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LAW AND DEVELOPMENT:
THE CHILEAN HOUSING PROGRAM*

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INTRODUCTION

The current political and economic importance of the Third World has caused a great surge of interest in the less-developed nations. Political scientists, economists, sociologists and historians have been the leaders in research in this field. Gradually lawyers are beginning to ask: What is the role of law in the development process?

Study of the role of law in development has lagged for a number of reasons. Non-lawyers tend to think of law as criminal law and court rooms. Furthermore, they dismiss law as irrelevant with the facile observation that law is useless if the government is not sincere in enforcing it. This, of course, is true also of economic policy or regional planning. One cannot help but wonder why law should be held to a higher standard.

Lawyers have neglected the study of the overall relationship of law to development because of an overemphasis on comparative study of more narrow subjects such as commercial law, taxation, and family law; and a tendency to focus on erudite questions of foreign substantive and procedural law, rather than on the legal aspects of pressing social and economic problems of less-developed countries.

How can the study of laws and legal institutions contribute to a better understanding of the development process? Almost all development efforts relate quite directly to the government, and the government operates according to, and through, laws. Arrangements between private parties are made according to forms provided by law and look for their ultimate enforceability to the legal structure.

So long as good decision making depends on complete information, decisions in the development process must take into account the legal

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environment within which they are made. The translation of these decisions into functioning programs will require the design of legal arrangements, legislation, and legal institutions.

Finally, the execution of development programs will depend significantly on the effectiveness with which the relevant legal aspects can be managed. The above suggests that anyone concerned with development must be concerned with the legal process.

The relationship between law and development is reciprocal. Those who are more interested in the legal side of the equation will concentrate on the effects of development on the legal process. This article, however, will concentrate on the effects of law on the development process.

It is extremely difficult to discuss the role of law in developing countries in the abstract. Those who try, inevitably resort to hasty generalizations and unsupported hypotheses. To avoid these pitfalls it seems advisable to study a concrete example of the relationship between law and development as demonstrated by a particular development program. The technique simply stated, is as follows: To study the importance of law in a developing country, it may be best to find a subject which is important to a developing country, and then inquire as to the ways in which law is important to that subject. Stated differently, the approach is: If one were to work as a lawyer in a developing country, what kinds of legal problems might he encounter? Therefore, this article is a study of the role of law in development as demonstrated by a housing program; seen from the point of view of the legal history of the program, the organization and functions of the major legal institutions, legal aspects of major issues involved, and the effect on the program of selected elements of the substantive law.

A precise definition of terms will not be attempted. "Development" is used to suggest a conscious effort at socio-economic progress such as increased productivity, and better health and education. Though it cannot be said with certainty what development is, it does seem safe to assume that housing is a development concern, and that the housing program is a development effort. The term "housing program" is used generally to refer to all those housing efforts, public and private, which are at least partially planned and directed by the government. "Housing" is used loosely, often referring to low and moderate income housing, and generally referring to urban, rather than rural, housing.

Lest the purpose of this article sound too ambitious, it should be emphasized that this is not a study of Chilean housing nor of Chilean
housing law. It is, rather, a study of selected aspects of the Chilean housing program which illustrate certain points about the role of law in the development process.

The research for this article was completed in late 1968. Therefore changes in the Chilean housing program since that time will not appear. Nevertheless, the illustrations in the various sections should continue to be informative as to the role of law in developing countries. In addition, it should be noted that the programs are described in general terms without allowance for many of the subtleties and exceptions to the rule. This is done because an overall view of the programs is sufficient for the purposes of this article.

The research has frequently crossed over into the fields of the various social sciences. This is inevitable in view of the artificiality of our segregation of the disciplines. A central theme of this study is that the legal process is an important aspect of the social system, and that, therefore, an understanding of the legal process is necessary for an understanding of the development process.

It would be difficult to find a better country than Chile for this particular research. More than most of the less-developed countries, it is sufficiently developed and sufficiently democratic that one may speak of the operation of a legal system in conventional western terms. Also, Chile is actively involved in the development process in a way that is probably as aggressive and sophisticated as any that could be found.

The housing program was chosen as the illustrative development program for a number of reasons. First, housing is one of Chile's major problems and one of the major problems throughout the less-developed world. Second, it is a problem that balances, as well as any, between being a problem of both economic and social development. Finally, it is an area of great activity in Chile and the subject of Chile's newest, and perhaps best, Ministry.

THE HOUSING PROBLEM IN CHILE

A development program is, to some extent, the mirror image of the problem it deals with. In order to study a given development program, it is necessary to look to the development problem it is designed to solve, its causes and magnitude, the major obstacles to its solution, and the importance of its solution to the development process. With this in mind, the following material is presented by way of introduction to the study
The role of law in the development process as demonstrated in the Chilean housing program.

Numerous books have discussed the causes and effects of the housing problem. The subject is as vast and complicated as the number of people and communities faced with it. Nevertheless, for present purposes, some basic observations should suffice to outline the problem. Much of the difficulty stems from the obvious fact that people need housing. If there are more people, more housing is needed. Thus, two of the most fundamental causes of the housing problem are population growth and urban immigration.

The population of Chile has grown from around 7,370,000 in 1960 to 8,900,000 in 1966. The roots of this growth can be seen in birth and mortality statistics. The mortality rate per thousand dropped from 30.2 in 1920-24 to 11.8 in 1960-64. In 1965 there were 273,000 births as compared with 91,600 deaths. The population of Chile is now increasing at a rate of approximately 230,000 people per year. The proportion of young and old is rising, while the proportion of the labor force is declining. All need housing.

Adding to the difficulty caused by overall population growth is the even more rapid growth of the urban areas caused by a combination of natural growth and immigration from the rural areas. In 1880, seventy percent of the population of Chile was rural. Today, seventy percent is urban. The population of Santiago grew from 952,000 in 1940 to 2,184,000 in 1964, and the Santiago metropolitan area now holds 35 percent of the total population of Chile. The housing demands which have resulted are as urgent as the population growth is rapid.

Population growth tells one side of the story. Another major cause of the housing shortage is the deterioration of the existing stock. This deterioration is particularly serious due to the poor materials and faulty construction techniques used in much of the housing of low-income families. As each house deteriorates beyond use, its inhabitants must be added to the population of those seeking housing.

Housing problems are characteristically discussed in terms of "housing deficits" and/or "inadequate housing." These loosely-defined terms leave much to be desired, and attempts are being made to find more accurate measures of the housing problem. Almost everyone in Chile has housing of some kind. The question is whether the housing meets the minimum standards assumed to be necessary for decent, safe, and sanitary existence. Obviously, the definition of these standards is difficult, and
beyond the present research. It should also be mentioned that there are certain types of inadequate housing which can be distinguished, and which do provide different problems. In Santiago, for example, it is estimated that of the inadequate housing, 24% exists in concentrated shack settlements, 60% is found in deteriorated buildings in the central city, and 16% is scattered on the periphery of the city.

With these factors in mind, the following statistics are offered by way of rough illustration of the Chilean situation. In 1952 the urban deficit was 140,800 housing units. By 1960 that figure had risen to 220,000 (before the 1960 earthquake), and it was estimated that of the total population, twenty-six percent were without adequate housing. Between 1952 and 1960 the number of inadequate housing units in urban areas increased by fifty-seven percent.

The total housing deficit in 1964 was estimated at 435,000 and by 1966 had grown to 600,000. The Ten Year Economic Development Program of 1961 called for 538,700 new units by 1970. Less than 70% of the anticipated number were built between 1960 and 1964. When the Frei government took over in 1964 the target was changed to 360,000 new units for the period 1965-70. In 1965 the public and private sectors together started 52,163 new housing units, close to the 60,000 per year target. But in 1966 the figure fell to 22,236. The government spent approximately as much on housing as it had in 1965, but costs had risen and a large quantity of funds had to be applied to terminating housing begun in 1965. All statistics are stated in terms of housing starts. A unit started may be an inaccurate measure since the government has begun building smaller units. Thus the Frei government in the first three years completed 70% of its original goal in terms of units, but only 50% in terms of area.

Increased demand for housing cannot be measured solely in terms of the need for units. It is also a function of the political climate. Today in Chile the people are demanding more and better housing than they have been willing to accept in the past.

Though we can account for much of the increased demand for housing in terms of population growth, deterioration, and rising expectation, these factors do not, by themselves, explain why the housing demand has not been met. Other countries have experienced rapid population growth and urban migration without suffering such extremes in housing shortages. Probably the most important reason for the failure to meet the housing demand lies in the economic conditions prevailing in the country. Prob-
lems arising from the construction industry, planning, politics, and social organization will also be considered.

The economic conditions aggravating the housing problem include: low per capita income, high unit cost, inflation, scarce savings, unavailability of mortgage loans, and limited government resources. The average per capita income in past years has been around $425 per year. Since income is poorly distributed in Chile, this figure would be considerably lower among those segments of the population who most desperately need housing. Unemployment is not high, but underemployment is. The government estimated in 1960 that 52% of the employed workers had an income below what was required for an acceptable standard of living.

The relevance of low per capita income to the housing problem is best seen when compared to the cost of housing. Housing costs are made up primarily of three factors: land, development (streets, water, electricity, sewage, and community facilities), and construction of the housing units.

Though land is not as expensive in Chile as in many developing countries, its cost is a substantial factor in housing expenditures. There are several reasons for high land costs. Rapid urbanization produces competition for land uses with the consequent high prices due to high demand. Demand is increased further because land constitutes a good investment due to Chile's persistent inflation. Savings put into land adjust automatically to inflation as property values rise along with the rising cost of living. The attractiveness of land as an investment is even more enhanced by Chile's low taxes on real property.

The high costs of land development are reflected in the cost of housing. As cities such as Santiago expand, most houses are not being built in established neighborhoods. Instead, housing projects are being started in former grain fields and vegetable patches. Streets must be paved, lots subdivided, and utilities installed. Such work is expensive and unavoidably adds to housing prices.

Finally, the overall cost of housing depends on the cost of construction per unit. Obviously, construction costs vary considerably depending on the size and style of house, and the method of construction. Nevertheless, even the most basic house requires substantial construction expenditures.

Inflation has been a persistent villain in the Chilean economy. The rise in the cost of living in 1963 was 45.4%. In 1966 it was down to 17.0%, but in 1967 had risen to 21.9%. The effect of inflation on land...
values has already been mentioned. Its other major consequences are that it discourages saving and makes normal mortgage lending almost impossible.

Chileans have preferred to put their money in land or consumer goods, rather than see their savings eaten up by inflation. As will be discussed in the body of this study, there has been some success in encouraging savings through a mechanism which adjusts savings according to the rise in cost of living. Nevertheless, this system has not solved all of the problems, and the level of savings continues to be low.

Inflation discourages mortgage loans for essentially the same reasons it discourages savings. Where mortgage loans have been available, they have required high down payments, high interest, and been for very short terms. A government-supported program to provide mortgage loans will be discussed subsequently. A certain degree of success is being enjoyed, but the problem cannot really be solved as long as the economy is highly unstable.

A final aspect of the economic factors aggravating the housing problem is seen in the limited government resources available for a housing program. Public funds for housing come from the annual budgetary appropriation, a 5% tax on business profits, and surplus social security funds. Public investment in housing in Chile has been high relative to most countries. Whether it has been high enough is a much debated subject, but the Frei government has announced its intention to shift more of the burden to the private sector. Since increased government funds are not likely to be forthcoming, the emphasis for the future must be on lowering costs, increasing private investment, and increasing efficiency in the housing program.

Besides financial problems, a commonly cited cause of the housing deficit is the inadequacy of the construction industry. There is a shortage of construction firms and those that do exist are involved very heavily in the construction of high-cost housing, or commercial and industrial facilities. The blame for this lack should not be assigned solely to the construction companies. The housing market, the building materials industries, and the labor supply all contribute to frustrate attempts to build low-cost housing profitably. The market for low-cost housing must be supported by government funds or government-supported thrift institutions. The materials industry must operate on a large scale and with local materials to be efficient and sufficiently inexpensive. Finally, there must be a supply of technical skills capable of doing the actual construction.
Chile has not been able to put all of these pieces together in order to come up with an effective construction industry.

Planning, or the lack thereof, has been another important factor in the Chilean housing problem. The tendency in the past has been to plunge headlong into construction to the neglect of careful planning or the establishment of better institutions to finance or execute construction efforts. Housing projects have been built far from employment opportunities, and supposedly low-cost houses have been so expensive that only a member of the upper middle class could afford them. Building codes and zoning ordinances are non-uniform and archaic. Gradually, planning organizations have been established, projects have been more carefully planned, and alternative means of public and private activity are being explored. Now that the formal structure for planning is being established, the burden of proof is shifting to the planning agencies to demonstrate their effectiveness.

Numerous additional factors affecting the housing problem could be listed. Politicians have made housing a political football, and the culture of poverty has made community development difficult. These and many other problems surround the efforts being made.

There is a flourishing and fascinating debate among development planners as to the rule of housing in developing countries. This is neither the time nor place to enter or summarize that debate; but a few observations on the role of housing should indicate that it is, at least, a respectable contender for the development dollar.

The importance of housing to political and social development is becoming increasingly apparent in developing and developed nations alike. The opposite of adequate housing is the slum, be it central ghetto or peripheral squatter settlement, and the problems of the slum are becoming well known. There is more to a slum than just bad housing, but housing is a major element. Slums are notorious for their low levels of health, education, and welfare. To raise these levels, the slums which drag them down must be eliminated. The poor person has no stake in political stability or respect for law. Home ownership may go far toward providing him with that stake; toward providing him with an interest in orderly development.

The importance of housing to economic development is difficult to evaluate. Investment in housing pays a slow return on capital invested, does not substitute for imports, and does not stimulate exports. On the other hand, housing does promote saving, stimulate construction and building materials industries, provide employment, and increases tech-
nical skills among the labor force. The slums in themselves are uneconomical: they produce little and consume large quantities of public investment. Investment in housing may be important economically in that it is an investment in man, the most important machine. What is the economic cost of a work force which lives far from its work, is weak due to poor health, and is dissatisfied with its role in an economy in which it has no stake? The relative importance of housing to industry, agriculture, or education can be debated ad infinitum; but it seems undebatable that housing plays an important role in political, social, and economic development.

It has been shown that the causes of the housing problem range from population growth, to finances, to construction, to planning. In theory, any one of these causes could be attacked as part of a policy designed to solve this particular development problem. Laws might be passed limiting family size, or urban migration might be forbidden. Land prices might be set by the government, or the entire construction industry might be nationalized. The possible ways of approaching the problem are literally infinite. Obviously, however, some choices are better than others; because they are more economical, more politically feasible, more humanitarian, or for some other reason. This study will view some of the choices Chile has made, why they were made, how they have been implemented, and with what results. It is hoped that by studying the legal and political institutions at work, something may be learned of the role of law in the development process.

LEGAL HISTORY OF THE HOUSING PROBLEM

The preceding section described the housing problem in Chile. This section will discuss the history of the program designed to meet that problem in order to provide a better perspective from which to understand the present efforts being made in the area of housing.

It would be difficult to trace the growth of housing demand and the housing program in terms of the fluctuations of the economic and political history of Chile. Housing has steadily attracted greater attention as the lower classes have become more influential in politics, as the population has increased and migrated to the cities, and as the result of occasional earthquake disasters which have advertised and aggravated the housing problem.

Though housing is currently a major issue in Chilean politics, it is not a new one. In 1891 the city of Santiago passed an ordinance prohibiting the construction of sub-standard housing within urban limits.
Near the end of the last century Senator Ramon Barros Lucas introduced legislation calling for workers' housing projects.

It was not until 1906 that the first law dealing directly with housing was passed. Law No. 1838 of 1906 created a commission to regulate the construction of worker housing, and set standards of health and safety for all new housing. In addition, it provided for government-assisted mortgage financing, and construction of housing with state funds. This legislation was remarkably ambitious and advanced for the times. Unfortunately, as with many laws of that period, the expected results were frustrated by the lack of funds, and few houses were built.

Most Chilean social legislation, including that which deals with housing, dates from the period after 1920. Before that time, Chilean politics was almost dominated by the conservative elements of the upper class. From the 1920's to the present, Chilean politics have become increasingly popularly-oriented.

The Housing Law of 1925 attempted to induce the improvement of the housing stock by allowing tenants to pay only 50% of their rents until the housing was brought up to compliance with the applicable standards. The results of this law were hardly as anticipated. Renters purposely damaged their apartments in order to be eligible to pay only one-half of the rent.

The 1925 law also created a special Housing Tribunal to hear cases regarding housing matters. The tribunal was dissolved shortly thereafter amidst complaints of corruption which were founded on the fact that there was no appeal from the tribunal's decisions.

The first attempt to create a technical organization to oversee national housing construction activity was decree-with-force-of-law (DFL) No. 2024 of 1927. The decree created the Ministry of Social Welfare (Ministerio de Bienestar Social), within which the Technical Department had responsibility for studying low-cost housing projects. This marked the beginning of the creation of a long series of government housing agencies continuing up to the present creation of the Housing Ministry discussed later in this study.

More housing legislation came in 1931. Law No. 4931 of 1931 created the Popular Housing Junta (Junta de Habitación Popular) for the purpose of procuring “sound housing at low prices for persons of scarce resources.” The Junta was to provide financing for the construction of low-cost housing through the Popular Credit Fund (Caja de Crédito Popular).
These rudimentary beginnings of a dynamic housing program received a serious set-back from the Great Depression of the 1930's. One result of the depression was the passage of laws to help debtors keep their homes. Law No. 5424 of 1934 provided that debtors with obligations contracted pursuant to government programs to construct low-cost housing could get loans from the Mortgage Credit Fund (Caja de Crédito Hipotecario) to help meet their payments. It is said that this relief made it possible for sixty percent of the debtors to save their property. Attempts to relieve credit problems created by weaknesses in the economy continue to the present day, as discussed in a subsequent section.

Another consequence of the housing difficulties which was accentuated by the depression was a series of changes in the governmental agencies dealing with housing. In 1931 the Popular Housing Junta became the Central Popular Housing Junta. An effort was made to decentralize its functions by creating Local Juntas, and by placing technical responsibilities for construction in the Department of Public Works. This policy was reversed the next year, in 1932, when all activity related to the promotion of low-cost housing was placed in the new Department of Popular Housing. Then, in 1936, the Popular Housing Fund (Caja de Habitación Popular) was created as an organ of the Ministry of Labor. It was an outgrowth of the Popular Housing Juntas, which had become the Central Popular Housing Junta, which, in turn, had become the Department of Popular Housing. It is safe to assume that these changes consisted of more form than substance. In reviewing the history of a development program, it would appear necessary to look closely to distinguish between real changes and mere name changes.

The importance of the Popular Housing Fund should not be overlooked. Its principal purpose was the construction of suitable low-cost housing, along with additional power to acquire land and organize housing projects. The Fund's major importance from the present perspective is that it was the direct ancestor of the Housing Corporation, (Corporación de la Vivienda, (CORVI),” formed in 1953, which is now a major organ of the Housing Ministry.

The Fund dedicated itself almost entirely to the direct construction of housing, leaving to one side the promotion of private initiative. The lack of funds available to the Fund made it impossible to build more than a small number of houses.

In recognition of the failures to solve the housing problem through public financing, Law No. 6067 of 1937 was passed. Along with rewriting nearly all of the legislation on popular housing, it emphasized
the subordinate role that direct state construction was to play to the efforts of private enterprise. Though substantial incentives to private enterprises were not enacted until several years later, the switch to reliance on private enterprise which this law represented is a trend which continues to serve as a basis for present policy. Incentives for promoting activity by the private sector in housing construction are discussed infra.

A major earthquake in 1939 provided another landmark in the development of the Chilean housing program. Law No. 6334 of 1939, passed in response to the quake, dealt with two especially important matters. First, it created the Reconstruction and Relief Corporation (Corporación de Reconstrucción y Auxilio) which was empowered to construct and make loans for housing of the earthquake victims. The corporation was not a great success; after ten years it had built 528 houses. Nevertheless it is important as an example of the flurry of activity which customarily follows Chile's rather frequent earthquakes. And it is even more important because it was later merged in 1953, with the Popular Housing Fund to form the important Housing Corporation (Corporación de la Vivienda, CORVI), as discussed below.

The second major subject of Law No. 6334 was the creation of the Chilean Development Corporation (Corporación de Fomento de la Producción or CORFO). CORFO had important housing functions including the establishment of non-profit housing organizations and the provision of housing loans. But CORFO's major significance lay in the fact that for the first time the state was taking the initiative in economic activities other than its traditional ones in order to channel its efforts directly toward economic development. With the acceptance of CORFO came general agreement throughout all sections of the population that Chile's problems required broad governmental planning and involvement.

By the 1940's it became apparent that there was an abundance of poorly coordinated institutions with housing functions. Law No. 7600 of 1943 was an effort to unify all of the programs, placing the responsibility for all housing authorities in the Popular Housing Fund. Many of the provisions of that law are still in effect today. And the effort to coordinate the housing programs has been proceeding steadily, if not successfully, to the present. The latest example of this is the Housing Ministry.

Another important effect of Law No. 7600 was the introduction of the five percent tax on business and industry income. The proceeds of
this tax are to be channeled into housing investments. The tax is discussed later in this study.

The first major incentive to private investment in low cost housing came with Law No. 9135 of 1948. This law, called the Pereira Law for its sponsor, provided tax exemption for the construction of low-cost housing. The scheme of exemption established by the Pereira Law is the major precedent for the keystone of the present housing program, DFL 2 of 1959.

The Housing and Social Assistance Foundation (Fundación de Viviendas y Asistencia Social) was created in 1949 as a public institution dedicated to the alleviation of housing problems among low-income groups. Its efforts were directed primarily at promoting community efforts and providing technical assistance. This organization was to provide the basis for the current Housing Services Corporation (Corporación de Servicios Habitacionales), one of the major organs of the Housing Ministry.

Law No. 11.151 of 1953 authorized the President to issue decrees-with-the-force-of-law concerning housing. One of these decrees was DFL 224 of 1953, called the Construction and Urbanization Law (Ley de Construcción y Urbanización). This law provides the basis for building regulation and land use control.

Another important product of Law No. 11.151 was DFL 285 of 1953 creating the Housing Corporation (CORVI) out of the Popular Housing Fund and the Reconstruction and Relief Corporation. From 1953 until the creation of the Housing Ministry in 1965, CORVI was the major housing institution, and it continues to be one of the major organs of the Housing Ministry.

The fundamental purpose of CORVI was the concentration within one organization of all the state responsibility in matters relating to housing. The new quasi-governmental institution was related to the executive branch through the Ministry of Public Works. Financing was to come from the resources of the former institutions out of which it was formed, the national budget, and the proceeds of the five percent housing tax mentioned above.

CORVI was to pursue its activities according to four basic objectives: the direct construction of housing, promotion of housing construction by the private sector, provision of community services to housing projects, and assistance to victim’s of calamities. The construction and
provision of services was to be done through technical institutions which would execute projects approved by CORVI. The promotion of private construction was to be done through the granting of loans, subsidies, and various incentives to those who invested in housing. Victims of calamities were to be helped by loans, construction, repair, and such other public works as were necessary.

From 1959 until the creation of the Housing Ministry in 1965, CORVI was responsible for the execution of the major housing law, DFL 2, discussed next. The present role of CORVI as an organ of the Housing Ministry is discussed in a subsequent section.

The period from 1953 to 1959 was a time of meager activity in the construction of low-cost housing—with only an average of 7460 units started per year. The Alessandri administration moved to remedy this situation with the passage of what is the most important piece of housing legislation today; DFL 2 of 1959, The famous Plan Habitacional (Housing Plan).

DFL 2, along with its subsequent amendments, provides the basis for the housing program now conducted by the Housing Ministry. DFL 2 expands on the Pereira Law, providing a long list of benefits and exemptions for activities and investments relating to the construction of low-cost housing which met the requirements provided in the law.

Another important innovation of DFL 2 was the creation of the concept of the “savings quota” as a defense for borrowers and lenders against inflation. By means of this monetary correction device, deposits of savers as well as payments on loans and balances owed on purchase prices were made adjustable in accordance with the cost of a living index. If the inflation in a given year is 15 percent, a holder of savings worth 100 units will be credited with holding 115, and a borrower of 100 units will be obliged to pay back 115.

In addition, DFL 2 provided funds for the resettlement of slum dwellers, legislated further on the five percent housing tax, and transferred the housing offices of the various social security institutions into CORVI. It is well to mention here that during the period from 1959 to 1964 the construction of low-cost housing units had risen to a pace of 30,900 units per year. Though DFL 2 has many weaknesses, as will be discussed below, it has apparently had some positive results.

The Central Savings and Loan Fund (Caja Central de Ahorro y Préstamos) was created by DFL 205 of 1960. This organization was
established to promote and authorize the formation of private savings and loan institutions, and insure their activities. The savings and loans were to receive deposits from savers and grant loans for the construction of housing, all subject to the system of monetary correction begun by DFL 2. The private savings and loans were seen as a method of attracting more housing investment and integrating the private sector into the housing program.

In 1965 the Frei government engineered the latest major reform in the housing program by creating the Ministry of Housing and Urban Affairs, established by Law No. 16.391. Thus the planning and coordination of housing activities has been elevated to the ministerial level, new projects and policies have been undertaken, and new organizations have been developed to execute the overall programs. The structure and activities of the Housing Ministry are dealt with at length in the following section.

Mention should be made of two low-cost housing laws which have been enacted since the creation of the Housing Ministry and which are important to this study. The first is Decree 553 of 1967 which restructures the government savings and loan program. This new approach is called the Popular Saving Plan (Plan de Ahorro Popular) and is discussed infra.

The second important recent enactment is Law No. 16.741 of 1968. This law is designed to remedy the widespread controversy over urban land tenure of low-income groups. A subsequent section discusses this problem at length.

Looking back over this brief sketch of the legal history of the housing problem, certain observations seem justified. The basic trend of the housing program has not varied: to devote more resources to more programs to produce more housings for more people. The methods used have evolved gradually: from the earliest ad hoc efforts, to treatment of housing as an adjunct to other concerns such as the Labor Ministry, to the massing of responsibility to CORVI, up to the recent creation of the Housing Ministry.

There has been constant experimentation with new approaches, and a constant growth in total size. It is difficult to know how to assess this development, but it appears apparent that to some extent it must be judged in its historical context. One may criticize the construction of only 30,000 low cost units per year in the 1960's, but it is a considerable improvement over 604 units per year in the period from 1906 to 1943.
This review of legal history is intended to provide a perspective from which to understand and evaluate the housing program as it is discussed in the subsequent sections. It must be emphasized that there is much which this brief history does not provide. It is difficult in a brief historical survey to distinguish between apparent changes in organization or policy, and those changes which are, in fact, substantive. What a particular law says may be quite different from what the law actually does. And differences in the way in which a law is executed or enforced may provide greater changes in a program than the enactment of totally new legislation.

A close look at the history of the housing program shows that change is not always the same as progress. Many of the changes are efforts to correct the mistakes of earlier changes. The frequent addition of new programs may be a healthy sign in some situations, but it may also create considerable confusion. For example, there are now several statutory definitions of "low cost housing" in Chile, each subject to a different scheme of benefits and requirements.

With its shortcomings in mind, this brief history illustrates how a development program evolves. And it serves as an introduction to the present housing program discussed in the subsequent material.

**MAJOR LEGAL INSTITUTIONS IN THE HOUSING PROGRAM**

Given the housing problems previously discussed and the institutional arrangements which grew up as discussed supra, what policies are in operation at the present time, and what organizations have been created to execute these policies?

The present housing program is a result, and a victim, of its historical background. It is a result of its history in that the overall program is for the most part a patchwork of prior programs and organizations placed in a new mold to carry out the purposes of the present government. It is a victim of its history in that the attempt to form numerous institutions taken from eight different ministries into a smoothly functioning entity has been plagued by confusion and inefficiency.

When the Frei government entered into power in 1964, the situation was one of decreasing construction activity, poor planning, incompleted projects, misuse of land, neglect of the lowest classes, lack of finances, and poor administration structure. Against this background the Frei government formulated its prescription for meeting the housing problem.
The following is a discussion of the policies and organizations involved in the Chilean housing program.

(a) **Policies of the Housing Program**

Production was to be increased in order to stem the expanding gap between housing needs and the available housing stock. In 1964 the government was forecasting the construction of 360,000 units between 1965 and 1970, or an average of 60,000 units annually.

Provision of community facilities, and concern for overall urban development, were to be joined with the housing program in order to coordinate the parallel development of the entire community, and in recognition of the fact that there is more to "housing" than just houses. By "community facilities" is meant schools, hospitals, markets, and other community centers. "Urban development" refers to transportation, location and regulation of commercial activities, and control of land use.

Government housing activities were to be focused on the most needy sectors of the population. Whereas former programs had directed two-thirds of the new housing to the middle class, the new program was to devote two-thirds to low-income people. The low-income groups were to be assisted by direct public construction, subsidies, provision of credit, and technical assistance.

Community participation in the government-assisted housing program was to be promoted. The initiative and participation of the people was to be tapped by way of housing cooperatives and self-help housing construction projects. Participation in decision making was to be advanced by the formation of community-based political units.

Financing of the housing program was to be improved by increased tax revenues, improvement of the savings and loan systems, and control of land and building materials prices.

The contribution of the private sector was to be increased by the provision of tax incentives to attract investment, and by the improvement of construction techniques in order to make housing investments more productive.

Finally, there was to be an administrative reform of the institutions involved in housing in order to improve their effectiveness. It was said that there were over twenty government organizations in eight ministries involved in housing in 1964. To correct this confused situation, Law No. 16.391 was passed to create the Ministry of Housing and Urban Affairs,
to establish the responsibilities of the other housing institutions, and to set out the objectives of the housing program. The following material discusses the organization and functions provided by Law No. 16.391, as well as additional organizational information.

(b) The Organizational Structure Designed to Execute the Policies

What can be learned about a development program from an overview of the organization and functions of its legal institutions?

1. The Ministry and its Related Organizations

The organization of the Housing Ministry places the minister presiding over a dual structure consisting on the one side of the ministry itself and on the other side of a group of semi-autonomous institutions related to the executive through the ministry. A National Housing Council made up of representatives of various interest groups such as the construction industry, consumers and other government agencies advises the minister.

The Housing Ministry is headed by a minister appointed by the President and has overall responsibility for the entire housing program. It plans, budgets, and coordinates the various housing institutions. In addition, it provides technical assistance, undertakes research in housing matters, and aids municipalities.

The Subsecretariat supervises the administrative work of the Ministry and attends to legal problems. It is composed of the Office of Administrative Matters, and the Office of Legal Matters.

The Office of Planning and Budgeting prepares national plans for the construction of housing and urban development projects. It coordinates these plans with other public institutions and with activities of the private sector. This office prepares the housing budget and participates in the preparation of the national budget. Finally, it oversees and evaluates the execution of the housing program.

The Office of Finance advises the Office of Planning and Budgeting on the preparation of the national budget, and approves the budgets of the Ministry and the dependent corporations. It also administers the funds of the Ministry and oversees the use of funds by the other organizations. Finally, this office conducts economic studies relating to housing.
The Office of Housing Planning advises the Office of Planning and Budgeting on the preparation of the national plan, and reviews the plans of other public institutions and the private sector in order to coordinate them with the national plan. The Office also oversees the enforcement of land use and construction regulations.

The Office of Community Facilities Planning reviews programs for the provision of community facilities and advises the Office of Planning and Budgeting on preparation of the national plan for community facilities. Both the process of providing community facilities and their physical characteristics are within the jurisdiction of the office.

The Office of Urban Development Planning advises the Office of Planning and Budgeting on the preparation of national plans for urban development and urban renewal. It promotes the execution of local community development program, and sees that they accord with national policy. Finally, it works with the Urban Improvement Corporation on matters concerning land use control.

There are six semi-autonomous housing institutions related to the government through the Housing Ministry. These institutions are provided for in general terms by Law No. 16.391, but each is governed by separate legislation setting out its precise power and responsibilities. These institutions are charged with executing the housing programs which are planned and budgeted by the various organs of the Housing Ministry. In the parlance of the Frei government, the organs within the Ministry perform a function which is "ejecutoria," (executive) and the institutions related to the Ministry perform a function which is "ejecutora" (executing).

The Urban Improvement Corporation (CORMU) is concerned primarily with land acquisition and land use planning. A major problem in past housing efforts has been the lack of land, its high cost, and its costly misuse. Through purchase and expropriation CORMU is to provide land for the use of other housing institutions. CORMU is also to assist in land use planning by overseeing the drafting of urban general plans, and by providing advice and assistance to local governments.

The Housing Corporation (CORVI) has been divested of its former responsibility for the entire housing program as discussed in the review of legal history. It now concentrates on the construction of housing and community facilities. CORVI also takes part in the planning and subdivision of housing projects, and occasionally works on the rehabilitation of housing.
The Housing Services Corporation (CORHABIT) grew out of the former Housing and Social Assistance Foundation previously described. It was formed to take over the social services' duties of CORVI in order to free CORVI to concentrate on construction. Its purpose was to overcome the feeling that government housing programs had not been sufficiently responsive to the needs of the lowest income sector. The major responsibilities of CORHABIT are: administering the distribution of permanent housing assistance; servicing the government savings and loan system; and promoting community housing activity by means of loans and technical assistance to cooperatives and self-help housing schemes.

The Urban Works Corporation (Corporación de Obras Urbanas) is a former office of the Housing Ministry which has recently been transformed into an autonomous organization. Its job is to execute the community services projects called for by the Office of Community Services Planning Office of the Housing Ministry. The corporation is divided into offices of Urban Paving, Sanitary Services, and Community Facilities.

The last important autonomous organization is the Central Savings and Loan Fund (Caja Central de Ahorro y Préstamos), whose job it is to authorize the creation of private savings and loan institutions, insure their deposits and loans, and purchase their mortgages in order to increase their liquidity and create a secondary mortgage market. The Fund has been moved out of the Ministry of Finance in order to integrate its activities into the housing program. The private savings and loan institutions are discussed below.

2. Institutions Outside the Ministry.

Mention should be made of several institutions involved in housing, though not connected with the Housing Ministry.

Chilean social security organizations (Cajas de Previsión) are an important agent in the overall picture of worker’s housing. These quasi-public institutions are organized according to the employment of their members. Their funds are made up of monthly payments of a net percentage of the employee’s income plus a matching payment by the employer. Obligatory functions consist primarily of the provision of pensions and disability payments. They are also required to pay a set percentage of their surplus funds to the Housing Ministry. This money goes into the general fund of the Housing Ministry to help finance its overall operation. Among the discretionary functions of the social secu-
rity institutions is the acquisition of housing for their members by the transfer of additional funds to the Housing Ministry. This procedure is explained below.

The private savings and loan institutions also play an important role in housing. As discussed above, they are authorized, regulated, and assisted by the Central Savings and Loan Fund. They are private non-profit institutions devoted exclusively to the provision of housing credit. There are two savings and loan systems in Chile; the government savings and loan system administered by CORHABIT, and the private savings and loan system administered by the Central Savings and Loan Fund. The major difference in their function is that, whereas the government system is for the sector of three minimum salaries, and below, the private system is for those of four minimum salaries and above. The private savings and loan system was begun in 1960. These institutions will be discussed further below.

Companies known as "5 percent companies" are another important component of the low-income housing market. These companies have been established to benefit from the 5 percent housing tax on business and industry. Liability for the tax can be satisfied by paying 5% of net income into a company devoted exclusively to low income housing construction. Businessmen establish a 5 percent company, pay their "tax" into it, and take the profits of the company. This unique arrangement is discussed further in the taxation section which follows.

Private builders are a key resource for housing. Almost no low-income housing is built as a private speculation venture. However, it is the private builders who actually construct the low-income housing which is built through government assistance programs. They do so on contract with the government or private savings and loan institutions.

The National Planning Office (ODEPLAN), an office of the Executive, is the major planning institution in Chile and works in cooperation with the planning offices of the Housing Ministry and related autonomous institutions.

The State Bank of Chile (Banco del Estado) is an autonomous state enterprise authorized, among other things, to receive savings and service the account of low-income people saving for housing in the government savings and loan systems. These savings are readjusted annually in accord with the monetary correction mechanisms introduced by DFL 2 to combat inflation.
Finally, there are the local governments (*municipalidades*) which have not played an active role in housing, but which are inevitably involved in housing concerns. The local governments are especially important insofar as their land use planning policies affect the housing situation. Efforts are being made to improve planning at the local level and to coordinate local needs with national plans.

Working together, the organizations described above perform almost all of the functions encompassed by the housing program. Needless to say, the effectiveness with which they operate is crucial to the solution of Chile's housing problems.

(c) *How the Organizations Execute the Policies*

Low-income housing is built through a great variety of programs, not all of which will be described at this time. Four major sources of low-income housing construction will be discussed briefly: (1) the government savings and loan system, (2) the social security institutions, (3) the private savings and loan system, and (4) the five percent companies.

There are two public sector sources of low-income housing; the government savings and loan system, and the social security institutions. The process begins with funds flowing into the Ministry of Finance from three sources: taxes, payments of the social security institutions, and external credits paid through the Central Bank. This money then passes to the Housing Ministry in the annual budgetary appropriation, and the Ministry distributes it to the autonomous corporations. CORMU obtains land and transfers it to the Urban Works Corporation. The Urban Works Corporation puts in the basic community services such as pavement, water, and sewage facilities and transfers the land to CORVI. CORVI contracts with private builders to construct housing and then passes the housing over to CORHABIT.

CORHABIT then distributes the housing to low income families from one of two groups. The first group are those who are saving in the government savings and loan system. These people receive their housing in return for a mortgage to CORHABIT. The families pay off the mortgage to CORHABIT, which transfers the payments to the Ministry, which returns the money to the Central Bank. The other group that receives housing is made up of the members of the social security institutions. They pay off their mortgages to the social security institution which continues to make payments into the Ministry of Finance.
for the benefit of the housing program. Approximately 27,000 of the 41,000 housing units began in 1967 were built through these two programs.

As explained above, the private savings and loan institutions are regulated and supported by the Central Savings and Loan Fund which is a semi-autonomous organization related to the Housing Ministry. This system deals with families of higher incomes than those who receive housing through the public sector directly. A saver who has accumulated the required savings receives a housing loan. He can take his loan out on the market to buy housing, or he can buy housing built by private builders for his particular savings and loan institution. The latter course is more commonly taken. The private savings and loan system accounted for approximately 5,000 of the 41,000 housing units started in 1967.

The five percent companies are the fourth source of low-income housing. As explained above, they attract their capital as a means of paying the housing tax on commercial enterprises. Although these companies are given credit for contributing substantially to the low-income housing stock, they cannot sell the housing they build without relying on purchasers who have credit from the government savings and loan system, or from the government supported private savings and loan system. Most of the housing they build is for the higher income private savings and loan market. These companies were credited with approximately 6,000 housing units started in 1967.

(d) Comments on the Policies and Structure of the Housing Program

How effectively have the current housing policies been assigned to functional institutions and translated into operating programs? The following is a brief overview of the policies discussed in (a) above and the organizational structure discussed in (b) and (c) which followed.

Increased housing production is always a stated goal, and just as regularly the results fail to meet the expectations. The reasons for these failures encompass the entire spectrum of housing concerns, since increased production is at the very heart of any housing program. There is a new approach to the problem of housing production in Chile which, though in part semantic, is an important step toward a more realistic housing program. In former times, housing has been discussed simply in terms of numbers of units in the housing deficit. This one-dimensional measure failed to account for difficulties in defining "adequate hous-
ing,” and overlooked many of the subtle social aspects of the housing problem. The housing program today is discussed as a group of policies, rather than as a set plan. And instead of depressing themselves with talk of housing deficits, planners are now talking of “housing solutions” and “progressive improvement of housing conditions.” This new attitude toward housing acknowledges the painfully obvious fact that a solution for the housing problem is not around the corner, and emphasizes the need to think in terms of policies, methods, techniques, and approaches to the problem. It is also realized today that attention to output maximization at the expense of careful planning can result in overly large projects of monotonous design with excessive density situated on sites that are attractive only for their low cost.

The joining of concern for community facilities and overall urban development with the housing effort was an essential step. Housing has never really been divorced from urban development, but now the linkage is institutionalized and better managed. The new ministry is called the Ministry of Housing and Urban Affairs. It would not have been incorrect to have called it the Ministry of Urban Affairs, since urban affairs is, in fact, the broad issue of which housing is but a part.

Community facilities (schools, hospitals, parks, etc.) are the responsibility of the Urban Works Corporation and the Housing Corporation. It is recognized that these facilities are a necessary part of a complete community. Nevertheless, it has become apparent that insistence on their inclusion in a housing project may be unrealistic and even counterproductive. Where funds are lacking, it may be preferable to put badly housed people in minimal structures as a first step, rather than make them wait for sufficient funds to do a complete job. Thus the desire to build complete communities must be tempered by the awareness that something is better than nothing.

Overall development including transportation, commercial establishments, public buildings, and other land uses must be coordinated with housing. The Urban Improvement Corporation is chiefly responsible for this coordination. Its success is hampered by its small size and limited powers, by the confusion of urban, intercommunal, and national plans; by the ineffectiveness of local governments in planning, and by the haphazard nature of urban growth found in any free society.

Emphasis on low-income groups is a salutary policy of the present housing program. The Urban Service Corporation is the primary institution responsible for advancing this policy by way of promoting housing
cooperatives and self-help housing projects, loaning money and materials to those who have lots on which to build, and providing technical assistance to community development efforts. The Housing Corporation has also contributed to this new trend by building more truly low-income houses, as opposed to the old-style showpiece houses that could only be bought by the middle class. Housing the poorest families is the most difficult part of the housing problem. Private investors cannot be attracted to provide housing for those who cannot pay for it, and the government does not have the necessary resources to assist the numerous low-income families who need housing. It is apparent that the solution to this problem crosses over into the areas of education, employment, and development in general.

Participation of community groups in the execution of housing projects and in the political process as a whole is being encouraged. The most obvious case of participation in the projects is found in self-help housing programs. Self-help has become an important component of several housing existence programs. Political participation is advanced by the creation of Juntas de Vecinos (Neighborhood Groups) who are recognized as representing community groups and are given the right to be heard in particular instances of decision making affecting the community. The Frei government has attempted, unsuccessfully thus far, to galvanize these Juntas into a national grass roots political program known as Promoción Popular (Promotion of Popular Groups, roughly).

It is difficult to compare the financing of the housing effort over a period of years because of complications with budgetary process and the confusion added by a rapidly inflated currency. The government claims it is spending more than before, and the opposition says it is spending less. Whatever the case, it seems safe to state that the government is getting less for its money than in prior times. Inflated currency and rising prices require addition of substantially more financing to produce significant increases in the output of the housing program.

The effort to stimulate the private sector has been pursued vigorously, but with many frustrations. Two of the leading techniques have been the provision of incentives, and the attempt to increase productivity through improved technology.

Incentives to private investment, primarily in the form of tax exemptions, are found in DFL 2 and its amendments. The Frei government has promised to correct past abuses of these incentives and increase their effectiveness in drawing private investment into low-income housing. It
would appear that these efforts have failed. The purpose of the law was to stimulate the construction of low-cost housing in poor areas, but the result has been a boom in the construction of luxury apartments in the wealthy sections of the cities. Meanwhile, the construction industry is still unwilling to move decisively into the low-cost housing field.

Productivity was to be increased by the introduction of standardized materials, mechanization of construction methods, and research into the housing market. The construction industry has proved slow to change; the scale of most construction does not justify mass production, standardization is often more of a burden than an asset to developers, and research has produced no remarkable discoveries.

Two major aspects of the proposed administration reform for the housing program were: (1) the creation of a Housing Ministry to plan, coordinate, and do research for the housing effort, and (2) the distribution of responsibility for different phases of the housing effort among several autonomous institutions related to the government through the Housing Ministry.

Creation of a Housing Ministry was a necessary and almost inevitable reform. The importance of the housing effort had grown to a point justifying its elevation to ministerial status, and the profusion of programs necessitated a coordinating institution. Unfortunately, however, the effort to coordinate the housing effort has failed in many respects. The institutions responsible to execute the plans of the Housing Ministry have so much autonomy and are so self-sufficient that their activities are only loosely controlled by the Ministry. The Executive Vice President of each autonomous institution is responsible to the Minister, but the institution is not subject to the dictates of the Ministry's planning and budgeting offices. Thus the influence of the Ministry must filter up from the planning office to the Minister, then across from the Minister and down through the autonomous institution.

Planning has confronted additional problems. The National Planning Office (ODEPLAN) is responsible for Chilean national planning. National planning is divided into sections, one of which is housing. The planning office of the Housing Ministry reports to the ODEPLAN on its proposals for the housing sector of the national plan. The planning office of the Ministry, in its turn, depends on the planners of the autonomous institutions for their prescriptions as to the goals and methods for meeting the housing problem. The potential for confusion in this multi-tiered structure is obvious, and observation would indicate that the potential is being fully realized.
Research on the housing market and on new construction methods was to be an important function of the Housing Ministry. The Technical Secretariat created for this purpose has been dissolved, with its functions transferred to the planning offices of the Ministry. The reasons for disbanding the Technical Secretariat are not clear, though it appears to be partly for budget reasons and partly for lack of productivity. The future of housing research is now uncertain.

The second administrative reform mentioned above is the distribution of functions among several autonomous institutions charged with executing the housing program. This distribution of functions was apparently based on the belief that several separate organizations with limited responsibilities would be more effective than one large institution attempting to perform all the functions. While this approach may be sound in theory, it has encountered problems in the Chilean practice. In the first place, the idea of placing the Ministry over all of the institutions is a half-hearted effort to make a centralized organization out of a decentralized structure. Secondly, the functions of the separate organizations have not been carefully defined, with the result of confusion, duplication, and conflict between the various organizations.

Part II of this study will be published in the next issue of the Lawyer of the Americas. It will cover law-related issues in the housing program and specifically the substantial role played by the law in the development process.