

Chapter 1 Pinochet, the Monopoly Designer (October 24, 2002; 12844 words)

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.

Not surprisingly, most scholars identify the September 11, 1973 military coup as a defining moment in Chilean history. A stable democracy, by any Latin American standard, came to an end that day when the military overthrew the socialist government of Salvador Allende. Forty-one years of peaceful transfers of power between democratically elected governments, which totaled eight presidential and eleven parliamentary elections, came to an abrupt, but at the time also predictable, end with the September 11 coup d'état.¹ Much has been written about the breakdown of Chile's democracy and the reasons behind the 1973 military coup. All sorts of explanations, from purely Marxist theoretical frameworks have been used to explain and understand the breakdown of democracy in Chile.² In fact, seeking to explain the demise of Chilean democracy is a favorite task of Chileanists.³ Human rights violations committed by the dictatorship have also captured scholarly attention.⁴ A large body of literature has been produced on the sociological, cultural, historical, economic and political changes and events that took place during the years of the dictatorship. Studies of authoritarian culture, popular sector resistance, women's organizations and even sociology of the exile have flourished and enriched our understanding of Chile and particular social processes.⁵ Yet, perhaps the most fruitful scholarly contribution resulting from the Chilean, and in a larger extent Latin American, political development deals with what we have termed

¹ Gil (1966, 1969), Petras and Zemelman Merino (1972), Kaufman (1972), Zammit (1973), Raptis (1973), Sweezy & Magdof (1974) and Loveman (1976) outline the growing conflicts between the working class and peasants with the upper class, landowners and the military in the years leading up to the coup. A similar point has been recently made by Vitale (1998) and Salazar and Pinto (1999)

² See the Marxist approach of Petras and Morley (1975), Roxborough and Roddick (1977), the sociological volume by Valenzuela and Valenzuela (1976), the rational choice approach by Cohen (1994), and the economist approach by Meller (1996) and Goldberg (1975).

³ In addition to those listed above, see Alexander (1978), Caviedes (1979), Faúndez (1988), Falcoff (1989), Fleet (1985), García (1977), Goldberg (1975), Landsberger and McDaniel (1976), Matterlat (1976), Palacios (1979) and A. Valenzuela (1978).

⁴ See in particular America's Watch (1983), Ahumada et al. (1990) and Constable and Valenzuela (1991).

⁵ For analysis by exiled leaders see Vuskovic (1978), Bitar (1980), Zaldívar (1983), Almeyda (1986), Almeyda et al. (1986), Arrate et al. (1986), Velasco Letelier (1986), Schnake (1988), Vodanovic (1988), Teitelboim (1988), Sule (1988), Politzer (1990), Arrate (1991) and Rodríguez (1995). For popular culture see Aman and Parker (1991). For women's political mobilization see Andreas (1977), Aylwin, Correa and Piñera (1986), Arteaga and Laso (1986), Chuchryk (1989), Garrett-Schesch (1975), Lavrin (1995), Moya-Raggio (1984), Salinas (1987), Schneider (1991, 1995) and T. Valdés (1988). For popular sector mobilization see Oxhorn (1991, 1995) and Roberts (1995, 1998). For overall accounts of the dictatorship see O'Brien and Roddick (1983), Cavallo, Salazar and Sepúlveda (1997), Drake and Jaksic (1995) and Spooner (1994).

transition literature.⁶ Studies on the causes of transitions to democracy, what causes dictatorships to cede power and how democratic forces step up their demands and mobilize have used Chile as a resourceful source of data and theoretical innovations.⁷

This approach bares some resemblance to transition literature. Yet, in this study I do not seek to explain why or how dictatorships give way to democratically elected governments. Instead I assume that everyone knows that sooner or later democratic elections will replace dictatorial rule. The dictator in power knows and accepts that. However, both the dictatorship and the opposition ignore when the transition will take place. The dictator, aware that a transition will eventually take place, prepares for the time when elections will replace authoritarian rule as the only game in town. For that reason, this dissertation will view the dictatorship as a government that knows its finite nature. While the government might credibly rule out elections in the near future, the dictator is well aware that elections will eventually take place.⁸ Only that assumption justifies the dictator's concern with establishing and outlining electoral rules even before an electoral calendar is even drawn or elections are scheduled. The belief that elections will replace authoritarian rule also prompts the dictatorship to seek ways to perpetuate its rule by means other than authoritarianism. Knowing that elections will be held one day, the dictatorship seeks to convert itself into a political party—or at least an electoral coalition—that might advance the authoritarian government's objectives after elections replace sheer force as the means of determining who rules.

The successful completion of a military coup calls into question the entire legitimacy of the constitutional order in existence before the take over: military coups are unconstitutional.⁹ Military coups might seek to restore the existing constitutional order or they might have the broader objective of instituting a new legal and constitutional order. A military coup aimed at deposing a government that has stepped out of its constitutional mandate is in that sense radically different from a coup led by people who ultimately seek to establish a new constitutional framework. The 1973 military coup in Chile made it clear since its first public statement that it sought to revamp the entire political order and not simply return to the 1925 Constitution.¹⁰

⁶ See for instance the edited volume by O'Donnell, Schmitter and Whitehead (1986), Malloy and Selligson (1985), Stepan (1989) Shain and Linz (1995), Przeworski (1991), Garretón (1986, 1987, 1989, 1990, 1991), Muñoz (1990) and Huneus (1985, 1987, 1988).

⁷ The body of literature is enormous, but the most widely read books are O'Donnell, Schmitter and Whitehead (1986) and Przeworski (1991). For a historical overview of the case of Chile in transition literature see Whitehead (1999).

⁸ This is certainly true in the case of Chile as Cristi (2000: 7-20) shows, the Junta discussed future elections in their first executive and secret meeting days after the September 11 coup.

⁹ Although most governments that emerge from successful coups will often claim that their primary objective is to restore the role of the existing Constitution. See Skidmore (1988) for the case of the military coup in Brazil and O'Donnell (1988) for the case of Argentina.

¹⁰ See A. Valenzuela (1995), Barros (1996), Cavallo, Salazar and Sepúlveda (1997), Cristi (2000), Huneus (2001).

The Military Coup

The Junta came to power by overthrowing the Popular Unity (UP) government, a coalition of socialists (PS) and communists (PC) that had brought Salvador Allende to the presidency in 1970. In addition to the PS and PC, UP was comprised of the Radical Party (PR), the *Movimiento de Acción Popular Unitaria* (MAPU) and *Izquierda Cristiana* (IC)—the latter two groups resulting from splinters from the Christian Democratic Party (PDC) in 1969 and 1971 respectively. Allende sought to implement a radical social change program that included the full nationalization of the copper mining industry, an aggressive agrarian reform program, nationalization of many industries and the overall empowerment of the working class with the state playing a much more assertive productive role.¹¹ The confiscation of land and factories alienated the conservative opposition, grouped in the National Party (PN).¹² The PDC had received the support of the conservative parties in the 1964 presidential elections but its social policies alienated the initial conservative support.¹³ Eduardo Frei Montalva (1964-1970) partially nationalized the copper mining industry and implemented an agrarian reform program, but the UP alliance discarded it as insufficient and opposed his government.¹⁴ The PDC presidential candidate in 1970 was a left-wing party leader and campaigned on more aggressive social policies. In fact, the policy positions of PDC's Radomiro Tomic and Salvador Allende did not differ dramatically, but the anti-communist stance of most PDC leaders and the unwillingness on the part of the left to support Frei's reformist government made a UP-PDC coalition very unlikely.¹⁵

Despite having voted in Congress to elect him president,¹⁶ the PDC joined the ranks of the opposition soon after Allende's inauguration in late 1970. Large, and often politically motivated, academic debates have survived the test of time but failed to reach a consensus over the reasons behind the UP's inability to reach a compromise with the more reformist factions within the PDC to reduce the strength of the opposition.¹⁷ The UP government went on to win a majority in the 1971 Municipal election. But the economic, social and political crisis that ensued—motivated in part by Allende's policies,

¹¹ For a good discussion of the UP government and its policies, see Arriagada (1974), De Vylder (1976), Garcés (1976), Goldberg (1975), Petras and Morley (1975), Loveman (1976), Valenzuela and Valenzuela (1976), Landesberger and McDaniel (1976), Altamirano (1977), Roxborough, O'Brien and Roddick (1977), Stallings (1978), A. Valenzuela (1978), Gil, Lagos and Landsberger (1979), Garretón and Moulián (1983), Davies (1985), Winn (1986), Faúndez (1988), Bitar (1995), Fontaine (1999).

¹² See Scully (1992), Falcoff (1989) and Roxborough and Roddick (1977) for a good account of the conservative party's position and strategies against the Allende government policies.

¹³ Operations and Policy Research (1964), Parrish, Von Lazar and Tapia Videla (1965), Petras and Zemelman Merino (1972), Fleet (1985), Scully (1992).

¹⁴ Loveman (1976), Petras and Zemelman (1972) and Kaufman (1972), Zeitlin and Ratcliff (1988).

¹⁵ For a good account of the PDC position over the period see Fleet (1985), Arriagada (1986), Cash (1986), Aylwin et al (1990), Ortega Frei (1992), Scully (1992), Sepúlveda (1996) and Gazmuri, Arancibia and Góngora (1996). See also Da Silveira (1968) for a depiction of the PDC as instrumental to Marxist penetration.

¹⁶ The 1925 Constitution required that if no candidate obtained a majority of the vote, Congress would elect the president from among the top two finishers, as it was the case in 1970.

¹⁷ See Garretón and Moulián (1983), Arriagada (1986), Landesberger and McDaniel (1976), Roxborough and Roddick (1977), Vuskovic (1978), Valenzuela (1978), Altamirano (1977), Tomic (1988), Goldberg (1975), Aylwin (1998), Jocelyn-Holt (1998), Jorquera (2000).

his inability to control the most radical sectors of his own coalition, fierce opposition by the PDC and conservatives and by the destabilization efforts on the part of the United States—soon eroded popular support for Allende. High inflation, growing unemployment, a black market (product of stringent price controls and conservative destabilization efforts) and a series of painful and economic damaging strikes brought the country to a standstill two years after Allende’s inauguration.

The March 1973 parliamentary election reflected the conflict that separated pro and anti UP Chileans. The opposition (PN and PDC) joined forces to form an electoral alliance. Although the opposition won the election, it fell short of the required, and self-imposed goal, two-third majority threshold that would have allowed them to constitutionally force Allende to resign from the presidency. Allende and his UP were able to transform an electoral defeat—less than 50% of the vote, but more than what Allende had obtained in 1970—into a victory. The opposition could not remove him from office and Allende did not feel compelled to broaden his government coalition.

Table 1.1. Electoral Results in Chile, 1964-1973

Election	Rightist Parties	Center Parties	Leftist Parties	Total Votes
1964 Presidential	5.0	56.1	38.9	2,512,147
1965 Parliamentary	15.4	59.3	21.8	2,335,336
1967 Municipal	12.9	56.8	29.7	2,247,803
1969 Parliamentary	20.0	44.7	31.2	2,307,512
1970 Presidential	34.9	27.8	36.2	2,923,294
1971 Municipal	22.2	26.6	50.3	2,789,180
1973 Parliamentary	54.5		43.7	3,629,049

Source: Urzúa Valenzuela 1964: 60-61, 136-137.

The political situation worsened after the 1973 election as the opposition’s victory fell short of their expectations and the UP government felt strengthened by the left’s best electoral showing ever. By late August 1973, a majority of observers, and most Chileans for that matter, could foresee that a democratic solution to the impasse was no longer possible. Despite the heroic and even epic reaction by Allende to the September 11 coup, the actual military intervention did not surprise most Chileans. The military coup was the chronicle of a death foretold of Chile’s 30-year old democracy.¹⁸ The coup brought to an end a 41-year period of uninterrupted regular elections. But just as the coup came as no surprise to most observers, the development of a long-term strategy on the part of the Junta surprised many who thought the Junta would govern for a short period of time after which it would hand power over to democratically elected authorities (Cavallo, Salazar and Sepúlveda 1997: 17).

¹⁸ Garretón and Moulián (1983), Valenzuela and Valenzuela (1976), González Camus (1988), Jorquera (1990), Angell (1993), Jocelyn-Holt (1998) and González (2000).

The Junta cancelled all political party activities. Citing massive government tampering with electoral rolls before the 1973 parliamentary election,¹⁹ the electoral rolls were destroyed and the independent electoral oversight board was shut down. And without elections, electoral rules are pointless. Yet, the future of the Junta that deposed Allende was not written in stone and the way in which elections were to take place in the future was also left unanswered. The Junta's consolidation in power was not an automatic process. Nor was it automatic that General Pinochet would emerge as the strongman within the Junta, would position himself as the monopoly electoral designer in the 1980 Constitution and would devise electoral rules to foster the electoral chances of the political party that was formed to promote his legacy and policies.

Upon taking office, dictators often assume executive, legislative and constituent powers. In some cases they do not close the legislature, but they make it clear that the legislature continues to function because the new government so chooses and not because it is constitutionally mandated.²⁰ Yet, because it is impossible to produce an entire new set of laws and regulations, a premise usually accepted by all social, economic and political actors is that old rules prevail unless the new government indicates otherwise. Such was the case in Chile as well. Existing laws and rules were in force until the Junta directly or indirectly repealed them by enacting new laws, decrees and regulations. The 1925 Constitution was in force until the moment the Junta took power. With the new authoritarian government, the Constitution could no longer be in force for the very existence of a non-elected government was a violation of the 1925 Constitution. It was the decision of the new government to determine what provisions of the 1925 Constitution would remain in place and which would be abolished.²¹

The adoption of a new Constitution was not a priority of the dictatorship.²² Military coup plotters are often more concerned with bringing an end to a given government than with the characteristics of the government that will replace it. Although the plotters could discuss both the strategy to successfully get rid of the sitting government and the plans to install a new government, they often opt not to because the latter discussion might give rise to disagreements and potentially derail the forced take over. If primarily concerned with deposing a government, plotters are better off discussing as little as possible their plans for after the coup. In Chile, during the first months after the coup, the military Junta sought to restore order and undermine any efforts aimed at restoring Allende's Popular Unity government. The parliament was closed, political party activity was officially suspended and opposition newspapers were

¹⁹ *Libro Blanco...* (1973), Pinochet (1980, 1983, 1990), Valdivieso (1988), Domic (1988), Whelan (1989), Rojas Sánchez (1998).

²⁰ For example, the Brazilian dictatorship (1964-1985) only closed Congress once for a brief period of time, but regularly influenced elections, prevented some individuals and political parties from running and influenced, if not dictated, decisions made by Congress. See Skidmore (1988).

²¹ A. Valenzuela (1995), Cavallo, Salazar and Sepúlveda (1997: 13-40), Cristi (2000), Huneus (2001: 77-129) and Barros (1996) discuss this issue at length.

²² As discussed below, a committee was immediately formed to discuss a new Constitution, but it did not constitute a group with a significant influence nor did it receive the undisputed attention of Pinochet and the Junta Members. Although the formation of the constitutional committee indicates that they did have in mind the writing of a new text, it was not one of their priorities at the outset of the military government.

closed. The Junta also sought to revamp the nation's destroyed economy and to control rampant fiscal deficit and inflation. Immediate efforts were made to restore relations with foreign creditors and the U.S. government, while diplomatic ties were severed with the Soviet Union, Cuba and other communist nations. Supporters of the Popular Unity government were prosecuted just as the Junta sought to consolidate its power over the nation. The regime immediately began to adopt some of the policies that would allow General Pinochet to stay in power for 16 and half years. Yet, it would not be until 1980 that the 1925 Constitution would be officially replaced with a new document.

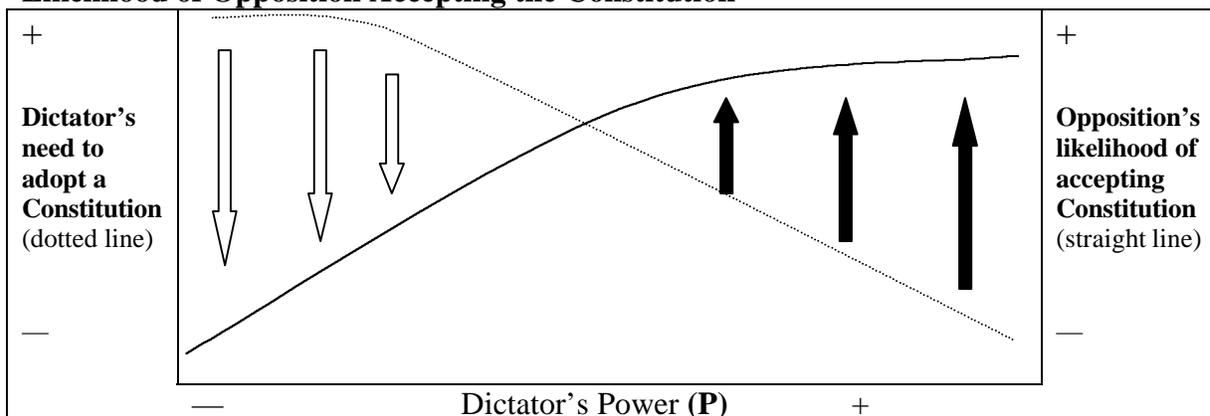
True, as Cristi (2000), Huneus (2001: 213-266) and I discuss below, the Junta did appoint a "constitutional committee" in late September of 1973, but none of the members of the committee were military officers. Although the Junta did anticipate the need to solve the constitutional impasse, the creation of the committee cannot be interpreted as indicative of the Junta placing constitution-making atop its priority list. Huneus recalls that the Junta in its first session of September 13, 1973 discussed that "the promulgation of a new constitution is under consideration [and that] such work is under the supervision of university professor Jaime Guzmán" (*Actas de la Honorable Junta de Gobierno*, Session 1, September 13, 1973 in Huneus 2001: 259), but it was clear that the writing of a new constitution was not an immediate priority of the new government precisely because the constitutional committee was one of the few initiatives where the military were not directly involved. This is not to deny that the Junta held the 1925 Constitution in low regard, but to assert that the Ortúzar Commission was not one of the influential groups within the new government. Starting on September 11, the Junta enacted decrees and decree laws that contravened existing constitutional provisions, but only occasionally asked the "constitutional committee" to consider some of the decrees. Even then, the Junta made the final decisions on the constitutionality of new decrees and decree laws.

The consolidation of the Junta in power and the emergence of Pinochet as its leading member would indicate that the adoption of a Constitution—which among other things would need to establish some type of a calendar for the transition to democracy—would run against the interests of Pinochet and the Junta. Not accidentally, soon after September 11, the Junta moved away from its original claim of intending to stay in power until the "reestablishment of the political order and the overcoming of the economic crisis" (in Huneus 2001: 215). The Junta began to talk about 'goals not deadlines'—*metas, no plazos*—and within a few months after the coup, the Junta had already changed its public discourse as it adopted a more ambitious program of radical, social and political transformation. Giving priority to a constitutional committee would mean that there would be 'deadlines' rather than just 'goals' (Cavallo, Salazar and Sepúlveda 1997: 17). In discussing the 1980 Constitution, Barros (1996) has noted that *even custom-made shoes bind*, describing the problems the Junta would bring upon itself if it were to outline any transition to democracy calendar. Logically, the Junta had no urgency to bind itself immediately after taking office.

Although constitutions bind, the likelihood of having others accept your constitution is highest when your power is strongest. Because *even custom-made shoes*

bind, the opposition is more likely to accept the dictator's favorite Constitution when the dictator's power is strongest. For that reason, producing a new constitution when the Junta felt most secure in power might have well been in the Junta's best interest. As the Junta consolidated its power and made it clear that a quick return to democratic government should be ruled out, the opposition perceived 'deadlines' as more important than 'goals.' In that sense, binding a very powerful dictatorship to a Constitution (and a transition calendar) is in and of itself a step forward for the opposition. Therefore, we can identify a trade-off between the powerful dictator's desire to custom-make a Constitution and his need for one. Assuming diminishing returns, Figure 1.1 presents a simple intuition of the trade-off between the two functions. The first function, *need to adopt a constitution*, is concave and decreasing as the dictator's power increases. The *likelihood of having the opposition accept the dictator's constitution* is also concave but it increases as the dictator's power increases. When the dictator's need to adopt a constitution is greatest (for example, when the dictator is about to be overthrown and needs to protect its supporters) the opposition is least likely to accept the dictator's proposed constitution. On the other extreme, when the dictator's power is overwhelming, the opposition is more likely to accept the dictator's constitution. There is an equilibrium area where the dictator proposes a Constitution and the opposition will accept it. That area in Figure 1.1 (**dark arrows**) can be characterized as the set of constitutional provisions preferred by the dictator and accepted, and therefore legitimized by the opposition. The area marked by the **dark arrows** is represents the moments when the dictator has enough power to propose a constitution and the opposition lacks power to reject it. The other possible equilibrium area is marked by the light arrows and represents the times when the opposition has strong bargaining power. The dictator needs a Constitution but does not have enough power to impose it. The case of the 1980 Constitution corresponds to the dark arrows: the dictator had monopoly power and the opposition accepted and legitimized the Constitution.

Figure 1.1. Dictator's Trade Off Between Need to Adopt a Constitution and Likelihood of Opposition Accepting the Constitution



The Consolidation of Pinochet's Power

There were three significant developments between 1973 and 1980 that strengthened Pinochet's dominant position as Chile's ruler. First, a power struggle that helped him secure the presidency of the Junta.²³ Second, the adoption of a series of economic policies aimed at implementing a broad and ambitious set of neo-liberal policies together with the consolidation of an oppressive military regime²⁴ and, third, the opposition's failure to form a united front against the dictatorship.²⁵

The inability on the part of the opposition to form a united front to oppose Pinochet and the success of the economic policies implemented by the government helped Pinochet strengthen his power. Pinochet obtained the position of president of the Junta, established himself as President of the Republic and successfully controlled the constitution making process, securing the position of president for much longer than most observers and political actors first thought possible. As Pinochet consolidated his rule and as the economic chaos gave way to an economic boom and as the overly politicized social conflicts were replaced by social order imposed by the authoritarian government, the opposition had more and more incentives to look for common ground to oppose the regime and—because he had emerged as the leading figure in the Junta—Pinochet himself.²⁶

His consolidation in power is most surprising because Pinochet only joined the plotters a few days before the coup. Perceived as a constitutionalist officer loyal to Carlos Prats, his predecessor as Chief of the Army, Pinochet initially took the position of Junta president because he represented the Army, the oldest branch of the Armed Forces. Although the Junta presidency was originally supposed to be rotated among the four members, Pinochet soon moved to keep the position permanently. In July of 1974, via Decree 527, the Junta separated legislative and executive powers. Pinochet assumed executive powers (not as president but as *Jefe Supremo de la Nación*) while the Junta—with Pinochet being one of its four members—retained legislative powers (Cavallo, Salazar and Sepúlveda 1997: 27-33). Although the promulgation of Decree 527 was not exempt of conflicts within the Junta, Pinochet successfully retained control of the executive without losing his *primus-inter-pares* status within the Junta.

²³ For a detailed account of this conflict, see Cavallo, Salazar and Sepúlveda (1997: 56-64), but a more ample historical account of Pinochet's involvement in the coup can be found in Constable and Valenzuela (1991: 47-53), Prats González (1985), Chavkin (1989), Verdugo (1989), Marras (1988), Falcoff (1989), and most recently in González (2000). Pinochet's own account can be found in Pinochet (1980), Whelan (1989), Canessa and Balart (1998) and Rojas Sánchez (1998).

²⁴ See Valdés (1995), Edwards and Cox-Edwards (1991), Vergara (1985), Bitar (1980), O'Brien and Roddick (1983), Loveman (1988) and Collier and Sater (1996: 359-389).

²⁵ Constable and Valenzuela (1991: 271-320), Drake and Jaksic (1995), Aylwin (1984, 1988, 1998), Foxley (1983, 1987), Bascuñán (1990), Arrate and Hidalgo (1989), Arriagada (1986), Almeyda (1986, 1993), Gazmuri and Martínez (2000).

²⁶ See in particular Aylwin (2000), Constable and Valenzuela (1991: 271-320), Ortega Frei (1992) and Cavallo, Salazar and Sepúlveda (1997: 265-445).

Later, in December of 1974, Pinochet succeeded in getting the Junta to name him President of the Republic (Cavallo, Salazar and Sepúlveda 1997: 56-64). However, that move left deep wounds with one of the Junta members. Air Force Commander Gustavo Leigh reluctantly agreed to sign Decree 806 and expressed his discontent with Pinochet's desire to revoke the 1925 Constitution. The publication of the *Declaration of Principles of the Government of Chile* earlier in 1974 also helped Pinochet position himself as the leader of the 4-men Junta. The *Declaration* was drafted mainly by a close Pinochet associate, constitutionalist lawyer and university professor Jaime Guzmán.²⁷

Pinochet further consolidated his leadership within the Junta on January 4 of 1978. The United Nations voted on December 16, 1977, overwhelmingly (96 to 5, with 14 abstentions) to condemn the Junta government for human rights violations. Pinochet responded by calling for a national plebiscite (called *consultation* to avoid the impression that it was an election) on January 4, 1978. The *consultation* was worded in unequivocal terms, "In the face of the international aggression unleashed against the government of the country, I support President Pinochet in his defense of the dignity of Chile and I reaffirm the legitimacy of the Government of Republic to carry out in a sovereign way the process of institutionalization of the country" (in Sigmund 1993:113). The "yes" was identified with a Chilean flag and the "no" was placed next to a black flag.

Pinochet transformed the UN condemnation into an opportunity to consolidate his power and legitimize his government. Other Junta members opposed the staged show of support. General Leigh in particular was vocal in his rejection of Pinochet's effort to transform the 'consultation' into a popular ratification of Pinochet as president (Cavallo, Salazar and Sepúlveda 1997: 154-164). The National Comptroller, Héctor Humeres, attempted to block the 'consultation,' but his previously submitted retirement request was promptly approved. A new Comptroller, Sergio Fernández, a civilian Pinochet loyalist who was the Minister of Labor, was appointed. Fernández proceeded to certify the 'consultation' as valid and the vote, without electoral rolls, was conducted on January 4, 1978. The government informed that the "yes" vote had won with 75% of the vote, with 5.3 million votes cast. The vote was internationally condemned as lacking "minimum guarantees of freedom of expression" (Sigmund 1993: 114), but helped Pinochet claim individual popular legitimacy.

Pinochet's consolidation in power became more evident with the forced departure of General Leigh from the Junta on July 24, 1978. Pinochet and the other two Junta members, Navy Admiral José Toribio Merino and Carabineros Chief César Mendoza, removed General Leigh and appointed General Fernando Matthei as new head of the Air Force. Pinochet's power reached a peak when the only Junta member who had challenged his leadership was forced out. Going back to Figure 1.1, with Leigh's departure, Pinochet's power was at its highest point. He had little need to adopt a Constitution (and indirectly go from "goals" to 'deadlines'). Yet, the success of the economic policies

²⁷ Ironically, Guzmán had originally entered the government as an advisor to General Leigh. He quickly moved on to General Pinochet's staff of advisors and emerged as Pinochet's alter ego in the constitution making process. See Guzmán Errázuriz (1991), Cavallo, Salazar and Sepúlveda (1997: 27-33); Cristi (2000) and Huneus (2001: 327-388).

implemented and the profound divisions within the opposition also put him in position to impose a Constitution of his own choosing. His consolidation in power gave him monopoly control to produce a custom-made Constitution and made it more likely that the opposition would accept it because, after all, *even custom-made shoes bind*.

Pinochet's consolidation in power was possible because of the success of the economic policies implemented by his government. Starting in 1973, shortly after the coup, a group of University of Chicago-trained economists associated with the Catholic University and conservative ideologues began to occupy key posts in the ministries of Finance, Economic and Planning and in the Central Bank. The so-called Chicago Boys took control of macro-economic policies and implemented a number of neo-liberal reforms that included privatization of state enterprises, reduction in government spending and inflation control policies.²⁸ As Constable and Valenzuela note, "by 1979, the fiscal deficit had been eliminated, and annual growth rates were averaging 6.5 percent. The negative balance of payments abroad, which had reached nearly \$800 million, was trimmed to \$344 million, and the foreign debt was renegotiated. Inflation had dropped to 65 percent by 1977, and production climbed 8 percent in 1978, reducing unemployment." (1991: 189). Although the neo-liberal economic policies eventually led to a dramatic crisis in 1982, by the late 1970s the government could claim credit for a solid economic performance.²⁹

Having removed his strongest political opponent from the Junta and being credited for the country's solid economic performance, by late 1979 Pinochet could freely talk about 'goals' and not 'deadlines'. When he least needed one, he pushed for the adoption of a new Constitution. By doing so, he could exercise monopoly control over the process and produce a custom-made constitution. Moreover, as the opposition remained incapable of forming a unified front, Pinochet was also more likely to obtain popular legitimacy for his Constitution. True, Pinochet's power was significantly constrained (Barros 2002), and the 1980 Constitution did not include all the provisions that Pinochet sought to include.³⁰ Yet, the valid counterfactual here is that Pinochet would have remained as dictator without a Constitution for a few more years, not that he could have obtained a Constitution without making any concessions. Thus, in choosing to adopt a Constitution, he did not respond to short-term needs but to long-term considerations.

²⁸ For a discussion on the Chicago Boys see Vergara 1985; Constable and Valenzuela 1991: 166-198; J. Valdés 1995; Cavallo, Salazar and Sepúlveda 1997: 74-82 and Huneus 2001: 389-436.

²⁹ For the social costs of the economic policies implemented by the dictatorship see the above plus O'Brien and Roddick 1983; Foxley 1983, 1988a; Walton 1985; Arellano and Cortázar 1986; Vergara 1990; Silva 1991; Edwards and Cox-Edwards 1991; Petras and Leiva 1994; Collins and Lear 1995; Martínez and Díaz 1996; Meller 1999. For a background on economic policies in previous Chilean governments see Ffrench-Davis 1973; DeVylder 1976; Meller 1996 and Drago 1998.

³⁰ The most common one is a provision that would have made Pinochet president for a 16-year term. Most historical accounts claim that the decision to place a popular plebiscite after an 8-year term (1981-89) was a compromise move between Pinochet who wanted the 16-year transitional term explicitly written in the Constitution and other Junta members who wanted a shorter transition.

During the first years after the coup, the opposition failed to join forces. Although the PDC supported—though not openly—the 1973 coup, the Junta did not form a national unity government that included representatives from the PDC. Though a few individual members joined the government, the PDC was alienated when it was clear that the Junta switched from seeking a prompt return to democratically elected governments to implementing deep and profound social and political transformations. It is widely agreed that the PDC believed that the military would quickly turn power over to civilian authorities. If that were the case, the PDC would stand a good chance of winning the next election.³¹ As a return to elected governments became less likely, the PDC declared its opposition to the Junta but did not join the existing UP's underground resistance or the exiled opposition.

Thus, the opposition was split between the former UP supporters and the PDC. While UP leaders and sympathizers were prosecuted, jailed, exiled and even killed by the dictatorship, the PDC was allowed limited freedom to voice its opposition. Although political party activity was officially banned, PDC leaders, including former president Eduardo Frei Montalva, gave press interviews and organized political meetings with relative ease. In general, the PDC opposition was more effective than the wounded UP opposition.³² The recent history of profound political confrontations prevented them from forming a unified opposition. The consolidation of Pinochet's power and the likelihood that the Junta would not surrender power created incentives for the opposition to join forces. Eventually, the ideological and strategic differences existing among opposition parties were overcome as the looming prospects of a long military dictatorship increased.

The call for a constitutional plebiscite in 1980 provided an excellent opportunity for the PDC and the PS (not the PC) to initiate a long and difficult journey to join forces. The plebiscite was a perfect opportunity because rather than having to spell out a common ideological platform, the two groups united against a common foe, the new Constitution. Two years later, the economic crisis of 1982 provided the necessary social unrest for the opposition to sustain social mobilization against the dictatorship. A dramatic increase in unemployment (over 20% according to the government and more than 30% according to most accounts) together with a drastic 13% contraction in the national economy constituted fertile grounds for the opposition.³³ Popular sectors, neighborhood organizations, women's organizations, students and, most importantly labor unions, staged an efficient stream of public demonstrations against the Pinochet regime.³⁴ The economic crisis also led some Pinochet supporters to welcome if not a change of government, at least some concessions to the moderate opposition. When Pinochet finally agreed to have his newly appointed Minister of Interior conduct a roundtable dialogue with opposition leaders in 1983-84, the obvious choice for the PDC and moderate socialists was to form a united front to strengthen their bargaining position

³¹ Sigmund (1993: 85-94); Cavallo, Salazar and Sepúlveda (1997: 9-40) and Jocelyn-Holt (1998).

³² See Valdés (1983), Zaldívar (1995) and Arriagada (1986) for accounts of PDC actions and strategies.

³³ See Walton (1985), Vergara (1985, 1990) and Valdés (1995) for a good description of the 1982 economic crisis and its social cost. See Valenzuela and Valenzuela (1986) for the political implications of the 1982 crisis.

³⁴ See De la Maza and Garcés (1985), Oxhorn (1991, 1995), Roberts (1995, 1998), Valenzuela (1991), Moya-Raggio (1984).

(Cavallo, Salazar and Sepúlveda 1997: 83-91). With those talks, Chile began its transition back toward democracy. But contrary to the hopes of the opposition, this transition would take place within the boundaries established in the 1980 Constitution.

1973-1980: The Making of the Constitution

The Junta's mission was broadly defined in Decree Law #77 as seeking to reconstruct "the country morally and materially towards economic development and social justice, giving life to new institutional forms which would permit the reestablishment of a modern democracy cleansed of the vices that favored the actions of its enemies" (in A. Valenzuela 1995: 28-29). Although most historical accounts of the regime focus on human rights violations as the most illustrative early characteristic of the dictatorship,³⁵ others have correctly pointed out that the Junta also developed a vision that entailed the foundation of a new legal order and a new constitution.³⁶ Most of those studies have outlined the ideology of protected democracy and military tutelage rather than on electoral engineering,³⁷ but they all share the vision that the Junta had no intention of governing under the 1925 Constitution. As Valenzuela put it, "The junta's low regard for Chile's constitution was apparent in the repeated adoption of decree laws that openly contravened that document's basic provisions" (1995: 29). The new government might have not been absolutely certain about what it intended to do, but it was certain that it did not want to give the government back to the politicians and political parties that, in their view, had brought about the demise of democracy in the first place.³⁸

Yet, the successful military coup had provoked a constitutional crisis. The new government had to take a definitive stance on the 1925 Constitution. If still in effect, or if its provisions should be enacted again, then the Junta government would need to give way to a government democratically elected following the provisions outlined in the 1925 Constitution. The Junta opted for the opposite alternative. Decree Law #788, approved on December 4, 1974, effectively eliminated the 1925 Constitution and granted constituent powers to the Junta. That decree stated that "all decree laws dictated to date by the Governmental Junta which are contrary, or in opposition to, or different from any precept of the Political Constitution of the State, have had and have the character of modifying norms, either expressly or tacitly, partially or totally, of the corresponding precept in the Constitution" (in A. Valenzuela 1995: 29). As A. Valenzuela notes "with the stroke of a pen, the four-member junta abandoned the principle of a written constitution anchored on popular sovereignty by making it clear that any of its laws took precedence over the constitution and automatically amended it" (1995: 29). Although the Junta did actively

³⁵ See in particular Ahumada et al (1990), Alexander (1978), García (1977), Matterlat (1976), O'Brien and Roddick (1983), Pacheco (1983), Verdugo and Orrego (1983), Mockenberg, Camus and Jiles (1986), Harrington and González (1987), Verdugo and Hertz (1990), González and Contreras (1991),.

³⁶ Valenzuela (1995), Zaldívar (1995), Cavallo, Salazar and Sepúlveda (1997).

³⁷ The most recent and well-documented analysis of the dictatorship's view of protected democracy and military tutelage are Cristi (2000), Portales (2000), Huneeus (2001) and Barros (2002).

³⁸ See for example the first official Junta document issued in 1974, the *Declaración de Principios del Gobierno de Chile*.

seek to enact new decree laws and regulations that altered, complemented or abolished existing legal provisions under the 1925 Constitution, electoral rules were neither modified nor explicitly repealed. Because no elections took place after 1973, the Junta did not dictate any provisions that changed the constitutional rules and laws that regulated elections. Eventually, the task of proposing new electoral rules was left up to the constitutional committee, but Pinochet, as the monopoly electoral designer, would eventually make the final decision.

While Pinochet consolidated his power, a Junta-appointed constitutional committee began to discuss the legal document that would replace the 1925 Constitution. The commission was originally created on the suggestion of Junta member Gustavo Leigh. On September 20—9 days after the coup—a four-member group met to begin the task of proposing reforms to the 1925 Constitution. The first members appointed to this commission were Jaime Guzmán, Sergio Diez, Jorge Ovalle and Enrique Ortúzar. They were all conservative lawyers and constitutional scholars who opposed the Allende government and supported the coup (Cavallo, Salazar and Sepúlveda 1997: 17). The Commission was officially formed only on October 25, 1973, via Supreme Decree 1,064, and was comprised also by Enrique Evans, Gustavo Lorca, Alejandro Silva and Alicia Romo. Later, in March of 1977, Silva and Evans resigned and, in May of the same year, Ovalle was asked to resign. They were replaced in June of 1977 by Luz Bulnes, Raúl Bertelsen and Juan de Dios Carmona (Carrasco Delgado 1987: 117).

The members of the commission (hereafter Ortúzar Commission) were drawn from a pool of conservative constitutional lawyers, but they represented different political views. Ovalle was a member of the Radical Party (PR) and although he belonged to a wing that had split from the PR when the party entered the Allende coalition in 1970, he was very much associated with the PR old guard. Enrique Evans and Alejandro Silva were linked to the PDC. Altogether, three of the initial seven members were not affiliated with conservative parties. The remaining 4 members were either members of the National Party (Diez and Lorca) that had served in previous conservative administrations (Ortúzar) or were conservative activists (Guzmán). Guzmán and two others (Romo and Bulnes) had been associated with the conservative *gremialismo* movement during the late 60s and early 70s. The *gremialismo* emerged as a reaction to leftwing activism in national universities, especially the Catholic University, where the progressive social doctrine of the Catholic Church at the time and the enthusiasm with the land reform programs championed by president Eduardo Frei (1964-70), induced many young Catholics to become politically active in support of radical social change.³⁹ Yet, although the initial Ortúzar Commission was not homogeneously conservative, it was by no means plural. No leftist intellectuals or representatives of leftist parties were included in the Commission. With the departure of Silva, Evans and Ovalle, the Ortúzar Commission lost the limited pluralism it originally enjoyed. The new members were all associated with conservative groups within the dictatorship. The only new member who could claim past allegiance to a different party was Juan de Dios Carmona, a former minister in the Frei

³⁹ For a detailed study of the doctrine of *gremialismo* and its leader Jaime Guzmán see Cristi (2000), and Huneus (2001: 327-388). For a biography of Guzmán see Guzmán Errazuriz (1991) and Salazar (1994).

government. However Carmona had strongly supported the military coup and at the time of his appointment he had already abandoned the PDC.

Table 1.2. Constitutional Commission Members

Name	Tenure in Commission	Party Affiliation before 1973	Party affiliation in the late 90s ⁴⁰
Enrique Ortúzar	October 1973-end	Ind (PN)	N.A. (deceased)
Jaime Guzmán	October 1973-end	Ind. (Gremialismo)	UDI (assassinated in 1991)
Sergio Diez	October 1973-end	PN	RN
Jorge Ovalle	October 1973- May '77	PR	PR
Enrique Evans	October 1973-March '77	PDC	N.A.
Gustavo Lorca	October 1973- end	PN	(deceased)
Alejandro Silva	October 1973- March '77	PDC	N.A.
Alicia Romo	June '77 –end	Ind. (gremialismo)	Pro-UDI
Luz Bulnes	June '77 –end	Ind. (gremialismo)	Pro-RN
Raúl Bertelsen	June '77 –end	PN	Pro-UDI
Juan de D. Carmona	June '77 –end	PDC	Pro-RN

Even though the Ortúzar Commission began to hold regular meetings, it lacked a clear mandate. A close associate of Pinochet, Monica Madariaga, recalled in 1988 that, “Initially it was called Constitutional Commission (*Comisión Constituyente*). One of my first missions, as a newly appointed Minister of Justice (April 1977) was to diplomatically suggest to Ortúzar that the name of the Commission had to be changed because I had been told from ‘above’ that the four-member Junta was the only constituent power. Therefore the Commission was, at most, charged with drafting an *anteproyecto de reforma constitucional* [constitutional draft]” (in Marras 1988: 80).

Although the Commission held regular sessions uninterruptedly and its records were properly preserved (Carrasco Delgado 1987: 118), it was by no means a Constitutional Assembly nor was it specifically and directly charged with designing a new document. Moreover, as Sigmund notes, “the committee moved at a snail’s pace, partly because of internal conflicts and partly because Pinochet was in no hurry to move in this area until he had consolidated his control” (1993: 123). The reasons were obvious. Only a few days after the coup it was not even clear how long the military Junta would stay in power, whether they would call for new elections, look at the existing Constitution for direction or even respect existing rules. Therefore, little actual decision-making power could be granted to a 4-member Commission by a de facto government that had yet to secure control of the country. That explains why constitutional scholar Enrique Ortúzar, who was not a close associate of Pinochet or the other Junta members, was appointed to that Commission. More than aiming to actually write a new constitution, the Junta might have been interested in securing political support among opponents of the Allende regime. Much of the wrong impression developed by many about the mandate given to the Commission is partially explained by the claim made by Ortúzar himself over the real authorship of the 1980 Constitution. But any historically grounded reading of the events

⁴⁰ A detailed discussion of the history, similarities and differences of two leading conservative parties—the UDI and RN—is offered in chapter 2.

leads one to conclude that the Commission was only created to study possible constitutional reforms and that, as it actually turned out to be, the real decisions were made later by others.⁴¹

Much time and thought has been devoted to studying how the Commission members came to agree on a text which 5 years and 417 sessions later was proposed to the government (Cavallo, Salazar and Sepúlveda 1997: 265). The claim that Chile's new institutional structure was devised in that Commission misses the point of what constitutional assemblies do. While it met to discuss and bargain over the institutional framework, the Ortúzar Commission acted more like a consultant group charged with elaborating a proposal that would suit the needs of those who hired them. Not surprisingly, the Ortúzar Commission document suffered significant modifications before it was turned into the 1980 Constitution. Not surprisingly, many of those modifications had to do with the electoral rules. I do not seek to underestimate the importance of the Ortúzar Commission, and in particular some of its members, in informing and shaping the views of the military and those of Pinochet himself. Yet the Commission could not impose its views. At most, the Commission was in a position to influence and persuade those who had decision-making authority. Drawing on a principal-agent comparison, the Ortúzar Commission believed it could become the agent charged with writing a constitution for the principal (the Junta). Yet, the Ortúzar Commission did not realize that the principal could, and in fact did, submit the work to additional agents after the work was completed. When principals cannot control and oversee the work of their agents, a principal-agent problem appears, i.e, the agents can effectively take advantage of the situation. That was certainly not the case here. The Ortúzar Commission wished it would become the Junta's agent to write the Constitution. The Junta thought otherwise and acted accordingly.

The Ortúzar Commission produced a Constitutional Draft and submitted it to the Junta in August of 1978.⁴² The document reflected the Commission's views but it also primarily included the views of the military Junta and of Pinochet himself. This is so because the Junta had not entirely left up to the Ortúzar Commission the drafting of the new institutional framework that would be in place instead of the 'failed' 1925 Constitution. While the Ortúzar Commission worked on sorting out the details of the different constitutional articles, Pinochet and the Junta produced their own documents and made their own statements as to what they considered to be the flaws and failures of the old constitutional regime.

In fact, parallel to the work of the Commission, the Junta produced two documents designed to guide the Constitution making process, the 1974 *Declaration of Principles of the Government of Chile* and a series of *Constitutional Acts*⁴³ starting in

⁴¹ Cristi (2000) correctly considers constitutional scholar Jaime Guzmán as the chief strategist behind the 1980 Constitution. Yet, in 1973 Guzmán did not enjoy power himself. His influence over the Junta and Pinochet himself slowly grew as time progressed. I concur with Cristi on his appreciation but I am cautious against giving much weight to the Ortúzar Commission in the initial stages of its work.

⁴² The document was published in the *El Mercurio* newspaper on October 19, 1978 and in Bulnes Aldunate (1981).

⁴³ Published in Soto Kloss and Fiamma Olivares (1976).

1976. Although Guzmán and to a lesser extent the remaining Ortúzar Commission members played a role in informing the writing of these documents, their text was a product of the Junta and of Pinochet's own consolidation as the central political figure within the Junta. In that sense, Guzmán played a dual role. In his capacity of member of the Ortúzar Commission, he discussed with his fellow commission members the drafts of the *Declaration* and the *Acts* and incorporated the guidelines outlined there to the constitutional draft they were preparing. Yet, Guzmán also developed a role, more influential and important, as an advisor to Pinochet. In that capacity, Guzmán was directly involved in the preparation of the *Declaration* and the *Acts*. In fact, Cristi notes that, "Guzmán is the author of that document [*Declaration*] which he prepared as a public official of the Government General Secretariat Ministry" (2000: 37).

Although both the *Declaration* and the *Acts* have few and rather vague references to elections and political representation, the two documents outline much of the ideology that eventually shaped the 1980 Constitution as a text characterized by military tutelage, restricted electoral participation and many appointed, rather than elected, offices. The *Declaration* and the *Acts* are clear evidence that even though the Junta, and Pinochet himself, supported the work the Ortúzar Commission, that Commission was never conceived as a constitutional assembly. Instead, when producing the *Declaration* and the *Acts*, the Junta government outlined its ideological vision for public opinion as much as for the Ortúzar Commission. The *Declaration*, in particular, as Cristi has brilliantly argues, "officially defines for the first time the new institutional design developed by Guzmán. The *Declaration* states 'the Armed Forces and Carabineros police has taken on the historic mission to provide Chile with a *new institutionality*'" (2000: 37). Thus, parallel to the work of the Commission, the military government announced its own guidelines and principles for the new Constitution. Guzmán played a central role in helping shape those views. For that reason, his influence over the Junta documents and more directly over Pinochet positioned him as a more important actor in the making of the 1980 Constitution than any of the other Ortúzar Commission members.

As requested by the Junta a few months earlier, the Ortúzar Commission proposed a constitutional draft in 1978. The Junta's pressure on the Commission to produce a document can be partially explained by a related political event in which Guzmán also played an important role. In a speech to a group of young loyalists delivered on July 9, 1977, for the first time since taking power, General Pinochet outlined a transitional calendar for the return of a civilian regime. The speech came to be known as Chacarillas Speech and was written by Guzmán. Cristi reports that Pinochet outlined the transition from a military to a civilian regime as one that "must begin, at the latest, on December 31, 1980, and must be completed in 1985, when the new constitutional order must be in force and the transition of power from military to civilian rule must be completed" (2000: 40). The handwriting of Guzmán can be clearly identified in the Chacarillas Speech text, "the content of the speech, particularly the emphasis given to the constitutional issue indicated that besides the editing, Guzmán's writing includes his own personal political agenda" (Cristi 2000: 40).

By having produced the *Declaration*, the *Acts* and with the calendar outlined in the Chacarillas Speech, the Junta, and Pinochet in particular, delineated the work of the Ortúzar Commission. The document presented by the Ortúzar Commission reflected the views of the Junta and particularly those of General Pinochet, which were formally delivered in a meeting between Pinochet and the Ortúzar Commission on November 15, 1977. As Cavallo, Salazar and Sepúlveda note, “Minister of Justice Madariaga had written herself a long memo, stating very precisely what the government wanted from the [Ortúzar Commission’s] proposal. Without even Pinochet knowing, one of those presents in that meeting knew the content of the memo ahead of time. Minister Madariaga had asked for Guzmán’s help in preparing the memo where all the basic concepts of the so-called ‘new institutionality’ were outlined. Even today [1991], not understandably, constitutional history has failed to attribute that memo the fundamental role it had in the making of the 1980 Constitution” (1997: 265-266).

The recent attention that scholars have given to the work of Jaime Guzmán⁴⁴ and his influence on Pinochet and in the making of the 1980 Constitution is not contradictory with the claims I make here. Guzmán might have influenced Pinochet and the 1980 Constitution, but the man in power was ultimately Pinochet. Guzmán’s ability was to position himself as Pinochet’s most influential advisor, earn Pinochet’s trust and convince the dictator of his own political views. But Pinochet could have developed a constitutional order without Guzmán, not the other way around. True, it might not have been as successful or as clever, but it was Pinochet who made the decision of going with Guzmán’s advise. The 1980 Constitution, with its electoral rules, is ultimately Pinochet’s, not Guzmán’s. The ideology and the outstanding conservative internal consistency of the document are certainly Guzmán’s making, but then again, the credit should ultimately go to Pinochet for choosing Guzmán and not other advisors (like Ortúzar himself) as the architect of the new constitutional order.

The Council of State’s Constitution Draft

Upon receiving it, the Junta submitted the proposal to a different body, the Council of State. This larger, more political and perhaps less constitutional scholarly body (where some of the Ortúzar Commission members sat and others had a direct influence) was charged with revising the document and making all necessary changes and modifications before submitting it back to the Junta for further action. The Council of State had been created via Decree Law 1319 on January 9, 1976. It first met on July 15 that year (Boetsch 1998: 162). Although many analysts understood its creation as a move to subvert the potential opposition of former presidents Jorge Alessandri⁴⁵ and Eduardo Frei⁴⁶ to the then 3-year old regime, the quick endorsement of president Alessandri gave

⁴⁴ Most notably Barros (1996, 2002), Cristi (2000) and Huneeus (2001).

⁴⁵ For a good biography of Alessandri see Carrasco Delgado (1987), Gamonal (1987) Boetsch (1988) and Arancibia Clavel et al.(1996),

⁴⁶ For an excellent biography of Frei see Gazmuri (2000) and Gazmuri et al (1996). See also Frei at al., (1970).

the Council of State some legitimacy. Former president Frei Montalva declined the invitation to join because the Council had no clear mandate—certainly not a mandate to restore democracy—and Frei did not want to legitimize the Junta with his presence (Zaldívar 1995). Eduardo Frei was the president of the Senate when Allende was overthrown and, according to Pinochet (1980, 1990), and most historians (Jocelyn-Holt 1998, Gazmuri et al 1996) supported the coup in part because he believed that he would easily win a presidential election after a short authoritarian transitional government. When the military government sent no signals of wanting to step down (and also as human rights violations began to surface) Frei and the PDC joined the opposition to the regime.

Alessandri's acceptance to join, and head, the Council of State can partially be explained by his widely public desire to reform the 1925 Constitution. As the son of the man who led the writing of the 1925 Constitution, Jorge Alessandri (the conservative president from 1958 to 1964) attempted to introduce significant constitutional reforms in 1963, a year before his term expired. Among his chief concerns was his effort to reform the electoral system. He sought to replace the proportional representation system by a majoritarian system. Alessandri had long advocated for the adoption of single-member districts to reduce political party fragmentation in congress. He longed for a 2-party system in Chile and strongly believed that an electoral reform could help achieve that goal (Boetsch 1998: 40-41). He also advocated for a change in the composition of the Senate by introducing non-elected senators who would represent a wide variety of labor, business and political interests. The proposed reform failed in Congress and Alessandri's term expired without significant constitutional changes. Although the former president continued to advocate constitutional reforms, the government of Eduardo Frei (1964-70) concentrated on a different kind of political reforms: the nationalization of copper and agrarian reform.

New constitutional reforms were adopted during the Frei government, and a few had to do with changes to the electoral rules (such as the creation of a new Senate district and a new Chamber of Deputies district in the far south and the expansion of the electorate by reducing voting age to 18 years of age and by eliminating literacy requirements). Most notably, the 1970 Statute of Constitutional Guarantees, agreed upon by the government and the presidential election plurality winner Salvador Allende paved the way for his election in Congress (Arriagada 1974, Palacios 1979, Sigmund 1977). As established in the 1925 Constitution, if the presidential election did not lead to an absolute majority winner, Congress would elect the president from among the two top vote getters in the election. The PDC conditioned its support in the congressional election to Allende's agreement to a constitutional guarantees statute. During the Allende government, talks over constitutional reforms were abandoned as a more radical revolutionary change was sought by the government coalition. Although by 1970, Alessandri's proposed reforms were thought to be shelved for good, the appointment of the former president to the Council of State gave Alessandri an excellent opportunity to revive some of the constitutional changes he had proposed in 1963.

The Junta sought to involve the Council of State in constitution making to give the process more legitimacy (Cavallo, Salazar and Sepúlveda 1997: 266-269). The 18-member Council of State was comprised of retired chiefs of the 4 branches of the Armed Forces, former presidents, a former president of the Supreme Court, a former National Comptroller, a former Minister, a former Ambassador, a former university president and several representatives from civilian organizations. Although all members were appointed by the government, the composition of the Council reflected the spirit of the 1963 Constitutional Reforms proposed by Alessandri to introduce non-elected members to the Senate.⁴⁷ In addition to representatives of labor unions, industrial and business leaders, intellectuals and former office holders, the Council departed from Alessandri's 1963 proposed constitutional reforms in that it had representatives from the four branches of the Armed Forces and lacked former presidents of the Senate and Chamber of Deputies.

All Council of State members had supported the 1973 coup. A good number was identified with conservative parties and those who did not have official political affiliation, could not be described as critics of the regime. The absence of the PDC and other opposition groups guaranteed that the Council would not stand in the way of the guidelines outlined by Pinochet to the Ortúzar Commission. Yet, the Council did widen the spectrum of ideological positions as compared to the Ortúzar Commission. The active involvement of former president Alessandri's, whose constitutional views differed from those of the government, also provided the Constitution making process with more legitimacy.

Table 1.3 Council of State Members

Name	Past Position	Political Affiliation in the late 1990s
Jorge Alessandri, President	Former president, 1958-64	Died in 1984
Gabriel González, Vice-President	Former president, 1946-52	Died in 1980
Enrique Urrutia	Former Supreme Court president	(Deceased)
Héctor Humeres	Former National Comptroller ⁴⁸	(Deceased)
Retired General Oscar Izurieta	Former Commander of the Army (1958-64)	(Deceased)
Retired Admiral Ramón Barros	Former Chief of the Navy (1966-68)	(Deceased)
Retired General Renato García	Former Commander of the Air Force (1955)	(Deceased)
Retired General Vicente Huerta	Former Chief of the Carabineros police	(Deceased)
Juan Antonio Coloma	Member of a youth organization	UDI
Julio Philippi	Member of the Lawyer's guild	RN, died in 1999
Guillermo Medina	Member of a labor union	Not politically active
Hernán Figueroa	Former Ambassador	(Deceased)
Mercedes Ezquerria	Member of a women's organization	n.a.
Juan de Dios Carmona	Former Minister in the Frei government	Not politically active
Carlos Cáceres	Economics Professor	UDI
Pedro Ibañez	Member's of the Business Federation	UDI died in 1999
Juvenal Hernández ⁴⁹	Former president, Universidad de Chile	Died in 1979
Enrique Ortúzar	Constitutional Scholar	(Deceased)

⁴⁷ See Boetsch (1998) and Carrasco Delgado (1987: 91-93).

⁴⁸ Contraloría General de la República. For a discussion of the role of the Contraloría see Barros (1996), Drake (1989) and Silva Cimma (2000).

⁴⁹ Died before the Council produced its final report.

The Council of State received a draft from the Ortúzar Commission on August 16, 1978. Yet, the text received was not a constitution. The 301-page document was not divided in articles and it resembled more “a treaty on constitutional law than a constitution” (Zaldívar 1995: 117). The Council of State asked president Pinochet to request from Ortúzar a document with articles and chapters so that the Council could proceed to review it. The Ortúzar Commission submitted a 14-chapter, 123-article document on October 18, 1978. The Constitution had a long preamble, written primarily by Ortúzar and a separate addendum with 11 transitional articles.

The release of the Ortúzar Commission document produced renewed public interest. The Chacarillas speech of July of 1977 added fuel to the debate over the transition calendar. On July 1979, the most influential newspaper in the country joined the debate over the content of the new constitution. The conservative *El Mercurio* editorialized that “the main defect of the constitution being discussed is its excessive connection with the current president and with the actual government form” (in Zaldívar 1995: 138).⁵⁰ Some voiced their opposition to the adoption of a new Constitution. Because *even custom-made shoes bind*, Air Force commander and Junta member Fernando Matthei stated that he thought it would make sense to first allow for the formation of political parties and then discuss a new Constitution that could generate consensus (in Zaldívar 1995: 139).

In the mean time, the Council of State continued with its weekly meetings and under the leadership of Alessandri sought to disregard the Ortúzar Commission text and instead modify the original 1925 Constitution (Zaldívar 1995: 140). As Alessandri noted “I am not for new Constitutions, because they represent a jump into the unknown. Constitutions must be reformed because, despite their possible perfection, with the years we can identify a number of practices that render them less useful” (in Carrasco Delgado 1987: 126).⁵¹ The new shape the Constitution was taken under the Council of State generated debate among government supporters and led Pinochet loyalists to denounce the Council of State’s modifications (Zaldívar 1995: 152). Pinochet daughter, Lucía Pinochet, declared that the “constitutional project does not reflect the spirit of the President” (in Zaldívar 1995: 152). In its quest for legitimacy, the Council of State invited prominent scholars to comment on the Ortúzar Commission document and, as Carrasco reports, “in order to increase citizens’ involvement with the Constitution making process, the Council issued a public call for comments and suggestions setting a deadline for December 15, 1978. Altogether, 150 comments and suggestions were received” (1987: 123).

Although the Council of State meetings were not public, the press widely reported on disagreements between members who wanted to reform the 1925 Constitution and

⁵⁰ “El principal defecto al interior de la proyectada Constitución es su excesivo vínculo con el actual gobernante y con la modalidad de su gobierno.”

⁵¹ “Como usted sabe, no soy partidario de las nuevas constituciones, porque ello significa dar un salto en el vacío. Ellas si deben reformarse porque, por perfectas que sean, con los años se establece una serie de hábitos que las desnaturalizan.” See also Zaldívar (1995: 140).

those who defended the Ortúzar Commission document. In the end, as can be inferred from a close reading of the two texts, the Council of State final document was more similar to the 1925 Constitution than the Ortúzar Commission document.⁵² On July 8, 1980, former president Alessandri presented Pinochet with the proposal by the Council of State. The Council's constitution draft was not approved unanimously. Carlos Cáceres and Pedro Ibañez wrote a dissenting opinion where they expressed their opposition to universal suffrage and to the direct election of the president and other officials (Cavallo, Salazar and Sepúlveda 1997: 269).⁵³

When Pinochet received the Council of State proposal, he appointed Interior Minister Sergio Fernández to form an ad-hoc committee to study the proposed document. Along with Fernández, the committee included Justice Minister Mónica Madariaga, Army General Fernando Lyon, Navy Admiral Aldo Motagna, Air Force General Enrique Montero, Carabineros Major Harry Grünewald—those four appointed by the Junta—, Army General Santiago Sinclair (from the Joint Chiefs of Staff) and Navy Captain Mario Duvauchelle. Zaldívar (1995: 192) has reported that in addition to those, other persons were consulted for specific issues. Among those were Chicago Boy economists Pablo Barahona, Sergio de Castro, Miguel Kast and José Piñera. The committee modified the text with “175 changes, 85 of those were very important and 59 were fundamentally important...the Junta produced a constitutional text of 14 chapters, 120 permanent articles and 29 transitional articles” (Carrasco Delgado 1987: 147; Zaldívar 1995: 192).⁵⁴ The final text was published in Decree Law 3,464, on August 8, 1980. The decree also convoked a national plebiscite to approve the new Constitution.

The plebiscite was scheduled for September 11, 1980. The voters had barely one month to consider the final document and decide whether to support it or vote it down. The plebiscite was carried out on “the basis of identification cards rather than an electoral list, and the chairmen of the voting places were selected by the government-appointed mayors, so that in many lower-class areas known to be antigovernment the elections were carried out under the direction of chairmen from outside the district. The press was barred from the count, and the opposition claimed that in some areas there were more voters than the entire population recorded in the census. Abstentions were counted as Yes votes. The result was a considerable victory by Pinochet, with 67 percent voting Yes (including 1.3 percent abstaining, who were counted as favorable) and 30 percent voting No” (Sigmund 1993: 127).⁵⁵ By any criteria used, the way in which the 1980 Constitution was approved cannot be defined as democratic.

The modifications adopted by Fernández's “Group of Eight” (Cavallo, Salazar and Sepúlveda 1997: 269), provoked profound discontent in Alessandri and others who

⁵² Both texts can be found in Bulnes Aldunate (1981). Zaldívar (1995: 177-181) discusses some of the differences between both texts. Carrasco Delgado (1987: 125-223) discusses each change made at length.

⁵³ Other provisions were not approved by consensus. See Bulnes Aldunate (1981: 307-411) for details. Specific discrepancies related to electoral rules will be discussed in the following chapters.

⁵⁴ Those changes that pertain to electoral rules are discussed in the following chapters.

⁵⁵ Zaldívar (1995: 207-279) discusses at length the government's strategy and tactics used to secure an electoral victory. As a leader of the PDC, Zaldívar accompanied former president Frei in his public opposition to the plebiscite. See also Cavallo, Salazar and Sepúlveda (1997: 265-285).

had thought they had the upper hand in the process. As Barros notes (1996: 233-254), the final document had more similarities with the Ortúzar Commission draft than with that of the Council of State.⁵⁶ Former president Alessandri, in an intriguing move, privately expressed his disapproval of the changes made, but did not come out in public opposing the Constitution in the plebiscite. In fact, Alessandri wrote a resignation letter as president of the Council and asked to have it delivered to Pinochet on September 12, a day after the scheduled plebiscite (Carrasco Delgado 1987: 140).⁵⁷ Yet, he voted in favor of the new Constitution—with all the changes he apparently opposed—in the plebiscite. As his associate Carrasco Delgado notes, “Alessandri thought that any statement he made could be decisive in determining the fate of the plebiscite. Alessandri thought that it would not be good for the constitution to be rejected. That explains his silence and his decision to vote favorably despite his reservations. Years later, in 1983, in his last major speech, he publicly expressed his disapproval of the changes made to the Council of State’s draft by the ‘Group of Eight.’⁵⁸

The plebiscite was held on September 11, 1980 and the government reported the approval vote won with 67% of the 6,271,868 votes cast.⁵⁹ Although the opposition denounced fraud and irregularities in the official campaign, the actual voting and the vote counting process, the political momentum was on the side of the government and its 1980 Constitution.⁶⁰ The Constitution became effective on March 11, 1981, when General Pinochet assumed the position of President of the Republic for an 8-year term. The 4-member Junta assumed the role of the legislative and its members were Admiral José Toribio Merino and Carabineros General César Mendoza (the two remaining original 1973 Junta members), Air Force General Fernando Matthei and the Vice-Commander in Chief of the Army Cesar Raúl Benavides. Benavides was appointed the Army’s representative in the Junta by President Pinochet, who remained as Commander in Chief of the Army. The transitional articles of the 1980 Constitution required that the president be excluded from the Junta. In any event, Benavides was a subordinate of Pinochet and he was correctly identified as Pinochet’s closest ally among the 4 Junta members.

By 1981, Pinochet had secured constitutional approval for his presidency, had legitimized his government and had shattered all expectations of a quick return to democratic rules. Yet, as Barros (1996, 2002) extensively argues, soon Pinochet found himself trapped into his own Constitution. The opposition began to use the Constitution to gain more political presence and, more importantly, began to frame its demands in terms compatible with constitutional provisions. If the objective of the Pinochet regime had been to focus on goals rather than deadlines, with the implementation of the 1980 Constitution the only thing that seemed to matter was precisely the deadlines. Yet, it

⁵⁶ See also Carrasco Delgado 1987: 140-145.

⁵⁷ See also Boetsch (1998) and Cavallo, Salazar and Sepúlveda (1997: 273-274).

⁵⁸ A copy of that speech can be found in Carrasco Delgado (1987: 253-261).

⁵⁹ Cavallo, Salazar and Sepúlveda (1997: 283). A breakdown of the regional vote can be found in Bulnes Aldunate (1981: 413).

⁶⁰ For a detailed discussion of the irregularities in the campaign and the voting, evidence of electoral fraud and manipulations, and testimonies of leaders involved in the limited but active opposition to the new constitution campaign see Cavallo, Salazar and Sepúlveda (1997: 275-285), Zaldívar (1995: 207-273) and Barros (1996: 184-188).

should not be inferred that it was a mistake on Pinochet's part to have a Constitution written. Although the Constitution did limit his ability to use force respond to the calls for his resignation during the 1983-85 political and economic crises, it also provided a lifesaver to the General who struggled to hold on to power amid growing opposition. In that sense, Pinochet made a smart move by binding himself when his power was strongest. That binding also provided with him with a safeguard for those days when his power would be significantly diminished. As Figure 1.2 shows, even though Pinochet's preferred constitutional arrangement might have been beyond limits considered acceptable to the opposition, by adopting a Constitution when his power was strongest, he secured a document that, despite being defined as outrageous and undemocratic, was sufficiently acceptable to the opposition to decide to play by the rules established in it. In that sense, even though the following chapters will discuss some of the constraints electoral designers have when choosing rules, Pinochet's decision to adopt a Constitution when he could position himself as the monopoly electoral designers was a brilliant move. He locked in a constitution when he was enjoying his strongest hold on power.

The post-1980 Constitution Electoral Rules

By adopting a Constitution, retaining the executive power and exerting significant influence over the legislative, Pinochet positioned himself as the monopoly electoral designer. But being the electoral designer is only one of the two conditions necessary to use the electoral rules to one's benefit. One must also have a political party that can benefit from one's monopoly. In that regard, the decision of some of Pinochet's supporters to form a political party that could benefit from the electoral rules established in the 1980 Constitution was, from the advantage point of two decades later, an equally brilliant move. The Constitution of 1980 has proven to provide a stronger safeguard for the political party formed to carry on Pinochet's legacy than for Pinochet himself. Twenty-two years after its proclamation, the 1980 Constitution is still the chart that rules the country and, despite the reforms adopted in 1989 and later, it has remained largely unchanged. On the other hand, General Pinochet's carefully planned legal and political protection shield has fallen apart. Since his arrest in London in 1998, General Pinochet has lost much of its power and influence. Upon his return to Chile, released on humanitarian reasons by the British government, Pinochet was impeached and lost his senatorial seat. He is no longer a relevant political actor, but the Constitution he had written remains as the main chart of the land. Even if the Constitution failed to protect the former dictator, its protected democracy features have survived fairly well.

As most constitutions, the 1980 Constitution had few specific references to electoral rules but it established clear and detailed principles on which those rules should be designed. The electoral designer made sure that the legal framework for electoral rules was clearly outlined in the 1980 document. It established a majority run-off system for the election of the president. For the bicameral Congress, it stated that there would be one 2-seat senatorial district for every region (13 in total)—in addition it established no less than 9 non-elected Senate seats—and charged the appropriate Organic Law with establishing how the 120-seat Chamber of Deputies would be elected. Local officials,

such as mayors and council members, would be appointed rather than elected. Voting was defined as mandatory for all those 18 years of age or older. Several restrictions were placed on individuals who aspired to run for office—mostly related to the infamous Article 8 that banned militants of Marxist parties from running—but no restrictions on re-election were established, except for the office of the president. Parliamentary and presidential elections would be held concurrently in such a way as to have elections once every four years. Although it is well known that the devil is in the details, it is also commonly practiced that the details of electoral rules are not included in the Constitution but left to the appropriate electoral laws. In that sense, the 1980 Constitution departed from the 1925 Constitution in that it did not entrench electoral rules in the Constitution itself but it did mandate that changes to the electoral rules required super majorities in parliament to be changed.

Although it established the basic guidelines for the electoral rules, the 1980 Constitution left most rules to be determined by Organic Laws. The difference between Constitutional provision, Organic Laws and regular laws resides on the super-majority vote needed to reform the Constitution or to change Organic Laws. The 1980 Constitution required a 3/5 majority of both chambers to change the Constitution. If the president vetoed a constitutional change, a 4/5 majority in both chambers could override the presidential veto. Yet, even with a 4/5 vote by both chambers, the president could still opt to submit the proposed change to a plebiscite. In addition, the 1980 Constitution provided for a 2/3 majority for some constitutional chapters and required two consecutive congresses to approve certain constitutional changes. Organic Laws required a 3/5 majority of both chambers and were subject to president veto (which could be overridden with a 2/3 vote of both chambers). Regular laws required simple majority, or a 2/3 majority in case of a presidential veto, to become law. Thus, there were three levels of entrenchment devised in the 1980 Constitution. The highest entrenchment pertained to certain chapters of the Constitution⁶¹ and it required a 2/3 majority in both chambers in two consecutive legislatures. A less stringent entrenchment was in place for the rest of the Constitution, with a 3/5 majority in both chambers (unless a presidential veto placed that burden at 4/5 majority). The least stringent entrenchment pertained to Organic Laws, where Congress could change them with a 3/5 majority (or 2/3 in case of a presidential veto). The Organic Laws were not immediately approved after 1980. In fact, the first Organic Law related to electoral rules was passed in 1985 (Electoral Tribunal Law).⁶² Other Organic Laws dealing with electoral rules were passed in 1986 (Electoral Registration Law and Electoral Registry Law)⁶³, 1987 (Political Parties Law)⁶⁴ and 1988 (Voting Law).⁶⁵ The way those laws came about and how they bound Pinochet's ability to maneuver is discussed at length in the next chapter.

⁶¹ Those pertaining to the “basis of the institutional order”, Constitutional Tribunal, Armed Forces, National Security Council, the Presidency and the Congress.

⁶² Law 18460, published on November 15, 1985. See *Ley de Partidos Políticos* (2001).

⁶³ Law 18556, published on October 10, 1986.

⁶⁴ Law 18603, published on March 23, 1987.

⁶⁵ Law 18700, published on May 6, 1988.

The Ortúzar Commission and the Council of State played an important role in helping shape the political system devised in the 1980 Constitution. The well-documented discussion sessions of the Ortúzar Commission (Barros 1996, Cristi 2000) and the lively debates that characterized the Council of State speak to the importance of both bodies in helping shape the political system of ‘protected’ or ‘authoritarian’ democracy designed in the 1980 Constitution (Huneeus 2001, Portales 2000). Yet, many electoral rules proposed by the Ortúzar Commission and the Council of State were not included in the final Constitution presented to a plebiscite. The choices over electoral rules were made by a single electoral designer, the Augusto Pinochet government. Some of those rules were included in the Constitution by the work of Pinochet’s appointed ad-hoc committee (Fernández’s ‘Group of 8’) after the Council of State offered its draft. Other rules were adopted after the 1980 Constitution had been approved. Those latter rules were adopted by the Legislative Commissions set up by the government after 1980.⁶⁶ The Fernández Commission made a number of significant changes, particularly with regard to the choice of proportional representation over single member districts and the choice of an across-the-board district magnitude of two (also known as the ‘binominal electoral system’). The Pinochet government, and not the Ortúzar Commission or the Council of State, was the chief electoral designer because the electoral rules established in the 1980 Constitution were decided upon after the Council of State and the Ortúzar Commission had completed their work. The role played by those two bodies can be described as advisory. The final choices were made elsewhere.

The rules established after 1980 but before democracy was restored in 1990—those outlined in the Organic Laws—were also devised exclusively by the military government. Although the Junta played a role in shaping those rules, the primary electoral designer again was General Pinochet who still exerted a strong influence over the Junta. The monopoly power enjoyed by Pinochet before the 1980 Constitution came into effect was partially reduced after March of 1981, when Pinochet was inaugurated as president under the 1980 Constitution. As Barros (1996, 2002) discusses, the chief constraint faced by Pinochet’s former monopoly control came from the Constitutional Tribunal, but also from the Junta members, who resisted some of Pinochet’s efforts to adjust the Organic Laws to his preferences. In the following chapter I discuss how the electoral rules adopted after 1980 resulted from limited bargaining between Pinochet and other actors that began to emerge as players after 1980. Yet, in general, Pinochet remained as the final decision maker over electoral rules. The emerging actors—the Constitutional Tribunal, the Junta and opposition political parties—were able to enforce Pinochet’s compliance with the 1980 Constitution, but fell short of forcing Pinochet to move away from its framework. Only when Pinochet was defeated in the 1988 plebiscite, could the opposition alter some elements of the institutional framework devised in the 1980 Constitution.

Assuming that there would be some form of political participation in the future, Pinochet sought to maximize his own chances of staying in power as president (and concentrate overwhelming powers in the hands of the executive). In that sense, the 1980

⁶⁶ All the rules are discussed in detail in the following chapters while the Legislative Commissions are discussed in Chapter 2.

Constitution was custom-made for Pinochet. Yet, assuming that Pinochet's political ambitions were not restricted to his own ability to hold on to power, but he also sought to promote his legacy beyond his time, the concern over what steps needed to be taken to foster and protect the political representation of those parties that would defend his legacy was essential. However, Pinochet was less clear as to what road to take with regard to political parties and political participation in general. Since 1973, Pinochet had wavered between two conflicting visions. On the one hand, he seemed to favor the idea of a personal and authoritative rule based on military support and with little popular participation. That first Pinochet can be characterized as the a-political president. But there was a second Pinochet, one inclined to building a popular base of support among labor unions, neighborhood organizations and women's organizations. Some of Pinochet's close advisors strongly believed the president should build a popular movement in support of his regime.⁶⁷

Wavering between those who defended an a-political model and those who sought to transform the "movement" into a political party, Pinochet seemed unable to make up his mind. In the end, he allowed for loyal political parties to form but he never openly identified with any of them. Although he sought the support of those parties when he needed them—especially during the 1982-1985 economic crisis and before the 1988 plebiscite—he never felt comfortable with the idea of framing his leadership in the context of a political party. When democracy was restored in 1990, Pinochet remained as Commander in Chief of the Army and was therefore legally prevented from joining a political party. During that period, however, he again wavered between the two conservative political parties that had parliamentary representation. When Pinochet stepped down from the Army in March of 1998 and joined the Senate as a lifetime member, he did not have enough time to join one of the parties. He served in the Senate for 5 months before he took a trip to England in September. On October 16, 1998, he was arrested on charges of crimes against humanity in London. Although he was released on humanitarian grounds in March of 2000, he was prevented from taking his Senate seat because of his poor health and because he was charged with human rights violations by a Chilean judge.

Most scholars, analysts and opinion polls agree, however, that the political party most closely associated with Pinochet and his legacy is the Independent Democratic Union (UDI), the political party founded by Jaime Guzmán on September 24, 1983 (Huneus 2001, Portales 2000). Unlike National Renewal (RN), UDI has historically maintained a loyalist position with the Pinochet legacy, the 1980 Constitution and Pinochet himself. Although I discuss in detail how the UDI and not RN became Pinochet's favorite party in the following chapters, the claim that the UDI should be analyzed as the party in the mind of the electoral designer when choosing what electoral rules to adopt can be best exemplified by the post-1990 political militancy of those who actually worked for Pinochet in writing the electoral rules. Jaime Guzmán, Sergio Fernández and most of those who served in the constitutional committees and legislative commission were all founding members or have been loyal militants of the UDI.

⁶⁷ That debate is brilliantly discussed by Arriagada (1988), Constable and Valenzuela (1991) and Valenzuela (1995).

However, because parties are *groups of office seeking politicians who stay together after they lose an election*, and because UDI and RN have stayed united in a political coalition since 1989, despite continuous losses, I consider the RN-UDI alliance as the monopoly designer's party.

In this dissertation I discuss why a monopoly electoral designer fails to select electoral rules that will guarantee an electoral victory for her party. Pinochet and his political party were in a monopolistic position when choosing electoral rules. Yet, they could not choose any rules they wanted. Despite their monopoly power, they were bounded by some basic constraints that restricted the choice of electoral rules from which he could select. When seeking to maximize the way in which he could transform electoral support for his political party into seats, and representation in general, the monopoly designer was subject to three important constraints. The first constraint has to do with the need to have the opposition participate in the electoral process. Following Przeworski (1991: 10), I define democracy as a system where parties lose elections. Competitive elections are therefore a necessary and sufficient condition for democracy to exist. Figure 1.2 outlines the basic structure of the problem in Chile. While Pinochet might have preferred an arrangement that guaranteed him a majority control of the legislative and executive despite the electoral result, he needed to provide the opposition with a chance of victory sufficiently large so as to make it attractive for the opposition to participate in the electoral process. Only through the opposition's participation in the electoral process could Pinochet legitimize the Constitution and the electoral laws. Figure 1.2 reflects a stylized structure of preferences over a legitimate-illegitimate continuum. Pinochet's favorite point lied outside what was considered as legitimate by other actors. He sought to adopt rules that would guaranteed him control of the executive and legislative powers. The alternatives proposed by the Ortúzar Commission and Council of State drafts lied within the boundaries accepted by the opposition but were further away from the opposition's preferred point than the 1925 Constitution. The electoral rules of the 1925 Constitution itself were further to the right than the opposition deemed legitimate.⁶⁸ The opposition, despite having its preferred point further to the left than the status quo, was willing to accept rules that favored Pinochet's political party provided that they had a chance of winning. As discussed above, when your opponent's power is overwhelming, you are inclined to accept rules that slant the playing field to her advantage, provided that you still have a chance of winning, because you prefer to have a game than not to play at all. Because Pinochet needed the participation of the opposition to legitimize the electoral rules, the first and most important constraint was given by the fact that the rules needed to be sufficiently acceptable to the opposition. For that reason, despite being a monopoly designer, Pinochet adopted rules that were acceptable to the opposition. True, the rules were also closer to Pinochet's (and Pinochet's party) ideal point than what had been proposed by the Ortúzar Commission and the Council of State, but they were still within the boundaries of what could be acceptable to the opposition.

⁶⁸ I discuss this in chapters 3-5, but the main criticism of the electoral rules associated with the 1925 Constitution was that electoral districts did not reflect the population changes—urbanization—that occurred after 1930 and therefore rural areas—strongholds of the political right—were over represented.

A second constraint faced by Pinochet as an electoral designer was the inability to anticipate all the unintended effects of the electoral rules chosen. While the independent effect of certain electoral arrangements might be anticipated fairly well, the combined effect of an entire set of electoral rules is difficult to anticipate. In addition, because electoral rules are not the only concern of the constitution maker, information shortcuts are often used when selecting electoral rules and misconceptions about the effect of some specific rules have an adverse effect in the designer's effort to maximize the electoral support for his political party. I discuss, and provide evidence for, this second constraint extensively in the following chapters.

The third constraint has to do with time. The effect of electoral rules can be anticipated because the designer has some beliefs about the preferences of the electorate. When these beliefs are accurate, the designer will better anticipate the effects of the rules. Yet, even when the beliefs are accurate, it is more difficult to anticipate how the rules will affect the designer's maximization problem in the future. The designer is better suited to use electoral rules to maximize how his party's electoral support transforms into seats in an election today than in an election ten years down the road. The following chapters discuss how the electoral designer maximized his party's electoral chances subject to those constraints.

Figure 1.2 Legitimacy in the Eyes of the Opposition of Electoral Rules Proposed

