Law and Development: The Chilean Housing Program

T. R. Burke

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PART II

LAW-RELATED ISSUES IN THE HOUSING PROGRAM

Having covered the nature and history of the housing problem and the pertinent major institutions, we can proceed to discuss specific examples of the role of law in the development process, as demonstrated by law-related aspects of major issues in the housing program. Certainly the major issues in the housing program are not primarily legal issues. It is equally certain that the legal problems and legal solutions discussed below are not strictly legal; they are social, political, economic, etc. The following sections illustrate how the law plays a substantial role in the development process.

(a) Land Use Control

Land use control laws are crucial to urban development, of which housing is such an important part. The difficulties surrounding this body of law illustrate an interesting and difficult problem. If land development is not regulated, urban growth will be haphazard, wasteful, and substandard. And to prevent this, the Chilean Congress has legislated extensive regulations. However, if regulations are excessive or outdated, they may serve to impede, rather than assist, urban development. There is some evidence of this counter-productivity in the Chilean experience. This section will discuss the problem of land development regulations as a constraint or obstacle to housing construction.

The major source of land use control and building regulations is DFL 224 of 1953 as amended by Decree No. 880 of 1963 of the Ministry

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**J. D., Stanford and Fellow of the International Legal Center (1967-1968) in Chile; presently Staff Attorney of the National Housing and Development Law Project of the University of California at Berkeley, and in the practice of law in San Francisco.
of Public Works. The body of law composed of these two provisions plus their modifications is called the Construction and Urbanization Law.

The Construction and Urbanization Law legislates on building permits, subdivision of land, land development requirements, building regulations, architects and building contractors, urban boundaries, and urban general plans. In order to build a housing project one must have plans drawn up by a licensed architect, receive permission from the government, install roads, water, sewage, and electricity, and build according to prescribed standards. These regulations may not seem unduly harsh at first glance, especially in view of the problems created by ad hoc urban sprawl. Nevertheless, the time and money required to satisfy these requirements as they stand, have resulted in their either discouraging housing construction or provoking low-income groups to build illegally.

The two major complaints against the Construction and Urbanization Law are that (1) it requires land development that is disproportionately expensive for low-cost housing projects, and (2) that the red tape involved in complying with the law is unnecessarily long and complex.

With regard to the first complaint, it is argued that there should be a distinction made between the kind of development required for housing in the wealthy districts and that required for low-income housing. Article 115 of the Construction and Urbanization Law requires that the developer provide, at his own expense, for water, light, pavement, sewage facilities and landscaping standards, for these services are found in the specific regulations based on the Urbanization and Construction Law. The law and the regulation were written at a time when the major concern was the aesthetic character of a particular development. No thought was given to the more pressing needs for shelter, regardless of aesthetics, of the low-income sector. And no distinction was made between the requirements for an expensive and a low-cost house, nor between a wealthy barrio and a worker community.

The government is aware of the fact that the extensive and costly development requirements of the Construction and Urbanization Law discourages construction of low-income housing. However, rather than change the law, the government periodically passes low-income housing legislation which carves out exceptions to it. This was done in 1959 through DFL 2, when Decree No. 1,464 of 1960 of the Ministry of Public Works established the special regulation for low-cost housing built in conformity with DFL 2. By Article 31 of this special regulation the public utilities enterprises were ordered to dictate special minimal requirement for the community services to be provided for the low-cost houses. Other exemp-
tions are carved out in the recent Loteos Brujos Law which provides that, the services of an architect are not required, permits may be granted to build according to a standard plan, construction can proceed without all the community services being installed, and for lower tax rates.

This erratic practice of carving exemptions onto the general land-use law raises several questions. It would be simpler to change this law itself to provide flexible development requirements depending on the price level and the location of the housing being built. Because the exemptions are scattered throughout the volumes of housing legislation, it is difficult to be sure which requirements apply to a particular project at a given point in time. Finally, the exemptions apply only to limited types of low-income housing and thus leave many cases at the mercy of the admittedly inadequate provisions of the general land-use law.

A new Urbanization and Construction Law is now being drafted by the Housing Ministry. It is unlikely that it will make any substantial changes in the quality of development required for low-income housing projects. The one possible exemption it may make is a waiver of the requirement to provide paving. However, though the new law will not make significant changes in the quality of development required, it will make important modifications in the timing of the developer's work. According to the new law, a builder will be permitted to construct and sell housing after only minimal development; the additional development can then be completed subsequently, but within a stated period of time. Postponing the development requirements in this manner may make it possible for more low-income families to move out of their present slum environments.

The other major complaint against the Construction and Urbanization Law is the amount and complexity of the red tape involved in building housing. This red tape is a particular burden to low-cost housing construction where smaller sums of money are involved.

In an article attacking the stifling bureaucracy surrounding housing construction, the leading architecture magazine in Chile lists more than one hundred separate operations required in the course of building a simple house. The article proceeds to assert in no uncertain terms that the time and money lost in this tedious paper shuffling is a serious deterrent to developers.

Besides being numerous, the requirements of the law are often hopelessly confusing. Many of the sections on land development requirements have baffled builders and enforcement agencies to such an extent that they
have chosen to disregard the law. As for its organization, the "law" is in fact a collection of laws constantly modifying and adding to the original law. To find the applicable provision at any given moment is extremely difficult. The Housing Ministry attempted to solve the problem in 1966 by publishing the laws on land development and construction in one volume. Within a few months the Ministry itself proposed legislation which was passed making its compendium incomplete.

A certain amount of paperwork and bureaucratic confusion is inevitable in any housing program. Nevertheless, there is ample evidence that the situation in Chile is excessive, and that more streamlined procedures would make a substantial contribution to the success of the program.

The effects of the land development requirements of the Construction and Urbanization Law on Chilean housing construction provide an interesting example of the role of law in this program. Laws designed to regulate private activity must be reviewed periodically to insure that they fulfill the purposes of the program and that they suit the existing situation.

(b) Urban land tenure

Chile recently found itself confronted with over 80,000 families living or building on lots to which they did not have clear title. Most of the people had agreed to buy the land from the owner, and had paid a substantial amount of money. In a good number of the cases they had moved on the land, and either had completed a house or were working on it. They lacked clear title to the land because of legal technicalities, ignorance, fraud, or other reasons. Disputes arose and these led to a crisis. The following material will discuss the way the problem arose and the measures taken to solve it.

As explained previously the Construction and Urbanization Law does not permit developers to open new subdivisions without expensive improvements to the land. It has been estimated that in the case of low cost housing these improvements cost approximately five times as much as the property benefitted. Even if they can afford this high land development cost, low-income groups cannot afford the final product. Therefore, the situation in Chile is one of desperate need for land coupled with inability to pay for land which was developed in accordance with the law. So the law was broken in a variety of ways, thus creating a crisis known as the Loteos Brujos, or land development fiascos.
In many cases the buyer and seller proceeded in open disregard of the Construction and Urbanization Law. The owner of the land was probably not a wealthy man nor a professional developer. He owned some property and he agreed to divide it and sell it. This practice went on for a year without the interference of municipal authorities who looked the other way because of their awareness that compliance with the law would defeat the desperate need for land. In some cases the owner intended to develop the land, but had not yet completed the work. In other cases the owner intended to develop the land, but had run out of money.

The most outstanding situations in the Loteos Brujos debacle resulted from land swindles. These swindles were executed in a variety of ways. A developer might have land for 300 building sites, 11 by 25 meters. He would divide up the land, place an advertisement in the paper and sell the parcels to pobladores. The catch was that the purchaser could not move on to the land until he had paid 70% of the purchase price. The price was usually paid in monthly installments over about a three year period. When the developer had sold all 300 lots, he would return to lot #1 and sell it again. Since neither purchaser moved on the lot for some time, neither knew of the other.

All went well until buyers began to reach the point at which they had paid 70% and could occupy the land. Purchaser 1-A moved onto his lot. Purchaser 1-B immediately smelled a rat and ran to the developer. Purchaser 2-A had not yet paid his 70%, so the developer would tell 1-B that there had been some mistake and that he should move to lot 2 (all the lots are flat and virtually indistinguishable, so he got away with it). Lots were sometimes sold three and four times. With so many sales and constant shifting around, there were sometimes as many as ten buyers who thought they owned one lot. A developer could play this game for a surprisingly long time, but eventually the situation would come to a head. By then, the developer was likely to be on the plane for Buenos Aires.

Another common swindle consisted of a developer getting an option to buy a section of land, displaying the option as proof of ownership to ignorant buyers and “selling” them the land. He took the same plane to Buenos Aires.

In all the above situations, whether characterized by mere disregard of the law or swindles, the result was essentially the same. Disputes arose over ownership of the land and needy families stood to lose either substantial sums of money, or their land, or both. Ownership could not
be clearly established because of the extreme confusion over land titles. Victims of swindles did not have title because the seller did not own the land, or, if he did own it, he sold it to several families. Those who turned their back on the Construction and Urbanization Law did not have title because they could not register their titles without calling attention to their failure to develop the land as required. In Chile, title registration is required to prove ownership.

To make matters worse, the law provided no remedy for the would-be purchasers. Since they had taken part in illegal transactions—land sales not complying with development requirements—the law would not come to their aid. Something had to be done to assist the 80,000 families embroiled in the Loteos Brujos. Law No. 16,742, known as the Loteos Brujos Law was passed in February of 1968.

The Loteos Brujos Law authorizes the Housing Ministry to declare a población to be in “irregular circumstances” when it is the site of a serious Loteos Brujos problem. The property involved is then taken over by the Housing Services Corporation (CORHABIT) in a kind of receivership. CORHABIT then initiates a proceeding to determine who is responsible for the Loteos Brujos. The owner of the land and the developer, if different persons, are held responsible to pay the costs of completion. If they cannot pay these costs, their property can be taken and liquidated to meet the expenses. CORHABIT then completes the necessary development work.

Meanwhile, CORHABIT receives the claims of all those who claim to have been affected by the Loteos Brujos. These claims are judged, and those who are declared to be the rightful owners are granted title to their property. Those who have a valid claim to relief but do not get the land are indemnified as much as possible from the property of the responsible parties. Those who receive title are required to pay the rest of their purchase payments to CORHABIT.

If CORHABIT finds it more convenient, it can condemn the entire area, and then distribute the property as it sees fit. This may be necessary where the claims to ownership are hopelessly confused, contradictory, and overlapping. If there is not enough money extracted from the owner and developer to pay the developments costs, those who are given title may be charged for the development, or they may undertake the development themselves through self-help projects.

The significance of this law cannot be appreciated by taking its provisions at face value. By itself, the law is an important and interest-
ing piece of legislation. But more importantly, when considered within the context of Chilean law and development, it is a radical departure from the accepted law of property designed to salvage a large segment of the marginal population from the harsh workings of the established law. The Civil Code provides that land can be sold only by written, notarized contract. The Loteos Brujos Law recognizes any evidence, including testimony concerning oral agreements, in order to decide who is the rightful owner. The Civil Code states that in order to acquire title to land, a purchaser must register his purchase within the Real Property Rights. The Loteos Brujos Law says that registration is not necessary to prove ownership.

Now that the Loteos Brujos Law has been promulgated to solve this land problem, the major obstacle is implementation of the law. One of the greatest difficulties may be the need to find competent personnel. CORHABIT has assigned a group of lawyers to the task of assisting the victims of the Loteos Brujos, but this is a small group facing large and difficult tasks. Their predicament is typical of any development context. It is not enough that the government pass well-intended legislation. Lawyers must be sent out to help marginal groups exercise their rights and remedies under the law.

The success or failure of the Loteos Brujos Law will be an interesting and important lesson. Land tenure problems are common to the urban (and rural) development of almost all countries. Chile may have found a way to solve these problems by its willingness to mold the law to fit the situation—a healthy attitude for any country.

This case presents an interesting example of the way in which law can help to both create and solve a development problem. The problem arose in part because of laws providing unrealistic land development requirements and a subsequent law had to be passed to solve the problem created by the prior law. If the new law is not effective, the process of correcting the correction could go on indefinitely.

(c) Landlord-Tenant: Rent and Eviction

The rights and duties of landlord and tenants vis-a-vis one another are always an important housing consideration. In the United States the most notable example of landlord-tenant problems is the institution of the "slum landlord." Fortunately, this has not been a serious problem in Chile.

A landlord-tenant problem receiving current attention in Chile con-
cerns the rights of rent and eviction. The changing law on this subject has had significant and interesting effects on the housing market. The following material will discuss the way in which this problem has developed.

A large percentage of Chilean families live in rented housing. The problem to be discussed in this section concerns primarily the middle-income sector since the low-income sector normally rents on an informal and extra-legal basis. Nevertheless, middle income renting problems are important to the low-income sector because the success or failure of the middle-income groups in finding shelter has a direct effect on the price and quantity of housing available for the low-income group.

The Civil Code, promulgated in 1855, provides that landlords are free to charge whatever rent they desire and can evict month-to-month tenants with one month notice. Article 1918 of the Civil Code says that the rental should be set in the same manner as with a sales contract. Article 1808 in sales contracts provides that the sales price can be freely set by the contracting parties. Eviction is treated in Article 1976 which states that notice of eviction should be given one rental period in advance.

These Civil Code provisions are consistent with the free enterprise notions current in the 19th century. The law guaranteed the owners right to rent his property as he saw fit, thus giving considerable power to landlords in relation to prospective tenants. This power became particularly significant around the 1930's as housing scarcity became pronounced. Landlords had tenants at their mercy, and often abused their power by charging exorbitant rents or evicting tenants summarily.

In order to remedy this situation, Law No. 6,844 of 1941 was passed. This law turned the tables on the landlord by placing a ceiling of 7% of assessed value on annual rent. This limit was raised to 11% by Law No. 11,622 of 1954 which is the current renting law.

Article 12 of Law No. 11,622 provides that three months notice must be given before eviction instead of the one month required by the Civil Code. One more month's notice is required for each year the tenant has lived in the rented premises.

To make matters more secure for the tenant, Article 14 of the same law requires that eviction be for "plausible motives." The article goes on to provide that the landlord must give proof that the "necessity, utility, or convenience of the eviction" justify the injury suffered by the tenant in being evicted. The law implies that this proof cannot be taken lightly and says that the motives will be presumed justified only when the landlord or his family wish to occupy the premises. Because the tenant has this
defense at his disposal, it is a well known fact in Chile that a tenant can delay his eviction by at least a year if he wishes to use all of the stalling tactics available in the court proceedings.

The current Renting Law is favorable to tenants. Unfortunately, it has discouraged investors. One consequence is that many landlords evade the law by charging illegally high rents. This could be fought, but tenants desperate for housing normally do not fight it. A more common result of present tenant-biased Renting Law is that investors have ceased to build much-needed rental housing.

To correct this situation, DFL 2 of 1959 provided that those who build rental housing meeting certain requirements would be exempt from the rent and eviction restrictions of the Renting Law and would be subject only to the Civil Code. The qualified rental housing applied to units under 140 sq. meters. The landlords are regulated only by the Civil Code so that they can charge any rent they like, and may give only one month's notice of eviction to a month-to-month tenant.

Tenants of DFL 2 housing are once again at a disadvantage, and are mounting considerable opposition to the change in the law. Meanwhile landlords are not satisfied either. They are still subject to the Renting Law, No. 11,622, in all rental other than DFL 2 viviendas económicas. The landlords argue that all rental housing should be freed from the Renting Law, or that the Renting Law should be improved. The eleven percent limit on rents is the biggest source of criticism. Landlords claim that rents should be established according to some scale other than flat percentage of the assessed value; or, that the flat percentage should be raised.

Thus the controversy continues in an attempt to strike a balance between the investor's need for an adequate return so that he will continue to invest, while insuring that the tenant is not overcharged.

The Chilean law on rent and eviction proceeded from the laissez faire Civil Code to the protection of the economically deprived in the Renting Law. Then, since the government and economy still rely heavily on private enterprise, the law swings back to the Civil Code in order to attract the private investor once again. This back-and-forth modification of landlord-tenant law provides an interesting example of the difficulties involved in rationalizing adverse interests, and the counter-productive consequences which may result from tampering with the market in a market economy.
(d) Construction: Promotion of the Private Sector

The need to increase housing construction is one of the central problems of the housing program. Infinite approaches to the problem are possible. Some countries have attacked the problem by establishing government construction enterprises; others by providing subsidies to low income groups. Chile has relied primarily on a policy of providing incentives to attract private capital to invest in low cost housing.

The major incentives consist of tax exemptions for builders and owners of low-cost housing. DFL 2 of 1959, discussed previously, is the major tax incentive provision aimed at promoting low-cost housing construction.

The most important exemptions in DFL 2 can be placed in two categories: exemptions for homeowners and exemptions for builders. The exemptions apply to owners and builders of "low-cost housing" (viviendas económicas) as defined in Title I of DFL 2.

According to DFL 2, homeowners are exempt from the tax on rental income earned from their low cost houses. There may be actual rental income if the house is being rented or presumed rental income, which is also taxable in Chile when the owner occupies his own home. Real property taxes are suspended for a period depending on the size of the home; 20 years if under 70m², 15 years if under 100m², and 10 years if under 140m². No inheritance tax is paid on the value of low-cost houses, and no sales tax is paid on the first transfer.

Builders enjoy three important exemptions. Corporate income tax is exempt if the corporation is devoted exclusively to the construction of DFL 2 viviendas económicas. No sales tax is paid on construction materials used in such projects. And the five percent housing tax on the net income of business and industry is exempted.

In addition, there are several minor tax exemptions and other benefits, all designed as incentives to the construction of low cost housing. The following material will discuss several consequences of the DFL 2 incentives, and ways in which some of these consequences have been or might be remedied.

One of the results of the DFL 2 incentives has been the construction of luxury or middle-income housing rather than low-cost housing. This perversion of the original intention of the incentives is made possible by the loose manner in which viviendas económicas qualifying for tax exemptions are defined. Article I of DFL 2 states merely that a vivienda económica must be smaller than 140m². It refers to the Special Regulation
on Viviendas Económicas for further specification. This regulation states minimum standards that must be met, but not maximum standards that are permitted. Consequently, it has been possible to obtain generous tax exemptions intended to promote low-cost housing by building expensive houses with less than 140m$^2$ of floor space. Possible means of restricting costly construction have either not been used or have not been used effectively. One technique would be to prohibit the use of expensive building materials or methods. Such a measure would require exhaustive listing and might result in a blanket condemnation of materials and methods which are justified in special circumstances. Chile has placed some restrictions on permissible materials, but architects are unanimous that the restrictions do not prevent luxurious construction.

A better method to limit tax-exempt construction to authentic low-cost housing would be to place a limit on the permissible cost, based on the cost per square meter, or some other measure. Such a provision may seem obvious at first glance, but the number of vested interests which have grown up around DFL 2 exemptions have effectively blocked any threatened move in this direction.

Another result of the housing tax incentives has been the construction of DFL 2 housing in the wealthy barrios rather than in the workers' districts. Of course, this problem is closely related to the problem of high-cost construction discussed previously. The original law provided the President with the power to declare certain areas as off limits for the benefits of this low-cost housing construction program, but nothing was done between 1959 and 1966.

The obvious solution to this problem would be to prohibit construction of DFL 2 housing in areas where it is not appropriate. This has now been done in some instances, but it has been done tardily and poorly. The beach resort Viña del Mar was declared unqualified for DFL 2 housing in 1966, but by then the beach was lined with high-rise luxury apartments benefitting from the exemptions. Viña has recently been reinstated because efforts are now under way to do something for the not-so-fortunate working class families who live in shacks back against the hills rather than in the summer homes on the beach. Downtown Santiago was declared off limits for DFL 2 housing also. But word got out that the prohibition was coming and builders got their construction permits before the ban was enacted.

Case by case approval or denial of DFL 2 housing projects could probably control the location of these projects better than clumsy attempts to designate entire areas as being acceptable or not. However, neither the
willingness nor the administrative machinery to make these decisions is now available.

A third consequence of the DFL 2 tax incentives is that the private investors at whom they are directed are making larger profits and receiving greater tax advantages than would probably be necessary to attract them to the low-cost housing field. It is extremely difficult to know how much incentive is enough incentive. It is also difficult to know accurately what percentage of the profits come from low-cost housing since much of the DFL 2 construction is actually aimed at the middle or upper income market. Nevertheless, assuming it to be true that excessive benefits are being realized from the incentives, we can proceed to discuss some possible means of remedying this problem.

If the problem is one of excessive exemptions, an obvious remedy is to limit the exemptions. Chile has taken its first major, though inadequate step toward doing this in Law No. 16,742 of 1968. Article 76 of that law amends Article 9 of DFL 2 so that contractors are no longer exempt from the 5% housing tax on business and industry. It also amends Article 16 of DFL 2 so that the inheritance tax exemption no longer applies to housing acquired within six months of the decedent's death. Finally, it amends or repeals several exemptions to minor taxes on official documents, requisitions and transfers.

These charges are important insofar as they go, but they leave the major exemptions untouched. The income, real property, and sales tax exemptions continue. In view of the relative importance of the modified and the surviving exemptions, it seems almost imperative to conclude that no substantial change has been made.

A final result of the DFL 2 tax exemptions is that they have distorted, if not destroyed, the entire Chilean tax structure. The exemptions apply to such a large portion of so many taxes involving so much revenue that the entire fiscal structure has been shaken to its roots. Every important Chilean tax is affected: the income tax, the real property tax, the inheritance tax, the sales tax, and the business and industry tax. Only one of the exemptions is even limited as to term of years, and it extends from ten to twenty years depending on the size of the house. It has been estimated that Chile lost between 140 and 170 million escudos in tax revenue in 1967 as a result of DFL 2 exemptions. A house worth 25,000 escudos may be exempted from 15,000 escudos in taxes over a twenty year period. Certainly in light of these considerations, Chilean planners are forced to ask themselves whether the benefits accruing are worth the costs involved.
One of the solutions to this problem was discussed above in relation to the problem of incentives being excessive, i.e., limit the exemptions. However, this approach will not recover the revenue being lost on DFL 2 housing which is already completed and enjoying the exemptions. Getting around these exemptions is a difficult, perhaps impossible, problem.

One method of collecting revenue from these tax-exempt houses would be to eliminate the exemptions. This probably cannot be done without resorting to condemnation, and, therefore, indemnification which would defeat the purpose. In Chilean jurisprudence, a tax exemption becomes vested as a property right under certain conditions giving rise to what is called a contrato-ley (roughly a contract based on a statute). Without delving into this confusing technicality, suffice it to say that it is virtually certain that the DFL 2 exemptions are based on a contrato-ley, though this has not been tested in the courts. Therefore, the government is barred from merely terminating the exemptions.

Another possible way of taxing the tax-exempt houses would be to impose a new tax, from which they are not exempt. This has been done in the Chilean patrimonial, or wealth, tax. Under this tax, DFL 2 housing is included in the tax base in which the 8% patrimonial tax is levied. Unfortunately, this is only a partial and temporary solution. The patrimonial tax is supposed to be in effect only through 1968 and the revenue it produces does not make up for that which is lost through the exemptions. Finally, no one is sure that this method of taxing DFL 2 housing is legal, since it has not yet been challenged.

The problem related to DFL 2 demonstrates some of the difficulties involved in attempting to establish incentives for the promotion of a given desirable activity. Chile was seeking low-cost housing in poor areas and has received high-cost housing in wealthy areas. How can a country define incentives properly, and how can it supervise their questions? What side effects may result from introducing incentives, and how can they be remedied if they appear?

(e) Taxation: Taxes Relating to Real Property

Taxes on real property are important to housing because of their effect on the cost of land, and on the attractiveness of land as an investment. Real property is a popular investment in Chile because its value adjusts automatically to inflation. Because it is a good investment, demand drives its price upwards. As a result, the acquisition of land for housing, whether by purchase or condemnation, becomes more expensive.
High taxes on real property would make land a less attractive investment and would force owners to put their property to more productive uses. Low taxes on real property merely add to the attractiveness of real property as an investment, and allow speculators to hold land out of use until demand rises to a point where they can reap large profits. The following material will discuss the effect on real property of (1) the income tax, (2) the inheritance tax, and, (3) the real property tax.

Law No. 15,021 of 1962 provides for a real property tax of 2% of assessed value on all real property and property attached to real property, thus including housing. To begin with, 2% is quite a low rate by comparison to most developed countries.

To make matters worse, the two percent rate is figured on assessed value which is below market value. To correct this valuation problem an assessment was carried out between 1962 and 1964. As a result, urban property assessments were raised to approximately market value. The increase over the former assessment was over 500%! This improvement was only temporary, however, because the assessments are now revised annually by the government's announced rise in the cost of living index. This figure is below the true magnitude of inflation, so that land assessments are once again falling behind the true market value.

As discussed previously, DFL 2 of 1959 exempted certain low-cost housing (viviendas económicas) from the real property tax for 10 to 20 years. This measure was designed to help solve the low-cost housing problem, but it may have the adverse effect of increasing land costs by decreasing tax burdens.

Income from real property is generally taxed at the rate of 20%. However, real property taxes which have been paid are credited against the 20% tax imposed on income from real estate. Consequently, the obligation to pay income tax on income from real property is usually eliminated.

Income from DFL 2 viviendas económicas is also exempt from taxation. Thus DFL 2 decreases the tax burden and increases the attractiveness of real property in one more way.

Inheritance taxes in Chile are so low that few estates are subject to any substantial tax. Nevertheless, the DFL 2 exemption of viviendas económicas has affected estate planning. A Harvard Tax Group study refers to "the tendency for persons of wealth to increase their holding in DFL 2 housing which passes to heirs free of tax."
The experience of DFL 2 would seem to affirm the hypothesis that lowering real property taxes will increase investment in the real property on which the taxes are lowered. More investment in low-cost housing is needed. If DFL 2 were in fact limited to true low-cost housing, rather than high-cost housing as previously explained, its measures would be fortified. With regard to high-cost housing and vacant land, the taxes should be raised to discourage investors and to lower prices in order to make land acquisition cheaper for middle and low income families.

Though it is not clear what effect the tax structure has on real property in all cases, it seems quite certain that the effect can be substantial. Therefore, planners would be well advised to proceed with particular caution whenever tampering with the tax structure.

In the foregoing material taxation has been discussed in terms of its effect on the real property market. Brief mention should be made of taxation as a revenue source to assist in financing the housing program.

Business income in Chile is subject to an additional tax in favor of the Housing Ministry for use in the low-cost housing program. The tax amounts to 5% of net income as calculated for income tax purposes. The taxpayer may either pay the tax directly into the treasury as is done with the regular income tax, or he may invest an equivalent amount directly in the construction of low-cost housing. Acceptable direct investments include: workers’ housing built or paid for by the taxpayer, deposits of money in savings and loan associations specializing in low-cost housing, loans granted by an enterprise to personnel for the construction or purchase of low-cost housing, and contributions made to companies engaged exclusively in low-cost construction.

Most businessmen have chosen one of the acceptable housing investments in preference to payment of the tax. A controversy has arisen over one of these tax alternatives: the contribution to companies engaged exclusively in low-cost housing construction.

The 5% tax was originally described as a “contribution” to low-cost housing rather than as a “tax”, probably to make it more acceptable to taxpayers. Because it was a contribution, alternatives to direct payment as a tax were permitted. One of these alternatives was contribution to a low-cost housing enterprise. As a result several very large low-cost housing companies, called “5% companies (Sociedades de 5%)” were formed. These companies have been successful and have constructed a substantial number of DFL 2 viviendas económicas. With the passage of time, however, it has become clear that the 5% tax is in fact a tax and not a contribution.
Those meeting the obligation by investing in 5% companies are making money on the return on their investment; that is, they are making money on the “tax” they are paying. There are many Chileans who feel that these 5% companies should be dissolved, or at least cut off from the 5% tax. This may be done eventually, but it will be difficult since millions of escudos have been invested in the companies relying on the 5% tax law, and because the companies are now a major segment of the low-cost housing construction industry.

The 5% housing tax has been an effective means of channeling more escudos into low-cost housing. However, it is unfortunate that more thought was not given to the way in which these funds should be used. Tax considerations seem to enter inevitably into a development program, and it is obvious that attention to tax policy offers substantial benefits to development planners.

(f) Land Acquisition; The Condemnation Power

The importance of land acquisition to the housing program is indisputable. To begin with, it is a truism that the government cannot provide housing without the land on which to build. The cost of land is an important factor in the housing program, and demands a substantial portion of the funds dedicated to housing. Location of land is another important factor: too often overlooked in the effort to minimize cost.

Housing planners must acquire land with an eye to its nearness to work places, the socio-economic makeup of the community being created, and the cost of providing community services for the land. Finally, land must be used economically, as defined by the national planning goals. Vacant land in the center of urban areas may be a wasteful land use which the government will wish to remedy by acquiring the property and building housing on it.

The government normally acquires land in one of two ways: by purchase or by condemnation. Government purchases do not differ significantly from private purchases and for that reason presents no particularly interesting legal problems insofar as this study is concerned. Therefore, the material which follows will be limited to a discussion of land acquisition by condemnation.

Acquisition of land by purchase is normally an adequate technique as long as the government is not determined to acquire a particular piece of land which the owner is not willing to sell. However, in the course of its efforts to place housing in strategic locations and to put vacant or
minimally-used land to better use, the government is likely to confront owners who are unwilling to sell. In these cases, and they should be plentiful in a dynamic and well-planned housing program, condemnation becomes an essential tool.

Until recently, condemnation has not been used extensively for land acquisition in the Chilean housing program, due in large part to the inadequacies of the law on condemnation. The three major obstacles have been (1) limited grounds on which condemnation could be based, (2) long and complicated procedures, and (3) high costs.

The law on condemnation finds its basis in Article 10, Section 10 of the Constitution. Law No. 16,615 was passed in 1967 to amend this provision in order to facilitate condemnation. Though the law was intended primarily to assist in the land reform program, it has considerable potential importance for housing as well. We shall look briefly to the changes wrought by this amendment in an effort to overcome the three obstacles to condemnation listed above.

The more liberal purposes for which property may be condemned are reflected in the change of language in Article 10, Section 10 of the Constitution. Article 10 begins, "The constitution guarantees to all inhabitants of the Republic," and then goes on to list a kind of Bill of Rights. Section 10 of the article, before the recent amendment read:

The inviolability of all property, without distinction. No one may be deprived of his property . . . unless by a judicial decision or by condemnation for reasons of public utility established by a statute.

The new section 10 reads:

The right of property in its varying aspects. No one may be deprived of his property except by virtue of a general or specific law which authorizes the condemnation in the interest of public utility or social interest, as established by the Legislature.

The earlier provision reflects a strict bias towards the rights of private property. The inviolability of property is still one of the key slogans of the conservative faction in Chile. But the recent amendment speaks of the "right of property in its varying aspects." This language, which we assume is purposely obscure, evidences an important trend in Chilean legal and political thinking towards a much more liberal attitude concerning property rights.
The present concept of property might be described as a belief in defining property in terms of its social function. The individual's property rights are protected, but not if they conflict with the interests of society at large.

Lawyers are aware of the danger involved in placing too much weight on fine semantic distinctions. However, these changes in language are of considerable importance in Chile. It must be remembered that in a Civil Law jurisdiction such as Chile, the language of the legal provision is accorded substantially more importance than in our system. Judicial interpretations of the provision are not as important as they are in the United States. In Chile, scholars will accord great significance to the words used, and government officials charged with executing condemnation matters will be influenced by the changes made.

There is already evidence of the influence of the more liberal approach found in the amendment. The statutes permitting the government bodies to condemn property for the housing program are being interpreted and applied broadly. Thus, the decree establishing the power of the Urban Improvement Corporation provides for condemnation in those cases which "the institution deems necessary for the creation of programs for housing, community facilities, and urban development in general . . ." The Urban Improvement Corporation is currently condemning property for each and all of these purposes, and in many cases is then turning it over to third parties, both public and private. Condemnation for such broad purposes was rare, if not unknown, before the constitutional amendment.

The procedure for condemnation is a major factor in its effectiveness. In keeping with the formal bias in favor of protecting private rights against public interference, prior condemnation procedures were long and complicated. Dilatory procedures were plentiful. The government had a difficult burden of proof against a large battery of defenses, and the land could not be taken until the entire proceeding was final.

The present Article 10, Section 10 of the Constitution provides only generally for the condemnation procedure. It states,

The law will determine the norms for providing indemnification, the proper court to hear claims as to the amount of indemnification. . . . the form by which this obligation is to be extinguished, and the means by which the condemning body will take possession of the condemned property.

Thus, the government was able to establish the condemnation
procedures. The law by which the procedure was subsequently established deserves special attention. To enact a new condemnation procedure by statute would have meant facing all the difficulties of going through the legislature; not the least of which would be opposition from parties of the Left and the Right. Rather than submit to this ordeal, the Administration devised a clever subterfuge. Rather than propose new legislation, the President issued a decree revising condemnation procedures in a 1935 statute. In this way the government was able to establish precisely the procedures it wanted with virtually no opposition.

The decree provides two methods of condemnation. By the first method, called "condemnation with agreement to value," the property owner and the government settle on an indemnification amount. The government takes possession of and title to the property, and the owner is paid 20% of the indemnification immediately with the remainder paid in two annual payments.

The second method, called "condemnation without agreement as to value," is the more important case of our purposes, and requires a more involved procedure. After the condemnation decree by the government, if the government and the owner cannot agree on the indemnification, the government designates three experts selected from a special list to set the value. When the value is determined, the government deposits 20% with the court and takes immediate title and possession of the property. The value determination can be appealed, but the condemnation is final. The remaining eighty percent of the indemnification, whether set by the experts or the court, is paid in five annual installments.

The major advantage of this condemnation scheme, from a procedural point of view, is that the government can take the condemned property immediately, rather than have to wait for a final determination as to the government's right to condemn, or the value of the indemnification, as was true with the former procedure.

The new provision also bestows substantial economic advantages on the government. Article 10, Section 10 before 1967 provided:

In such a case (condemnation), indemnification must be paid to the owner before the condemnation will be considered final.

As stated above, the present section 10 leaves the procedure to be established by a later law, which the President has done by decree. The present section 10 merely says:
The condemned owner will always have the right to indemnification; the amount and conditions of payment of which shall be determined justly, taking into consideration the interests of society and the condemned owner.

As explained above, the controlling decree on condemnation provides that the government now takes the property after having paid only 20% of the value, rather than the entire amount. The balance is paid in two years where there is agreement as to the value, and over five years where the value is contested. Six percent annual interest is paid on the unpaid balance; and 60% of the unpaid balance is increased by that year's percentage increase in wages and salaries, or consumer's prices, whichever is lower.

This method of payment is considerably cheaper for the government than the former payment procedure; and, therefore, makes possible increased exercise of the condemnation power. Because of the obligation to pay only 20% of the value in order to take the property, the government can condemn more property in a given year.

The other terms of payment—number of years, interest, and readjustment for wage or price increases—are extremely important in view of Chile's inflationary economy. Thus a condemned owner is prompted to come to agreement as to indemnification in order to be paid off in two rather than five years. Six percent interest on the unpaid balance is a benefit to the government and a burden to the owner in view of an inflation rate in the area of 20%. Finally, the government is bound to make an adjustment on only 60% of unpaid amount. To add insult to injury, these inflation figures are set by the government and fall short of the actual inflation.

There is one more advantage to condemnation which, now that condemnation is procedurally and economically feasible, contributes to its attractiveness. Purchase of land requires long and difficult searches to provide against the possibility of clouds on the title. Condemnation, on the other hand, results automatically in a free and clear title for the government. For this reason, the Chilean government is now using condemnation in some situations where purchase would be no more expensive.

Condemnations which before the 1967 amendment to the Constitution accounted for a small percentage of the land acquired in the Chilean housing program, now accounts for well over half of the land acquired.
As a result of the amendment, more land is acquired, more effectively and more economically.

(g) Financing

1. Provision of Credit for Homebuyers

The Chilean financial problem has already been discussed. It consists primarily of two factors. First, incomes are low and housing costs are high. Second, the Chilean economy is too inflationary to permit normal saving and lending practices. It follows that one of the major causes of the housing shortage in Chile is the lack of financing.

The government has adopted a number of measures to attempt to overcome the housing finance problem. It has bolstered the private sector by establishing and supporting a private savings and loan system; and by providing tax incentives to builders and owners of DFL 2 low-cost housing.

The public sector has contributed to the solution of the housing finance problem through the social security organizations, by way of grants and loans, through public works, and by administering and supporting a public savings and loan system. Efforts to improve this latter program, the public savings and loan system, will be discussed in the following material.

Until recently, the government savings and loan system has been hopelessly confused and economically unsatisfactory. Over twelve different savings plans were available, at least in theory. Terms, interest rates, and down payments varied arbitrarily. Though savings was to be a major condition for obtaining a loan, the granting of the loans was not in fact closely related to an aspirant's savings record. Loans did not constitute an effective response to the demand for housing. Finally, the loans were not adequately tailored to meet the costs of the borrowers.

To remedy these and other weaknesses in the public savings and loan system, the government has ordered a re-structuring of the program. This new system is set out in Decree 553 of September 26, 1967, and is known as the Popular Savings Plan. (Plan de Ahorro Popular).

The Popular Savings Plan offers five different savings plans leading to loans for the purchase of five different kinds of housing assistance. Plan No. 1 consists of two stages—the first stage being an undeveloped lot, and the second stage being development of that lot. Plan No. 2
allows direct purchase of a developed lot without the need to pass through a first stage as in Plan I. The third plan provides a loan to purchase a "basic unit" which is a house twenty meters square with bathroom and kitchen. Plan 4 calls for a "family unit"; a forty square meter house. Finally, Plan 5 makes available a "remodeled"; a forty square meter apartment near the center of the city.

The plans are listed in order of the magnitude of the savings required and the loan obtained under each plan. An applicant signs up for the plan he wishes to pursue by inscribing his name in the Applicant's Register of the particular plan. Each plan has a list of savings requirement which must be met to receive a loan.

Let us assume that a worker in Santiago wishes to obtain a loan to purchase a "family unit". In order to inscribe in the Register for the plan, Plan 4, he must deposit the required "initial savings" of 142 savings quotas. He must then continue to deposit 12 savings quotas each month (12 quotas being the "monthly quota") for the next 24 months (24 months being the "term of the plan"). At this rate, he will at the end of twenty-four months arrive at the "necessary savings" of 430 quotas, with which he is entitled to receive his loan. The loan for Plan 4 in Santiago is 2,400 savings quotas. The borrower has fifteen years in which to pay off the loan, at a rate of 15.7 savings quotas per month. Each plan is designed with requirements of this nature, differing only in terms of the amounts involved, depending on the plan concerned and the area of the country in which the loan is sought.

The savings and the loans are subject to monetary correction. As the prospective borrower is accumulating savings, the savings he is credited with are increased periodically by the amount of inflation during that period. Thus, if a man has savings of 100 and there is an inflation of 5, he will be credited with savings of 105. The same correction is made on debts, so that a man owing 100 when there is an inflation of 5 is held to owe 105. In this way the savings and the loans are supposed to maintain a constant value. The extent to which this does or does not work is a subject which must be left to an economist.

Accumulating the "necessary savings" does not guarantee immediate receipt of a loan. The Popular Savings Plan provides that an aspirant may apply his loan to the construction or purchase of any qualified housing, whether it is part of a public or a private project. Therefore, if one wishes to take his loan out onto the private market, he may.
In fact, this is done very rarely because the housing available on the private market will be considerably more expensive for an equivalent size and quality. Instead, the borrower places his name on an Application List to wait for the opportunity to apply his loan to the purchase of a house in a publicly initiated project. His name is placed on this list according to a point system, and housing is made available to those with the most points, as explained in the next section. The waiting period may extend into years depending on the Plan and the zone involved.

The prospective borrower may withdraw from the program at any time before receiving his loan, and may always withdraw any savings in excess of the “initial savings,” “monthly quotas,” and “necessary savings.” Once the loan is granted, he must maintain the “necessary savings,” and the debt is guaranteed by a first mortgage on the property he acquires with the loan.

The Popular Savings Plan went into effect in March of 1968, and it is difficult to evaluate it at the time of the writing. Nevertheless, it is possible to venture a few comments and criticisms regarding this attempt to improve the public savings and loan system. Four purposes along with their respective attendant problems will be discussed. They are: (1) reform of the administrative structure to include fewer savings plans, (2) improved coordination between private and public savings, (3) better response by the savings and loan program to housing demands, and (4) assurance that loans coincide with housing costs.

In order to reduce the confusion of the former savings and loan program, the Popular Savings Plan decreases the number and variety of plans to five. The idea is to channel all housing efforts through a limited number of clearly defined programs, each one tailored to meet the needs and capacities of a particular group. Another advantage is that the new scheme is supposed to set the public savings and loan system off from all other housing programs in a more definite way. Finally, it allows the Housing Ministry to exercise more careful control over the planning and execution of its housing activities.

A major difficulty of this new system is that however neat and logical it may be on paper, it is not consistent with the actual state of affairs of Chile's housing situation. The government cannot provide a few set packages of solutions if the problems are not equally as neatly divided. The solutions must fit the problems, and the problems are infinitely diverse and complex. A poor man who needs a roof will
not be helped by Plan 1 which provides an undeveloped lot; and yet he cannot afford the new house offered by Plans 3, 4, or 5. As previously discussed, housing needs must be viewed as a continuum of housing services. The government program should provide alternatives along the length and breadth of this continuum.

The present 5-plan system also fails to take into account the requirements of unfinished work left over from prior programs. These left-overs demands account for a large part of the housing program and must be provided for. The result is that the closed system of the Popular Savings Plan was opened to outside forces before it began. Efforts to secure better administration control of the housing program are laudable, but the effort must be made against a program allowing for a plurality of housing programs.

Another purpose of the Popular Savings Plan is to relate public investment to private savings. By tying the granting of loans to a borrower’s savings record, public savings are used to stimulate private savings. In this way the system has a multiplier effect on the funds available for housing, since the borrower must save an amount equal to approximately 15% of his loan in order to be able to unite his savings with public funds. The government is in effect saying to the prospective buyer that if he will demonstrate his willingness to contribute to the financing of his housing, the government will join with him to make that financing possible.

The success of this approach depends in large part on maintaining a proper balance between private and public effort. It is extremely difficult to know what amount of private effort can be and should be required to merit public support. Assuming that this balance can be struck satisfactorily, the system appears to have considerable merit.

A problem with this method, however, is the very fundamental question as to whether and to what extent assistance should be based on willingness and ability to save. Willingness is certainly the more acceptable criteria, though it may penalize the family of a negligent head of the household. Ability to save, on the other hand, may very well have no relation to the needs of a particular family. Since the present Chilean system is emphasizing ability to save, it may in effect be saying that the less one has, the less he will receive.

The means by which the Popular Savings Plan attempts to assure that loans are granted on the basis of savings records will be discussed in the next section which deals with the point system according to which loans are distributed.
A third purpose of the Popular Saving Plan is to measure housing demand in order to insure that the government program is providing assistance where it is most wanted and needed. The way this is supposed to work is extremely simple: if a certain number of families sign up for one Plan, then the demand for the assistance provided by that Plan must be equal to the number of families applying, and the government will assist exactly that number of people rather than waste its efforts where they are not “in demand.”

Though this method may look ingenious at first glance, it does not take a great deal of scrutiny to see that the “demand” which is measured and met is a kind of self-fulfilling prophecy. We offer five programs and by helping the applicants for these programs, we satisfy the housing demand. Obviously this does not allow for the infinite kinds of demands which cannot be met by the five plans. And it does not allow for the families which choose one of the five plans but would seek other assistance if it were available. Finally, it makes the rash assumption that demand is reflected in the ability of families to save.

Even with the five current plans there is considerable doubt as to their appropriateness to meet the demands of the various sub-markets they attempt to cover. Eighty-two percent of all applicants are inscribed in Plans 1 and 4. The response to Plan 3 has been so frigid that it will probably be dropped altogether. We return to our previous conclusion that housing programs must be sufficiently varied and flexible to deal with all facets of the housing problem.

A final purpose of the Popular Savings Plan is the provision of loans which will be sufficient to meet the costs of the type of housing for which they are intended. Each savings plan is designed to provide a particular kind of housing assistance, not just a certain size of housing loan. Thus, completion of Plan 2 leads to a developed housing site and Plan 4 provides a “family unit.”

In the private savings and loan system, a particular loan may be intended to permit purchase of a stated type of housing, but if the loan falls short the borrower has to make up the difference. In the public savings and loan system, the government promises that the loan will permit recognition of the assistance it is designed to attain. The loans were originally planned so as to be adequate to their stated purposes. However, costs have risen and the loans are not always sufficient. When this happens, the government is having to make up the difference.

This problem must be solved for the system to be economically
viable. Housing costs might be held constant by fixing prices. There is a
good deal of price setting in Chile, but it is not a happy choice to make.
Another solution would be to raise the requirements for the various plans
so that the loans would meet the higher costs. Finally, the government
might follow the private savings and loans system, and not guarantee that
the loans will be sufficient to acquire a stated objective.

The government savings and loan system is an appealing alternative
to costly give-away programs. Additional efforts must be made to admin-
ister it in a way that responds to the demands of the low-income sectors
while distributing the financial burden as effectively as possible.

2. Distribution of Financial Assistance

Assistance should be distributed so as to reward desirable activity
yet attend to those most in need, and not frustrate reasonable expectations.
The Chilean housing program, having devised the Popular Savings Plan
to attract savings and grant loans, must develop an effective method of
determining the order in which loans will be provided.

Those who have accumulated enough savings to be eligible for a
loan from the Popular Savings Plan are placed on a list of loan applicants
in an order determined by the number of points they have. Points are
assigned according to the quantity of the applicant's savings, his being a
member of a community organization, his family size, and other factors.
As building sites or housing become available, loans are distributed to
those highest on the list. This section will discuss the point system.

The difficulty in designing such a point system is establishing a clear
and just priority, which at the same time tends to further the purposes of
the programs. This is done principally by assigning the most points to
those factors which are considered most important. Thus, if the aspirants
need is to be emphasized, a large number of points are assigned for each
family member. But if effort is to be rewarded, more points will be given
for a good savings record.

Before the Popular Savings Plan, the government savings and loan
system was plagued by long and unmanageable waiting lists, arbitrary
standards, and inefficient recognition of the savings effort made by some
aspirants. There were situations in which the lists were disregarded and
applicants were passed over while others received loans; and there were
long waiting periods for many prospective borrowers. These problems
and the ways the Popular Savings Plan attempts to meet them, will be
discussed in the following material.
Long and unmanageable waiting were both a result of the sign-up requirements. A housing aspirant needed only one savings quota to have his name on the list. In the Popular Savings Plan, twenty quotas are required to be admitted even to the first stage of Plan 1. In this way the lists are limited to those who are willing and able to make a serious savings effort.

Arbitrary standards for the granting of loans were a result of the haphazard way in which over twelve different savings plans were operating side-by-side. This confusion has been eliminated by the establishment of five clearly defined plans in which the assignment of points is carefully set out.

The accumulation of savings was often overlooked under the former system, because high points were assigned for marital status and size of family. Under the former system a man received twenty points for being married, ten points for each member of his family, and only five points for every fifty savings quotas saved toward receiving a housing loan. Through the Popular Savings Plan a man receives 1000 points for accumulating the "necessary savings," 10% more for being a member of a community housing organization, 15% more for being a member of a housing cooperative, 20% more for joining a self-help housing project, and only 3% more for each family member in excess of four. The change in emphasis is remarkable. Whereas the system used to focus on need as a criterion for assistance, it now uses the point system as an incentive to savings and community action.

Another problem under the former system was the occasional passing over of applicants on the lists in favor of families involved in other programs. One cause of this phenomenon was the slum eradication program which relocated slum dwellers in new housing regardless of their savings records. Other exceptions to the lists were made on occasion when members of social security organizations, whose housing is normally handled separately, would be given new housing which might have gone to applicants on the lists. In both of these situations, the expectations of the loan applicants are frustrated, and the public trust in the savings and loan system is jeopardized. Unfortunately, these two exceptions to the integrity of the list, the eradication program and the social security programs, have not been solved by the Popular Savings Plan as of yet.

Long waiting periods for prospective borrowers have been a continuing headache. The problem is particularly acute for the man who gets on the list but cannot move up because of his inability to accumulate more points through savings or other means. The former system assigned two
additional points for each year an applicant was on the list. Though this
was not adequate, it was better than the current system which gives no
recognition to the age of an application. There should be some relief or
courage for the man who has acquired his savings and has been
waiting for months or years for a loan.

The point system of the public savings and loan system has been
improved considerably. The Popular Savings Plan has established a system
with greater clarity which is more adequately suited to the declared
purposes of the program. However, two particular criticisms must be made.

One criticism is that the present point system makes almost no
allowance for the need of the applicant. A housing program cannot be
run this way; and, in fact, the Chilean system does give consideration to
need. The way it does is by making exceptions in the point system or in
the case of slum eradication where the families are given housing regard-
less of savings. This gives rise to the second criticism: the public cannot
be convinced of the certainty and justice of a point system if exceptions
are made. If allowances must be made for factors other than savings and
community action, and such allowance is unavoidable, then these other
factors should be incorporated into the point system to preserve the
integrity of the system.

3. Mortgage Loan Servicing

The Popular Savings Plan depends for its success on a revolving fund:
a loan is granted, the borrower pays back the loan, and the money he
pays back is used to make another loan. Therefore, the recuperation of
capital by way of collecting mortgage debts is essential to the system.
Conversely, a heavy default rate can bankrupt the Plan. There is at present
a serious problem of uncollected debts in the government savings and loan
system. Causes of this problem, and some possible means of solving it, will
be discussed in the following material.

It has been estimated that approximately 80% of the 150,000 borrow-
ers are behind on at least one payment; the average is ten payments
behind. The revenue which is due and outstanding amounts to approxi-
mately 60 million escudos.

The effect of these defaults is serious. Not only will the Plan gradually
go bankrupt, but also while the Plan continues thousands of applicants
are being denied housing because their neighbors do not pay their debts.
Another consequence is that for those who have received their loans, the
program has become a give-away program rather than a sound financial arrangement.

Unlike the public savings and loan system, the private savings and loan system has been able to maintain a very low default rate. This suggests that savings and loans systems are viable in Chile and that there is room for improvement in the public program. The following weaknesses in the system will be discussed briefly: (1) the administration of debt servicing is highly inefficient, (2) a tradition of non-payment must be overcome, (3) debt collection is often subordinated to wooing voters, and (4) legal sanctions for non-payment are often inadequate when employed.

Administrative procedures are sorely inadequate for the servicing of 150,000 mortgage debts. Possibly the most extreme case is that of a community of 15,000 people who have yet to be billed after six years in their new homes. The irony of this situation is that the people want to pay, but the government has yet to figure out what they owe. Until they pay they will not have clear title to their houses, they will not be able to get loans to improve their houses, and they will not be able to get rid of certain "unsavory" elements who have moved into their community.

Even when the government knows what a borrower owes, there is no bill sent out to tell him what his debt is and when it is due. The borrower is expected to come to the regional office on his own cognizance and cancel his debt. At the office he joins a long line of borrowers who wait while the clerk sorts manually through a veritable mountain of bills and receipts, all of which are made out separately by adding machine, one-finger typing, and long-hand.

The long run solution to these administrative problems probably lies in more streamlined methods. A computer was used recently as an experiment in one district of Santiago. On the first attempt, it raised debt collecting by 40 to 50%.

The short run solution of this administrative morass must depend on clearing up the huge backlog of debts in order to bring matters up to date. It is probably unrealistic to expect borrowers who have been allowed to fall ten payments behind to pay up. If they can only afford thirty escudos per month, what are the chances they will be able to pay three hundred escudos in back debts? The collecting agencies are now being encouraged to accept whatever payment they can get from a borrower. Rather than hound a borrower for an extra ten escudos, they are given discretion to decide that the debtor has paid as much as can be expected,
and they cancel his debt. Another technique is to waive whatever penalties are owed for being in default. Finally, some collectors have executed new payment contracts with the debtor on the spot. These contracts have no legal validity, but are often persuasive to the debtors.

Another problem of debt collection is the difficulty of overcoming the tradition of non-payment; or the lack of a tradition of payment. Many of the recipients of government housing assistance are recent arrivals from rural areas where they were under the protective (though sometimes harsh) wing of the patron who provided them with the services they now seek from government. These services are expected as a matter of right and not as something for which they should be charged. There is some basis for this feeling towards the Chilean government, since in many cases the working people have received assistance free of charge. Numerous earthquakes have required the government to supply free housing to the disaster victims. This aid is said to come through the government housing agency, CORVI. The saying, "Casa Corvi-casa gratis" grew up, and it persists today. The non-payment tradition is fed by the fact that defaulting purchases are not evicted under today's programs, as will be discussed below.

The government's interest in collecting debts is often dulled by its desire to attract working class voters. This is often due to the fact that debt collection is supervised by a political apprentice who draws his power from his ability to marshall votes in his district, and not from his ability to collect debts. A more glaring case of politics-before-economics is the occasional decree that all the debtors in a particular area will be exempt from the national readjustment raising debts in accordance with that year's inflation. This is done not infrequently as a political favor and amounts to a give-away of the difference between what would be owed with the readjustment and without it. Politics also enters the mortgage loan servicing province when political figures refuse to enforce judicial eviction orders, as will be discussed next.

One can hardly ask the government to forget politics and concentrate on financial responsibility. Nevertheless, it must be hoped that the government will become fully aware of the fact that it is destroying its own housing program by always opting for short-run voter satisfaction. If the government wishes to subsidize housing, then it should create a well-planned system of subsidies. But it should not distribute haphazardly de facto subsidies by mismanaging a system which is economically viable in theory.

Legal sanctions for default have not been used extensively, and have
often been ineffective where attempted. The case against a defaulting purchaser is not difficult to make. A debtor is allowed to fall three payments in arrears. After three defaults an action should be commenced against him. The government need only go to court and prove the default to obtain an eviction order.

In practice the government has not brought many of these suits, as demonstrated by the fact that the average defaulting debtor is ten payments in arrears. Defaulting purchases are so numerous that the government does not have enough personnel to bring all of the actions. Also, as mentioned above, there is considerable reluctance to sue, for political reasons.

Nevertheless, a number of actions are brought. In these cases the government has secured an eviction order with little difficulty. At this point the remedies break down once more. The court does not have the "poder público," the power to enforce its own judgments. It issues a judgment which the successful party must take to the local political official to be enforced. The political official is an appointee who got where he is by being able to deliver votes to his party in his area. If he evicts a working class family from its home on Tuesday, half the major papers will run a damning expose of his cruel and heartless act on Wednesday. The political official decides that a few mortgage installments are not worth risking his party's (and his) political necks. Multiply this scenario hundreds of times, and you have a savings and loan system that cannot enforce collection of its loans.

There is no chance that the current defaulting purchasers can be forced to pay. The government could not bring 120,000 suits even if it wanted to. The brightest hope for improving the recuperation of capital by collecting debts lies in improvement of the collection procedure in order to avoid the need to employ sanctions. In future cases of default, it is hoped that the government will sort out the most extreme cases for legal action. It is unlikely that public opinion would line up behind, for example, the man who has moved out of his home in order to collect rents on it, but is not paying off his loan. Then it must be hoped that the responsible political officials would enforce the eviction order.

The Popular Savings Plan is not a perfect system, as discussed in previous sections. Nevertheless it does hold out hope for a considerable contribution to the solution of Chile's housing problems. It will be unfortunate if this program fails, not because it was ill-conceived, but because it was improperly executed.
SOME CONCLUSIONS ABOUT THE ROLE OF LAW TO DEVELOPMENT

The Legal Process as a Development Environment

The immersion of the development process in the legal process is unavoidable. Development plans and programs must inevitably confront, change, work with, and create law.

The very powers and responsibilities of the government for development are found in law: the Constitution. When the government began to move cautiously into the housing field, one of its first acts was to pass laws to regulate housing construction; the forerunners of the current Construction and Urbanization Law.

As shown in the section on the legal history of the housing program, the government efforts in housing have produced a growing list of laws and legal institutions. When the government began to take a direct role in housing, organizations had to be created. Laws were passed to create those housing institutions, and further laws were passed to regulate their activities.

Many of the problems encountered in the housing effort had their roots in, or were aggravated by, the law. Examples have been seen in the laws passed to regulate construction, the rights of landlords and tenants, and methods of land transfer.

New approaches to the housing problem which have been attempted over the years have found their expression as laws. Savings and loan associations were created, community participation through cooperatives and self-help housing schemes were promoted, and a housing tax was imposed on businesses. These innovations have their basis in economic, political, and social considerations, but to be effective they must be translated into law, and fitted into the overall legal structure. The success with which these policy decisions were transformed into actual programs has been critical to the success of the housing program.

It should be evident from the above that any development program, such as housing, is inextricably intertwined with the legal process. The legal process is an environment within which the development process operates.

Legal Causes of Development Problems

Since most development programs are concerned with economic development, it is natural that most development problems have economic
causes. Many other development problems find their causes in the social and political systems. The legal process is inevitably involved in these problems, but usually could not be listed as one of their causes. There are situations, however, in which the legal process may be, if not the major cause, at least one of the causes of a given development problem.

As previously discussed in connection with the substantive law of urban land tenure, the strict requirements for recording land titles and the unrealistic demands of the Construction and Urbanization Law led to a situation adversely affecting thousands of low-cost housing aspirants. If provision had been made for these people in the law, the problem need not have arisen. Proof of this fact is seen in the passage of the law of Loteos Brujos which is remedying the situation.

The Renting Law has created distortions in the housing market which have worsened the short supply of housing units as already discussed. Because landlords are restricted in the rent they may charge, investors have shied away from building rental housing. Recent housing laws have attempted to remedy this situation by exempting qualified housing from the Renting Law. This re-creates the problems which led to passage of the Renting Law in the first place. Therefore, study is under way to draft a law which will satisfy both landlords and tenants.

The low tax on real property, made even lower by the under-assessments on which it is based, has driven property prices upward by making real property an attractive investment, and has kept property off the market by allowing speculators to hold it without heavy tax consequences. A higher real property tax should lower land values, put more property in circulation, and provide proceeds from a resource where much of Chilean wealth is hidden.

The Legal Process as an Impediment to Development Efforts

Though not a cause of development problems, as suggested in the last section, the legal process may be an impediment to development efforts insofar as there may be defects in the legal process: that is, ways in which the legal process does not perform its functions effectively. If the legal process is important to the development process, then defects in the legal process may impede development efforts. For the sake of simplicity, I will discuss the defects in the legal process in terms of defects of form, substance, procedure, and enforcement.

The notion of defects of form is meant to suggest the problem of poorly written laws which by reason of their content or organization cannot
be worked with effectively. The Construction and Urbanization Law presents an excellent example. Many of the sections on building regulations have baffled architects and enforcement agencies to such an extent that they have chosen to disregard the law. As for its organization, the “law” is in fact a collection of laws constantly modifying and adding to the original laws. To find the applicable law at any given moment is extremely difficult. The Housing Ministry attempted to solve this problem by publishing the laws on construction and urbanization in one volume. Within a few months the Ministry itself sponsored legislation which made its compendium obsolete.

Substantive defects which impede development are readily apparent. Perhaps the best example in the Chilean housing effort is a defect which has now been cured: the constitutional provision on expropriation. Before the Constitution was amended, the government was without an important tool for acquisition of land for housing construction. The lack of an effective expropriation power could not be called a cause of the housing problem, but its unavailability was a serious impediment to the housing program. Through the recent amendment, the government should be able to acquire more and better land for less money, thus making the housing effort more effective.

Procedural defects are found in those parts of the law which set out the methods by which legal rights and duties are protected and performed. These procedures may be concerned with legal actions in the courts of law, or with the red tape required to perform legal transactions. One of the major procedural difficulties facing the housing program is the inability of the Housing Ministry to enforce its right to collect mortgage payments. Though the courts will order eviction of a defaulting purchaser, the responsible political functionary will not enforce the order for fear of incurring the wrath of working class voters. If the power to enforce judgments were entrusted to the courts themselves, rather than to the elected officials, this problem would not arise. A second important procedural defect is the red tape for which all bureaucracies are infamous. Suffice it to say that the number of stamps, notarial signatures, and carbon copies necessary for a simple transaction is staggering.

The failure to enforce the law can be a serious defect in the legal process. The legal obligation of mortgage debtors to pay for their houses is not being enforced in many instances. One result of this will be an additional financial burden on the housing program, with the result that fewer houses will be built in the future. The Construction and Urbanization Law was not enforced by municipal officials who felt that the law was
unrealistic. The result was the *Loteos Brujo* which left thousands of people in serious trouble and saddled the municipalities with responsibilities for large inadequately developed housing projects.

Finally, mention should be made of the interrelationship of defects. For law to work, it must be correct in form, well-conceived in substance, provide effective procedures, and be enforced. A defect in any one of these areas will be reflected in the law as a whole.

*Law as the Implementation of Development Programs*

Development programs result from a long process of defining the problem, gathering data, designing methods to be used, and setting goals. Consideration is given to the political, economic, and social ramifications of the problem and its solution. After this process has been completed and a proposed program has been outlined, the program must be implemented. One of the major steps in implementing a development program is putting it into law—both drafting the legislation and executing it.

The Frei government decided that administrative reform of the housing program was needed. Out of an infinite variety of possible reforms came the system already described, with the Housing Ministry working as a coordinator of a set of autonomous organizations. The structure of this system was set out in Law No. 16,391 and has since been elaborated on and modified by further laws and decrees. The successes and failures of this administrative structure are due in part to the manner in which it was drawn up and translated into law. If the regulations setting up CORMU and CORVI were more tightly written so that the two organizations were not given overlapping powers, there might be less conflict and duplication in their work. If the Office of Planning and Budgeting of the Housing Ministry were assigned more authority over the executing institutions, there might be better coordination in the area of planning.

In 1960 housing authorities were looking for a way to encourage savings for housing and to make mortgage loans available—a good trick in a country plagued with chronic inflation. DFL 205 of 1960 set up the savings and loan system as an attempt to answer this need. Savings and mortgage payments would be readjusted annually to allow for inflation, and savings and loan operations would be regulated and insured by a government agency. When difficulties have arisen in the system in the past years, new laws have been passed to cure the defects. Today the savings and loan system is a major source of housing financing, and proof that innovation within the institutional framework can have important
consequences for development. Savings and loans may be called an economic rather than a legal device. Whatever their nature, the success of the Chilean savings and loan system is due in large part to the ability of those who drafted the implementing legislation.

Lawyers are found throughout the housing institutions involved in the drafting and execution of housing laws. One of the major offices of the Housing Ministry is the Office of Legal Affairs, and each autonomous institution has a legal staff as one of its major components. Besides the legal staffs, there are many more people with legal training who are working in planning and administrative positions. The constant need to work with law, in housing or any other development program, makes these individuals valuable to the implementation of the programs they are engaged in.

Reform in the Legal Process as a Developmental Technique

A good deal has been written recently about law reform. For the most part, “law reform” has meant the drafting of new substantive laws and codes of procedure. Developing countries might well consider giving increased attention to this kind of reform and more — reform of the entire legal process. Efforts should be made to modernize the legal process in order to make it a more effective agent in the development process.

Reform is the conscious correction of defects. Where a defect in the legal process is working contrary to the development effort, reform of the legal process becomes a development technique. To plug modern development programs into an inadequate legal process is fruitless.

Where is reform needed? Throughout the entire legal process: in law making and the judiciary, in substantive and procedural law, in law enforcement, in legal education, and in the legal profession. Who is responsible for the reform? Everyone who works in the legal process: lawyers, judges, lawmakers, enforcement agents, and scholars.

The methods of reform are many and varied. Reform may come through statutes, decrees, or regulations. In a more gradual fashion, it may come about by reinterpretation of old laws. Important reform of institutions may be accomplished by restructuring their apparatus or restating their goals. Scholarly research may point the way toward reform. And the force of public opinion may provoke reforms in the old order, or demand reforms that will bring the law in line with former customs.

The criteria for reform are difficult to state because they are essen-
tially the same as the criteria for development as a whole. Indeed, reform and development are to a great extent synonymous. When we call for reform in the legal process, we are really calling for development in the legal process which will parallel and enhance development in the entire social system.