

# Water, Law, and Development in Chile/California Cooperation, 1960–70s

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**Abstract.** — During 1963–78 the governments and the top universities of Chile and California undertook three programs of binational development assistance and cooperation. The programs built on a long historical relationship between the two regions, marked by their striking similarities in physical geography and natural resources, despite being 1,000s of miles apart on opposite sides of the Equator. The first program was for technical development assistance to Chile in the framework of the Alliance for Progress, and involved the three governments of Chile, California, and the United States. Water resources and river basin development planning were a primary emphasis, and led to building Chile's largest dual-purpose reservoir (Colbún). The second program was for graduate-level academic exchange and involved the two leading public university systems, the University of Chile and the University of California. This comprehensive program was funded for more than a decade by the Ford Foundation, with agriculture, natural sciences, and engineering the dominant fields. The third program was a separate effort to reform Chilean legal education, led by Stanford Law School and funded by the Ford Foundation. This Chile Law Program was a leading international example of the “law and development” movement in the 1960s, which overlapped closely with the early years of the “law and society” movement in the U.S. Both university and law school programs ended after the Chilean military coup in 1973. What were the impacts of these programs on water, law, and society in both Chile and California? What lessons can we learn today from those historical experiences? We answer these questions with an historical overview and synthesis of diverse documents and evidence. In focusing on water, law, and society, we aim to contribute to the interdisciplinary synthesis of different fields of development studies.

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## 1. INTRODUCTION

This paper is about the relationship between Chile and California during the 1960–70s. We tell the story of that relationship, which is now a little known chapter of history, through the lens of water, law, and society. That lens helps clarify our core theme: the variety of academic and professional disciplinary perspectives on the world, and their different roles over time in national development politics and policies (Dezalay & Garth, 2002).

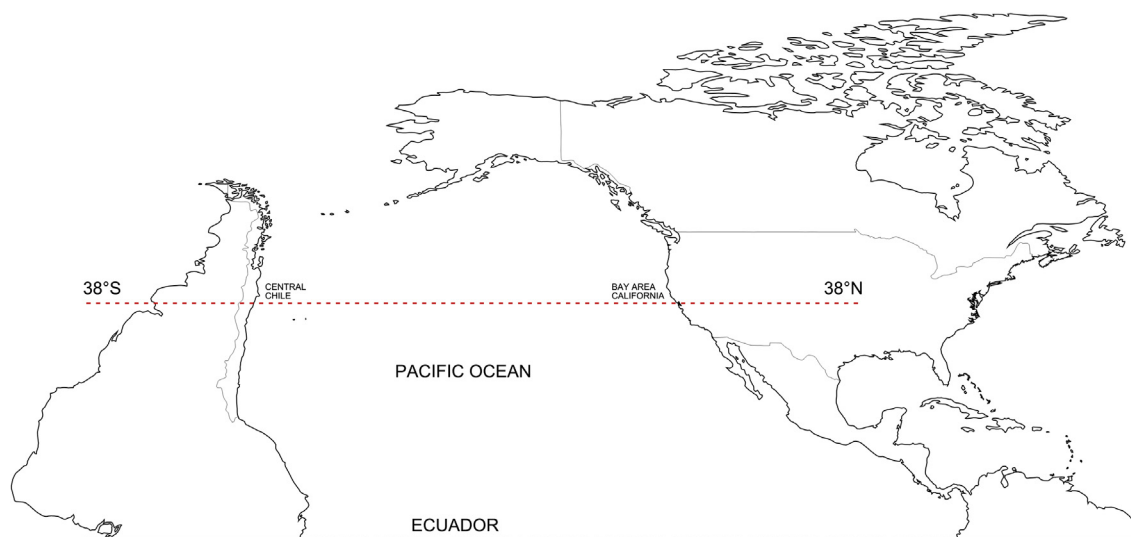
The economic and cultural ties between Chile and California have been strong since the California Gold Rush began in 1848, as both places exchanged people, goods, ideas, and plant species (Melillo, 2015). The geographic parallels between Chile and California were well recognized from the beginning. The two regions occupy the Pacific coasts of South and North Americas, thousands of miles apart on opposite sides of the Equator, yet they are strikingly similar in physical geography, climate, ecosystems, and natural resources (see Map 1).

The 1960–70s were a dynamic and conflictive time in both Chile and California, as in much of the world, marked by Cold War politics, strong government planning and spending in economic and social welfare policies, leftwing social and political protest, and international development aid. During this period there were three different programs of bilateral cooperation between Chile and California, each program involving some form of development assistance: i.e., transfer of knowledge or expertise. These three programs were distinct and separate. This is confusing because people often refer to “the Chile/California program” without saying which one they mean, and often without knowing that there were more than one. We briefly summarize the three programs here and describe each in more detail later. Our goal in this paper is

to tell the story of these programs in a concrete and multifaceted way, by pulling together and synthesizing scattered pieces of information and documents in both English and Spanish.

The first Chile/California program was for technical development assistance to Chile, in the framework of the Alliance for Progress. The program involved the three governments of Chile, California, and the United States. It was funded equally by Chile and the U.S., with California acting as a sort of subcontractor to carry out U.S. foreign policy.

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Map 1. Chile and California.

The second program was for graduate-level educational exchange and involved the two leading public university systems, the University of Chile and the University of California. This program was commonly known as the *convenio* (agreement) and it was funded for more than a decade by the Ford Foundation.

The third program was a separate effort to reform Chilean legal education and the legal profession, led by Stanford Law School and also funded by the Ford Foundation. This Chile Law Program was a leading international example of “law and development” in the 1960s (discussed below). Surprisingly, this program is not included in most accounts of the Chile/California programs.

What were the impacts of these programs on water, law, and society in both Chile and California? What lessons can we learn today from those historical experiences? Finally, how did those experiences help prepare the way for the rise of neoliberalism that followed soon afterward in Chile?

From one perspective, the conflict at the heart of the paper is between building professional scientific knowledge on one side, including the idea of government through rational planning, vs. faith and ideological doctrine on the other side. The military coup in 1973 meant the triumph of ideology, including social and economic theory, notwithstanding the fact that the military regime governed the country through bureaucratic rationality for over 16 years.

In focusing on water, law, and society, we aim to contribute to the interdisciplinary synthesis of different fields of development studies. In the following Section 2, we discuss the theoretical literature to which this paper contributes.

Sections 3–5 describe the three Chile/California programs mentioned above. In Section 5, we provide additional context by describing the new field of “law and development” in the 1960s, and its close ties to the emerging field of “law and society” in the U.S. The Chile Law Program was a flagship example of this first wave of law and development, but it is little known except to specialists. At the end of Section 6 we describe the University of Wisconsin’s activities in water and law in Chile in relation to the 1967 Agrarian Reform Law.

In Section 6 we describe the end of the Chile/California programs and the changes imposed on academic and professional disciplines by Chile’s military regime after 1973. We contrast the influence of the University of Chicago Economics Dept.

in Chile, which is widely known internationally, with the influence of the California programs (Harvey, 2007; Valdés, 2008). In Section 7 we examine the evaluations and critiques of law and development in the 1970s, and how the movement changed in its second wave from the 1980s on. Section 8 concludes.

Until recently, few people remembered the Chile/California programs, except for those who were involved directly or indirectly. In 2008, however, President Bachelet of Chile and Governor Schwarzenegger of California signed an agreement for a new round of bilateral cooperation and educational exchange, a “strategic association for the 21st century,” referred to as the Chile/California “Plan.” Priority issues include environment, energy, agriculture, and information technology. The Government of Chile has funded hundreds of Chilean students to do graduate and professional degrees in California.<sup>1</sup>

This new program has renewed interest in the historical background, as shown by an exhibit in a Santiago subway station in 2013.<sup>2</sup> In our view, however, the earlier programs remain largely mythical in Chile, about which vague things are imagined or assumed, little is known concretely, and less is written or published (e.g., Geisse, 1994).

The different Chile/California programs offer lessons today about international cooperation for development, especially in Latin America. In many parts of the world, the 1960s were characterized by dramatic social changes and conflicts and by government efforts to adopt social and economic reforms. In Chile and other Latin American countries, political crises in the 1970s led to authoritarian military regimes and the rise of neoliberal economic policy. These forces shaped the experiences of different academic and professional disciplines. In brief, the natural sciences and engineering fared better than the social sciences and law in times of social and political crisis. The rise of neoliberal economic theory and policies reflected a narrow, technical approach to social sciences, which was partly a reaction against the broader approaches of the 1960s.

## 2. THEORETICAL CONTEXT

One of our theoretical goals in this paper is to advance an interdisciplinary understanding of water, law, and society. In

broad terms, we aim to combine the perspectives of geography (i.e., socio-environmental studies) with law and society (i.e., socio-legal studies). Our second goal is to describe the origins and evolution of the law and development movement, and to emphasize its close connection both to the law and society movement in the U.S. and to the rise of neoliberal economics in Chile.

There is a large body of literature about water rights and legal pluralism, written by anthropologists, sociologists, and geographers. Most of this work has focused on South America, particularly the Andean countries that have large indigenous populations (Bolivia, Peru, Ecuador), and also on Asia. The basic idea of legal pluralism is that there is more than one system of rules and norms for human behavior; instead there are multiple legal orders that intersect in various ways. This contrasts with the traditional legal centralist view that the formal law of the state is the only law that really counts as law (Da Sousa Santos, 1987; Merry, 1988; Prieto, 2012). Systems of property rights to water offer many illustrations of legal pluralism (Benda-Beckmann *et al.*, 1997; Boelens, 2015; Boelens, Getches, & Guevara-Gil, 2010; Bruns & Meinzen-Dick, 2005; Meinzen-Dick & Bruns, 2000; Perreault, 2008).

Research on legal pluralism shares many of the core ideas of law and society (discussed in Section 5), such as to study the “law in action” (i.e., law in social context) rather than simply the “law on the books.” Legal pluralism is also closely tied to studies of common property rights (or common pool resources), which are a category distinct from both private property and state property (Macpherson, 1978). There is a vast literature about common property, involving water and other natural resources, particularly at local or community scales (Agrawal, 2001; Ostrom, 1990; Schlager & Ostrom, 1992).

Our case is different in that we look at international exchange between two regions in the Americas, regions that are far distant but extremely similar in landscape, climate, and natural resources. We focus on binational cooperation for development of the poorer region, in this case, Chile. We examine different academic and professional disciplines, and compare and contrast their roles in national development policies and politics. Hence, due to the nature of the topic, our approach is closer to law and society than to legal pluralism, but the analytical approaches are very similar.

Our second theoretical contribution is to provide essential but little known background for understanding the rise of neoliberal economics in Chile and elsewhere in Latin America. That background is the story of the law and development movement. The first wave of that movement in the 1960s was dominated by sociology, political science, and law, while economics had little influence. At the time, the dominant theories of development economics were strongly state-centered, as exemplified by the U.N. Economic Commission for Latin America and the Caribbean (ECLAC), headquartered in Santiago, Chile. That first law and development movement failed in the 1970s, largely due to North Americans misunderstanding the social and political contexts of Latin America (discussed in Section 5).

The second wave of law and development began in the 1980s and has been much more influential in international development. It has been dominated by orthodox, market-centered economic theory, as represented by the Washington Consensus, according to which the primary function of law in development is to promote markets and economic growth. Many people and organizations have opposed that approach, however, arguing that the primary purpose of law in development

is to protect human rights and to seek justice and equity (Thome, 2000; Trubek, 2006; World Bank, 2002). We argue in this paper that part of the confident expansion of neoliberal economics into other fields in the 1970–80s was due to this historical experience: namely, the failure of other social sciences to shape public policies in times of social and political crisis.

### 3. CHILE/CALIFORNIA PROGRAM OF TECHNICAL ASSISTANCE, 1963–67

In the early 1960s California was still in the golden age of its post-World War II boom. Governor Edmund (“Pat”) Brown led the state into two transformative efforts to build institutions and infrastructure: namely, the University of California system and the State Water Project. The state government was full of self-confidence (Starr, 2009).

In Chile the early 1960s were a time of growing political ferment over the need for major social and economic reforms. Agricultural land reform was the emblematic case. President Eduardo Frei Montalva and the Christian Democratic party were elected in 1964 and governed Chile until 1970. They passed a strong Agrarian Reform Law in 1967. Chile became a leading example of the “Alliance for Progress,” an initiative pushed by U.S. President John Kennedy as a moderate alternative to more radical political change, such as Fidel Castro’s revolution in Cuba. Chilean society and politics became more and more polarized in the later 1960s. The Socialist Salvador Allende was elected President in 1970 and governed a leftwing coalition called Popular Unity, until overthrown by the military coup in 1973.<sup>3</sup>

The first Chile/California program was called the “Program of Technical Assistance,” and it was for development aid to Chile in the framework of the Alliance for Progress between the U.S. and Latin America. Pres. Kennedy’s 1961 speech announcing the Alliance is worth reviewing for several reasons. Its sheer ambition for starters: Kennedy called the Alliance “a vast new Ten Year Plan for the Americas, a plan to transform the 1960s into a historic decade of democratic progress” (Kennedy, 1961). He promised U.S. financial support to all cooperating Latin American countries on the scale of the Marshall Plan to rebuild post-war Europe, “for only an effort of towering dimensions can ensure fulfillment of our plan.” Kennedy said that problems of land use and land tenure were a top priority. He also emphasized the key role of science in national development, which meant expanding U.S. support for science education and training in Latin America.

The Chile/California Program began in 1963 and involved the three governments of Chile, the United States, and California. Pres. Kennedy and Gov. Brown were friends and political allies and supported the idea. Chile and the U.S. funded the program equally, with California acting as a subcontractor to the U.S. government to implement development aid. In other words, the California State government was to provide services to the newly created U.S. Agency for International Development (USAID). At the time this new trilateral approach was considered an important experiment in federalism and foreign policy, “the first time the national government has utilized the state as an arm of U.S. foreign policy” (Dvorin, 1965, p. 35).<sup>4</sup> The program defined five specific areas of cooperation: agriculture, education, water, highways and transportation, and planning. The list reflects California in its glory days, world-famous for big achievements in all of those areas (Starr, 2009).

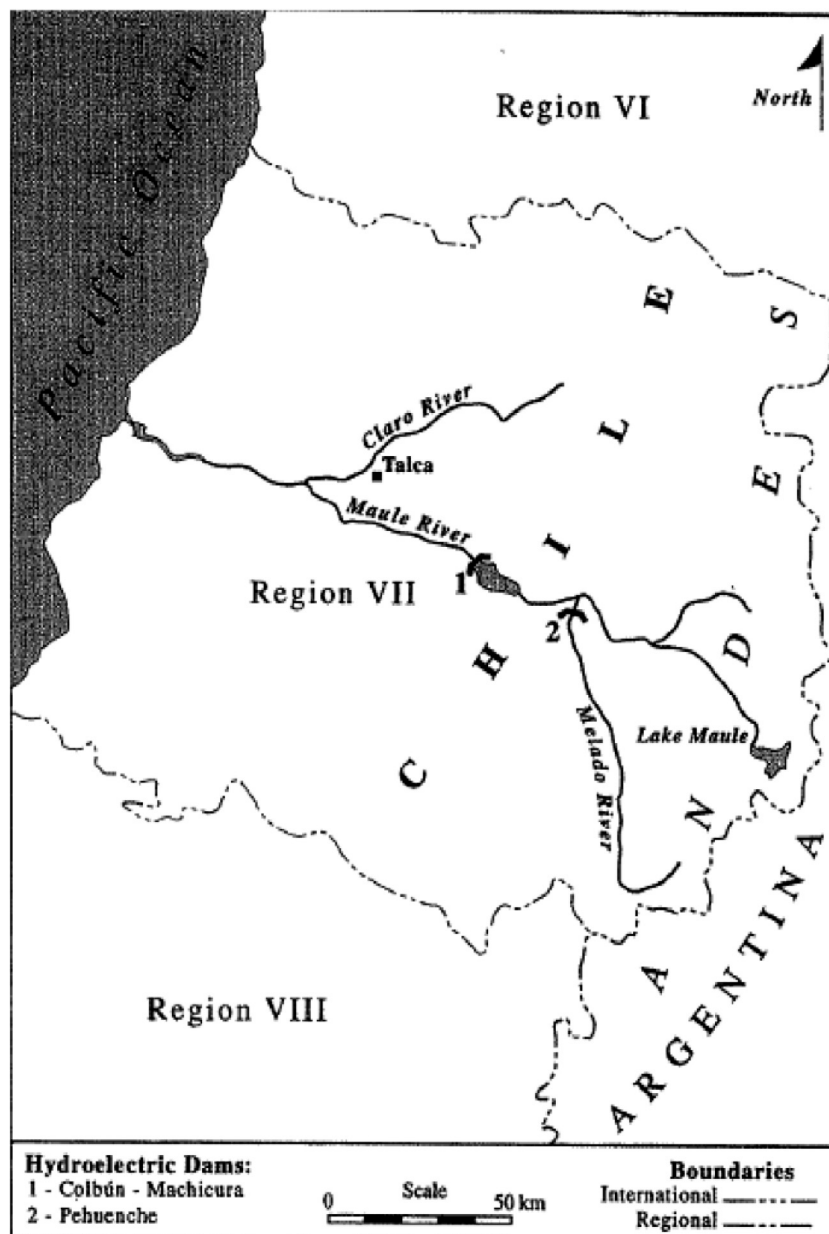
Here we focus on water. Water resource development was a priority for both Chileans and Californians in the program,

who shared the goals of planning river basin development and building multi-purpose dams. The Maule River basin in south-central Chile was already identified as an area to study further. Chilean government water engineers had been studying the Maule River for decades, for the two purposes of electric power generation and irrigated agriculture. Two government agencies, the National Electric Company (ENDESA) and the Irrigation Directorate, signed a legal agreement in 1947 to manage a mountain lake in the upper Maule basin for those two purposes (Bauer, 1998a, 1998b, 2004). See Map 2.

In 1963 California sent two career engineers from the State Department of Water Resources (DWR) to live in Chile for a two-year stint. One was William Berry, director of DWR's division of resources development, who was known to some people as the "technical father of the California Water Plan." The other was Herb Greydanus, who had worked for DWR for 10 years.<sup>5</sup> DWR was then in the middle of planning and

building the State Water Project, a multi-billion dollar set of dams, canals, and pumping stations that was one of the world's largest public works projects (Hundley, 2001; Reisner, 1986; Starr, 2009). The State Water Project involved moving a large volume of water from northern California hundreds of miles to southern California. Both Berry and Greydanus were closely involved with the State Water Project.

According to Greydanus, he and Berry worked in the offices of the Chilean Government's Irrigation Directorate, which was part of the Ministry of Public Works. Their Chilean counterparts had already done a great deal of homework. Ricardo Edwards and Hernan Gomez were the lead Chilean engineers.<sup>6</sup> The team agreed on a site for what was to be the country's first major dual-purpose dam and reservoir, named Colbún, located on the Maule River where the river comes down out of the Andean foothills into the agricultural valleys of central Chile. The Californians helped to plan, design, and



Map 2. Maule River Basin (from Bauer, 2004).

justify water development on a river-basin scale, with a strong emphasis on building large multi-purpose dams.<sup>7</sup>

There was some disagreement at the time about whether to focus on developing the Maule River basin or the Bío Bío River basin farther south. The Bío Bío was larger and more important, with greater hydropower potential and urban and industrial water demands, and for these reasons it was favored by USAID. The Chile/California team studied the Bío Bío as well, but Pres. Frei preferred the Maule as a better way to gain political support from farmers.<sup>8</sup>

In the end, ENDESA built hydropower dams first on the Rapel River (1968–70) and then on the Laja River (1973–81), before building Colbún Dam in the 1980s.<sup>9</sup> A decade later Colbún was a key actor in a major legal and political conflict between hydropower and irrigation in the Maule basin (Bauer, 1998a, 1998b, 2004, 2009).

The first Chile/California program ended in 1967, a casualty of the rightward shift of politics in California. Ronald Reagan was elected governor in 1966 and he led a conservative backlash against the politics of Gov. Brown. The Chile/California program was closely identified with Brown, and Reagan canceled it. But the program had deeper problems than state politics. The basic idea of the triangular relationship for delivering foreign policy had not worked well, from the point of view of the U.S. Government: USAID supplied the money to California and expected to influence the program, but California did not feel obliged to answer to USAID or to the State Dept. That situation did not last long (Dvorin, 1965; Melillo, 2015).<sup>10</sup>

#### 4. UNIVERSITY OF CHILE/UNIVERSITY OF CALIFORNIA *CONVENIO*, 1965–78

The second and generally better known Chile/California program was the agreement between the two public universities, the University of Chile and the University of California. (Each university was in fact a system with numerous campuses.) This agreement (*convenio*) was for a 10-year period from 1965 to 1975 and was funded mainly by the Ford Foundation, for a total of \$10 million. The *convenio* was not related to the technical assistance program discussed above, except that the earlier program had funded some planning studies for Chilean universities.<sup>11</sup>

The basic idea was to promote academic exchange at the graduate level: Chilean graduate students went to the University of California to do a master's or Ph.D. and then returned to Chile to teach and build research programs, while U. California faculty and grad students went to Chile to do research and teach. The *convenio* covered a university-wide range of fields, including natural sciences, social sciences, arts, humanities, and the professional fields of engineering, architecture, and urban planning. There was a strong emphasis on agriculture and natural sciences, since the Ford Foundation had earmarked 25% of the budget for agriculture.<sup>12</sup>

##### (a) *Historical context: University reform in Chile, 1950–60s*

Before we describe the *convenio* in more detail, we pause for historical background about university reform. In the 1950–60s, the social and political pressures to reform and modernize universities in Latin America were growing fast. Many university reforms aimed to promote academic research and to professionalize science, including social science since science was defined broadly to mean the systematic production of knowledge. Professionalizing science required higher standards of

academic research and full-time academic salaries, instead of the traditional emphasis on vocational training by part-time faculty which was the norm in Chile as in the rest of Latin America. One Chilean university administrator referred to the “tension in the problem of the factory of professionals versus the university of knowledge” (Monckeberg, 2005, p. 101, quoting Edgardo Boeninger). University reforms also aimed to greatly expand student enrollment and to shift academic research toward applied work that helped promote national development and social welfare. These reforms were a dramatic change for universities in Latin America, and they relied on an alliance between national reformers, foreign development agencies, and international philanthropic organizations (Correa, Figueroa, Jocelyn-Holt, Rolle, & Vicuña, 2001; Fuenzalida, 1984; Garreton & Pozo, 1984; Monckeberg, 2005; Puryear, 1994, pp. 10–18; Quesada, 2009; Quesada, 2012; Zanelli & García, 1990).<sup>13</sup>

Jeffrey Puryear's book about Chilean intellectuals and their political roles during the military regime underlines the importance of the efforts and investments made to strengthen the social sciences in Chile after 1960. As Puryear (1994, p. ix) says, “This study is about how intellectuals helped engineer a successful transition to democracy in Chile.”<sup>14</sup> He reviews the post-World War II history of academic social sciences in Chile, specifically sociology, economics, and political science. In the mid-1950s, the dynamic rector of the University of Chile, Juan Gómez Millas, led a “broader effort to institutionalize scientific research within Chilean universities.” This effort had major support and funding from Chile's national government, the U.S. government (USAID), and the Ford and Rockefeller Foundations, as well as UNESCO, the Organization of American States, and some European sources (Puryear, 1994, p. 13, 15; see also Fuenzalida (1984); Correa *et al.*, 2001).

For example, in the late 1950s three “serious, research-oriented teaching programs in sociology were established in Chile,” at the University of Chile, the Catholic University, and the Latin American School of Social Sciences (*Facultad Latinoamericana de Ciencias Sociales*, FLACSO) (Puryear, 1994, p. 15).<sup>15</sup> Student enrollment climbed steadily until 1970. Teaching economics grew at the same time: by the mid-1950s the University of Chile's program was “possibly the strongest in Latin America,” thanks in part to close relations with the U.N.'s ECLAC, which was led by world-renowned economist, Raúl Prebisch. The Ford Foundation supported the University of Chile's Economics Department throughout the 1960s, when the university became “the region's strongest source of academic research in economics” (Puryear, 1994, p. 16). During the same period the Catholic University was working with the University of Chicago Economics Dept., with support from USAID, as discussed in Section 4.

In short, in the early 1960s the University of Chile was a leading Latin American example of a traditional university that was considered ripe for reform, along the lines that the Ford Foundation wanted to support. In 1964 the University of Chile proposed a plan of long-term educational cooperation to the University of California and the Ford Foundation. Clark Kerr was then President of the U.C. system (Starr, 2009). The idea was to be a relationship between peers, not a one-way transfer of expertise. Some faculty and administrators in the University of California were skeptical about the University of Chile's capacity to be an equal partner, and they requested and got a “quid pro quo” in the form of research funding and opportunities for Californians in Chile (*Comprehensive Report*, pp. 3–14; Fuenzalida, 1984, pp. 95–99, 105–111).<sup>16</sup>

The *convenio* had two phases, from 1965 to 1969 and from 1970 to 1978. A total of about 600 people participated in all, half from Chile and half from California.

(b) *Phase 1 of convenio, 1965–69*

The first five years were the *convenio*'s "formative or experimental phase" (*Comprehensive Report*, p. 21). The highest priorities for funding were agriculture, veterinary medicine, natural sciences, and engineering (including some water science at U.C.-Davis). During this time the Inter-American Development Bank also lent \$5 million for the University of Chile to build a new agricultural campus, with new laboratories and classrooms, on land that was then on the outskirts of Santiago. The Rockefeller Foundation gave money for Chilean students to go to the USA for graduate education and training, particularly in fields related to agriculture (Garrido, 2002).

The *convenio*'s arts and literature programs were less active. Libraries faced the special problem that their money for new books lost value rapidly because of Chile's high inflation (*Comprehensive Report*, pp. 27–36).

The social sciences turned out to be one of the *convenio*'s biggest disappointments (*Comprehensive Report*, pp. 40–47). The University of Chile's departments of economics and history were considered strong enough to be part of the quid pro quo that the Chileans were bringing to the collaboration. Other social sciences, however, "were regarded as largely undeveloped. . . . [So] it was decided initially to concentrate *Convenio* resources in the fields of social welfare, sociology, law, political science, geography and anthropology, as Chilean authorities stated that these areas deserved urgent attention" (*Comprehensive Report*, p. 41).

It is worth quoting the *Comprehensive Report* at length on these matters:

[D]espite the fairly high level of exchange visits, the development of genuine cooperative activities in social science during the 1965–69 period proved to be slow and difficult. Serious obstacles were encountered in developing programs. . .

The Chilean Social Science Subcommittee . . . had to plan on a university-wide basis in a University whose traditional pattern of planning was on a faculty, institute, center or school basis. Moreover, the Committee had to plan to cooperate with a foreign university. . . without a real understanding of behavior patterns and interests within that University or its own plans, and this planning had to be done in an environment of intense nationalism, which was reflected in widespread fears of cultural imperialism.

Operating under these pressures, believing that the UChile needed development more than the UCalifornia, and not understanding the academic interests of the UCalifornia, the Chilean Subcommittee began to plan on the assumption that the almost exclusive purpose of the *Convenio* was to develop the UChile.

On the other hand, the California Social Science Subcommittee . . . [had] no real understanding of the problems, interests and plans of the UChile. Second, the Committee members, as faculty of an institution dedicated to research and graduate training, began to operate with assumptions which were to bring them into disagreement with their Chilean counterparts. Although the Californians realized that one purpose of the *Convenio* was to develop the UChile, they nevertheless did not fully understand the situation in Chile and tended to believe that this development could best be achieved by using the *Convenio* as a vehicle for supporting California faculty graduate research and training in Chile. This was not the same conception of the purpose of the *Convenio* held by the Chileans. They wanted California faculty and graduate students to teach basic courses and conduct research only on subjects of interest to the UChile (*Comprehensive Report*, pp. 44–45).

Despite serious efforts on both sides to bridge these gaps, "[i]t became evident. . . that there were vast differences in inter-

ests, methodology, philosophy and experience, and reward systems between the groups in the two Universities, which proved to be extremely inhibiting" (*Comprehensive Report*, p. 47).

(c) *University reform movement, 1967–69*

The movement for university reform in Chile gained popular momentum in 1967–68. One major issue was how much *cogobierno*, "co-government," to adopt, which meant participation by students in university elections and decision-making. The student uprisings in Europe and USA in May 1968 also triggered a crisis in the University of Chile, forcing the Rector to resign so that reforms could move faster. Chief among the students' demands was a new academic structure of departments organized around substantive fields, rather than the old European chair system based on individual professors. The new structure would also be more effective for applied research for national development (Garretton & Pozo, 1984; Huneeus, 1972).

The ferment at the University of Chile had a big impact on the Chile/California *convenio*. *Convenio* administrators and faculty, both Chilean and Californian, worked hard to respect the Chilean reform process while nonetheless making and implementing their own long-term plans. They eventually responded to the political instability by making their top priority the development of graduate degree programs in the U. of Chile, "to meet the country's needs for trained scientific and technical personnel" (*Comprehensive Report*, p. 53).

The timing of the U. of Chile reform coincided with the evaluation of the *convenio*'s first five years by *convenio* leadership and the Ford Foundation. The evaluation was positive, and recommended more focus on a few strategic target areas for the next five years. Those targets were to support and develop key graduate programs at the University of Chile; to support research projects with specific faculty commitment in both systems; and to do long-term planning for the future when Ford funding would be gone. All of these targets served to reinforce the priorities and successes of the *convenio*'s 1st phase: agriculture, veterinary medicine, natural sciences, and engineering (*Comprehensive Report*, pp. 55–57).<sup>17</sup>

Even the technical scientific work on agriculture was affected by Chile's Agrarian Reform Law, which was passed in 1967. The Agrarian Reform was a broad and deep process that changed the basic structure of Chile's agricultural land tenure over the next six years, and it was one of the country's emblematic social and political conflicts. This meant that the hundreds of Chileans and Californians who were studying something related to agriculture, even if it was science or engineering, were affected by the social and political context. For example, agronomists studying crop irrigation had to learn something about water rights (Parks & Hansen, 1978).

(d) *Phase 2 of convenio, 1970–78*

The *convenio*'s second phase (1970–75) was intended to be more strategic and focused. Within the *convenio* conditions seemed favorable to success, as the Chileans and Californians knew each other better after several years of working together, and the next goals were clear and specific. Events were complicated from the beginning, however, by Chile's ever more polarized political and ideological scenario. Pres. Allende's election in 1970 led to three years of government by the left-wing political coalition called Popular Unity. Those three years were characterized by increasing social conflict as the rightwing pushed back, until the Chilean armed forces took

power in a violent coup on September 11, 1973. That ended the Ford Foundation's support of the *convenio*, although it took a few more years to wrap it all up.

The same technical fields that dominated the 1st phase of the *convenio* were best suited to survive during the turbulent years after 1970, and especially after the military coup in 1973. Agriculture, veterinary medicine, forestry, and fruit had three new M.S. programs and the new agricultural campus, Antumapu. (The Chilean foresters studied at Berkeley, the fruit experts at Davis.) The natural sciences and engineering remained strong and continued to be funded by Chilean and U.S. government agencies after the Ford Foundation left, including the fields of biology, ecology, chemistry, chemical engineering, earthquake engineering, and water science and engineering. The research on water included topics of hydrology, irrigation, and water resources systems analysis. U.C.-Davis was especially active in all these areas, and their Chilean graduates became known as the "Davis Boys."<sup>18</sup>

The *convenio*'s social sciences, by contrast, remained weak and limited. Demography and urban/regional planning (working with Berkeley and UCLA) were two areas that stood out until they were shut down after the coup, along with virtually all other academic social science research in Chile (see below).

#### (e) *Results of convenio*

What were the overall results of the *convenio*, according to the *Comprehensive Report*? For the University of California, it was a successful example of a large, long-term program of international educational exchange. The institutional commitment was high. Within the UC system, different campuses and departments gained experience in interdisciplinary collaboration. About 300 individual faculty and students had formative professional and life experiences, which in many cases extended into lifelong connections with Chile.

The benefits for the University of Chile were probably larger, especially in the professionalization of science which was the main goal of Chilean academic reformers. About half of the 300 Chilean participants in the *convenio* went to California for graduate school. Many Chilean faculty and students gained practical experience in planning academic programs, and gained academic maturity and international confidence as researchers. The *Comprehensive Report* refers to "the slow, productive, learning process which took place in UChile, ultimately leading to important progress in its institutional development" (*Comprehensive Report*, p. 101).

We have already seen that the dominant fields in the *convenio* were agriculture, veterinary medicine, natural sciences, and engineering. The University of California awarded 52 Ph.D.s, of which 12 were in agriculture and veterinary medicine, 38 were in natural sciences and engineering, one was in arts and literature, and one was in social science. UC also awarded 92 M.S. degrees, of which 36 were in agriculture and veterinary medicine, 35 in natural sciences and engineering, 11 in social sciences, and 10 in arts and literature and library development (*Comprehensive Report*, p. 119).

The social sciences were a disappointment. According to the *Comprehensive Report*, the *convenio* had "very high" expectations for the social sciences, but the expectations

far exceeded the accomplishments in terms of long-term, meaningful, joint research and academic exchange. Much debate within the UCalifornia system and between the UCalifornia and the UChile went on as to the proper role and place of social science teaching and research within a university framework. The UCalifornia took the position that this University was engaged in an academic exchange program and that politics, while not to be ignored, should be played down as a significant factor in the decision-

making and program implementation of the exchange. This view was not held by all Chileans; none was able to implement it fully. Politics, in fact, did dictate within the UChile many decisions regarding appointments to the faculty, the nature of the curriculum and to some extent in the initial stages, the selection of people to come to California for research or advanced studies" (*Comprehensive Report*, p. 108).

In the end, the "Davis boys" are probably the best symbol of the *convenio*'s success: highly trained agricultural scientists who were essential to the fruit export boom in Chile after the mid-1970s (Jarvis, 1994). That boom was stimulated by the military regime's economic and social policies and so it had political overtones, but the scientists were able to continue their technical work.

#### 5. CHILE LAW PROGRAM WITH STANFORD LAW SCHOOL, 1967-73

The third Chile/California program was called the Chile Law Program. This was a partnership between Stanford Law School and three Chilean law schools, led by the University of Chile, which was funded by the Ford Foundation. Curiously, the Chile Law Program is rarely mentioned in connection with the other two Chile/California programs, despite the personal and institutional connections through Ford and USAID. Instead the Chile Law Program has been known as a classic example of law and development, which was tied to the emerging field of law and society.

##### (a) "Law and development" and "law and society"

"Law and development" emerged as a field in the early 1960s. The field was sometimes called a movement, and it consisted of American lawyers and law professors who sought to export their expertise to developing countries. These lawyers joined the post-war boom in international development assistance, in which other social scientists were deeply involved. The law and development movement proved to be short-lived in this first phase, which ended in the mid-1970s.

The law and society movement was closely related. David Trubek wrote a retrospective essay in 1990 to mark the 25th anniversary of the Law and Society Association (LSA), an academic professional organization established in the U.S. in 1964. He discussed the "law and society idea," which is that "law is an object that can be studied by the social sciences" rather than being simply "a set of rules and principles" (Trubek, 1990, pp. 5-6). He also described the institutions that were built around this idea, especially the LSA, and the people who supported both the idea and the institutions, whom he called the "law and society movement."

The law and society idea may seem obvious today, but it was a "new domain of social knowledge" in the early 1960s. By its nature, law and society was in part a challenge to the mainstream legal academy in the U.S., although many people in the movement also sought to gain influence within that academy. The field's core question is easy to ask but hard to answer: what is the relationship between law and society? The major disciplines in social sciences and humanities have taken different approaches to answering that question. One common motto of law and society is that "law on the books" (what lawyers study) is different from "law in action" (i.e. law in social context). Most law and society scholars shared liberal or progressive political views about social change ("liberal" in the sense of contemporary American politics).

Trubek highlighted law and development in his essay, and he himself had worked in the field. He traced the evolution

of U.S. legal thought from legal realism in the early 20th century to what he called “Imperial Law” in the late 1950–60s: “many in the legal elite believed that law could and should be actively used to shape society. This activist legal consciousness formed the context in which law and society took shape” (Trubek, 1990, pp. 21, 23–24).

He described law and development as a prototypical example:

“We devised grand programs to re-educate Third World lawyers, who—we felt—had failed to understand the mix of pragmatic instrumentalism and liberal idealism that had been the staple of our legal education. By exporting the educational techniques of the American law school—Socratic method, social science, and all—we would strengthen legal institutions just as AID agricultural technicians were transforming small, yellow eggs into large, white ones”.<sup>19</sup>

[Trubek, 1990, p. 23]

In a more recent paper about the “rule of law” in development assistance, Trubek summarized key features of the law and development movement of the 1960s:

“The L&D [sic] movement cherished a vision of lawyers as pragmatic, instrumental problemsolvers who would facilitate state-led economic development. . . . The primary goal of [L&D] programs was to transform legal culture and institutions through educational reform and selected transplant of ‘modern’ institutions. If formalism was the source of bad laws, weak enforcement, and ineffective or counterproductive lawyering, then the most important thing to do was to create a new, more instrumental *legal culture*. This culturalist approach led to a heavy emphasis on reform of legal education”.

[Trubek, 2006, pp. 75–76, emphasis in original]

One of the notable features of the first phase of law and development was its lack of clear, systematic, or critical theory. As Trubek (1990, p. 78) said,

“Beyond a general belief in the importance of law, the relevance of western models, and the importance of a modern legal culture, it was all ad hoc and pragmatic. This was a time everyone thought it urgent to get on with the job, not theorize. Theory could—and did—come later.”

This feature also reflected the fact that lawyers dominated the movement rather than social scientists, in spite of the ties to the law and society movement which were then being consolidated.

John Henry Merryman agreed with Trubek’s analysis. Merryman was a Stanford Law professor who was both a scholar of comparative law and also deeply involved in the law and development movement.<sup>20</sup> In describing the movement’s “intellectual origins,” he argued that several factors came together in the 1960s:

“the idea of progress, the movement for law reform, the emergence of an interest in ‘law and society’ and its various components (sociology of law, anthropology of law, law and economics, law and psychology, law and politics), the notion of social engineering through law, and the U.S.’s post-World War II commitment to foreign assistance”.

[Merryman, 1977, p. 461]

Merryman preferred the term “law and society” to the other variations, “because it implies interaction between the legal system and the society of which it is a part and because it commonly is used in a broadly inclusive sense” (Merryman, 1977, p. 464, n. 19).<sup>21</sup>

### (b) *Chile Law Program*

Merryman is one of two people close to the heart of the Chile Law Program who have written authoritative and detailed accounts. Merryman was the key person representing Stanford Law School throughout the Chile Law Program. James Gardner worked for the Ford Foundation in the

1970s and later wrote a book about law and development in Latin America (1980).<sup>22</sup>

In Gardner’s words,

“The Chilean reform evolved as the largest and most important American legal assistance endeavor in Latin America, a program of legal education reform carefully connected with parallel efforts in Latin America and with a network of United States scholars and institutions concerned with law and development”.<sup>23</sup>

[Gardner, 1980, p. 126]

Like the university *convenio* discussed above, the basic idea of the Chile Law Program was academic exchange, although in this case the transfer was even more one-sided.

In the 1960s many lawyers and legal academics in Chile were calling for reform of the legal system and the legal profession, in order to better serve national economic and social development. Lawyers were generally considered “barriers to development” in Chile (Gardner, 1980, p. 147). A critical part of this legal reform was legal education, that is, how new lawyers were trained to think and act as professionals in society.

In 1964–65, the deans of three Chilean law schools, led by Eugenio Velasco of the U. of Chile Law School, approached the Ford Foundation with a proposal to transform the three schools’ curricula in partnership with Stanford Law School.<sup>24</sup> Merryman evaluated the Chilean proposal for the Ford Foundation, visiting Chile in 1966 with a Ford vice-president. They gave a positive report:

“[We] encountered an apparently widely shared (among Chileans) and persuasively articulated (by Chileans) thesis. We were told that the Chilean legal system was antiquated, out of touch with contemporary reality and inadequate in a developing Chile; that the system of legal education perpetuated the legal system’s defects; and that reform of teaching and research in the faculties of law was the most efficient way to break the cycle”.<sup>25</sup>

[Merryman, 2000, p. 482]

Ford agreed to fund the program in 1967, with a grant of nearly \$800,000 to the three law schools. Ford also created the International Legal Center, with an office and small staff in Santiago, to administer the program.<sup>26</sup> Surprisingly, there seems to have been almost no connection with the broader university *convenio* that Ford was supporting at the same time. The law program was its own separate story.<sup>27</sup>

The goals of the Chile Law Program were to introduce the U.S. model of law school in Chile. As Gardner describes it, the approach emphasized socio-legal methods more than substantive law. This included the study of judicial decisions in concrete cases, as befits the common law system, rather than the more abstract logical analysis of the civil law tradition, which dominates continental Europe and Latin America, including Chile.<sup>28</sup> The U.S. legal model produced and depended on lawyers who were pragmatic problem-solvers and social engineers, both in business and public policy. This professional identity made them open to considering factors other than law that affect how law operates in practice. U.S. legal education, in other words, was more permeable to other fields of social science than was the case in Latin America. This viewpoint drew on the 20th century tradition of American legal realism as well as the law and society movement that emerged in the 1960s.

A small group of young Chilean law professors were selected to go to Stanford for half a year (from May to December) to study and to prepare new teaching materials for Chile. The Chilean participants were not enrolled in a degree program at Stanford (or in Chile). It was called the “Stanford-Chile Law Seminar,” or simply the “Stanford seminar,” and it was repeated for three years (1967–69). A total of 19 or 20 Chileans went through the seminar during this period.<sup>29</sup>



Merryman gave a detailed description of the Stanford seminar, which was called “a seminar on the objectives, methods, and standards of legal education and legal research” (Merryman, 2000, p. 486). The Chileans read and discussed key work in socio-legal studies. Each person wrote a prospectus for a new course in Chile, with a proposed set of new teaching materials, and also wrote a proposal for future research. All of this work reflected the theoretical approach of law and society, “law in action” rather than “law on the books,” which was to be established at the three Chilean law schools for both teaching and research. After the Chileans returned to their faculty positions in Chile, they continued to work on their teaching materials and on their research, advised by professors at prominent U.S. law schools (Merryman, 2000, pp. 489–490).

In 1968, Ford Foundation staff wrote a review of the Chile Law Program’s first two years, finding “modest but precarious accomplishment and with considerable potential,” in Gardner’s words (Gardner, 1980, p. 135). The review recommended that the Chilean law professors play a stronger role in the program. At the same time, according to Merryman, the Chilean participants had organized themselves by the seminar’s second year to propose the same thing. They argued for moving the program’s center of gravity from Stanford to Chile, including teaching the seminar in Chile (Merryman, 2000, pp. 490–491). These converging views led to the establishment in 1969 of the Institute for Legal Teaching and Research at the Univ. of Chile (*Instituto de Docencia e Investigación Jurídicas*, IDIJUR). IDIJUR continued the Chile Law Program’s activities in both teaching methods and research until it was closed in 1974.<sup>30</sup>

The Institute’s sense of mission was illustrated by the comments of one of its founders, Andrés Cuneo, in 1978:

“[T]hese two elements—crisis in the legal system and crisis in the formation of lawyers—determine the destiny of the Institute. . . . The sign [*signo*] of Law and Development, the relationship between Law and Society, the contribution of Law to life and to social changes, are present at the birth of the Institute and characterize all its activity . . . [Students learn] with the contribution of the other social sciences that Law is a living reality in society, which is not autonomous but instead interacts with many other variables . . . The emphasis on socio-legal research . . . [means] to apply and adapt the methods and techniques of the other social sciences to the facts that are relevant to the Law. . . . This perspective presents many problems that neither we nor other academics in the world have solved, but it opens horizons and removes arrogance.”<sup>31</sup>

Ford’s 1968 review also found that the program’s focus on reforming legal education had had little impact on the legal profession or on other legal and social reforms in Chile. Therefore, the review recommended that both Stanford and Chilean law professors should get more involved in the substance of legal reforms, rather than simply the methods of teaching.

The Ford Foundation made a second grant to the program in 1970 (\$430,000), but the Foundation’s doubts about the program’s teaching effectiveness led to a shift of emphasis to research. From then on, “American assistance to the reform of Chilean legal education was winding down” (Gardner, 1980, p. 143). The crisis of law in Chile continued unabated, according to a substantive and critical 1970 report for the Interamerican Development Bank (Orrego, 1970).

After 1970, according to Merryman, the political climate got worse for academic activities.

“[T]he Allende government became in practice less tolerant of U.S. influence and less committed to Chile’s tradition of academic freedom, and the programs of reform in the faculties of law and the activities of the Instituto both suffered. The subsequent military coup and takeover of the universities by the Pinochet government completed the process of destruction. . . . closing the Instituto and, in a deliberate cleansing of the intellectuals, driving

the Chilean veterans of the Stanford Seminar from the universities”.  
[Merryman, 2000, pp. 491, 498]

(c) *University of Wisconsin: water, law, and society in Chile, 1960–70s*

Although it was not a part of the Chile/California programs, the University of Wisconsin (UW) played an important role in studies of water rights, law, and society in Chile. The UW established its Land Tenure Center in 1962, with funding from the new USAID (which was established in 1961). The Land Tenure Center coordinated the work of faculty in different departments, particularly agricultural economics, sociology, and law, in countries throughout Latin America, as part of the Alliance for Progress. “The goal was a research and training program integrated in such a way that training could be accomplished by performing research on land tenure and development issues in the rural areas of Latin American countries” (Dorner, 1971, p. xiv). Although international in scope, this interest in applied policy research was an important part of UW’s historical tradition in Wisconsin. It was also fully compatible with the law and development movement.<sup>32</sup>

The UW and the Land Tenure Center were active in supporting agricultural land reform in Chile, especially after the passage of the Agrarian Reform Law in 1967. Chile’s Agrarian Reform was a comprehensive program that aimed to transform the country’s agricultural sector, including patterns of land ownership, farming practices, crop markets and subsidies—and also water rights, which were essential to irrigation.<sup>33</sup> The Agrarian Reform Law included a new Water Code that strengthened government authority over water use and weakened private property rights (see Bauer, 1998a, pp. 39–40; 2004, pp. 38–41).

During the late 1960s a UW law professor (Joseph Thome) and two UW Ph.D. students did research on water rights in Chile. Both students were working in law and social science, in a new interdisciplinary program that UW was pioneering at the time. Daniel Stewart’s dissertation described the legal and economic history of Chilean water rights from the Spanish colonial era to 1965, and was titled *Chilean water law in action*. Rubens Medina’s Ph.D. was in law and sociology and his dissertation was about the social relationships among irrigators in their management of canal systems and distribution of water (Medina, 1970; Stewart, 1967; Thome, 1979).<sup>34</sup> None of this research covered the period after 1970.

## 6. MILITARY REGIME, UNIVERSITIES, AND THE RISE OF NEOLIBERALISM

The military coup on September 11, 1973 put an end to many things in Chile. The military took power to oust a socialist government and then remained in power for over 16 years with the goal of transforming Chilean society, economy, politics, and culture—all carefully institutionalized through law (Bauer, 1998a, 1998b; Constable & Valenzuela, 1991; Loveman, 1988).

For the two Chile/California programs still in operation, related as they both were to Chilean university reforms, the military regime was the end of the road. The military intervened directly in universities by “designating” military officers as rectors, who then made major changes in administration, faculty personnel, curriculum, etc. It was an “unprecedented ideological purge” (Correa et al., 2001; also Monckeberg, 2005). Military rectors closed many departments and programs in the social sciences, because of their presumed

connection to leftist thought and culture. Moreover, the military cut university budgets. The biophysical sciences suffered, too, losing faculty and research funding.

Academic and professional culture changed dramatically. According to Garretton and Pozo, after the coup

“the university function adjusted to the free market model imposed by the government: the goal was to train professionals whose only reference point is the world of work and production, and concretely in private enterprise, a fundamental pillar of the economic policy that has been adopted . . . [W]ithin this professionalizing perspective, the decline of social sciences is not surprising. . . . [as] they do not represent any immediate utility for the government's plans and programs”.

[Garretton & Pozo, 1984]

The change was especially marked in the University of Chile Law School, especially after Hugo Rosende was named dean in 1976. Rosende was a hard-line conservative who was one of the military regime's most important civilian legal advisors. As Dean, he ended all social scientific work at the law school and changed the school's name from “legal and social sciences” to simply “law” (Matus, 1999; Monckeberg, 2005, p. 239). In this political context, the Ford Foundation ended its support of both the *convenio* and the Chile Law Program soon after the coup.

Puryear describes how foreign funding sources supported a large community of social scientists in Chile after 1973. Since university employment was no longer an option, these academics worked in NGOs and private research centers. According to Puryear (1994, pp. 164–165),

“[t]he major investments that began around 1960 had established what was perhaps the region's strongest community of social scientists. . . . After the 1973 coup, foreign donors provided funds over nearly two decades to keep many of those well-trained social scientists working in the country, despite the repression of the military regime. . . . Thus the investments that had been made in social science talent during the 1960s were safeguarded and even augmented during the 1970s and 1980s.”

Those social scientists in turn played a significant political role in Chile's transition from military back to civilian rule. For the most part, however, Puryear's argument does not apply to the Chile/California programs, which were weak in the social sciences.

The great exception to the fate of social sciences under the military was economics, led by the department at the Catholic University. The Catholic University had partnered with the University of Chicago Economics Department since the 1950s, supported by USAID, in yet another binational agreement for development assistance. Chilean graduate students went to Chicago for their M.A. or Ph.D., and then returned to Chile to teach. The Chicago Economics Department was already notable for its strongly free-market viewpoint, although at the time it was still marginalized from many academic and policy debates in the U.S. In Chile too, the economists at the Catholic University (who became known as the “Chicago Boys”) were marginalized from mainstream academic and policy debates in the 1960s and early 1970s. Statist views of economic development, particularly as represented by ECLAC, were dominant across the political spectrum in Chile (Valdés, 2008).

The military regime changed all that in the mid-1970s by turning to the Chicago Boys to restructure the national economy. The economists were ready, having developed their policy analyses and recommendations over the previous years. A group of them wrote a comprehensive manuscript that became known as the “brick” (*el ladrillo*), and offered it to the military junta soon after the coup. The neoliberal economists (including some trained at universities other than Chicago) began

by dominating the military regime's economic policy and in the late 1970s they extended their influence into many other areas of social policy, such as education, health care, social security, etc. In the area of water law, the military regime followed their advice by replacing the statist 1967 Water Code with the neoliberal Water Code of 1981, emphasizing private water rights and water markets (Bauer, 1998a; Bauer, 2004). The economists also shaped fundamental aspects of the 1980 Constitution, including new political and institutional arrangements that limited state regulatory powers over private economic rights. In their efforts to design institutions that would favor free markets, the economists drew on recent work in law and economics and institutional economics in the U.S. (work which took for granted the legal institutions of the U.S., which were quite different from Chile). In the Chilean political context, however, the economists joined forces with a group of conservative Catholic lawyers to articulate an overall vision of dramatic social change that the military supported (Bauer, 1998a, 1998b).

## 7. RESULTS AND CRITIQUES OF CHILE LAW PROGRAM

In terms of *law*, Chile came to symbolize the poor results of the first wave of law and development. Law and development programs in Latin America were widely considered ineffective at best and damaging at worst. The experiences in Chile and other countries had a major impact on the U.S. lawyers involved, who worked hard afterward to evaluate what had gone wrong, including a lot of self-criticism. By the late 1970s there was strong consensus in the U.S. legal academy that law and development had failed because its proponents had misunderstood the social context for their reforms—a painful but useful message for the law and society movement.

Three of the leading scholars and participants who wrote critiques of law and development were Trubek, Merryman, and Gardner (discussed above). Trubek's viewpoint was summarized in section 5 (see also Trubek & Galanter, 1974). In Merryman's assessment of the field in 1977, he wrote that U.S. law and development programs were “largely a parochial expression of the American legal style.” The programs emphasized “action over inquiry” and were typically marked by “unfamiliarity with the target culture and society (including its legal system), innocence of theory, artificially privileged access to power, and relative immunity to consequences.” He concluded that the results were “ineffectual or harmful as technical assistance and peripheral as scholarship” (Merryman, 1977, pp. 479, 481).

Merryman put a positive spin on this damning conclusion by arguing that it was now time for inquiry over action. Thus he proposed a new name for the field that emphasized a more academic approach: “comparative law and social change,” a term which “locates the field in the scholarly landscape, relating it to both law and society and comparative law” (Merryman, 1977, pp. 481–482).

Gardner's critique was sharper. The first part of his book is “a history of American legal assistance to Latin America, as part of a larger process of American lawyerly involvement in foreign aid.” He includes three detailed national case studies: Brazil, Chile, and Colombia. The book's second part is “an analysis of the American legal models and concepts that informed, defined, and were ultimately carried abroad as part of this process.” Gardner discusses four legal models in particular, what he calls methodological (i.e., the case method of teaching), educational (the American law school), professional

(the legal engineer), and jurisprudential (American legal thought) (Gardner, 1980, pp. 4–5).

The case studies showed that “local legal cultures, formal and informal, proved remarkably resilient in the face of American legal models.” Gardner argued that

“the American legal models carried abroad had built-in flaws and vulnerabilities, and that these surfaced and were clearly illuminated in the harsh exposure of the Third World. As shown in the case studies, American legal models demonstrated a vulnerability to authoritarian ordering and abuse. The model of the lawyer as a pragmatic problem-solver and social engineer proved purblind, as a professional model, to issues of legitimacy, ethics, and values. The concept of rule-skeptical, instrumental law tended, as a jurisprudential model, to restrict legal research and thought, to undermine the rules and formal entitlements of rule of law, and to have the potential of converting law into an instrument and exercise of repressive policy and power. Stated too simply, the exported American legal models tended to reinforce narrow and technocratic models of the lawyer and the law. . .

“It was a frustrating if instructive experience: the American legal missionaries had carried abroad the patented medicine of social engineering and rule-skeptical, instrumental legal thought only to learn that this was not a cure but a disease—one that took on virulent form in tropic, authoritarian climates”.<sup>35</sup>

[Gardner, 1980, pp. 9, 5, 11]

These analyses had an impact in U.S. academic circles, especially in law and society. In contrast, the impacts on law and legal studies in Chile were minimal, except for the small group of Chilean lawyers involved. The law and society idea was new and foreign in Chile, and after 1973 the field disappeared. It has revived somewhat since the return to democratic government in 1990, but it remains on the fringes of Chile’s legal academy and profession.

## 8. SUMMARY AND CONCLUSIONS

In this paper we have woven together different themes about water, law, and society in the Chile/California programs, in that particular chapter in history, the 1960–70s. All three programs aimed to promote development in Chile through international cooperation with California, and all three emphasized the transfer of knowledge and expertise from California to Chile. We have examined this history mainly through the lens of different academic and professional disciplines, including natural sciences, social sciences, arts and humanities, law, and engineering.

In the cases of university exchange, we saw that the natural sciences and engineering were more resilient than the social sciences and humanities, during times of social and economic crisis and authoritarian rule in Chile. The natural sciences and engineering were useful in practical terms to economic production, especially in a national economic model based on extraction and export of natural resources. The social sciences, humanities, and law and development were largely shut down. The field of neoliberal economics was the exception, whose proponents expanded and gained influence over government policies in part by claiming to do science rather than politics.

The difficulties of law and social sciences are essential historical background for understanding the rise of neoliberal economics in Chile. The failure of law and development, with its broad social science approach, was a lesson to economists and technocrats to narrow the scope of their social analysis, in Chile and elsewhere. Learning that lesson was part of the second wave of law and development that emerged in the 1980–90s, in the international context of the Washington Consensus.

This second wave was dominated by orthodox economic analysis and its offshoot, “new institutional economics,” with little input from other fields. The approach was promoted by

the World Bank and other international development organizations, with the argument that legal and institutional reforms would stimulate market-driven economic growth (World Bank, 2002). Achieving the “rule of law” protected private economic actors from excessive government interference. The market economic approach was countered by the international human rights movement and fellow travelers, whose members argued that the rule of law meant protecting human and civil rights as well as property rights from excessive government interference (Thome, 2000; Trubek, 2006).

That debate is still with us today. In any case, the more recent law and development has become a much larger enterprise than it was in the 1960–70s, and much more shaped by economics (Dezalay & Garth, 2002; Trubek 2006; World Bank, 2002). In the U.S. as well, the field of law and economics took a separate path from law and society, and has been more influential both in law schools and in public policy (Duxbury, 1997; Tomlins, 2000; Trubek, 1990).

In terms of *water*, California’s influence has been noticeable in dams and technology, but not in law and policy. The single largest impact was the plan to build Colbún Dam on the Maule River (and the adjacent Machicura Dam), as part of dual-purpose river basin development: irrigation and hydropower. After Chilean engineers had done the background and analytical work, engineers from the California Department of Water Resources gave a boost to basin-wide planning and large-scale, multi-purpose water projects. Colbún-Machicura Dams were eventually built in the 1980s during the military regime, when ENDESA was still owned by the government, and they are still the only large dual-purpose reservoirs ever built in Chile.<sup>36</sup> When the military regime privatized ENDESA in the late 1980s, Colbún-Machicura Dams were separated out and kept in public ownership in order to counterbalance ENDESA’s market power. Since the early 1990s, Colbún has been at the heart of key national disputes between irrigated agriculture and hydropower companies, over conflicting water rights and river basin governance. Colbún was later privatized in the 1990s and today is one the three large private companies that dominate Chile’s electric sector (Bauer, 1998a, 2004, 2009).

In the realm of water law and policy, however, neither of the two academic programs had any noticeable impact on water law and policy in Chile. Neither program focused on the 1967 Agrarian Reform Law and its Water Code. It seems safe to say that the Chile/California programs had no impact on water issues in California, although they surely broadened the minds and perhaps the careers of the individual Californians involved. The military regime rejected California’s approach of strong government water agencies in favor of the Chicago Boys’ vision of the free market in the 1981 Water Code. Since then, the river basin approach to water policy has been dormant in Chile, despite frequent rhetorical invocation, because of the wide scope of private property rights to water. Both Chile and California have become international symbols of water management, but they represent contrasting approaches to water markets, government regulation, and environmental protection (Bauer, 2010).

We close with a recommendation. Since 2008, the new Chile/California program has sent many Chilean graduate students to universities in California for advanced degrees. New research should assess the mix and range of disciplines and degrees chosen, and the interdisciplinary content. What have been trends in thesis and dissertation topics? Has there been much comparison between Chile and California in areas of policy studies? In which areas of knowledge and ways of knowing does the current generation of Chile/California scholars shine?

## NOTES

1. Memorandum of Understanding on the Issues of Human Capital development, Education, Environmental Protection, Energy, Agriculture, Information and Communication Technologies, and Trade, signed June 12, 2008; Una Asociación Estratégica para el Siglo XXI, brochure, Government of Chile, Ministry of Foreign Relations.
2. For example, Chile's National Historical Museum showed an exhibit in a central Santiago subway station in 2013–14, with support from various other organizations. The exhibit was called "Land of Opportunities: California and Chile" (*Tierra de Oportunidades*), and it included six themes: "the gold rush, agricultural modernization, scientific and technological innovation, academic collaboration, cultural influences, and immigration" (<http://www.museohistoriconacional.cl/618/w3-article-9466.html>, accessed June 12, 2015).
3. For more historical background see [Bauer \(1998a\)](#) and its bibliography.
4. To indicate the scale of the program, each country contributed \$1 million in 1964–65 ([Dvorin, 1965, p. 37](#)). For a good summary, see Agency History, Inventory of the Chile-California Program Records, F3721:1–572, California State Archives.
5. Bauer interview with Herb Greydanus, July 13, 2012. Greydanus worked for the U.S. Bureau of Reclamation in 1950–53 before joining DWR, where he worked for 24 years. For nine years he was director of DWR's division of resources development, which had been Berry's position. Greydanus then became a private consultant in a firm with other ex-DWR engineers for 26 more years.
6. Interview with Greydanus; Bauer interview with Michael Nelson, January 10, 2012. Nelson was an economist from New Zealand who worked in Chile and Argentina throughout this period, for Stanford Research Institute, Chile/California Program, and Resources for the Future (RFF). Nelson stayed in Chile for decades afterward, working for the United Nations Economics Commission for Latin America and the Caribbean (ECLAC) and becoming an international consultant.
7. See [Bulkley and McLaughlin \(1966\)](#), an MIT report that describes the case of the Maule River as an example of multi-purpose river basin development, and says that the Chile/California Program played an important supportive role. Bulkley and McLaughlin also describe the tension among different water users and government agencies, namely between ENDESA and the Irrigation Directorate. Nelson confirmed the importance of this tension (interview with Nelson, N. 9). See also [Edwards \(1966\)](#) for a comprehensive summary of the Colbún/Maule project from the standpoint of the Irrigation Directorate, and see [ENDESA \(1965\)](#) for a very similar description from the standpoint of hydropower. Both documents emphasize the key contribution of the Chile/California Program to developing the project. See [White \(1957\)](#) for an overview of river basin development as it was understood internationally in the 1950s. The Tennessee Valley Authority was a worldwide point of reference.
8. Interview with Nelson. See [Wollman \(1968\)](#), a book on water in Chile that resulted from collaboration between Resources for the Future and ECLAC. Wollman worked for RFF and spent 18 months in Chile in 1964–65. He particularly thanks the Chile/California Program, especially Michael Nelson (p. vii), and relies on those sources in discussing the Colbún project and multiple-purpose river basin development (pp. 97–104).
9. Chile's largest dual-purpose reservoir was and is Lake Laja, which is a natural lake whose outlet was modified in the 1950s to allow storage for hydropower generation and irrigation. Lake Laja is the source of the Laja River, which is a principal tributary of the Bío Bío River. See [Bauer \(1998a, 1998b\)](#). For history of ENDESA, see [Bauer \(2009\)](#).
10. Interviews with Greydanus and Nelson.
11. Although the Ford grant was considered large at the time, it was dwarfed by the scale of U.S. financial assistance to Chile during 1962–70: \$1.2 billion ([Kornbluh, 2003](#), pp. 31–32).
12. Our account of the *convenio* relies on the valuable *Comprehensive Report* written by *convenio* staff in 1979 (no author is indicated, although many people are named in the Preface): University of Chile—University of California Cooperative Program, 1979, *Comprehensive Report, 1965–78*, Vol. I, Narrative Report (123pp.). For a summary in Spanish, see Teresa Iriarte, "Convenio Universidad de Chile-Universidad de California: Período 1965–75," October 1984, U. de Chile Departamento de Extensión y Cooperación. Catalán interview with Teresa Iriarte, Santiago, 2010. See also [Fuenzalida \(1984\)](#).
13. The Catholic University in Santiago followed similar trends during this period, but U. of Chile was the leader; see [Krebs et al. \(1994\)](#).
14. Puryear worked for the Ford Foundation in Latin America for nearly two decades, starting in 1973.
15. FLACSO was established by UNESCO during this period.
16. According to the *Comprehensive Report*, the U. California had learned from the experience of the previous Chile/California Program that international cooperation was much more effective if the U.C. system itself was participating, rather than contracting individual experts (pp. 12–13). [Puryear \(1994\)](#) refers briefly to the Chile/California *convenio* (p. 14), which he calls a "spectacular example of foreign assistance" (p. 176, N. 6), but he says little beyond noting that agriculture and veterinary medicine were the main emphasis. Rector Gomez Millas became Minister of Education in 1964 when Pres. Frei took office. He was replaced by Gonzalez, who was rector until forced to resign in 1968 in the heat of student protests.
17. During this time the Ford Foundation also supported Resources for the Future, an independent center for research on environmental and natural resource economics and policy, located in Washington, DC. Although RFF's main focus has always been the U.S., there was a Latin America program from 1964 to the late 1970s. The program began in 1964 with collaboration with the United Nations in Chile, specifically the Institute for Economic and Social Planning and the Economic Commission for Latin America. In 1969 and 1973 the Ford Foundation made grants that supported RFF staff and local researchers in Chile as well as Argentina, Brazil, Colombia, Mexico, and Peru. These collaborations continued for years and produced many books and publications on agriculture, water, and other resources. See [Crosson, Cummins, and Frederick \(1978\)](#), with a bibliography; [Frederick \(1975\)](#); and [Wollman \(1968\)](#), discussed in Section 3.
18. The nickname was a nod to the "Chicago Boys," as the University of Chicago-educated economists were called in Chile (discussed in Section 6). By 1972 the program had carried out 23 research projects (*Comprehensive Report*, pp. 88–90). See [Parks and Hansen \(1978\)](#) for an example.

19. Trubek also criticized law and development as an example of a wider problem in law and society: the “tendency to accept the law as a clear source of legitimate authority” or as an “unproblematic source of normative inspiration” (pp. 36–37).
20. Comparative law means the study of different countries’ laws and legal systems. There are several major kinds of legal systems in the world, of which the common law and the civil law are the most widespread. See, e.g., Merryman (1985), Zweigert and Kotz (1992).
21. For more historical analyses of law and society, see Garth (2000), Garth and Sterling (1998), Tomlins (2000). For a description of the “aspirations and perspectives” of the Jurisprudence and Social Policy Program at U. California-Berkeley, which is a well-known graduate program in law and society, see Selznick (1980). Legal history is a strong academic field closely tied to law and society. See e.g. Hurst (1957), Hurst (1964); and Novak (2000) and Scheiber (1970) for overviews of Hurst’s work. For critical legal history, see Gordon (1984), Horwitz (1977), Kairys (1990), Thompson (1975), Trubek (1984).
22. This section draws on Gardner (1980), Merryman (2000); and Dezalay and Garth (2002), pp. 110–118. Two essential Chilean sources are Figueroa (1978); and the annual journal of the Univ. of Chile Law School, *Anales de la Facultad de Ciencias Jurídicas y Sociales*, during 1935–72, online at [www.analesderecho.uchile.cl](http://www.analesderecho.uchile.cl)
23. The chapter on the Chile Law Program is 65 pages and includes a long and nuanced description of the roles of law in Chilean society during the governments of Frei (1964–70), Allende (1970–73), and Pinochet (1973–80).
24. The other law schools were Univ. of Concepción and Catholic Univ. of Valparaíso, which were important regional universities in Chile.
25. For the views of Dean Velasco about the “crisis of law” in Chile, see his 1965 speech, “Derecho y los cambios sociales,” later published in Figueroa (1978). Velasco was elected Dean in 1965 and served until 1971.
26. The Ford VP who had evaluated the proposal with Merryman, John Howard, later became head of the International Legal Center in Santiago (Merryman, 2000, p. 482, n. 3).
27. Bauer interview with Norman Collins, July 13, 2012. Collins was a professor of agricultural economics at U.C.-Berkeley who worked for both of the other two Chile/California programs before becoming Ford Foundation staff for the rest of his career. He lived for decades in India and Mexico.
28. See Merryman’s classic book, *The Civil Law Tradition* (1985), for essential background on the contrast. For an example of the argument that Chilean law had failed to keep up with social reality and needed major reform, see Steven Lowenstein’s 1971 article in the *Boletín* of IDIJUR, republished as “El status del derecho y la profesión legal,” in Figueroa (1978). Lowenstein was a U.S. lawyer who worked as staff for the International Legal Center in Santiago. See also Fuenzalida (2009).
29. Gardner (1980, p. 134) says 19; Merryman (2000, pp. 486–487, 490) says 20.
30. For a summary of IDIJUR’s many research projects, see Figueroa, “Investigaciones jurídico-sociológicas emprendidas en Chile,” in Figueroa (1978, pp. 262–281).
31. Cuneo, “El Instituto de Docencia e Investigación Jurídicas,” in Figueroa (1978). Present tense in the original. “I cannot say whether this book will endure in time. The idea of this publication is simply to leave testimony of what this generation was, before new concerns or ideas bury its legacy.” Cuneo made these comments in 1978, after five years of military dictatorship, in a political context very different from the early 1970s.
32. In a sense the LTC’s mission was also similar to public land grant universities in the U.S., with their applied research and technical extension services. The land grant universities, however, have emphasized science and technology rather than political topics such as property rights or land tenure.
33. For two contemporary studies of Chile’s Agrarian Reform, see Thiesenhusen (1971) for agricultural economics and Thome (1971) for law. See also Garrido, Guerrero, and Valdés (1990), Jarvis (1988).
34. One of us (author 1) did an M.S. in geography at UW in the 1980s, with a thesis on water rights in the Western U.S., but only learned later about the Land Tenure Center, UW’s law and society tradition, and the Chilean water rights studies.
35. See Karst and Rosenn (1975) for a massive textbook of cases and materials in Latin American law and development, and Dezalay and Garth (2002) for a more recent critique.
36. Lake Laja is also managed for those two purposes, but it was a natural lake whose outlet was modified to serve as a reservoir.

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