people.

the degree exam for the oral defense of a thesis,¹²⁴ and 8) an attempt to substitute the hour-teacher by full or half-time teachers (Figueroa, 1974, 92-94).

In broad terms, the reforms attempted during the sixties and the beginning of the seventies reflected aspirations held in Chile from the very beginning of the century, but this time bolstered by a widespread feeling of a crisis of law and the legal profession. However, like its predecessors, it failed. Even though the reform obtained some achievements, these were extremely short-lived and strongly shadowed by the weak organization of universities and the lack of an academic community able to set forth the ambitious commitments pretended¹²⁵ (Bascuñán et al, 1973; Fuenzalida, 1997, 1999). After the coup d' état of 1973, the great majority of the changes were reversed. In the case of the University of Chile, in 1976, the new dean Hugo Rosende decisively returned to the curriculum of 1947 (Fuenzalida, 1997, 231-32). Then, following a leopardistic fate, *“all will be the same though all will be changed”* (di Lampedusa, 1960, 46).

¹²⁴The degree exam is the last exam of the legal studies and it is considered as the biggest “filter” of the legal studies. In general it covers all Civil Law (three years and half), all Procedure Law (three years and half) and a topic on what the student must prepare a dissertation.

¹²⁵ The reforms of the sixties did not only fail in Chile, but in most countries of Latin America, according to Fröling the reasons of this failure were:

(F)irst the political context of some of the countries where the new programs were launched was not conducive to the experience. During the second half of the 1970s, Chile, Brazil, Peru, Argentina, and Uruguay experienced political changes and increased repression that ended experiences of social changes in which law could play an important role. Second, these reforms were largely resisted by the bar and most established academics of the law schools. Third, it is questionable whether mere changes in legal training could have modified the internal ideology and outlook of lawyers and judges, whose values and practices were also shaped

The Legal Community.

In Chapter One I examined how the legal community got closely linked to the state. I argued that the main reasons for this link could be found in the intellectual prestige of the knowledge taught in universities, in the scarcity of other professions, in the relationship between the legal community and the aristocracy and between the aristocracy and political power, and finally in the belief that law was sufficient condition to guarantee welfare and progress of the nations. All these conditions disappeared slowly or got blurrier during the second half of the nineteenth century and the first three quarters of the twentieth. Thus, several professions arose; both the relationship between the aristocracy and the legal profession, and the aristocracy and political power got nebulous; and finally the rationalistic idea that law was sufficient condition to guarantee welfare and progress was undermined by a different paradigm. In addition to the former, the private practice of law became very attractive due to the economic benefits attached. From the last quarter of the nineteenth century Chile experienced a significant economic growth. It is very likely that this economic growth bolstered the economic exchange and, therefore, an increased need for legal services. The birth and development of a robust middle class during the twentieth century also sustained this trend.

by factors such as the professional market, the internal power structure of the judiciary and the place of the judiciary within the political system (1998, 240).

My aim in this section is to argue that in the period considered in this chapter the *definition* or *image* of lawyers has experienced deep modifications. From a profession basically oriented toward the needs of the state it has become a profession oriented toward the needs of individuals (this is what I call a transition from the state to the market). Therefore, the legal community has changed its main client. The first chapter attempted to show how the link between the legal community and the state was built; this section tries to show how this link got weaker and how a new one began to replace it.

This section is divided in three parts. In the first I examine the changes experienced by the legal community in this period: the growth in the number of lawyers, the changes in their social composition and social prestige. In the second part I review some modifications in the practice of law, among them the requirements of the profession, the creation of a representative body and an ethics code, and the new fields of specialization. Finally, in the third part, I examine the relationship between lawyers and the public sphere. I argue that from the twenties law graduates began to share their jurisdiction in the public sphere with other professions, significantly medicine, teaching and engineering. Later in the fifties two other professions, this time closely related to social sciences, began to compete with law, sociology and economics. I suggest that the successful arriving of these professions was closely related with some substantive changes in the model of the state.

Internal Changes of the Legal Community.

During the period covered by this chapter, there have been numerous changes in the *internal features* of the legal community. Here I examine some of them.

Social Class and Gender.

During the nineteenth century and the first decades of the twentieth, legal studies were attended almost exclusively for members of the wealthiest class (Serrano, 1994, Urzúa, 1992, 179). In Chile, as in the rest of Latin America, law was the profession of the elite (Falcao, 1988; Lomnitz & Salazar, 1997; Lynch, 1981; Perez Perdomo, 1984). In the Chilean case this situation was not odd, in 1895 72 percent of the population was illiterate and a law degree required university education. As in other countries the development of the middle class changed the profile of the law student, and therefore of lawyers (Junqueira, 2000, 40, Lomnitz & Salazar, 10, 1997). In Chile the development of the middle class began around the last years of the nineteenth century and became strong around the twenties. As Urzúa suggests it is very likely that this middle class had used the study of law as a mechanism of social mobility¹²⁶ (1992, 183). The legal studies, however, remained almost without participation of the lower class (Lowenstein, 1970, 26,27). The second change in

¹²⁶ A survey undertaken by Lowenstein in 1968 gives a good proof of the incorporation of the middle class assessing the economic burden to finance the legal studies. According to this survey: (w)hen asked if family financing of the legal studies was difficult for the family, 149 (32.3%) respondents replied that it was a substantial economic burden, 172 (37.3) that it was a small burden, and 45 (9.5%) said it was no burden, 9 (2.0%) fell between substantial and small, 75 (16.5%) said the question was not relevant to them, and 10 (2.4%) did not respond (1970, 25).

the composition of the legal community was the incorporation of women.¹²⁷ Women were admitted at university in 1877. Between 1910 and 1960 357 women were in law (Collier and Sater, 1996, 287). According to Merryman et al., between 1945 and 1970, 826 women were admitted to practice by the Supreme Court (calculated with the data provided in Merryman et al, 1979, 465. See Table I). Examining the different years, in 1945 there were 11 women out of 153 lawyers admitted to practice; in 1955 24 out of 143; in 1960 22 out of 185; in 1965 42 out of 224; and in 1970, 83 out of 331 (Loc cit).

Number of Lawyers.

Until the twentieth century, legal studies were the most popular of all university fields¹²⁸ (Collier & Sater, 1996, 102, Serrano, 1994, 175). Although the creation and development of other professions has diminished the participation of law student in the total number of university students¹²⁹, the number of lawyers has growth constantly. According to Serrano, 1014 law degrees were issued between 1843 and 1879 (1994, 176). In 1854 the national census registered 282 lawyers, in 1865,

¹²⁷ This seems to be a general trend in Latin America (Pérez Perdomo, 2000, 8)

¹²⁸ **TABLE I** Students of the University of Chile in 1901 (Mellafe et al., 1993, 147)

School	N. of Students	School	N. of Students
Law	398	Medicine	192
Mathematics	123	Pharmacy	54
Dentistry	79	Teaching	155
Obstetrics	55	Total Students	1056

¹²⁹ According to the data provided by Mellafe et al. in 1901 around 40 percent of the University of Chile students were enrolled in law. In 1953 law students were only a 14.9 percent of the total (calculated according the data provided by Pacheco [1953, 252]).

435, the number increased to 624 in 1875, and 941 in 1885¹³⁰ (Ibid at 176). Following Urzúa, the census of 1907 registered 1,947 lawyers (1992, 194). According to the estimations of the University of Chile Political and Administrative Sciences Institute, there were 3,237 lawyers in 1959 (quoted in Urzúa 1992 at 195), and following Lowenstein 3,725 in 1969 (1970, 23). Merryman et al. offer the following numbers between 1945 and 1970 (1979, 467).

TABLE II Number of Lawyers between 1945 and 1970

Year	Lawyers	/100K	Year	Lawyers	/100K
1945	943	16.97	1959	2357	33.11
1946	1066	18.87	1960	2480	33.9
1947	1180	20.54	1961	2602	35.14
1948	1284	21.97	1962	2765	36.12
1949	1379	23.16	1963	2915	37.11
1950	1475	24.29	1964	3072	38.18
1951	1574	25.62	1965	3241	39.05
1952	1666	26.51	1966	3398	39.86
1953	1766	27.36	1967	3553	40.58
1954	1870	29.08	1968	3702	41.93
1956	1979	30.05	1969	4057	42.59
1957	2096	31.12	1970	4306	44.31
1958	2223	32.23			

Source: Corte Suprema, Escalafón del Poder Judicial

Another indicator of the growth experienced by the legal community is the increase in the number of lawyers admitted to practice in Chile by the Supreme Court. According to Merryman et al., there were 153 in 1945, 207 in 1958 and 331 in 1970 (1979, 465). A more indirect indicator is the number of students of law¹³¹: 819 in 1,918 (Mellafe et al., 1992, 148), 2,821 in 1961 and 3,266 in 1969 (Urzúa, 1971,

¹³⁰Serrano uses the national census of the respective years as the source. The difference between the number of law degree issued and the number of lawyers registered in the census can be possibly explained because the census only registered lawyers who practiced the legal profession.

¹³¹ The number of law students is related to the increased supply of law schools. Besides the University of Chile, in 1927, law was taught in a course established in Concepción since 1865, in

67). Beyond the complexities involved in the calculation¹³² and the differences among the distinct surveys,¹³³ what is relevant to this thesis is the fact that every survey noted a significant increase in the number of lawyers. I think there are several reasons that allow to explain this growth, among them, the social prestige and rewards attached to the legal profession, the increase in the supply of law schools experienced until the decades of thirties (see supra note 105), the increasing power of the middle class and the incorporation of women to the university.

Social Prestige.

According to Serrano, a law degree was the straightest channel to improve social status in the nineteenth century (1994). Mellafe et al. reported that in 1902: “only a reduced number of those who obtained a law degree practiced the profession. The majority went to the agriculture, businesses, diplomacy or the public service” (1993, 126). This prestige seems to have remained during the first half of the twentieth century. In 1937, Galdames, referring to the legal studies, pointed out that these were preferred by the youth not mainly because of its easiness, but rather for the

the Catholic University of Santiago since 1889, in the College of the Sacred Harts in Valparaíso since 1894, and in a branch of the University of Chile in the latter city.

¹³² The complexities involved in the calculation of the number of lawyers refer basically to the calculation basis employed. Some of these complexities are common to the study of every profession (e.g. to determine how many professionals are still alive, and how many of those are retired). Others refer more exclusively to the legal profession (e.g. who should be considered as a lawyer, only those who practice or also judges, notaries and those who practice a completely different activity). Therefore, the differences in the calculation probably depend on different basis of calculation.

¹³³ Even though the numbers offered here are relatively similar, there are other studies with relevant differences. Schiefelbein for instance calculates the number of lawyers coming to 4,662 in 1960 and 7,245 in 1969 (quoted in Urzúa, 1992 at 194,195).

expectations of improving their social status (1937, 124). Finally, the outstanding participation of lawyers in politics and businesses¹³⁴ seems to bolster this social prestige (Urzúa, 1992, 181).

During the second half of the twentieth century, there is some evidence that the social prestige of lawyers declined. I have already referred to the survey undertaken in 1970-71, according to which lawyers were ranked in eleventh place out of fifteen.¹³⁵ Beyond the accuracy of this survey, there was a shared concern within the legal community about the loss of social prestige of the legal profession. In this regard, one of the most frequent grievances of lawyers during the reforms of the sixties was the loss of the former prestige of the legal profession (Bascuñán et al., 1973, 101, 114; Cuneo & Figueroa, 1971, 120; Pumpin, 1972, 10). According to Cuneo & Figueroa:

the prestige of the legal profession, traditionally very high, has diminished, and the lawyer, more than a professional expert in the

¹³⁴ I examine the participation of lawyers in politics later in this section. With respect to their participation in businesses, Urzúa offers the following data about the participation of lawyers in the boards of the *Sociedad Nacional de Agricultura* (S.N.A) and the *Sociedad de Fomento Fabril* (SOFOFA) (1992, 181).

TABLE III Percentage of Lawyers in the Boards of S.N.A and SOFOFA

Year	Sofofa	S.N.A
Until 1890	32% (N-20)	29% (N-110)
1910-1912	25% (N-24)	50% (N-12)
1920-1923	18% (N-22)	27% (N-22)
1930-1933	9% (N-22)	39% (N-31)
1940-1943	6% (N-32)	33% (N-30)
1950-1953	9% (N-23)	50% (N-20)
1960-1964	14% (N-35)	24% (N-50)

¹³⁵ The order is 1) Medicine, 2) Civil Engineering, 3) Chemical Engineering, 4) Mechanical Engineering, 5) Economics, 6) Metal Engineering, 7) Dentistry, 8) Electronic Technician, 9) Mining Engineering, 10) Agricultural Scientist, 11) Law, 12) Mechanical Technician, 13) Social Service, 14) journalist, 15) Secondary Teacher. (1974, 78)

resolution of problems began to be considered as a source of difficulties and obstacles (1971, 120).

It is difficult to know to what extent the survey and the opinion of prominent lawyers reflected the real prestige of the legal profession.¹³⁶ The high demand for legal education that today survives seems to show a slightly different picture. However, even though these sources could have exaggerated the importance of the loss of social prestige, what seems clear is that there was such a loss (Pérez Perdomo, 1995, 88; 1999, 8). One possible explanation of this loss can reside in the fact that from the second half of the twentieth century the possibility of improving the social status through a law degree became more difficult (Brunner, 1988, 366). Another possibility is the loss of jurisdiction of lawyers in the public sphere challenged by other professionals such as economists and sociologists.¹³⁷ Convergent with the latter explanation, the loss of social prestige of the legal profession can be associated with the so-called crisis of the law in the sixties. Finally, it is very likely that lawyers were perceived as agents of the wealthiest group that hindered the social progress (Novoa, 1972).

Requirements.

Until 1875 the requirements to become a lawyer were more or less the same than before the Revolution of Independence. In 1875 the congress passed the *Ley de organización y atribuciones de los tribunales*. The title XII of that statute rose the minimum age to practice to twenty and did away with the period of apprenticeship

¹³⁶ See Table III.

¹³⁷ I return to this point when talking about lawyers and the state.

period.¹³⁸ Later, in 1925, with the creation of the Chilean Bar (Colegio de Abogados) it was included the mandatory enrollment in this body as a requirement to practice. The first systematic regulation of the requirements to become lawyer came in 1942 with the law 7,421, the *Código Orgánico de Tribunales* (COT). The COT established the requirements in Articles 523 and 525. These requirements were 1) 20 years of age, 2) Chilean nationality, 3) a law degree issued by the law schools of the University of Chile, Catholic University of Chile, Catholic University of Valparaíso or University of Concepción, 3) to not have been condemned or to be under current trial for crime with “corporal punishment”, 4) a former good behavior, 5) a social practice in a Consultorio *Jurídico para Pobres* (Legal Aid Office for the Poor), and 6) the enrollment in the Colegio de Abogados.

The Legal Profession

There is not much information available with respect to the legal practice in Chile in the nineteenth century and the first half of the twentieth. According to Serrano, the practice of the legal profession guaranteed a decent subsistence during the nineteenth century¹³⁹ (1994, 173). In addition to the wages, lawyers had some kind of guild-consciousness; in 1862 the first Chilean Bar (*Colegio de Abogados*) was

¹³⁸ See Chapter One.

¹³⁹ Serrano provides the example of a young deputy who proved the level of wages the Congress required to join the Chamber of Deputies appealing to his profession of lawyer. The Congress

created led by a group of lawyers and politicians. This bar developed basically academic activities. After one year of work the interest diminished rapidly until it died in 1868 (Lowenstein, 1970, 49). The reduced number of lawyers in Chile, I think, can explain both features. Lawyers had not much competition and, in general, they came from the wealthiest families, therefore, they should have a good clientele and probably most of them knew each other. Regardless of the good clientele, it is very alike that the practice of the legal profession had been weak, until the 1880s Chile was an agrarian country, very poor, with a very basic trade and almost without middle class (Collier & Sater, 1996; Jocellyn-Holt, 1992). As Urzúa suggested, in such an environment the relationships that took a juridical form must be scarce and so must be the work of lawyers (1992, 170,171). The significant changes propelled by the nitrates around 1880 also affected the legal profession. The growth of the exports created a new field for practicing lawyers. In the approach of Anibal Pinto, lawyers acted as intermediaries between the foreign investors that dominated the nitrates and the state (quoted in Urzúa 1992 at 173). Peña suggests that these foreigner investors and the newcomer businessmen of the late nineteenth century helped to consolidate the traits of *liberal profession*¹⁴⁰ that the legal profession have acquired in that century (1994, 89). According to the same author, beyond the liberal profile, the legal profession was basically multifunctional and unspecialized, and kept self-control of professional activity (loc cit).

decided that the fact that the young deputy was a lawyer guaranteed the requirement of sufficient wages (1994, 173).

The last two decades of the nineteenth century and the first two of the twentieth seem to have been a period of expansion of the legal profession's field. Several of the most consolidated *estudios jurídicos* (law firms) were created around this period.¹⁴¹ A note of awareness, however, is needed here. Until the second half of the twentieth century there were not *de jure* law firms and only few *de facto* law firms.¹⁴² All of the mentioned law firms started as small solo practitioners or family offices shared by relatives. The practice of the legal profession during the first half of the twentieth century probably resembled the description of Pérez Perdomo in the case of Venezuela in the 1920s and 30s. According to Pérez Perdomo, the traditional practice of lawyers was as solo practitioners or with a friend or a relative, in a small office in the downtown of the city. The main tasks of lawyers were the practice in the courts and the relationship with the client had two features. First, it was very personal and sustained (lawyers resembled a family doctor), and second the lawyer was independent of her client. The number of the issues served by each lawyer was small, and the relationship with the other lawyers was more or less close (1981a, 209-212).

¹⁴⁰ According to Falcao the liberal tradition stresses autonomy, liberty and individualism (1988, 427)

¹⁴¹ Among them: Carey & Cía. (1905), Cariola, Diez, Pérez-Cotapos & Cía. (1889), Claro & Cía. (1880), Phillipi, Yrarrázabal, Pulido & Brunner (1904), Estudio Arturo Alessandri (1893), Sargent & Krahn (1899), Puga, Pascal, Stantic, Ortiz, Gutiérrez, Cabello & Estay (1925), Estudio Federico Villaseca (1916).

¹⁴² Here I use the distinction of Falcao, according to this author *de facto* firms are "merely two or three lawyers sharing office space and common spaces, such as rent and secretarial services. They do not have any legal status, and their members are registered as individual practitioners" (1988, 429). *De jure* firms fit the traditional definition of a law firm, namely: "(A)n association of lawyers who practice law together, usually sharing clients and profits, in a business traditionally organized as a partnership but often today as either a professional corporation or a limited-liability company" (BLACK'S LAW DICTIONARY, 7TH EDITION, 1999, 891)

In 1925 the Law Decree 406 created a second Chilean Bar.¹⁴³ To some extent, the creation of the Chilean Bar represented the transition of lawyers to a modern profession.¹⁴⁴ The Chilean Bar is an organ the mission of which is to foster the progress, prestige and prerogatives of lawyers. The Law Decree 406, modified by the Law 7,685 in 1941, provides an ethic code to the legal profession, establishes rules about wages, makes the enrollment mandatory to lawyers, establishes sanctions, and guarantees the monopoly of the legal profession. Later, in 1967 a procedure for grievances against lawyers was added.

The 1930s brought about several changes to the Chilean society. The tremendous effects of the Great Depression led the government to leave the *laissez faire* economic policies that had maintained since the mid-nineteenth century and got closely involved in the orientation and planning of national economy, attempting to industrialize the country. The attempt was carried out through the import-substitute industrialization model, encouraging the growth of the national industries as a way to prevent future shocks. This industrialization and the subsequent urbanization added to the growth of the middle class generated more legal relationships and, therefore, more work to lawyers. In the long term these movements have also fostered the specialization of the legal profession in Chile (Urzúa 1992, 201).¹⁴⁵

¹⁴³ The former, created in 1862, had a short life and almost no significance.

¹⁴⁴ See Johnson (1972), Larson (1977), Parkin (1982), Freidson (1986) (1994), Collin (1990), MacDonald (1995)

¹⁴⁵ The specialization was also a widespread phenomenon in the rest of Latin America. See Lynch (1981, 26-30), Pérez Perdomo (1981b, 83), Lomnitz & Salazar (1997, 24) and Falcao (1988, 427).

As Urzúa suggested, the growing of more specialized economic actors such as corporate clients and others alike, derived from the industrialization and the trade fostered the associations of lawyers (1992, 201). Solo practitioners are no longer capable of dealing with the legal needs of such clients. As Perez Perdomo reported, in the Venezuelan case the growth of these kinds of clients modified the practice of the profession, creating new modalities such as corporate in-house counsels or law firms (1981b, 84). These new forms of practice began to change the profile of the legal profession. Lawyers began to lose their uniformity, the environment of work changes depending on the client.¹⁴⁶ In-house lawyers lose the autonomy that characterized the legal profession. I think it is also possible to state that lawyers, in general, began to devote more time to the legal practice. According to a survey undertaken in 1968 over 461 lawyers Lowenstein (1970, 31,32) registered the following results:

TABLE IV Time Devoted by Lawyers to Legal Practice

Question: Would you consider from the time that you left law school, that you have practiced law :		
	Number	%
Always	354	76.8
During some periods	95	20.6
Never	9	2.0
No response	3	0.6
Total	461	100.0
Question: With respect to the amount of time dedicated to law since graduation, have you practiced (c) :		
	Number	%
Exclusively law	257	55.8
Law along with other activities	187	40.6
Not at all	11	2.4
No response	6	1.3
Total	461	100.0
Question: In your present work, how much time is given to law practice (c) :		
	Number	%
All	331	71.8

¹⁴⁶ In the American case, Heinz & Laumann report that: "(M)uch of the differentiation within legal profession is secondary to one fundamental distinction between lawyers who represent large organizations (corporations, labor unions, or government) and those who represent individuals. The two kinds of law practice are the two hemispheres of the profession (1997, 31)

More than a half	51	11.1
Half	27	5.9
Less than half	25	5.4
Nearly none	21	4.6
None	3	0.6
Other	1	0.2
No response	2	0.4
Total	461	100.0

Regardless of the process of specialization and association, it is important to note that even today solo practice or small law offices dominate the legal profession, and most of the law firms are only de facto. To some extent, the big changes to the legal profession are still forthcoming in Chile. The sixties and seventies therefore represented only a shy beginning of these transformations. I examine these transformations in the next chapter.

Lawyers and the State.

As frequently stated in this thesis, during the nineteenth century and the first decades of the twentieth law was considered as the profession of power. In the words of Bravo, the lawyer was the statesman *par excellence* (1998,96). Between 1851 and 1952 Chile had 20 democratically elected Presidents, 19 of whom were lawyers. From the second half of the twentieth century something began to change.¹⁴⁷ I have already examined the existence of a relative decline in the social prestige of lawyers; in the following pages I review their decline in the public sphere.

¹⁴⁷ Using again Presidents of the Republic, during the second half of the twentieth century Chile has had two soldiers (Carlos Ibáñez del Campo, Augusto Pinochet Ugarte), two engineers, (Jorge Alessandri Rodríguez, Eduardo Frei Ruiz-Tagle), one physician (Salvador Allende), and one lawyer-economist (Ricardo Lagos Escobar) (see Appendix).

The nineteenth century was the golden age of lawyers (Bravo 1998, 96). As Serrano states “it is a common place to assert that law was the profession of the leading class” (1994, 177). As the same author explains:

(T)he lawyer became the prototype of the nineteenth century statesmen because the state required not only high and middle officers, but also because it needed ideologists capable to explain the new order and jurists capable to formulate it legally (loc cit).

I have already referred to the link between the leading social group and the legal community to explain the connection between lawyers and politics. There are two other causes that bolstered this link, the absence of other professions and certain manner, that I call non-professional, to manage the state’s affairs. In the following I examine them.

In the nineteenth century and the first decades of the twentieth there were no university studies that prepared public service personnel or the diplomats (Mellafe et al., 1993, fn. 35, 126). Thus, law, the most demanded and prestigious profession, monopolized the training of these professionals who managed state affairs¹⁴⁸, and therefore, lawyers had an enormous presence in the highest offices of the state (Eyzaguirre, 1973, 406). As Galdames pointed out: “(A)ll the government was in the hand of lawyers” (1937, 128). Even though there is some exaggeration in

¹⁴⁸ In this regard, Valentín Letelier, proposed in 1888 a reform for the University of Chile’s Law School according to which legal studies contained three different specializations: practice of law, diplomacy and administration of the state (Galdames, 1937, 153). The purpose of Letelier was to provide the nation a “enlightened and scientifically disciplined bureaucracy” (ibid. at 128)

this statement, lawyers had a hegemonic presence in the public sphere. I have referred to the profession of Presidents of the republic between 1851 and 1952. Other indicators are the number of cabinet ministers and parliamentarians who had a law degree.¹⁴⁹

In regard to other professions, Serrano reported that the most significant were engineering and medicine. However both, but especially engineering, were considered as low-status professions and had several problems such as filling their courses with students, lack of teachers, and searching for a monopoly (1994, 178-222). This weak prestige of medicine and engineering was probably due to the scarce diffusion and wide incomprehension of the positivistic tendencies in Chile (Subercaseaux, quoted in Brunner, 1988, 56). In such a context, the scientific sciences did not have a systematic treatment until the end of the nineteenth century and, in some cases, until the first half of the twentieth century. Furthermore, until the twentieth century no competing social sciences were taught at university (in the case of economics, the first school was established in 1927 and the first school of sociology in 1946). Therefore, before the second half of the twentieth century

¹⁴⁹With respect to parliamentarians Marcella found that between 1834 and 1888 there were 782 parliamentarians, the author discovered the profession of 226 of them, 186 were lawyers, 26 engineers and 14 medics (1973, 87). In the case of the cabinet ministers I have examined the original cabinet of members of the original cabinet of each presidential terms between 1836 and 2000. Between 1836 and 1900 a significant number of the members were lawyers, all of them between 1861 and 1876. In every of the presidential terms between 1836 and 1900 law was the dominating profession of ministers (not all of ministers were professionals. In the first cabinet of the second term of Manuel Montt [1856-1861], for instance, there were no professionals). Considering the first cabinets, the cabinet of Jorge Alessandri (1958-64) was the first where the majority of professionals were not lawyers (four engineers, three lawyers, one teacher, and one veterinarian) (See Appendix).

lawyers did not have a strong competition either in the practice of law or in the public sphere.

With respect to the manner of managing the state, some clarification is required. Before 1973 the role of the state in Chile had been strongly linked to the common welfare (Góngora, 1981, 134). Hence, the state was closely involved with national defense, education, justice, health, economy and cultural activities among others. The change I am alluding to does not refer to this character of the state that Bravo calls *modernizer* (1998), but rather to the *pattern of development* (Meller, 1998, 47). After the Great Depression the state left the *laissez-faire* economic policies established around the 1860s. The new pattern of development fostered by the devastating effects of the Great Depression was the “inside-oriented development” (desarrollo orientado hacia adentro) and the manner to achieve it the “import-substitution industrialization.” The inside oriented development demanded a growing role of the state in the economic process. As in the early years of the republic, the country needed a bureaucracy capable of managing the new model of development, the international economic relationships and, overall, of achieving economic and social welfare for the country.¹⁵⁰ However, in contrast with the birth of

¹⁵⁰ In this regard the report of the University of Chile’s commission committed to the study of a new Faculty of Commerce and Industry stated:

(T)he lack of experts in the organization and leading of the industrial corporations has decisively influenced the small or null representation of the country in the international markets, where, considering the nature of its products, the country could have acquired an advantageous position. It is unbelievable, for instance, that even to carry out the trading of nitrate there have not been efficient technicians among us and, therefore both the publicity and the sales of the nitrate have been

the republic, lawyers were no longer the functionaries the state needed to achieve this commitment.¹⁵¹ Nevertheless, the process was slow and, in regard to the *new technicians*, visible only around the sixties. Before examining this I revise the competing new professions.

1924 saw the creation of the School of Economic Sciences and Commerce in the Catholic University of Chile. Ten years later the University of Chile founded the School of Commerce and Industrial Economics.¹⁵² Even though both schools had humble origins (Vial et al., 1999; Palma, 1974) and, in the beginning, were directed by lawyers¹⁵³, during the fifties they began to achieve public presence through their institutes¹⁵⁴ and their professionals.¹⁵⁵ ¹⁵⁶ Since the sixties, economists have become a stable presence in the government, and therefore they

made until today by foreigners, who do not have another interest but their own welfare (quoted in Palma, 1974, 13).

¹⁵¹ In fact, the founding of CORFO, probably the most emblematic decision of the new path of development was suggested to President Pedro Aguirre Cerda by a pioneer Keynesian economist, Flavián Levine Bowden. Levine was one of the first graduates of the new Faculty of Commerce and Industrial Economics (Dezalay & Garth, 14, 1998).

¹⁵² Before the founding of these faculties the economic studies in the university were carried out through a few courses in the schools of law. Thus, in 1917, for instance a Seminar on Economic Sciences was created in the Faculty of Law of the University of Chile to encourage the students to study economic and social topics (Mellafe et al, 1992, 127).

¹⁵³ The most significant were Rafael Correa Fuenzalida (University of Chile) and Julio Chaná Cariola (Catholic University)

¹⁵⁴ In the case of the University of Chile, the Institute of Economics in 1944, the Economic Planning Center in 1966 and the Socio-Economic Studies Center in 1964. The Catholic University founded the Catholic University Economic Investigation Center in 1956.

¹⁵⁵ Palma, referring to one curricular modification of the University of Chile's Faculty of Economics and Commerce states:

the restructuring of the economic studies has allowed the graduates a successful cooperation in the most diverse jobs in the public sector and an appropriated contribution to the good performance of the unavoidable role the state has today in the direction and planning of the country's economic activities (1974, 24).

¹⁵⁶ The growing presence of technocrats in the government can be appreciated in the first cabinet of president Jorge Alessandri (1958-64) As Collier and Sater point out: "Alessandri's first

began to challenge the hegemony of lawyers (Puryear, 1994, 17).¹⁵⁷ The peak of economists was under the military regime. I examine this in the next chapter.

The second group of competition for lawyers in the public sphere came from sociology. Even though there were sociologists in Chile since the second part of the nineteenth century,¹⁵⁸ sociological courses in the university only began in the early thirties at the University of Chile in the School of Philosophy and Education (Brunner, 1998, 135). The university schools of sociology were founded only in the last years of the 1950s.¹⁵⁹ According to Godoy, the slow growth of hard social sciences in Chile was related to adverse social and cultural conditions, modified only after the WW II (1960, 14).¹⁶⁰ The social, political and economic changes fostered by the conflict made necessary a discipline and specialists¹⁶¹ to study them. Sociology was that discipline.

(“independent”) cabinet included “apolitical” technocrats who gave the promise of bringing professional expertise to government”¹⁵⁶ (1996, 258).

¹⁵⁷The hegemony of lawyers was not complete. Both in the Congress and in the Ministries there were other professionals such as teachers and agrarian scientists. However, as I examine later sociologists and economists were the professionals whom lawyers thought were displacing them from the public offices.

¹⁵⁸ The most famous of this period were José Victorino Lastarria and Valentín Letelier. The former can be fairly called the first positivist in Chile. Lastarria was lawyer, writer of literature and law, diplomat, politic and judge on the Supreme Court. Valentín Letelier was one of the most noted intellectuals of his age. He had not only studies in Law (he taught Administrative Law in the University of Chile), but also a deep foundation on sociology (in fact, he can be denominated the first juridical sociologist in Chile) history and philosophy. During his life, Letelier was teacher, lawyer, writer, diplomat, deputy and rector of the University of Chile.

¹⁵⁹ In the University of Chile in 1957 and one year later in the Catholic University.

¹⁶⁰ According to Godoy, the Second World War carried out significant changes in social, political and economic structure, such as industrialization, urbanization, a mass-culture, more power to middle class and, a “general acceleration of the process of changes” (quoted in Brunner, 1988 at 194).

Sociology became a significant profession around the 1960s. As Brunner emphasizes, in this decade, Latin American and Chilean sociologists successfully identified, as a strategy of professional legitimation, their profession with the *modernization of society* (Brunner, 1988, 253). Sociologists became then significant actors in the public sphere (Dezalay & Garth, 1998, 35, Puryear, 1994, 12, 17). This is notorious in the governments of Eduardo Frei Montalva¹⁶² (1964-70) (Góngora 1981, 127; Brunner, 1988,317) and Salvador Allende¹⁶³ (1970-73) (Barrios & Brunner, 1988, 238).

To understand the success of economists and sociologists in the public sphere during the second half of the twentieth century (Puryear, 1994, 17) it is necessary to understand some basic features of what Góngora called *the age of global planning*¹⁶⁴ (1981, 126-138). According to Góngora, the age of the global planning began in Chile in 1964 with the government of Eduardo Frei Montalva, bolstered by a report of CEPAL of the fifties, which ranked Latin American countries as underdeveloped, and by President Kennedy's Alliance for the Progress. The technical performance was basically carried out by social scientists (1981, 126-28).

¹⁶¹ Referring to the lack of specialists, Godoy considered that, so far, the study of social sciences was marked by the hegemony of lawyers formed in law schools (quoted in Brunner, 1988, 195).

¹⁶² With regard to the participation of sociologists in this government, Góngora points out: (S)ince Eduardo Frei began his government (1964) governing exclusively with the Christian Democracy, Chilean politics acquired a new style, characterized by the influence of social scientists and the approaches of CEPAL (the United Nations Economic Commission for Latin America) in the politics of the leading party (1981, 127).

¹⁶³ According to Barrios & Brunner, sociologists, in general, played a role as ideologists of Allende's regime (1998, 241).

The main idea was that the failures of the Chilean economy were related to some basic structural features of the Chilean society such as:

co-existence of “traditional” or “backward” socio-economic structures, specially in agriculture, with “modern” in the industry and international trade; inequality in the economic level, which produced a poor per-capita income average; resistance to technical innovations; lack of basic education later specialized in technical applications and scientific research, lack of innovating and creative businessman, etc (Góngora, 1981, 126).

To overcome these failures, and therefore the underdevelopment, two conditions had to be accomplished: first a strong intervention of the state, and second, the scientific model of knowledge which “appeared as the base of the most development nations and promised economic and social development” (Brunner, 1988, 253). These two conditions intertwined had two effects. On the one hand they bolstered the rising of sociologists and economists and, on the other, they produced a deep impact in the declining of lawyers in the public sphere¹⁶⁵ (Bravo, 1998, 100), “provoking a professional self-image crisis the legal profession attempted to overcome by mimicking the remaining social sciences” (Peña, 1994, 90).

¹⁶⁴ I will only consider the economic feature of the global planning. As their name suggest, they can be understood as “comprehensive, nonnegotiable solutions to social problems...that sought to transform society from the top down, without political alliances (Puryear, 1994, 27)

¹⁶⁵ In this regard Fröling asserts:

(T)he ideal of social planning associated with modernization policies created a new demand for specific expertise in planning, accounting, and the drafting of development projects. These skills had been mastered by economists and sociologists but were not taught to law students (1998, 239).

Before going to the situation of lawyers I would like to summarize what I have already said in this last section. First I stated that the strong involvement of lawyers in the public sphere was related to the connection between lawyers and the aristocracy, the virtual monopoly of lawyers in the system of professions and a certain manner to manage the state characterized by a kind of *universal jurisdiction* of lawyers in public affairs. Both virtual monopoly and the manner to manage the state changed. In the case of the former, I have only referred to economics and sociology; nevertheless the university system as a whole experienced a tremendous growth in Chile during the twentieth century.¹⁶⁶ This growth meant competition in the fulfillment of the public offices. With respect to the manner the state managed public issues, my impression is that from the thirties, and very intensely during the second half of the twentieth century, the management of public issues became a specialized field. This specialization does not fit the universal jurisdiction of lawyers; instead, it requires new specialists. In addition to the former, the new path of development that began in the thirties and became strong in the sixties gave preference to sociologists and economists in the accounting, design and managing of the country. Now I turn to lawyers.

¹⁶⁶

TABLE V Number of University Students

Year	Students
1931(Mellafe et al, 1992, 148)	5000
1940 (Collier & Sater, 1996, 291)	7800
1956 (Loc cit)	19000
1967 (Barrios & Brunner, 1998, 234)	55600
1973 (Loc cit)	146000

For a more detailed account about the growth and diversification of university studies see Bravo (1992a, 218-19)

As stated before, in the Chilean case there was a widespread feeling about a “crisis of law” during the sixties (Domínguez, 1973, 114; Novoa & Silva, 1971, 38-68; Pumpin, 1970, 19; Tapia, 1971, 98; Velasco, 1968, 9 [quoted in Lowenstein, 1970, 55]). In general, the crisis of law was related to the legal system and to the role of lawyers in the public sphere. With respect to the legal system, Eugenio Velasco, then the dean of University of Chile Law Faculty, pointed out:

(T)he legal system has become incapable of dealing with the central economic and social problems confronting society; and even more disturbing, the law has often come to be --to a very marked degree in Chile-- an actual block to progress...(quoted in Lowenstein, 1970 at 55).

The crisis of the legal system was attributed to the inadequacy of Chilean positive law, written basically during the third quarter of the nineteenth century and inspired by the *laissez faire* thinking; the confusion provoked by the enormous number of laws and subjects regulated; the unequal application of the law (Ibid. 56-60); and “in large part to a parallel ‘crisis’ in the legal profession” (Ibid at 60).

In regard to the legal profession, there was a shared feeling about a loss of jurisdiction and social prestige of the legal profession during the sixties. Lawyers did not fit the idea of progress and development in vogue during the sixties and the first years of the seventies. This impression about loss of jurisdiction and displacement of the public issues was not only held in Chile, but also in the remaining countries of Latin America. Referring to the former, Lynch asserts:

(T)he legal profession in Latin America has been sharply criticized for its failure to play a major role in the process of social change and

economic development. Critics have argued that legal education and scholarship are too formalistic and dogmatic. They claim legal educators ignore social and economic problems in the classroom and, as a result, law graduates are not prepared to deal with the legal aspects of development...It is possible that the major factors causing this changing image of Latin American lawyers have little to do with the relevancy of legal skills or knowledge. As noted... the diversification of higher education is altering the law school's traditional monopoly over the education of the elite and is contributing to specialized occupational roles. (Lynch, 1981, 73)

In the Chilean case, Eduardo Novoa Monreal, probably the best known lawyer of President Allende's government, pointed out:

lawyers have no solution to offer. More from inertia than lack of initiative and more from inadvertence than blindness, the legal profession has abandoned its primary and most useful social function: the constant renovation of law so that it can be placed at the service of society. It is understandable then, that the lawyer, with so little comprehension of his most basic function, not only remains isolated from the great social movements which are bettering the quality of life for all men, but --and much more serious-- the lawyer generally demonstrates a total incapacity to contribute anything to these changes which are among the most important and hopeful of modern times (quoted in Lowenstein, 1970 at 60,61).

In general, the crisis of the legal profession was explained resorting to the low quality of legal education. Even though this was true --and, in most cases, still it is, I think that Lynch (1981, 73) is correct when attributing the crisis to the growth of external competition.¹⁶⁷ In this regard, I think that the crisis of the legal profession can be understood as a general claim of lawyers for the lost jurisdiction, and the

¹⁶⁷ Nevertheless, In the Chilean case an integral diagnosis of the crisis experienced by the legal profession should consider three factors, namely, the growth of external competition, the growth of internal competition, and the weakening of its cognitive basis.

reform of the legal studies an attempt to recover the lost dominions¹⁶⁸ (see Bascuñán, 1973, 114; Cuneo & Figueroa, 1971, 120; Velasco, 1971, 90; Tapia, 1971, 98). In the sixties it was considered that a narrow conception of law and its functions had isolated the legal profession, divorcing it from the social problems of the day, transforming lawyers in a barrier to development¹⁶⁹ (Lowenstein, 1970, 60,61). Thus, in 1967, the president of the Law Students Center stated:

(F)or a number of years, we have had to listen to the justified attacks on the legal profession creating what amounts to a crisis today and leading to the progressively lower status of our future professionThe causes for this state of affairs are many but the most important is the incapacity of the lawyer to respond to social change, an incapacity deriving from the poor quality of the training received by students and future lawyers in our schools of law (quoted in Lowenstein, 1970 at 63).

I would like to emphasize the fact that the so-called crisis of law can be in a relevant part understood as a claim of the legal profession to recover the lost dominions in the public sphere. As I have shown several complaints of the legal community were focused toward a displacement of lawyers by other professionals. Since lawyers still had monopoly on legal issues, it can be assumed that the displacement referred to other fields. Taking into account the strong stress in the social sciences, and the role of lawyers facing development, it is not exaggerated to think that the threat was

¹⁶⁸ A survey practiced in 1971 to 192 professionals, 25 of them lawyers, revealed that 88 percent of the lawyers interviewed opined that professionals from other specialties were occupying the field of lawyers (Schieflbein & Mc Ginn, 1974, 65).

¹⁶⁹ Lowenstein exemplified this referring to the program of land reform in Chile, stating that lawyers had managed to frustrate the manifest intend and spirit of the land reform legislation by using procedural complexity and civil law remedies (1970, 61).

in the public sphere. Lawyers were not anymore the *children of the state*¹⁷⁰, at least not the only ones.

* * * *

In this second chapter I have attempted to show how the role, or the definition, of lawyers has changed in Chile from the mid-nineteenth century. I have argued that until the first decades of the twentieth century this definition was closely linked to the management of public affairs. The change to the market, which means to the needs of private clients, has been slow and, in fact, is still occurring. Probably a note of clarification is needed here. The change that I am referring to is not the change of every lawyer, but rather the change in the archetypical lawyer, what I call the definition of lawyer. In the nineteenth century lawyers were considered as statesmen; today, I argue they are thought of as intermediaries between private actors. This does not mean that the legal community has no place in the public sphere anymore. In fact, during the period considered in this chapter it was strongly, even though decreasingly, represented in the public sector. Instead, I am arguing that is this representation became specialized; lawyers lost their universal jurisdiction in public affairs, so that a law degree is no longer a guarantee in the public sphere. Conversely, during the sixties and the first years of the seventies, lawyers were frequently considered as obstacles for the development, barriers for the progress.

¹⁷⁰ I owe this expression to Professor Rogelio Pérez Perdomo

In addition to the decline of lawyers in the public sphere, I have argued that they began to play a significant role in the market. Once the market became more complex and the number of juridical relationships growth, the role of the lawyer gained an increasing relevance in the articulation of these relationships. This new role I argue was fostered by the economic growth of the country and an increased clientele able to demand legal services.

Up to this point I have suggested two movements with respect to lawyers: first a *centrifugal force* that moves them away from the state, and second a *centripetal* one that conveys them toward the market. Both movements are extremely difficult to demonstrate convincingly not only due to the lack of information, but rather because they are trends and therefore they accept several shades and exceptions. Notwithstanding, I think this approach is correct.

I have already referred to the Durkheimian principle of the division of the specialized work in modern society; this concept can be used as a heuristic tool to understand what I have been saying. Both the changes in the legal practice and in the public sphere can be understood as manifestations of an increasingly complex society which need specialized operators to manage growing diversification either in the public or in the private sphere. In such a context *universal jurisdictions* are condemned to disappear.

In the Chilean case I have said that the broad jurisdiction of lawyers in the public sphere was related with the links between the legal community and the leading social group, the legal community and other professions, and the legal community and the state. These three relationships have experienced significant changes; all of them have driven the change I am alluding to.

Before leaving this chapter it is useful to emphasize that this change is a trend, more evident in the eighties and nineties than in the first thirty years of the second half of the twentieth century. Therefore, the decades of the twentieth century considered in this chapter only marks the beginning of an unfinished process.

Chapter III

NEO-LIBERALISM AND GLOBALIZATION. (1973-2000)

The law has become a business like any other.
Anthony Kronman

In the first two chapters of this thesis my aim has been to show how the legal community acquired a strong presence in the public sphere and how, later, this jurisdiction was challenged by new professions and by a new model of managing public issues. In addition, I argued that the definition of lawyers began to move closer to the market. During the last quarter of the twentieth century, the legal community has become more distant from the public sphere on the one hand and more involved with the market on the other. In this last chapter I argue that the current role of lawyers must be basically understood within the practice of a profession –the legal profession- determined by market dynamics.

To examine the situation of the legal community in the last thirty years I think two factors are especially worth considering: first the neo-liberal policies established by the military regime and more or less followed by the subsequent governments and

second the globalization of the economy. I submit that both have had (and, in the case of globalization, will have) a significant impact for the legal community and, especially, for the legal profession. I examine neo-liberalism in the following paragraphs when dealing with the history of Chile. In the case of globalization, I note its effects when reviewing the changes experienced by the legal profession.

The coup d' ètat that ended the government of President Salvador Allende in 1973 had a tremendous impact in Chile, an impact that even today divides opinions and Chileans. The military regime not only transformed the democratic government into a dictatorship but also modified completely the economic model of development; this is probably its strongest legacy. As noted before, until 1973 Chile was strongly involved in an inside-oriented pattern of development, this model reached its peak during President Allende's socialist government which was characterized by an intense intervention of the state in the economy of the country (Meller, 1998, 117-61; Ffrench-Davis, 1999, 25-27).¹⁷¹ The military regime attempted quite the reverse (Meller, 1998, 182-193). In this regard it can be pointed out that: "between the decades of 1960 and 1980...the Chilean state had its moments of maximum and minimum economic prominence in [the twentieth] century" (Meneses & Fuentes, 1998, 233).

¹⁷¹ The strong intervention of the state began during from the government of Eduardo Frei Montalva (1964-70), however Allende's government led this up to one point where "there was no part of the state economy that was not directly or indirectly managed by the state" (Martínez & Díaz, 1996, 45).

Considering the widespread economic crisis in 1973 the military regime quickly imposed an “orthodox neo-liberal economic model” (Ffrench-Davis, 1999, 59) that lasted roughly until the recession of 1982.¹⁷² This first stage of economic reforms was marked by structural reforms oriented toward a more open economy.¹⁷³ The second stage, between 1983 and 1990, was characterized by measures to create export-based development (Martínez & Díaz, 1996, 47). The neo-liberal approach of the military regime reached every single aspect of the Chilean economy,¹⁷⁴ transforming it into an a free market economy in which the private sector was considered the engine for economic progress. The arrival of democracy in 1990 and the following two governments (Patricio Aylwin [1990-1994] and Eduardo Frei Ruiz-Tagle [1994-2000]) did not reversed the main features of the economic model, which is still considered extremely successful. Nevertheless there have been significant efforts to “pay the social debt” (Martin, 1998, 317) to the lower class, who basically have born the costs of the accelerated development¹⁷⁵ (Ffrench-Davis, 1999, 264-70; Meneses & Fuentes, 1998, 235).

Among other consequences, the neo-liberal policies of the military regime, especially the privatization of public companies, favored the concentration of

¹⁷² Between 1983 and 1990 the neo-liberal model suffered several “heterodox measures” triggered by the enormous recession of 1982 (Meller, 1998, 246-49).

¹⁷³ For a good description of the economic measures adopted by the military regime see Ffrench Davis (1999) and Meller (1998).

¹⁷⁴ In this regard, Martínez & Díaz registered modifications related to the foreign trade, prices, privatization, fiscal policy, internal credit, external debt, labor market, and social security (1996, 50, 51). See also Ffrench-Davis (1999, 61).

¹⁷⁵ Regardless of the social costs and two recessions, Chile experienced significant economic growth compared to the rest of Latin America between 1973 and 1989 (Castells, 1996, 152-57). This

property and the formation of large private firms owned by new conglomerates (French-Davis, 1999, 188; Collier & Sater, 1996, 374). In this regard, Martínez &

Díaz state:

(P)ractically all sectors of the Chilean economy are currently controlled by large firms that in turn belong to economic groups. More than at any other stage in its history, Chile is dominated by conglomerates – national or foreign- that were strengthened by the economic policies carried out between 1973 and 1990 (1996, 69).

In addition to these “schumpeterian” actors, the neo-liberal policies had a substantive impact in regard to social indicators. In this regard, French-Davis reports negative consequences in average and minimum wages, labor laws, and public expenditure in health, education and housing¹⁷⁶ (1999, 260-64). According to the same author this deterioration affected especially the poorest sector of the population (Ibid. at 263). As stated before, the successive governments have devoted some significant efforts to improve the situation of this poorest sector looking for a more equitable distribution of resources (Martin, 1998, 313-52).

In broad terms then, during the last thirty years, Chile has experienced a dictatorship and two democratic governments. The economic performance of the country has been substantially improved¹⁷⁷ as well as social indicators, the democracy seems

growth has been improved by the first two democratic governments with an annual growth rate of 7 percent between 1989 and 1998 (French-Davis, 1999, 35).

¹⁷⁶ Nevertheless, the military regime improved some other indicators such as illiteracy, birth mortality, life expectancy and education.

¹⁷⁷ However, to show complacency will be a fatal mistake, Chile is still a country with a weak technological base, lack of human capital and a good deal of the success related with its exports that bolstered the economic growth was related to the exhaustive exploitation of its natural resources.

solid; and there have been some institutional transformations that, in the long term, could help the transition to a full-fledged development.¹⁷⁸

What has happened to the legal community under these neo-liberal policies and the opening of Chile to the world? With respect to legal education, it was a turn back to the professionalization of studies. The commitment of the lawyer as a “statesmen” (Kronman, 1993) seems completely lost. Legal studies have been once again the object of several criticisms and at least two reforms, but the scope has been completely changed, orienting it to the needs of the market. The second significant change is the astounding growth in the supply of law schools since 1981. With regard to the legal profession, I argue that all the transformations noted in the last chapter have gone deeper. Finally, in regard to the public sphere, I hold that the jurisdiction of lawyers has become specialized in legal issues and with respect to involvement in other public issues there has been some prevalence of other professionals such as economists, political scientists and sociologists.

Legal Studies: The Power of the Market.

The present section covers two different topics: first the growth in legal education in Chile since 1981 and second, the main features of the curriculum and teaching methodology, and the reforms carried out between 1973 and 2000.

¹⁷⁸ Probably the most significant transformation is the taken with respect to judicial power and

University for Everybody.¹⁷⁹

Until 1981 there were eight universities in Chile and only five of them provided legal education.¹⁸⁰ In that year the number of students attending law schools was 1,799 (Zavala, 1999b, 94). In 1981 the university system had 34,233 vacancies and the number of postulants exceeded 60,000. The situation was especially critical in fields such as economics and law (Bravo, 1992a, 280-81). This situation led the military regime to include the university system within the “eight modernizations of 1981” introducing a new statute, the *-Ley Orgánica Constitucional 18,962*. The goal of the government was to create a university system “open, competitive and with high academic quality” (Atria, 1998, 614). The incorporation of private agents was encouraged in order to achieve this goal and the universities’ financing policies were altered, reducing the participation of the state (Fuenzalida, 2000, 14). The total registration of students in universities grew from 116,474 in 1982 to 146,720 in 1992 (Bravo 1992a, 285) and 276,852 in 2000 (Consejo Superior de Educación (http://www.cse.cl/Estadisticas/cuadro_11.html)). In regard to law students, the

criminal procedure.

¹⁷⁹ “University for everybody” was a frequent slogan of the left wing parties during the first years of the seventies.

supply of legal schools grew enormously, from five law schools in 1973 to more than 37 in 1999.

TABLE VI Universities that provide legal studies

1973-1980	1981-1990	1991- 2001
U. of Chile (1842)	U. of Chile (1842)	U. of Chile (1842)
Catholic (1889)	Catholic (1889)	Catholic (1889)
U. of Valparaíso (1911)	U. of Valparaíso (1911)	U. of Valparaíso (1911)
C.U. of Valparaíso (1928)	C. U. of Valparaíso (1928)	C.U. of Valparaíso (1928)
U. of Concepción (1929)	U. of Concepción (1929)	U. of Concepción (1929)
	U.C.S of Concepción (1976)	U.C.S of Concepción (1976)
	U. Gabriela Mistral (1982)	U. Gabriela Mistral (1982)
	U. Diego Portales (1983)	U. Diego Portales (1983)
	U. Central (1983)	U. Central (1983)
	U. Finis Terrae (1988)	U. Finis Terrae (1988)
	U. Andrés Bello (1989)	U. Andrés Bello (1989)
	U. Bolivariana (1989)	U. Bolivariana (1989)
	U. La República (1989)	U. La República (1989)
	U. SEK (1990)	U. SEK (1990)
	U. Austral (1990)	U. Austral (1990)
	Autonomous U. of the South (1990)	Autonomous U. of the South (1990)
	Adolfo Ibáñez (1990)	Adolfo Ibáñez (1990)
	U. Bernardo O'Higgins (1990)	U. Bernardo O'Higgins (1990)
	U. de los Andes (1990)	U. de los Andes (1990)
	U. of Temuco (?)	U. of the Sea (1991)
	U. Real (?)	U. Saint Sebastian (1991)
	U. Las Condes (?)	U. Arturo Prat (1991)
		U. of the Development (1991)
		U. of Talca (1992)
		U. of the Americas (1992)
		U. of Antofagasta (1993)
		U. Arcis (1993)
		C. U. of the North (1993)
		U. Saint Thomas (1994)
		U. of Tarapaca (1994)
		C. U of Temuco (1994)
		U. of Atacama (1995)
		U. A. C. Humanism (1997)
		U. Miguel de Cevantes (1998)
		U. of the Americas (1999)
		Maritime U. of Chile (1999)

¹⁸⁰ These were the University of Chile, Catholic University, University of Concepción, Catholic University of Valparaíso and University of Valparaíso.

		U. Alberto Hurtado (2000)
		U. Mayor (2000)
		U. Magallanes (2001)
		U. Alonso de Ovalle (?)

As the following table shows, the enormous growth in the supply of universities has also led to substantial growth in the number of students.¹⁸¹

TABLE VII Number of students of law 1973-1998

Year	Number of Students	Year	Number of Students
1973	3544	1986	5310
1974	3607	1987	6890
1975	3998	1988	8096
1976	3282	1989	9486
1977	3283	1990	8304
1978	3093	1991	9918
1979	2856	1992	11904
1980	2757	1993	13635
1981	1799	1994	14944
1982	N/I	1995	16142
1983	N/I	1996	17650
1984	N/I	1997	18627
1985	4514	1998	18469

Source: Zabala (1999a) (1999b)

Despite of the impressive growth of the university system, in the case of law, the new universities have followed the professionalistic matrix of the former five law schools (Bravo, 1992a, 299). In this regard, the increase of the university system has not brought about a significant diversity neither in curriculum nor in teaching methodology. In the following paragraphs I examine the characteristics of legal education during the last thirty years.

¹⁸¹ The increase in the number of law students has been a widespread and sustained process not only in Chile, but in Latin America overall (Pérez Perdomo, 2000, 3).

Curriculum and Teaching Methodology.

As noted in Chapter II, the arrival of the military regime weakened the reform attempts of the seventies, bringing back the curriculum and the teaching methodology of the first half of the twentieth century. In this regard, Antonio Bascuñán, Dean of the University of Chile Law School stated in 1977: “(T)he political change meant a reaction against the process of reform of the legal studies in the country, led by the Supreme Court and the Chilean Bar” (quoted in Fuenzalida, 2000 at 231). Therefore, the first decade of the military regime brought about a restoration of the traditional curriculum and teaching methodology, followed later by the newcomer universities beginning in 1981.

In general both the curriculum and teaching methodology of legal education in Chile mirror Peña's observation of Latin American legal education (2000, 5; see also Pérez Perdomo, 1978, 143-46). Peña divides his observations into four categories: contents, evaluations, teaching methodologies, and academic profession. In regard to the contents, he notes the hegemony of a “legal paradigm” focused on a formalistic approach to the normative dimension of the rules that neglects the social

and ethical features of the legal phenomenon. In addition, Peña notes that the legal education does not provide the skills required for the legal practice. With respect to the evaluations, they are “highly ritualistic and formalistic” (loc. cit) and encourage memorization over analytical skills. In the case of teaching methodologies, he finds that the conference (*clase magistra*) as the predominant mechanism. In this scheme there is not room either for a fluid interaction between students and teacher or for useful case method discussion of prior legal decisions. Conferences therefore remain reduced to the explanation of legal rules and, most times, through the dictation of a legal handbook¹⁸² (Guerrero, 22-24, 1997). Finally, with respect to the academic profession, Peña suggests that one of the most distinctive traits of legal education is “the inexistence of an academic community of professional scholars devoted full-time to the research and teaching of law” (2000, 5). In other work, Peña argues that in the Chilean case legal teaching is predominantly done by practicing lawyers with a high value in the market (1994, 94). This last feature of legal education explains a good deal of its flaws. Without an academic community there is no possibility of legal research, active classes, or effective evaluations.

TABLE VIII Teachers with Full or Half Time and Teachers with Ph.d or Master¹⁸³

UNIVERSITY	% Teachers with full or half time 2000	% Teachers with Ph.d or Master 2000
U. DEL MAR	9%	23%
U.ALBERTO HURTADO	43%	71%
U.MIGUEL DE CERV.	18%	55%
U.SANTO TOMAS	60%	40%

¹⁸² Roberto Guerrero, a professor at the Catholic University, reports that one of the most frequent criticizes of legal studies is the fact that classes do not add any significant value to legal handbooks; therefore they could be given even by mail. This situation lead s to high rates of absenteeism among students (1997, 22,23).

¹⁸³ Unfortunately the information does not provide the number of teachers in every school. This makes very difficult the comparison among the different law schools.

U.BOLIVARIANA	16%	8%
U.SEK	15%	27%
U.BOLIVARIANA	12%	23%
U.LA REPUBLICA		10%
U.SAN SEBASTIAN	40%	40%
U.AUTONOMA DEL SUR	14%	19%
U.DE ANTOFAGASTA	45%	10%
U.DE TARAPACA	17%	3%
U.ARTURO PRAT	16%	3%
U.DE ATACAMA	27%	10%
U.DE VALPARAISO	15%	25%
U.DE TALCA		
U.C.S.CONCEPCION	13%	18%
U.C. TEMUCO		
U.MAGALLANES		
U.ADOLFO IBAÑEZ	24%	38%
U.DEL DESARROLLO	10%	32%
U.A.H.CRISTIANO	5%	14%
U.ARCIS	15%	5%
U.DE LAS AMERICAS		
U.ANDRES BELLO	4%	23%
U.FINIS TERRAE	3%	13%
U.CENTRAL	7%	37%
U.DIEGO PORTALES	19%	23%
U. GABRIELA MISTRAL	10%	34%
U.DEL DESARROLLO	17%	13%
U.MAYOR		
U.C.NORTE	12%	3%
U.C.VALPARAISO		
P.U.C. DE CHILE	78%	35%
U. DE CHILE	12%	
U.CONCEPCION		
U.AUSTRAL	51%	34%
U.MARITIMA DE CHILE	13%	73%

Source: Consejo Superior de Educación.

Until 1988 there were no significant reforms either in the old universities or in the newcomers; the curriculum was rigid and the approach dominated by professionalism. Probably the only change was an explicit orientation toward the needs of corporations in the case of some new universities, significantly Diego

Portales and Gabriela Mistral (Zabala, 1999, 79). According to Fuenzalida, the process of renovation of legal studies did not begin in the traditional universities but in the Law School of the University Diego Portales and CPU (Corporación de Promoción Universitaria¹⁸⁴) (1997, 234; see also Dezalay & Garth, 1998, 86-87). Even though it was formerly oriented to the business sector, Diego Portales University Law School quickly shifted to the study of public issues and after 1990, to the challenges of the legal system under a democratic government.¹⁸⁵ The early efforts of CPU and Diego Portales University Law School did not bring about changes in the curriculum or in the teaching methodology.

The Catholic University was the first to introduce relevant changes in the curriculum in 1997. In this year, a flexible curriculum was introduced, in which fifth year students could choose among optional courses, the professional practice being the only mandatory course in that last year¹⁸⁶ (Zabala, 1999, 80). In addition to the Catholic University Law School, two other schools are currently engaged in significant reforms -Diego Portales Law School and the University of Chile Law School.¹⁸⁷ In general terms, both schools introduced a flexible curriculum¹⁸⁸ that

¹⁸⁴ CPU is an NGO established in 1960 with funding from the U.N.'s Institute for Development and the U.S. AID.

¹⁸⁵ It is important to note that the main effort of Diego Portales University Law School was focused toward the formation of a high quality research department rather than the transformation of the curriculum or the teaching methodology. These issues were systematically undertaken only after 1998.

¹⁸⁶ Rigidity has been one of the most stubborn features of legal studies in Chile. In this regard, the possibility of election is very revolutionary.

¹⁸⁷ Of these two reforms efforts, only Diego Portales University Law School's is currently working.

favors specialization, changed to a semester schedule, introduced a credit system, incorporated a new pattern of classes replacing the conferences for more interactive mechanisms, added new forms of evaluation that encourage analytical skills over memorization, and encouraged the formation of professional scholars and research departments.

As noted in Chapter Two, reforms are almost an inherent trait of Chilean legal education. It is still too early to assess the achievements of these new reforms; nevertheless, some things can be said. First, up to this point, these reforms have only affected a small portion of law schools; therefore the majority of the schools remain under the above-mentioned features. Second, Chile does not have yet a strong academic community that would be needed to undertake widespread ambitious reforms in legal studies. Third, it is very telling that these reforms are oriented toward the needs of the market rather than the needs of the state. In such regard it seems that the ideal of lawyers as social architects has disappeared. Today there are several criticisms against the legal education system. With respect to the teaching methodology they are basically the same as forty years ago, however with respect to the contents of the curriculum they have changed dramatically. Today the complaints do not focus on the disparity between legal education and the management of public affairs, but rather on the disparity between

¹⁸⁸ In both cases a flexible curriculum means that students must take a set of mandatory courses (these courses reflect the “basic matrix” of the legal profession). In regard to the remaining courses they can choose among optional courses until fulfilling the number of credits required for graduation.

legal education and legal practice -the work of practicing lawyers (Fuenzalida, 1997; Guerrero, 1997; Peña, 1994).

The Legal Community.

During the last thirty years of the twentieth century, the legal community has followed and gone through the same pattern of modifications noted in Chapter II. Therefore, in the legal profession, the movement toward specialization, the stratification, and the new forms of practice have had a stronger development. I argue that these changes can be understood as a response of lawyers to increasing internal competition and some challenges set up by the economic growth of the country and the globalization of the economy. With respect to the public sphere, I sustain that the jurisdiction of lawyers is today constrained to legal issues. The public sphere has become specialized. In the new distribution of expert labor, the big stake of public issues seems to depend on other professionals. Before examining the legal profession and the public sphere, I review some features of the legal community during the last three decades.

Internal Features of the Legal Community.

Number of Lawyers.

As an effect of the substantive growth of the supply of legal studies and law students, the number of lawyers has increased considerably. According to the National Census of the respective years, in 1982 there were 6,546 and in 1992 9,308 (website Consejo superior de Educación). There is no reliable information for the following years. Peña, quoting Santos Pastor, reports 9,926 lawyers in 1998 (2000, 4) and Lizama (2000, 5) calculates 75 lawyers/100,000 inhabitants in 2000. Considering that in the year 2000 Chile had a population of around 15,200,000 (website CELADE) that means around 11,400 lawyers for that year. Even without reliable information about the number of lawyers, a good indicator of the increase is the number of students who received a law degree.¹⁸⁹ In 1980 there were 302 law graduates (website Consejo Superior de Educación), in 1996, 861, and in 1997, 1,040 (website Ministerio de Educación). Unfortunately I do not have the number for 2000; nevertheless it is very likely that the number has grown very substantially. The reason for this continuing growth lies in the fact that to confer a law degree a university need at least five years of life (the length of legal studies). If we consider that from 1992 there have been established 17 new universities (that means a little less than half of the legal studies supply), then it is not difficult to conclude that most of them began to issue law degrees only around 1998.

¹⁸⁹ In the Chilean case a student who has received her degree from a law school only has to make her Practice that consists in serving in a Legal Assistance Program for the Poor (Consultorio Jurídico for six months and be approved) and take an oath in the Supreme Court. None of the former requirements are a significant entry barrier to become a lawyer; therefore the large majority who get a law degree become lawyer.

Social Prestige, Gender, and Social Class.

There are no reasons to believe that the social prestige of the legal community has improved in the period covered by this chapter. The reasons I have argued for such a loss in the last chapter still stand, and today internal competition bolsters the engagement of lawyers in some practices that diminish their prestige in the professional realm. According to a survey undertaken in 1997 by FLACSO that asked for an assessment of lawyers' performance in solving people's problems, 8.1 percent of those surveyed said that lawyers do a lot (*hacen mucho*); 36.3 percent, they do something (*hacen algo*); 32.2 percent, they do little (*hacen poco*); and 22.9 percent, they do nothing (*hacen nada*) (1997, 70). In regard to gender, even though my data is very small, there are good reasons to suppose that the participation of women has increased in the legal profession. If the number of students who received a law degree is taken as an indicator of the legal profession's size, 220 out of 634 law students who received their law degree in 1995 were women, 327 out of 861 in 1996, and 454 out of 1,040 in 1997 (website Ministerio de Educación). With respect to social class, there is no reliable information about the social class of law students in the past three decades, notwithstanding the lack of data, it is very likely that the modification of financing university education in 1981 from public to private¹⁹⁰ had weakened or, at best, only

¹⁹⁰ According to Vial, the modification of universities' financing worked twofold. First, there was a general reduction of the state budget for education, and second, a reorientation of the investment in education from the higher education to the schools (*educación básica y media*) (1999, 257).

maintained the small participation of the lowest class (Lowenstein, 1970, 26, 27; Peña, 2000, 3).

The Legal Profession.

There are two key issues in understanding the changes the legal profession has experienced in the last thirty years and its current scenario. First, as noted before, the number of lawyers has grown significantly, and second the practice of law has become increasingly complex and specialized (Correa, 1999, 265; Vargas et al., 2001, 140). I think two things help to explain the complexity and specialization of the legal profession: the economic growth of the country in these last three decades and the globalization of the economy.¹⁹¹

Even though the 1960s and 1970s brought about certain changes, by 1981 the legal profession kept most of the traces of a liberal profession. Therefore, according to the Law 4,409, the jurisdiction on legal issues related to the practice of law

¹⁹¹ Of course there are several other factors. I have chosen these because, even though at first glance, they seem to be related only to business lawyers, economic conditions ultimately permeate the whole social fabric.

belonged to the Bar, the great majority of lawyers kept control over their clients,¹⁹² and “(M)ost of the top lawyers were professor-litigators working in quite small, family oriented firms” (Dezalay & Garth, 1998, 76). In addition, the low supply of law schools worked as an entry barrier to the legal profession, maintaining a small number of lawyers and thus producing a kind of protected market. In the same year there were two events with relevant consequences for the legal profession: first, in February the law Decree 3,621 was passed according to which the Chilean Bar lost its jurisdiction over the conflicts arising among lawyers or among lawyers and their clients and the affiliation to the bar was no longer a requirement to practice the legal profession.¹⁹³ The second event was the opening of the university system and the subsequent appearance of several new law schools and internal competition. It is still difficult to assess the consequences of both changes. In the case of the suppression of jurisdictional attributes of the Chilean Bar, it can be stated that it implies a lack of ethical control¹⁹⁴ over the legal profession and bolsters more

¹⁹² As it is widely known one of the traits of liberal professions is the fact professionals are independent from their clients.

¹⁹³ The explicit commitment behind this statute was to bolster labor freedom. In this regard, the first Considering (*Considerando*) of the Law Decree 3,621 states:

(Considering) 1.- That labor freedom necessarily conveys freedom of affiliation or disaffiliation to any kind of association, so they can not be established as requirements to practice any labor activity.

¹⁹⁴Of course this is true only if the bar was able to exert some ethical control. There is some literature that argues that associations such as bars are more concerned with protecting the monopoly and the prerogatives of their members than with the public interest. See, for instance, Abel (1989), Collin (1999), Freidson (1994), Larson (1977), MacDonald (1995), Zuckerman (1999). In the same regard, in his compared analysis of work and organization of lawyers throughout the world, Clark points out:

(P)rofessional associations normally act to further the self-interest of lawyers by justifying them as supporting the public interest. Successful bar associations and law societies have been able to control apprenticeship training of potential lawyers and their entry to the profession (1999, 129).

aggressive patterns of competition.¹⁹⁵ In regard to increasing competition, lawyers have a wide set of mechanisms to deal with internal competition¹⁹⁶, among them specialization, association in law firms or in corporate in-house counsels, creation of demand, reduction of fees, and advertising. Chilean lawyers have used some of these mechanisms to face the competition, however, before examining them, I review the relationship between globalization and the legal profession.^{197 198}

In July 1992, The Economist asserted “the internationalization of law is still a faintly MacLuhanite fantasy, but the internationalization of lawyering has begun”¹⁹⁹ (quoted in Roorda, 1993 at 147). In very general terms, globalization has two consequences for the legal profession, first it widens the field of legal practice and second it makes the practice of the legal profession more competitive. Thus, even though lawyers gain access to new markets, they also have to bear the competition of foreign

¹⁹⁵ For instance, one of the barriers that hinders aggressive competition is the existence of a minimum fee schedule (Abel, 1989, 118). In the Chilean case minimum and maximum fees were fixed according to an official schedule. The law decree explicitly suppressed this in its Article 5. The second barrier in the Chilean case is the banning of advertising. Even though this is still in force, the arrival of Internet has made the efficacy of the rule very fuzzy (almost every important law firm or solo practitioner has her own web page and in these web pages it is very difficult to distinguish information of the firms from publicity).

¹⁹⁶ For a good description of the American case see Abel (1989).

¹⁹⁷ The relationship between globalization and the legal profession is a function of what Castells has called *informational economy* (1996, 93) and the subsequent need to have a globalized law. Since both topics overcome the borders of this thesis I do not explore them. In regard to the informational economy see Castells (1996). For a good insight on law and globalization see Jayasuriya (1999).

¹⁹⁸ I do not discuss economic growth here because I already did so in the first pages of this chapter.

¹⁹⁹ According to Roorda:

(T)he legal profession is experiencing internationalization and globalization which has developed through the following, partly co-existing, stages: (1) referral to foreign counsel; (2) cooperation with foreign counsel; (3) frequent international communication and travel abroad; (4) opening branch offices abroad; and (5) full service practice abroad (1993, 151).

lawyers.²⁰⁰ In this regard Clark states: "...globalization is opening up new legal markets. Lawyers trained in foreign, comparative, and international law will come to dominate these markets" (1998, 268). As with other fields globalization blurs the barriers between national and foreign legal practice, obliging lawyers to develop new skills such as languages and knowledge about foreign legal systems in order to lead transactions all over the world. Clark provides an example of the former stating that: "(L)arge government companies going public, whether in Australia, Chile or France, normally have to float some of their stock in the United States (1998, 273; see also Trubek et al. 1993).²⁰¹

Having reviewed the factors I argue have modified the legal practice in Chile – internal competition and economic growth, and globalization, I turn now to the manner in which the legal profession has handled this changing environment.²⁰²

In general, the most visible tendency has been toward specialization. A good sign of this is the growth of legal postgraduate and post title programs in Chilean Law Schools. According to a research on the main Chilean law firms, all of main firms have a significant number of lawyers with post graduate studies either in Chile or

²⁰⁰ A good example of this foreign competition is the arrival of American law firms in Asia and Europe (Trubek et al., 1993).

²⁰¹ A note of caution is useful here. Even though globalization is a world process it is not symmetrically distributed among countries (Bauman, 1998). In this regard we can talk about more or less globalized countries according to their economic possibilities. In the case of lawyers the situation is basically the same, using the theory of hemispheres of Heinz & Laumann (1997) it can be stated that globalization basically affect these lawyers of the corporate business hemisphere.

²⁰² The information available about lawyers in Chile allows very few statements and several speculations about this topic, therefore this will be the aim of this section.

abroad²⁰³ (Lizama, 2000, 38, 39). Another trend reported by this research is the prevalency of foreign languages spoken by lawyers in law firms – English, German, and French being the most frequent.

TABLE IX Lawyers who speak more than one language

Law Firm	No. of Lawyers	Lawyers who speak more than one language(%)	Law Firm	No. of Lawyers	Lawyers who speak more than one language(%)
Carey	70	96	Deloitte	17	82
Cariola	39	100	Larraín	17	100
Claro	38	W/I	Grasty	16	88
Philippi	34	W/I	Urenda	16	75
Morales	30	100	Barros	15	75
Puga	20	55	Montt	15	47
Baker	19	95	Urrutia	15	93
Prieto	19	74	Carvallo	15	80
Alessandri	18	94	Ossandon	14	W/I

Source: Lizama (2000)

Postgraduate studies in general are a manner of specialization as well as a way to become more marketable product (Pérez Perdomo, 1981b, 84). In this regard they reflect both specialization and competition.

In addition to specialization, a second way to face internal competition is by creating law firms, either *de jure* or *de facto* (Falcao, 1988, 428), corporate in-house counsel and legal clinics.²⁰⁴ Although solo practitioners have historically characterized Chilean legal practice, there has been a tendency to form professional associations

²⁰³ As Pérez Perdomo reports a postgraduate degree, especially in the United States, has become a need for Latin American corporate lawyers who belong to big firms (1999, see also Dezalay & Garth, 1995, 77-78).

²⁰⁴ Legal clinics are “private law offices that attempt to cut out costs by attracting a large clientele, routinizing services, and replacing lawyers with paraprofessionals who use forms and word-processing equipment” (Abel, 1989, 138).

in the last few decades.²⁰⁵ According to the research of Lizama, eleven out of the twenty most prestigious Chilean law firms were created between 1970 and 1994 (2000, 7,8). Besides law firms, another kind of professional association is an in-house counsel. Even though there is no information about the number of corporations who use this kind of service, it is very likely that in Chile, like in other Latin American countries, corporations use this kind of department to prevent litigation.²⁰⁶ In the case of legal clinics, in Chile, so far I know, there is only one: Legal Chile (www.legalchile.com), which works as a “prepaid legal service.”

All of these patterns of association, lawyers working for legal firms, in-house lawyers and legal clinics distort one of the most distinguishing features of liberal professions, independence from the client. In this regard, some sociologists talk about a “proletarianization of professional occupations” (MacDonald, 1995, 61,62) and “bureaucratization of professional work” (Pavalko, 1971,180).

A third manner to face internal competition is by lowering prices. In the Chilean case there is no reliable information about lawyers’ wages. Nevertheless it is commonplace among young lawyers to assert a general lowering in the

²⁰⁵ In a competitive environment, lawyers’ professional associations present several advantages; in the case of law firms some of them are economies of scale, specialization, economies of scope, and minimum scale (Gilson & Mnookin, 1984, 2; see also Galanter & Palay, 1997, 57-64).

²⁰⁶ In general in-house counsel works to prevent conflicts. As Pérez Perdomo reports “(W)hen litigation is unavoidable, the client usually will retain outside counsel, often through in-house counsel, although the latter may handle routine matters in court” (1995, 209).

remunerations. From an economic perspective, increased competition should lead to a redistribution of the rents. Therefore lawyers that can add value to their work by specialization, new skills, better technology, economies of scale and others, should maintain or even increase their rents. Instead lawyers who are incapable of developing comparative advantages can only remain in the market by closing their fees to their marginal costs.

With respect to other ways to deal internal competition, creation of demand and advertising, the response of the Chilean legal profession still seems to be weak. In the case of creation of demand, some of the most common ways to create demand for legal services are legal aid and public interest litigation (Abel, 1989). None of them has been widely explored in Chile. In the case of legal aid, the service is provided by the state through obligatory defense of the poor imposed on lawyers without payment (*Turno*) and by law graduates or students who, at least, have fulfilled all the courses of the legal curriculum.²⁰⁷ In the case of public interest litigation, it is virtually non-existent in Chile (Peña, 2000, 7). In general, the only institutions concerned with public interest law are law schools, and only a few of them

²⁰⁷ As noted before, to obtain a title of lawyer in Chile it is required to complete all the courses of the legal curriculum, a degree exam and a period of around six months in the Legal Assistance Programs for the Poor. The objective of these programs is to provide legal aid to poor people. Nevertheless, one of the three aspects of criminal procedure reform in Chile is the Public Criminal Defense (*Defensoría penal Pública*) whose object is to provide legal aid and allows the hiring of private lawyers. If the project is approved that it will be a new field for practicing lawyers

Up to now, the most visible effect of internal competition and globalization in Chile has been new patterns of stratification within the legal profession. In general, professional stratification is a phenomenon related to the internal differentiation within a profession. In the Chilean case it can be argued that the stratification of the legal profession began with the class differentiation of lawyers during the 1920s. In this regard, once the legal profession lost the ability to produce social mobility it became stratified. Historically, the most common variable of stratification within the legal profession was social class. Even though today it still constitutes a significant variable, there are others equally or more determinant, namely: university of provenience, belonging to law firms or corporate in-house counsels, and the performance of the lawyer (Peña 2000, 6 [fn. 26]; see also Dezalay & Garth, 1998, 78 [fn.117]).

Even though it is not easy to measure stratification, one of the most reliable indicators is the nature of the lawyer's clients.²⁰⁸ In the Chilean case the pattern is the same as the one reported by Heinz and Laumann (1997, 31), namely, corporate clients, either national or foreign are basically represented by law firms.

TABLE X

Law Firm	Corporation
Carey	Exxon, Philip Morris, Boeing, Bank of America, Mobil, ABN Bank, American Airlines, Avon, Bank Boston, Chase Manhattan Bank, CNN, Home Depot, ING Group, Merrill Lynch, Mitsubishi, Pepsi Co., Banco Eduards, Codelco, Enersis, Laboratorios Chile, LAN Chile.
Cariola	IBM, Coca Cola, Disney, Siemens, Unilever, IANSA, Masisa
Claro	Citigroup, Gerber, Merrill Lynch,

²⁰⁸ I have mentioned before that according to the study of Heinz & Laumann the most significant difference between lawyers is the nature of clients (1997, 31).

Philippi	Ford Motors, AT&T, Hewlett Packard, Agfa, Bell South, Chase Manhattan Bank, Procter & Gamble
Morales	Deutsche Bank, Paribas, Silicon Graphics, Merrill Lynch, Viña San Pedro, Quiñenco, Madeco
Alessandri Alessandri	Sears, BMW, Bayer, Burger King, Deutsche Bank, Johnson & Johnson, The Gillette Co., CTC, ENDESA
Larraín	Polygram
Grasty	Blockbuster,
Urenda	General Electric, General Motors, Hewlett Packard, Sony, Almacenes Paris, Soquimich
Barros	Chilectra, D&S, ENDESA
Ossandon	MacDonald, Pizza Hut, Concha y Toro, Laboratorios Chile

Source: Lizama (2000)

Lawyers and the State.

As stated at the outset of this chapter, the aim of this last section is to argue that the jurisdiction of lawyers has become specialized in the public sphere, constrained to legal issues. Thus, to assess the importance of lawyers means to assess the importance of legal issues in the public sphere. Accordingly, in the last thirty years, the relevance of lawyers in the public sphere is very symmetric to the significance of legal issues in Chile. In this regard, lawyers had almost no importance in the seventies, but they had importance in the early eighties thanks to the “political legitimization”²⁰⁹ of the military regime. The same thing can be said in regard to the restoration of democracy in 1990 and the necessity to reform the legal system for the protection of human rights, yet an unfinished project.

To understand the role of lawyers in the public sphere during the last thirty years it is useful to distinguish two stages: the dictatorship (1973-90) and the democratic governments (1990-2000).

The Dictatorship.

Conversely to most Latin American dictatorships, the Chilean military regime was not populist; instead, very soon it reached a “founding character.”²¹⁰ With respect to this section, the important feature of this founding character is the deep transformation of the model of economic development: “the Chilean road to capitalism” (Collier and Sater, 1996, 364) and the entering and predominance of the new children of the state, the *Chicago Boys*.²¹¹ I have already talked about the consequences of the neo-liberal policies for lawyers in the market, now I am interested in examining the group who fostered these policies and their influence in the public sphere.

In 1975, two years after coming to power, the military regime made a clear choice for neo-liberal policies²¹² (Fontaine, 1988; Ffrench Davis 1999; Martínez & Díaz,

²⁰⁹ I explain this term below

²¹⁰ According to Góngora, the military regime marks the third stage of the global planning. In the approach of Góngora, with the military regime began a general restructuring of the economy, social aspects, and of the power of the state: a “top down revolution” (1981, 133).

²¹¹ The Chicago Boys were a group of economists, most of whom graduated from the Catholic University who attended the Chicago University School of Economics in the fifties, sixties and seventies. The University of Chicago subscribed an agreement with the Catholic University in the fifties encouraging and supporting the study of Chilean economists in pursuing master or doctoral programs in economics in the University of Chicago. Around one hundred students completed their studies, graduating from the University of Chicago and had very high positions in Pinochet’s government. Their name came from the orthodox manner with which they applied the main trend held by this School, the model of Chicago, to Chile (Fontaine, 1988; Martínez & Díaz, 1996; Vial, 1999).

²¹² Accordingly, Collier & Sater state:

1996; Meller, 1998; Vial, 1999). Even though during the first years soldiers filled the majority of the public offices, there was a strong involvement of economists as counselors of the new authorities²¹³ (Fontaine, 1988). Later, these economists held some of the most important positions in public service.²¹⁴ As Martínez & Díaz emphasize, the deep economic transformation experienced by Chile between 1973 and 1990 “was mostly imposed by technocratic and military elites, protected by the authoritarian regime” (1996, 44).

In the first years of the military regime there was no investment in law or legal institutions (Dezalay & Garth, 1998, 51). In general, lawyers had small importance in the public sphere, neither in the government nor in the opposition. In the case of the government, they were frequently considered a hindrance to the economic changes demanded by economists (Fontaine, 1988, 97). In this regard, Mónica Madariaga, a lawyer, who was the first Minister of Justice under Pinochet's regime claimed with respect to economists: “(T)hey made us feel like insects” (Constable and

(I)n April 1975, after hearing the arguments and counter-arguments of economists..., Pinochet threw caution to the winds, came down decisively in favor of the Chicago Boys, conferred extraordinary powers on Jorge Cauas (his Finance minister since July 1974), and appointed Sergio de Castro as Economy minister (1996, 365).

²¹³ The relationship among the Chicago Boys and soldiers, came from the last year of Allende's government when navy officers asked some of these economists to an alternative economic plan in case Allende was knocked down. Among these economists were Sergio de Castro, Alvaro Bardón, Juan Braun, Pablo Barahona and Sergio Undurraga (Fontaine, 1988, 19). This draft was known as “the Brick” and it contained the economic outline of Pinochet's Government (Fontaine, 1988, 18-20). As Vial asserts: “the brick was the first step in Chicago's ascension to the economic management of the country” (1999, 235).

²¹⁴ Among them, Alvaro Bardón (President of the Central Bank), Sergio de Castro (Economics and Finances Minister), Pablo Barahona (Economics Minister), Ernesto Silva, Rolf Lüders (Economics and Finances Minister), Sergio de la Cuadra (Economics Minister), Juan Braun, Sergio Undurraga and Miguel Kast (Minister of Labor).

Valenzuela, 1991, 171). In the case of the opposition, political parties were forbidden and resistance to the regime was organized basically from NGOs dominated by sociologists, economists and social scientists (Puryear, 1994).

As a way to re-organize the country as well as to obtain political legitimacy,²¹⁵ the military regime formed a commission in 1973 to draft a political constitution that would be approved through a referendum. The Constitution of 1980 took eight years to be drafted and approved (Fernández, 1998, 45-62). That Constitution is probably the most visible appearance of lawyers during the military regime on the side of the government.²¹⁶ With respect to the opposition Puryear reports:

(A) look at cotemporary Chile yields some immediate facts: virtually all intellectuals who played leading roles in the transition to democracy were social scientists who had carried out graduates studies abroad...the majority are economists or sociologists...Most of the rest are political scientists or historians. Some originally studied law but moved on to a social science discipline. A very few are lawyers who pursued an academic career (1994, 8).

Although I think Puryear's statement is, in general, correct, there are some shades that it is necessary to note. Compared to social scientists, there were few lawyers, but these lawyers were extremely important. Some telling cases are Patricio Aylwin Azocar, the chief negotiator of the opposition, who would become President of the

²¹⁵ I use the term legal legitimacy referring to the famous model of Lipset. According to Lipset: "(L)egitimacy is the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate one for the society" (1960, 77). Lipset argues that the stability of political institutions is a function of the combination between *effectiveness* and *legitimacy* (1960, 81). The military regime was very effective in the economic management of the country until 1982, however, its power came from a coup d'état and, therefore, was illegitimate.

²¹⁶ But of course not the only one. The military regime had some lawyers in ministries (e.g. Sergio Fernández, Gonzalo Vial, Mónica Madariaga, and Hernán Felipe Errázuriz) and its main ideologist, Jaime Guzmán, was also a lawyer

Republic and Gabriel Valdés Subercaseaux, a former minister of foreign affairs who would become President of the Congress, and Enrique Krauss, a former minister of economy who became minister of internal affairs under Aylwin's government (Cavallo, 1992).

The poor performance of lawyers in the public sphere can be explained on the one hand by the forbiddance of political parties²¹⁷ and, on the other, by the technocratic character of the government.²¹⁸ Thus to some extent, on both sides politicians were replaced by technocrats, in the government the Chicago Boys and, in the opposition, social scientists in general.²¹⁹ Legal education permitted lawyers to participate in politics meanwhile the issues at stake were general and therefore, did not need determined expertise, however, once these issues became specialized toward social sciences, especially economics and sociology, there was little room left for professionals "without methodological training in social issues and specialization in debates, rhetorical and dilettante" (Peña, 1994, 90).

Democratic Governments.

²¹⁷ In 1973 Marxist parties were forbidden, and in 1977 all the remaining parties were dissolved. Only in 1987 did the military regime pass a law allowing political parties again (Arriagada, 1998, 71) In regard to the situation of political parties during the military regime, Allamand talks about an "anti-parties culture" (1998, 78-80; see also Puryear, 1995, 33).

²¹⁸ In this regard, Puryear states: "...it replaced politics with administration, and politicians with technocrats. Decisions were made by administrators according to technical, professional criteria" (1995, 34).

²¹⁹ In the case of the opposition, this replacement can be understood by considering that the military regime did not accept political criticisms, therefore the only way to preserve some dissident thought in the public realm was through academic analysis that, unlike political criticism, was not against the law (Puryear, 1994, 39).

Democracy returned to Chile in 1990, since there have been three governments (Patricio Aylwin 1990-94, Eduardo Frei 1994-2000, and Ricardo Lagos 2000-...). It is not easy to talk about this last period, things are still occurring, and there is no reliable information yet. Therefore, the contents of this last section are more speculative than assertive.

From the 1960s, lawyers experienced a marked loss of jurisdiction in Chile. The coup d'état did not improve this loss but rather made it even deeper. The arrival of democracy returned lawyers to some of their former presence; nevertheless, this time, that presence was determined by the significance of some legal issues to the democratic governments. In this regard lawyers have not recovered their former wide jurisdiction on public issues but instead their particular jurisdiction has been increased because legal issues have been more significant than in the sixties, seventies, and eighties.

The arrival of democracy found a fairly stable country with a vigorous economy based on a free market and oriented toward exports. As noted before, the incoming government kept the main features of the neo-liberal model attempting to introduce more equity in the distribution of resources. Conversely to the economic model, democratic governments have attempted a deep transformation of the legal

system^{220 221} especially in issues related to the protection of human rights.²²² In the case of President Aylwin, Snyder states:

(L)egal reform became the major goal of the Aylwin administration once it took office, and a variety of reform legislation followed in the wake of the installation of the transition government. In 1990, the new justice minister, Francisco Cumplido, proposed a package of laws...that would permit the investigation of human rights abuses, eliminate the death penalty, remove crimes committed by civilians from the military jurisdiction and reduce the broad state of exception powers created by the military regime (1995, 280; see also Vargas et al., 2001, 15, Peña, 1993, 392).

In regard to the following government, President Eduardo Frei led a vigorous attempt to transform criminal justice followed later by President Lagos' government, creating a public prosecutor and establishing a public and oral trial. This reform sometimes has been called "the reform of the century" (<http://www.agci.cl/revista/reprj1.htm>).

It is still very soon to assess the role of lawyers in the public sphere in the last ten years. The preceding paragraphs only attempt to suggest a hypothesis according to which the presence of lawyers in modern states is a function of the relevance

²²⁰ I use the term judicial system as used by Merryman:

the complex of social actors, institutions and processes referred to by members and observers of a society as "legal" or "juridical" or as directly related to or forming part of "law" or "the legal system" or the judiciary order" (1998, 775).

The several legal reforms in Chile carried out in the last ten years have attempted to modify almost every component of the legal system.

²²¹ The scope of the legal reforms carried out in Chile in the last ten years is wide and its analysis complex (See Peña, 1993; Vargas et al., 2001; Vaughn, 1993). I do not aspire to make that analysis here; my point rather is only to note that legal reforms have occupied a significant space in the agenda of the three democratic governments.

attributed to the legal system. In the Chilean case, the last ten years have seen a tremendous renaissance of the legal system's significance in regard to the protection of human rights; however some time is still necessary to assess the accuracy of that hypothesis.

* * * *

In this last chapter I have attempted to examine the main features and changes of the legal education, the legal profession, and the activity of lawyers in the public sphere during the last three decades. I have argued that the main features to understand these issues are an indisputable tendency toward professionalization in the case of legal studies, the neo-liberal policies, the economic growth of the country and globalization in regard to the legal profession, and a specialization of lawyers' jurisdiction in the public sphere. Intertwined, these factors have propelled lawyers into the market.

It is useful to recall once again that when I talk about the transition of lawyers from the state to the market I am not referring to absolute movements but rather tendencies. In this regard, what I have tried to argue in this thesis is that the definition or role of lawyers has changed. Until the early twentieth century lawyers were basically considered as servants of the state and, in fact, a good deal of the

²²²The diagnosis of the parties who bolstered the first democratic government was that the military regime had systematically violated human rights and the judiciary had done nothing to prevent it

state's highest offices were filled by lawyers. Today, the image of lawyers is closely tied to the market, to the legal relationships between individuals, corporations or the legal relationships among them and the state. That image of "intermediaries" is also consistent with the reality of lawyers. Still today law is a significant profession in the public sphere and several high functionaries of the state are lawyers; however, law is neither the only profession nor the most important in the public sphere. In addition, I insist, the definition of lawyers has changed. The most forceful proof I can give of the former is the fact that the most progressive law schools are orienting their reforms toward the needs of the market, not the needs of the state.

Conclusion.

Throughout this thesis I have argued that the transition of lawyers from the state to the market is the main issue to examine in order to understand the changes the legal community has experienced in Chile. In addition, and following the model of Burrage et al. (1990), I have suggested that to understand that transition it is necessary to consider the relationships between lawyers and other professions, lawyers and the university, lawyers and the legal profession, and lawyers and the

(Peña, 1993).

state. I think that these three relationships intertwined shed light about the causes of the transition I have argued. In the next pages I offer a brief summary of what it has been argued in this thesis and some predictions about the challenges of the legal education, the legal profession, and the future of lawyers in the public sphere.

In regard to legal education, it has been noted that it has played a relevant role in determining to some extent the jurisdiction of lawyers. Thus, a university education allowed lawyers to achieve a monopoly on legal issues as well as a wide jurisdiction on public issues until the twentieth century. Paradoxically, later, legal education contributed to marginalize lawyers from the management of the state and oriented their fates toward the market.

I have already suggested that since the process of codification in the nineteenth century, legal education has been dominated by a dogmatic approach and oriented toward professionalization. This dogmatic paradigm isolated lawyers in the sixties and seventies from a model of development characterized by other kinds of expertise more related to social sciences such as economics. In the case of professionalization, the most important reforms of the twentieth century (1902 and the 1960s) attempted to modify the professional character of Chilean legal education, orienting it to public issues. The difference between the two reforms lies in the fact that in the former there was no competition; in this regard, this first reform

was a genuine intellectual enterprise carried out by some enlightened lawyers. In the case of the reforms carried out in the sixties and seventies the scenario differs radically. The reform undertaken in these years was, to some extent, the answer of a profession that saw its jurisdiction on public issues seriously threatened. Turning now to the reforms of the nineties, it is still too soon to give reliable opinions; nevertheless one thing appears clearly, the failures of Chilean education no longer have the state as a parameter. Today, the claims about the poor quality of Chilean legal education have as a referent the practice of the legal profession.

Regardless of the goal –public issues or legal practicing, the claims about legal education have been fairly constant: a dogmatic approach and a methodology unable to encourage students. If the causes are constant, then the evident question is why has every attempt at reform failed? A good deal of the explanation could lie in the endemic lack of an academic community able to lead a reform. Without a strong community of scholars devoted to legal research and teaching, any attempt to reform is condemned to follow the leopard's fate.

With respect to the most recent reforms, I am interested in suggesting why the current scenario differs from the previous ones. An extremely relevant feature of Chilean education has been the scarcity in the supply of legal education. As examined before, until 1981 there were only five law schools; today there are

roughly forty. I think that this new abundance of supply will generate a kind of Darwinian pattern of competition among law schools.²²³ In this regard, the improvement of legal studies will no longer be the goal of a few enlightened scholars but a strategy of survival.²²⁴

Finally, with respect to the challenges of the law schools, it seems to be clear that they are related to the training of competitive professionals. In this regard some of the challenges are the same as those of the 1960s and others have changed. In the methodological realm the challenges refer to the failures of the Chilean legal education I have already noted throughout this thesis. Thus, the conference class should be replaced or combined with more interactive dynamics; the conference classes that remain should not be the dictation of a legal handbook, but something that adds value to the reading of legal texts. With respect to evaluations, it seems clear that the legal profession does not require significant amounts of memory but rather analytical and practical skills; therefore the mechanisms of evaluation should tend to measure these skills in a manner that guarantees an adequate level of complexity and impartiality. In regard to the contents of the curriculum, the

²²³ According to Lemaitre & Lavados the diversification of the university system has produced an educational stratification (1988, 102). This stratification is sometimes reflected in the registrations (the highest demand correlates with the most prestigious universities, the lowest to those with scarce prestige). As Bravo reports even in 1991 the university studies' vacancies outnumbered the postulants. The legal studies were not an exception.

²²⁴ In addition to the increased supply of law schools, the second factor that makes this market more competitive is the reduction of "information costs" (I use this expression considering information costs as a kind transaction costs –the costs necessities to identify the seller and the product- due to the new technologies of information. Today, almost every law school has its own website; this means that the market should become much more transparent for consumers.

aspirations of the sixties are no longer here. There are still complaints about the legal studies but the scope is different. Today no one thinks today that law schools should train an enlightened bureaucracy; we think that law schools should train good practicing lawyers. In this regard, the contents of the curriculum must reflect the new scenario for lawyers. As stated before, the practice of law has become extraordinarily complex and diversified; this means two things for legal studies: flexibility and specialization. Today, the aspiration of an encyclopedic lawyer who works as a family doctor seems to be extemporaneous. Lawyers instead need a solid base (the basic matrix of the profession) and an important degree of specialization in some given field. A solid base should allow lawyers to understand the general features of a legal problem and to interact with other lawyers with expertise in other fields of law and from the same or different countries. Specialization can work as a comparative advantage, a new pattern of stratification.

With respect to the legal profession, throughout this thesis I have argued that the legal profession has become the most significant piece of the legal community. The beginning of the legal profession in Chile was very humble. Chile was a country dominated by war and very poor with only a small high class able to demand lawyers' services and a large lower class unable to hire lawyers to solve their legal problems. This situation remained more or less the same until the late nineteenth century. The exploitation of nitrates during the last twenty years of the nineteenth century gave Chile an unknown wealth. As it has been suggested this wealth

generated some externalities for the legal profession –basically a wide market where lawyers could offer their professional services. The last decade of the nineteenth century and the first decades of the twentieth saw the birth of a middle class in Chile. That birth meant basically two things to the legal profession: first an increase in its potential clientele, and second a massive arrival of middle class lawyers. Historically law had been frequented mainly by members of the wealthiest class. As I argued before, in addition to the incorporation of the middle class, the twentieth century also saw an increasing incorporation of women to the legal profession. Therefore, it can be stated that the legal profession has experienced changed both the social class and gender of its members.

Until the second half of the twentieth century, the legal profession kept the main features of a liberal profession. Therefore, lawyers were professionals without specialization working as solo practitioners or in small family offices, and were highly independent. In the second half of the twentieth century this liberal character began to experience some changes. Thus, specialization increasingly became a need, and some models of professional association such as law firms, corporate in-house counsel, and legal clinics began to appear. Another evidence of specialization is the increasing number of post-graduate legal courses taken either nationally or abroad. The arrival of these professional associations also turns blurrier the independence claimed by liberal professions. Finally, I have argued that

the most visible consequence of these changes up to this point is more internal stratification within the legal profession as well as new patterns of stratification.

To understand these changes I have proposed two explanations. First, in the last twenty years there has been enormous growth in the supply of legal education, this growth has triggered a significant enlargement of the number of lawyers. This enlargement destroyed one of the most distinctive features of the legal profession in Chile: its small size. From an economic approach it can be said that such an increase in the number of lawyers generates tougher internal competition. From my perspective, most of the changes can be understood as answers of the legal profession to this increased internal competition. The second explanation lies in the economic growth of Chile in the last thirty years and the globalization of economy. Both phenomena have increased complexity of business and legal practice in general. I have already suggested that the most visible effect, although not the only one, in the Chilean case is the stratification of the legal profession. In this regard, the Chilean legal profession probably will follow a pattern akin to the American division in hemispheres depending on the nature of the clients.

Today the legal profession is experiencing challenges never seen before. The market for legal services has become increasingly specialized and complex and the internal competition drives lawyers to search for competitive advantages. What

should that means? In the long term the mechanisms the legal profession has employed to face increased internal competition must be more visible, therefore it is very likely that associations of lawyers in any of their forms will keep growing. In addition, phenomena like advertising could become more aggressive and public interest litigation explored as a new field of practice. Another way to achieve specialization which today is very popular and I think will become a need in the future, is post graduate studies. Undergraduate legal education has always been poor in Chile. It was unable to train an enlightened bureaucracy and, currently, is unable to train good practicing lawyers. The increasing demand for post-graduate legal studies can transform high quality post-graduate legal studies in a very profitable business and generates some positive externalities to the undergraduate level.

The increasing internal competition described above could also have a dark side. As noted before, currently there is no body entitled to carry out an ethical surveillance of legal practice; the affiliation to the Bar is voluntary and conflicts among lawyers or between lawyers and their clients are handled by courts. In such an environment, the ability of the legal profession to curb individual egoism (Durkheim, 1997, XXXIX) or, in other words, to produce “recognition symbols”²²⁵ (Parsons, 1958, 44) is very narrow. Combined with a more competitive practice,

²²⁵ The idea of recognition-symbols as institutional normative patterns allows Parsons to explain the difference among the objectives of businessman and professionals, therefore diluting the ilusive

the inability to produce informal or formal rules to regulate professional behavior could lead to unethical practices, which, in such a scenario, can be to some extent a comparative advantage to certain clients. Another field which is likely to flourish under these conditions is legal malpractice.

In regard to the public sphere, I have argued that the tendency has been the opposite than in the market. Until the first half of the twentieth century lawyers were extremely powerful in the managing of public issues but, gradually, they were losing that preferential position and keeping finally only the slice related to the legal issues. Throughout this thesis I have employed the expression universal jurisdiction to express that until the twentieth century lawyers had almost no professional competition in the public sphere. I have argued that this situation was related basically to the superior status of legal knowledge, the lack of professional competition, and a strong linkage between the legal community and the aristocracy which governed the nation until the first half of the twentieth century. All these situations disappeared or got fuzzier, threatening the privileged position of the legal community in the public sphere. Thus, the crisis of 1930 led the government to engage in a new model of development which needs different kinds of expertise to work and, later, the *age of the global planning* preferred the assistance of professionals trained in the social sciences, especially sociologists and economists. Professional competition has increased enormously and, in the last

differentiation between the altruistic motives of professionals and the egoistic motives of

thirty years, some professions have displaced lawyers from their preferential royal box. In regard to the relationship between lawyers and aristocracy two things must be noted: first, since the 1920s the relationship between the aristocracy and politics has become fuzzier and, second, the legal community has increasingly opened its doors to the middle class. Therefore, the aristocracy is no longer the group who controls politics and public issues -not explicitly at least- and lawyers do not come predominantly from the wealthiest groups, but according to the data available, from the middle class.

As a result of the above-mentioned changes the jurisdiction of the legal community has become increasingly specialized, being largely confined to the area of lawyers' expertise: legal issues. A caveat is worth noting here. I am not asserting that lawyers are no longer important in the public sphere but rather that they have lost their former hegemony over it. Today lawyers share the public sphere with other professionals and the jurisdiction they keep is only in legal issues. Even in legal issues there is some interference of other professionals. A telling case is the participation of economists in the design of the last reform to criminal procedure. In Chapter 3, I argued that the key issue in understanding the participation of lawyers in the second half of the twentieth century is the importance of the legal system to the nation. Thus, the small participation of lawyers during the sixties, seventies and eighties can be understood as a function of the scarce significance attributed to

businessman (1958).

legal issues in these three decades. Conversely the increasing significance in the democratic governments would have to do with the increasing relevance of the legal system in the last ten years.

A last point I want to make regarding to lawyers and the public sphere is the possibility of an overlap between the significance of lawyers in the market and in the public sphere. Growth in world trade and a reduction in direct intervention by the state in the economy have led to an increasing role for lawyers in the world of business (Dezalay & Garth, 1997, 109). This role would transform powerful lawyers (mainly partners in big law firms) into “social brokers” or intermediaries between the state, law and business, who would provide the necessary cohesion between the ‘*noblesse d’ Etat*’ and the business leadership (ibid. at 110-112). The interesting point about this theory whose origins can be traced back to Mills (1956), lies in the fact that it is very likely that the legal community will keep power over public issues, but this time through the legal profession, which, in other words, means that lawyers will exert power on the public sphere from the market. If so, then the transition from the state to the market will be completed and *all will be the same though all will be changed*.

APPENDIX.

APPENDIX I
Presidents of the Republic 1831-2000²²⁶

Joaquín Prieto Vial(1831-1840)(!)
Manuel Bulnes Prieto(1841-1850)(!)
Manuel Montt Torres(1851-1861)(*)
José Joaquín Pérez Mascayano(1861-1871)(*)
Federico Errázuriz Zañartu (1871-1876)(*)
Aníbal Pinto Garmendia(1876-1881)(*)
Domingo Santa María González(1881-1886)(*)
José Manuel Balmaceda Fernández(1886-1891)(*)
Jorge Montt Álvarez(1891-1896)(!)
Federico Errázuriz Zañartu (1896-1901)(*)
Germán Riesco (1901-1906)(*)
Pedro Montt Montt(1906-1910)(*)
Ramón Barros Luco (1910-1915)(*)
Juan Luis Sanfuentes Andonaegui (1915-1920)(*)
Arturo Alessandri Palma (1920-1925)(*)
Emiliano Figueroa Larraín (1925-1927)(*)
Carlos Ibáñez del Campo (1927-1931)(!)
Juan Esteban Montero Rodríguez (1931-1932)(*)
Arturo Alessandri Palma (1932-1938)(*)
Pedro Aguirre Cerda (1938-1942)(*)
Juan Antonio Ríos Morales (1942-1946)(*)
Gabriel González Videla (1946-1952)(*)
Carlos Ibáñez del Campo (1952-1958)(!)
Jorge Alessandri Rodríguez (1958-1964)(+)
Eduardo Frei Montalva (1964-1970)(*)
Salvador Allende Gossens (1970-1973)(^)
Junta de Gobierno (1973-1989)
Augusto Pinochet Ugarte (President)(!)
José Toribio Merino Castro(!)
Gustavo Leigh Guzmán(!)
César Mendoza Durán(!)
Patricio Aylwin Azocar(1990-1994)(*)
Eduardo Frei Ruiz-Tagle(1994-2000)(+)
Ricardo Lagos Escobar (2000-)(*)

(*)Lawyer
(^)Medic
(+)Engineer

²²⁶ With the exception of the *Junta de Gobierno* of 1973, this list only considers the governments legitimately elected.

(!)Military

APPENDIX II
Curriculums of the of the Law School of the University of Chile

1848 (quoted in Mellafe et al. 1993 at 89).

First year	Natural Law
Second year	Roman Law
Third year	International Law
Fourth year	Legislation, Práctica Forense ²²⁷

1889 (quoted in Galdames, 1937, 173).

First year	Natural Law, Roman law, Civil Code.
Second year	Civil Code, Canonical Law, Political Economy
Third year	Civil Code, International Law, Criminal Code
Fourth year	Práctica Forense, Commercial Code, Constitutional Law
Fifth year	Práctica Forense, Mining Code, Criminal Judgment, Administrative Law

1902 (quoted in Galdames, 1937 at 173).

First year	Philosophy of Law, Roman Law, Politic and Social Economy
Second year	General History of the Law, Constitutional Law, Civil Law
Third year	Industrial and Agrarian Law, Civil Law, Criminal Law, International Public and Private Law
Fourth year	Civil Law, Commercial Law, Procedural Law, Mining Law
Fifth year	Administrative Law, Procedural Law, Public Finance and Statistics, Legal Medicine
Optional Courses	Compared Civil Legislation Compared Commercial Legislation History of Juridical Doctrines History of Political Doctrines History of Social Doctrines History of European Diplomacy History of American Diplomacy Political Science

²²⁷ Until the reform of 1851 the Práctica Forense was carried out in the Academy of Práctica Forense and lasted two years.

1947 (quoted in Lowenstein, 1970, 150, 151).

First Year	Introduction to the Study of Law, Roman Law, Constitutional Law, Constitutional History of Chile (one semester), Political Economics
Second Year	Legal History, Public International Law (one semester), Civil Law (introduction, Subjects & Objects), Procedural Law (Court Organization), Economic Policy
Third Year	Penal Law (General Theory), Labor Law, Civil Law (Obligations and Contracts), Procedural Law (Civil Procedure), Financial Law
Fourth Year	Civil Law (Family and Estates), Procedural Law (Penal Procedure), Commercial Law (Business Organizations and Transactions), Industrial and Agricultural Law (one semester), Criminal Law (Special Part Crimes; one semester), Legal Medicine
Fifth Year	Commercial Law (Maritime and Bankruptcy), Mining Law (one semester), Private International Law (one semester), Course Area Concentration (one semester), Administrative Law, Legal Philosophy, Forensic Practice (one semester)

1966 (quoted in Lowenstein, 1970 at 150,151).

First Year	Political and Constitutional Doctrine. Introduction to Law, Economics, History of Political and Social Institutions of Chile, Introduction to Philosophy, Sociology (one semester)
Second Year	Civil Law I, Roman Law, Constitutional Law, Economic Policy, Labor Law, Legal Sociology (one semester), Legal History (one semester)

Third Year	Civil Law II, Procedural Law I, Penal Law I. Administrative Law I, Social Security (one semester), Economic Law (one semester), Public International Law (one semester), Public Finance (one semester)
Fourth Year	Civil Law III, Procedural Law II, Commercial Law I, Administrative Law (one semester), Penal Law (one semester), Taxation (one semester), Legal Medicine (one semester), Agrarian Law (one semester), Mining Law (one semester)
Fifth Year	Procedural Law III, Commercial Law II, Civil Law (one semester), General Theory of Law (one semester), Private International Law (one semester), Legal Accounting (one semester), Philosophy of Law (one semester) <i>*In the first semester of the fifth year it was compulsory to take two of the following courses: Political Science, Comparative Economic Systems, Criminology, Criminalistics.</i> <i>In the second semester of the fifth year it was compulsory to take two of the following courses: Administrative Science, Contemporary International Relations and Politics, Air Law, Course Area Concentration</i>

2000

University of Chile.

First Year	Civil Law I, Roman Law, Introduction to Legal Theory, Historic Law I, Political Law, Political Economy, Free Course* (one semester)
Second Year	Civil Law II, Procedural Law, Consitutional Law, Economic Politic, Historic Law II, International Public Law. Free Course* (one semester)
Third Year	Civil Law III, Procedural Law II, Penal Law I, Social Security and Labor Law I, Economic Law, Elective Course (one semester), Free Course* (one semester), Legal Clinics• (one semester)
Fourth Year	Civil Law IV, Procedural Law III, Penal Law II, Commercial Law I, Taxation, Social Security and Labor Law II, Free Course* (one semester), Legal Clinics• (one semester), Accounting (one semester)
Fifth Year	Mining Law, Administrative Law, International Private Law, Philosophy of Law, Free Course* (one semester), Legal Clinics• (one semester), Specialized Course (2) (one semester each one), Thesis Workshop (one semester)
<p>*The student has to approve two of these courses between the first and the fifth year •Legal Clinics can be taken in third, fourth or fifth year</p>	

Catholic University.

First Semester	Economic Law I, Philosophical Founding of Law, Roman Law, Constitutional Law, Legal Theory
Second Semester	Economic Law II, Philosophical Founding of Law, Roman Law, Historic Law, Constitutional Law
Third Semester	Religious Doctrine, Commercial Law I, Civil Law I, Social Security and Labor Law, Administrative Law, Procedural Law I
Fourth Semester	Commercial Law I, Civil Law I, Social Security and Labor Law, Administrative Law, Procedural Law I, General Formation Optional Course.
Fifth Semester	International Public Law, Commercial Law II, Penal Law I, Procedural Law II, Civil Law II, Canonical Law
Sixth Semester	Commercial Law II, Penal Law I, Procedural Law II, Civil Law II, Professional Ethics, General Formation Optional Course.
Seven Semester	Commercial Law III, Penal Law II, Procedural Law III, Civil Law III, Taxation Law, General Formation Optional Course
Eight Semester	Commercial Law III, Procedural Law III, Civil Law III, Taxation Law, Mining law, International Private law
Ninth Semester	Legal Practice, Deepening Optional Course (<i>Optativo de Profundización General</i>) (4), General Formation Optional Course
Tenth Semester	Legal Practice, Deepening Optional Course (4)

Diego Portales University

First Semester	Rules Theory, Law and Moral, Legal Analysis Workshop, Political Institutions, Historic Law I, Roman Law I
Second Semester	Legal Order Sources, Current Moral Problems of Law, Organic Constitutional Law, Historic Law II, Roman Law II, Optional Course
Third Semester	Introduction to Private Law, Introduction to Procedural Law, Fundamental Rights, International Public I, Economy I, Optional Course
Fourth Semester	Theory of Obligations (*) (<i>Derecho de Obligaciones</i>), Property Rights(*) (<i>Derechos Reales</i>), Procedural Acts, Warranties and Protection, International Public Law II, Introduction to Penal Law
Fifth Semester	Theory of Obligations (*) (<i>Derecho de Obligaciones</i>), Property Rights (*), Civil Procedures, Administrative Law I, Labor Law, Theory of the Crime (<i>Teoría del Delito</i>), Optional Course
Sixth Semester	Civil Liability* (<i>Responsabilidad Civil</i>), Law of Successions and Pecuniary regimes of the Marriage* (<i>Derecho de Sucesiones y Regímenes Patrimoniales</i>), Procedural Actions, Criminal Procedure, Administrative Law II, Penal Law (Especial Part).
Seven Semester	Civil Liability* (<i>Responsabilidad Civil</i>), Law of Successions and Pecuniary regimes of the Marriage* (<i>Derecho de Sucesiones y Regímenes Patrimoniales</i>), Economic Law, Commercial Law institutions, Legal Philosophy, Optional Course (2)
Eight Semester	Civil and Commercial Contracts, Corporations, Taxation Law I, Seminar I, Optional Course (2)
Ninth Semester	Insolvency and Bankruptcy, Deepening Course on Private Law, Taxation Law II, Optional Courses (2)
Tenth Semester	Optional Courses (6)

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