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**Constitutional Choice and the Balance of Power:
Case Study of the Chilean Electoral System**

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**Constitutional Choice and the Balance of Power:
Case Study of the Chilean Electoral System**

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Abstract

Constitutional Choice and The Balance of Power: Case Study of the Chilean Electoral System

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The goal of this report is to examine how the relative balance of power between competing elites affects institutional choice in new democracies and the consequences this may have on democratic stability. I first develop a theoretical framework around the hypothesis that if the newly established democratic institutions to some degree safeguard the interests of the outgoing elites, they are less likely to defy them and find unconstitutional means through which to protect said interests.

Given that elites ousted from power in a democratic transition are rarely rendered powerless by the process, this report works under the assumption that democratic reform is to some degree implemented by the outgoing ruling elite groups that at the same time stand to lose from it. If we assume these elite groups behave rationally, they will act strategically to protect their interests and thus will prefer institutions that are compatible with the upholding of such interests even when their political opponents are in power.

The ability to affect institutional choice is of course limited by the relative power the ruling elites hold at the time of institutional choice. Even so, competing elites may make concessions in order for the outgoing elites not to go back on democratic reform in case the balance of power shifts back in their favor, allowing them to protect their advances in the struggle for power. Thus for democratic reform to be sustainable in the long-term, it must be through institutions that reduce the perceived risks they pose to elites interests.

Under this theoretical framework, I study the case of the constitutional choice process that led to the current Chilean electoral system. After the 1988 plebiscite, the military regime was surprised by the fact that over 55% of the electorate voted for elections to be held. This meant that in order for them to secure the market-oriented reforms they had implemented under Pinochet, the 1980 constitution would have to be amended. But given the relative balance of power between them and their opponents, both sides would have to make concessions. This would lead to an electoral system that remains unchanged to this day.

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Chapter 1: Introduction

The goal of this work is to examine the relationship between varying levels of institutional protection of elite interests, the balance of power between elite factions and democratic stability. The working hypothesis is that if democratic institutions safeguard the interests of elites, they are less likely to find unconstitutional means, outside institutions through which protect said interests. If we think of politics as the competition for power, it is hard to argue against the idea that competing elite factions will want to wield it over the others. However, this is not always a possibility, especially for those who are part of the outgoing regime in a democratic transition.

The basic working assumption of this paper is that democratic reform is, at least partially, implemented by the outgoing ruling elite groups that at the same time stand to lose from it, and in order to protect their interests and/or preferred economic and political outcomes during and beyond periods of democratic transition, ruling elites will choose, or at least should if they behave as rational actors, institutions that are compatible with the upholding of such interests regardless of who is in power. This is of course limited by the relative power the ruling elites hold at the time of institutional choice, even so very powerful competing elites may make concessions in order for the outgoing elites not to go back on democratic reform in case the balance of power shifts back in their favor. Thus for democratic reform to be sustainable in the long-term, it must be through institutions that reduce the perceived risks they pose to elites interests.

Finally, under the risk posed by alternation in power, elites that stand to lose should prefer institutions that are less subject to arbitrariness in their enforcement and interpretation; this is especially true if there is a probability that their opponents may be in power and want their interests shielded in case of that scenario. Ideally, these institutions should be self-enforcing, that is that they set incentives for those in power to uphold them and those out of power to not challenge them.

Let us start to exemplify the argument by looking at the choice between presidentialism and parliamentarism. There is a wide literature discussing the virtues and weaknesses of both systems of government such as Linz (1994); Shugart and Carey (1992); Linz and Valenzuela (1994); Stepan and Skach (1993); and Przeworski, et al. (1996). This discussion goes far beyond the goal of this paper but it is important to acknowledge that the general conclusion of the literature is that countries with parliamentary systems will be more successful at consolidating democracy. In a presidential system, the executive and the legislature are both elected and thus both should have democratic legitimacy, yet there is no democratic principle to deal with conflict between these branches of government, which can lead to deadlocks from which the only way out may be unconstitutional. Among the features of presidentialism is the rigidity of the fixed term; the lack of a vote of no confidence makes the risk of falling into a deadlock even more likely. Arguably, this set of features can probably be dealt with by the introduction of institutional mechanisms. But there is another aspect which is far more problematic for our posited self-serving elites and that is the winner-takes-all nature of presidentialism; elites looking to protect their interests even if there is

alternation of power, are likely not advised to put such absolute power in the hands of their political opponents. The winner-takes-all nature of a presidential regime may allow overriding any institutional safeguard implemented to protect one side from abusing the other, even through unconstitutional means.

An illustrative case for this tension between the power of the executive and the legislature is Ukraine. While the country has a presidential system in which the executive holds considerable power, there has been a pendulum in the balance of power between executive and legislature. Specifically in 2004 there was a constitutional amendment that gave more power to the legislature but by 2010 those reforms were rolled back. I will examine this swing and argue that it is the product of elite groups protecting their interests.

Ukraine's constitution was the product of years of negotiation in which President Kuchma had been successful in diluting the power of opposing parties and coalitions through a mixed strategy of "divide and rule" and political patronage (Whitmore (2004)). This had resulted in an asymmetrical balance of power between competing political forces that was in favor of the President. Kuchma's overwhelming power over his political opponents can be observed in the fact that he had considerable control in the drafting of the constitution that was finally passed by the Rada (Parliament) in June of 1996.

As the Ukraine transitioned to democracy after the fall of the USSR, society was demobilized and the party system was weak. This made incumbent presidents particularly strong in relation to their opponents, as they were able to garner enough support from

elites through the use of patronage resources. This resulted in their expectations of remaining in executive power being high enough that they felt no need to make inclusive constitutional bargains, O'Donnell and Schmitter (1986). The consequence of this balance of power structure was a high concentration of power on the executive.

The above mentioned situation of demobilization however was not a permanent equilibrium and in consequence the relative balance of power would drift enough, that incumbent elites would feel the need to strategically react to protect their interests, as they saw an increased probability of turnover in power. As Kuchma's opponents on the right sought to win over the presidency in 2004, they realized they could mobilize voters along an anti-Russian cleavage. The result of this increased mobilization was that Kuchma could no longer maintain power by the use of patronage and the considerable power of the presidency. As evidenced by Kiev, the capital city, being overrun with protests contesting the results of what was perceived as a rigged run-off in the 2004 presidential election between Yushchenko and Yanukovych, in which the latter was declared as the winner. This increased mobilization would eventually lead to the Ukrainian Supreme Court annulling the results and calling for a second run-off in which Yushchenko was declared the winner in February of 2005. This represented an overturn in power that probably would have not been anticipated by Kuchma in 1996.

In December of 2004, amidst the political crisis and mass mobilization, the Ukraine's constitution was amended in order to give more power to the legislature. Among the changes reducing the power of the President was for example a new for of check and balance coming from the Prime Minister, who before the amendment could be

dismissed unilaterally by the president but now could only be dismissed by the legislature¹.

In conclusion, the 2004 constitutional amendment in the Ukraine, that shifted power from the executive to the legislature, was the product of a more symmetric balance of power between competing elites. This gave the incumbent elites incentives to opt for a system that would be more protective of their interests in the then more likely scenario that their opponents made it into the executive. As soon as masses demobilized, the balance of power shifted back in favor of Kuchma's faction, they were able to go back on the institutional reform.

It is important to note mobilization is not a permanent state and it is expected it would wane after the transition process; as noted by Kurtz (2004), liberalization leads to atomization, thus undermining mobilization. The question is then striking an institutional balance between democratic consolidation and the protection of elite interests. A second order condition to this balance is the sustainability of these institutions over the long run. This is clearly illustrated by the case of the Ukraine, in which there was the there was an institutional *pendulum* where more inclusive constitutional amendments were annulled once an asymmetrical balance of power between competing elites was restored. This highlights the need for democratic institutions to be self-enforcing in order for them to survive in the long run despite who may be in power. For example, O'Donnell and Schmitter (1986) argue that pacts are a way to guarantee elite interests alongside the

¹ It is important to note that the constitutional court overturned these constitutional amendments in 2010 after Yanukovich won the presidential elections. I speculate that this may be the product of swing back to the previous balance of power as society demobilized again.

interests of other elite groups and thus pave the way for more inclusive constitutional bargains.

In the following pages, I will further develop the theoretical argument on the variables of relative balance of power between competing elites, the protection of elite interests and institutional stability. In a case study of the Chilean electoral system, I will examine a case that unlike the Ukraine has been able to maintain institutional stability. I will also show that there may be costs to this stability, such as the lack of political representation of the party system and even some of degree of corruption.

Chapter 2: The Political Economy of Constitutional Choice

As polities transition to democracy, ruling elites are likely to see not just their political power but also their economic interests threatened. Under the assumption of rationality, they should go to great lengths to protect said interests. One important factor in this process is that ruling political elites may also have a say in the institutional choices made in newly established democracies. Under the underlying assumption of rationality and to the extent they can fend off democratic forces, they will try to establish institutions that help them minimize their losses during and after a transition to democracy. This may arguably be one of the biggest threats to the consolidation of new democracies and raises questions on the necessary institutional conditions for democratic consolidation. The argument of this work is that among these conditions is some level of alignment between the newly implemented democratic institutions and the interests of elites, who may impede democratic consolidation if the institutional framework on which it takes place is one that places too much uncertainty on their future economic or political interests. It is important to note that at this point the outgoing elite may prefer democracy over other outcomes, as the failure of democracy may lead to an authoritarian regime in the hands of their opponents.

Institutions, Democracy and Constitutions

In order to understand how institutions affect elite interests I draw from Acemoglu and Robinson (2011), who highlight the difference between extractive political institutions and inclusive political institutions. The former concentrate

unconstrained power in the hands of a few with little in the way of checks and balances or rule of law; and the latter allow broader participation and the placement of checks and balances on power. The most straightforward theoretical perspective should be that democratic consolidation is more likely to take place under a system of inclusive institutions rather than extractive institutions, which begs the question of why political institutions with the most potential for inclusiveness are not always adopted in all new democracies.

The types of institutions chosen during a process of democratic transition shape the political order in many aspects, such as who has control of the state and economy. North, Wallis and Weingast (2009) classify modern democracies as “*open access orders*” with both competitive economic and political systems while non-democratic and less democratic pre-modern polities are organized in a manner they call “*limited access orders*”, which are set by dominant elites to advance their economic interests by limiting conflict and violence with each other and to protect themselves from the advancement of masses, going as far as blocking democratization as much as their power allows them if necessary. Of course, elites may not always have the power to keep a completely *limited access order* perpetually and block a democratic transition but that does not mean they will not try to protect their interests during and after a transition as far as their power allows.

The key question to understand democratic consolidation may then not be why are extractive political institutions adopted but why are inclusive political institutions adopted at all, considering elites stand to lose much more than political power from

adopting them. Inclusive political institutions generate competition, which in turn produces winners and losers. Thus those who are in power during an extractive political institutional framework stand to lose, at least probabilistically, from a transition to inclusive political institutions. The risk of losing privileged political positions that gives them power with few checks and balances seems enough of an incentive to hinder democratic reform. But there is not only the risk of losing privileged positions, as political institutions also determine the allocation of resources, elites will lose the economic monopolies extractive institutions allow if they choose to adopt more inclusive institutions.

The adoption of inclusive political institutions is not without its complications. For example, how the aggregation of individual preferences into collective decisions is managed. Even simple rules such as the majority vote can stray from equilibrium and lead to majority cycling (Arrow, 1951). Another aspect is that rules such as the majority rule may have the potential leave minorities unprotected from decisions of the majority. There is a question of the justice of decisions made through this rule. In fact, for Tullock and Buchanan “The only means whereby the individual can insure that the actions of others will never impose costs on him is through the strict application of the rule of unanimity for all decisions, public and private. If the individual knows that he must approve any action before it is carried out, he will be able to remove all fear of expected external cost or damage” (Buchanan and Tullock, 1962). Of course, a unanimity rule places impossibly high costs of implementation, there is a trade-off on the costs of decision-making and the protection against adverse decisions.

For Buchanan less than majority rules can be justified, by making the distinction between ordinary and constitutional politics. The condition he posits is not that there must be unanimity in ordinary politics but a generalized consensus on the constitution, (Buchanan, 2003). In this decision process, individuals can determine the net benefit of their relationship with the state and if they are better off belonging in the structure set forth by the constitution, the loyalty of individuals on a constitutional democracy should lie not with the government but with the constitution (Buchanan, 2001).

The Elite Paradox

This leads to another important point of the theory, which assumes the struggle for power is a permanent element in societies. This manifests into the fact that there is not a cohesive elite but rather competing elite groups that struggle over power with each other. Ruling elites that stand to lose their position of power to competing elites product of a democratic transition and also have a hand in the institutional choice for the new democracy face paradoxical choices. The paradox is that elites that face uncertainty about their continuation in power may need to adopt more inclusive institutions to protect their interests in the event of losing their position of power to competing elites. However, these institutions at the same time make them relatively less powerful in the event that they are able hold their positions of power or regain them in the future. As following the logic highlighted by Buchanan, elites agree to the implementation of more inclusive institutions in exchange for protection against adverse decisions that may be made when their opponents are in power.

Ruling elites that have had a hand in choosing more inclusive institutions that determine a less limited (*or even open access*) order have submitted themselves to competition from other elites. A very powerful and cohesive dominant elite does not need to address the demands of weaker elites. If these pose no threat to their power, the consequence may be an entrenched limited access order.

But not all hope is lost for democracy; elites may have varying degrees of relative power over time. In a limited access order, when the relative balance of power between competing elites shifts enough in favor of competing elites, it may trigger a transition to democracy. The balance of power between ruling and competing elites should then be an explanatory variable that helps determine the kinds of institutions that will be adopted. The more gains competing elites can make in the relative balance of power to the ruling elites, the more likely the ruling elites will hedge their bets on more inclusive political institutions. It is important to note that while a shift in the relative balance of power between competing elites should increase the probability of triggering a change of regime to a more inclusive one, it does not guarantee that the new regime will be a fully democratic one.

One major risk after a process of democratic transition is that there may still be strong remnants of the pre-existing limited access order. The former ruling elites may have the power to block democratic consolidation, surely then institutions that set incentives for them to support democracy or at least not impede its consolidation are thus of utmost importance for its long term survival. Under this logic, for there to be political and institutional stability in the new democratic system which would lead to its

consolidation, elites that have the upper hand in the balance of power at any given moment should not have the incentives to switch to an alternative system of government. This point is especially important in the event the relative balance of power may shift back in favor of the ousted elite and without the right incentives may feel compelled to go back to the more extractive institutional framework, as was the case in the Ukraine and its institutional shifts between 2004 and 2010.

As highlighted by Przeworski (1991), when an authoritarian regime breaks down, a stable democracy is just one of many possible outcomes. Another risk to democratization is that shifts in the balance of power do not lead not only to a full-blown open access order. The ruling elite may invite the most powerful competing elites to co-opt into a less limited access order that may stray from being what we could call an open access democratic order. One of the typical consequences of the struggle for power is political violence. Because this can affect economic rents and be costly in other ways, the ruling elite has an incentive to reduce violence. By inviting competing elites to be co-opted into the existing order, the ruling elite is able to reduce the threats competition poses to their interests. In this scenario limiting access to only the most powerful competing elite thus limiting competition from other factions, may assure “adequate stability of the rents and thus of the social order” (North, Wallis, Webb and Weingast, 2007). A less extreme case of this scenario is a democratic regime with limited representativeness through an institutional framework that restricts which elite factions have access to power. This can be the product of ruling elites not inviting the most powerful competing elites to co-opt in the pre-existing order but rather allowing them to

participate in the institutional choice process. This allows a negotiation process in which the ruling elites can make concessions to the democratizing forces but given that they still hold a favorable position in the balance of power can also make competing elites make concessions to their interests. The effects of this type of collusion on democratic consolidation are not entirely clear. There are challenges to the idea that pacts freeze democracy and that the effect of pacts on democratic consolidation depends on factors such as the diversity of the bargaining cartel and their links to civil society (Encarnación, 2005).

The Assumption of Elite-driven Institutional Choice

The logic presented above rests on a series of assumptions starting from the assumption that institutional choice stems from elites rather than from the masses. In this approach, the role of masses is limited to their ability to shift the balance of power by supporting one elite group over the other. Once that assumption has been established, the next assumption is that elite actors are motivated in this choice by concerns for their individual political and economic interests. Additionally, this choice takes place in a climate of uncertainty that comes from shifts in the relative balance of power between ruling and competing elites. In order to determine whether elite interests have the power affect the institutional framework, in the following section, I draw from different schools of thought on where institutional choice originates in order to form a theory.

There is a branch of political science that sees democratic political institutions as being deeply rooted in society and culture, originating from it. Thus they should be

complimentary with one another, Almond and Verba (1963). For there to be stability. This not only applies to democratic but also for authoritarian regimes, “*regardless of regime type; in order to be stable, the authority patterns characterizing a country’s political system must be consistent with the people’s prevailing authority beliefs*”, (Eckstein, 1966). Authors such as Almond and Verba (1963) and Putnam (1993) study democratic consolidation in terms of aspects such as overt support for democracy, confidence in political institutions, interpersonal trust and norms of cooperation. In the scenario of institutions being rooted in culture, institutional change like cultural change should be slow and incremental, which does not seem to fit with the theoretical framework this paper tries to present.

While the pressure of societal forces cannot be entirely discounted in the shaping of institutions, Rokkan (1970) offers a more balanced view on the generation process of institutions that also incorporates the elites and their interests. In his account of the emergence of proportional representation in Europe, the societal pressures brought on by universal suffrage triggers institutional change, constrained by the strategic considerations of elites. A new wave of mobilized voters meant a drastic shift in the balance of power. Competing elites that before had null to marginal access to legislature were suddenly a threat to the political power of ruling elites. These in turn sought proportional representation as a means to protect their position of power.

Moving to the other end of the spectrum of the civil society and elites dichotomy. Frye (1997), in a study of variations in presidential power in post-communist presidencies as determined by the bargaining power of the electoral favorite and the level

of uncertainty of the outcome of the election, the conclusion is that institutional choice is autonomous from economic and societal forces. Among his conclusions is that despite the uncertainty of the transition, political actors are able to act strategically.

It could be argued that Ukraine is a counter-example to Frye's conclusions in the sense that societal forces, in the form of the Orange Revolution, spurred institutional change that led to decreased presidential power. But as previously outlined, the shift in the balance of power as a product of societal pressures wasn't enough to make institutional change permanent and the Ukraine reverted back to the more centralized systems in existence before the 2004 reforms.

These theories fit the theoretical framework proposed by this work in the following way: The process of institutional choice is assumed to be an elite level phenomenon as Frye outlines, but in the model societal forces can act as a trigger to institutional change by shifting the balance of power, as exemplified by Rokkan's account of Europe's transition to proportional representation. The society and culture approach to institutions is less relevant to the presented theory, presenting a story of slow and incremental path dependent change while the theory of this work is a story of critical junctures in which shifts in the balance of power break through path dependence and when institutions follow a path it is the product of entrenched elite interests and not of a cultural equilibrium.

Electoral Systems

Having established a theory of institutional choice and made the assumption that it is elite driven, I now move on to the main institutional focus of this work. The study of electoral rules is a central research focus of political science; the study of electoral systems of established democracies often deal with how these formal rules shape the behavior of masses as well as that of elites. In the theoretical perspective of this work, the main variable of concern is how institutions shape the behavior of the elites.

According to Lijphart (1994), electoral systems can be studied on a number of key aspects, such as: District magnitude, ballot structures, effective thresholds of representation, apportionment, assembly size, list type (open or closed) and electoral formula. These last two aspects are the ones I will mostly focus on, as main area of interest is how electoral rules shape party system behavior (Duverger, 1954). A plurality rule is more likely to generate a two-party system while proportional representation is more likely to generate a multi-party system. This is important as it affects the degree to which competing elites are able to threaten the pre-existing regime. With respect to the underlying elite driven theory of this work, party system behavior, as the product of electoral rules seems to be the area to explore more deeply. It relates to how ruling elites will try to constrain or limit the access of competing elites to office. There are a number of areas the study of electoral rules can also focus on, such as their effect on governmental responsiveness (Downs, 1957). This relates to the theory of this as far as it relates to the effect mass support has on the underlying balance of power between competing elites.

As established in the theoretical framework of this work, ruling elites will try to establish institutions that protect their political and economic interests. This is compatible with observation by Boix (1999) that the current regime “*shapes the electoral rules to its advantage*”. Also in the vein of the presented theory of institutional choice, as long as institutions serve the ruling elite’s interests, they have no incentives to modify them but “*as soon as the electoral arena changes, however, the government considers altering the electoral system.*”. Here we assume changes in the electoral arena being a shift in the relative balance of power between competing elites. This triggers change in the electoral system. Or, in the case of new democracies the trigger is the creation of an electoral arena. A new road to power as an alternative to violence.

Chapter 3: The Chilean Electoral System

The following chapter discusses the case of the Chilean electoral system in relation with the theory presented in this work. I will outline how the ruling elites will try to establish institutions that protect their interests even when there is alternation in power. In order to counter the historical polarizing tendencies of the Chilean party system, which led to the breakdown of democracy, the ruling elites set the goal to establish an electoral system that would push the number of parties down and thus incentivize a more stable party system.

If the ultimate goal of the electoral rules established by the outgoing was only to bring the number of parties down from the tripartite equilibrium that existed prior to the military dictatorship in order to secure political stability, the more obvious choice would have been a single-member district electoral rule, which following Duverger's law would also have the effect of pushing the effective number of parties or coalitions down to two. Single-member districts also have a moderating effect on polarization as they push policy offerings towards the preferences of the median voter.

But reducing the number of effective parties would have not been enough to secure the interests of the ruling elites, such as the permanence of the free-market economic system. It was highly unlikely that under a single-member district rule the right-wing parties would maintain enough seats to have veto power over changes to the constitution. This led to the military regime finding an alternate electoral rule that would over represent the right-wing and allow it to veto radical changes, resulting in the two-

member district rule known as the binominal system. As will be discussed later on, the goals of stability and protection of elite interests may be at odds, there is not a clear-cut consensus on the stabilizing effects of the binominal electoral system.

The Institutional Choice Process

During most of Chile's democratic history up to 1973, elections for both the upper and lower chambers of legislature used a proportional representation system with multimember districts. Despite the clear consensus of the Chilean party system being up until that point divided into thirds, as discussed by Klugman (1991); Navarrete (2003); Scully (1992); A. Valenzuela (1978); and S. Valenzuela (1996). Despite this, Chilean politics were considered to be quite stable and when conflict arose it was usually dealt with by a pattern of swiftly changing coalitions.

The aforementioned political stability would last until the overthrow of the presidency of Salvador Allende in September of 1973 by the armed forces. Allende came into office after an election in which none of the three candidates managed to gather a majority vote; the electoral results for the election gave Radomiro Tomic of the Christian Democratic Party a 28% vote share, Jorge Alessandri of the Partido Nacional, product of the unification of the traditional liberal and conservative parties in 1965, a 35% vote share and Allende of the Unidad Popular, a coalition of the Communist, socialist and other left-leaning parties, a 36% vote share. Not having a majority, the decision on who would be president rested with congress. After the Christian Democratic Party's refusal

to conspire with the Partido Nacional to maneuver for new elections, the decision of congress was ultimately to appoint Allende as president.

The ultimate goal of Allende's government was the transformation of the Chilean economy through a four-pronged strategy: income redistribution, expansion of government programs, nationalization of key industries and land reform. Through increased demand, product of these policies, initially reflected good results in the first year of Allende's government, yearly inflation by December of 1972 was 163.4%². The government's problems were not helped by the rollback of international aid and credit. The bad economic results and the quick process of redistribution initiated a political crisis.

After an attempted military coup in June of 1973, in an effort to defuse political tension, the Christian Democratic Party and Allende initiated negotiations. In order for the Christian Democratic Party to support Allende's government it required changes in his program and a distancing from the far left. The failure of Allende to come to compromise with the Christian Democratic party ultimately led to congress passing a resolution that declared Allende's government unconstitutional in August of 1973, (Valenzuela, 1978). This can be argued to have been an open invitation by the Christian Democratic and the right to a military coup.

After the overthrow of Allende's presidency The Partido Nacional disbanded and called its militants to support the military regime, which would stay in power for almost

² <http://www.ine.cl/ProductosEstad%C3%ADsticos/Precios.aspx>

17 years. During those years the military government would establish a new constitution in 1980 and shift towards a market-oriented economy.

During the latter days of the military regime, the balance of power between the regime and the opposition was not entirely clear. The military regime had been effective in the oppression of opposition, Congress and political parties were abolished, liberty of expression was limited and human rights were systematically violated. During the regime there were 28.259 victims of political prison and torture, 2.298 executions and 1.209 people disappeared (Retting report, 1991)³. The fact that after the coup Chilean socialists would split into several groups made opposition by force ineffective and the biggest victory of the more extreme Leninist factions was a failed attempt on the life of Pinochet in 1986. As for the more moderate factions, the Partido Por la Democracia was created by Ricardo Lagos and leaders of the Socialist Party in 1987 with the goal of opposing the military government through democratic means. When it came time for the 1988 plebiscite that would decide the continuation of the regime, the center-leaning Christian Democratic Party, that had aligned with the right-wing against Allende in his final days as president but had opposed the military government on the grounds of the human rights violations, aligned with the Socialist Party, the Partido Radical Social Democrata and the Partido Por la Democracia, among other smaller left-leaning parties. They formed a coalition known as Concertación por el No that defeated the dictatorship in the 1988 plebiscite, with 55% of the electorate voting against the continuation of the military government. It was clear the balance of power had shifted away from the military.

³ http://www.ddhh.gov.cl/ddhh_rettig.html

Before the December, 1989 elections took place, a negotiation process began between the military government and the political parties on a constitutional reform. While the left called for a less rigid constitution, the right-wing parties decided that instead of backing up the continuation of Pinochet in power by supporting him as a candidate in the upcoming elections, it was preferable to establish a system of executive power that was acceptable to be transferred to the opposition and not pose threats to the existing order.

The military regime presented a proposal of constitutional reforms with the supposed goal of assuring political stability during and beyond the transition, (Von Baer, 2006). Among the many reforms established to protect the market-oriented economy, the regime changed the constitutional law on the Central Bank, increasing its autonomy and protecting it from the vicissitudes of the democratic process (Boylan, 1998). The constitutional reforms specific to the electoral system had the purpose of transforming the party system in an effort to moderate the historically polarized and ideological competition between parties, which was perceived by the regime as detrimental to democracy (Marín, 1986). These reforms, as established by Gonzalez (2008), would also have the secondary effect of protecting the free-market economy that had been established during the military regime, among other interests of the military, such as maintaining the government funds obtained from copper revenues, which still make up a large portion of the military's budget.

As soon as the proposal was made, figures opposing the regime such as Ricardo Lagos started opposing it as an effort to redraw electoral districts in terms of the information provided from the plebiscite to favor the right-wing. But not in terms of other problems it may have, such as its effects on representation.

Keeping the two member districts was of key importance for the military regime. According to Siavelis (1997) Single member districts effectively meant that the right-wing could be shut out of Congress, analysis by Navia (2003) shows that the Concertación would have gained the 19 senatorial districts. The option of having more members per district was not attractive to the regime; a three-member district would allow the same dynamic previous to coup (Historia de la Ley 18799, p. 51). An important factor for the military regime wanting to restrict the number of congressional seats was the desire of depriving the communist party access to Congress (Pastor, 2004).

Another sticking point in the negotiations regarding the electoral system was about permitting parties to form pacts. The authoritarian regime opposed the formation of electoral pacts; the goal of the electoral law was to reduce the number of parties and thus favor larger waves of opinion (Historia de la Ley 18799, p. 48). The opinion was that allowing electoral pacts would indirectly facilitate for multipartism and the legislative representation of minority parties (Historia de la Ley 17899, p. 270).

Left-wing parties, on the other hand, pushed for pacts to be permitted. The argument was that under a system that did not allow electoral pacts, akin parties would compete against themselves without their votes being aggregated. This made it very possible that a large share of preferences would not be represented in the legislature (Von

Baer, 2007). This is of special importance to the Concertacion, which at the time of its conception consisted of seven political parties, as well as a number of social movements. The fear was that without electoral pacts, the most likely outcome would be that more than two lists per district. This dynamic entails the risk that a party with even 30% of vote share could be left out of congress (Historia de la Ley 17899, p.335)

After negotiations with the political parties, especially the Christian Democratic Party and Renovación Nacional (Pastor, 2004), electoral law was amended to allow electoral pacts of parties that could present joint lists. Another important agreement was the increase from 13 to 19 senatorial districts; this had the effect of diluting the power of the nine designated senators established in the 1980 constitution, among them one ex-chief of each of the branches of the military. The constitutional reforms, with support from both right and left leaning parties, were approved in a plebiscite with over 91% of votes.

The electoral rules that were finally agreed upon establish a majoritarian formula with run-off for presidential elections but most importantly kept the two-member district formula for legislative elections. The system also contemplated closed lists in which political parties, which could form electoral pacts, appointed candidates. This is what is now known as the binominal system. One of the distinguishing characteristics of the legislative formula is the requirement of the winning list to double the vote share of the runner-up list to obtain the two seats in a district. These combined rules have the effect of pushing down the number of effective lists in any given district down to two, as a third list is left without any seats. The electoral formula over represents the second majority as

the runner-up list can obtain one half of a district's seats with only one third of the votes. The binominal system was then established to counter the natural tendency of the Chilean party system to divide into thirds, which led to the breakdown of democracy in 1973. The expected result would be a reconfiguration from a tripartite party system to a bipartite party system (Carey, 1997). In fact, a third list in any given district mostly has the effect of increasing the probability of over representing the first majority by allowing them to win both seats. Fragmentation of a coalition would only help the other capture both seats, this has the effect of incentivizing coalition unity.

As expected by ideologues of constitutional amendments, this gave way for a reconfiguration of the pre-regime parties into two large coalitions. The left leaning Concertación was on one side, while the Remnants of the Partido Nacional would transform into two new parties; Renovación Nacional and the Unión Demócrata Independiente, which would compose the right-leaning coalition. Up until this point, as previously pointed out, party coalitions in Chile were known to be short lived, but the effects of the electoral system have resulted in the longest lived coalitions in contemporary Chilean history enduring up until the time of this writing.

According to the theory of this work, due to the shift in the balance of power, the military regime must negotiate and include competing elites into the institutional choice process. The result of this negotiation was the modification of the binominal system to allow for parties to have shared lists and thus facilitate the formation of two big coalitions, with little hope of a third option gaining seats in the legislature given the electoral rule.

As previously mentioned, if the goal of the electoral system was to bring down the number of parties down to deal with the effects the tripartite nature of the Chilean party system had on stability, there were a number of alternatives to do so. The binominal system allowed ruling elites and the competing elites limit competition from future competing factions that may gain political traction in the future by establishing a system that ensures legislative representation only to the two largest coalitions. More importantly, it allows for a system that protects the interests of the military regime and the right by ensuring the sector half of the seats in legislature with only one-third of the votes.

The Binominal System and its Effects on the Party System

The binominal system establishes that parties or coalitions can each present a list of two candidates to contest the two seats in each district. The country is divided into 19 senatorial and 60 deputy districts. Voters must cast a single ballot not for the list itself but for an individual candidate. The candidate gathering a plurality vote in each district is granted a seat while the other seat is granted to that candidates running partner only if the vote count for that list doubles that of the closest competing list. The practical effect of this electoral rule is that it is unlikely for lists to be granted both seats within a district.

An electoral system as described above sets extremely high representation thresholds, which present contradictory incentives for candidates and coalitions. Being the weaker running mate of a list in a district, in which the list is expected to gather less than two-thirds of votes, is a straight path to defeat. Candidates then have the incentives

to partner up with relatively weaker running mates, reducing the lists probability of crossing the two-thirds threshold. In terms of the coalitions, the incentives are such that the stronger coalition will assume an aggressive strategy to try and cross the two-thirds threshold and gain both seats in as many districts as possible. The weaker coalition on the other hand is likely to adopt a defensive strategy, with the objective of securing one of the seats in as many districts as possible, which requires a relatively low threshold of one-third of votes. These thresholds set perverse incentives not only in the formation of lists for the legislative elections but, as will be discussed later on, even in the appointing of government posts outside of legislature.

One of the most common assumptions in political analysis is that candidates and parties, or coalitions in the Chilean case, will act in accordance with the goal of vote maximization with the ultimate goal of obtaining the most seats possible. One of the most useful illustrations of this dynamic is the one dimensional election model with two opposing candidates under a single-member district rule such as presented by Downs (1957) and Black (1958). Under this model, adopting the position of the median voter is expected to maximize the number of votes and thus secure the election. As established by Hinich and Munger (1997), it is even possible to extend this theory to more than one dimension, in this context it may not be the position of the median voter but an alternate position that maximizes the number of votes but the basic strategic interactions remain basically unchanged. When the electoral rules and number of candidates from the above model vary, such as is the case of the Chilean electoral system; more complex strategic interactions are introduced.

There are contradictory analyses on the effects the binominal system on party integration and ideological polarization. There is a current of thought that posits the binominal electoral system, in contrast with more representative system, incentivizes both inter and intra coalition negotiation and places heavy penalties on parties that do not moderate their ideological tendencies (Guzmán, 1993). The electoral system is also expected to have a moderating effect on political platform as it encourages centripetal competition (Rabkin, 1996).

Another current of thought questions the moderating effects the electoral system may have on Chilean politics. Some observe significant continuity in electoral choice before and after the military regime, arguing the party system prior to the regime is one of the most important predicting factors of vote choice after the transition. The electorate remains divided into left, center and right (Valenzuela and Scully, 1997). This places pressure on the parties to respond to new problems in ways that conform ideological line their voter base would expect them to adopt.

Empirical spatial analysis by Dow (1998), suggests that binominal electoral rule produces two levels of competition with opposing effects. The competition between the lists may produce behavior in accordance with the goal of overall vote maximization, such as seeking the median voter. Meanwhile, the competition within lists produces behavior opposing that goal; candidates seek the median voter within voters of their respective coalition. Other empirical work based on the spatial model by this and other

authors⁴, questions the effectiveness this electoral system when it comes to the supposed goal of moderating the polarizing effects of the underlying tripartite Chilean party system. By comparing the effects on polarization of Presidential and Legislative elections, we show that legislative elections incentivize parties to move away from the center.

This author's overall conclusion is that the polarizing effect of the electoral system provides strong incentives for the permanence of coalitions by reducing the likelihood of the Christian Democratic party jumping ship to the other coalition as it had done in the past. In conclusion, according to the theoretical framework of this work, the shift in the balance of power does not lead to a full-blown open access order but instead the ruling elites invite the strong competing elite into a less limited access order. Through the changes electoral system, the ruling elite allows the competing elite to co-opt in a power structure that provides the protection of their interests even within the context of alternation of power and provides the competing elite incentives to not deviate from said power structure.

Beyond Moderating Effects

In the following section I discuss how, in addition to the effects the binominal system may have on the ideological polarization of the party system, there is a series of other perverse effects it poses. One is the effect it has on political representation, given

⁴ Presented at LACEA-LAMES 2011 meeting.
(<http://www.webmeets.com/files/papers/lacea-lames/2011/694/Paper%20RAK%20JG.pdf>)

the candidate selection process as the preferences of the Chilean electorate change over time. As well as how it even affects how the executive appoints political posts.

The decision as to which candidates will be on the list for each district is taken on at least three levels (Siavelis, 2005). The first level is the decision making process within each party. Once that is settled, parties begin the process by which subparts within the coalition determine the allotment of candidates each party will have on the electoral lists. Finally, each coalition must determine the allocation of these candidates to determined districts.

Coalition cohesion may be at odds with the fact that each party wants to increase their relative power within their respective coalition. For example, only once has there been a Concertación electoral list in which both candidates came from the same party, (Navia, 2004). Thus, the negotiation process that leads to candidate selection in the closed-list binominal system, may have the consequence of coalition making candidate choices that don't maximize either individual or list vote within districts and the low representational thresholds of the binominal system make the penalties for doing so lower; giving parties leeway to present candidates that stray from the preferences of the constituency and are still able to get a seat in the legislature. This centralized candidate selection dynamic then places restrictions on the representation legislators are able to provide their given districts as they must toe the party line in order to be on the closed list on the next election.

As elaborated previously there is wide consensus in the literature on the Chilean party system of its tripartite division prior to 1973, with the Christian Democratic Party standing as a programmatic center party. But the conflict over the military government led to a reconfiguration to a bipartite party system by 1989; with parties that supported the regime in the 1980 plebiscite or during its government located on the ideological right and those that opposed it on the left. The binominal system, which pushed down the number of effective electoral coalitions down to two, then coincides with the nature of the major political division in 1989 being centered around the support or opposition to the military regime. As outlined earlier, the Christian Democratic party, which had historically switched alliances, sided with the opposition to the military regime on grounds of the human rights violations it had committed.

An important part of the literature of the following decade on the Chilean party system centers around the debate over whether the conflict revolving around the authoritarian government caused a generative fissure on an authoritarian-democratic axis that would have along lasting effect on the Chilean party system. While some authors accept the thesis of the conflict producing generative fissure on the party system [Tironi and Aguero (1999); and Tironi, Aguero and Valenzuela (2001)]. Others reject it and classify it merely as a politicized cleavage on positions regarding the military government [Scully (1992) and Valenzuela(1999)]. As time progressed and Chileans left the legacy of the military government behind, some authors who initially claimed this cleavage might have long lasting effects on the party system have retracted from such claims. Tironi (2010) now sustains that the authoritarian-democratic cleavage had progressively

waned to the point of almost disappearing by 1997. In spite of the cleavage around the military government becoming irrelevant to Chilean voters, the party system retains the same bipartite structure that reflects the 1989 political landscape, with the Christian Democratic Party remaining in the left-leaning Concertación despite elections becoming more contested since the 2000 election.

According to surveys by the Centro de Estudios Públicos (CEP), in 1990, the Christian Democratic Party enjoys the highest identification among the population, with over 25% of polled individuals identifying with it. This gives the party great power within the coalition. This power is reflected in the fact that the two presidents after the return to democracy were Christian Democrats. This strong party identification grew stronger to over 38% by 1993. But party identification decreased to around 25% in 1997, and continued to decline to 17.8% and 12.4% in 1999 and 2001, respectively. The effect of this decline in popularity of the Christian Democratic Party is reflected in the fact that the Concertación candidates for the 1999 and 2005 presidential elections came from the left-leaning parties within the coalition. Identification with the Christian Democratic Party was around 14% during the 2009 elections, in which the Concertación faced the first electoral defeat to the right in 20 years. This signals a decrease in the level of influence the Christian Democratic Party has within the Concertación. However, with the closeness of the last two Chilean elections, the centrist Christian Democratic Party still has enough voter base to shift election outcomes in favor of the coalition with which it allies. So it stands to question why the Christian Democratic Party has not flirted with the right-wing and instead stayed with the left-leaning coalition, even when this has meant

supporting issues such as the passing of a divorce law in 2009. Attempts of Christian Democratic Party members to side with the right have been met with scorn by the party, as was the case of historical party member Adolfo Zaldívar who was expelled from the party in 2007 after signing a document that opposed the Concertación government's proposal to keep using public funds to finance Santiago's new public transport system.

The party system prior to 1973 was characterized by changing alliances in which parties in the ideological center jumped from coalition to coalition based on their electoral goals. Given the landscape presented above, it is expected that the Christian Democratic Party may be tempted to leave the Concertación but this has not been the case. If the waning Authoritarian-Democratic cleavage was the explanatory factor for the Christian Democratic Party choosing to ally with the Concertación in 1989, its diminishing salience over time should have led to them to ally themselves with the right-wing or coalition once elections became more contested the likelihood of the Concertación staying in executive power became less and less likely. The electoral system then imposes an institutional gridlock on the party system, freezing it according to preferences of the electorate in 1989, but that do not correspond with the preferences of the current electorate.

Finally, the effects of the binominal electoral system stretch far out of the realm of legislature. The representation thresholds it sets means that in order to gain a majority in the legislature, coalitions may want to present lists with two strong candidates, even in districts in which the probability of reaching the two-thirds threshold is low. This is at odds with the interests of individual candidates who may want to have a relatively weaker

running mate, in order to secure a seat for themselves.

Coalitions wishing to get past the hurdle of the high representation threshold, must then present incentives to candidates to not only run in highly contested district but also invest the resources needed for a strong campaign, despite the high probability of losing out on a seat. The Concertación, which had control of the executive from 1990 until 2010, may have been able to deal with this juxtaposition of conflicting interests by the means of an insurance-like scheme for candidates. This would reduce the personal risk out of running in a closely contested district allowing them to field stronger pairings than the right-wing coalition in the legislative elections between 1989 and 2001. Carey and Siavelis (2003) find that 75% of Concertación candidates that failed to gain a seat in a highly contested district later on held a desirable executive appointed post in government within what would have been their legislative period in comparison with only 25% of candidates who lost in less closely contested districts. Although authors, such as Garrido and Navia (2005), offer alternate explanations to this phenomenon, they cannot disprove these executive posts being used as compensation for candidates running in close elections but did not manage to win a second seat for the coalition.

Chapter 4: Conclusions

This work has examined the relationship between the balance of power between competing elites, the level to which institutions protect elite interests and how they affect institutional stability. The basic assumption is that elites are utility maximizing or in the case of ousted elites, loss-minimizing actors, that when faced with uncertainty will act with the goal of protecting their interests to the maximum extent their relative power allows. In the case of outgoing ruling elites in a process of democratic transition, they will to the extent possible push for institutions that minimize their losses, as much it is allowed by the constraint set by the relative balance of power to competing elites. Among the factors that can affect this balance of power is that of underlying societal pressures and support from the masses.

The chapter on Chile, like the case of Ukraine, highlights how shifts in the balance of power as well are able to trigger a change in institutions. In the case of Chile, the military regime realized they had to act strategically in the protection of their interests once the results of the plebiscite showed that the competing elites, which had coalesced in the Concertación, were in a powerful position with broad support from the masses.

In the theory chapter I argue that given the relative balance of power between ruling and competing elites, the institutional change the outgoing ruling elites tries to implement may be constrained. This effectively translates into a negotiation process in which the ruling elites have to make concessions to the democratizing forces in order for the latter to make concessions that allow them to protect their interests. Despite the fact

that they are being ousted, the ruling may still hold a favorable position in the balance of power, which means the competing elites should be willing to make these concessions in order for the ousted ruling elites.

In the Chilean case this negotiating process led to the modification of the binominal system, which allow for parties to have joint lists, creating incentives for formation of two big coalitions. The military regime and the Concertación established a representation threshold high enough that competition from third options will be left unrepresented. At the same time it protects the interests of the military regime by over representing the right and giving them veto power over change of the economic system.

The electoral system, according to the theory outlined in the second chapter, allows the competing elite to participate in power, leaving out the smaller parties on the left of the political spectrum. It only allows two effective coalitions, leaving any third alternative unrepresented in the legislature. In a sense the more powerful competing elites were invited to enter into a power structure designed by military regime, as explained in theory section, to be a system that limits competition.

Also according to the presented theory, the Chilean electoral system secures the interests of the outgoing regime even when their most powerful competitors hold executive power and a majority in the legislature. It does not establish a fully open-access order but a less limited one with little incentives to deviate from it. As Buchanan puts it, elites can see the net benefit for both factions as being, positive and thus submit themselves to the negotiated constitution.

The above is evidenced most strongly by the survival of the electoral system despite the wide acknowledgement of its vices. Despite political parties on both side of the political spectrum posturing about the need to make substantial changes to the electoral syste, no substantial advances have been made. For Example, the Christian Democratic Party and Renovación Nacional presented a joint document entitled “A new Political Regime for Chile” in January of 2012. It highlighted the need to do away with the binominal system but did not actually present an alternative to replace it.

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