You Select the Rules of the Game and Lose? Advantages and Constraints When Choosing Electoral Rules: the Case of Chile

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Introduction (Chapter 0)
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If able to choose the rules of a game in which she will be a player, why would an electoral designer select a set of rules under which an electoral defeat is possible? Why do electoral designers fall short of using electoral rules to guarantee their own electoral victory? In analyzing all the electoral rules chosen in Chile in the 1980 Constitution and before the transition to democracy, I argue that those with monopoly power to select the electoral rules (electoral designers) are bound by three constraints. First, they need to draw rules that will give the opposition a chance of victory. Otherwise, the opposition will not take part in the electoral process. Second, those who select the rules use information shortcuts to make up for their incomplete information about the entire set of electoral rules and about the anticipated combined effect of the rules they adopt. Electoral rules previously used in the country and objections to the distortional effects of those rules are often used as information shortcuts to select certain rules and reject others. Third, electorates do change over time and the intended effect of a set of rules, even if achieved, might not remain the best outcome for the designers. Rules that are optimal at time T_1 might not be optimal at T_2. I show how the electoral rules adopted by the military dictatorship (1973-1990) were bound by those three constraints.

I show that given those constraints, the dictatorship sought to optimize its choice of electoral rules and tried to use them to improve the influence and power of the political parties that supported the dictatorship beyond Augusto Pinochet's departure from power. This is a story of how, despite existing constraints, electoral designers devised a set of rules that minimized the costs of an electoral defeat. This is also a story of how sub-optimal rules were chosen and rules that would have produced distortional effects more advantageous for the pro-dictatorship parties were overlooked. Finally, this is a story about how the original distortional effects intended by a set of electoral rules become diluted over time and turn out to work less and less in favor of the parties that were initially benefited by the rules. I show how the electoral designer used its monopoly power to select electoral rules as an insurance mechanism to reduce the political cost of an electoral defeat. By choosing electoral rules that distorted the preferences of voters in favor of the dictatorship's political party, the electoral designer minimized the cost of an electoral defeat and improved the chances of exerting power and influence in the government after the transition to democracy had taken place.

Electoral Rules

Any definition of democracy presupposes the existence of an electoral rule. A dictionary will tell us that democracy is "government by the people." More sophisticated definitions specify that such 'government by the people' is exercised through some vote-counting mechanism, where majority rule is often used—but it is not the only existing

mechanism—to select the rulers. But the 'form' of majority rule, the definition of who are 'the people' and the specific way in which 'the people' will 'govern' are matters determined by electoral rules.

Therefore, electoral rules by definition need to precede any exercise of democratic governance. Even under an ideal conceptualization of a new polity that establishes a government, some basic decisions need to be made before citizens can exercise their vote (including the decision of who qualifies as a citizen). Thus, even if we think of an election for a constitutional assembly among the most democratically-minded individuals, the decision as to whether the members of the assembly will be chosen by proportional representation or in single member districts needs to be made before a vote is taken.

Often, electoral rules are narrowly defined as the choice of electoral formula, that is, the rule by which votes are transformed into legislative seats. Here I adopt a broader definition of electoral rules that includes considerations beyond that of how seats will be allocated. Some of those decisions are the size of districts (district magnitude), district apportionment (how districts are drawn), voter eligibility, candidate eligibility, the number of offices to be elected, whether election for different offices will be held concurrently, whether voters will select individual candidates or party lists and even if those rules can be modified afterwards. All these decisions need to be made before democracy can be exercised. All the options available have some distortional effect

because they affect how preferences are aggregated into a limited number of seats. All those decisions constitute the electoral rules.

The choice of electoral rules is a critical foundational step for any democratic polity and as such it has captured the attention of many scholars in the field.[1] Those in charge of determining the electoral rules can influence how the rest of the population votes and can manipulate incentives to induce the electorate to use or avoid certain strategies when deciding how to cast their votes. Electoral Designers can distort how votes are transformed into seats, can place restrictions on who can run for office, determine who has the right to vote and establish the conditions under which elections are held. Designers cannot determine individuals' preferences, but by choosing different electoral rules, they provide incentives and disincentives for voters and candidates to act strategically. In short, they can impose certain distortional effects in how preferences are transformed into votes and how votes are aggregated. This dissertation concerns situations in which Electoral Designers have 1) monopoly power over electoral rules, 2) the intention to win the elections for which they are setting the rules and 3) detailed knowledge about the preferences of the electorate.

Different Designers have different interests and preferences over electoral rules. It matters if there is one designer or if several designers bargain over which rules will regulate the electoral process. If there is one designer, she will have monopoly power

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[1] This dissertation draws primarily on the theoretical and methodological framework used by Cox 1997, Sheplse and Bonchek 1997, Lijphart and Waisman 1996, Fiorina 1996, Laver and Shepsle 1996, Grofman 1995, Lijphart 1994, Shugart and Carey 1992, Tsebelis 1990, Taagepera and Shugart 1989

over which rules to select. If there is more than one designer, the rules adopted

necessarily will be the result of some type of bargaining. Once the system is in place

(after the first election has been held), changes to electoral rules are always the result of

bargaining. In this sense, the first time around, the designer might have an advantage:

monopoly power to select electoral rules.

Although they have an advantage over other political actors because they get to

determine how votes are translated into seats (as well as other electoral rules), Electoral

Designers also face constraints. First, Designers cannot make full use of their monopoly

power. If other political actors reject the chosen rules, the entire process will lack

legitimacy. Simply put, there won't be any players for the electoral game to be played.

The rules must be accepted by a sufficient number of players in order for the game (the

election) to be played.

Designers also face uncertainty when attempting to take advantage of their

privileged position. With or without monopoly power, designers cannot anticipate all the

possible ways in which voters can strategically respond to the structure of incentives

posed by different electoral laws because they have incomplete information on the

preferences of voters and on the combined effects of the entire structure of incentives

posed by different electoral rules.   Either because there are multiple possible

outcomes or because the game is not fully specified, designers cannot anticipate all the

effects of the electoral rules they choose. On occasion, designers might not know the

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and Grofman and Lijphart 1986. I am also informed by the pioneering work conducted by Sartori 1976,
Rae 1971, Rokkan 1970, Rae 1967 and Duverger 1954.

preferences of the voters and therefore might not know how to best design a system that can distort voters' preferences in such a way as to maximize the designer's electoral support into elected seats. The more designers know about the preferences of the electorate, the easier it will be for them to distort the aggregative effect of electoral rules in their favor. Yet, even when Designers have complete information about the preferences of the electorate, as it was the case in Chile after the 1988 plebiscite, there is still incomplete information about the combined effect of different electoral rules and about the entire set of best-response strategies that can be used to offset the distortional effect intended by the electoral rules. Because information is costly and because they find information shortcuts (i.e., previous electoral rules used, rules used by neighboring countries), Designers will often overlook some available choices when deciding on the electoral rules to be adopted. In this sense, in addition to unintended consequences electoral rules might have, certain outcomes cannot be achieved because designers overlook some electoral rules.

In addition, designers cannot anticipate their own optimal outcomes in the future. They might know what works best for them at time T_1 but cannot anticipate if the same outcome will be their most preferred outcome several years down the road (say, T_2). For that reason, the monopoly power that they enjoy at time T_1 might not be of use for them at T_2. Power over choice of electoral rules is more useful for designers to influence the first election than future ones. In fact, it might well be the case that the distortional effect produced by the chosen electoral rules will work against the Designer's party in the

future. Having monopoly power to select electoral rules today helps little in securing a distortional effect that benefits your party in the future. The monopoly power enjoyed by this type of Electoral Designers has little effect in their ability to distort the electoral preferences of future electorates on their favor.

Electoral Designers

Not all designers are equally interested in influencing how the distortional effect of the electoral law will transform votes into seats. A designer that simply prefers 'democracy' to 'not-democracy' might be indifferent over diverse electoral rules as long as the distortional effect does not go beyond a certain admissible legitimacy threshold. Similarly, if the designer is not a part of the polity (for example, an invading power that writes a constitution for the invaded country), the designer might be more interested in 'stability' than in how the electoral rules distort the aggregation of votes into seats. However, when the electoral designers are also voters, they have preferences and will want to exert influence over who can be elected and therefore will be more concerned with the distortional effect of the electoral rule.

Because there is usually more than one seat to be filled in an election, the designer cannot simply seek to secure representation for herself, or for those that will represent her. The designer also needs to attempt to secure representation for her allies. We often understand those persons as like-minded politicians and assume that they group into political parties. If designers are also members of a political party, they will select

rules that maximize their party' likelihood of wining more seats. In this dissertation, I identify two characteristics of the electoral rule selection process, monopoly power and identification with a political party. The interplay of those characteristics gives us four possible combinations:

- ? The designer has monopoly power and belongs to a political party.

- ? The designer has to bargain and belongs to a political party.

- ? The designer has monopoly power and does not belong to a political party.

- ? The designer has to bargain and does not belong to a political party.

In the archetypical case of the United States Constitutional Convention of 1787, electoral rules were chosen as a result of bargaining among different actors. Some would claim that the "framers" belonged to political parties while others would suggest they did not. Either way, the classic way to understand how electoral rules were chosen in the U.S. corresponds to options that include bargaining (2 or 4 above). In a few cases, such as Japan's 1946 Constitution, the designer had monopoly power and did not belong to a political party (option 3). In the most recent wave of Eastern European transitions to democracy, there was either bargaining or the designers were not certain that they would continue to constitute a unified political party in the newly established democracies. In a very limited number of cases, the designer belongs to a political party and has monopoly power. In those cases, the rules chosen are the designer's most preferred arrangements under existing (or perceived) constraints. Because the designer belongs to a party, a

rational choice approach would presume that the rules selected benefit the designer's political party. In other words, the designer should select rules that will distort the aggregation of votes in favor of her own party.

A case of monopolistic designer who belongs to a political party, possesses accurate information about the preferences of the electorate and faces no time or resource constraints is the most likely setting where rules that best serve the interests of the designer's party will most likely be adopted. If given that opportunity, will a rational designer adopt the most beneficial rules to advance her party's chances of winning elections, or will there be other considerations that come into play?

It is rare to find a case where there is monopoly decision-making power over electoral rules, accurate information about the electoral preferences of voters and few time or other constraints. One such case is Chile. The Pinochet dictatorship designed a new set of electoral rules between 1980 and 1988. Having monopoly control over the rules chosen, the Pinochet regime sought to foster the development of a new party system. At the same time, it sought to establish a set of rules that distorted electoral preferences in favor of the regime's political party. Although the Pinochet dictatorship had monopoly power over the choice of electoral rules, it also faced the challenge of adopting rules that would be acceptable for the opposition. Unless the opposition accepted the electoral rules, even if promising to change them later on, there could be no credible electoral process.

Stable electoral preferences observed in Chile in the years before the democratic breakdown of 1973 and most importantly, opinion polls taken before the 1988 plebiscite and the results of the 1988 plebiscite, provided the Pinochet dictatorship with an exceptionally good assessment of the preferences of Chilean voters. Given their monopoly power, their clear intention to hold on to power after the elections and the accurate information about the electorate's preferences, did the Pinochet regime choose the most convenient set of electoral rules that would best distort the electoral preferences in favor of Pinochet's party and reduce the possibility of strategic response for the opposition?

I show that between 1980 and 1988, the Pinochet regime chose a set of rules that helped Pinochet achieve that objective given the existing constraints. They also selected rules that eventually had unintended consequences (some of which they could have anticipated) that did not benefit them and overlooked a series of rules available to them that could have helped them better distort electoral preferences in their favor. Yet, the rules they chose served the dictatorship better in the first round of elections than in elections held in subsequent years. Throughout this dissertation, I argue that the Pinochet dictatorship used its monopoly power to select rules that would minimize the cost of an electoral defeat. By adopting certain electoral arrangements that were expected to distort the preferences of Chilean voters in favor of the dictatorship's party, the Pinochet regime sought to minimize the cost of losing power in an election.

As several scholars have argued, it would be far fetched to define the Pinochet dictatorship as a one-man rule (Valenzuela 1995, Barros 2002, Huneeus 2001). Because Pinochet governed with the support of the Armed Forces, the business community and conservative parties and groups, claiming that one electoral designer enjoyed monopoly power might seem questionable. Yet, although there were clearly documented ideological, strategic and tactical differences within the military dictatorship, there were enough commonalities to define them as a homogenous electoral designer. Those who supported the Pinochet regime had certainly one thing in common. They preferred to hold on to power rather than to cede power to the democratic opposition. In that sense, as I discuss below, we can define the entire Pinochet regime as the monopoly electoral designer.

The monopoly power enjoyed over electoral rules by the dictatorship reached its peak during the adoption of the 1980 Constitution but began to fade away as the 1988 plebiscite neared (Chapters 1 and 2 discuss in detail the historical framework). After Pinochet lost the 1988 plebiscite, there was bargaining over electoral rules. Following on the 4-type description discussed above, after the 1988 plebiscite the situation in Chile went from 1 (the designer has monopoly power and belongs to a political party) to 2 (the designer has to bargain and belongs to a political party). In this dissertation I discuss the rules that were adopted when there was monopoly power and the rules adopted, or modified, when there was bargaining and show how they produced different results.

Yet, as I argue above, monopoly cannot be exercised without taking into consideration the need to provide the opposition with a chance, however minimal, of victory. For that reason, even before the plebiscite (before there was formal bargaining), the military began to take into consideration the demands of the opposition because the dictatorship needed to grant legitimacy to the entire process. That is the time when the adjustments to the electoral rules outlined in the 1980 Constitution began to take place. That is also the time when minimizing the cost of losing power was the criteria that informed the decision of the electoral designers. Before I move on to discuss the specific characteristics of this particular case, I need to define what I mean by *monopoly power* and by *political party*.

Monopoly Power

When there is more than one designer choosing the electoral rules, there will necessarily be bargaining. Although there are different types of bargaining, and there are cases with asymmetrical bargaining power, it is useful to dichotomize the process of electoral rule selection into case where there is bargaining and cases where there is an electoral designer with monopoly power. As in the proverbial case of democracy (a country is either democratic or it is not, even though both democracies and dictatorships are also measured in scales) the selection of electoral rules is the result of either bargaining or unilateral decisions.

Just as it is impossible to find a perfect democracy—let's recall Dahl's suggestion (1971) that democracies should really be called polyarchies—there is probably no case where an electoral designer has enjoyed absolute control over the choice of electoral rules. There might be demands from other countries, pressures from interest groups and political actors and principal-agent problems, with the monopoly designer being the principal and those hired to actually devise the entire set of electoral rules being the agents. Even autocrats need advisors, and different advisors think differently and might have different motivations when suggesting electoral rules for the autocrat to consider. There is probably no case where the 'designer' had *absolute control* over the electoral rules chosen. But there are a few cases where the designer had almost unchecked monopoly power. The case of Chile under Pinochet (1980-88) comes as close as one can imagine. Pinochet could choose any electoral rules he wanted as long as he would not deter enough members of the opposition to stay away from the elections. In a sense, *monopoly power over electoral rules exists when the rules chosen are accepted by the opposition and cannot be changed before the first election occurs.*

Political Parties

Designers have preferences over candidates, policies and, ultimately, outcomes. Although we often assume that candidates will implement the policies they announce, it is often the case that the policies implemented differ from the policies announced. Even though policies and candidates are not unrelated, they are not always the same.

Candidates promise to implement policies because policies are expected to bring about outcomes. Yet, if candidates, once elected, achieve the outcomes they promised through different policies, they stand better chances of being re-elected if they adopt the policies they promised, but the policies failed to bring about the expected outcomes. Because candidates, policies and outcomes are not the same and because voters have no way of ensuring that candidates implement the policies they promise (and there are no guarantees that policies will achieve the expected outcomes), I assume preferences over candidates rather than over policies. Voters care about policies, outcomes and candidates, but in general they treat candidates as proxies for both policies and outcomes. When the designer is also a voter, she wants her preferred candidates to be elected (in some instances, she is the candidate herself).

If the total number of seats to be filled is large enough, getting the preferred candidates elected is not enough. Designers want their preferred candidates to win a commanding majority of seats. When the number of seats in the elected body is large enough, the representative body will naturally see the emergence of voting factions. Because of the needs posed by plurality or majority rule requirements, the elected members face incentives to form groups to obtain a commanding majority of the elected body. Be it as a result of negotiations, the use of coordination devices or cost-efficient considerations, the groups formed to constitute majorities will tend to be comprised of roughly the same individual members.

When the groups that constitute voting factions are cohesive and the membership does not vary significantly, we refer to these groups as political parties. Because the electoral rule is announced before candidates can officially declare their intention to run, potential candidates tend to form these groups, the political parties, before the election. In addition, because certain electoral rules require individual candidates to belong to a political party, party formation is likely to occur before the election and before the body of elected representatives is formed.

The incentives to form political parties also apply to the electoral designers. But, the designers can shape those incentives by choosing certain rules. Once elected, the representative body has the power to change electoral rules for future elections as well. The representatives of the electorate can influence how votes are transformed into seats in the future. In this sense, elected representatives are also potential electoral designers. For this reason, we think about designers and elected representatives as facing similar incentives. Although designers choose electoral rules and elected representatives may attempt to alter those rules, when they find themselves in the position of designing an electoral law, they face similar incentives. And those incentives can only be utilized to their electoral advantage if they see themselves as belonging to a political party that wants to maximize their electoral support into elected seats or to minimize the loss of power in case of an electoral defeat.

Parties are often also defined in terms of ideological differences (Schumpeter 1950, Duverger 1954, Downs 1957, Sartori 1976, Aldrich 1995, Alesina and Rosenthal

1995). Yet, a sufficient reason to explain the existence of parties does not require ideology. Neither does the existence of ideological similarities necessarily lead politicians to form political parties. In fact, ideology is not a necessary condition to form a political party. Parties do form for other reasons as well. Because ideological differences do exist in the world, we often observe parties positioning themselves along an ideological continuum. Yet, there are cases where parties are not ideological but party membership among elected representatives is determined by other considerations (clientelism, ethnicity, religious identification or regionalism). There are countries characterized by a strong party system and weak ideological distinctions, countries with a weak party system and strong ideological divides, and cases where we observe weak parties and weak ideological differences. Countries with strong party systems and strong ideological divides are the typical cases of study and have often lead us to equate political parties with ideological divisions. Yet, ideology is neither a necessary not a sufficient condition for parties to exist.

I follow Przeworski in defining democracies as systems where parties lose elections (1991: 10). In this definition, parties are central to the existence of democracy. Parties might have or might lack a strong ideological component. In countries where individual political parties form around individual leaders, it is more difficult to identify an ideological component that differentiates parties. Let us recall that because parties are generally understood as groups of like-minded politicians who unite to seek office, the

definition of political parties often hinges on ideology as a necessary explanatory variable for the existence of parties.

However, if parties organize to win elections—seats in the representative body—a more intuitively powerful definition of political parties should encompass the strategic need to maximize how electoral support is transformed into seats (Pzeworski and Sprague 1986, Müller and Strøm 1999). In this sense, parties are groups of politicians—not necessarily like-minded—that organize to best respond strategically to the challenges posed by electoral laws: a distorted aggregation of individual preferences. Yet, winning elections is not sufficient, the members of an elected body need to form majorities to form governments and to adopt laws (Laver and Shepsle 1996, Powell 2000, Diamond 1999). For that reason, parties are also understood as like-minded politicians who align to convert their preferences into legislation (Aldrich 1995). Yet, that does not need to be the case. Political parties formed to win elections do not need to be the same ones that organize, after elections, to command majority control of the legislature. Because elected representatives might agree on some issues and disagree on others, different majorities might form to approve different laws. If the majorities are always formed by alliances of different elected representatives who are like-minded on that particular issue, any grouping of representatives voting together can be understood as a short-lived political party. But having voting or electoral coalitions in parliament is not what we intuitively think of when we speak of political parties.

Just like ideology, like-mindedness is neither a necessary nor a sufficient condition for a political party to exist. A definition of political party must include some condition of enduring unity among the members. If different elected representatives form different majorities all the time, we are inclined to suggest that no political party commands majority of support of the elected body. Yet, we often observe that recurrent groups of elected representatives vote together and often form stable majorities. In fact, if a group of politicians forms an electoral alliance and wins a majority of the seats in the election, they have incentives to stay unified and govern together. Be it because they have similar policy preferences or simply because they control a majority of seats (and forming majorities is simply a coordination problem that they successfully solved), the party will stay together after the election.

However, parties are more than simple solutions to a coordination problem. For an electoral coalition or a voting coalition to be considered a political party, we need to observe that they have passed a certain threshold of enduring unity. In a sense, political parties exist if the group of politicians that form electoral alliances stay together even in the absence of coordination problem solving incentives. Thus, *political parties are groups of politicians who stay together after they lose an election.*

Chile and its 1980 Constitution

Many instances of electoral engineering have taken place in countries with well-established democratic traditions and party structures (Cox 1997, Lijphart 1994, 1984,

Riker 1982). Instances of electoral engineering have also occurred since the third wave of democratization (Huntington 1991, Mainwaring 1999). Recent transitions to democracy in Eastern Europe and Latin America have provided us with an interesting opportunity to study electoral engineering in countries with past history of electoral politics (Lijphart and Waisman 1996: 2). In Latin America, most countries adopted the same electoral systems they had before the democratic breakdown or, in some instances, have adopted systems that favor some type of proportional representation.

In general, when new rules have been adopted, different political actors have bargained over what electoral rules to choose (Kaminski, Lissowski and Swistak 1998, Kaminski 1999, Benoit and Schiemann 2001, Lijphart and Waisman 1996). In a few instances, the decision has been made by a monopoly designer. Chile is such a case. In Chile, the "the historical proportional representation system was replaced with a majoritarian system" (Siavelis and Valenzuela 1996: 77, Siavelis 2000, Jones 1995). Although this is a case study approach, I will inform my analysis with existing rational choice models to explain strategic decisions made by designers and discuss how designers convert their preferences into electoral rules.

Following the approach of Mainwaring (1999) for Brazil, Siavelis (2000) for Chile and others used for Eastern European emerging democracies, I use a single case (Chile), informed by other cases to explain how electoral rules were chosen. I do not seek to explain only what happened in Chile. Rather *I use the case of Chile to inform our understanding of how electoral designers with monopoly power make their choices*. I

study how they make their decisions, how they attempt to correct what they see as failures of older electoral rules and how they adopt rules that they believe will maximize their electoral support into political representation. By expanding the study of electoral rules beyond the electoral law, apportionment and districting, I provide a framework to understand ticket splitting, incumbency re-election and electoral participation as variables that can also be influenced by the electoral design.

General Pinochet ruled the country from 1973 to 1990. He adopted a new Constitution in 1980. In general, all constitutions include provisions that have a distortional effect on the aggregation of preferences and votes and Chile was no exception. But as in other countries, there was a process by which the constitution and electoral rules were chosen. In Pinochet's Chile, a Commission was formed, shortly after the 1973 military coup, to study constitutional reforms. The Ortúzar Commission submitted a proposed draft of a new Constitution in October of 1978. The draft was then revised and amended by another body, the Council of State, appointed by and friendly to, but nominally independent of, General Pinochet. The Council of State modified the draft submitted by the Ortúzar Commission and presented it to General Pinochet and the military Junta. Pinochet and the Junta then revised and modified the proposed Constitution and submitted their version to a national plebiscite. Thus, three different sets of electoral rules can be identified in the making of the 1980 Constitution: the Ortúzar Commission draft provisions, the revisions and corrections made by the Council of State and the final revisions and corrections made by Pinochet and the Junta before

submitting the Constitution to a plebiscite. I also include the electoral rules existing before 1973 (1925 Constitution) in the comparison because they represented a significant reference point. The four sets of electoral rules differ significantly in their provisions and implications. Although they constitute different rules, there was no real bargaining taking place between their proponents. Instead, they were consecutive announcements of policy preferences made by different actors. The 1925 Constitution represented the status quo, the Ortúzar and Council of State's proposals represented the preferred points of those bodies and final 1980 Constitution provisions represented Pinochet and the Junta's preferred outcome given the constraints discussed above.

The 1980 Constitution was submitted to a national plebiscite in September 11 of 1980. Approved under allegations of fraud and prosecution of opposition leaders, the Constitution became effective on March 11, 1981. That day, General Pinochet was inaugurated as a constitutional president. His term was scheduled to end in March of 1989, but six months before that, a plebiscite was to be held where voters could accept or reject a presidential nominee selected by the government. If voters rejected the government's candidate, open presidential elections would be held in 1989 and the new president would take office on March 11, 1990. If voters approved the government's proposed candidate, the new president would be sworn in as president for an 8-year term beginning in March 11, 1990. Either way, a government's candidate victory or defeat in the plebiscite, parliamentary elections were to be held in late 1989 and a bicameral Congress was to be inaugurated on March 11 of 1990.

According to the military government, the 1980 Constitution was approved by 67% of the more than 6.2 million voters that cast ballots while 30.2% voted against the proposed Constitution (Cavallo, Salazar and Sepúlveda 1997: 283). Although questions of legitimacy persisted, the military government claimed that its mandate was legitimated by the vote. Any democratic transition would need to take place within the framework established in the 1980 Constitution. Yet, the long document, comprised of 120 permanent and 29 transitional articles, did not include many of the details that would govern elections. Instead, the 1980 Constitution established that an appropriate set of electoral laws would outline them.

Starting in 1985, both as a result of growing political opposition to the Pinochet regime (resulting from the 1982-84 economic crisis) and as the date for the plebiscite neared, the Pinochet government began to promulgate the electoral laws that would regulate the electoral process. Some provisions were already entrenched in the 1980 Constitution but others super-majority laws (*Leyes Orgánicas Constitucionales*) were promulgated in 1985 (Electoral Tribunal Law), 1986 (Electoral Registration Law and Electoral Service Law), 1987 (Political Parties Law) and 1988 (Voting Law).

The 1980 Constitution and the *Leyes Orgánicas* promulgated between 1980 and the 1988 plebiscite were adopted by the military under conditions of monopoly power within the boundaries set by the 1980 Constitution. In fact, when the Pinochet regime appointed the member of the Constitutional Tribunal, the Tribunal quickly adopted the role of guardian of the 1980 Constitution. As Barros (1996: 266) suggests, "even

custom-made shoes bind." Yet, despite being confined to the limits imposed in the Constitution, the Pinochet regime had ample leverage to design the *Leyes Orgánicas* with the clear intention of holding on to power beyond 1988 (as a political party) and with an accurate knowledge of past electoral preferences and behavior and past strategic interaction and coalition formation among political parties. All the initial choices over electoral rules were made by the dictatorship under these conditions.

Despite the efforts made by the opposition to derail the 1980 Constitution provisions and to find an alternative road for the transition to democracy, General Pinochet was chosen as the government candidate and the plebiscite was held on October 5, 1988. Unlike the vote taken in 1980, the 1988 plebiscite was held under conditions that could be generally described as free and fair. Although the government utilized state resources to campaign for Pinochet, and the opposition had little access to the media after 15 years of political prosecution and gross human rights violations, the unofficial presence of international observers and press correspondents helped the opposition prevent fraud in the vote counting process. Pinochet lost the popular vote by 54.7 to 43% of the 7.236 million votes cast by previously registered voters (with 2.2% null and blank ballots). Pinochet accepted his defeat but pledged to uphold the 1980 Constitution and all of its provisions. As mandated in the 1980 Constitution, open elections were scheduled for December of 1989. But Pinochet's electoral defeat led many of his opponents to call for his immediate resignation and for the abandonment of the Constitution. Yet, Pinochet stayed firm and did not resign. The military continued to

support him and he successfully weathered out the political pressures to bring about an immediate end to the Pinochet regime.

Before the plebiscite, the democratic opposition formed a coalition called *Concertación por el No* (Coalition for the No Vote). Comprised of 17 center and leftist political parties and groups (some undergoing the official registration process as established in the 1987 Political Parties Law), the main groups were the Christian Democratic Party (PDC), Socialist Party (PS), Party for Democracy (PPD) and Radical Party (PR). The *Concertación* asked Pinochet to resign and unsuccessfully sought to establish a dialogue with government leaders and supporters to find a different transition to democracy. Pinochet and his supporters stood firm to uphold the 1980 Constitution and the transitional path outlined there.

The *Concertación* succeeded in getting some concessions from the dictatorship after Pinochet's defeat. A package of constitutional reforms proposed by the dictatorship received the *Concertación*'s acquiescence and was overwhelmingly approved in a plebiscite in mid 1989. Negotiations for that constitutional reform were conducted outside the realm established by the Constitution. Yet, those reforms did not radically alter the legal framework established in the 1989 and their adoption was implemented in a process consistent with the 1980 Constitution, as Transitional Article 18 gave the military Junta the power to adopt constitutional reforms with the approval of the electorate in a national plebiscite.

With the adoption of the 1989 reforms, the status quo of the constitutional making process in Chile changed from monopoly power to bargaining. Although the bargaining was not formally conducted within the framework established by the 1980 Constitution (which gave total authority to the military Junta to propose constitutional reforms), it was not inconsistent with it. Bargaining over the reforms, however, did represent a departure from the monopoly decision-making favored by the military government since it took power in 1973 and presented its 1980 Constitution for popular ratification in 1980. As provided in the Constitution, presidential and parliamentary elections were held in December 1989. The *Concertación* won the presidency, a majority of the elected seats in the Senate and in the Chamber of Deputies. The overall 1989 results resembled the 1988 plebiscite results. The *Concertación* obtained 55.3% of the presidential vote, just short of the 56% obtained by the "No" choice a year earlier.

Since 1988, the *Concertación* has won all presidential (1989, 1993 and 1999), parliamentary (1989, 1993, 1997 and 2001) and municipal elections (1992, 1996 and 2000). The Constitution has been reformed several times, and some of those reforms have included changes to the electoral rules. Yet, most distinct features of the electoral rules have not been modified despite the insistence on the part of the *Concertación*. Some of those features include district magnitude, provisions for non-elected senators, the military role in the Constitutional Tribunal and in the appointment of non-elected senators. For those reasons, many observers have claimed that Constitution has deadlock provisions that obstruct the consolidation of democracy. Here, I only discuss the

provisions regarding electoral rules that were designed to have a distortional effect in favor of the political party that Pinochet's government sought to transform itself into after it left power.

The analysis is divided into four time periods. First, from 1973 to the 1980 promulgation of the Council of State's constitutional draft, the Junta shared the Constitution writing process (but not the constitution making power) with appointed bodies, friendly but not entirely loyal or dependent on the Junta. Second, from the time the Junta revised the Council of State's draft and submitted it to the 1980 plebiscite to the October 1988 plebiscite, the Pinochet regime had monopoly power over the choice of electoral rules. Third, from October 5 of 1988 to the inauguration of the new government on March 11 of 1990 there was limited bargaining between the Pinochet regime and the opposition, but occurred outside the constitutional framework. Fourth, after March 11 of 1990, there has been bargaining over electoral rules changes. But the bargaining has been confined to the 1980 constitutional framework. Those four periods are discussed in detail in chapters 1 and 2.

Although the multiplicity of actors during the first period might lead to indicate some form of bargaining, the Junta took it upon itself to prepare the final draft of the Constitution and discarded the electoral rules proposed by the consulting bodies. Thus, the first period should be understood more as an information gathering devise than actual bargaining between the Junta and groups friendly to the dictatorship, the Ortúzar Commission and the Council of State. Immediately after the 1973 coup, the Junta sent

clear signals that it sought to revamp political institutions in Chile rather than return power to civilian elected authorities after a period of authoritarian government. Shortly after taking power, the dictatorship set up a commission to study constitutional reforms. In 1974, the dictatorship issued a statement of principles (*Declaración de Principios*) where it enunciated its basic conception of what legal framework Chile should have before electoral politics could be restored. However, only when General Pinochet consolidated his position within the Junta, a precise and detailed legal framework was produced. The Constitutional Commission created in late 1973 issued a document in 1978. The document was submitted for revision to the Junta-appointed Council of State, which in turn produced a new draft in mid 1980. Between the time the Council of State submitted its draft and General Pinochet called for a plebiscite, a group most closely associated with General Pinochet himself revised and introduced many controversial permanent and temporary provisions in the proposed Constitution. Among those provisions were changes in the electoral rules and in the timeframe for democratic restoration.

The government of General Pinochet made public the new Constitution in August of 1980 and called for a national plebiscite to ratify it in September of 1980. Often, scholars have pointed to the framework devised in the 1980 Constitution to secure military tutelage over democracy in that country as a defining characteristic of that body (Barros 2002, Portales 2000, Loveman 1999). Even though some of the electoral rules adopted sought to protect that military tutelage, here I only study electoral rules

adopted, but not the military's view of democratic government. I analyze what they changed and what was left intact from the previous system and from the Ortúzar and Council of State's drafts. I show how those changes responded to their interests to distort political preferences of the electorate to the advantage of the military's own political party.

By looking at what rules they adopted, and comparing them to the rules existing before 1973, to the Ortúzar and Council of State's drafts and to other rules that could have been adopted, I discuss what they sought to achieve and what they aimed to prevent. In a way, I show what to do and what not to do when attempting to alter and modify an existing political party system. I look at how designers attempted to distort rules in their favor and change the existing party system. But I also look at how political parties have resisted, adapted and modified the rules established by the original designer. I provide a framework to understand how far electoral rules can go into changing a party system, and how not all existing rules are considered. Designers are bound by certain frameworks and fail to consider all the options available to them.

I do not challenge the claim that electoral rules have an effect on the party system. Yet, I conclude that existing and previous electoral arrangements themselves influence the designers in such a way that many choices available to designers are not even considered when establishing a new set of electoral rules. This is a story of how monopoly designers make use of the opportunities available to them to shape and influence in their own benefit the way voters exercise control over elected politicians.

This is a story of how they ignore certain rules that could have aided them and adopt other rules that backfire. Finally, this is also a story of constraints and bounds that prevent even monopolistic designers from adopting their most preferred choices.

Duverger suggested that electoral laws influence the number of political parties that exist in any given country. Although he was not the first to suggest the causal link, nor did he claim it was a 'law', he is properly credited with formulating the belief as a general causal rule. I start with Duverger's initial claim. However, I expand the definition of electoral rule to include **all** the arrangements that need to be made before a vote is actually taken, not just whether the allocation of seats in the elected body will be done using plurality or a proportional representation. Those choices are:

Will the electoral rules be entrenched in the Constitution or will they be subject to change by non-super majority laws.

- ? If seats will be allocated by proportional representation (PR) or in single member districts (SMD).

- ? How many seats each district will get (if PR is chosen over single member districts).

- ? How districts will be drawn and how often there will be redistricting.

- ? Who will be eligible to vote and what hurdles will be placed on the enfranchisement of voters and the exercise of the vote.

- ? Who will be eligible to run and what hurdles will be set for candidates to be placed on the ballot.

? How many offices will be chosen by each voter, and if elections will be held

concurrently.

? How voters will select candidates of their choice (will they vote for individual

candidates or for political party lists?).

In the discussion of each of those features, I show how the designer set up rules that sought to minimize the cost of an electoral defeat. Devised as insurance mechanisms against an electoral defeat, the electoral rules chosen sought to minimize the loss in seats, and political power, for the designer's party in case of an electoral loss. As with most insurance mechanisms, the rules chosen would also hinder the electoral designer's party in case of an electoral victory. But because they were chosen primarily based on beliefs that the designer's party would be in the minority, they can be appropriately seen as best response strategies.

Each one of the features discussed and the rules chosen allows me to underline the three constraints that electoral designers face when choosing electoral rules. In some of the chapters I stress the need to give the opposition a chance of winning and to persuade them to participate in the press. In others, I focus on how the designer chose rules that were less than optimal to achieve the intended objective. In most chapters I also discuss how those rules, overtime, have turned out to work in favor or against the initial objectives for which they were drawn.

The discussion of how the dictatorship tackled each one of those rules constitutes a chapter in my dissertation. In Chapter 1, *The Military as Monopoly Designers and as a Political Party*, I review the history of the military regime and its efforts to establish a new Constitution. I look at the electoral rules proposed by the Ortúzar Commission and the Council of State and compare them with the rules adopted by the 1980 Constitution. I also study the electoral laws adopted by the military after 1980. I provide a historical background framework for the choices made by the Chilean designers. In this chapter I set to show that Pinochet was in fact a monopoly designer and that the dictatorship sought to convert itself into a political party.

In Chapter 2, *Monopoly Design and Electoral Rules Bargaining*, I discuss changes to electoral rules adopted after the 1988 plebiscite. There are two types of changes. Those adopted by the military before the inauguration of the elected democratic government in March of and those adopted after March 1990, when there was bargaining under the conditions specified in the 1980 Constitution. I show that monopoly design ended with the 1988 plebiscite, that some bargaining took place for the 1989 constitutional reforms and that full bargaining has been the rule after 1990.

I approach the choice over Single Member Districts (SMD) versus Proportional Representation (PR) as a decision over adopting or rejecting an insurance policy in Chapter 3 (*Proportional Representation or Single Member Districts*). By choosing PR, the designer 'buys' insurance in case her party is in the minority. When choosing SMD, the designer foregoes the insurance and risks losing it all under a winner-takes-all

system. In addition, when designers want to foster two strong centrist parties (median voter theorem), they choose SMD. When the choice is to foster more diversity among parties, they select some form of PR. In Chile, the dictatorship chose PR over SMD in 1980 for senatorial elections and before the 1988 plebiscite for Chamber of Deputies elections. The Pinochet regime preferred to secure representation for its candidates rather than to create centrifugal incentives for political parties. Yet, by reducing district magnitude compared to the pre-1973 rules, some incentives were created to reduce the number of political parties and prevent polarization. The adoption of more permissive party coalition formation rules and the adoption of a larger district magnitude PR for municipal elections (M=6, 8 or 10) have undermined the reductive effect of the electoral system in national elections.

In Chapter 4 (*District Magnitude*), I argue that knowing the electoral support for his party after the 1988 plebiscite, the electoral designer chose a district magnitude of 2 to minimize the effects of an electoral defeat. Any other PR arrangement would have resulted in fewer seats in parliament for the designer's party. I show that a simple formula, a rule of thumb of a sort, can be used to identify the district magnitude that will maximize one's seats holding electoral support constant. In this chapter I show how the system chosen gave the opposition a good chance of transforming a victory into a majority of seats, but it also served as an insurance mechanism for the designer party in case of an electoral defeat. I also show how the designer's party overlooked some alternative seat allocation rules that would have better served the objectives of ensuring

against an electoral loss. Finally, I show how the district magnitude chosen worked better for the electoral designer in the first election than in posterior elections.

By gerrymandering and mal-apportioning districts, designers can produce an additional distortional effect on how votes are transformed into seats by drawing districts to distort electoral preferences in her party's favor. This is what I discuss in Chapter 5 *(District Boundaries)*. Once the choice of PR with fixed DM of 2 was made, districts were drawn in such a way as to over represent the regions where the pro-Pinochet vote was strongest. The designer drew districts so that it would be difficult for the opposition to get both seats. Areas where the democratic opposition was strong were grouped into more populated districts whereas areas where the designer's party was strong got fewer voters per district. Here I show how, over the years, contrary to the military expectations, the opposition has performed better in smaller districts than in more populated districts. Designers failed to anticipate future changes in population and electoral preferences. This chapter shows how having monopoly power to select electoral rules matters more for the first election than for subsequent elections in the future.

Chapter 6 discussed *Voter Eligibility*. The electoral designer adopted enfranchisement laws intended to produce a high (but not full) turnout in the 1988 plebiscite. Although a high turnout would legitimize the plebiscite, the designer suspected that the higher the turnout the more likely he was to lose. Voting was made mandatory in the Constitution, but registration was made voluntary to create a

coordination problem for the opponents. That arrangement has had some unintended

consequences. Because a large majority of those who became eligible to vote after 1988

have failed to register, older Chileans are more likely to vote than younger ones.

Consequently, it has been more difficult for the electorate to move beyond the Yes-No

cleavage that has characterized Chilean politics since 1988. That has favored the

Concertación. In addition, although a higher turnout historically favored the left, in

recent years it has favored more strongly conservative parties. The additional registration

hurdles in place since 1988 were designed to aid the electoral designer win the plebiscite

but in the long term they have worked against the electoral designer's party. This is a

chapter about how the designer failed to anticipate the long-term consequences of his

decisions.

In Chapter 7, I discuss *Candidate Eligibility*. The tradition of no re-election

restrictions had an inertia effect on the electoral rule adopted by the military. I suggest

that re-election restrictions could have worked in favor of the military. Because the

designers did not place term limits and restrictions on re-election, they failed to take

advantage of a rule that could have distorted preferences in favor of the designer's party.

Chapter 8 deals with the *Number of Offices Chosen*. In deciding how many

offices voters can select in every election, designers can restrict the possibility of ticket

splitting. I show how the designer overlooked the possibility of manipulating the rules to

create incentives for ticket splitting. I discuss the amount of ticket splitting in Chile after

1990 and how some changes to electoral rules have affected the incentives for ticket splitting.

Finally, Chapter 9 deals with *Electoral Pacts: Open Lists vs. Closed Lists.* Designers can reduce the number of political parties by banning electoral pacts and reduce the power of existing parties by establishing open rather than closed lists. In Chile, the designer originally prevented electoral pacts but when the designer's party split into two, electoral pacts were allowed. The democratic opposition also benefited with that change, but the main beneficiary was the designer, as the two parties that defender his interests could form a unified coalition. Although the designer rejected closed lists, because of the small district magnitude, political parties can successfully transform their open lists into closed lists where voters have no choice over which of the party's candidates will get into office. This is a chapter about unintended consequences of electoral rules over time. Although the designer opposed closed lists, his choice of small district magnitude combined with open lists effectively gave parties the option to face elections as if closed lists were the rules.

By analyzing how the electoral designers came to their choice and by assessing the effects of those choices, I test the designers' ability to use rules to maximize their chances of keeping power. I also test how the three main constraints outlined above (giving the opposition a chance to win, information shortcuts and time inconsistency) restricted the monopoly party's ability to optimize its chances to staying in power. While some chapters present the predicament of a monopoly designer having to select rules that

did not maximize the electoral chances of the designer's political party, other chapters deal with the way in which the designer copied electoral rules used in the past and overlooked some rules that could have had distortional effects more convenient for the designer's party. All the chapters show how the initial intended effect of the rules selected diminish over time. In many cases, the intended effect worked early on but then reversed and began to work against the designer's party. In other occasions, the intended effect was never realized and the distortional effect of the electoral rules chosen never favored the designer's party.

In the end, I find that given the constraints, the dictatorship did well in selecting rules that favored the designer's party. I argue that the Pinochet dictatorship used its monopoly power to limit the loss of power and influence in case of an electoral defeat. In a sense, the dictatorship used its ability to unilaterally select electoral rules as an insurance mechanism against electoral defeat. Because the dictatorship chose the rules, the electoral defeat suffered in 1988 by Pinochet and in 1989 by the political parties that supported the dictatorship did not result in an absolute loss of power and influence. Despite being in the minority, the forces loyal to Pinochet could exercise an enormous amount of power and influence in the legislative because of the distortional effects of the electoral rules that gave those parties much more political representation than they would have had under alternative electoral rules. Yet, I also show that the electoral designer overlooked a number of rules that could have more effectively limited the political power and influence of the new democratic government. By resorting to

electoral rules used in Chile before the military dictatorship, the Pinochet regime did not make an optimal use of its monopoly electoral designer power.

Finally, I show that the original effect of the electoral rules chosen to distort electoral preferences in favor of the designer's party becomes blurred over time. The power to unilaterally pick the electoral rules has a much greater effect in the first election after transition to democracy than in subsequent elections. This dissertation offers contributions to our understanding of democratic theory, of the effect of electoral rules and it provides a general framework for policy recommendations for institutional design. While I show that having the power to impose electoral rules can be used to favor one's own party, I also show that there are constraints to the exercise of monopoly power, that monopoly electoral designers make mistakes and that, over time, the original effect of the electoral rules no longer works in favor of those who selected them.

Table 1. Brief Description of Major Electoral Rules in Chile, pre-1973 - 2001

Electoral Rule	Before 1973	1988	2001
Proportional representation or SM districts	PR 9 senatorial districts 29 chamber districts	PR 13 senatorial districts 60 chamber districts	PR 19 senatorial districts 60 chamber districts
District Magnitude	Varying 1-18 for deputies and fixed at 5 for senators	Fixed at 2 for deputies and senators.	Fixed at 2 for deputies and senators, varying 6-10 for municipal councils
District Boundaries	No redistricting provisions, districts drawn used 1930 census but strict proportionality was not observed	No redistricting provisions; districts drawn used 1982 census but no strict proportionality observed	No redistricting provisions, Chamber districts same as in 1988, 6 new senate districts.
Voter eligibility	Mandatory voting, Universal at age 18 (since 1970); electoral registration every ten years until 1962 and once in a lifetime thereafter	Mandatory voting, but voluntary registration, Universal at age 18; registration needed only once in life.	Mandatory voting, but voluntary registration, Universal at age 18; registration needed only once in life

Candidate eligibility	No re-election restriction, anybody can run, but party affiliation is favored, long periods between registration and election day	No re-election restrictions, Marxist candidates cannot run, long periods between registration and election	No re-election restrictions
Offices chosen by each voter	Presidential, parliamentary and municipal not held concurrently	Presidential and parliamentary held concurrently, no municipal elections	Presidential every 6, parliamentary every 4 (concurrent every 12 years), Municipal every 4 (never concurrent)
Electoral Pacts; Open lists vs. closed list	Permissive electoral pacts provisions until 1962, allowed at national level thereafter. Open list with ranking order preference until 1958, open list until 1973	Open lists with no electoral pacts.	Open lists with electoral pacts at the national level.