

# **Authoritarian Constitutionalism and Political “Stability” in Chile: The Role of Law and Institutions in the History of Chile (1820 – 1925)**

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## **Introduction**

The objective of this paper is to make a meaningful contribution to the debate over the importance of institutions and law in the political history of Chile during the 19<sup>th</sup> century. It is commonly held that in Chile there is a majoritarian opinion according to which we enjoy an exceptional politico-legal tradition when compared to other Spanish-American nations and that it is only in recent years, specifically starting with the 1990s, that this opinion began to be questioned. In the lines that follow, what will be shown is that, contrary to what is commonly believed, there is a long and important historiographical trend that casts doubt over the importance and influence of law and its institutions in Chilean political history, and that, hence, the recent wave of historic revisionism is not as novel as it pretends to be. Discussing this historical view will then enable us to test arguments reevaluating the place of law and institutions in the history of Chile. Reflecting on the autocratic republic and its legacy will, lastly, lead us to certain conclusions regarding the theory of the constitution.

## **1. The “exceptional Chilean political tradition.”**

In recent years, various historians and political scientists have begun advancing the argument that our historical conscience is “ill.” With increasing frequency our “false consciousness” as regards our political tradition and our past as a political community is berated. Accordingly, we would be fooling ourselves to boast of a political tradition characterized by “institutional stability,” and it would be an error to believe that we have demonstrated continual respect for the Constitution and the laws throughout our history (“Chilean legalism”). The widespread

conviction that Chile is one of the few Latin American countries that has managed to live under a democratic government that respects the rule of law has been cast into doubt. A constant source of patriotic pride has thus begun to erode, one that represented Chile as a rarity in the region: unlike the rest of Latin America, characterized by the fragility of its political institutions, in Chile, “institutions work,” as President Ricardo Lagos liked to say. By some irony of history, two presidents who were to be deposed by force and would end up killing themselves, José Manuel Balmaceda and Salvador Allende, shared the same faith in the stability of political institutions in Chile.

The “traditional” conception of the exceptional character of the political and institutional history of Chile can be summarized as follows. After a brief period of “anarchy” in the years following the fight for independence, Chile supposedly found the path to flourishing republican institutions starting with the establishment in 1830 of the so-called “Portalian regime.” To be more precise, even if in Chile there had existed the same evils of political disorder and constitutional instability that plagued the rest of Latin America, thanks to the work of the government led under the inspiration of Diego Portales and its constitutional text of 1833, the country supposedly entered the path towards political and institutional stability in comparison with the rest of the region.

Chile did, in fact, seem to enjoy great constitutional stability: from 1830 to the present day, it has been governed by only three constitutional texts (1833, 1825, and 1980). Similarly, the Chilean political system has shown a large chain of governments that succeed each other in accordance with the constitutional order. Under the authority of the 1833 text, governments constitutionally succeeded each other until the 1920s, with the exception of the fall of Balmaceda whose reign ended as a consequence of the Revolution of 1891. During the 1920s, there was a

relatively short period of instability in Chile amidst a wave of political disorder and coups d'état that affected the entire region and was related to the economic and commercial consequences of the First World War and the Great Depression of 1929. Starting in 1932, and until September 1973, Chile reassumed its democratically stable character, representing the only Latin American country to enjoy four decades of civil governments constitutionally elected with a competitive political party system, uninterrupted by putsches, revolutions, or political assassinations. Following the end of the military dictatorship there has also been a successive line of civil governments elected in conformance with the constitutional rules between 1990 and 2010, a period which is still widely considered a successful “transition to democracy.”

## **2. The material conditions of political and institutional stability in Chile.**

It is impossible to completely understand the conception which is normally held of Chilean political tradition, nevertheless, without considering the explanations put forward to account for the political “exceptionality” that has distinguished Chile from the rest of the countries in Latin America. Within the various reasons commonly called on to provide such an explanation, the most recurrent are related to the specific socio-economic and geographic structure of Chile with special emphasis on the political genius of the “Portalian regime” which was established as a consequence of the conservative reaction of 1830 and whose constitutional consecration is found in the 1833 Constitution.

As for the socio-economic and geographical causes, what could distinguish Chile from the rest of Spanish America, to which it was tied not only by language, culture, and religion, but also by a shared colonial heritage? The traditional response is recited as follows: Chilean society

was even more hierarchical, homogenous, and compact than those of the rest of the Latin American nations.

In Chile there had supposedly existed a very simple social structure in which a dominant group composed of aristocrats of Spanish descent (*peninsulares* and *criollos*) was distinguished from an inferior group composed almost exclusively of differing strata of *mestizos* determined by the degree of indigenous or African descent. Given the low proportion of indigenous population (at least in the area north of the “frontier”) and the insignificant number of African slaves brought to Chile, there was a large enough degree of racial homogeneity to prevent the explosion of racial conflict that occurred in other parts of the region where the indigenous population was greater or there was a greater presence of African slaves. Together with this, and in part thanks to this, in Chile the independence revolution did not have even a tinge of social conflict. The strong bonds of submission and loyalty the working class – the vast majority of whom were illiterate rural dwellers – demonstrated for the patron class were kept intact (the first social struggles would not appear until much later).

The dominant class in Chile, moreover, enjoyed a notable degree of cohesion, principally due to the fact that it was largely led by a group of landowners from the Central Valley who had interests both in agriculture and commerce since colonial times. Strong opposition of economic interests, by consequence, did not arise within the group, unlike what occurred in other parts of Latin America where the landowning classes were often in opposition to differentiated mercantile and middle classes. Lastly, Chile was comprised of a relatively manageable geographic entity and lacked strong regional tensions (Santiago, the capital, was the only city of considerable size). Chile, in sum, was socially and geographically compact.

### 3. Not so exceptional? The 1820s.

Despite the presence of these favorable material conditions for the establishment of stable order, the pattern followed by the political and constitutional events in Chile during the 1820s did not differ much from that of the rest of Spanish America. There is nothing about those years that seems to distinguish the Chilean experience. In Chile, as in the rest of the region, the republican option triumphed over the monarchy during this period, but in a way that did not include finding a formula for conjugating political freedom with order and stability: one after another various attempts at political organization succeeded each other.

Just as in the rest of Latin America, the first government following independence were strongly marked by militarism and the *caudillismo* typically associated with local strongmen in Latin America who were able to mobilize private armies, as well as by a high degree of authoritarianism in the executive. As was frequently the case in the region, the first government was not only led by one of the generals in the war for independence (in fact, that honor was first offered to San Martín and only then to O'Higgins), but furthermore in the years following the executive continued to be dominated by military officers who had played some role in the war for independence (principally, General Freire who was Supreme Director between 1823 and 1826, President of Chile in 1827, and chief of the liberal army in 1830).

Nor is it difficult to find "Bolivarian" traits in the thoughts of O'Higgins. The Chilean "father of the homeland" had initially hoped to install a fully representative government, but the obvious signs of disorder and political instability in the newly-formed republics led him to revise his assessment, after which he became convinced of the need for a strong, energetic executive capable of quashing anarchy. Only once order had been consolidated and the moral situation of

the people allowed it, could truly representative governments be established. A similar transition from liberal values to more conservative ideas can be seen in the thinking of Simón Bolívar. The Liberator declaimed unconstitutional dictatorships and the monarch, at the start, in favor of establishing democratic republics. The disappointments stemming from his republican experience in Venezuela and the wars for independence, however, led him to the belief that before all else it was necessary to defeat the evil of anarchy. Although he continued to believe that the republican model – especially in its federal version – was ideal, given Latin America's colonial heritage and absence of civic virtues, he felt there was no alternative to establishing an elitist republic with a powerful, centralized government. Both the Chilean hero and the Liberator were willing to sacrifice a great deal of political freedom in order to form governments capable of imposing order.

Yet if both Bolívar and O'Higgins eventually came to believe in the need for quasi-dictatorial government, the latter perhaps did not go as far as the former. The Liberator would end up at the extreme of proposing a Napoleonic regime with a president-for-life who could name his own successor (what many contemporary scholars call a monarch in republican clothes), and a three-chamber congress (also with some life-long members) that would include a House of Censors – the “fourth branch” – composed of a sort of supreme priests of the law who would carry out the moral supervision of the community following a design inspired by the ancient Roman magistrate.

Whatever the case was, the government of O'Higgins certainly possessed a dictatorial quality. O'Higgins himself believed in the necessity of a regime similar to the dictatorships of ancient Rome during the political crises. This explains the personal, draconian, and centralist style of his government. Notwithstanding, this came with an apparent desire to carry out an

ambitious program of social reform and an attempt to institutionalize the exercise of power which would yield two constitutional texts (those of 1818 and 1822). This has led many historians to advance the thesis that the government of O'Higgins, because of his political thinking and his actions, constitutes a case of "legal authoritarianism" or "constitutional dictatorship" which differs from the governments of *caudillos* observable in the rest of Latin America.

Despite the apparent scruples of the Supreme Director to avoid becoming a despot, after he had already ruled the country for six years, an antiauthoritarian reaction forced him to abdicate in 1823 to avoid the possibility of an armed conflict. From then on, just as in other areas in Latin America, various formulations for constitutional organization were attempted in accordance with republican, liberal values; attempts which had to confront a hostile reality and perished amid the conflicts between the capital city and the provinces, between the State and the Church, the conservatives and the liberals. The state apparatus turned out to be too weak and ineffective, incapable of maintaining control of the national territory, and victim, moreover, of endemic financial problems. The political institutions thus demonstrated notable weakness with respect to the vehicles of social power (the local strongmen known as *caudillos* and their militias, the landed aristocracy, and the church).

Putting aside the brief and "original" experiment of the moralist Constitution of 1823 – fruit of the conservative utopian Juan Egaña – which was never fully implemented, the occurrences in Chile can be seen as a part of a reaction that took place all over the region during the 1820s against the authoritarian military governments established during the struggles for independence. In order to avoid falling back into despotism and to guarantee that government action would represent the will of the people, attempts were made to establish a federal regime

which would shift some power from the executive to the legislature and recognize greater autonomy to the provinces. Once the federal model revealed itself to be impractical, the hopes produced by the conciliatory government of Pinto and the more balanced 1828 Constitution were quelled by the outbreak of another civil war.

The historical assessments usually made of the political events and forms of political organization of the period 1823 – 1829 do not completely concur, but the consensus is greater than it appears. Opposite to conservative historians, most of whom do not look positively upon the events of these years (which they refer to as the era of “anarchy”), there is a no less important section of historiography that considers it a period of “constitutional rehearsals,” or “years of political apprenticeship;” a time of necessary preparation for the establishment of an institutional framework in a nation that was still young and lacked significant republican experience. Everyone seems to agree, nevertheless, that the various attempts at political organization of those years were victims of excessive idealism and ingenuous confidence in the effectiveness of law, of a naivety natural for a “young republic.” Some historians, however, have argued that the political history of Chile in the 1820s also showed differentiating signs that augured or were a precursor of the Chilean political exceptionality to come later.

#### **4. The “republican model.”**

Still, there seems to have existed a broad consensus that it was only around 1830, thanks to the order established after the conservative revolution, that the essential steps were taken in Chile to establish a political tradition which would be totally exceptional in the Latin American body because, among other things, it was inspired by sober realism or political pragmatism, it was free of the excesses of enthusiasm and the legal institutional utopianism of the preceding decade. If it



is true that Latin America shifted in the 1830s and 1840s towards more conservative ideals and constitutional projects, in Chile this conservative reaction was especially solid and effective. In the conservative reaction led by Portales, Chile is said to have found the political formula for forging a path somewhere between anarchy and tyranny.

The conservative 1833 Constitution would become the first Latin American constitutional text to found a stable, operative republican order. This constitutional text would, in effect, remain in force for almost a century (1833 – 1925). Following its mandates, strongly centralized presidential governments would rule with the capacity to impose and maintain political and social order (1830 – 1860). The institutional consolidation resulting from these governments would provide the platform for a series of political practices based on specific constitutional dispositions and certain constitutional reforms would give rise to the so-called parliamentary regime (1861 – 1925), which was much less authoritarian and more democratic than its precedent.

The regularity of government succession is also said to be notable. If in the seven years following O'Higgins (1823 – 1830) there were, according to some calculations, no less than 30 governments, between 1831 and 1891 presidential succession was utterly regular, totaling eight governments in this period which, after the government of Bulnes (1841 – 1851), were all led by civilians. In the nearly one hundred years that run from 1830 to 1925 the relatively peaceful political times were supposedly only disrupted by two armed insurrections which were energetically put down by the government (1851, 1859), and the civil war which ended Balmacedas' government (1891).

## **5. The Portalian regime – an institutional order?**

An ever-more prevalent historical view, however, has cast doubt over the estimation that the exceptionality of Chilean order was due to the constitutional design of the government and other political institutions. As early as 1928, Alberto Edwards, one of the heroes of conservative historiography questioned in his book, *La Fronda Aristocrática en Chile*, whether the State or republic “in form” derived from the 1833 Constitution and the politico-legal ideas underlying it. Furthermore, it could be fairly said that one of the “revisionist” aspects of his approach to Chilean political history consists in assigning much less relevance than in previous historiography to constitutional texts and political ideas to explain historic events and the actions of the principal political actors.

Edwards insisted that it is a mistake to trace the independence revolution to a “spiritual and doctrinal movement of democratic nature” and rejected that the constitutional experiments and discussions of the 1820s had any relevance. In fact, he categorically denied that there were any “symptoms of revolutionary spirit” in the country before Napoleon’s invasion of Spain. In his view, independence “came about purely accidentally,” the same way it would have if by a cosmic catastrophe a comet had crashed into the Iberian peninsula. The captivity of the monarch and the dismantling of the imperial structure supposedly sowed the seeds for the emergence of a rivalry between those born in Spain and those born in the colony that would wear away the legitimacy of the traditional monarchical regime: “the government had become for the native-born *criollos* an institution dominated by an adverse party.”

The calls for democracy and the principle of popular sovereignty can be explained, according to Edwards, by purely instrumental reasons, by opportunism, not by convictions. The native-born aristocracy, then, made appeal to the principle of popular sovereignty only because of the need to found “command and obedience on ... something more noble than physical

necessity or terror” and that body of doctrine belonged to a legitimizing framework that was available for the justification of a new order following independence. Given that it had become impossible to appeal to the “doctrine of the divine right of kings,” there was no alternative other than the “doctrine of popular sovereignty.” The fact that, following independence, popular sovereignty and democratic ideals appear with increasing frequency in proclamations, constitutional texts, government and other documents in both Chile and the rest of Spanish America does not imply, however, that there existed a genuine, deep-rooted republican and democratic ideology. Furthermore, Edwards observed, that ideology had revealed itself incapable of establishing institutional order in the region.

The new Latin American republics, according to Edwards, were “formless” States that “only warranted the name of Republic in that they were not dynastic,” i.e., because the governments were not monarchic. It was only in Chile that a republic “in form” had materialized, thanks to the “miracle” of the Portalian regime. Edwards’ thesis, however, is that the genius of Portales did not have as much to do with the establishment of the constitutional regime in 1833 as might first be thought. For the conservative historian, this constitutional text is as irrelevant for the explanation of the Portalian regime as are the constitutional texts of the 1820s (1818, 1822, 1823, 1828), the supposed “Era of Greenhorns.”

Rather, at the center of Portales’ work – a pragmatic, skeptical politician, a “man of action,” as Edwards liked to say – was not a constitution but rather a material accomplishment: managing to get the aristocracy behind him and dismantle all opposition in order to restore “traditional order.” His main achievement was rapidly dispelling “the specter of democracy ... as if it had never existed,” in order to reestablish the principle of authority that during colonial times was imposed in the name of the king, even though now it was imposed in the name of the

“Government” (instead of monarchical absolutism, “presidential absolutism” was established in Chile). By grace of the prevailing weariness of political turbulence and military revolt, and taking advantage of the circumstantial unity produced by “the passions and interests of the struggle” among dissimilar factions, Portales supposedly restored the “traditional notion of the State” through the imposition of “a new and impersonal power, a majestic evocation of the old monarchic order, a Government that reigns once again as an obeyed permanent moral force, one superior to political factions and military prestige.” Yet, despite possible appearances, this traditional notion of the State refers more to a material fact than to a normative-institutional one.

## **6. The foundations for and substance of a State “in form”.**

It is crucial to clarify, in order to avoid misunderstandings, certain central characteristics of Edwards’ historical interpretation that are echoed in later historical discussions, since the superficial image that is projected by the language and concepts employed could lead to utterly mistaken conclusions. Firstly, the republic “in form”, the Portalian State, is not an institutional order founded on a specific constitutional design. That is, the foundation for the Portalian regime is not made up of some or the other constitutional principles but, rather – according to Edwards – something else. Furthermore, Portales was supposedly systematically misunderstood by “publicist” historiography that exaggerated the importance of public law and constitutional texts. Portales himself, in fact, “was unaware or pretended not to know who were the principal theoreticians of public law and social theory that were dominant at the time,” and was completely indifferent to the concepts and principles of constitutionalism that were part of the “intellectual baggage” of politicians then. The primary inspiration for his political oeuvre was very different. Portales, who openly displayed a certain indifference to legal institutions, reinstated above all else unthinking obedience, the habit of obeying authority, in the same way

the monarch was obeyed when Chile was a Spanish colony, whose legitimacy stemmed, more than some principle of representation or to divine right, from the brute fact that authority was unquestioned. This restoration of colonial order is Portales' system: not a new philosophy of government under the light of liberal and republican inspired constitutionalism, but rather a 'religion of government.' This and nothing else is "what makes the machine go." The vision put forth by Edwards bears some resemblance to the legal positivism – as Eyzaguirre and Góngora pointed out (see *infra* section 7) – that saw in the 'habit of obedience' the basis for the authority of the sovereign.

The basis of Portalian order is not, then, primarily institutional or normative in nature, but rather material. That is why, when Edwards speaks of the "traditional concept of the State" or of the "Portalian State," the term "State" has no normative connotation either. What Portales restored when reestablishing "the traditional concept of the State" or "the noble concept of the State" was not a complex of political and legal institutions through which power was exercised, but instead something completely different: what he restored was a material fact, the imposition of power, and an attitude, a disposition of the "soul" or of the "national consciousness" towards "mechanical obedience" to the government. These material facts are the true foundation upon which public order and the institutions are based. In the words of Edwards himself:

The achievement of Portales was the restoration of a situation and a sentiment that had provided the basis for public order, for three centuries of Octavian peace as a colony: the situation was characterized by a powerful, durable Authority, superior to the prestige of *caudillos* and to the force of any faction; the sentiment, traditional respect for authority in the abstract, for the legitimately established Authority independently of who exercised it. What he did seemed to be new because it was too old: he materially and morally restored the monarchy, not in its dynastic principle, which would have been ridiculous and impossible, but rather in its spiritual foundations as a conservative force for order and institutions.

The State “in form” –the “traditional concept of the State”– that existed in Chile by Portales’ hand, involved above all the actual existence of a strong, indisputable government that dominated all of the factions in the ruling class (whence the “great silence” ensuing Portales’ victory) and to the obedience displayed by the rest of the population. The genius of Portales was doing whatever necessary for Chilean society to return to being ordered and disciplined as in colonial times, and he accomplished this through two ways: he managed, on the one hand, to domesticate the Chilean aristocracy (“more by fear and calculation than by conviction and temperament”) and, on the other, he was able to take advantage of the indifference and complacency of everyone else (“the general inclination of the masses in the country towards passive obedience and relaxation” of which Portales spoke). Here, enters into the formula, “the weight of the night,” which is the final essential element in the foundation of the Portalian regime:

It probably is not only, then, the geographic circumstances of our country and the simplicity of its social structure that enabled Chile to remain a State “in form” for several generations; but also the isolation and relative backwardness of this poor colony will have played a part in making the miracle happen: the social order here must owe its stability to “the weight of the night,” to use the original, picturesque expression of Portales himself. The colonial spirit of passive obedience and hierarchical discipline survived the catastrophe of Independence and provided the foundation on which the great Ministry of 1830 was built, precisely because we had not gone very far down the path that led to the decomposition of our “historic soul.”

When Edwards examines the elements in the foundation of Portales’ accomplishment, the State “in form,” he is not doing what today we would call constitutional or institutional history, nor, certainly, history of concepts or of political ideas, even if much of his reflections seem to fall into the category of what we would call history of “mentalities” or “attitudes.” We thus find ourselves faced with another point that needs clarifying, one that relates to the way Edwards

conceives the relationship between the Portalian regime and law. Illuminating this question turns out to be significantly more problematic and difficult. On various occasions Edwards maintains that the Portalian regime reestablished both “legitimate tradition” and “legal order” which would be distinguished as “true political tradition” by its “legal regularity.” There is even one passage where the very concept of State “in form” seems to be defined from the point of view of law and the constitutional text. This must not, however, lead to a misinterpretation of the position that the constitutional text and the law occupy in the Portalian regime according to *La Frontera*. The conservative historian insists time and time again the great error of liberal historiography is that, due to its bias for “publicity” and “lawyerly” character, it attributes too much importance to the constitutional texts and the principles of public law. That is why we jurists, who have a natural tendency to overestimate the role of constitutions and law, would be ill-equipped – Edwards holds – to understand the Portalian restoration of the traditional notion of the State.

Edwards never tires of insisting that the 1833 Constitution played “an insignificant, and moreover passive, part” in the Portalian restoration of the “high notion of State,” the State “in form.” Furthermore, that Constitution, according to Edwards, was not only unjustly discredited as authoritarian, as it was in truth a parliamentary constitution, but that it was also one of the mechanisms that had permitted the gradual erosion of presidential authority and along with it the very legacy of Portales. Given the extremely limited role and importance he attributes to it, it is not strange that Edwards found both grandiloquent praise and impassioned criticism of the 1833 Constitution unjustified.

But in conclusion, what is the position of law in the Portalian State according to Edwards? It is impossible to give a clear answer. The only response of relative certainty is its negative aspect: Edwards assigns less value and importance in the political development of Chile

than the historiography dominant until then. But this scant importance seems contradicted every time that the author emphasizes the “legality” of the State “in form”.

Reading the work as a whole, it is clear that he insists on the importance of law in Portales’ accomplishment from the point of view of the administrative regularity of the government, in which the government appears “vested in legality,” which is important because the same regularity and legality was part of the legitimate traditional colonial order that Portales is said to have restored. Yet the position of law and the constitution in the Portalian regime could not be other than ambivalent, as it was, for that matter, in the thought of Portales himself, who was supposedly skeptical of the utility of the constitution and laws but knew, all the same, that he needed them, that he could not forego the vestment of legality. In fact, Edwards on occasion contradicts his own argument that the 1833 Constitution was ultimately parliamentary.

This ambivalence, or better yet, indefiniteness, with regards the place of law and constitutions in Chilean political history of the 19<sup>th</sup> century is not coincidental; it is central to the task of situating the historical problems that face us in the period from 1830 to 1891.

## **7. The notion of State in Chile.**

*La Fronda* remains to this day the *locus classicus* for the argument that Chile boasts, unlike the rest of Latin America, a State or Republic “in form,” and that this is because of the brilliant accomplishment of Diego Portales. It will not come as any surprise, then, that the theses forwarded in the book have been taken up by other conservative historians. Of special importance among them is Mario Góngora’s *Essay on the Historical Notion of State in Chile during the 19<sup>th</sup> and 20<sup>th</sup> Centuries* (1982), which became the most discussed and most influential historical essay of the 20<sup>th</sup> century. In the work, as its title indicates, Góngora aims at writing the



history of the notion “State,” whose basic terms owe much to the oeuvre of Edwards, whom he qualifies as “the best historian of the republican period.” Góngora, however, makes certain corrections and clarifications to the thesis of *La Fronda* that give his work a place of its own, but that, rather than countering Edwards’ argument, radicalize the interpretive lines in it.

In *Essay*, Góngora uses as a starting point the nuclear thesis that in Chile a national State was consolidated, thanks to Portales, characterized by a strong government much different from the militarism and *caudillismo* of the early days following independence. The successful Portalian conception was based on the realization that a strong, centralized government, led by an omnipotent executive, was necessary, removing to a distance the democratic ideas that Portales felt were impractical in Chile due to its lack of culture and the virtues of the population.

Yet Góngora makes two fundamental corrections to Edwards’ account. In the first place, he maintains that Edwards was mistaken to understand the establishment of the Portalian regime as a restoration of the traditional colonial order, denying that his regime was nothing more than monarchist absolutism in republican vestments. Góngora maintains that this argument is faulty for two reasons: first, because “the full absolutism of the Spanish monarchy never made it to the Colony,” and, in the second place, because presidential authority after independence represented a new type of regime that, unlike the Spanish monarchy, lacked any sacred or religious foundation and was based, more accurately, on a modern, centralized State that made direct appeal to the principle of authority (in a kind of legal “positivism” that simply requires submission to authority and respect for the law, as Eyzaguirre had already noted). According to Góngora, the work of Portales was:

Lacking any transcendent ideas, based on “duty;” despite all interior and exterior oppositions; despite the lack of “republican virtue” in the Chilean people;

completely turning about the optimism that followed independence; with all of that, there is a duty that falls to those in control, to civil servants and military officers, to make Chile a great country on the Pacific coast. It is a “modern” creation, nothing like anything in the Spanish-speaking world or the colonial arrangement but, more accurately, centralized following the French model with all of the fragility of the newly-formed States of the 19th century, lacking any sense of the sacred that characterizes medieval kingdoms.

Despite this sense of duty and legalist positivism, however, the portrait Góngora paints the ambivalence and uncertainty of the relationship between law and the Portalian regime can still be found, especially when effort is made to draw the limits of the authority of the strong, centralized government that comprises its nucleus:

Legal texts, including the 1833 Constitution, did not matter much [to Portales]: obligatory for mere citizens, government officials, and courts of justice, these texts had to leave room for the discretion of the chief of the Executive Branch whenever public well-being required it.

Even so, Góngora’s assessment is important as it clarifies a bit further the relationship between law and the State in conservative thinking: it affirms that government officials must also respect the law, except when the limits imposed by law restrict the government’s ability to impose order and protect public interests.

The second correction is just as fundamental, but in an important sense carries even further one of the interpretive arguments of *La Fronda*. In addition to a strong, centralized executive, the other pillar supporting the regime comprised a solid social base made up of an aristocracy that preferred order above all else:

I think, then, in contraposition on this point to Edwards ... that the regime instituted by Portales was not “impersonal” or abstract, but rather that the Government needed the support of an aristocracy – an American aristocracy, to be sure, not feudal landowners; but a class that was obediently subjected to the Government by its own interest in preserving public order. “Impersonal” governments are typical of a bourgeoisie or industrial proletariat, never of an aristocracy. Still, we are not dealing with a purely aristocratic government such as

the one installed after 1891, but rather must insist on the polarity conceded by both parts: one of them, an authoritarian Government that openly intervenes in elections... the other, an aristocracy of landowners, who were also as it would happen relatively open to government and military officials who largely come from the middle classes. The Portalian regime presupposes that the aristocracy is the class in which social rank, and interests that derive from social rank, is defined by the moral quality that prefers public order to chaos. It is our opinion that this is what “makes the machine go” in Portalianism.

Thus, for Góngora the definitive basis for Portalian order, what supported presidential authoritarianism like a backbone, is a material and cultural fact: the existence of a particular political and socio-economically dominant class (landowning, but accessible to the most important state civil and military officials) that was characterized by a special cultural trait, i.e., the worship of order. This means that cement of the entire structure of the regime lay in the existence of a dominant class that preferred running the risk of tyranny out of fear of anarchy. This enabled the regime to dispense with two qualities that Edwards associated with the “fully formed” State – impersonality and the abstract character of government – that, because they are eminently institutional qualities, were not easily reconciled with Portalian order, whose origins are more material and cultural. It should be noted in any case that this modification of Edwards’ thesis constitutes, more than a denial, a radicalization of the thesis of *La Fronda*: the basis for the accomplishment of Portales, the State “in form,” is not institutional or normative but rather social and cultural. This is why Góngora takes it upon himself to make clear, leaving no room for doubt, that he employs a non-normative-institutional concept of State.

The State, for those who look at it historically – not merely from a legal or economic criterion – is not a mechanically established apparatus with a utilitarian finality, nor is the Treasury, nor bureaucracy ... we could say ... like Spengler “in truth the State is the physiognomy of an entity of historic existence.” These essays cannot be ascribed to political, social, economic, or cultural history; they are the history of a “concept,” that openly embraces those subjects, as is natural, wherever they help make the concept comprehensible; otherwise, this would be nothing more than abstraction.

## 8. The long shadow of the weight of the night: recent historical revisionism.

It would be difficult to exaggerate the influence of the historical argument of interpretation begun by Edwards on Chilean historiography. The shadow of this disposition, which casts into doubt the importance of legal and political institutions to understand Chile's political tradition, has become so widespread that it is even noticeable in the work of historians considered "revisionist." Hence, to take one of the most influential cases, although the author proclaimed himself to be "revisionist," the theses underlying the essays in *The Weight of the Night*, by Alfredo Jocelyn-Holt, belie an important degree of influence by the ideas of Edwards and Góngora.

These essays represent an effort to nuance the idea that in Chile political order was supposedly imposed by virtue of the conservative regime that grew out of the strong, centralized presidentialism starting in the 1830s. Of course, the author notes that the "order" imposed between 1830 and 1860 was quite relative, as is demonstrated by the fact that half of period is made up of states or regimes of exception ("meaning that the constitutional order operated on a level that was at most nominal"), and includes two civil wars (1851, 1859), as well as the assassination of Portales, the principal figure of the regime. He then points out that the center of gravity in the governmental structure shifted in 1860 towards the parliament, such that presidentialism did not enjoy an overly long life. Lastly, he observes that the scant size and limitations of the administration's resources – something that would not begin to change until the 1880s – make it difficult to believe that "that the existing state was able to assure pacific coexistence or mold society as it saw fit using public policies." Besides, the institutional structure that the state did possess was in his opinion more a product of Bourbon reformism than the Portalian regime.

What, then, provided the basis for social order? Jocelyn-Holt answers that “the persistence of traditional social order was more important than the state.” In addition, according to him, “no *transcendent* social change took place in all of the 19<sup>th</sup> century” (italics in original). The basis for social order continued to be, then, as during the colonial era, what Portales called “the weight of the night,” which he defined as composed of two elements: (i) “the social submission of the lower classes” and (ii) “the seigniorial, hierarchical order that in truth presided over and governed the country.”

Jocelyn-Holt especially emphasizes the second element: the “predominance of the traditional elite.” For him, what is presented as the power of the State in the 19<sup>th</sup> century is nothing other than the social power of the elite who instrumentalize it. The “social elite” and not the State would thus be the principal political actor for two reasons: a. the members of the state apparatus would come from the same elite and b. the maintenance of the elite’s unity prevailed on the occasions when the State threatened to become a divisive factor. This enables him to reach the following conclusion:

The administrative power of the state was envisioned – in the best of scenarios – as an instrument of an oligarchic government serving the elite and, in the worst case, was perceived as a potential danger that had to be controlled before it could divide that same elite. In fact, every time the threat was raised during the 19<sup>th</sup> century, it was suppressed. We can conclude, then, that it was the elite, and with it traditional order, and not the administrative state, that was the principal political force behind social stability, as well as its source.

So it can be said – carefully – that the argument of Jocelyn-Holt seems to follow the same lines that Edwards drew. Both are concerned, above all, with supporting two theses. First, that the protagonist of Chilean political history is a particularly cohesive class that is socially, economically, and culturally dominant – that the latter calls “aristocracy” and the former “social elite” – playing a central role only accompanied by the role of the military. Second, that “the

principal source of stability” in Chile consisted, by consequence, in the preservation of the traditional order.

One of the aspects of *La Fronda* that has attracted the most attention is its allocation of the protagonist role for the entire 19<sup>th</sup> century to the aristocracy since, according to Edwards, it – occasionally accompanied by the army – was the driving force behind all of the political events of the century. Edwards himself, in fact, goes out of his way to emphasize that what enabled Portales to carry out his work was having managed to unite behind him the various aristocratic circles. Furthermore, for Edwards, “the principal merit of Portales’ system” was uniting the Chilean aristocracy, which had grown tired of political instability and was terribly frightened by the specter of “the collapse of the republic,” transforming it into a “formidable social base.” Moreover, in *La Fronda*, the political history of the years following 1860 is also characterized by the erosion of the “presidentialist” government and its replacement by a “parliamentarian oligarchy.” It is not apparent how Jocelyn-Holt’s argument can be considered “revisionist.”

Similarly, what has already been said of Edwards’ work provides sufficient grounds for maintaining that he would agree with the thesis that the main source of social stability in Chile was the preservation of the traditional order. Edwards insisted time and time again that the genius of Portales was precisely the restoration of colonial order – “what was called ‘colonial reaction’ in the works of Portales was not only ... the most skillful and honorable part of his system but the system itself” – and this restoration was not carried out in the name of the monarch’s divine right to rule, but instead in the name of national sovereignty, although the appeal to that ideal was purportedly nothing more than an opportunistic move, a superficial facade without any real implications. In a similar way, in fact, another distinctive aspect of the works of Jocelyn-Holt is their insistence on the “strategy of co-opting the language of politics”

that the elite follows. The only difference between the two that is perceptible here seems to be one of emphasis: Jocelyn-Holt maintains that Portales did not restore the traditional order but rather preserved it, and, accordingly, he says Portalian order should not properly be considered order as such but rather “residual order,” that maintained what was left of the Ancient Regime following independence. This, as will become clear, is far from a fundamental disagreement.

The only real contradictions between them stem from Jocelyn-Holt’s inclination to deny the importance that the State supposedly had in the political history of the 19<sup>th</sup> century in Chile. Yet, in no small measure, the contrast arises because Jocelyn-Holt, unlike Edwards and Góngora, uses the term “State” strictly in an institutional sense, and one that is very restrictive, for instead of referring to the whole institutional complex normally recognized as the state apparatus, he reduces it to the government and the administrative apparatus under its direct control, i.e., “state” only refers to the executive branch, or as he himself says on occasion, he understands the State as “administrative state.” If the starting point is a concept of the State as restricted as this one, rejecting the conception of the political history of the 19<sup>th</sup> century as primarily a “history of the State” is completely understandable.

This restricted concept of State makes it easy to understand why the author speaks of the authoritarianism of the government of the elite during the 19<sup>th</sup> century instead of presidential or state authoritarianism. It also renders comprehensible why for Jocelyn-Holt the achievement of Portales was not the creation of state or presidential authoritarianism, but rather the preservation of some “social authoritarianism.” Accordingly, when he questions the importance of the role of the “state” in understanding 19<sup>th</sup> century Chilean history, what he is doing is questioning the importance of political institutions, just as Edwards and Góngora did before him. What Jocelyn-Holt does when appropriating the concept of the State is to reaffirm ever more the distance

between the social elite and the institutions by contrasting a sphere of state action and a socio-cultural one.

Manipulating the notion of the State, however, while amplifying the scope of action of the social elite, leads to a paradoxical implication. According to him, the State is only powerful because the elite uses it (it is its “auxiliary instrument”), such that behind State power there is nothing other than the power of a powerful elite, and at the same time he holds that the elite opposes the State, and that the elite prevails in every instance. This leads to more paradoxes. Thus, for example, although Jocelyn-Holt conceives of the social elite as part of civil society, inasmuch as distinct from and independent of the State, and sometimes as civil society itself, he finds himself obliged at other times to describe the elite as an element that opposes and limits civil society.

The most striking of these conceptual difficulties is the one that reflects Jocelyn-Holt’s attempt to distinguish between “government” and “state” in order to make a distinction between government of the elite and government of the State. This is why he goes as far as proposing that: (i) the main task following independence was the establishment of a stable government within a constitutional framework, not the establishment of a State, and (ii) that the material conditions for the establishment of a State only existed starting at the end of the 19<sup>th</sup> century, an achievement that was only reached in the 1920s. It is very difficult to understand the difference that Jocelyn-Holt tries to establish between the modern State and a “stable government with constitutional backing.” The only explanation that I can think of is that Jocelyn-Holt anachronistically understands the State as “social State” or “administrative State” – using the terms as they were coined by German jurists and sociologists – which corresponds to the conception of the State in the 20<sup>th</sup> century, trying to formulate the relationship between State and



civil society in the same way liberal German theorists formulated the relationship of civil society to the constitutional monarchies in Germany of the 19<sup>th</sup> century, when the monarch and administration (as the State) were opposed, on one side, to the organized bourgeoisie and parliament (as civil society) on the other.

Beyond this obscure conceptual panorama, the opposition between social elite and State in Jocelyn-Holt is no more than a social distinction between the traditional landowning aristocracy and a new elite class originating in the State. Put otherwise, the institutions are ignored to such a point that the State itself is only visible in a social dimension. For Jocelyn-Holt, the tensions between the “ruling class” and the “state” during the 19<sup>th</sup> century were fundamentally an expression of social tension. In fact, for him, the only danger that the State represented was precisely its ability to potentially erode the political cohesion of the elite.

## **9. Reevaluating the place of institutions and law in 19<sup>th</sup> century history.**

In the preceding pages, an effort has been made to show that one of the most (if not the most) influential historical trends of the 20<sup>th</sup> century – contrary to what is commonly thought – attributes little importance to the institutions and to law when explaining Chilean political tradition and the political history of Chile in the 19<sup>th</sup> century. In this final section an attempt will be made to outline arguments for reasserting their importance and value, arguments that seek a foothold in the works of historians who seem to adopt the opposite position.

The most frequent argument used to question the importance and value of law and institutions relies on the recurrent use of “states of constitutional exception” and other means of political repression employed during the 19<sup>th</sup> century and particularly between 1830 and 1860. And, in effect, the so-called “organization of the State” was indisputably accompanied by a

considerable degree of repression. That is why conservative governments, especially during the times of Portales (1830 – 1837) are commonly qualified as “dictatorial” or “authoritarian.” An assessment of the conservative governments that is limited to their repressive or dictatorial side, however, is in the end unilateral and does not contribute to an understanding of the contribution these governments made to the formation of the political tradition of the country – significantly less repressive and increasingly more democratic – in the years 1861 – 1925.

With the objective of providing a more balanced evaluation, some historians have begun to study the political regime of the years following independence under the light of the concept of “constitutional dictatorship” or “constitutional authoritarianism” and “autocratic republic.” If the governments of the conservative republic had been merely dictatorial or authoritarian, they would have been sterile, incapable of generating or creating any political order, of leaving behind any legal or institutional legacy. Those governments were to play an important role in the political and institutional history of Chile in the second half of the 19<sup>th</sup> century, a role that is neglected by a historical reconstruction focusing on their repressive, dictatorial, or autocratic nature, and that sees important precedents in the “Bolivarian legacy,” from which it purportedly inherited its ambivalent character. Only a reductionist vision of the political history of 19<sup>th</sup> century Chile, then, could limit the legacy of the period to repression and political violence.

The conservative reaction in Chile was to take, in effect, the path blazed by O’Higgins setting as the primary objective the construction of political and social order through a strong, centralized government. And although this would be accompanied by a less ambitious program of social reform, it did not abandon aspiration for progress, which grew ever more resolute as order was established. That is why Collier, for example, argued that O’Higgins was the “true precursor” of Portales. But in order to appreciate this it is necessary to not only consider the

solitary figure of the minister, but also the broader assembly that comprises the so-called “Portalian State.” A vision – commonly shared in the historiography of the period – of the conservative republic centered on the figure of Portales turns out to be incapable of affording an evenhanded vision of those years, as in the figure of Portales, who had little esteem for constitutions and laws when they became obstacles for the imposition of public order, surges nearly unilaterally the dictatorial aspect of his regime and his successful affirmation of the “principle of authority.” That image, however, cannot explain the space the autocratic republic created for the emergence of a political and constitutional tradition that would allow for a gradual liberalization and democratization of the government.

One of the major problems that this period poses to historians is, then, accounting for the bi-frontal or ambivalent character of the legacy of the conservative republic, expressed in the *contradictio in adjecto* implicit in the terms ‘constitutional dictatorship’ and ‘autocratic republic,’ since the ideals of both constitutionalism and republicanism would seem incompatible with any authoritarianism or autocracy. And as important as figures such as Diego Portales – who symbolizes the dictatorial or autocratic aspect of the conservative republic – are for understanding the character of the period, there are others just as important, such Mariano Egaña, to whom a large part of the 1833 Constitution is indebted as well as important work as a senator, or Andrés Bello, a leading jurist in international public law, responsible in no small way for Chilean and Spanish-American foreign policy, principal author of the style and content of the acts and documents of the government during his time (e.g., writing the messages from the President to Congress), principal figure in the process of Chilean codification and author of the justly admired Chilean Civil Code, first rector of the University of Chile, and a considerable etcetera. The regime of the conservative republic has thus two aspects: one that represents a

political realism that does not hesitate to employ whatever means considered necessary to impose real order, be they legal (*secundum legem*) or illegal (*contra legem*), and another represented by people like those just mentioned, who consistently make efforts to give the government republican and constitutional form. Only by beholding both aspects at once can one understand why the autocratic republic does not appear to be the last chapter of colonial history – as Heise would say following a historical argument that goes back as least as far as Lastarria – but rather the first in the story of the formation of a free, independent republic. In sum, the question that must be answered pertains to the contribution of the autocratic republic to the “exceptionality” of Chilean political tradition.

The idea of the “exceptionality” of Chilean political tradition has a long history that goes back to the political triumph of a certain conception of order forwarded by the governments composed of American-born aristocrats and their allies, but one that would end up as part of the common heritage of Chilean politics once its most violent and repressive aspect had been purged. Still, before an understanding can be reached of the moment when the conservative order overcame itself, to put it one way, we must first understand how this notion of order emerged, which was from the start associated with the formation of Chilean political self-consciousness, and how the notion was first used to frame the legitimacy of and then to transform the autocratic republic.

The conservative victory in 1830 and the preservation of the political order which began implementation under their control was not solely based on discontentment with the government and constitution in place at the time of the conservative revolution, but rather was above all a product of the existing social consensus near the end of the 1820s that imposing order was necessary. The main source of legitimation for the conservative regime thus lay in the guarantee

it seemed to offer of peace and order and promise to dispel the specter of anarchy. This is why it should be no surprise that there was an active government policy to promote and spread the idea that Chile had in fact become orderly. Near the end of the conservative government led by Joaquín Prieto (1831 – 1841), the idea had already begun to circulate that Chile possessed an exceptional degree of order and security compared to the rest of Spanish America.

Towards the middle of the 19<sup>th</sup> century, when a sort of historical national conscience was starting to be displayed, an ever-growing consensus could be perceived, one that held that Chile constituted an “honorable exception” in Latin America, a “model republic,” which led to a “superiority complex” that shone through official documents and acts, albeit much more reservedly than in correspondence between politicians and articles in the press. Chileans believed themselves to be in an oasis of peace and political stability, free from the waves of anarchy and unnamable dictatorships that afflicted their “sister republics,” certainly an enviable scenario in the Latin American context. This conviction, which would become a source of national pride, would also be reinforced when Chile acquired an international reputation for “political and constitutional stability.” The political order whose formation began in 1830 and was consecrated by the 1833 Constitution would thus begin to be viewed as a model to follow by thinkers from other countries on the continent.

Although the ideas of liberty and progress also appear in official documents and pro-government press, the dominant concept in the ideology of the conservative republic (1830 – 1860) was indisputably that of order. The existence of a firmly established order – the “most sacred of idols” in the heart of the governing party – was considered the necessary condition for all freedom and all progress. The extremely high value that the government and its allies assigned to “public order” following the experience of political and social disorder in the 1820s –

the contrast between before and after 1830 that conservatives emphasize – constituted the major endorsement and the primary source of legitimacy for the legal and constitutional mechanisms of the governing constitutional dictatorship of the autocratic republic.

That is why it is not completely accurate to understand the broad use of “states of constitutional exception” and the concession of “extraordinary powers” as depriving the 1833 Constitution of any value. In the years from 1830 to 1860, the idea that regimes of exception do not diminish the authority of the constitution is very widespread – its treatment as a reaffirmation in the exception and its authoritarian imposition was expressed along these lines in the message that President Prieto made public when the constitution was adopted. It is only this way that one can understand that the conservatives at the same time that they admire and praise the constitutional text of 1833, they enthusiastically saluted the declarations of states of constitutional exception in order to repress disturbances of public order. The opposition, for its part, harshly criticized the constitution precisely because of the space it seemed to leave for political oppression, specifically, for example, through the regulations for states of exception. The constitutional regime of 1833 and the states of exception thus appear, at least between 1830 and 1860, intimately related. Yet although 19<sup>th</sup> century Chilean political history is, to no small measure, the history of the construction of a political and institutional order, largely using authoritarian legal means and with a high degree of political repression at great cost in terms of liberty, it is also the story of the gradual disappearance of those legal means – as order became increasingly consolidated and trust in its stability spread – and the subsequent rise of what would later be called the “parliamentarian republic,” which was much more democratic and less repressive than the autocratic republic.

Let us examine this in a bit more detail. The political history of the years 1830-1860 revolves around the establishment and operation of a series of mechanisms through which the constitutional dictatorship of the autocratic republic was institutionalized and legalized. It tells how, by mandate of the 1833 Constitution, a highly centralized government led by the powerful figure of the presidency, had great powers to control both the legislative activity of congress and its membership and which benefited from the assistance of an administration that left practically no space for local autonomy. This authoritarian constitutional framework would be developed and completed by important complementary legislation of the same stripe.

The 1833 Constitution and its complementary legislation would establish a true “constitutional dictatorship” in which the President, the great guarantor of national security and domestic public order, was not only made the primary magistrate of the autocratic republic, but also practically elevated him to a point of unchecked power. He was not only given enormous “ordinary” power to control congress and the administration (at both the national and local levels), but also the ability to exercise at times “extraordinary” powers during states of constitutional exception in which the rule of the constitution was suspended, and “extraconstitutional” powers such as, for example, the manipulation of elections (the President was the “great elector”). The presidency designed by the 1833 Constitution was, as can be seen, one of the strongest in Latin America, which is saying quite a bit in a region characterized by the preponderance of the executive branch.

Yet, this said, what needs to be understood is that the history that follows from 1861 until the civil war of 1891, and from that civil war until the replacement of the 1833 Constitution by the one from 1925, is, to a large degree, one of the gradual liberalization and democratization of a political order that had grown stable enough to tolerate greater degrees of dissent and political

competition that would become institutionalized through various modulations of the constitutional regime that progressively allocated more power to the parliament and the incipient party system which would end up becoming decisive political actors. The main consequence of these changes was the increased inclusivity of the Chilean political system through the internalization of the conflict between the government and opposition. In effect, from 1861 on, space for discussing reforms of the 1833 Constitution appeared for the first time, which had so long been the aspiration of the opposition. Liberal opposition to the aristocratic governments had, in effect, rallied for years around the call for a “true republic,” for which the reform of the 1833 Constitution was seen as necessary (proposals envisioned reducing the authority of the overly powerful presidency, reforming the administration which was too centralized, establishing a stricter constitutional framework for states of constitutional exception, etc). Suddenly it became possible to push forward a series of reforms that for a long time could be considered impractical given the difficulty of the procedure for constitutional reform, the loyal acquiescence typically shown by congress that resulted from the mechanisms of electoral intervention, and the high prestige of the constitution in the conservative ranks.

The design itself of the 1833 Constitution allowed for parliamentary control of the government and the administration that, although it was not initially exercised with vigor – given that the membership of congress was determined by the executive – was not irrelevant. A series of constitutional dispositions, in which historians find the reflection of Mariano Egaña’s admiration for the English parliamentary monarchy and the influence of the Belgian constitutional model, allowed a “series of parliamentary practices” to emerge that would later provide the foundation for the imposition of a “parliamentarian” interpretation of the 1833 Constitution, something that at first would have been difficult to believe or even predict. The



situation began to change in 1861 and in 1871 the first constitutional reforms were approved to the 1833 text, reflecting the increased power parliament had acquired and the greater amount of political space for action that had been opened to the opposition. A series of legal reforms was also very important. The most important of them might have been the electoral reform of 1874 that made elections more competitive, broadening the electorate and reducing the capacity of the executive branch to interfere in the result. From a weak position and rather secondary role, the Chilean parliament had undergone a transformation, becoming according to Drake “one of the most solid legislatures of Latin America.” The primacy of Congress over the President would be definitively consolidated by the civil war of 189, which toppled the government of Balmaceda, who had threatened to reestablish the predominance of the executive.

The sea change in the political order is visible far beyond the constitutional or legal reforms and the parliamentary practices. The resurgence of the press and a more active public opinion, and the open discussion of subjects as sensitive as religious questions are some of the manifestations that stand out most. They are all meaningful signs that reflect diminished political repression to preserve order. A patent demonstration of this fact can be found in the recourse to states of constitutional exception. While it is estimated that in the period from 1830-1860 roughly one-third of the time was spent under some state of constitutional exception – Lastarria went so far as saying half the time – after 1861 regimes of constitutional exception would not be used for 30 years, despite the occurrence in the meantime of the War of the Pacific (1879-1884). Only with the outbreak of civil war in 1891 were they once more employed, but once the decisive moments of this internal war had passed, they would fall back into disuse until 1925. Significantly, the use of states of exception would be much greater under the rule of the 1925 Constitution than during the years that spanned the period from 1861 to 1924.

### **In guise of conclusion: constitution as aspiration.**

A brief recapitulation of the arguments covered up to this point will lend itself to the purpose of drawing certain conclusions regarding the place and importance of law and institutions in the political history of 19<sup>th</sup> century Chile. The first conclusion that can be made is that, although favorable socio-economic and geographic conditions existed in Chile for the establishment of stable order, these were not sufficient in themselves. In Chile, as in the rest of Latin America, there existed a series of factors which conspired against the attempts across the region to organize States with a stable republican order, and that explains in a large part the succession of governments and constitutional experiments that followed O'Higgins' fall from power and why putting an end to the social and political disorder that afflicted the newly-formed republic was not accomplished. Only after the conservative victory in 1833 did Chile cease to be "the country of anarchy," as Bolívar called it, by virtue of the strong, centralized government that was established in the "conservative republic."

Yet had it not been accompanied by programs for the constitutionalization and legalization of government action, the conservative government would have been utterly barren, incapable of generating an order that could become a legacy for following generations. That is why the men responsible for the constitutional design and juridification of the social and political order of the conservative republic (e.g., Mariano Egaña and Andrés Bello, already mentioned) must be considered as significant as Portales. Nevertheless, it must also be recognized that the conservative governments displayed some ambivalence to the position of law and institutions, an internal tension that is captured in the expressions "constitutional dictatorship" or "autocratic republic," terms that suppose an ever-unstable union between the dictatorial or autocratic character and a "constitutional" or "republican" aspiration. Therein lies their transitional or

provisional nature, since the unstable fusion of these elements, which are in the end incompatible, always threatens to move in one or the other direction: on some occasions it seemed the autocratic republic was going to degenerate into a mere autocracy or dictatorship, while on others it seemed about to improve itself and become less ambiguously, or better yet, less imperfectly republican and constitutional. The indications were that the second alternative was impending, as the nation, beginning in 1861, gradually grew freer and more democratic, making a transition from centralist presidentialism to oligarchic parliamentarism.

The jump between the Portalian regime, necessarily provisional, and the regime of oligarchic parliamentarism that succeeds it, is a crucial one. The shift, which begins in 1861, opens the path for the gradual liberalization and democratization of the Chilean political system. The best aspects of the Chilean political tradition in the 19<sup>th</sup> century are due in large part to the slow, regular progression of this reorientation. One question that then becomes important is understanding how much of the shift is due to the moderates who led the transformation of the Chilean political system, scaling back repression of the opposition, increasing political tolerance and freedom – as was the case of José Joaquín Pérez (President from 1861-1871) – as well as certain followers of authoritarianism who at a given moment yielded to the changing times and political circumstances – as was the case with Antonio Varas, who renounced his fiercely resisted candidacy to the presidency. The rigidity and exclusive nature of the style of government that Portales left behind, the hard line of the conservative republic, simply became intolerable by the middle of the century, and threatened to destabilize the constitutional order and lead to civil war, as demonstrated by the episodes of violent insurrection that in 1851 and 1859 affected the government of Montt. That is why the renunciation of Antonio Varas – who represented the hard liners – to the presidency has always been considered a “patriotic gesture” and was to be an

indispensable condition for someone like Pérez to become the government's candidate for President.

A more balanced evaluation of the order established starting in 1830 and the 1833 Constitution that consecrates it cannot fail to note, of course, the regime's initial deficit of institutionalization and legitimacy – a deficit which is manifest in the high degree of repression carried out in the name of maintaining order in the early decades – but must also recognize its successful creation of ever-increasing space for dissent, political opposition, and an increasingly vivacious sphere of public opinion. It brought about, in sum, a greater degree of political inclusivity once the stability of the social and political order seemed more or less certain, when the risk of relapse into being “the country of anarchy” had become much less intimidating.

These reflections reveal something important about the essence of constitutions. It is not enough to observe the discordance between the constitutional text – or what is usually referred to in constitutional theory as the “formal” constitution – and the actual form of organization and exercise of the government – the “material” constitution – in order to dismiss the former as an insignificant piece of paper, as many historians do (Edwards, for example, and later, Bravo Lira). In every constitutional theory, and behind the reconstruction of positive constitutional law in any country, one will inevitably encounter this tension between formal and material constitutions. Moreover, however, as revealed by the study of political organization in Latin American nations, and in particular Chile, constitutions can be seen not only as normative texts designed to be enforced, but are also texts that express political aspirations, aspirations – it is known – that cannot be imposed once and for all in the immediate, but that operate like a roadmap, like a medium to long-term project for the construction of a nation with a complex of governmental

institutions in accordance with the principles and constitutional decisions that have been adopted. Constitutions can be seen, to put it another way, as promises and calls to action at the same time.

Constitutions are, in this sense, a source of legitimation whose operation presupposes mediation between the factual and validity – a “transaction between theory and reality” as Briseño put it – given that even if they can and do maintain distance from the factual reality, the latter cannot stray too far from the other without effectively rebutting it. Government action cannot deviate too far from the constitutional bounds that provide it with a legitimizing framework without negating the constitution, which is why it can be said that despite the distance that (always) exists between the two, and that, in this way, the constitution represents an idealization of government action, it represents an idealization with limiting effects. It remains nonetheless an idealization. As the history of the conservative republic shows, the order of the parliamentary republic was partly achieved by means of the blood spilled through political repression. This is why the ambivalence cannot be denied, both extremes and the tension between them can only be ignored at the cost of unacceptable reductionism. The constitution must be observed from a distance because it might be converted into a rationalization of unjustifiable repression and political violence, through which the institutional channels of power are instrumentalized or captured by those who hold social power or, to use Marxist terms, by class interests.

This in turn offers an adequate perspective to undertake a reconstruction of the relationship between social power and political power during the period under study. For the idealization implicit in a constitutional text to become operative, it must first have the backing of the groups holding social power, and this does not in itself constitute an outright negation of the idealization. At the moment the State was constructed, during the years of revolution for

independence and the period that followed, defeating the forces of realism was not the only necessity; it was also necessary to obtain the loyalty of the civil population to the new political corps. That is why it was so difficult at first, if not impossible, to draw the line between the political power that was institutionally legitimate and the social power materially based on wealth and social prestige. This was something that the Portalian regime, unlike that of O'Higgins, accomplished: the public order he established was imposed by the strength of a social order. The first great contribution of the autocratic republic was consolidating the support of social groups and economically powerful individuals – the “elite” or “aristocracy” of the time – for the construction of the State and the institutionalization of power, initially through fear of the “specter of anarchy,” then using the promise of “progress” which an operative republic appeared to offer. But this promise of progress generated pressures for changes in the very social framework that had supported political order. Once this order became stabilized, changes in social structure became possible. It is only with the crystallization of the relationship between social power and politico-institutional power that the political order becomes too rigid and incapable to increase its inclusivity. This is clearly expressed when certain social pressures for change lose political recognition, whether that be because they are simply not thematized or because any proposal for reform seems impractical. This was to occur with the “social question” during the parliamentary oligarchy.

Before returning, however, this question concerning to its limitations, it should be observed something about its potentialities: the 1833 Constitution provided both the conservative government and its followers and the liberal opposition with a common language through which to express and channel their respective political convictions and, above all, their political disagreement. The discussion revolving around the constitution, its parliamentary

reinterpretation, and the constitutional reforms towards parliamentarism will play a crucial in widening the inclusivity of the political system by incorporating the opposition, reducing bit by bit the degree of repression required to preserve order. Briefly put, the relevance of the constitutional order is also evident in its being the language and object of political discussion between backers of the government, the “conservatives,” and the “liberal” opposition. The 1833 Constitution afforded both the social consensus behind the government and the expression of political disagreement a republican form and language, integrating them into the cultural framework of constitutionalism. The adoption and settling of this form, of this language, could only play a crucial role in the subsequent transformation of the political and constitutional order that began in 1861 and produced the political order that would rule through the first quarter of the 20<sup>th</sup> century. In the national imaginary of the 19<sup>th</sup> century, Chile saw itself with increasing strength as in possession of a valuable, particular constitutional and political tradition, like a free homeland, whose progress owed much to its republican institutions and virtues.

The constitutional order, by consequence, was no other than a mediation between the project that consecrated our ideals of government and the material conditions which modulate its operativity, mediation that always risks becoming an idealization or rationalization that simply masks political oppression, to thus find itself denied as a promess.

Towards the last third of the 19<sup>th</sup> century, the Chilean political system started to fossilize and show itself incapable of maintaining open channels of political expression that would have enabled it to identify the problems that the socio-economic evolution of the country was provoking, both in the rural world and the mines, as well as the city. The so-called “social question” put to the test the capacity of the polity to integrate into institutional channels new areas of political and social conflict, new fields of discord. The parliamentarian oligarchic

republic, with an extremely high degree representation of landowners and businesspeople, proved incapable of implementing the necessary reforms, and chose once again to turn to repression, using the army to repress the protests and strikes that were used by workers to improve their miserable conditions and demand better, less exploitative treatment. A series of “massacres” began, one after another (1903, 1905, 1906, 1907, 1913, 1924, 1925, etc), following the rhythm of the economic and exportation crises, which would give the worker’s movement, socialists and anarchists, its first martyrs. Nothing was done despite the constant voices calling for reform in order to avoid revolution. Recourse to the military became increasingly common, which quickly politicized the military officers and gave them an idea of the social situation the country was experiencing, one that the authorities refused to acknowledge, and would eventually lead to the complete discredit of congress and the dominant political parties in their eyes. This fossilization of the Chilean political system would lead to the destruction of the 1833 Constitution and with it the parliamentary republic would collapse after a military intervention that signified the return to patterns of government similar to those of the political authoritarianism prior to the parliamentary republic. The political system born of its collapse would not preserve parliamentary tendencies either. This politico-constitutional order, which would preside over the destiny of Chile for a large part of the 20<sup>th</sup> century (1925-1973), although marked by a strongly presidentialist character and a respectable party system, would remain submerged in the tension between reform and revolution until once again a military intervention would put an end to it.