

## Journal of Civil Law Studies

---

Volume 8

Number 1 *Les unions (il)légalement reconnues:  
approches internationales*

*(Il)legally Recognized Unions: International  
Approaches*

*La Roche-sur-Yon (France), December 6, 2013*

---

Article 16

10-5-2015

# Chile : Recent Evolution of the Civil Law in Chile: The Rise of Doctrine

Carlos Felipe Amunátegui Perelló

Follow this and additional works at: <http://digitalcommons.law.lsu.edu/jcls>



Part of the [Civil Law Commons](#)

---

### Repository Citation

Carlos Felipe Amunátegui Perelló, *Chile : Recent Evolution of the Civil Law in Chile: The Rise of Doctrine*, 8 J. Civ. L. Stud. (2015)

Available at: <http://digitalcommons.law.lsu.edu/jcls/vol8/iss1/16>

This Civil Law in the World is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Journal of Civil Law Studies by an authorized editor of LSU Law Digital Commons. For more information, please contact [kayla.reed@law.lsu.edu](mailto:kayla.reed@law.lsu.edu).

# RECENT EVOLUTION OF THE CIVIL LAW IN CHILE: THE RISE OF DOCTRINE

Carlos Felipe Amunátegui Perelló\*

I. Introduction .....	283
II. Jurists and Legal Education in Colonial Chile.....	286
III. Bello's University.....	291
IV. A Lost Chance?.....	300
V. Rebirth.....	305

## I. INTRODUCTION

The latest developments in private law in Chile do not come from anything as exciting as a legal reform of the Civil Code<sup>1</sup> or from the enactment of any miscellaneous legislation. On the contrary, Private law seems to have kept its same legal framework, while the political powers have refrained from introducing radical innovations. This would appear as a rather uninteresting atmosphere for a comparatist, but this is not really the case. Under this quiet appearance, legal developments have been emerging at a faster pace than at any previous point in Chile's History,<sup>2</sup> and

---

\* Professor of Roman Law, Pontificia Universidad Católica de Chile. This article is part of Fondecyt Project 1141231 and of Anillos de Investigación Asociativa SOC1111.

1. The last amendment of the Civil Code was a fairly anodyne modification of the rules concerning presumptive death (L.20577 of February 2012). Before that, there was the massive reform of filiation, which was done in 1998 (L. 19.585), but being so old, it should not concern us, for it's not what one would call a recent development.

2. Just to quote some recent developments, Immissions theory has appeared in Chilean Private law as a way to deal with environmental issues (*see* CARLOS FILIPE AMUNÁTEGUI PERELLÓ, *DERECHO CIVIL Y MEDIO AMBIENTE* (Thomson Reuters 2014)); economic analysis of law has entered the reasoning of judges in the distribution of the risks (*see* Cristián Aedo Barrena, *El concepto normativo de la culpa como criterio de distribución de riesgos. Un análisis*

some developments that were intended to be introduced by legislation, have been implemented by the Chilean Supreme Court for strictly dogmatic considerations before any reform was enacted.<sup>3</sup>

This is rather surprising for a country that has always been proud of its strictly positivistic tradition.<sup>4</sup> Just twenty-two years ago, in 1992, when I happened to begin my legal studies, the President of the Supreme Court declared in his inaugural speech: “The law is determined by the political powers—the Legislative power and the Executive Power—and it is for them to declare what is just and what is not. The judge may not discuss nor doubt the fairness of the Law.”<sup>5</sup>

---

*jurisprudencial*, 41:2 REVISTA CHILENA DE DERECHO 705-28 (2014), and liability for moral damages has appeared in contractual obligations (see Romy Grace Rutherford Parentti, *La reparación del daño moral derivado del incumplimiento contractual. Tendencia en la reciente jurisprudencia nacional y Española*, 40:2 REVISTA CHILENA DE DERECHO 669-89 (2013)), while the Supreme Court (not without hesitation) finally opted for the French doctrine of precontractual liability and regulated it among tort law (see Lilian C. San Martín Neira, *Responsabilidad precontractual por ruptura injustificada de negociaciones*, 40:1 REVISTA CHILENA DE DERECHO 317-24 (2013)).

3. A very controversial case was recently decided by the Supreme Court regarding the prohibition of hiring strike-breakers. This issue was on the legislative agenda, but it was still not enacted. The Supreme Court decided on the 4th of December 2014 that the interpretation of the statute allowing an employer to hire such personnel (art. 381 of the Labour Code) did not fulfil Chile’s international obligations according to the ILO Conventions Nos. 87 and 98, and that the Labour Code should be interpreted harmoniously with Chile’s international responsibility.

4. See Jorge Baraona González, *La cultura jurídica chilena: apuntes históricos, tendencias y desafíos*, 35 REVISTA DE DERECHO (VALPARAÍSO) 427-48 (2010); Felipe González Morales, *Cultura Judicial y Enseñanza del Derecho en Chile: Una aproximación* 14:5 COLECCIÓN DE INFORMES DE INVESTIGACIÓN 6 (2003); and Bernadino Bravo Lira, *Estudios de Derecho y Cultura de abogados en Chile 1758-1998: tras la huella ius commune, codificación y descodificación en el nuevo mundo*, 20 REVISTA DE ESTUDIOS HISTÓRICO-JURÍDICOS 85-106 (1998).

5. “. . . [L]a ley la dicta el poder político—Poder Legislativo y Poder Ejecutivo—y ellos dicen lo que es justo, sin que sea permitido al juez discutir o dudar de la justicia que la ley encierra” (Diario Oficial de Chile, 15th of March, 1992). The speech was given by the President of the Supreme Court on the 1st of March, 1992. See comments in: Bravo Lira, *supra* note 4 and Barahona González, *supra* note 4.

This statement, which seems to be taken straight out of the nightmares of the *École de l'Exégèse*, was actually the very state of art in legal science in the post-dictatorial Chilean atmosphere. Twenty years ago, civil law was a rather sleepy subject. Most of the reference works were decades old –mainly from the early 30's and '40s- while the law courts were accustomed to applying a rather simplistic reasoning inherited ultimately from long-gone Pandectism. Comparative approaches were rare and historic perspectives were simply out of reach. Nevertheless, this unpromising panorama has radically changed during the last two decades in a completely unpredicted fashion. Nowadays, private law has become one of the most vibrant areas in Chile. This is due to the emergence of a new element in Chilean legal tradition, academic research.

Although the role of the jurist in Civil law traditions can never be overstated,<sup>6</sup> one of the main problems of Chilean private law was the lack of legal research. Generally speaking, there was little research done in universities, for legal scholars were usually lawyers recruited from the bar who had little academic training. Publications were usually handbooks, small in scope, which intended to simplify earlier (European) works and make them accessible to students.

To put some numbers on it, we would like to recall an interesting work published by Joel Gonzalez in 2005.<sup>7</sup> It was an index of all private law literature published from Chilean independence (1810) through the day of its publication. It included some twelve hundred works. Its second edition is now almost complete, and the number of entries in the book has more than doubled. That is to say, in the last ten years more legal literature

---

6. On the matter, Peter Stein's opinion remains a classic, which puts the jurist at the core of the difference between Civil law and Common law. See Peter Stein, *Judge and Jurist in the Civil Law: A Historical Interpretation*, 46:2 LA. L. Rev. 241-57 (1985).

7. JOEL GONZÁLEZ CASTILLO, *ÍNDICE CHILENO DE DERECHO PRIVADO. 1.200 ARTÍCULOS DE DERECHO CIVIL Y DERECHO COMERCIAL* (Jurídica 2005).

has being produced than in the preceding two hundred years. These numbers are eloquent: legal research is rising at a fairly fast pace. This is the result of very recent developments in legal education, which this report intends to summarize. To do so, we will take an historical perspective by examining legal education and legal scholarship in Colonial Chile; the nineteenth and twentieth centuries; and finally the current developments.

## II. JURISTS AND LEGAL EDUCATION IN COLONIAL CHILE

The role of jurists in the Spanish colonies begins in a rather bizarre way. At the beginning of the conquest, lawyers were forbidden to cross the ocean and enter the Spanish possessions in America.<sup>8</sup> In 1509, a royal order (*Real Cédula*) was enacted by Charles V forbidding lawyers to enter America unless they held a special license given by the king.<sup>9</sup> The argument given was that lawyers promote litigation and social unrest.<sup>10</sup> Probably, this potential unrest must be seen in the light of the brutal behaviour of the conquistadors and the emerging controversy about the legitimacy of the Spanish conquest. In any case, in 1526, the prohibition was replaced by the need of a special license from the Crown, after it received a petition from the Mexican city house (cabildo).

During the conquest of Chile, in the royal charter given to the Conquistadors to occupy the territory that will eventually become

---

8. Javier González Echeñique, *Los Estudios Jurídicos y la Abogacía en el Reino de Chile* (Tesis para el Grado de Licenciado, Universidad Católica de Chile, Facultad de Ciencias Jurídicas, Políticas y Sociales 1954), 23-25.

9. The document was published in 5 COLECCIÓN DE DOCUMENTOS INÉDITOS RELATIVOS AL DESCUBRIMIENTO, CONQUISTARTE Y ORGANIZACIÓN DE LAS ANTIGUAS POSESIONES ESPAÑOLAS DE ULTRAMAR (Real Academia de la Historia 1890) 187-93.

10. The relevant part says in archaic Spanish:

... [A]nsi mismo porque yo he seydo ynformado que a cabsa de aver pasado alas dichas yndias algunos letrados abogados han subcedido en ellas muchos pleitos e diferencias yo vos mando que de aquí adelante no dexeys ny consyntays pasar a las dichas yndias ningund letrado abogado syn nuestra licencia e especial mandado que sy necesario es por esta presente cédula lo vedamos e proyvimos.

Chile,<sup>11</sup> this prohibition was maintained and lawyers were forbidden to enter the territory. However, a few years later, in 1560, the disposition was relaxed and replaced with a general licence for anyone who wished to go into the Spanish colonies.<sup>12</sup> This included lawyers, who were thus no longer specifically forbidden to enter America. Nevertheless, even before that time, many lawyers were in fact present in the Spanish colonies. The first one to enter Chile did so in 1549.

While the literacy levels in the Spanish Empire were never high, in sixteenth-century Chile they were definitely poor. Some of the founders of Santiago were not even able to write their names, and most of them did so only with difficulty.<sup>13</sup> The only places where their children could get some kind of education were in the schools founded by religious orders. Given the absence of any institution that could provide higher education in the entire South Cone region during this historical period, these religious orders, backed by the authority of canonical regulations,<sup>14</sup> established two pontifical universities in Santiago. However, neither of these taught law, and the descendants of the Conquistadors had to travel to Lima in order to get a legal education at the Royal University of San Marcos, an extremely expensive endeavour, according to the

---

11. These are the *capitulaciones* made for Simón de Alcazaba in 1526, Diego de Almagro, Pedro de Mendoza and again Simón de Alcazaba in 1534, Francisco de Camargo in 1536 and Sancho de la Hoz in 1539. See González Echeñique, *supra* note 8, at 26.

12. See RECOPIACIÓN DE LEYES DE LOS REYNOS DE LAS INDIAS, law 1, tit. 26.b. IX (A. Ortega 1774) [hereinafter RECOPIACIÓN DE LEYES].

13. JOSÉ TORBIO MEDINA, LA INSTRUCCIÓN PÚBLICA EN CHILE 13 (Elzeviriana 1905) [hereinafter INSTRUCCIÓN PÚBLICA].

14. These regulations established that in territories which were at least 500 miles away from a Royal University, the religious orders could found one (RECOPIACIÓN DE LEYES, *supra* note 12, at law 2, tit. 22, book 1). Following this provision, both the Dominicans (1621) and the Jesuits (1617) established their own private universities. On the matter, see MEDINA, *id.* at 168-69; González Echeñique, *supra* note 8, at 82-89; and Bravo Lira, *supra* note 4, at 85-106.

documents of the period.<sup>15</sup> In fact, this was one of the main reasons cited by Santiago's town hall (cabildo) when it asked King Phillip V to establish a Royal University in Santiago in 1713.<sup>16</sup> According to the cabildo, there were very few lawyers in Chile and it was almost impossible for Chilean families to send their sons to Lima.

After twenty-five years of struggle—and the complete assumption of all the costs by the cabildo of Santiago—on the July 28<sup>th</sup> 1738, the King allowed a grant to found the University for Chile. It was named after the king, Real Universidad de San Felipe.

Although there are many reasons to give credit to the Spanish Crown for the quality of its universities in America, the Real Universidad de San Felipe should not be counted as an achievement. It was probably one of the poorest universities in the whole of the Spanish Empire, and also one of the most corrupt. The total budget (5000 pesos) was less than the salary of the president of the University of Salamanca at the time (8000 pesos). In any case, this admittedly small budget was administered irresponsibly<sup>17</sup> and the University was unable to pay its

---

15. There were even some scholarships awarded, but they seem not to have been enough for the needs of the kingdom. See González Echeñique, *supra* note 8, at 60.

16. The text of the petition was published for the first time in MEDINA, INSTRUCCIÓN PÚBLICA, *supra* note 13, at 381. On the matter it says:

*Y que lo persuadió al dicho señor alcalde el hacer esta propuesta el considerar que los vecinos de esta ciudad, que con tanta liberalidad contribuyen á la dicha balanza, escaseándolo aún de lo preciso de sus familias, se hallen atrasados y sumamente pobres, y que por falta de medios dejan de remitir sus hijos á la Real Universidad de San Marcos de Lima, donde, después de los peligros y contingencias de una dilatada embarcación, son los gastos excesivos y que no pueden sufrir sus caudales . . . y que bien les constaba á los dichos señores cuan falto se hallaba el reino de personas peritas en la Facultad de Cánones y Leyes para cualquier duda ó consejo que se pudiese tomar, y que los negocios eran muchos y muy graves, y que hoy sólo se hallaban tres abogados seglares y dos eclesiásticos, y que no discurría que por ahora hubiese vecino de este reino que tuviese ánimo de remitir un hijo suyo á estudiar á la dicha Universidad de los Reyes, por los crecidos gastos, que cada día van en aumento.*

17. The University used to spend a large part of its budget in expensive ceremonies and parties, as for instance, on the reception of a new governor of Chile. See ALEJANDRO FUENZALIDA GRANDÓN, HISTORIA DEL DESARROLLO INTELECTUAL EN CHILE 23-24 (Universitaria 1903).

professors.<sup>18</sup> To solve its economic problems, the University sold doctoral titles under the name of indulgencias (*indulgencias*). Although this procedure was not unique to the University of San Felipe, being in use at other Spanish universities, nowhere else was the practice so widespread and systematic. Starting with its first president, Tomás de Azua, who gave himself the title of *doctor utrusque iuris* immediately after being appointed<sup>19</sup> and eight years before any law lesson was given in the University (1748), many members of the Chilean aristocracy paid good money for the privilege of being called doctor.

In fact, the construction of the University's building was paid for through the selling degrees.<sup>20</sup> This was so notorious that in 1758, when the University finally was opened for students, its council decided to never again give the title of doctor to anyone who had not completed the proper studies.<sup>21</sup> Of course, this decision was not followed and soon the university lapsed back into its old business. In 1785, the ruinous economic state of the University propelled its authorities to push matters even further. The University opened a market of degrees (*feria de grados*) where 25 titles were auctioned. This procedure was repeated several times during its history. Some of these titles were transferrable, so the fortunate doctor could even sell it again!

Regardless, the model followed in the creation of the University was the Real Universidad de San Marcos in Lima, whose constitutions were adopted by the Real Universidad de San Felipe.<sup>22</sup> Law was by far the most important subject at the

---

18. Fuenzalida, one of the most important historians that studied the institution, says that the most frequent excuse given by the professors not to give their lectures was that they were not paid on due time. See FUENZALIDA GRANDÓN, *id.* at 34.

19. Miguel Luis Amunátegui, *La Universidad de San Felipe* in ANALES DE LA UNIVERSIDAD DE CHILE 15 (1874).

20. Miguel Luis Amunátegui reports that some of the building materials were brought to the Monjes Mercedarios in exchange for three titles of doctor in Theology. See Amunátegui, *id.* at 16.

21. Amunátegui, *supra* note 19, at 23.

22. Bravo Lira, *supra* note 4, at 85-106.



University, and out of ten chairs, there were four for law.<sup>23</sup> These were: 1) *Institutas*, where the basics of Roman law was taught through the Institutes of Justinian, and perhaps the comments by Vinnius; 2) *Prima de Leyes*, for *Digestum Infortiatum*;<sup>24</sup> 3) *Prima de Cánones*, for Gregory IX's Decretals; and 4) *Decreto*,<sup>25</sup> for the *Decretum Gratiani*.<sup>26</sup> It should be noted that both professors and students systematically skipped classes and that the University was never able to impose a strict schedule. Just two years after its inauguration, the President of the University, José Valeriano Ahumada, decided to check the contents of the student's notebooks. Most of them were simply blank and no notes had been taken.<sup>27</sup> In fact, very few lessons were probably ever given in the University. A description of its academic activities given in 1795 says that the whole academic year was reduced to four months of one-and-a-half hours of daily classes.<sup>28</sup>

We should add that the University lacked a library, and it was only able to get one after the Jesuits were expelled from Chile in 1767 and the University finally got their books in 1771.<sup>29</sup> Of course, the Jesuits were not teaching law, so their library was focused on philosophy and theology. In these conditions, with very few classes, no notes taken and no library, it seems rather difficult to imagine what kind of legal education could be given. The University was basically focused on taking exams while the

---

23. See the *Real Cédula* that created the University in Amunátegui, *supra* note 19, at 5.

24. From Books 23 through 38 of DIGEST OF JUSTINIAN, available at <https://archive.org/stream/digestofjustinia01monruoft/digestofjustinia01monruoft.djvu.txt>.

25. The Governor of Chile appointed these chairs. They were granted for the first time in 1755, a year before the University was formally opened for students. See FUENZALIDA GRANDÓN, *supra* note 17, at 5.

26. See Alejandro Guzmán Brito, *La enseñanza de Derecho en Chile. Historia y perspectivas*, 25 ANALES DEL INSTITUTO DE CHILE 315 (2005-6) [hereinafter *Enseñanza de Derecho*].

27. See JOSÉ TORBIO MEDINA, 1 HISTORIA DE LA REAL UNIVERSIDAD DE SAN FELIPE DE SANTIAGO DE CHILE 66-67 (Universo 1928).

28. The description was given by Francisco Javier Errázuriz in 1795. It was published in FUENZALIDA GRANDÓN, *supra* note 17, at 102.

29. See FUENZALIDA GRANDÓN, *supra* note 17, at 54.

students learned the subjects privately, either with private teachers or in the *Colegio de San Carlos*, which was established in 1769, after the expulsion of the Jesuits.<sup>30</sup> In 1813, shortly after gaining Independence, this was the critical judgement made by congress to the University: “The University, considering its constitution, is more of a house for tests than an educational establishment.”<sup>31</sup>

Not surprisingly, no legal work is known from Colonial Chile. There were, however, some written by Spanish public servants who happened to be in Chile during Colonial period.<sup>32</sup> None of these were published in Chile, for there was no printing press there until 1812, just two years after the beginning of the Independence process.

### III. BELLO’S UNIVERSITY

During the struggle for Independence, which started in 1810, public education was one of the many targets addressed by the spreading revolution. In fact, in 1811 a complete plan to replace the Colonial educational model was presented to the newly established Congress.<sup>33</sup> The plan consisted of the fusion of all public educational establishments in Chile into a unified institute, which would be responsible for all branches of higher education. This institution, the Instituto Nacional, would conduct classes and give exams, leaving the old Royal University as a mere academy with the task of giving degrees. In 1813, during the thick of the

---

30. González Echeñique, *supra* note 8, at 163.

31. 1 SESIONES DE LOS CUERPOS LEJISLATIVOS DE LA REPÚBLICA DE CHILE. 1811 A 1845 at 297 (Cervantes 1887) [hereinafter 1 SESIONES DE LOS CUERPOS LEJISLATIVOS].

32. We know of eight works. The first one was written in 1633, and the last one was published after the Independence. See González Echeñique, *supra* note 8, at 189.

33. See 1 SESIONES DE LOS CUERPOS LEJISLATIVOS, *supra* note 31, at 173-78.

Independence wars, the proposed Institute was founded by order of the *Junta de Gobierno*, the Senate and Santiago's *cabildo*.<sup>34</sup>

Although the educational model had the appearance of a seminary, for students were supposed to pray daily and perform many kinds of spiritual exercises, the foundation of the Instituto Nacional meant a massive reorganization of legal education. The old vice of selling university titles was strictly forbidden and the grant of any degrees without taking the proper exams banned.<sup>35</sup> In fact, the doctor title altogether fell into oblivion, probably due to the monarchical overtones and tradition of doubtful value.<sup>36</sup>

As we have noted, the old University of San Felipe, following the medieval tradition, did not teach positive law, but centred its studies in Roman and cannon law. The newly founded Instituto did precisely the opposite and suppressed Roman law, replacing its study with positive law. It consisted of two chairs, one for Natural Law and *ius Gentium*, where Political Economy was also taught, and another one for Positive and Cannon Law. One of the main innovations was the use of printed texts for classes.<sup>37</sup> During the colonial period, there were no printing presses in Chile, and the importation of books was difficult due to the Colonial administration system. The lack of books forced legal teaching to depend heavily on oral transmission and tradition. In the newly

---

34. See 1 SESIONES DE LOS CUERPOS LEJISLATIVOS, *supra* note 31, at 289-322.

35. See DOMINGO AMUNÁTEGUI SOLAR, LOS PRIMEROS AÑOS DEL INSTITUTO NACIONAL (1813-1835) at 153 (Cervantes 1889).

36. The title was not formally abolished. In fact O'Higgins, promulgated a decree restricting legal profession to those who held a doctoral degree in 1821, but it was never enforced. In 1832 the doctoral degree was simply not contemplated in Higher Education and it was absent from legal studies until the 21st century. See Guzmán Brito, *supra* note 26, at 289.

37. Natural Law was taught using ELEMENTA IURIS NATURAE ET GENTIUM by Johann Gottlieb Heineccius, Political Economy through Adam Smith's classic THE WEALTH OF NATIONS, and Jean-Baptiste Say's CATÉCHISME D'ECONOMIE POLITIQUE. In Positive law, which was nothing more than Castilian law, Ignacio Jordan de Asso and Miguel de Manuel's INSTITUCIONES DEL DERECHO DE CASTILLA was the preferred text. Cannon law was taught with the aid of Giovanni Devoti's INSTITUTIONUM CANONICARUM LIBRI QUATUOR. See Guzmán Brito, *Enseñanza de Derecho*, *supra* note 26, at 316.

founded Instituto, however, books were finally at the core of legal studies.

The Instituto Nacional was closed shortly after its inauguration due to the success of Loyalist faction in the battle of Rancagua (1814),<sup>38</sup> but when the country was finally under the control of the revolutionaries, it was reopened in 1819, closely following its original model.

The inauguration of the Instituto Nacional left two oddities in the newly borne Chilean educational model. First, the University was kept solely as a Science Academy, which awarded higher education degrees but had no direct role in legal education. Second, it was possible for a student to learn all of the subjects privately and still earn a degree by taking the proper exams in the Instituto. These two features will be central to the Chilean educational system during the whole period being reviewed.

The low educational quality of the Universidad de San Felipe left a stigma on the University system. During the early Republic, the competences of the University were restricted to a minimum. In fact, when the President of the University of San Felipe claimed that students of the University could take exams independently from the Instituto, the University was simply closed.<sup>39</sup> The Universidad de Chile, which was established to replace it, was more of an academy than a University,<sup>40</sup> but it had more control over the education given at the Instituto than the University of San Felipe did; its professors could integrate the commissions that administered the exams and the University established the educational curricula, which led to university degrees. So, in a

---

38. The professors of the University of San Felipe and even some of the students pressed the Spanish general Mariano Osorio into re-establishing the old educational regime. See AMUNÁTEGUI SOLAR, *supra* note 35, at 183.

39. This was the famous *Decreto Egaña* that also created the Universidad de Chile. For details, see AMUNÁTEGUI SOLAR, *supra* note 35, at 475.

40. Mario Baeza Marambio, ESQUEMA Y NOTAS PARA UNA HISTORIA DE LA FACULTAD DE CIENCIAS JURÍDICAS Y SOCIALES DE LA UNIVERSIDAD DE CHILE 100 (Talleres gráficos Valdés 1944; published as part of the COLECCIÓN DE ESTUDIOS Y DOCUMENTOS PARA LA HISTORIA DEL DERECHO CHILENO series).

way, the Instituto should teach what the University approved. In any case, the University only gained direct supervision over the higher education regime at the Instituto in 1852,<sup>41</sup> when a University Section (*Sección Universitaria*) was created as a separate branch of the Instituto. This section was dependent of the president of the University of Chile through an appointed delegate. This section was formally incorporated into the University structure in 1879, when the *Ley de Instrucción Secundaria y Superior* gave educational competence to the University of Chile. From this year onwards, the University of Chile began teaching law formally.

The possibility of studying in private academies was left unaffected by the foundation of the Instituto Nacional. In fact, in 1832 the government explicitly decreed that the students of any private institution could take their exams in the Instituto Nacional.<sup>42</sup> The foundation of the University of Chile (formally opened in 1843) did not introduce any changes into the situation, and the regulations of the University specifically prescribed in article 15 of its charter that the University should oversee the exams of the private institutions.

At the beginning of 1830 there were at least two private academies in Santiago that taught law:<sup>43</sup> the Liceo de Chile, organized by the liberal Spanish émigré José Joaquín Mora, and the conservative Colegio de Santiago, where Andrés Bello, the author the Chilean Civil Code, taught and eventually became president. These two institutions were fundamental for the restructuring of legal studies in Chile and their influence extended throughout the entire 19<sup>th</sup> century. Although their existence was

---

41. *Id.* at 102.

42. 2 BOLETÍN DE LAS LEYES Y DE LAS ORDENES Y DECRETOS DEL GOBIERNO DE CHILE 93 (El Mercurio 1846).

43. By that time there were ten private institutions that taught higher education in Santiago. Although only two taught law, the number of their students was significantly inferior to that of the Instituto Nacional's. The Liceo had 12 law students, while the Colegio had only 8. The Instituto, on the other side, had 66 law students. See AMUNÁTEGUI SOLAR, *supra* note 35, at 443.

rather brief,<sup>44</sup> Roman law was reintroduced into legal studies in these institutions. Also, International law was updated in their core curriculum. In fact, their programs were partly followed by the curriculum reform of the Instituto Nacional in 1832. Obviously, given the presence of Andrés Bello, the influence of the Colegio de Santiago was longer lasting.

It seems rather curious that the most important legal scholar of Chile in the 19<sup>th</sup> century was not only not Chilean, but never formally studied law. It was mere chance that brought such a character to Chile. Andrés Bello was born in Caracas in 1781 and graduated with a bachelor in arts in 1800. He started to study law, but had quit under pressure from his father.<sup>45</sup> He tutored Simon Bolívar, with whom he maintained a somewhat distant relationship—especially once the old pupil became a leading figure in the various Independence movements in the Americas. He was a man built upon self-study, learning English and French by his own means. Because of his language skills, he found himself placed in quite an exceptional position in 1810, when Venezuela was looking for English support for its independence. Probably due to his knowledge of the English language, very uncommon at that time in Caracas, the government sent him, along with Bolívar and Luis López Méndez to London to try to convince England to aid Venezuela.

Soon enough, it became evident that England would never support Venezuela's claim for independence, for, once Spain had been invaded by Napoléon, it had become an ally against France. Therefore, Bolívar returned to Venezuela and left Bello in England. Bello, without any economic support from Venezuela, lived at the very edge of poverty for the next twenty years. Eventually, he entered John Mill's circle. Mill hired him to put

---

44. The Liceo was closed after the Conservative's victory in the Civil war of 1830. The Colegio de Santiago also disappeared when most of its authorities took control of the Instituto Nacional in the early 1830's.

45. An interesting description of this scene can be found in JOAQUÍN EDWARDS BELLO, *EL BISABUELO DE PIEDRA* 14 (Nacimiento 1978).

Jeremy Bentham's notes in clear handwriting. At this time, Bello became aware of codification and its tenets, due to the fact that Bentham was not only an active promoter of the phenomenon, but had also personally coined the term "codification" to describe the process.

Bello's law studies seem to have come about in a peculiar fashion. His own philology studies were focused on the *Cantar del Mio Cid*, a medieval epic poem composed in the 12th century and finally written on paper by order of Alphonse X ("the Wise"). In order to understand the language of the poem, he started studying the *Siete Partidas*, which had been written during the same historical period. His contact with Bentham brought him under the influence of Blackstone and Kent, whom he quotes on several occasions. Regarding Roman legal thinking, he studied Vinnius and Heineccius. He even made a Spanish translation of Heineccius' *Elementa iuris civilis* to teach Roman law in Chile, which was printed in 1843. This translation was used in Chile for the remainder of the 19<sup>th</sup> century and even the first years of the 20<sup>th</sup>, until 1912, when the Pontificia Universidad Católica de Chile adopted a new text.<sup>46</sup>

In 1822, he was hired by the Chilean diplomatic delegation in London. In 1829, he finally abandoned England and moved to Chile—where he performed the bulk of his scholarship—and never again left until his death in 1865. In Chile, he was appointed to write its new Civil Code, was elected senator, and was the first president of the newly founded Universidad de Chile in 1843.

Following Bello's influence, the Instituto reformed its legal education program in 1832.<sup>47</sup> This new curriculum not only re-established Roman law as a fundamental subject in the formation

---

46. See HUGO HANISCH ESPÍNDOLA, ANDRÉS BELLO Y SU OBRA EN DERECHO ROMANO 14 (Consejo de Rectores de las Universidades Chilenas 1983).

47. For the details of the program, see AMUNÁTEGUI SOLAR, *supra* note 35, at 521; BAEZA MARAMBIO, *supra* note 40, at 111; HANISCH ESPÍNDOLA, *supra* note 46, at 28; and Guzmán Brito, *Enseñanza de Derecho*, *supra* note 26, at 318.

of lawyers, but also included some new features, such as Universal Legislation, a subject based on Andrés Bello's understandings of Jeremy Bentham's ideas,<sup>48</sup> and international law, which was also taught through Bello's book on the matter.<sup>49</sup> In short, out of the five years that the law program encompassed, three of them were devoted exclusively to studying works written by Andrés Bello; and when Chilean codification was finally completed, the fourth year of legal studies was also devoted to the study of Bello's work.<sup>50</sup>

The reform of 1832 suffered various modifications during the 19<sup>th</sup> century, especially in order to suppress Universal legislation<sup>51</sup> (which was considered too revolutionary by the President of the Instituto, the old realist and conservative priest Juan Francisco Meneses), to include Procedural law (1853), and other subjects that were codified during the century (in 1859, 1863, 1866, 1872, and 1887).

In any case, in the late 19<sup>th</sup> century two major reforms came about which definitely altered the character of legal studies. The first one was intended to relax the control that the University of Chile had over any private institution of higher education. In 1872,

---

48. It was based on Bentham's *TRAITÉ DE LÉGISLATION CIVILE ET PÉNALE*, which was edited in French in 1802 by Étienne Dumont in Paris, and was very influential in Latin America during the first half of the 19th century. We know of the contents of Bello's course through the hand-written notes taken by his pupil Ramón Briseño Calderón. According to Domingo Amunátegui, it was taught following Bello's notes on the matter; AMUNÁTEGUI SOLAR, *supra* note 35, at 563.

49. It was called *PRINCIPIOS DE DERECHO DE GENTES* when it was first published in 1832, but in accordance with Bentham ideas, the name was changed to *PRINCIPIOS DE DERECHO INTERNACIONAL* in the third edition (1864). On the matter, see GUILLERMO LAGOS CARMONA, *ANDRÉS BELLO, EL MAESTRO DEL DERECHO INTERNACIONAL* 33-36 (Andrés Bello 1982).

50. When the Civil Code was finally went into force in 1856, there was a lot of debate on whether old Castilian law should be studied at all. Finally, in 1857 the study of Spanish law was abolished and replaced by the newly-created subject of Civil law (significantly, the subject was not called Civil Code). See Alejandro Guzmán Brito, *Los dos primeros libros chilenos de derecho civil patrio*, 11 *REVISTA DE ESTUDIOS HISTÓRICO-JURÍDICOS* 148 (1986).

51. This modification came around in 1850. See BAEZA MARAMBIO, *supra* note 40, at 137.



a statute was enforced that allowed any private institution to validly take exams independently from the University of Chile's external evaluation. In practice, this meant that law studies could take place in any private institution without any supervision of the State. This statute enabled the creation of the Pontificia Universidad Católica de Chile (1888) and the Pontificia Universidad Católica de Valparaíso (1888). In the same year, the students of the Instituto were permitted to take their exams in any order they wished.<sup>52</sup> In practice, this meant that the programs lost much of their structure for the students could study the subjects in any order they wished.

During this period, law was taught in an increasingly exegetical manner. While law was codified, the legal subjects came to be studied in the order presented in the codes, occasionally adding some comments to its dispositions. It was significant that the subject "Civil Law" was renamed to "Civil Code" in the 1863 reform, just five years after the enactment of the Code. In fact, in the subsequent reforms, the inclusion of new subjects closely followed the enforcement of new codes.<sup>53</sup> This style of teaching, which at the time was referred to as literal re-exposition (*reexposición literal*),<sup>54</sup> came to be associated with the École du Exégèses, although it lacked the philosophical framework of the famous French school and seems to be a rather simplistic view of the very basic legal knowledge that existed in Chile at the time. In fact, during the colonial times, one of the few things that students of law knew were Justinian's Institutes, almost by heart and with very little commentary, due to the lack of printed books. This same

---

52. Originally, to exercise this option, they had to pass classes in Roman law and Natural law, but this requirement was relaxed in 1876 and 1878. This option was only abolished in 1917.

53. See Iñigo de la Maza G., *Los abogados en Chile: desde el Estado al Mercado*, 10 COLECCIÓN INFORMES DE INVESTIGACIÓN at 10 (2002) (published by Centro de Investigaciones Jurídicas, Facultad de Derecho, Universidad Diego Portales, Chile).

54. Alejandro Guzmán Brito, *El Código Civil de Chile y sus primeros interpretes*, 19:1 REVISTA CHILENA DE DERECHO 86 (1992) [hereinafter *El Código Civil de Chile*].

kind of memorization learning seemed to persist at the core of the 19<sup>th</sup> century Chilean university, not so much because of an ideological perspective on the nature of law, but for the simple inability to do much better. In fact, there was no sharp break from the traditional Spanish law, and the *Siete Partidas* were still known and quoted during the entire 19<sup>th</sup> century.<sup>55</sup>

Although the production of academic legal work was rather scarce, it is remarkable that the first legal works appeared shortly after Independence.<sup>56</sup> One of them was a concordance between the Civil Code, its projects and some foreign codes,<sup>57</sup> following the example of Saint Joseph's Concordances. Another is a legal dictionary of the Civil Code.<sup>58</sup> These were, in fact, comparative exercises, for they took into account French and Spanish laws. The two first complete expositions on the Chilean Civil Code were published shortly after its enactment, in 1863.<sup>59</sup> These works were very basic in their content and attempted simply to explain the dispositions of the Civil Code, following its order and system. These were followed by more in-depth studies known as commentaries (*Comentarios*), which attempted a more ambitious goal: to explain the dispositions of the Civil Code in the light of jurisprudence and comparative exercises with French and Spanish

---

55. *See id.* at 81-88.

56. The first legal work ever published in Chile was basically a republication of a handbook of wills originally published in the Phillipines by Pedro Mujillo Valverde. Regardless, since 1843 the journal *Anales de la Universidad de Chile* published legal papers, some of which were the results of the research done by law students to get their degrees. By reading them, one can get a very complete idea of the legal culture that existed in 19<sup>th</sup> century Chile.

57. *For example*, VITALICIO A. LÓPEZ, *RAZÓN I FUENTE DE LA LEI O CONCORDANCIA DEL CÓDIGO CIVIL CON EL PROYECTO DE QUE SE FORMÓ* (Ferocarril 1858).

58. FLORENTINO GONZÁLEZ, *DICCIONARIO DE DERECHO CIVIL CHILENO O EXPOSICIÓN POR ORDEN ALFABÉTICO DE LAS DISPOSICIONES DEL CODIGO CIVIL DE CHILE Y DE AQUELLAS LEYES . . . QUE ES IMPORTANTE CONOCER* (El Comercio 1862).

59. These are: JOSÉ VICTORINO LASTARRIA, *INSTITUTO DEL DERECHO CIVIL CHILENO* (El Comercio 1863); and JOSÉ CLEMENTE FABRES, *INSTITUCIONES DE DERECHO CIVIL CHILENO* (El Universo 1863).

law.<sup>60</sup> During the final period of the 19<sup>th</sup> century, Chile's first legal journal appeared, the *Revista Forense Chilena*, which was published regularly between 1885 and 1892. Although the journal did not last, soon, by the beginning of the 20<sup>th</sup> century, legal journals became an important way of presenting research to a wider legal community.

Nevertheless, by the mid-19<sup>th</sup> century, the restricted scope of legal teachings became a matter of debate. Fernandez Concha, in a speech made upon the assumption of his chair as professor of the University of Chile in 1857, sharply criticized the lack of philosophical explanations in legal studies and its restricted legalistic scope.<sup>61</sup> Although the professor, from his conservative position, did not tackle the deeper problems of exegetical legal studies, such as its complete dependence on statutes for dogmatic analysis, he still made an important point when he called for a wider perspective in legal studies.

During the late 19<sup>th</sup> century there was a tendency towards leaving aside the strong legalistic approach that legal studies had acquired. It was noticed that by 1880, classes ceased to be a textual repetition of statutory dispositions and that professors started innovating in their legal approaches.<sup>62</sup> This brought major changes in legal education during the 20<sup>th</sup> century.

#### IV. A LOST CHANCE?

By the end of the 19<sup>th</sup> century legal education had matured and its old structure was no longer suitable to express the legal

---

60. The first one, unfortunately incomplete, is JACINTO CHACÓN, *EXPOSICIÓN RAZONADA Y ESTUDIO COMPARATIVO DEL CODIGO CIVIL CHILENO* (El Mercurio 1868). It was followed by another incomplete study: PAULINO ALFONSO, *EXPLICACIONES DEL CÓDIGO CIVIL* (Cervantes 1882). Although there were other attempts of restricted scope, the first complete commentary on the Civil Code is: ROBUSTIANO VERA, *COMENTARIO DEL CÓDIGO CIVIL* (Gutenberg 1894), in seven volumes.

61. See Rafael Fernández Concha, *Discurso de Incorporación*, 15:1 ANALES DE LA UNIVERSIDAD DE CHILE 131-42 (1857).

62. This observation is included in a report of 1880 done by Ignacio Domeyko. See 60 ANALES DE LA UNIVERSIDAD DE CHILE 209 (1881).

knowledge that had accumulated over the century. The old exegetical method seemed to be unable to show the complexities of the interpretation the legal codes had acquired. In this context, the influence of the late 19<sup>th</sup> century and early 20<sup>th</sup> century French doctrine was fundamental for the renovation of private law. Pandectism entered Chilean universities, not through German authors, who remained largely unknown until later times, but thanks to Charles Aubry and Frédéric Charles Rau's *Cours de droit civil français*. As is well known, this is an adaptation of the famous work of Karl Salomo Zachariä, *Handbuch des französischen Civilrechts*, which explained the French civil code in the light of German Pandectism. Following their methods and example, Luis Claro Solar wrote the first systematic commentaries on the Civil Code in his monumental work *Explicaciones de Derecho Civil Chileno y Comparado* (1898–1927). These commentaries remain in use after a century and are still the most complete analysis of the Chilean Civil Code. As their title suggests, they contain a comparative approach, mainly (but not exclusively) considering the *Bürgerliches Gesetzbuch (BGB)* and the *Code Napoléon*, as also up-to-date French legal doctrine (with especial emphasis in Planiol, Josserand and Ripert). More surprisingly, it took into account traditional Spanish law, considering the *Siete Partidas* and early 19<sup>th</sup> century legal doctrine as important influences in the Chilean Civil Code, as well as Roman law. It is in itself an important exercise of historical and comparative effort, which was immediately adopted by the practicing lawyers and had an overwhelming influence in legal studies.

Legal education came under debate in that same period. A proposition to update it was put forward in 1901,<sup>63</sup> which included

---

63. This was made by Alejandro Álvarez (*see*: ALEJANDRO ÁLVAREZ, *LA NUEVA TENDENCIA EN EL ESTUDIO DEL DERECHO CIVIL: SEGÚN LA PEDAGOGÍA MODERNA Y SEGÚN EL RESULTADO DE LAS CIENCIAS POLÍTICAS Y SOCIALES* (imprensa Moderna 1900)). His plan was basically to replace the exegetical model with a systematic exposition of private law in order to elaborate legal constructions. For more details, *see* BAEZA MARAMBIO, *supra* note 40, at 195.

the abandonment of the exegetical method in order to embrace a systematic perspective of private law, following the Pandectist model.<sup>64</sup> In 1902 the University council approved the plan. The name of the main subject of Private law, “Civil Code”, was changed to “Civil Law”, in order to make explicit the methodological change.<sup>65</sup> A strong component of the methodological change was the inclusion of a comparative perspective in legal studies. In fact, the new curriculum included for the first time Comparative Law as a University subject in the last year of legal studies. Legal History replaced Cannon Law, which had lost its original importance in a secularized country. Bello’s old handbook of Roman law was replaced with up to date literature. The whole reform could be summarized—as it was, some years after—in the motto “beyond the codes”.<sup>66</sup>

During the following years, the reform was applied and gave Chile an increasingly complex legal environment. Legal literature

---

64. The influence of Pandectism, which was called “constructivism” in Chile, can be attested to in the comments made to the Legal Education program made by Tomás A. Ramírez, who considered this the only valid way to interpret legal dispositions. In his exposition, he expressly says that the method was taken from Zachariä through Aubry and Rau ((see *Sesión de 22 de Abril de 1907 del Consejo de Instrucción Pública*, 120 ANALES DE LA UNIVERSIDAD DE CHILE 67 (1907)). For more details, see Leonardo Enrique Valdivieso Lobos, *Historia de la cátedra de Derecho civil en la Universidad de Chile* (Memoria para optar al grado de licenciado de la Universidad de Chile, 2005), p. 67.

65. The President of the University in his report on the State of the University explicitly says:

*Como lo indica el nombre de los ramos establecidos en el nuevo plan de estudios, al comentario del Código se ha sustituido la enseñanza del derecho correspondiente, dando así mayor generalidad a esta enseñanza y elevándola por encima de nuestra propia legislación, la cual no debe presentarse al criterio del alumno como única e inmovible base de sus conocimientos jurídicos, sino como la expresión de ideas más fundamentales y sintéticas, aplicadas a un estado social determinado.*

Manuel Barros Borgoño, *Memoria del Rector de la Universidad Correspondiente al año 1901*, 110 Anales de la Universidad de Chile 123 (1902).

66. See Juan Antonio Iribarren, *Los Estudios Jurídico-Sociales*, 72:134 ANALES DE LA UNIVERSIDAD DE CHILE 421-542 (1914).

flourished and gained consistency,<sup>67</sup> while universities expanded.<sup>68</sup> Nevertheless, the system had a fatal flaw that was going to limit the development of Chilean legal culture: there was no attention paid to the formation of jurists at a higher level, who could develop legal research. In fact, it must be remembered that there had been no doctoral program in Chile since its Independence. Accordingly, legal academics were simply well-trained lawyers who spent part of their free time teaching law. There was no professorship, as the role is understood in most civil law countries, nor could there have been any spirited scholarly debate on legal matters.

This lack of intellectual room for legal development was deeply felt among students,<sup>69</sup> and one of the main points of the next attempt to reform the legal education system was undertaken to establish a proper legal academy. The ideas proposed to overcome this difficulty were to send students abroad in order to deepen their studies and to start a Doctorate program in Chile.<sup>70</sup>

In the 1920's, new reform was proposed. It included some minor reforms in the undergraduate program, but at its core was the proposition to create a doctorate program in law<sup>71</sup> and to

---

67. The *Revista de Derecho y Jurisprudencia*, established in 1904, was meant to be the expression of these new tendencies. Although it finally disappeared in 1988, it created new standards for legal journals and a tradition regarding law studies.

68. To the three already-existing (Universidad de Chile, the Pontificia Universidad Católica de Chile and the Pontificia Universidad Católica de Valparaíso), the Universidad de Concepción was added in 1928.

69. The most convincing analysis in this sense was made by Iribarren, who advocated for the creation of a professorship following German standards. He also proposed the creation of a doctorate program which would focus on Comparative law and Legal History. See Iribarren, *supra* note 66.

70. Both of them appear for the first time in the work of Iribarren, *supra* note 66, but they are insistently repeated several times in the forties (Baeza Marambio, *supra* note 40, at 206) and in the sixties (ANÍBAL BASCUÑAN VALDÉS, *PEDAGOGÍA JURÍDICA* 112-13 (Editorial Jurídica 1954).

71. The idea was put forth during the first decades of the 20th century. It was proposed as a way to improve the quality of academia in 1914 (see Iribarren, *supra* note 66, and a doctorate program was even approved by the Pontificia Universidad Católica de Chile in 1915, but was never put into practice. The same happened with the doctoral program approved by the University of Chile in 1924 (see Guzmán Brito, *supra* note 26, at 306-307).

systematically send brilliant students abroad. Finally, in 1927,<sup>72</sup> a statute provided the legal basis for the establishment of doctoral programs in Chile. Nevertheless, no doctorate program in law would commence for the next seventy years.

Legal scholars have not investigated the reasons for this neglect. It remains a brutal fact of Chilean legal history, which is rendered even more intriguing since the idea was repeatedly proposed during the 1940's and 1960's. In fact, the lack of a proper academic environment in legal studies was still felt during the 1990's and the early 2000's.<sup>73</sup> From my point of view, the initial failure to establish a proper legal academic environment in Chile during the late 20's and 30's is due to the enormous impact that the Great Depression had on Chilean economic life. In fact, Chile was so deeply affected by the 1930's depression that its effects were still visible decades later. This brought political instability to Chilean politics, where a succession of unstable governments followed each other until the late 30's, and included several military coups and a Socialist Republic. In fact, this political instability can be perceived in the changing legal education programs that were put forward during the time.<sup>74</sup> Political instability is not compatible with scholarly academics, and a peaceful environment was not restored until the late 1930's, when properly elected presidents became the rule again.

Nonetheless, the political atmosphere was dominated by economic needs. Poverty became rampant and the achievements of government were measured in economic terms. During the 50's and 60's, Chile became a battlefield between competing economic and political ideologies. In this scenario, law had a secondary role,

---

72. This is the Decreto con Fuerza de Ley No. 7500.

73. See de la Maza G., *supra* note 53, at 17; and Baraona González, *supra* note 4, at 440.

74. The curriculum was changed in 1924, 1926, twice in 1928, 1930, twice again in 1933 and finally in 1934. This means 8 different curricula in 10 years!

and legal specialists were not a priority in the government's political agenda.<sup>75</sup>

Nevertheless, during the late 60's, some attempts were made to change the legal profession in order to broaden its curriculum and incorporate other branches of social science into professional formation.<sup>76</sup> These attempts were finally brought down by 1973's coup, which ended any attempt at reform for the next years.

In addition, the legal education system was deeply affected by overcrowding.<sup>77</sup> Between 1907 and 1970 the total population grew from roughly three million to almost nine, with an increasing level of urbanization and higher overall education levels, since primary school became compulsory in 1920. Nevertheless, the number of law schools was still four—the same as in 1928.

#### V. REBIRTH

I started studying law during the early 1990's, immediately after the transition from a military dictatorship to democracy. As was previously stated, the legal atmosphere was dominated by a very narrow positivistic perspective, which held a naïve faith in the supremacy of statutes as the only source of law. Most teachers were famous lawyers who played the role of part-time scholars. None had the time to do serious research, and many lacked the abilities. A doctor in law was an *avis rara*, to the extent that I can only count one of my teachers who held a doctorate. Something striking during those years, however, was the continuous increase in the number of law schools and law students around the country.

---

75. In fact, law specialists lost their political predominance during this period. See Bravo Lira, *supra* note 4, at 85-106; and de la Maza G., *supra* note 53, at 5-17.

76. This was done by diminishing the importance of the traditional dogmatic approaches in legal formation and incorporating economic and sociological analysis into the curriculum. Its main achievement was the 1966 reform. See Valdivieso Lobos, *supra* note 64, at 96.

77. For a wider perspective, see José-Joaquín Brunner, *La idea de Universidad en tiempos de masificación*, 3:7 REVISTA IBEROAMERICANA DE EDUCACIÓN SUPERIOR 130-43 (2012).



In 1981 the government enacted a whole new regulation for universities in Chile.<sup>78</sup> This regulation allowed the creation of new private universities, in addition to the old ones created before this statute, which are now called traditional universities. During the 80's and 90's, the numbers changed from four to almost thirty law schools. Therefore, what was a few thousands law students rapidly became more than twenty-four thousand. Most of these law faculties were the result of precarious private initiative, where little or no research took place.

In this context, some legal professionals became aware that they could actually make a living by professionally working in universities. Many of them taught in two or three universities, for the demand for professors was much greater than the actual supply. By the late 90's it became rather common for some law students to go abroad in order to study in a doctoral program. Some were sent with scholarships by their own universities, which expected to re-hire them at the end of their studies. Others simply asked for bank loans in order to pay for the adventure. When returning to Chile, these newly trained doctors were usually hired by newly-founded law schools and became the core of their staff.

By the late 90's the perception of an on-going crisis in legal education was commonplace. Reforms were pushed from two sides: the market and the State. On one side, the university market became segmented.<sup>79</sup> Higher education was divided into elite and non-elite universities, where faculties that could employ a higher number of full-time professors, with better qualification and the best academic profiles, effectively improving their ability to attract students and charge a higher tuition. For any law faculty to become

---

78. This was the Decreto con Fuerza de Ley No. 1.

79. See José-Joaquín Brunner, *La Educación Superior en Chile: Tendencias y Perspectivas*, given at a seminar organized by the Ministry of Education and the World Bank, in Montevideo, October 1999, available at [http://www.researchgate.net/publication/266218359\\_LA\\_EDUCACION\\_SUPERIOR\\_EN\\_CHILE\\_TENDENCIAS\\_Y\\_PERSPECTIVAS](http://www.researchgate.net/publication/266218359_LA_EDUCACION_SUPERIOR_EN_CHILE_TENDENCIAS_Y_PERSPECTIVAS); Victor Salas Opazo, *Segmentación en el "mercado" del pregrado universitario chileno* in ENEFA Proceedings 5 at 2708-27 (2012).

attractive in a competitive educational market, large investments in human capital were needed and all kinds of market mechanisms to attract new talent into their staff were implemented. In a few years, the most prestigious law faculties in Chile passed from having very few full-time professors with a doctorate degree, to being predominantly composed by them.<sup>80</sup> Doctorate programs were opened<sup>81</sup> and legal journals flourished.<sup>82</sup>

On the other side, the State intervened in two ways, by creating economic incentives for academics and institutions in order to promote research,<sup>83</sup> and through the creation of an accreditation program that gave access to public funding for those institutions that passed an assessment exercise.<sup>84</sup> Although some major changes in the system can be expected,<sup>85</sup> the steady increase of legal scholarship will probably continue.

This meteoric rise of legal scholarship is one of the most important events in Chilean legal history. For the first time in its

---

80. For instance, my own Faculty only had six full time professors with a doctoral degree during the early 2000's. Ten years later, it had twenty-five. The number is still growing and it will probably arrive at forty by the end of the decade. Recently, I was informed about formal plans of Universidad de Chile to increase their number of full time professors with a doctoral degree to a mastodontic 108 by the end of the current decade, but there are still too many uncertainties on the matter.

81. The same Decreto con Fuerza de Ley No. 1 of 1981 regulated doctoral degrees and legally reinstated them. Anyway, the first doctoral program was not open until 2001. Now, there are seven doctoral programs in Chile, which are experiencing fast development.

82. There are about thirty legal journals, of which eight are included in relevant international indexes.

83. A number of different competitive research funds were created, primarily through CONICYT, a national council for the development of research. These programs benefit not only the researchers, who compete to receive funding to finance their research, but also the university institutions, for they improve their chance to get additional State funding.

84. Enacted by the statute L20.129 of 2006.

85. Currently, the whole Chilean educational system is under discussion. It is likely that some major reforms can be expected from Bachelet's administration, which will probably lead to the State assuming the tuition costs in universities that have completed their assessment exercise, whether they are public or private. If the right decisions are made, this could lead not only to more egalitarian access to higher education, but also to a significant improvement in the overall quality of the system.

history, law has a serious academic perspective as is demonstrated by the rise in the number of journals and legal books published each year. This will influence the future legal developments in unexpected ways, and hopefully, for the better.