

# ***You Win Some, You Lose Some: Constitutional Reforms in Chile's Transition to Democracy***

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## ABSTRACT

Chile's 1989 constitutional reforms constituted a trade-off: the military gave up protected democracy provisions but acquired greater autonomy. The democratic opposition could accept or reject, but not modify, constitutional changes proposed by the outgoing dictatorship. This study addresses a very limited time period in the transition to democracy: the moment after the transition has been secured and transitional rules have been established. The dynamics of this period differ markedly from those in the larger democratic transition. The approach in this study complements alternative explanations of why the 1989 reforms benefited the outgoing dictatorship more than the incoming democratic government. Although the outgoing regime granted several opposition demands by reducing restrictions on political pluralism and eliminating barriers to political party activity, it also secured provisions that made the military more independent of civilian authorities than originally conceived in the 1980 Constitution.

Chile's transition to democracy took place under the rules established by the military dictatorship of 1973–90. Adopted by the government of General Augusto Pinochet, the 1980 Constitution embodied the spirit of the Cold War National Security Doctrine (NSD) (Constable and Valenzuela 1991, 69–73; Loveman 1991; Sigmund 1993, 132–39; Weeks 1999, 108; Weeks 2003; Fitch 1998; Fuentes 2000; Rabkin 1992). The NSD sought to establish a “protected democracy,” which limited political pluralism and secured military tutelage over civilian authorities. In addition, the 1980 Constitution contained temporary articles designed to rule the transition to democracy. They explicitly provided for an eight-year presidential term (March 1981–March 1989) for Pinochet, and required the ruling junta to submit a presidential nominee for a new eight-year term to a plebiscite in 1988.

Chosen as that candidate, Pinochet lost the plebiscite on October 5, 1988, thus allowing for elections in 1989. Because the end of his regime was certain, this period resembled more the “transition from one administration to the next” that occurs in well-established democracies than a

transition to democracy. Rejecting the democratic opposition's calls to negotiate the reforms, the outgoing government unilaterally proposed a set of constitutional changes. With the opposition's acquiescence, the reforms were approved in a plebiscite on July 30, 1989.<sup>1</sup> Elections were held in December 1989, and new civilian authorities took power in March 1990. With or without the reforms, the 1989 elections would still have been held. Indeed, the reforms did not alter the rules for the transition. Instead, they addressed the institutional design for the new democratic period.

Most accounts argue that the military government agreed to reform the 1980 Constitution to give it legitimacy and secure its acceptance by the opposition (Loveman 1991; Garretón 1995; Fuentes 1996; Godoy 1996, 1999; Cavallo et al. 1997; Boeninger 1997, 362–66; Aylwin 1998; Agüero 1998; Allamand 1999b; Portales 2000; Huneus 2001; Ugglá 2005). It is alleged that the military made some concessions on the protected democracy to preempt a Concertación effort to dismantle the constitution, while the Concertación agreed to fewer reforms than originally demanded to make it easier to “reconstruct the country and not just solve the issues inherited from the past” (Boeninger 1997, 364; see also Zaldívar 1995, 308; Ugglá 2005).<sup>2</sup>

While some provisions that represented the military's ideal points were eliminated, provisions to increase the supermajority thresholds for constitutional amendments and to reduce the first presidential term—widely expected to go to the Concertación—from eight to four years were included. Those reforms were considered to be the Concertación's concessions. In this view, the 1989 reforms were a trade-off in which the elimination of certain protected democracy clauses was negotiated by reducing the power of the executive and shielding the constitution against efforts to dismantle it (Cavallo 1992, 1998; Rojo 1995; Otano 1995; Moulián 1997; Jocelyn-Holt 1998). In addition, the reforms allowed the new government to concentrate on the future rather than on the rules of the game (Zaldívar 1995; Boeninger 1997; Allamand 1999b; Ugglá 2005.)

There is little debate about who benefited most from the 1989 reforms. Critics have emphasized that the outgoing dictatorship got much more out of the reforms than the incoming democratic government (Ugglá 2005). Because the Concertación's presidential victory in 1989 was nearly certain, the outgoing dictatorship wanted to limit presidential powers and increase the powers of the legislature, where conservative parties would have more influence due to the presence of appointed senators and the distortional effects of the electoral laws (Portales 2000). In addition, the reforms closed a loophole in the 1980 Constitution: the chapter on constitutional amendments had been weakly shielded against changes (Allamand 1999b; Ugglá 2005).

While most explanations adequately highlight how the negotiations ended up benefiting the outgoing dictatorship more than the incoming democratic government, the interpretations of what went on in those 17 months are generally informed by the literature on transitions to democracy. But that literature is primarily concerned with what brings about regime change, rather than with the negotiations between the outgoing and incoming regimes after the date of the coming regime change becomes certain (Cavarozzi and Garretón 1989; Garretón 1984; Smith 1987; Karl 1987; Haggard and Kaufman 1997; Linz and Stepan 1996; Stepan 1989; Przeworski 1991; O'Donnell and Schmitter 1986; O'Donnell et al. 1986; Agüero 1995). Either because the outgoing regime is not in a position to negotiate or because the negotiations take place concurrently with the dynamics that bring about the transition, many studies overlook the arrangements between the outgoing and incoming regimes when it is clear that there will be a transition and the identity of the new government is also known.<sup>3</sup> Traditional approaches are more concerned with the negotiations between the regime in power, interested in preserving attributions and protecting its leaders against reprisals, and the likely new regime, interested in leaving the past behind and consolidating democracy.

Transition literature deals primarily with bargaining under uncertainty: it is not clear when or if there will be a transition or what the new government will be. In Chile, there was certainty about the transition. To complement rather than invalidate transitions to democracy explanations, this study argues that the reforms should be understood as a process in which the outgoing and incoming regimes had forward-looking considerations. To that end, this study first discusses the making of the 1980 Constitution and then analyzes the 1989 reforms.

## **THE MAKING OF THE 1980 CONSTITUTION**

The period of military rule in Chile is often referred to as Pinochet's rule; but unlike other dictatorships in the region, it was not a personalized dictatorship (Barros 1996, 2002). The stated objective of the military junta was to restore order and return power to elected civilian authorities (Cavallo et al. 1997, 17). Yet the Junta soon shifted gears and sought to build a more elaborate project to correct what it considered the ills of the past. Soon after the 1973 coup, the Junta appointed an official group (known as the Ortúzar Commission) to study constitutional reforms, but the Junta retained legislative and constituent powers.

The 1925 Constitution was abolished as the Junta's decrees replaced significant segments of it (Valenzuela 1995; Barros 1996, 2002; Huneescu 2001). The Junta also produced other documents that outlined its vision and shaped the commission's work. The 1974 Declaration of Principles

of the Government of Chile established that the Ortúzar Commission was a consulting body charged with making proposals to the true constitutional power, the Junta (Barros 1996, 2002; Huneeus 2001; Cavallo et al. 1997). In addition, the Junta produced a set of Constitutional Acts between 1974 and 1976 (Soto Kloss and Fiamma Olivares 1976).

In July 1977, General Pinochet outlined his vision for the new institutional order in his famous Chacarillas speech (Pinochet 1977) and set in motion a hurried process of constitutionmaking. New guidelines were sent to the Ortúzar Commission to help it produce a document that would be consistent with Pinochet's views. After the Ortúzar Commission presented its report in July 1978, the Junta sent it to the Council of State for further revisions.<sup>4</sup> The Council of State was a figurative consultation body created to improve the dictatorship's international and domestic reputation; its suggestions for changes were mostly ignored. The Junta then took both proposals and appointed an eight-member committee—headed by two cabinet ministers—to produce the final document, which was made public on August 8, 1980. Pinochet immediately called for a national plebiscite to ratify the new constitution. By any criteria used, the way the 1980 Constitution was approved cannot be defined as democratic (Sigmund 1993, 127).

The new constitution, which took effect in March 1981, included a set of transitional articles specifically designed to rule the eight-year transitional period. Some of them restricted individual rights, but for the most part they outlined the special powers granted to the president and to the Junta, which would serve as the legislative body. The 1980 Constitution mandated a plebiscite in 1988, in which voters would accept or reject a presidential candidate proposed by the Junta for an eight-year term. If voters approved, the new president would take office in March 1989. Otherwise, a presidential election would occur in 1989. Although opposition parties rejected both the constitution and the way it was approved, the turn of events led them to use the 1988 plebiscite to mount a campaign to defeat Pinochet and hold open and free elections in 1989.

The 1980 Constitution provided a framework for protected democracy that included restrictions on political parties and labor unions, constraints on freedom of the press and freedom of expression; it also distorted political representation by combining an ad hoc electoral law that subsidized conservative parties with the appointment of nonelected senators. In addition, the Constitutional Tribunal was granted the power to rule on whether individuals and political parties represented a threat to the institutions and functioning of democracy. The charter explicitly gave the military a tutelary role by making it the "guarantors" of the democratic order. To strengthen this tutelary role, the military was included as a fourth power in the political system, notably through a controlling participation in the very powerful National Security Council

(*Consejo de Seguridad Nacional*, COSENA), which appointed designated senators and members of the Constitutional Tribunal.

In mid-1989, 54 constitutional reforms were approved in a plebiscite. Those reforms eliminated or modified many, but not all, of the backward-looking protected democracy provisions in the 1980 Constitution (Andrade Geywitz 1991). At the same time, some provisions that guaranteed military autonomy were reinforced.<sup>5</sup> In acquiescing to the proposed constitutional amendments, the Concertación was willing to trade more military autonomy for fewer protected democracy provisions.

## **PROTECTED DEMOCRACY AND MILITARY AUTONOMY**

Widely linked to the national security state (Ensalaco 1994, 410, 1995; Loveman 1994; Agüero 1995; Weeks 2003), the idea of protected democracy is incompatible with the traditional understanding of liberal democracy, which it seeks to replace. It is “premised on the notion that people must be protected from themselves and from organizations that might subvert the existing political order” (Loveman 1994, 111). As stated by Pinochet, Chile’s protected democracy was intended to replace “the neutral and defenseless classic, Liberal State with one committed to the values of our nationhood” (quoted in Ensalaco 1994, 411).

Protected democracy was an idea implicit in nineteenth-century Spanish American constitutions. It was resurrected in the transitions from authoritarian rule in the 1980s (Loveman 1994, 112, 131). Thus, although it was not a new concept to Latin American polities, military dictatorships framed it in stronger terms (Loveman 1994, 113). Pinochet’s version included a teleological program, imposed to preserve traditional values. Catholicism, love for the fatherland, and a particular understanding of the family were the goals it allegedly sought to defend from foreign and internal threats (Pinochet 1977; Loveman 1994).

The system required a guardian to defend the nation against threats but also to decide when such threats existed (Loveman 1994, 123). The armed forces were to perform this guardianship role; thus the provisions for military autonomy. As a consequence of the imposition of protected democracy, many postdictatorial regimes in Latin America converted the armed forces into “a virtual fourth branch of government—guardians of the nation” (Loveman 1994, 123).<sup>6</sup> As a result, military functions were expanded—including military jurisdiction over civilians (Pereira and Zaverucha 2003)—and the armed forces were granted budgetary and administrative autonomy.

Only by being autonomous could the military perform a tutelary role. Therefore, not surprisingly, the constitution included prerogatives against civilian control over the armed forces. But the level of protected

democracy that exists in a country does not necessarily depend on the amount of military autonomy. A country can have significant protected democracy provisions with little military autonomy. Or, as in Chile after 1989, the military can be more autonomous with a more limited protected democracy framework. Military autonomy is not even necessary for protected democracy; protected democracy can also coexist with little or even no military autonomy.

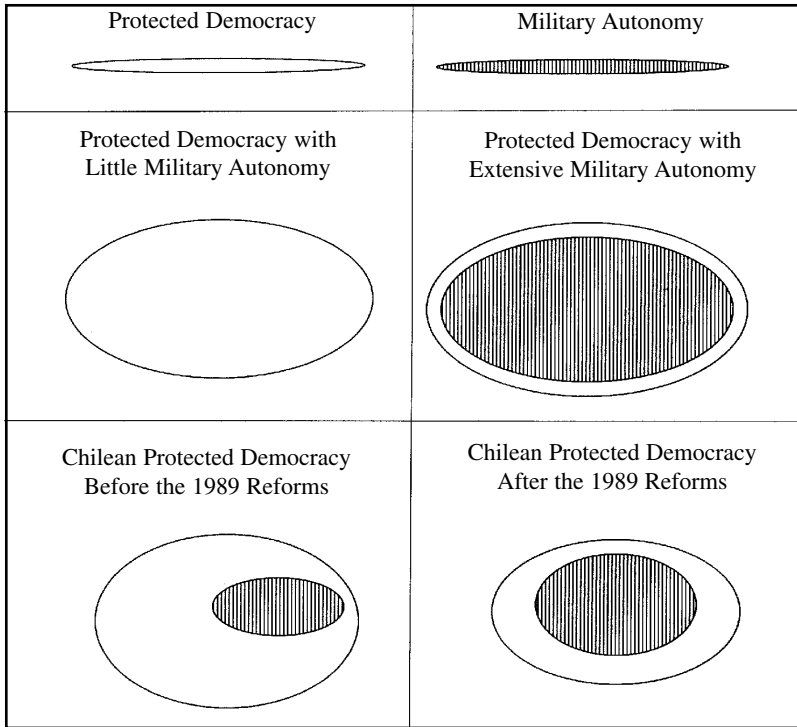
To be sure, enhanced military autonomy has not prevented substantial reforms to the protected democracy system. Chile's 1989 constitutional reforms decreased the structure of protected democracy (Ensalaco 1994, 410). Moreover, the enhanced military autonomy granted by the 1989 constitutional reforms did not strengthen protected democracy. Despite increasing military autonomy, the overall amount of protected democracy in the constitution decreased. Even though the reforms fell short in crucial areas, they "significantly strengthened the principles of separation of powers, representation, and popular sovereignty" (Ensalaco 1994, 421). After the reforms, the constitution had fewer protected democracy provisions, but the number of military autonomy provisions increased. Figure 1 graphically shows this relationship.

## **ACQUIESCENCE, REJECTION, AND TIMING**

For constitutional reforms to be made after the 1988 presidential plebiscite and before the new democratic government took office, the Junta had to propose a set of constitutional amendments, and citizens had to vote them up or down in a new plebiscite. Thus, after Pinochet lost the 1988 plebiscite, it was formally up to the Junta unilaterally to propose constitutional reforms. The victorious opposition did not have the power to bargain directly with the outgoing government, nor could it alter the proposed constitutional reforms. Yet because it had recently received majority support in the plebiscite, the democratic opposition could credibly block a constitutional reform proposed by the Junta. If the democratic opposition rejected a reform, that reform would be highly unlikely to win approval in a plebiscite. If the opposition acquiesced to a constitutional reform proposed by the Junta, that reform's approval in a plebiscite would be guaranteed. The opposition's acquiescence thus was the only way for the dictatorship to acquire legitimacy for its unpopular constitution (Uggla 2005).

The opposition could influence the shape of the reforms only indirectly, by stating which set of reforms it would consider more acceptable than the status quo of the 1980 Constitution. Because the Concertación comprised several parties with different ideologies and institutional design preferences, however, it had diffuse policy preferences. While some Concertación parties would have clearly preferred

Figure 1. Trade-Offs Between Protected Democracy and Military Autonomy



more sweeping reforms, others were willing to accept less radical reforms. They could not absolutely agree on what reforms were essential to include (Uggla 2005).

The opposition began proposing changes that would “democratize” the 1980 Constitution as early as the mid-1980s (P. Aylwin et al. 1985; A. Aylwin et al. 1988; Boeninger 1997). These efforts and initiatives informed and helped identify what articles and concepts the opposition deemed acceptable—a “laundry list” of reforms. Yet those documents, symposiums, and roundtable discussions also allowed the dictatorship to identify what type of reforms would be sufficient for the opposition not to exercise its veto power over the process. If the plebiscite victory granted legitimacy to the Concertación, the debate on constitutional reforms that took place before the plebiscite made its preference disagreements clear.

The dictatorship, however, did not formally negotiate with the opposition. Indeed, by announcing ahead of time what changes it considered essential, the opposition made it easier for the dictatorship to propose a set of modifications that would not be rejected. Conversely,

it was possible for the military government to identify a set of reforms that would satisfy the demands of a sufficiently large number of parties such that the entire Concertación would acquiesce to the entire reform package. By the same token, because the Concertación could only accept or reject but not modify the dictatorship's proposed reforms, the military could maximize the number of protected democracy provisions that remained untouched. The concessions made by the military actually were a subset of the Concertación's laundry list, but they fell short of what the opposition had asked for.

The dictatorship, moreover, was able to modify still other provisions that would give the military more autonomy. This was possible partly because, immediately after the plebiscite, the opposition failed to transform the No vote into an outright rejection of the entire constitution. Although the Concertación tried to link Pinochet's defeat with a defeat of the 1980 Constitution, holding the plebiscite under the rules established in the constitution weakened that claim. Thus the only lasting effect of the Concertación's victory in the 1988 plebiscite was its emergence as a strong veto player in the process of constitutional reforms that took place in 1989.

To be sure, the dictatorship knew that controlling the pace of the process was a crucial tool and took full advantage of it, promulgating a set of Organic Constitutional Laws (LOC)—which required legislative supermajorities to be modified—in February 1990, only weeks before leaving power. This timing gave the opposition no time to react or, probably, even to fully understand the consequences of the new measures. Among these laws were the Armed Forces LOC and the Police (*Carabineros*) LOC, which regulated appointments, pensions, and other important military issues and restricted powers explicitly granted in the 1980 Constitution to civilian authorities.

In this scheme, time played in favor of the military.<sup>7</sup> The government controlled the pace of the process, and the Concertación needed the reforms to be approved quickly. Because it did not want to spend the valuable "honeymoon period" reforming the constitution, the Concertación preferred to have it reformed before taking office, even if this meant compromising its ideal point (Boeninger 1997, 362–66; Allamand 1999a). Moreover, some politicians in the Concertación feared that the set of authoritarian provisions in the 1980 Constitution would constitute a difficult hurdle to overcome to consolidate democracy. By lowering the hurdle even partly, the Concertación would increase its chance of success once in government.

There was little time between the 1988 plebiscite and the 1989 electoral campaigns. Because it worked in favor of the military, the little time that elapsed between the plebiscite and the constitutional reforms helped to weaken the position of the Concertación.

It should be noted that the opposition's power to secure approval or guarantee rejection of the reforms came not from the threat of popular subversion but from the certainty that the Concertación's overwhelming electoral support could block any efforts by the Junta to change the constitution. The transitional articles established that any changes between the October 1988 plebiscite and the inauguration of the first democratically elected government had to be approved in another plebiscite. While the popular protests against the dictatorship in the mid-1980s were important in shaping the rules for the plebiscite, they did not play the role of a credible threat in the 1989 reforms. When the Concertación agreed to participate in the 1988 plebiscite by calling on its supporters to register to vote, the threat of popular subversion weakened. Although the opposition had committed to play by the rules, however, it was still possible to call for popular subversion if Pinochet were to lose the plebiscite and ignore the results. Yet when Pinochet conceded defeat, the threat of popular subversion disappeared, just as the veto power consolidated.

The 1989 reforms can also be understood as responding to forward-looking concerns on the part of the military, in sharp contrast with the backward-looking considerations that characterized the 1980 constitutionmaking process.<sup>8</sup> Because protected democracy is intended as a backward-looking safeguard against historical experiences (Barros 2001, 2002), the design of the 1980 Constitution sought to prevent problems, conflicts, or crises harbored or facilitated by previous constitutional arrangements. Provisions banning Marxist parties and guaranteeing private property rights, together with runoff provisions for presidential elections, for example, would make it impossible for Salvador Allende's Popular Unity election in 1970 and government until the 1973 coup to occur again.

After the 1988 plebiscite, the military had forward-looking concerns when proposing constitutional reforms. The military wanted to change the constitution because it sought to "correct" some mistakes and oversights (Portales 2000; Allamand 1999b; Uggla 2005). Indeed, by increasing military autonomy, the dictatorship showed its ability to stop thinking about preventing past experiences and to start thinking about how best to manage under the new democratic rules. Securing the protection of the military from trials for human rights violations (beyond what was already covered by the 1978 Amnesty Law) became a central concern. Ensuring a greater degree of autonomy from civilian authorities in areas relating to budgets and career promotions was another priority. These two issues were not conveniently addressed in the 1980 Constitution. These, then, were the important issues in the months that elapsed between the constitutional reform and the inauguration of the democratically elected president.

## PROTECTED DEMOCRACY PROVISIONS

The 1980 Constitution was filled with protected democracy provisions, which rendered that charter largely undemocratic. Many of those provisions were dropped or modified in the 1989 reforms. Some remained but were never used after 1990, and were removed in 2005. But in general, the 1989 reforms significantly democratized constitutional provisions in place between 1990 and 2005 and made Chile's constitution more compatible with other democratic charters in the world.

### Political Pluralism

Several provisions in the constitution restricted political pluralism. Infamous Article (Art) 8 embodied the military's vision of protected democracy. Art-8 declared,

Any action by an individual or group intended to propagate doctrines attempting against [i.e., threatening] the family, or which advocates violence or a concept of society, the State or the juridical order, of a totalitarian character or based on class warfare, is illegal and contrary to the institutional code of the Republic. The organizations and political movements or parties which, due to their purposes or the nature of the activities of their members, tend toward such objectives, are unconstitutional. (Constitution of the Republic of Chile 1980)<sup>9</sup>

The Constitutional Tribunal was in charge of declaring the constitutionality of individuals or groups accused of infringing Art-8. Any person (Art-82) could present an accusation for infringement of Art-8. Rulings by the Constitutional Tribunal were final and not subject to appeal.

This broad definition limited free speech and reflected principles that informed the NSD; namely, that the defense of Western values against communism justifies placing restrictions on individual liberties. Under some conditions, NSD concerns justified authoritarian regimes as long as they opposed communism. After the 1959 Cuban revolution and the emergence of revolutionary guerrillas in Latin America, the NSD was used to justify pro-U.S. military dictatorships in several countries. The NSD defined opponents of authoritarian regimes friendly to the United States as internal enemies and justified their repression as an antisubversive war whose objective was the elimination of the enemy and its organizations.

The 1989 reforms eliminated Art-8, but its content was partially transferred to Art-19.15. The change is made clear in that every single reference to Art-8 in the rest of the original constitution was changed into a reference to Art-19.15. This is the case with Art-82, on the attri-

butions of the Constitutional Tribunal, and Art-57, on the causes for the impeachment of legislators. In this sense, Art-8 provisions remained, though much weakened, in Art-19.15 after the reforms.<sup>10</sup>

Initially, Art-19.15 required political parties to exercise “effective internal democracy”; made foreign funding illegal; and made membership rolls, funding, and budgets public. Mirroring some original Art-8 provisions, the reforms added new requisites to political parties by stating that “parties, movements, and other organizations that do not respect the democratic and constitutional system, defend a totalitarian system or use, defend or promote violence as a political means are unconstitutional” (Art-19.15). The Constitutional Tribunal retained the power to rule on parties’ constitutionality, but noncompliance with Art-19.15 would result only in the dissolution of the party, not in individual punishment.

When transferred to Art-19.15, the provisions of Art-8 lost three key features. The references to parties that “propagate doctrines attempting against the family” or that advocate “a concept of society, the State or the juridical order, of a totalitarian character or based on class warfare” were eliminated. In addition, the requisite of mandatory compliance by parties was circumscribed specifically to the democratic and constitutional system, instead of the more general reference to the institutional order. Art-19.15 became more pluralistic after the reforms, in two aspects: it allowed for membership rolls to be private and included a reference to political pluralism. The democratic opposition considered the inclusion of the words *democracy* and *pluralism* in the constitution a significant achievement.

The modified Art-19.15, with its exclusion and condemnation of violence and the requirement for all parties to respect the constitution, is compatible with a plural democracy. In contrast, the reference to totalitarianism remains extemporaneous and recalls the NSD inspiration of its authors. The expression is not a problem per se. The German Constitution, for example, includes a reference against totalitarianism. But in Chile, the expression recalls the anticommunist claims of the dictatorship, which were the basis of many of the provisions that limited political pluralism. Art-8 explicitly forbade Marxist parties based in Marxist-inspired movements.

In dealing with the causes for removal of senators and deputies, Art-57 also contained a reference to Art-8. Causes for removal included being involved in labor conflicts, promoting the disruption of public order, promoting changes in the legal institutional order by ways not provided for in the constitution, and, for the Chamber of Deputies or Senate president and committee chairs, allowing a vote on a bill later declared unconstitutional by the Constitutional Tribunal.

The 1989 Reforms replaced the reference to Art-8 by Art-19.15 and eliminated the provision on allowing votes on bills that were later

declared unconstitutional. In the latter case, automatic removal from office was too extreme a punishment for a simple procedural decision to vote a law that could later be declared unconstitutional. That last provision shows the effort to make the Constitutional Tribunal an oversight power for the legislature. The obvious long-term result of that provision would have been to compel legislators to consider the views of the Constitutional Tribunal before drafting laws.<sup>11</sup> Because the reforms eliminated that provision before the first legislature was elected, it was never exercised.

Since 1990, after Constitutional Tribunal rulings that rendered some legislation unconstitutional, several senators and deputies have strongly criticized those decisions and accused the tribunal of undermining the role of the legislative branch. Yet those complaints have been ill-conceived. The objections arose because the tribunal lacked legitimacy, not because it was undemocratic.

After the reforms, legislators could no longer be impeached for allowing the chamber to vote on legislation that the tribunal later rejected, but the three other causes noted above remained intact. Despite the improvements made by the reforms, these harsh provisions for impeachment of legislators seemed an unwarranted threat to the freedom of expression of elected politicians. Since 1990, however, no elected senator or deputy has been accused on these grounds. A handful of senators and deputies who have been impeached since 1990 have faced criminal and defamation charges in ordinary courts of justice.<sup>12</sup>

Another attempt to consolidate a protected democracy framework had to do with the line of presidential succession. In case of a vacancy, the Senate could appoint a new president for the remainder of the term or until the next scheduled parliamentary election (Art-29). That provision is not undemocratic *per se*, but it was in the context of the Chilean political system. The Senate originally comprised 26 elected and 9 appointed members. The power of nonelected members and their potential role in choosing the new president were unwarranted in a democratic system. The 1989 reforms eliminated that provision and replaced it with immediate presidential elections. Under the original 1980 Constitution, the president also had the power to dissolve the Chamber of Deputies (Art-32.5). That provision undermined the chamber's constitutional oversight power. The power to dissolve the Chamber of Deputies was eliminated in the reforms.

In adopting protected democracy clauses, the military was especially concerned with restricting and limiting the power of political parties and labor unions. The military asserted that those institutions were responsible for the political crisis that led to the 1973 coup. Therefore, Art-19.19 prohibited the participation of labor union members in political parties and activities. The reforms allowed labor union members to

participate in politics, but the constitution still prevented labor organizations from having a political affiliation and from organizing activities linked to a political party.

Likewise, Art-23 stated that labor union leadership was incompatible with political party membership. It also forbade political party intervention in the labor movement. The reforms reduced the scope of that limitation to only the high-ranking leadership of both labor movements and parties. These norms show the attempt by the military to reduce the political parties' scope of action and to dismantle political activity in general. Allowing for labor union leaders to participate openly in politics was a requirement of basic pluralism for the new democracy. The solution attained in the reforms broadened the scope of political action by labor unions.

### **Freedom of Expression**

Some constitutional provisions that restricted freedom of the press, established film censorship, and limited educational freedom were not modified by the 1989 reform. Thus, in protecting privacy and "honor" against abuses by the press, Art-19.4 rendered responsible for the infractions those making the statements and the owners, editors, directors, and administrators of the media outlets.\*<sup>13</sup> Art-19.5 states that private residences can be seized and searched and private communications intercepted, but "only according to the law." Art-19.11 allows the government to constrain freedom of education on "moral, good habits, public order, and national security" grounds and forbids political party contents in education. The constitution still allows the government to seize and search homes and private correspondence, and it further indicates that a simple majority law will regulate how those searches will be conducted. Restrictions on freedom of education, specially those responding to national security interests and banning "political contents," are other examples of provisions of protected democracy that remained in the constitution after 1989 (and also after 2005).

Censorship was also a part of protected democracy provisions. Art-19.12 created an independent National Television and Radio Council to regulate broadcasting and established film and art censorship. The 1989 reforms eliminated the ambiguous reference to "other artistic expressions" and also restricted the council's oversight power to television only. Film censorship remained a constitutional provision until it was eliminated in 2001. Finally, Art-22 mandates all persons to respect Chile and its symbols, to preserve the essential values of Chilean tradition, and to defend national security. It does not describe what those values are. That article was not modified in the reforms, but nobody has been charged so far with violating Art-22.

## Human Rights and Emergency Powers

The reform explicitly established the defense of human rights as a state duty in Art-5. That provision was not in the original 1980 Constitution and was perceived as an important concession by the dictatorship to the democratic opposition. From a judicial perspective, it opened a legal recourse to file lawsuits for human rights violations during the dictatorship. Apparently, it was accepted by the military under the assumption that courts would not admit such lawsuits (Huneus 2001, 606).

Art-19.26 established that under “states of exception,” individual rights and guarantees provided by the constitution were suspended. The reforms erased that sentence. In addition, Art-39 explicitly established that “The rights and guarantees, ensured to all persons by the Constitution, may only be affected in the following exceptional situations: foreign or internal war, internal disturbances, emergency and public calamity.” In the 1989 reforms, a small and perhaps semantic but symbolically significant change was made by introducing the phrase *the exercise of* at the beginning of the sentence, thus implying that the rights themselves can never be suspended, only the exercise of those rights. The constitution identifies four states of exception: state of assembly in case of war, state of siege in case of internal war, state of emergency in case of a serious alteration of public order or a national security threat (external or internal), and state of catastrophe in case of natural disaster. According to Art-40, the president was required to obtain the COSENA’s agreement before declaring a state of exception.\*

Among these four states of exception, the more troublesome for democratic consolidation was the state of siege, designed to confront “internal war,” an NSD concept. The 1989 reform eliminated a presidential prerogative to exile persons or forbid their return to the country (Art-41.2) during a state of siege and beyond the duration of the state of exception (Art-41.7).

The suspension of the right of assembly (Art-41.2) remained, but restrictions affecting the right to access and disseminate information and freedom of expression, the right of association, and the privacy of correspondence were eliminated. Instead, new restrictions on the rights to travel within the country, information, and opinion were included. Art-41.3 of the 1980 Constitution restricted the *recurso de protección* and *recurso de amparo*—variations of habeas corpus—under state of assembly and state of siege. The reforms restored habeas corpus rights regardless of the emergency powers exercised by the government.<sup>14</sup>

Even though many restrictive provisions on individual rights during states of exception remained unchanged, the reforms introduced the concept of human rights into the constitution and reduced some of the

powers conferred to the government under states of exception, making them more compatible with the rule of law in democracies, where individual rights are never suspended and persons can always present their allegations before civil courts.

### **The National Security Council, Constitutional Tribunal, and Senate**

At the core of the notion of protected democracy is the role of the armed forces as “guarantors” of the institutional system. In addition to creating a special chapter for the armed forces, a novelty in Chilean constitutions, Art-90 gave the armed forces the role of guarantors of the institutional order.\* Through the COSENA, the armed forces could exercise its tutelary role.\* Indeed, the COSENA formalized an institutional framework for a deliberation role for the armed forces. That, however, directly contradicted the very definition of the armed forces provided in Art-90: “The Armed Forces and the Armed Police, as armed corps, are essentially obedient and not deliberating bodies.”

According to Art-95, the COSENA was chaired by the president and consisted of the senate president, the Supreme Court president, and the commanders in chief of the army, navy, air force, and *Carabineros*. The reforms added an eighth member to the COSENA, the national comptroller, curtailing the armed forces majority in that body. After the reforms, the COSENA comprised the four commanders in chief and four civilians. Its decisions were made by an absolute majority of the eight members with voting rights (four cabinet ministers were also nonvoting members), and there were no constitutional provisions in case of a tie. Art-96 gave the COSENA the power to “represent” (*representar*) its views and opinions to any political authority on facts that threatened the basis of the institutional system or compromised national security.<sup>15</sup> The reforms replaced it with the milder term “to make known” (*bacer presente*)\* and reduced the number of interlocutors to the president, Congress, and the Constitutional Tribunal. Art-96 also gave the COSENA the authority to request briefings on external or internal security of the nation to any state agency or body. The COSENA could be convened by the president or by any two members; but except for one occasion, only the president convened it between 1990 and 2005.<sup>16</sup>

The Constitutional Tribunal (Art-81) was composed of seven members, appointed by the president (1), Senate (1), Supreme Court (3), and COSENA (2).<sup>17</sup> According to the original Art-82.7, the Constitutional Tribunal could rule on the constitutionality of organizations and political parties in accordance with Art-8, and was charged with ruling on individual actions against the institutional order (Art-82.8). The reforms replaced the reference to Art-8 with a reference to Art-19.15 and com-

bined the references to groups and persons into one, leaving the main content of the text unchanged.

The Senate was originally composed of 26 elected members (two for each region) and two kinds of nonelected senators (Art-45). All former presidents who served for at least six years were granted lifetime seats. The other 9 nonelected senators\* were appointed for eight-year terms as follows: two former Supreme Court justices appointed by the Supreme Court; one former national comptroller appointed by the Supreme Court; one former commander in chief from each military branch (4), by COSENA; one former public university president appointed by the president; one former cabinet minister appointed by the president.

The alteration in the composition of the Senate was a major improvement of the reforms. Although they did not modify the number or selection process of appointed senators, they increased the number of elected senators from 26 to 38, thus reducing the relative power of the nonelected ones. In addition, original Art-49 forbade special Senate sessions from discussing subjects that were on “matters alien to its functions”; that is, not strictly legislative. The reforms dropped that restriction.

### **Supermajorities**

Art-63 stated that laws interpreting constitutional principles and LOCs required a 3 to 5 majority in both chambers. After the reforms, laws interpreting constitutional principles required a 3 to 5 majority, but LOCs required a 4 to 7 majority. The reforms slightly reduced the quorum required for LOCs, but several laws that had ordinary status were upgraded to LOCs, making the entire system more difficult to change. In addition, the original 1980 Constitution required two consecutive congresses to approve certain constitutional changes. That provision was also eliminated in the 1989 reforms.

## **PROTECTED DEMOCRACY CONCESSIONS**

Altogether, the set of protected democracy concessions made by the outgoing dictatorship in the reforms was significant. The democratic opposition, the Concertación, welcomed those reforms but called them insufficient. Some critics have contended that the cost paid by the Concertación for getting those reforms—granting democratic legitimacy to the 1980 Constitution—was too high (Portales 2000). But no one has suggested that the protected democracy provisions dropped from the original 1980 Constitution were insignificant. This study does not take issue with whether the democratic opposition paid an excessive cost for the reforms in terms of granting democratic legitimacy to the charter;

but it does argue that the cost to the Concertación included acquiescing to new military autonomy provisions.

## **MILITARY AUTONOMY PROVISIONS AFTER 1989**

In addition to the tutelary role, the 1980 Constitution endowed the armed forces with autonomy from civilian authorities. Granted the nominal role of supreme commander of the armed forces, the president was stripped of the authority to ask for the resignation of commanders in chief and high-ranking military officers.\* In addition, the executive and legislative branches had little power to influence budgetary decisions made by the armed forces or to reduce the defense budget.

During the time that elapsed between Pinochet's defeat in the 1988 plebiscite and the inauguration of the democratic government in 1990, two processes took place. On the one hand, the outgoing dictatorship agreed to reform the 1980 Constitution, dropping a number of protected democracy provisions. On the other, the military actively sought to strengthen its autonomy from civilian control, making the already existing autonomy provisions even more powerful.

### **Unsupervised and Guaranteed Budgets**

According to the Armed Forces LOC (#18,948), promulgated February 22, 1990, the military budget cannot fall below the previous year's budget, adjusted for inflation. This provision guarantees a basic funding level in terms of absolute currency. Given that this law was passed during the dictatorship, when defense budget expenditures were very high, the minimum military budget has remained above levels observed in neighboring countries. Nevertheless, the decision to set this budgetary floor, readjusting the 1989 military budget for inflation, did not assure a growing defense budget. It would have been more convenient for the military to tie defense spending to a percentage of the government budget or to the gross domestic product. Between 1990 and 1998, Chile's economy expanded at an annual rate of 7 percent, with very low inflation, undermining the expected weight of this budgetary floor as compared to the national budget (Huneus 2001, 607).

The defense budget is decided in the same way as the rest of the public administration budget. The minister of finance presents the legislature an expenditure framework proposal for each ministry, and both chambers vote on it as part of the national budget law (Baldez and Carey 1999). Unlike other ministerial budgets, the initial defense budget the Ministry of Finance is mandated to offer cannot be inferior to the military budget of 1989, adjusted for inflation (Ministerio de la Defensa Nacional 1997). Any spending reductions by the legislature cannot bring

the defense budget to levels below the 1989 budgetary floor adjusted for inflation.

Another LOC, the “Copper Law,” provides additional budgetary autonomy to the armed services. Originally promulgated as a secret law in 1987, the law guarantees 10 percent of the annual sales of state copper giant CODELCO for military acquisitions.<sup>18</sup> Those funds are not subject to government oversight. The amount is equally distributed among the three branches and solely intended for the acquisition of weapons. Depending on copper prices, these transfers had ranged from the mandatory US\$180 million minimum (adjusted for inflation) to US\$300 million per year (Baldez and Carey 1999, 20). In addition, the military can freely dispose of existing assets (property, excess materials) without reporting to civilian authorities. Military land property is not, unlike other government property, “owned” by the central government but by each military branch. Yet just like public property, military property is not subject to property taxes.

These two LOCs “deny civilian politicians—whatever their preferences—discretion to cut real levels of military spending” (Baldez and Carey 1999, 20). Some observers have noted that the military spent a shrinking share of the country’s GDP in the 1990s, due to the country’s fast economic growth (Rehren 1997; Baldez and Carey 1999; Huneus 2001).<sup>19</sup> But the lack of civilian oversight over military budgetary decisions and the restrictions on the power of elected authorities to set defense spending levels remain a problem. In addition, as the Chilean Center for Military Research (CESIM) stresses, the Copper Law also constitutes a comprehensive mechanism that assures the stable flow of resources regardless of changes in national priorities. CESIM, a Chilean Army organization, underscores the “independence of origin” of the procedure established in the Copper Law and the “relative autonomy of the armed forces to use the resources provided by it without having to ask the legislature and isolating national defense from short-term political temptations” (CESIM 2000).

### **Autonomy in the Line of Command**

The constitution prevented the president from forcing high-ranking military officers, including commanders in chief, into early retirement. Between 1989 and the 2005 reforms, commanders in chief, once appointed to a four-year term by the president (who was restricted to selecting from the five highest-ranking officers), were accountable only to the COSENA. As it turned out, the president inherited commanders in chief appointed by their predecessors and had little influence on the promotions of high-ranking officers to the pool of eligible candidates for the post.

The military's tutelary role over political institutions was central to the backward-looking structure of the 1980 Constitution. The protected democracy framework defined the military as guarantors of the institutional system. The armed forces became an unchecked power; the constitution granted them autonomy. The constitution viewed the military as immune to contamination by politics and as the reservoir of Chile's values and tradition. To be sure, the military has enormous power in all political systems because it controls the coercive apparatus; hence the classic question, who guards the guardians? Yet the 1980 Constitution gave the military an explicit role outside and above the system of checks and balances. The president, as supreme commander of the armed forces, was atop the line of command (Art-32). Yet the 1980 Constitution twice contradicted that concept, in the same Art-32 and in Chapter 10. Art-32.18, 32.19, 32.21, 93, and 94 contained restrictions that undermined the president's power over the military.

Between 1990 and the 2005 reforms, Art-32.18 restricted the president's power to appoint and remove commanders in chief to the mechanisms outlined in Art-93 and Art-94. Art-93 required the COSENA to consent to their removal. As originally conceived, the COSENA consisted of seven members, four of them on active military duty. By making their removal contingent on the COSENA, the constitution gave commanders in chief the power to block their own removal. Although the 1989 reforms increased the number of civilians in the COSENA to four, equal to the number of military officers, the removal of a commander in chief still required the concurrence of at least one military officer. By rejecting the request to include the president of the Chamber of Deputies in the COSENA and give civilians a majority in that body, the dictatorship kept a high degree of military autonomy in the constitution.\*

According to Art-32.18, the appointment, promotion, and removal of high-ranking officers had to be consistent with the mechanisms outlined in Art-94. Initially, Art-94 established that "appointments, promotions and retirements of officers of the Armed Forces and *Carabineros* shall be made by supreme decree, in accordance with the law and the regulations of each institution." After the reform, the wording changed to

The appointments, promotions and retirements of officers of the Armed Forces and *Carabineros* shall be made by supreme decree, in accordance with the *corresponding constitutional organic law that will determine the respective basic norms and the basic norms for professional careers, recruitment, retirement, seniority, command, command succession and budget for the Armed Forces.* (*Constitución* 1990, Art.-94. Authors' translation, emphasis added)

The modified article constrained the executive power by giving the Armed Forces LOC the power to limit how the president could influence

the appointment, promotion, and retirement of high-ranking officers. Although the supermajority threshold for LOC was lowered from 3:5 to 4:7, the law that was to regulate the armed forces was changed by the reforms from a regular law to a supermajority law. New autonomy provisions in the Armed Forces LOC that rendered the president unable to force the retirement of high-ranking officers were introduced with the 1989 reforms. True, without the reforms, the dictatorship might have still attempted to promulgate a strong law to regulate military appointments. But when the democratic opposition acquiesced to the reforms, the constitution gained enough legitimacy to allow the dictatorship to custom-make an Armed Forces LOC that would significantly strengthen military autonomy in the line of command and restrict the oversight of civilian authorities.

Art-94, moreover, originally dealt exclusively with appointments, promotions, and retirements of armed forces personnel, but the reforms expanded its provisions to include in the Armed Forces LOC the regulation of military professional careers, retirement benefits, seniority, internal organizational matters, internal succession mechanisms, and budgets. The reforms that changed Art-94 were among the first new provisions to be acted on after the July 1989 plebiscite. Although most of the protected democracy provisions that were eliminated would have become effective only in March 1990, the changes to Art-94 provided the grounds to make the Armed Forces LOC even more comprehensive and inclusive than originally intended in the 1980 Constitution.

Other presidential powers over the armed forces were already restricted in the 1980 Constitution as compared to the 1925 Constitution. In Art-32.19, the power to “command” the armed forces was constrained by the phrase *according to the needs of national security*. After 1989 and before the 2005 Reforms, Art-32.21 required the president to hear the COSENA before declaring war. COSENA acquiescence was not needed to declare war, but the president was mandated to convene the COSENA and hear its views. To declare war, the president also had to obtain the consent of the legislature. Those provisions were not modified in the 1989 reforms.

Weeks before surrendering power, the Pinochet government promulgated the Armed Forces (#18,948) and Carabineros (#18,961) LOCs. The LOCs stated that appointment, promotion, and removal of high-ranking officers required a presidential decree proposed by the appropriate commander in chief. The president could choose not to promulgate the decree. As it turned out, this provision gave the president a de facto veto power over the promotion of high-ranking military officers: although unable to order their retirement, the president could successfully block their military careers. Since 1990, Chilean presidents have actively used that veto power to obstruct the careers of officers linked

to past human rights violations and to influence the composition of the high-ranking leadership of each military branch.

## **THE EVOLUTION OF MILITARY AUTONOMY**

After the reforms, the military successfully used the Armed Forces LOC to acquire greater autonomy. Although the constitutional reforms explicitly increased military autonomy only in the modifications of Art-94, the unprecedented democratic legitimacy with which they vested the constitution made it easier for the outgoing dictatorship to strengthen military autonomy. Although the threshold needed to modify LOCs was reduced from a 3:5 to a 4:7 majority, the dictatorship could exert direct influence over the nine nonelected senators. Through the distortional effects of the electoral system, which gave conservative parties 42 percent of the elected seats in 1989 (with 34.9 percent of the votes), conservative and prodictatorship senators could block any efforts to reform LOCs.

Fortunately, as Chilean democracy has evolved, the autonomy of the armed forces has decreased. For example, even though certain military budgets do not formally require legislative approval, the military often presents most of its budgetary allocations to the Senate Defense Committee. Similarly, the line of succession in the army became normal after Pinochet stepped down in March 1998. That year, President Eduardo Frei appointed General Ricardo Izurieta as new army commander in chief. Shortly before that, Izurieta had been promoted from the eighth to the fifth level of seniority to meet the constitutional requirement to make his appointment possible. In the entire move to replace Pinochet, 11 other high-ranking generals also retired. Such a move, moreover, triggered considerable renewal within the army. After a four-year term, Izurieta was replaced by General Emilio Cheyre in 2002. That was the first succession of a lawfully appointed commander in chief by another since Salvador Allende appointed General Pinochet in August 1973.

Pinochet's arrest in London in 1998 on charges of human rights violations in Chile during his government further stimulated military subordination to civilian democratic authorities. The military complied with requests to provide new information on the disappearance of political dissidents during the dictatorship, as part of the *Mesa de Diálogo* talks put together by President Frei between the military, human rights victims, and representatives from civil society. Although the *Mesa de Diálogo* was widely seen as an effort to lay the groundwork to make it easier for the British government to release Pinochet on humanitarian grounds, its existence strengthened civilian oversight.

As a follow-up to the *Mesa de Diálogo*, the government created a National Committee on Political Prison and Torture, which produced a

report with more than 35,000 cases of documented torture victims (*Informe de la Comisión Nacional sobre Política y Tortura* 2005). Concurrently, announcing a new army doctrine on human rights, General Cheyre acknowledged institutional responsibility in past wrongdoings. He rejected what he called a “Cold War logic of confrontation and conflict” that viewed the adversary as an enemy and justified all means to gain power without respect for individual rights. The army, he stressed, “is on the way to adjust to the principles and values of democracy as a political system, and respect of human dignity as the vital element for a sound national and international coexistence” (Ejército de Chile 2004).<sup>20</sup>

A number of administrative measures have also curtailed some of the budgetary autonomy enjoyed by the armed forces. According to a recent interpretation of the Copper Law (adopted in September 2004 by the Finance and Defense Ministries and declared constitutional by the National Comptroller’s Office), the 10 percent assigned by law to military equipment purchases is no longer equally distributed among the army, navy, and air force. Instead, the Defense Ministry now makes decisions on how to allocate those resources to the three branches annually.

Even before the 2005 reforms, symbolic gestures underscored the growing oversight power civilians enjoyed over the military. In January 2002, President Lagos appointed Michelle Bachelet as minister of defense, the first woman ever to occupy that office. Not only was Bachelet a member of the Socialist Party, but she was also the daughter of Alberto Bachelet, an air force general who served in Allende’s cabinet and died in 1974 while imprisoned by the Pinochet dictatorship (Villagrán 2002). Michelle Bachelet’s appointment as defense minister three decades later was seen as a promising sign of the growing influence of civilians over the military. Bachelet subsequently, in 2006, was elected the first female president of Chile.

## CONCLUSIONS

The 1989 reforms eliminated many, but certainly not all, protected democracy provisions from the constitution. Many provisions restricting individual freedoms remained until the 2005 reforms. For example, the presence of designated senators prevented electoral majorities from becoming a commanding majority in the Senate. The armed forces were still constitutionally defined as guarantors of the institutional order. Restrictions on individual liberties and national security provisions that informed decisions on education, political party formation and activities, and even some forms of press censorship remained despite the democratic government’s efforts to change them. The outgoing dictatorship was in a better position to propose a set of reforms that, while retain-

ing several authoritarian provisions (and actually strengthening military autonomy), would receive the acquiescence of the incoming government. Yet the constitution was more democratic after the 1989 reforms than when it was adopted in 1980.

Military autonomy was not undermined by the 1989 reforms. To the contrary, the armed forces were more autonomous after the reforms than in the original 1980 Constitution. Whether the military successfully retained all its autonomy is disputable, because civilian authorities increased their oversight power by means other than constitutional and legal reforms (and ultimately, the 2005 reforms drastically restricted military autonomy). Still, the 1989 reforms combined provisions that weakened the protected democracy framework but concurrently set the conditions that facilitated the strengthening of forward-looking military autonomy provisions. While overall the 1989 reforms reduced protected democracy provisions, the number of military autonomy provisions increased. Thus, the 1989 reforms should be understood not only as insufficient in eliminating all protected democracy provisions, but also as having increased those provisions that dealt directly with military autonomy.

## NOTES

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1. Some 6.1 million voters approved (91.7 percent of 6.651 million valid votes); 7.1 million votes were cast (Andrade Geywitz 1991, 196).

2. The Concertación is a coalition of parties that made up the democratic opposition and today continues to govern Chile. It comprises the Christian Democratic Party (PDC), Radical Social Democratic Party (PRSD), Party for Democracy (PPD), and Socialist Party (PS).

3. Arato and Miklósi (2003) have looked at such negotiations in Eastern Europe.

4. The Ortúzar proposal and the Council of State's can be found in Bulnes Aldunate 1981.

5. After 1990, several Concertación constitutional reform initiatives were rejected. See Congressional Bulletins 702-07 (06/02/92), 1328-07 (08/30/94), 1680-07 (08/22/95), 1726-07 (11/07/95), 2000-07 (05/06/97), 2321-07 (04/14/99), 2511-07 (06/13/00). Finally, on August 26, 2005, 58 reforms (Law 20,050) eliminated most protected democracy clauses and military autonomy provisions from the constitution. In a highly symbolic move, President Ricardo Lagos replaced the signatures of Pinochet, his ministers, and the Junta members at the end of the text with his own signature and those of his ministers. The binomial electoral system remained the last authoritarian enclave, although it was removed from the constitution and placed in the appropriate organic law (LOC)

to make it easier to change in the future. To be sure, the 2005 reforms also gave constitutional stature to some practices that naturally developed when democracy was restored in 1990.

6. Jaime Guzmán, the ideologue of the 1980 Constitution, advocated in the Ortúzar Commission for the independence and autonomy of the Chilean armed forces (Silva Bascuñán 1992, 26). For Guzmán's role on the Ortúzar Commission and as a Pinochet *consigliere*, see Barros 1996; Huneus 2001; esp. Cristi 2000.

7. Elster (2000) discusses the importance of time as a central bargaining tool in constitutionmaking. His framework is applied to this section.

8. For a discussion of forward- and backward-looking concerns see Elster 2000.

9. Our references are taken from the English translation of the original 1980 Constitution. For the 1989 reforms we use our own translations.

10. After the 2005 reforms, the references to Art-19.15 remained unchanged, except for their number. Art-82 became Art-93, and Art-57 became Art 60.

11. Art-57 had a precedent in the *graphé paranomon* of classical Athenian democracy. This was a legal accusation against a citizen for having made an unconstitutional proposal in the assembly. Even if the assembly had passed a decree, its proponent could be punished later for having put it to a vote. More infrequently, citizens were also prosecuted for having proposed an unsuitable law (see Hansen 1991). We are grateful to Jon Elster for pointing this out.

12. For example, the impeachment of General Pinochet in 2000 responded to his indictment for conspiracy and cover-up of a number of crimes committed during the dictatorship.

13. An asterisk (\*) indicates the provisions that were eliminated or substantially modified with the 2005 reforms.

14. The 2005 constitutional reforms reduced both the duration of states of exception and the rights and liberties that could be limited under them. State of assembly no longer allowed restrictions to the right of information and unionization, and the practice of transferring persons within the national territory—internal exile—was eliminated from the state of siege. The president now requires Senate approval (no longer COSENA's approval) to declare a state of assembly or siege. The approval of both chambers of Congress is now required to extend a state of emergency decreed by the president.

15. The above-cited English translation of the original 1980 Constitution uses the term *to express* rather than *to represent*; but in our view, that verb does not appropriately capture the meaning of the Spanish *representar*.

16. In 1992, Army Commander Pinochet, Navy Admiral Jorge Martínez, and Supreme Court President Marcos Aburto convened the COSENA. On other occasions, military leaders pressured the president to do it but refrained from doing so themselves. We thank an anonymous reviewer for this observation. Since the 2005 reforms, only the president convenes the COSENA.

17. The 2005 reforms increased the number of members of the Constitutional Tribunal to 10, appointed by the president (3), Congress (4), and the Supreme Court (3). The COSENA lost the attribution to appoint Constitutional Tribunal members.

18. Law 18,628 (June 23, 1987) modified existing Law 13,196 (October 29, 1958). Because it dealt with military affairs, Law 13,196 was promulgated, but its contents were kept formally as classified information. This law provided the military with additional financial resources tied to profits and taxes collected from copper sales. When promulgated, the contents of Law 18,628 were also classified.

19. For example, a navy officer argues that the military budget is “insensitive to the evolution of the rest of the economy” (Lorca 2000, 8).

20. Naturally, the army’s freedom to express that it has unilaterally changed its doctrine without civilian oversight underscores its autonomy.

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