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Introduction

Constitutions provide structure for two kinds of activity: solving problems about which there is consensus, and mediating conflict over policy choices about which there is not. Moreover, the structure of constitutions is not assembled behind a Rawlesian veil of ignorance. Those who write constitutions, whether they are the elected democratic representatives of a free people or the agents of an authoritarian government, are often partisans in the policy conflicts the constitution will resolve, ready and willing to manipulate the institutional structure on behalf of their policy goals. This lack of innocence produces a tension between the problem-solving and conflict-mediating features of constitutional design. The best structures for solving problems about which there is consensus delegate considerable flexibility. This is what we see in the world of commerce; when all of the stockholders of a firm share the goal of earning higher profits, they delegate considerable decision-making authority to the company's manager. In contrast, when there is conflict about policy goals, those whose grip on power may subsequently slip will seek to "lock in" concrete policy choices, denying flexibility to future decision makers who may not share their objectives.

Yet even the most guileful partisans will perceive some cost in fully constraining future decision makers. Future politicians constrained from increasing spending on public health cannot expand medical subsidies as a way to redistribute income to the poor, but neither can they raise spending to combat an unforeseen epidemic. Constitutions embody tradeoffs made by their authors between locking in their vision of good government and permitting future decision makers to adapt to a changing world.

In this book I develop a model of executive legislative relations that illuminates the balance between delegation and constraint that the Pinochet government imposed on Chile as the price for that country's transition toward democracy. This model challenges the common wisdom that gridlock is the inevitable result of a legislature and an agenda-setting executive

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who seek to move policy in opposite directions from the status quo. Central to the model is a recognition of the often neglected concept of policy "valence." This term, coined by Stokes (1963), pertains to policy objectives such as highway safety and low crime, about which there is consensus. An agenda-setting executive can pry grudging legislative approval for ideological reforms that a majority of the legislature oppose in exchange for improvements in valence that are advantageous for both the executive and the legislature.

A chief source of the executive's ability to make proposals with higher valence than the status quo is the inevitable tendency of any set of laws to "lose touch" with their environment. Several economists (Schultz, 1968), (North and Thomas 1973) have argued that institutional change occurs in response to a change in "relative prices." The agrarian revolution at the end of the neolithic era and the industrial revolution of the past several hundred years both created pressure for major institutional changes. But as with earthquakes, not all social and economic changes are cataclysmic. Government policy can be fine-tuned to a steady stream of microtremors, such as changes in the moral content of popular culture that increase the number of single-parent households, the arrival of cable television technology, and the invention of effective but expensive prescription drugs that change the optimal mix of medical expenditures away from doctor visits and toward drugs. Social and economic tremors like these create an asymmetry between constitution writers and the policymakers who follow them. It would have been impossible for a constitution writer fifty years ago to anticipate computer vandalism by "hackers," while contemporary policymakers can easily draft antihacker legislation. In a rapidly changing environment, constitution writers can be sure that it will be increasingly easy for future policymakers to formulate high-valence alternatives to any policies put in place today, but they cannot anticipate the substance of the changes. This is why the need for constitutions to delegate grows over time.

The constitution left behind by the Pinochet government creates a tension between a powerful, democratically elected executive, and numerous "authoritarian enclaves," centers of administrative, judicial, and legislative power insulated from direct electoral control. This arrangement is the Pinochet government's solution to one of the fundamental dilemmas of military government: how to disengage from direct rule. Samuel Finer compared this to the problem of dismounting a tiger (Finer 1962). The enclaves are a tranquilizer that keeps democratic politics inert while those close to the military government climb down. In the early years of the transition the struggle between the enclaves and the executive favored the former, which act as veto players, locking in numerous policy guarantees demanded by the Pinochet government, most notoriously in the ambit of

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human rights. Over a longer time horizon the executive is increasingly able to bundle high-valence alternatives to an increasingly obsolete status quo with changes in the ideological position of policy more to the liking of the president, and the electoral majority that put him in power, and less appealing to the defenders of the authoritarian enclaves. The institutional tranquilizer is beginning to wear off. In contrast with the stereotype of strong presidents as antidemocratic, the powerful Chilean executive is the main avenue by which the voters are able to influence government policy.

The potential for the Chilean experience to provide general lessons about democratic transitions has been recognized by academics (Przeworski 1991) and politicians (La Tercera 1998) alike. Here the analysis provides guidance about the circumstances in which the institutions that shape Chile's democratic transition are most likely to lead to an eventually stable democratic outcome, and when they are not.

The plan of this book is straightforward. First I develop a model of the constitution writer's tradeoff between allowing future decision makers the flexibility to implement policies that improve valence on the one hand, and constraining future decision makers from altering the ideological content of government policy on the other. I then use this model to clarify the mechanisms affecting the balance of power in executive legislative relations, a balance that largely determines the speed of Chile's democratic transition.

Actually carrying this plan through is not a trivial task. First a detailed roadmap of Chile's constitution is needed to verify the adequacy of the characterization of the Chilean president as the agenda setter in the legislative process. Then there is the even knottier task of charting the ideological landscape. This is done by using roll-call votes cast in Senate committees. While these votes have a number of properties that make them very useful measures of members' policy preferences in the various issue areas dealt with by the committees, they also require that the analysis overcome some serious technical hurdles that are guaranteed to thwart the standard techniques used to analyze the U. S. Congress when the number of voters is small. The methodological approach I develop to deal with these problems in the Chilean context is easily and widely adaptable to other settings in which a small number of decision makers take positions for and against a stream of agenda items. Potential applications include the U. S. Supreme Court, the U. S. International Trade Commission, and party whip votes in which the number of independent decision makers corresponds to the number of parties rather than the number of legislators.

This analysis results in a three-part payoff. First there is a model of the tradeoff between flexibility and constraint faced by constitution writers, which will find useful applications far beyond the western coast of South

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America. Second there is a statistical model of roll-call voting in small legislatures. While this model was essential to mining ideological gold from the committee roll-call vein, it is also likely to prove useful to analysts in a variety of other contexts. Finally, this book offers guidance on when the "Chilean way" of military extrication from power leads out of hell, and when a framework of institutional guarantees such as those imposed by the Pinochet government as its price for ceding power will simply delay the onset of a new round of breakdown and military rule.

THE PLAN OF THIS BOOK

The first two chapters present a model of constitution writing. In Chapter 1, I introduce a spatial model that recognizes that public policy questions involve a combination of valence issues, such as honesty, efficiency, and safety, about which there is a consensus, and position issues, such as abortion and gun control, about which people disagree.[1] Most public policy involves elements of both valence and position. Consider the development of financial transactions via the internet. Virtually all would agree on the importance of regulating internet transactions to reduce fraud and abuse, but we would expect that the left and the right would disagree on the details of those regulations, and how their costs should be born. Should companies making financial transactions on the internet place interest-free deposits with the Central Bank, and if so, how large should the deposits be? How large a processing fee should such companies be allowed to charge? Should financial transactions on the internet be taxed? The greater the weight people place on the valence elements of policy relative to the position elements, the more scope there is for compromise.

When the executive has agenda-setting power and is able to propose policy reforms with higher valence than the status quo, the resulting outcome departs from the standard predictions of the agenda-setter model (Romer and Rosenthal 1978). Even when the executive and the legislature cannot agree on the preferred direction for ideological change, the executive can make the legislature a take it or leave it offer that gives the median legislator something he or she and the executive both want: higher valence, in exchange for the legislature giving the executive something he or she wants, and the median legislator does not; policy that is ideologically closer to the executive and farther from the median legislator.

This simple model of public policy captures the crucial tradeoff constitution writers must make between entrenching specific policy positions and allowing future policy to adapt to changing circumstances. At one extreme one could make the the entire legal and administrative code part

[1] This useful terminology was developed by Stokes (1963).

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of the constitution, so that any change, whether an expansion in the band of frequencies broadcasters are allowed to use or an adjustment in the tariff on imported blue jeans, requires a constitutional amendment. At the other extreme, a constitution could provide a very simple framework for choosing decision makers, and then leave these decision makers great leeway in their choice of policies. In the Chilean case the solution imposed by the Pinochet government was somewhere between these two poles, with an executive agenda-setter able to propose policy reform, and a legislature capable of blocking it.

Chapter 2 provides a brief account of the circumstance in which the military government's dual legacy of institutional structure and unresolved human rights abuses came about. This account begins with the conflicting histories that are remembered on the left and the right. Each has its own version of the fall of the Popular Unity government. The chapter goes on to show that the institutional framework that emerged was in part a by-product of Pinochet's struggle to consolidate power within the military government. The model developed in Chapter 1 is extended to account for constitution writers' uncertainty about the future and then used to analyze the military government's extrication problem. Most analysts emphasize the importance of growing opposition to the Pinochet government in spurring the democratic transition: forced to choose between withdrawal or killing large numbers of demonstrators and facing a downward spiral of civil opposition to military rule at home and pariah status abroad, the armed forces withdrew. While foreign and domestic opposition were important, the analytical model developed here shows that under plausible assumptions about the Pinochet government's uncertainty about its electoral appeal, powersharing with the civilian opposition could have resulted in a more favorable ideological outcome from the standpoint of Pinochet supporters than would unfettered delegation to Pinochet! The chapter concludes with a brief description of the surprising success of the opposition to the military government in uniting to defeat Pinochet in a plebiscite on his continued rule, thereby hastening the resumption of civilian rule.

Attention in Chapter 3 turns to the details of the institutions left behind by the military government when it ceded power in March 1990. The institutional battlefield of the transition is the Senate. The Concertación, an alliance of parties that opposed Pinochet, controls the presidency and the lower legislative chamber, while the opposition, which is sympathetic to the Pinochet government, account for a majority in the Senate, thanks to the presence of the so-called institutional senators, who are appointed mostly from within the institutional enclaves. The analysis of the Constitution in Chapter 3 confirms that, despite many twists and turns in the legislative process, the president's monopoly over certain types of proposals,

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and his constructive veto powers over all proposals, leave him as the de facto agenda setter, while the opposition delegation in the Senate must decide between the status quo and the president's proposals. This institutional analysis also identifies some powerful "proposal germaneness" restrictions, to use Shepsle's terminology (Shepsle 1979), that are at work in the Chilean constitution. These have the effect of limiting changes in the ideological content of policy to a single-issue dimension at a time.

In Chapter 4 attention turns to measuring issue positions and calibrating the relative importance of issue positions and valence. These are empirical questions about preferences. In this analysis I exploit the information to be found in voting records from Senate committees. To learn about underlying preferences from voting records it is customary to assume that legislators vote "sincerely" for the closest alternative. Chapter 4 identifies the conditions under which we may expect this behavior: public votes, and an agenda that is difficult to predict or manipulate, and that includes a wide array of proposals, not merely those crafted by floor managers to have the best chance of passing. As shown in Chapter 4, these conditions are all closely approximated when committees of the Chilean Senate cast votes on proposals at the second readings of bills.

The discussion then turns to the key issues involved in analyzing roll-call voting data, and it shows how these data can be used to estimate the parameters of the analytical model developed in Chapter 1. It discusses the details of the voting data analyzed here. This analysis is extended beyond the standard agnostic approach of estimating the characteristics of proposals to overcome the serious statistical problems to which the standard models are prey, problems that become even more serious when, as in this analysis, the number of voters is small. Beyond the importance of the statistical issues, I argue that proposal making is intrinsically important, and that our empirical methods have heretofore accorded it too little attention.

The subsequent three chapters focus on three important legislative committees: Constitution,[2] Education,[3] and Labor.[4] In each chapter the statistical analysis is integrated with a discussion of some of the votes that divided Senators in order to put their estimated ideological locations in a substantive context.

This committee-specific analysis is restricted to the revealed preferences of the senators who actually participated in the deliberations of these three standing committees. However, committee assignments are closely controlled by the parties. At any time during the legislative session Senators can be replaced on committees, something that happens routinely when Senators must be away from Congress on the day of a committee meeting.

[2] The Comisión de Constitución, Legislación, Justicia, y Reglamento.
[3] The Comisión de Educación y Monumentos.
[4] The Comisión de Trabajo y Prevision Social.

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A renegade committee member who pursued an agenda distinct from his party caucus would quickly find himself reassigned. The policy preferences exhibited by Senate committee members must reflect the views of at least a substantial portion of their party delegations.

What emerges from an analysis that encompasses the details of Chile's legislative institutions and a careful mapping of Senators' ideological positions is a clearer picture of the pressure points in Chile's democratic transition. At one extreme voting records from the Constitution Committee indicate the human rights issue is highly polarizing, with members of the Concertación and the opposition Senators each taking a unified position against the other group. The analysis indicates little scope for compromise, and a very high level of cohesion, especially among the Concertación Senators. The Concertación formed around the human rights issue, and this continued to be a significant source of unity for the coalition until Pinochet stepped down as commander in chief of the armed forces to become Senator for Life. The seating of Pinochet in the Senate, and his subsequent October 1998 arrest in London on Spanish charges of murder, torture, and genocide, divided the Concertación, with some grudgingly accepting the Faustian bargain they had struck in allowing Pinochet impunity from prosecution while others could no longer contain their disgust and wanted him punished. The distances among members of the Concertación on these issues should not be exaggerated. The Concertación's Senate delegation voted in block and against the opposition on a pair of resolutions addressing the government's response to Pinochet's arrest, and the official positions of all of the Concertación parties have been supportive of the government in these matters. Shared disgust with the human rights legacy of the military government continues to be an important part of the Concertación's system of beliefs.

At the other extreme, the Concertación are deeply divided on social legislation, with a significant segment of the Christian Democratic party aligning with the parties on the right on social issues such as drug abuse and divorce. In part, this is a byproduct of the electoral system. In order to win the second seat in Chile's two-member Senate districts, one of the Concertación candidates must win the allegiance of some very conservative voters. One way to do this is to offer the electorate a candidate who is on the left on economic issues, but on the right on social issues. However, these candidates, who are competitive in the general election, tend to do badly in the internal politics of the Christian Democratic Party.

While Chile has been characterized as a blocked transition, in which the "authoritarian enclaves" of power have checked all meaningful attempts at reform, the picture that emerges here is more complex.

On human rights issues the characterization that the military and its political allies retain a policy veto is fairly accurate. The highly cohesive

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issue position shared by the opposition Senators means that most human rights initiatives from the president are dead on arrival in the Senate. On education policy the lower degree of polarization and the executive's ability to bundle high-valence reforms with proposals that move education policy leftward mean that over time the Concertación has been able to move education policy steadily in their preferred direction.

On labor and social issues the picture is more surprising. The moderate position of institutional Senator William Thayer combined with the razor-thin majority enjoyed by the opposition in the Senate place the median Senator somewhere between the preferred issue positions of the Concertación and the policy advocated by most of the opposition Senators. This has given the government leeway to move labor policy leftward on this issue, which has traditionally divided the right and the left.

On social policy the conservative position taken by several of the Senate's Christian Democrats has meant that the opposition Senate majority has been redundant; even without it leftward reforms of social policy would be checked by an alliance between the socially conservative Christian Democrats, with their deep roots in Catholicism, and the Senators of the opposition.

The eighth and concluding chapter compares Senators' estimated preferred outcomes across issue areas and provides evidence that there are at least two issue dimensions to Chilean politics. The first concerns welfare state issues such as labor relations and education, but it also encompasses human rights, while the second is associated with Senators' stands on social issues including divorce, drug abuse, and other issues concerning personal morality. This second issue dimension harks back to the late-nineteenth-century divisions in Chilean politics over relations between the Catholic Church and the state. Because the Concertación divide on the social issues, the opposition has an incentive to focus on this issue area in an effort to pry apart the Concertación alliance on the welfare state, while those on the left have an incentive to keep the human rights issue alive as a means of reenforcing the beliefs that hold the Concertación together.

Consistent with the theoretical analysis of the conflict between the executive and the institutional enclaves, the highly polarized question of how to deal with the human rights abuses of the former military government has not been resolved. There is a high level of polarization, and high salience on the position issue of pursuing those guilty of human rights abuses committed under the auspices of the military government (on the left this issue is called "justice," while on the right it is referred to as "revenge") relative to the valence issue of reconciliation and reduced risk of future civil war. As the model predicts under such circumstances, the civilian government that took power in Chile in 1990 has done almost

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nothing to punish the human rights abuses committed under the auspices of the military regime; doing so would require repeal of the military's "self amnesty," which covers the vast majority of the unresolved human rights cases. During the first ten years of civilian rule in Chile the human rights issue has followed the recipe for gridlock; a policy area with high-salience polarized policy positions relative to the weight accorded to valence. However, this is a policy area in which the terrain may change very dramatically. While at this writing ten years of civilian rule have gone by with little progress toward solving the human rights crimes committed during the period of military government, these have also been ten years during which few new human rights abuses have been committed. If the current stalemate persists for another decade or two, those with direct personal involvement in the conflicts of the 1970s, when human rights abuses committed by the armed forces were most numerous, will no longer constitute a significant part of the voting public, nor will the officers who ordered extrajudicial executions and torture remain in powerful positions within the institutional enclaves. A generational change in leaders, and voters, may be expected to reduce the salience of justice, in the form of investigations and trials, relative to reconciliation, in the form of reduced willingness to risk Chile's partial democracy in order to arrest, or protect, the guilty.

To assess the lessons offered by Chile's ongoing transition we must first ask how well the Faustian bargains Chileans struck during the 1980s have served them during the 1990s. A useful anecdote helps to illustrate the question. A very energetic and talented young economic theorist went shopping in an antique store, and found a lamp he liked. He and the store owner haggled a while, and settled on a price of $100. As the store owner was writing up the sale, the economist interrupted; "I'll give you $99 for it!". "What do you mean?" replied the owner, with enraged surprise, "We agreed on a price of $100!". The economist then patiently explained that since the store owner had been willing to sell for $100, and he would have to wait to sell the lamp to someone else, tying up valuable space in his store and wasting time haggling with someone else, his reservation value for the lamp was certainly at least a bit under $100. Although his understanding of bargaining theory was impeccable, the economist soon found himself standing in the parking lot, sans lamp.

Like the antique dealer, the military government would probably have been willing to relinquish power on at least somewhat less favorable terms than it did. Many opponents of the former military government note this and argue that it proves the transition was a failure, that the Concertación sold out to the armed forces. But ex post regret at not pressing for more favorable terms must be weighed against ex ante uncertainty about how far the military government could be pushed. With the clarity of hindsight

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it seems very probable that if the Concertación had insisted on a few more concessions the armed forces would have been willing to accede. But at the time this was far from obvious, while the improvements in Chilean society, notably a nearly complete end to further human rights abuses, at least by the second or third year of civilian rule, are not to be dismissed lightly.

While the Chilean transition toward democracy remains unfinished, leaving many frustrated with the slow pace of events, it compares well with alternatives such as civil war and continued military rule. Moreover, if social peace can be maintained for another decade or two, with no new round of military intervention in politics, the salience of the human rights issue may be expected to decline, opening the door to further reform.

A common view of the Chilean transition is that the institutional enclaves have prevented a full transition to democracy, saddling the country with "Pinochet without Pinochet." But when the powerful executive is weighed in the balance, the incompleteness of the transition from military rule can be seen as temporary. The speed with which the executive is able to move policy depends on the salience of conflict vs. the consensus elements of policy. In the Chilean transition this salience can be expected to fade as the generations that lived through the coup age, allowing further reform.

While it is clear that Chile is undergoing a transition from military rule, it is less obvious what sort of government this will be a transition to. As the Concertación gain control of the institutional enclaves, they will face a moment of truth. Thus far the coalition has been united around the objective of reforming the constitution to eliminate the institutional enclaves. As the opportunity to actually do so presents itself there will be a strong temptation to keep the institutions in place, using them to defend the Concertación's own policies, much as it has been used up to now to protect the status quo left behind by the military. That final chapter of the transition has yet to be written, and for now we may only speculate as to how the Concertación will choose. But much can be learned from what has already transpired.

How readily can the Chilean example be followed by other countries undergoing transitions from authoritarian rule? Chile's institutions, which have the effect of preventing change in some key policy areas, may be expected to work best when the issues dividing the sides are currently intense, but they can be expected to fade in importance over time, as with the importance of human rights prosecutions in Chile. The Chilean approach will not work so well when divisions will remain, or worsen. If an authoritarian government has targeted its victims along ethnic or religious lines, then we may expect that time will do little by itself to reduce the rancor that divides societies that come under authoritarian rule. Future generations with the same ethnic or religious identities as the victims may

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