

Legalism Under Stress:

The *Unidad Popular* and the Chilean Banking System (1970-1973)

Abstract

It has become a common place to stress the importance of credit and finance for contemporary capitalist societies. Latin America is no exception, although this trend is referred to as “peripheral financialization”. The paradox is that while credit and finance increase their relevance for societies, the study of money remains a niche of enquiry controlled by economists and monetary policies become a technical rather than a political matter. My work-in-progress Article intends to contribute to the emerging literature that challenges the ‘orthodox view’ of money as a neutral veil and emphasizes its legal and political character. Inspired by these heterodox theories of money, I use Chile as a case study to explore the possible correlations between changes in the constitutional and monetary orders. In particular, I study the monetary policy of President Salvador Allende, whose government (1970-1973) aimed to transform the social and economic structure of the country under a liberal rule of law regime. In its social revolutionary endeavors the *Chilean Road to Socialism* had a successful beginning. By the end of the first year of government more than 90% of the banking system was under state control. The seizure of most of the banking system was done using the legal system in place, proving right those who believed that the Chilean rule of law was “an astonishingly elastic one”. The tragic ending of this so-called ‘socialist experiment’ is well known, but neither its lessons in terms of money governance, nor the importance of economic power for the constitutional order, have been duly examined. The importance of analyzing the Chilean experience goes beyond geographical borders, especially because current understanding of money has devalued its connection to political authority, legal order and the state.

Introduction

The problem of material inequality and wealth accumulation in capitalist societies has been broadly discussed from different fields such as sociology, economy and political science, especially since the 2007-2008 economic crisis.¹ Unlike those fields of knowledge, these issues have not received the same systematic attention from legal scholarship until recently.² In particular, from the standpoint of liberal constitutionalism neither wealth accumulation nor

¹ Hacker y Pierson, 2011; Winters, 2014; Picketty, 2014; Boushey et.al., 2017

² Pistor, 2019; Grewal and Purdy, 2018; Grewal, 2014

economic inequality is considered as inherently problematic.³ Scholarship has focused on the rule of law, constituent power, or in the related questions about who governs and how political power is divided and controlled.⁴ Constitutional theorists rarely pursue the problem of wealth accumulation as a specific legal-constitutional topic,⁵ and if any, money's role and its relationship with politics is constrained to the study of campaign finance regulations, but its broader relation to the legal order and power is commonly overlooked.⁶

The idea of money and its regulation is rarely something we question in ordinary life, notwithstanding its importance. When there is a political crisis money markets fluctuate, and uncertainty pervades society affecting competitive market economies. On the other side, inflation and hyperinflation are common nightmares of governments. Macroeconomics is about the relationship of money and government, and law is the organizing medium of both (the legal-economic nexus).⁷ This Article reassess the politics of money creation and its dynamics, inspired by the emerging legal scholarship regarding money that challenges the orthodox economic conception of money as a neutral instrument and illuminates the role of law in the construction of social and economic order. In this endeavor, I analyze the experience of the *Unidad Popular's* government (1970-1973) as a case study. The tragic ending of this so-called 'socialist experiment' is well known, but neither its lessons in terms of money governance, nor the radical

³ Grewal and Purdy, 2018

⁴ J. Raz, 2001

⁵ "Economic power seems to be the elephant in constitutional theory's room: everyone knows it is there, but no one acknowledges it", See G. Sitamaran, The puzzling absence of economic power in constitutional theory (denouncing that the relationship between economic power and modern constitutional theory has not been duly developed). But see, David Singh Grewal, *The Laws of Capitalism*, 128 Harv. L. Rev. 626 (2014); Katharina Pistor, *The Code of Capital. How the Law Creates Wealth and Inequality* (2019), Grewal and Purdy, 2018.

⁶ I can venture three possible reasons for the above: first, because of the alleged neutrality of the law and the general idea that the Constitution has (or should have) little to do with the economic system. Second, the link between the economic and the political through legality, and in particular the connection between money and the constitutional order, is overshadowed by the hegemonic imaginary of the neoclassical account of money as a neutral veil that emerges out from social interactions. And finally, much related to the latter, the influence of *law and economics* as the main approach for understanding the relationship between legality and the economy.

⁷ Samuels, 1989

transformation of the epistemological understanding of money after the 1973 coup d'état, have been duly examined. The importance of analyzing the Chilean experience of money governance goes beyond geographical borders, especially because the current common understanding of money has devalued its connection to political authority, legal order and the state. This paper proceeds as follows: part I explores the conceptual relations between money and political authority by contrasting two distinctive narratives regarding money; part II portrays Chile's political and economic structure before 1970 to explain the role that money and specially credit, had for Allende's political project; part III describes the government's policy to acquire most of the private banking system by legal means; and, part IV analyses how changes in money governance spearheaded the constitutional crisis of 1972-73 which precedes the military coup.