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Constitution, Continuity and the legacy of Dictatorship: 25 years of the Pinochet coup

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The Pinochet Coup

In this paper we focus on the formal constitutional mechanisms of the 1980s and 1990s by which the Chilean military dictatorship, and those economic and social forces allied to the military, continued the form of society which they had dramatically created in the 1970s. Our article is thus a social, political and economic commentary on the formal provisions of a constitution.¹ We offer the caveat that this article does not claim to elucidate, via a study of Chile, how all dictatorships might tend to retain influence after the return to formal democracy. Nor are we concerned here with General Pinochet’s recent detention in London.²

This article examines, then, how one dictatorship maintained what it valued as its social and economic gains when the dictatorship ended and there was a passage from dictatorship to formal parliamentary democracy. The dictatorship in question is the Pinochet dictatorship in Chile. General Pinochet with fellow generals and admirals seized power in Chile a quarter of a century ago, on 11 September 1973, so overthrowing the elected President Salvador Allende. In 1989, having lost a presidential plebiscite in 1988, Pinochet allowed a return to substantial parliamentary democracy and a proper

¹ The Chilean constitution is easily consulted via the internet at http://www.congreso.cl
² When this paper was first drafted, in late September 1998, the trajectory of Chilean politics had long since ceased to engage social and legal commentators in the English-speaking world. The brief history contained here was largely neglected, if not forgotten. The unexpected detention of Pinochet in London in mid October 1998, following an extradition request by the Spanish investigating magistrate Garzón, suddenly brought Pinochet and Chile back to prominence. Our article is not concerned with the technicalities of prosecutions for international human rights violations, nor with immunity claims, nor with extradition procedures. Whatever the personal outcome in Europe for Pinochet, Chile remains in a strong sense Pinochet’s Chile, economically and politically. This article concerns the constitution of that Chile.
presidential election. Pinochet then remained as head of the Chilean armed forces until early 1998, continuing to have much political influence. Chile has had, therefore, 25 years of General Pinochet. The title of our paper describes ‘25 years of the Pinochet coup’, not 25 years after the Pinochet coup. The burden of this paper is that through the 1980 Pinochet constitution the special economic dimension of the 1973 military coup has been sustained.

A Special Revolt

Although there are not necessarily wide generalisations that can be drawn from the recent history of Chile, the Chilean case is worthy of study beyond Latin America for many reasons. First among these reasons, the military coup against the elected Allende government was a highly international event. The coup was partly inspired by and was aggressively supported by the United States of America. The coup prompted widespread foreign criticism and boycotts over many years. Not least, the nature of the coup precipitated over a million Chileans into forced or voluntary exile (from a total population of less than 15 millions). Secondly, the coup was a politically extraordinary event. Chile during 150 years previous to the Pinochet coup had remained very far from being an unstable banana republic prone to palace coups. Chile had sustained a long tradition of parliamentary democratic forms, even if tempered by various forms of internal oppression, most notably against the Indians in the South. Thirdly, the Pinochet regime gained notoriety for its initial slaughter of political opponents and its later sustained campaigns of disappearance and torture against citizens. Fourthly, and most important from a sociological point of view, the coup became much more than a coup against supposedly malevolent and misguided socialist politicians who were leading the country to ruin. To the surprise and chagrin of traditional right-wing parliamentary politicians (who expected to see the military hand power back to them after a short delay), the army sustained for

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3 For a poignant account of exile and return, see for example García Márquez, Gabriel (1987) Clandestine in Chile, Granta Books, Cambridge

4 Eyzaguirre, Jaime (1967) Historia de las instituciones políticas y sociales de Chile, Editorial Universitaria, Santiago de Chile

5 Pendle, George (1963) A History of Latin America, Penguin, Harmondsworth
years a military government largely excluding traditional landed and industrial interests. Even more, the military coup became the vehicle for a thoroughgoing economic revolution, a revolution that went against traditional right-wing economic and social prescription. This economic revolution has had profound social consequences for Chile, halting and reversing many of the social and economic tendencies of the previous 50 or even 100 years. Moreover, the Chilean economic revolution had important demonstration consequences for Britain.⁶

The Economic Coup

The Chilean *laissez-faire* economic revolution conducted under Pinochet was the revolution of neoliberal Chicago economics - free trade ambitions, the end of protectionism. (Contrast, for example, the autarchy and protection espoused by Franco’s military coup in Spain in 1936.) Since 1973, exposed to world competition, many small uncompetitive Chilean industries (eg car assembly) have been swept away. Chile has returned to being, as it was until the First World War, an economy of extractive and agricultural exports (eg copper, timber, salmon, fruit, wine). The military iron fist permitted the imposition of a neoliberal economy of privatisation, low tariff barriers, consequent exposure to world competition, the retreat of state welfare schemes, the suppression and later containment of trade union activity, the growth of economic inequalities. Many of these themes became the themes of Margaret Thatcher’s 1979 UK government. Since Chile had become something of a ‘pure’ laboratory for monetarist Chicago neoliberal economics just a few years earlier, the references to Chile as a model were explicit in the Thatcher government.⁷ Thanks to the military repression of dissent, the Pinochet dictatorship was able to implement neoliberal economic policies swiftly, directly and thoroughly.⁸ The Thatcher government, though radical and determined, had to proceed more cautiously.

⁶ In the early 1980s Margaret Thatcher’s ministers explicitly quoted the Chilean neoliberal experiment as a model for the British economy.


⁸ For a thorough account of ideology and practice up to 1983, see Latin America Bureau (1983) *Chile: The Pinochet Decade*, Latin America Bureau, London.
In broad terms, the Pinochet coup’s policies represent the marriage of American National Security Doctrine (internal and external war against international communist subversion) with the monetarism of Chicago School economics, and the general intellectual tenor of Friedrich von Hayek and Milton Friedman. Hayek had emerged post-World War II as an early and forceful critic of the Keynesian state interventionism (in economic affairs) that became the conventional wisdom of western capitalist economies. Hayek regarded Keynesian state intervention as *The Road to Serfdom*, the title of his 1944 attack on the state management of capitalism. For Hayek, Keynesianism represented moral decline, retreat from the rule of law, decline of belief in private property and competitive markets. Hayek regarded Keynesianism as inherently and blatantly inflationary, whereas Latin American Keynesian thought of the 1950s and 1960s considered inflation within the continent to be the result of basic structural economic weaknesses.

Hayek and Friedman contributed to making the University of Chicago a centre of *laissez-faire* economics that combatted state sponsorship of industrialisation. A core belief of the Chicago School is that inflation is a monetary phenomenon produced entirely by demand and money supply. Hayek’s *The Constitution of Liberty* also claims that economic liberty is more basic than political liberty; economic liberty for Hayek is philosophically prior to political freedoms. Hayek also observes in his work that democracy can acquire totalitarian powers, and that authoritarian governments can behave according to liberal principles.

Hayek’s stance is that even mild inflation cannot be tolerated since it will lead to much worse. In his view, the economically stimulating effect of inflation can only be maintained by accelerating it. Thus, mild inflation leads to rampant inflation. The only question for Hayek is therefore whether to stop inflation gradually or via a sudden ‘shock’ treatment. The short ‘shock’ of government intervening to kill inflation by withdrawing from economic activity and by ending barriers to free market competition is likely to produce high unemployment - higher than that produced by gradual economic reform. However, a gradual 2-3 year attack on inflation is in Hayek’s view beyond the capacity of most democratic governments since the high rate of unemployment over several years demanded by any anti-inflationary structural reform would be likely to destroy the government responsible for the policy.

Chilean industrial development had been largely state sponsored, ie of
the type routinely disliked by Hayek as being inflationary and inefficient. Chicago School economics became influential in academic circles in Chile from 1955 onwards, the Chilean *laissez-faire* economists of the Catholic University of Santiago coming to be known as the 'Chicago boys'.\(^9\) Despite strong links with business in the decade prior to the coup, the ‘Chicago boys’ were regarded by the conventional right wing and by national capitalists as being too extreme. They were seen as advancing ideas unsuited for implementation within a democracy.

The arrival of the military dictatorship in 1973 therefore offered a novel laboratory for the implementation of Chicago ideas. And the ‘Chicago boys’ offered the military the confident economic plan which the generals lacked, the generals having been *against* President Allende’s policies rather than *for* traditional right wing policies favoured by civilian politicians. After some hesitations the coup accepted Chicago theories.

Friedrich von Hayek, and his colleague Milton Friedman were both immensely and directly influential in Chile following the coup. Hayek and Friedman visited Chile to support their pupils in the work of reforming the Chilean economy and Chilean society. Friedman’s monetarism and Hayek’s assault on inflation were both championed by the economists who came to dominate the policies of the dictatorship in a rapid process of displacement of economists of other persuasions. Hayek advised for Chile the ‘shock’ deflation which he later advised Mrs Thatcher for Britain.

The shock treatment implemented by the Chicago economists in 1975-76 was intended to alter structures and expectations for ever. Above all, state expenditure to keep the economy going was to be abandoned. Chile was to face its economic problems (high cost of oil, halving of the value of traditional copper exports) by increasing non-traditional exports rather than by seeking an International Monetary Fund (IMF) loan. Friedman rejected the view that Chile’s problems were external impositions created by sudden changes in international terms of trade. He believed Chile’s problems were home manufactured, and that with the necessary unpleasant medicine unemployment was inevitable. However, a short sharp shock could, with temporary unemployment, transform economic prospects. State expenditure was to be cut by 20%. An end had to be sought to increases in the supply of money.

\(^9\) Latin America Bureau, *op cit.*
outstripping increases in production.

Pinochet accepted Friedman's prescriptions. At the personal level, appeals to the need for single-minded disciplined policies appealed to Pinochet's self-image. It also suited the dictator of Chile, an increasingly isolated country politically and economically, not to have to depend on foreign loans. Chicago policies also conveniently resulted in the marginalisation of the air force generals who had been inclined to support more orthodox and/or gradualist policies.

In 1975 government expenditure was accordingly cut by 27%. Tax receipts and inflation both rose, then fell. Chilean gross national product (GNP) fell by 16.6%. Many industries disappeared. Wages fell in 1975 to half their value of 1970. In early 1976 official unemployment rose to 28%. The social security system was breaking down, partly as a result of bankrupt firms defaulting on social security payments. The minimum wage in the country was driven down. With lower wage costs, productivity rose steeply. The collapse of internal markets forced producers to find new markets abroad. Trade tariffs were cut, banks privatised, economic power increasingly concentrated in the hands of large finance companies. By mid-1976, when the 'shock' officially ended, three key Keynesian institutions were severely weakened - a controlling state, a well-organised and influential labour movement, and tariff walls between the national economy and world economy. All but 15 of 507 state firms had been privatised. By the end of 1978 Chile's average tariff barrier against imports stood at only 10% - lower even than during the most liberal 19th-century period.

**Hayek and the New Constitution: 'The Constitution of Liberty'**

By the end of the 1980s the product of neoliberal *laissez-faire* economic policies in both Britain and Chile was that both were countries where extremes of wealth and poverty had been sharpened, where the welfare state had retreated, where job insecurities had been heightened. Following the analysis of Andrew Gamble,\(^\text{10}\) (he sees British political economy as a historic struggle between the free trade needs of big international capital and the protectionist wishes of national small and medium capital), in Margaret Thatcher’s Britain

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\(^{10}\) Gamble, Andrew (1994), *Britain in Decline*, Macmillan, London
international capital won the political struggle and achieved policies supporting its interests. By the end of the 1980s much the same had happened in Chile under the Pinochet regime. Pinochet had established an economic framework in which international capital dominated. Locally generated medium and small capital suffered.

However, by the end of the 1980s both the UK Thatcher government and the Pinochet regime in Chile had generated economic difficulties and more general political problems that undermined the respective governments. Chile, for example, had suffered an enormous banking crisis in the 1980s.

The Conservatives in Britain solved their problems by rejecting Thatcher for a new Prime Minister, Major, so retaining power until 1997. Pinochet's response to his political problems was to step down as President, but to remain as head of the armed forces. Pinochet lost the plebiscite of 1988 in which he hoped to be endorsed as President for a further eight years. In fact, the apparent constitutional position of Pinochet had already changed substantially since the coup. Pinochet passed from being the treacherous/liberating general of the 1970s (the characterisation depending on your point of view), to a constitutional head of state in the 1980s. Of course, throughout the Pinochet years of government Pinochet combined the roles of head of state and head of the armed forces. Although Pinochet introduced a new constitution with parliamentary elements (endorsed by a plebiscite in 1980, and planned originally to come into effect in March 1989), this was always effectively backed by use of force. Significantly, the Pinochet constitution of 1980 was titled 'The Constitution of Liberty', a direct reference to the treatise of the same title by Hayek, the work in which individual economic freedoms are seen as being more fundamental and important than political freedoms. When the Pinochet regime borrowed the title of Hayek's 1960 book as the name for its proposed constitution, 'The Constitution of Liberty', Hayek did not complain.

Pinochet's 1980 Constitution of Liberty remains the basis of Chilean political life, although modified by the discussions that led to Pinochet's removal from the Presidency in 1989. The Constitution of Liberty put Pinochet on the road to perpetuating his new neoliberal society beyond the

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11 Moulian, Tomás (1997), *Chile actual: anatomia de un mito*, Arcis, Santiago de Chile

years of terror into a decade in which there were some superficial returns to democracy. The 1980 constitution combined the ideologies of *laissez-faire* and 'national security' (US cold war political concerns). On the latter theme, for instance, the Communist Party was proscribed. There were, however, limited democratic elements in the 1980 constitution. A new congress was eventually to be established, for instance, but it was marginalised away from the capital, Santiago, to the fascinating but disintegrating working-class port of Valparaiso. Pinochet needed a 'proper' constitution, partly because of international distaste for his regime. Even the United States, ally and promoter of the 1973 coup, had lost patience with Pinochet when he arranged to have an exiled Allende minister, Letelier, assassinated in 1976 on United States territory.  

Discussion in Dictatorship: The double negotiation of the constitution

There were two phases of negotiation of the present Chilean constitution - the original formulation culminating in the 1981 constitutional plebiscite, and the limited renegotiation following Pinochet's defeat in the 1988 succession referendum. The construction of the present constitution therefore spans over a decade - from the late 1970s until 1990. The four periods of the constitution are thus: (1) constitution created during the military dictatorship to serve the ends of the regime; (2) planned period of gradual implementation during the 1980s; (3) defeat of Pinochet in the 1988 succession plebiscite, followed by partial renegotiation, 1989 elections, and change of presidency in 1990; (4) formal democracy within an unchanged constitution, and the maintenance of the economic structures created by Pinochet. Until March 1998, it must be remembered, Pinochet remained as head of the armed forces. Chile has thus passed from coup and dictatorship to 'constitutional dictatorship' (the 1980s) to formal (partial) democracy (the 1990s).

Why and how was this process of constitutional construction accomplished? First, we return to the original needs of the dictatorship in the years after the 1973 coup. The constitutional debate of these years is described in detail in *Chile actual: anatomía de un mito.* In the latter half of the 1970s

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13. Latin America Bureau, *op cit.*

the Pinochet dictatorship lacked both internal and external legitimacy. Internal dissent continued, exiles pressed from abroad, and international disapproval - expressed in material boycotts - weighed heavily on the regime. In 1976 there was open internal trade union opposition, even from right wing Christian Democrats. In 1977 Pinochet found it expedient to ban all political parties. The UK withdrew its ambassador in 1975 following the torture of the British doctor Sheila Cassidy, and the US government was scandalised by the 1976 Letelier murder in Washington. Until 1981, just after the plebiscite which endorsed the 1980 constitutional proposals, the United States maintained restrictions on government finance for Chile. This was serious for the regime. It must be remembered that the USA had originally promoted the 1973 coup.

Hence the last years of the 1970s were marked by a growing legitimization crisis, all the more acute internally because of the economic pain created by the 1975-76 'shock' measures of the Chicago School economists.

In response to the legitimization crisis Pinochet ordered the preparation of a new constitution. The first plans were published in late 1978 by a Constitutional Commission. These then passed through the Council of State (Consejo de Estado), and the subsequently revised version then went to the military junta. The Constitutional Commission’s original plan was for a ‘protected democracy’ with a strong executive, a two-chamber Parliament, a politically influential and autonomous military, and a ban on totalitarian political doctrines (communism). Importantly, the new economic neoliberal structures were to be constitutionally protected; there was to be an independent Central Bank, and restrictions on trade union activity. Finally, the constitution would be difficult to amend once in place. When the original constitutional plan passed through the Council of State various changes were made. It was at this stage that the idea of a transition period was introduced. The changes at this stage generally reflected conservative civilian thought. Constitutional amendment was made easier. In broad terms, in the Council’s revisions

15 Article 8 of the 1980 Constitution of Liberty did indeed make the Communist Party illegal. However, in 1989, the year of the first presidential elections, Article 8 was abolished, so making the Communist Party legal once more. Opposition forces, including right wing parties, reached a broad agreement to reincorporate the Communists into conventional political life. Interestingly, however, despite the opening up of political life, there has been no return to a radical socialist agenda in the 1990s - neither the Socialist Party, nor the Communists, have regained the radical energies of the late 1960s and early 1970s.
presidential and property rights were increased; citizen and military rights were reduced in comparison with the Commission original.

In its turn the military junta revised the revisions of the Council of State, generally reversing any proto-revision that might weaken Pinochet's chances of continuing for as long as he wanted as President. In the version of the constitution finally submitted to popular referendum on 11 September 1980 (the seventh anniversary of the coup), the role of the military in political life was again increased, constitutional amendment again made more difficult, the presidential term increased from six to eight years, the Central Bank again made more independent, and the transition period of the constitution extended from five to eight years. In the final version the idea of an unelected transitional parliament was rejected in favour of a succession plebiscite at the end of the transition period. This succession plebiscite, planned for 1988, would avoid a fully competitive presidential election. Simply, citizens would vote for or against a junta-nominated presidential candidate (ie Pinochet). A congressional parliamentary election was proposed for December 1989. A full presidential election would take place only if the junta's candidate was rejected in the 1988 succession plebiscite.

It can be seen from the last paragraph that one of the thrusts of the junta's changes was to preserve the presidency in Pinochet's hands after 1988. As we know, the attempt failed with the failure of Pinochet to win the 1988 succession referendum. It is worth recording that maintaining personal presidential power had long been an ambition of Pinochet. His opening 1977 directive to the Constitutional Commission had included a curious device, that of an indirectly elected president. The 1977 directive had been advice from Pinochet in favour of a president elected not by popular suffrage, but indirectly by Congress. The Constitutional Commission rejected the advice, proposed the more conventional directly elected presidency, but also invented the idea of the transitional period before a new constitution might take full effect.

The 1980 constitutional plebiscite was needed by the military dictatorship to legitimate the new economic Chile created by the 1973 coup. In 1973 the military had so far stepped beyond the bounds of the normal role of the armed forces in Chile that popular approval was deemed necessary for the new neoliberal society created on the back of repression. Opposition forces, after hesitation, came to accept the plebiscite - practically though not normatively. The opposition, in Moulian's view, generally reached the
conclusion that the constitutional proposals had generated such interest in the population that a 'don't vote' campaign would be unsustainable.\textsuperscript{16} Moreover, campaigning for a 'no' vote rather than abstention would create valuable political space that would allow further campaigning on fundamental issues. Hence, the opposition, including the Communist Party, participated in the plebiscite campaign. In 1980 the opposition lost; Pinochet's 'yes' campaign in favour of the constitutional proposals won. The published result gave a 'yes' vote of 67\% to the junta, 30\% to the opposition 'no' campaign. Evidence of rigging of the outcome is irrefutable - voting by some traceable subpopulations of the electorate was over 100\%.\textsuperscript{17}

We turn now to the second negotiation of the present Chilean constitution. This preceded the re-entry to congressional and presidential elections. The 1980s saw growing internal opposition to the Pinochet regime, and the General lost the 1988 succession plebiscite. This referendum, designed to keep Pinochet in power until the late 1990s, in turn provoked fresh constitutional negotiation. The opposition had come to accept the need to maintain the 1980 Pinochet constitution - any promise to do away with it was likely to convince the military to remain in power by force. The 1980 constitution made it easier to amend the constitution during the transitional period than following full implementation.\textsuperscript{18} The freshly victorious opposition therefore had great interest in negotiating with the outgoing junta before the conclusion of Pinochet's presidential term. Once fully implemented, the constitution would require for any amendment the approval of both houses of the Congress. Given the presence of unelected, appointed, senators in the Senate, the achieving of a majority in favour of amendment would be difficult. So, before the new constitution came into full effect, there was a second round of constitutional negotiation.

In practice, this renegotiation was largely carried out between the

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\textsuperscript{16} Moulian, \textit{op cit.}
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\textsuperscript{18} Article 116 of the constitution establishes the majority needed for a reform of the constitution. For a constitutional reform a majority of three-fifths of senators and deputies is required. In practice, therefore, Chile has acquired a rigid constitution since the composition of the Senate, with its unelected designated senators dependent on and favourable to the legacy of dictatorship, militates against any proposal achieving such a three-fifths majority.
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military government and Renovación Nacional, a right-wing grouping highly sympathetic to the Pinochet regime. Renovación Nacional saw that there was a need to further legitimate the 1980 constitution by removing from it the elements which were 'over-protective' of the interests of the military. Renovación Nacional indeed succeeded in persuading the military to modify the constitution without deflecting the constitution from its fundamental direction. The composition of the Senate was modified, the powers of the Council of National Security changed, the autonomy of the armed forces reduced. However, in essence, the thrust of the Pinochet constitution was maintained. This thrust was to have an effective minority veto in Congress, and to make impossible fundamental political and socio-economic changes without broad political agreement. In the Senate the original balance of 26 elected to 10 unelected senators was changed in the constitutional settlement of 1989 to 38 elected to nine unelected. Thus the likelihood of a largely ‘blocking’ Senate was reduced somewhat. The centre-left anti-Pinochet coalition styled ‘la Concertación’ accepted the modesty of the constitutional changes negotiated by Renovación Nacional. A plebiscite of 1989 massively endorsed the adapted constitution. Since then the Concertación grouping has three times won the national congressional elections, the last general election being in December 1997. By not challenging the political and economic structures created by the military regime, the Concertación has three times won the right to administer the society created by Pinochet and the 1973 coup.

**Key Article 19 of the Constitution**

The above discussion of how the present Chilean constitution was created indicates how little Pinochet was prepared to open up Chile in his 1980 constitution. However, a new constitution was delivered in 1980, and opposition forces used the constitutional referendum, and the provisions of the constitution, as far as possible, to re-establish political life.

Article 19 of the Chilean constitution is a key part of the history and nature of the recent changes in Chile. This article regulates the rights and

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19 Moulian, *op cit.*

20 For instance, in the 1980 version of the constitution Pinochet envisaged appointing a full quarter of the Senate. With this guaranteed base, the head of state needed the support of only three of the elected senators in order to effectively control legislation.
duties of citizens, including the rights to civil liberties. Among these is number 7, concerning personal liberty and individual safety. The importance of Article 19 is that it gives a constitutional protection to liberty, and gives explicit expression to the conditions under which a citizen may lose liberty. 21

The Pinochet dictatorship's early years had been marked by unrestricted and unregulated mass arrests, torture, disappearances and murder. The inclusion of Article 19 in the constitution gave legal assistance to individual liberty. It put for the first time during the Pinochet dictatorship some brake on the torture and abuse practised by the security forces without any legal impediment, and with complete impunity. Thanks to Article 19 some of the arrests made after the Constitution of Liberty was promulgated were combatted by the freedom provisions promised in the document. Gradually, via appeal to Article 19, the regime of terror directed at opposition forces in particular, and at the citizenry in general, was contained and reduced. Chile in the 1980s was a much less murderous polity than in the period 1973-79. Thus, Article 19 represents an important line of development in the evolution of the dictatorship towards a formally democratic regime. Besides individual liberty, Article 19 establishes a series of freedoms which permitted opposition forces to use various areas of public freedom, and to begin overt criticism of and opposition to the regime. So, for example, freedom of expression, freedom to gather and freedom to engage in union activity were all fundamental in this process of allowing gathering public opposition to the Pinochet regime. Most important in all this was section 15 of Article 19, regulating the right of association, and hence the right to organise a political party. During the 1980s, within the constitutional framework established by Pinochet, the opposition was allowed to create political organisations. It should be remembered that by 1977 the coup abolished all conventional political activity, including that of right-wing parties and factions - to the great surprise and chagrin of conventional right-wing politicians who expected to see themselves rapidly translated by the military to positions of power. This

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21 Article 21 of the Chilean constitution provides for constitutional protection of the rights and duties recognised in Article 19, establishing in particular legal mechanisms to be used in the case of violations of individual freedoms. It is important to point out that this Article 21 provides Habeas Corpus for the protection of the individual. This proved to be a most important brake on the illegal violence and disappearances. With the implementation of the constitution this Article 21 became in the 1980s one of the fundamental tools available to opposition groups in hindering arbitrary actions by the regime against its own citizens.
The military gathered political power to itself. However, section 15 of Article 19 allowed the creation of political bodies, many of them reproducing bodies formerly well established in the political history of the country. For instance, the Christian Democratic Party re-emerged, and has continued to play a key political role in Chile in the 1990s. During the 1980s, unlike the 1970s in Chile, opposition to the regime could be both frontal and constitutional, and recognised as such by the regime. This in turn re-socialised citizens into the dynamic of conventional political activity and the dynamic of having openly conflictual currents of thought within the country. The early Pinochet regime had, in contrast, been a totalitarian state, complete with concentration camps, mass murder, routine terror and repression (e.g. curfews), direct military control of mass communications, and the prohibition of the political parties.

Laissez-faire economic policy is written into the Chilean constitution. Article 19, section 21, of the constitution regulates economic freedoms, and within this establishes the framework of the state's economic activity. It is a key part of the Constitution of Liberty since it embodies constitutionally the minimal role accorded to state intervention in economic affairs. This intervention is to take place within, and to be regulated within, the very same framework as that of individuals. The state's economic activity will be of the same general character as that of individual citizens or legal persons. With this provision is created a prohibition on the state of maintaining and developing economic activities in protected or monopolistic areas of activity. Most fundamentally, this part of the constitution establishes that the state will intervene in economic life merely as one more individual. In sum, the physically totalitarian state developed a sketchily democratic state (the new constitution) that provided for an economically minimalist state. In the 1990s that economically minimalist state has survived the crude forms of the dictatorship which generated it.

The influence of Hayek and Friedman in all this is clear, and continuing. The democratic Chile of the 1990s has not reversed the economic philosophies embedded constitutionally in the political system established by Pinochet in 1980-81. The next section below explains how, too, the structure of the Congress militates against constitutional change. In short, the Pinochet

For a fictional, but barely fictional, account of attitudes to the coup in the Chilean political class see Isabel Allende's novel, (1994), *The House of the Spirits*, Black Swan, London
The constitution of 1980 was carefully prepared in order to make the retreat from neoliberal *laissez-faire* difficult and unlikely.

The economic importance of Article 19 is that, above all, it establishes by constitutional guarantee the economic system within which the state is to operate. Thus, strategic economic change, at the level of general system reform, is removed from the democratic decision-making. This article must be considered as one of the fundamental legacies of Pinochet to post-Pinochet Chile. Article 19 establishes the fundamental economic character of the nation as a fundamental constitutional point - unlike in Britain, for instance, where neoliberal strategies are embedded in government policies, not in constitutional arrangements. The success of the Pinochet regime has been in creating an economic revolution that can only be reversed by constitutional reform, a reform made unlikely by the electoral and legislative arrangements developed in the 1980 constitution, and passed (with limited modification) to the 1990s. (See paragraphs on Article 45, below.)

**Congressional form: The two chambers and a ‘life senator’**

The Chilean parliament has two chambers, carefully designed by the constitution to produce stalemate on radical proposals - ie to protect the status quo.

The composition of the Chilean Senate, the upper chamber of Congress, is dealt with by Article 45 of the constitution. Traditionally in Chile, the Senate had been an elected body. Pinochet's 1980 constitution introduced for the first time 'designated', non-elected senators. Although their number was reduced (from the number desired by Pinochet) in the constitutional reforms that followed Pinochet's defeat in the 1988 plebiscite, designated senators remain a key feature of the Chilean constitution. Pinochet's invention of designated senators gave non-elected entry to the Senate to former presidents of the republic, former ministers, heads of the armed forces. Former presidents in particular were to enjoy an almost automatic right to a lifetime senatorship. This clearly gave Pinochet a straightforward escape route. Once his military term of office expired he could go on to be a life senator. With this new role would come, crucially, permanent legal immunity since Article 58 of the constitution provides for the freedom from external prosecution of senators during their office.
In early 1998 Pinochet did indeed retire as commander in chief of the armed forces, and he immediately took his seat as a life senator in the Congress. Constitutionally this was an interesting manoeuvre, successfully accomplished. Ironically, Pinochet had not been elected to the presidency by any proper democratic process, and indeed he had deposed the last properly elected president, Allende. With similar irony, Pinochet entered a democratic congress although he had abolished parliamentary democracy in 1973. The manoeuvre is interesting partly because the translation from army to Congress shows the foresight with which Pinochet’s advisors created the present legal framework. In a sense, Pinochet needed to become a life senator in order to protect himself from possible attempts in the courts to prosecute him for human rights abuses. The present constitution conveniently prevents the prosecution of senators except via impeachment from within the Senate itself. The construction of the balance of forces within the Senate (eg the presence of 'designated' senators representing the armed forces) makes such impeachment highly unlikely. The Senate is therefore a place of safety for Pinochet, as well as a place of continued influence. However, it was important, in order to avoid a human rights prosecution, for Pinochet to enter the Senate on the very day on which he stepped down from the armed forces. And it was in exactly this way that he took his seat for life.

Article 45 (composition of the Senate) and Article 58 (relative immunity of senators from prosecution) in combination represent a marked break with the democratic tradition of the organs of the state. More than this, however, the constitution, even as amended into its present form after the 1988 plebiscite, created a Senate that has been and remains an effective block on the passing of any legislation which might tend to reform fundamental aspects of the polity created by the dictatorship. Pinochet has been granted a presence

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23 The immunity position is rather complex. In 1978 Pinochet granted himself, and other military, immunity from prosecution for any crimes committed during and after the coup. However, in late November 1998, following Pinochet’s detention in London at the request of the Spanish investigating magistrate Garzón, the Chilean foreign minister reported that there were 14 outstanding complaints against Pinochet on file with Chilean investigating magistrates. Despite the immunity law of 1978, and to deflect attention from himself, Pinochet finally tolerated the prosecution of his former head of the DINA secret police. DINA had reported directly to the President. Previously, Pinochet had vetoed the extradition of Contreras to the USA to be prosecuted for the murder of Letelier in that country. Contreras was finally convicted and imprisoned in Chile. Even in the event that this precedent or other arguments could produce a prosecution of Pinochet within Chile, he retains the right to appear before a military tribunal. It is very unlikely that a military tribunal would ever convict him.
for life in the politics of Chile, and at the same time effective personal legal immunity.24

A brief description of the composition of the lower chamber of parliament is useful for us, too. The lower chamber of the parliament is fully elected. However, by design of the constitution, the lower chamber has quirks of composition that tend to produce political stalemate, and thence legislative stagnation. In the contemporary Chilean electoral system parties normally offer two candidates in each constituency, there being two deputies elected for each constituency. However, it is extremely unlikely that any party will have in practice two candidates elected for a single constituency. Where any party, Party X, wins the first deputy position, in order also to win the second seat, it must gain for its second candidate more than twice the votes of the candidate, from Party Y or Z, who takes third position. Such large majorities for the second seat are very unusual. Understandably, the two deputies for any constituency therefore tend to come from different and opposing parties. The result is therefore a lower house where no one party dominates, and a lower house little subject to changes of political composition over the successive elections of the 1990s. The Pinochet constitution has produced a neutralisation in advance of radical legislation.

Legacies and the Transition

The Pinochet regime has left two major joint legacies to Chile. First, the neoliberal economic policies created in the mid 1970s have remained practically unquestioned during the 1990s. Parties that opposed Pinochet, and then formed the democratic governments, have not been consistent in opposition to the neoliberal privatisation policies of the dictatorship. The basic neoliberal laissez-faire orientation of the Chilean economy remains as before - the state interventionism of Allende’s Popular Unity government has never returned to the practical political agenda, despite the fact that the Socialist Party is central to coalition government.

Second, the political constitution of Chile remains one essentially created by the dictatorship to reproduce, within democracy, the social arrangements imposed under dictatorship. Simply, the Pinochet constitution

24 See the same conclusion reached in The Economist, 5 December 1998, pp 71-72
is a constitution of checks and balances where any party finds it difficult to achieve a majority in Congress. The upper chamber, Senate, has those appointed (unelected) 'designated senators' representing the four branches of the armed forces. The voting system, Senate's composition, and constitutional relationships between the executive and the two chambers (not explored in this article) all contribute to a system in which controversial economic and constitutional reforms are unlikely. This is what the Pinochet regime wished - having radically transformed Chilean society, the regime ensured that return to democracy would not favour return to opposing economic policies.

Such was the situation largely until Pinochet’s detention. Pinochet’s arrest in London in October 1998 provoked in Chile the resurgence of majority political demands, demands still unsatisfied by the long period of transition in Chilean politics during the 1990s. The General’s arrest brought back to the public agenda the need to bring to a conclusion various themes largely neglected during the transition to formal democracy. It has become clear that a majority of the population remained unhappy with the treatment given during the transition to certain key topics, most importantly those of justice and human rights. Public unhappiness has centred on the need for the establishment of responsibility for the mass murders, disappearances and torture during the Pinochet years. Also, there has been unhappiness, now manifest, over the political arrangements inherited by Chile via the constitutional framework created by the dictatorship. Most obviously, given the lack of precedent in Chile, there has been growing opposition to Pinochet’s life senatorship and to the existence of designated (unelected) senators.

These unresolved issues (justice, human rights, political arrangements) would not have acquired the importance and energy they now have if Pinochet had not been detained in London in late 1998. The event gave rise to reborn hopes, demonstrating that the legal and constitutional themes had been latent issues all through the transition (i.e. from 1989 onwards). It can be claimed that the majority support for Pinochet’s prosecution\(^{25}\) indicates majority disapproval for the course traced by the transition with regard to these issues. This last claim is supported by the high rate of abstention recorded in national

\(^{25}\) See *The Economist, op cit.* In late 1998 polls indicated that nearly two-thirds (60-62%) of Chileans were in favour of Pinochet’s prosecution for human rights violations, and that about 50% of Chileans were for the prosecution of Pinochet in another jurisdiction.
elections, particularly the general election of late 1997. High abstention is historically very unusual in Chile, traditionally a deeply politicised country, and this mass abstention has explicitly worried political circles.\textsuperscript{26}

Pinochet's arrest has made clear that the transition in Chile, like the transition into democracy in many nations, has involved political compromises, compromises that have left unresolved themes which are quite crucial if citizens are to live together productively and cohesively. The compromises reached between Pinochet and the Concertación coalition that has ruled during the 1990s have left widespread frustration among the citizenry with regard to the promises of justice and of political change. These promises are regarded as having been broken by the political class,\textsuperscript{27} a class which in recent years has made little effort to modify the political and social legacy of Pinochet.

Without the arrest of Pinochet and the obvious interest within certain European jurisdictions to achieve some justice in relation to Chile, the resurgence of political agitation would not have occurred. Without this arrest, the transition would have continued along its 'normal' course. The human rights issue, we can claim, would have remained latent, both politically and judicially. Pinochet's life senatorship and the institution of the designated senators would have continued relatively untroubled.\textsuperscript{28}

Pinochet's arrest has therefore revealed something of the nature of the Chilean transition towards democracy, and gives us the opportunity to comment on the general theoretical ideas surrounding such political transitions. With the collapse of the Soviet block, theories of transition from authoritarian to democratic regimes have become more closely debated. There are two major theoretical currents which claim to explain political transitions, their successes and failures.

On one side we have what might be termed 'cultural theories' which in general terms argue that political transitions of this type are successful to the extent that they answer to popular political and social aspirations. Only in the

\textsuperscript{26} See, for example, issues of the daily paper \textit{El Mercurio} (Santiago) in the closing weeks of 1997.

\textsuperscript{27} That there is a 'political class' in Chile can be seen in the repetition in positions of political and business power of certain family names. The present President Frei, for instance, is from a younger generation of the Frei family which produced the President Frei of the 1960s.

\textsuperscript{28} Demonstrations against Pinochet's investiture as life senator in March 1998 were very muted.
measure that compromises and agreements represent and express general wishes, are those agreements, and thus political transitions from dictatorship to democracy, successful. In this version, success is dependent not on the mere existence of compromises and agreements between elites, but also on the inherited political culture more general within the citizenry.

On the other side, what we might term 'pact theories' maintain that transitions are successful where rival political elites can arrive at agreements and compromises on fundamental issues which allow them to stabilize the country, keeping contained 'excessive' popular demands that might provoke instability in the nation. In this view, elite groupings reach compromise agreements among one another, agreements that allow the elites to co-exist without major upset or difficulty. Excessive reform zeal from below is kept under control. It is the interests of the political elites which are best served by the transition.

The popular reaction to Pinochet's arrest in Europe indicates the existence of demands and aspirations long unfulfilled within Chile. The current unrest against Pinochet, lacking a military response, also demonstrates that - despite threats from certain sectors - the Chilean transition has never been in danger from a second coup d'état. Neither internal nor international conditions have existed to foster and support such a repeat coup.

The recent history of Chile accords better with a 'pact theory' interpretation of transition. The democratic transition in Chile was a transition in which the escape back to democracy sacrificed issues of justice and democracy that are of great importance to the majority. The sacrifice was managed on the back of a political blackmail that evoked the ghosts of civil war, coup, or general social and economic chaos. Quite simply, the message was that the modified Pinochet constitution was the best reasonably available if the country wished to remove Pinochet without fear of active military resentment. Until now, the political elite groupings have pacted between one another not to pursue the outstanding matters of human rights and responsibility. They have done this in the interests of a new stable political system in which they retained great influence (Pinochet and the military) or else gained great influence (the coalition Concertación government). The supposed consequence of pursuing the former dictator was renewed violence and chaos. These elites have so far succeeded in containing the social demands still deeply rooted in public consciousness.
The 25 years of Pinochet's domination of Chile are not over. While the Pinochet constitution remains in place, the *laissez-faire* society generated by the dictatorship is likely to survive. Pinochet may have stepped down from presidency and army, but the Pinochet society is still working, constitutionally protected. The question now is to what extent the post-arrest militancy will lead to a general revision of the economy and state.

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