

DEMOCRATIC INSTITUTIONS AND CIVIL-MILITARY RELATIONS: THE CASE OF CHILE

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INTRODUCTION

In December 1999, Chileans cast their votes in a presidential election, the third time they have done so since the end of the military government of General Augusto Pinochet (1973-1990). Pinochet himself retired in 1998 and has been harried by house arrest in England as a result of judicial proceedings against him in Spain.¹ Given such major historical changes, we would expect that political institutions in Chile are becoming quite effective in channeling and dealing with military concerns. But how effective are they? This article analyzes the four main political institutions that mediate civil-military relations in Chile: the Defense Ministry, the National Security Council, Congress, and the Judiciary.

The construction and/or resuscitation of institutions has been a crucial part of building democratic political systems. The military regimes that once ruled Latin America are fading ever more into the past. In some cases, such as Ecuador, an entire generation has grown up not knowing military rule at all. Yet, interestingly, even though the military no longer governs Latin American countries, the scholarly debate over civil-military relations in the region has rarely been as nonconsensual. In particular, we face the question of whether or not civilian leaders have been successful in building and reinforcing political institutions, especially in a postauthoritarian context. Studies of different countries can examine the same situation and come to very different conclusions.² Often, different studies appear simply to speak past one another.

The intent of this article is to speak directly to the central debate, namely the effectiveness of democratic institutions in the postauthoritarian era. Political institutions can have an independent impact on political outcomes, and therefore deserve further attention. Given the importance of institutions in determining policy, a useful strategy is to examine those formal institutions that

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mediate civil-military relations. By "effective" we mean whether the military accepts that formal institutions are the only appropriate avenues for expressing opinions, concerns, and/or suggestions with regard to military policy.

INSTITUTIONS AND POLITICAL ACTORS

In a commonly noted definition, March and Olsen characterize institutions as "collections of interrelated rules and routines that define appropriate action in terms of relations between roles and situations."³ As such, institutions mediate between political actors. Rules govern these relationships. The scope of action of each actor is thus well-defined and fairly predictable in any given situation. If institutions are effective, then all involved in political decision-making know the roles of all other political participants and the manner in which those decisions will be reached and ultimately implemented.

These institutions are not often transitory. Considerable effort must be expended to construct them, which means they cannot be demolished easily. Consequently they become part of the political landscape. As they become entrenched, more and more they structure the ways in which different political actors behave. Over time, not only do they mediate but they can also help define political actors' goals.⁴

The application of the "new" or "historical institutionalism" is novel for the study of civil-military relations. It represents an interesting avenue of inquiry, since civilian supremacy over the military depends so much on the ability of civilians to compel the military to accept decisions and to follow the rules that each institution carries with it. In the absence of effective rules, the military (as well as all other political actors) proceeds in an *ad hoc* manner to pursue its various interests, leaving civilians off balance and less able to respond effectively.

Pion-Berlin's institutional analysis of Argentina is therefore interesting.⁵ His thesis is provocative because it contradicts the many analysts who argue that continuity characterizes civil-military relations in Latin America and that the armed forces have retained significant political influence even after leaving power. Instead, he argues, those analyses fail to recognize the importance of democratic institutions. Those institutions were constructed precisely to limit the military's political influence to only those areas where such influence was widely considered legitimate. For example, few would expect U.S. military to miss the chance to flex its political muscles to lobby congress for weapons procurement or other issues related to professional development, and so, he argues, we should not expect differently from any other military establishment.

In particular, high levels of institutional autonomy and concentration of authority lead to the strengthening of civilian policy makers.⁶

Therefore, military behavior may be conditioned by institutions. As long as the armed forces follow institutional rules, then exerting pressure for or against certain policies will not necessarily be detrimental to civilian governance. Institutions thus stand between the military and its policy goals. Although the institutional process will be predictable, the outcome will not.

Political institutions can take on a life of their own, perhaps not even following the intentions of their creators. In this view, in the postauthoritarian context the military finds itself constrained by institutional rules even if it held a position of power at the time of transfer from military to civilian government.⁷ The transaction costs involved in manipulating them become too high even for the military, as they do for all other political actors as well. Not only are institutions difficult to destroy, but they also do not change easily. This does not mean that institutions are static or rigid, but rather that once created they can often resist major modifications.

According to the historical institutional argument, the military's range of options diminishes as a result of institutional roadblocks. Even if the military itself created the institutions, once constructed these same institutions will not necessarily always conform to military interests.⁸ The concerns of the military leadership become channeled through political institutions, which in turn increases the costs involved in defying institutional rules.

However, any emphasis on the institutional bases of civilian control over the military must take into account the fact those instances where the military itself played an important role in formulating institutional rules. Even when military governments have given way to civilian rule, some institutions retain undemocratic features. Most Latin American constitutions, for example, include a number of military prerogatives. Indeed, some constitutions were written under the direction of military rulers. In sum, we must remain cognizant not only of whether civil-military relations take place primarily under the auspices of formal institutions, but also whether or not those same institutions are primarily democratic in nature. To what degree do military-created institutions correspond to the military's interests?

To determine the effectiveness of institutions, we must therefore make an assessment of how much they effectively limit the military's options. How much do institutional rules force the armed forces to accept decisions with which they expressly disagreed? If political institutions do not force the military to accept decisions with which it disagrees, then institutional strength cannot be deemed high.

Therefore, one critical issue that must be explored further is precisely

the cost of circumventing institutions. As North argues, "an essential part of the functioning of institutions is the costliness of ascertaining violations and the severity of punishment."⁹ In Latin America and elsewhere, political actors circumvent institutions at some point. With regard to the armed forces, in all countries the military will seek to exert pressure to achieve its goals through a variety of means that do not necessarily involve institutions. At the extreme, those efforts involve public defiance of stated civilian policy or even the use of force.

The idea that institutions are often circumvented is neither new nor controversial. A broad range of activities can take place outside the auspices of formal rules and procedures. In fact, it has been argued that activities such as avoidance, discretion, and overlooking can sometimes *increase* confidence in institutional structures.¹⁰ This is because they absorb uncertainty, thus contributing to a "general aura of confidence within and outside the organization."¹¹ In other words, if small deviations occur from those formal procedures, particularly in areas where the institution is less equipped to deal with a problem or issue, then the institution will benefit if the alarm is not sounded as to its lack of effectiveness.

Yet, with regard to civil-military relations this argument rings rather hollow, especially given how much is at stake, namely control over the state's coercive force. For civilian supremacy to hold, the institutional structures that mediate civil-military relation must be strong. If many deviations from the formal rules occur, then civilian supremacy will be eroded. We must assess empirically the degree to which the military follows formal institutional rules in addition to the ability of civilians to impose costs on the military for refusing to adhere to institutional dictates.

A number of authors assert that informal rules and practices play an integral role in determining political outcomes.¹² Yet there has been little discussion about the manner in which less formal political interactions damage the credibility and effectiveness of formal institutions. This is particularly important in the context of civil-military relations. If the armed forces avoid formal institutions, civilian policy makers are left in a position of very high uncertainty. When the military ignores institutional structures, even the use of military force becomes a possibility. At the very least, civilians are left guessing.

CIVIL-MILITARY RELATIONS AND POLITICAL INSTITUTIONS IN CHILE

When President Patricio Aylwin took office in March 1990, Chilean political institutions in general were weak. Seventeen years of military govern-

ment had undermined, temporarily erased them, or even created new ones. Soon after the *coup d'état* in 1973, the military regime made clear its intention to remake Chile's institutional structures. General Pinochet spoke of creating a "new institutionality" in Chile.¹³ Under his direction, a commission spent years working on a new constitution. A plebiscite ratified that document in 1980, thus replacing the 1925 constitution.

The military regime's goal in part involved fashioning a more prominent position for the armed force in the country's political institutions. For example, as discussed below, Pinochet intended the National Security Council to be a vehicle for military influence over the political system. Given the military regime's emphasis on forging the "new institutionality," the constitution grants them the role of the protectors of institutional order.¹⁴ In all, the military wanted to ensure that its voice would always be heard; if and when crises erupted, the military leadership would thus be an integral part of the process. Indeed, if a crisis reached the point where the commanders in chief believed that Chile's institutions were at risk, then the constitution codified the right to armed intervention.

The new administration thus faced the formidable challenge of reforming the more authoritarian institutions and reinforcing the democratic ones in order to assert civilian influence in the face of any military intransigence. The conception, creation, and implementation of policy, whether it be defense policy or not, had been the military's prerogative for nearly seventeen years. After 1990, the new civilian government sought to wrest back the policy process.

THE DEFENSE MINISTRY

The Defense Ministry is a political institution dedicated solely to military issues. As such, the ministry represents a critical link between civilian policy makers and the officer corps, an arena where issues related to the armed forces can be debated and/or negotiated. Importantly, the Defense Ministry is a forum for military concerns, but with the proviso that ultimately the President of the Republic will have the final word on all decisions. Although military opinions and suggestions will be taken into consideration, they need not be followed.

The administration of Patricio Aylwin, which took office in March 1990, inherited a largely powerless Defense Ministry. Created by decree in 1932, at the outset the ministry was an important contact point. Defense Minister Emilio Bello Codecido and army commander in chief General Oscar Novoa worked together to establish tranquil civil-military relations after the political

upheavals of the 1920-1932 period. By the late 1930s, that goal had largely been accomplished. Thereafter the ministry's political relevance went on the decline, particularly since subsequent civilian governments began to show less interest in military issues.

During the military regime (1973-1990), Defense Ministers were all officers, and the ministry itself became regarded as a career "graveyard." General Pinochet was simultaneously president of the Republic and army commander in chief. Defense policy was generated in his offices, not in the ministry. Despite the ministry's general lack of prestige as the new civilian government assumed power, the Aylwin administration attempted to compel the military leadership to accept the Defense Minister as a viable go-between.

First, Aylwin appointed a political veteran to the post. Christian Democrat Patricio Rojas had been Minister of the Interior under President Eduardo Frei Montalva (1964-1970) and more recently had been campaign manager for the successful senatorial candidacy of Andrés Zaldívar. Second, Aylwin refused to follow the tradition of filling the subsecretary posts with officers.¹⁵ In exchange, he granted the military veto power over the choices. The position of Subsecretary of the Army proved the most difficult, since Pinochet vetoed all of Aylwin's choices who had defense expertise, finally agreeing to Marcos Sánchez, a lawyer with no previous experience with either the army or defense issues.

Rojas confronted the extremely difficult task of persuading the military to utilize a hitherto ineffective political institution. Even before Aylwin took office, Pinochet declared that the Defense Ministry was a purely administrative body and that he planned to take all important matters directly to the president.¹⁶ Very quickly, enmity developed between Rojas and Pinochet that would be present during Aylwin's entire four year term.

In December 1990, Pinochet called for a quartering to barracks of every army soldier in the country, a measure traditionally associated with ensuring readiness for battle, but also often a precursor to military rebellion. Pinochet and his supporters blamed congress for making false accusations against him. Pinochet was also furious at Rojas for purportedly having demanded the general's resignation.¹⁷ The so-called "ejercicio de enlace" revolved around those two issues, as a congressional commission investigated whether or not Pinochet's son had been involved in illegal business deals during the military regime.

The crisis lasted several weeks, and Pinochet successfully bypassed the Defense Ministry as he negotiated a solution. Resolution of the conflict was reached in an *ad hoc* manner, outside the auspices of the Defense Ministry, excluding Defense Minister Rojas altogether. That strategy of going around Rojas would recur. Since Aylwin refused to bow to army pressure and fire

Rojas, the Defense Ministry was not an important political player during his administration.¹⁸

The second major political-military crisis for the new administration began in May 1993. During the so-called "boinazo," soldiers were reposted outside the army's headquarters in downtown Santiago in response to an announcement in the press that the courts were about to reopen the aforementioned case against Pinochet's son.¹⁹ Yet the incidence was further exacerbated by the failure of the Defense Ministry to process a number of army documents, including payments for promoted officers, which the army claimed were languishing in the office of Subsecretary of War Sánchez.²⁰

Pinochet believed that many within the government were intent on forcing him out and that, in particular, Defense Minister Rojas deliberately mistreated the army in order to foment discontent within the ranks against the commander in chief.²¹ In this view, the navy and air force did not receive similarly poor treatment, thus proving that there was a concerted effort to force Pinochet's removal. For these reasons, the general refused to allow crisis resolution to be channeled through the Defense Ministry. Instead, the army leadership dealt only with selected government officials.²²

When Eduardo Frei became president in March 1994, he used care in deciding upon a new Defense Minister. He chose Edmundo Pérez Yoma, a conservative Christian Democrat whose father had been assassinated by leftist terrorists in 1969. Immediately, Pérez Yoma announced that he would seek a much more "professional" as opposed to "political" relationship with the armed forces.²³ Sending his own signals, Frei retained Jorge Burgos as Subsecretary of War. Burgos had worked well with the army after replacing Marcos Sánchez in the aftermath of the "boinazo." The government's strategy was to emphasize technical defense issues within the Defense Ministry, an area in which the military had long believed civilians to be deficient. In addition, Pérez Yoma would not refer to military autonomy, but rather civilians' "relative" leadership.²⁴

Given Pérez Yoma's support for the military, relations improved considerably. During 1995, when the Chilean Supreme Court tried and convicted retired General Manuel Contreras for involvement in the murder of Orlando Letelier, the Defense Minister played an important role.²⁵ The army negotiated largely with Pérez Yoma, extracting a variety of concessions before finally handing Contreras over. One impetus for the army came when Pérez Yoma threatened to resign as a result of his inability to end the crisis.²⁶ A major drawback was that these discussions constituted a direct challenge to the court's authority. Although the Ministry of Defense's constitutional role is to mediate military-executive relations, it has no jurisdiction over the judicial system. The army's interest in the Defense Ministry, therefore, seemed limited to those times

when a sympathetic minister held the position.

Interestingly, in January 1998, when the Chamber of Deputies began the process of launching a constitutional accusation against General Pinochet (see the discussion on congress), Pérez Yoma distanced himself and refused to act as mediator, stating that the accusation was a political, not military, matter and therefore was out of his sphere of authority. He still smarted from President's decision in late 1997 to veto an army promotion that Pérez Yoma had initially approved. In fact, the Defense Minister resigned soon after.²⁷ The army thus looked elsewhere to express its concerns.²⁸

The lack of ministerial leadership between January 1998 and July 1999 reinforces the notion that the military continued to adhere to the Defense Ministry only conditionally. During that time, Frei named two different ministers. The first was Raul Troncoso, an old political ally of Frei's who sought to reintegrate the ministry into the debate over the constitutional accusation.²⁹ However, when the final vote failed to proclaim Pinochet guilty of the charges levied against him, the ministry had played only a limited role in influencing the outcome.³⁰ The second minister was José Florencio Guzmán, a close associate of Troncoso. The army in particular viewed him as weak and often continued contacting Troncoso even when he had moved from the Defense Ministry to Interior.³¹

As the Pinochet crisis in England remained unresolved in mid-1999, Frei finally decided to bring back Pérez Yoma. The military simply refused to bring its concerns to the ministry unless the leadership trusted the Defense Minister. Under the other Defense Ministers, less formal contact points were the rule, which undermined the formal institutions. For these reasons, the Defense Ministry cannot yet be considered an effective political institution for civil-military relations. When its institutional rules do not conform to military desires, the military circumvents the ministry, which becomes largely irrelevant.

If the ministry were an effective institution, we would expect the military leadership to contact the Defense Minister in order to express preoccupation with a given issue. Once that concern had been expressed, moreover, the military would accept the ultimate decision made by either the minister or the president, even if the outcome proved inimical to military interests. In Chile, that situation has yet to hold.

THE NATIONAL SECURITY COUNCIL

Created by the 1980 constitution, the Consejo de Seguridad Nacional (CSN) has represented a source of considerable leverage for the armed forces in

Chile. Although a 1989 plebiscite limited its prerogatives, half of the council's eight members are commanders in chief, one each from the armed forces and the national police.³² The military regime intended the CSN to provide the armed forces with a mechanism for routine influence over the political system.³³

Many analysts argued that the CSN would have a very detrimental effect on civilian governments' ability to assert control over the armed forces. In practice, the CSN has had mixed results. Only sporadically has it been central to conflict resolution. In fact, neither civilians nor commanders in chief chose to convoke the CSN during the "ejercicio de enlace" and the "boinazo." The primary reason was that the 1989 reform erased the military's advantage, thus making any vote a more risky proposition.

In 1993, the "boinazo" provoked a public discussion about whether a meeting of the National Security Council should be called. The army did not wish it to meet, because from the beginning of the "boinazo" army officers gave assurances that the troop movement was entirely "normal."³⁴ The army's goal had been to pressure the government while claiming that nothing was out of the ordinary. The Aylwin administration did not want the CSN to meet either. Calling its members together would represent an admission that national security had been at risk as a result of military disobedience, an admission the administration refused to make.³⁵

During the Frei administration, the Contreras affair did not lead to a meeting of the CSN and neither did the constitutional accusation levied against General Pinochet. However, it did meet after General Pinochet was placed under house arrest in England. Between October 1998 and July 1999, the CSN convened four times to discuss different aspects of the case, with the result of showing support for President Frei's initial attempts to secure Pinochet's release; proclaiming that Chile's sovereignty was being compromised; protesting the British government's decision to keep Pinochet in the country; and ultimately discussing the possibility of invoking humanitarian reasons to bring Pinochet back to Chile.³⁶ As Pinochet's case progressed, the CSN had become a positive forum for civil-military dialogue.

Thus far, the military has not been able to use the CSN to put pressure on other civilian institutions, such as congress. Nonetheless, the power to convoke it grants the armed forces an important influence. The 1980 constitution allows two members to force a meeting. As a result, two commanders in chief can force the president to listen to their concerns and to bring issues to the table, even if the president wishes otherwise.

In addition, at different times both Aylwin and Frei felt obligated to call a meeting simply because commanders in chief were discussing the possi-

bility of doing so first. The presidents convoked simply to avoid the appearance of having been forced to attend the meeting. As a consequence, the CSN's institutional rules continue to be detrimental to full civilian control over the policy process.

In terms of being an effective political institution, the CSN has shown mixed results. Since neither civilians nor officers can guarantee the outcome of a vote, they tend to seek other contact points when faced with political conflict. In this sense, the structural features of the CSN have made it a less relevant institution. Although the CSN has not proved the obstacle to democracy that many observes predicted, it does give the military the ability to force the president to hear the armed forces' opinions.

To be an effective institution, the CSN would represent a forum through the commanders in chief could express opinions in time of crisis. The fact that even the armed forces have periodically chosen not convene the council in the face of serious political conflict demonstrates its weaknesses. Finally, the military's ability to force a meeting means that the institution continues to be an obstacle to civilian supremacy over the armed forces because its own charter is not fully democratic.

CONGRESS

The Chilean Congress has worked to insert itself more forcefully into national debates on civil-military relations. Congressional investigations have brought certain controversies more into public view. For example, the "ejercicio de enlace" was sparked in part by the fact that a special congressional commission began investigating Pinochet's son. These first steps, however, proved tentative. Once the crisis erupted, the president of the Chamber of Deputies agreed to bring the investigation to a hasty close. In addition, the congressional debate over the "ejercicio de enlace" highlighted the fact that the military had many supporters in congress.³⁷

Given the opposition's political power and its structural leverage in congress, the Aylwin administration faced serious obstacles as it attempted to pass substantive legislation on issues related to the armed forces. Even the congressional Defense Committees analyzed and debated only a few issues, such as intelligence reform and obligatory military service.³⁸ Those commissions also generally lack expertise, and military officers were not commonly called to provide their opinions on defense matters. Congressional staff was minimal, and often lacked any background in the area of defense.³⁹

President Aylwin proposed a wide range of initiatives to congress, none

of which successfully passed. Between 1990 and 1994, congress debated and rejected reforms related to officer retirement rules, intelligence gathering and budgets, moving the national police from the Defense Ministry to Interior, adding a civilian to the National Security Council, limiting the jurisdiction of military courts, and speeding up investigations of human rights abuses. For a variety of reasons, particularly the influence of military supporters, none of these measures passed. In particular, the constitution provides the military with four senate seats. One retired commander in chief from each branch as well as the national police becomes a designated senator. In addition, the electoral system ensures that the right (as well as any other major party coalition) remains a significant minority, disproportionate to its vote totals.⁴⁰

The Frei administration met with the same problems when attempting to enact reforms. With regard to military justice reform, for example, Defense Minister Pérez Yoma requested that a series of congressional proposals be shelved.⁴¹ He advocated a slow and incremental approach to military reforms, especially since Pinochet would soon be retiring. Both Frei and Pérez wanted to ensure that the new commander in chief began his term with a favorable view of the government. Congressional debate over military policy would be potentially acrimonious and therefore undesirable. As a consequence, they believed the reforms were better postponed.

In some policy areas, Congress is legally blocked from becoming too influential. Since 1958, by law the military has received a share of the national copper earnings. During the military regime, this share expanded to become a guaranteed income, whereby the armed forces would share 10 percent of copper sales.⁴² Article 96 of the constitution also guarantees that the military budget cannot fall below 1989 spending levels, adjusted for inflation.⁴³ Congress is thus prevented from making any major cuts to the military budget. Article 62 of the constitution states that Congress can only accept, reject, or decrease the budget proposal sent by the president, thus leading one defense expert to argue that its role in the budget process has been "very limited, almost nil."⁴⁴

The strategy of civilian policy makers has been to make the budget floor into a ceiling. In other words, they would grant the military only what the law forced them to provide. Nonetheless, in 1996 the military budget reached just under \$US2 billion, which represented 2.64 percent of GNP.⁴⁵ The copper law itself represented 14 percent of the total, or \$US285 million. In 1990, the percentage of GNP dedicated to the armed forces was 4.2, and that figure had gradually dropped each subsequent year. So while the share of national resources granted to the armed forces was indeed on the decline, the budget floors prevented any serious cuts from being made and since the Chilean economy continued to grow, the military budget did not suffer much as a result.

Despite congress' inability to pass substantive legislation related to the military and the constitutional-legal obstacles to cutting the military budget, the constitutional accusation against Pinochet, initiated by five Christian Democrats in January 1998, was a major initiative. The constitutional accusation constituted a way to make judgment on state officials for failing in their constitutional duties. Given the limitations imposed by the military regime, it was the sole manner by which Pinochet (or any general or admiral) could be judged. The constitution had been structured to prevent political judgments of officers, and offered only a narrow avenue through which politicians could exert authority. Article 48, part 2(d) grants congress the right to present an accusation against any general or admiral for "having gravely compromised the honor or security of the Nation."

The accusation had limits. The most important was that Congress could not accuse Pinochet of any wrongdoing committed before March 11, 1990. The Constitutional Organic Law of Congress prohibited it. Promulgated on January 26, 1990, transitory article 3 states that constitutional accusations can be directed only at actions that took place after the end of the military regime. The accusation therefore focused only on Pinochet's comments and actions after he no longer was president.⁴⁶

Intense congressional debate ensued, and emotions ran very high on all sides.⁴⁷ The conflict dragged on for four months, and ultimately was defeated by a vote of 62-55, with one abstention. Despite its rejection, the process of presenting the constitutional accusation represented a significant step forward. Congress asserted itself and the country engaged in an extended dialogue about the military regime and its abuses. The presentation of the constitutional accusation would have been inconceivable in the initial postauthoritarian period. Although the Frei administration opposed the measure given how it would rock the civil-military boat, administration officials did not fear outright military rebellion to the same extent as the 1990 and 1993 crises.

Congress' institutional effectiveness has thus been uneven. Its members have become increasingly bold with regard to making political judgments on General Pinochet. At the same time, over the long-term its ability to affect the military budget significantly will likely remain limited. Finally, without greater expertise the congressional committees will continue to have minimal influence over decisions related to more technical military matters. Moreover, when it sought to exert its investigative and oversight functions, overt military threats to civilian control resulted: the "ejercicio de enlace" and the "boinazo."

At the same time, congress has become a much stronger institution since 1990. Although the constitutional accusation produced political tension, the situation did not match the high degree of uncertainty characterized by the

"ejercicio de enlace" and the "boinazo." In consequence, members of congress may become further emboldened to challenge hitherto untouched areas of the military's domain. If it were effective, congress would exert more oversight over technical military issues. Its members would also seek to judge military officers if they believed those officers had violated the law.

THE JUDICIARY

The Chilean judicial system entered the postauthoritarian period in a very debilitated position. Before leaving the presidency, General Pinochet ensured that the courts were full of judges favorable to the military regime. Even more importantly, the military government had decreed an amnesty in 1978. The amnesty covered the entire period following the coup. For what he termed humanitarian reasons, Pinochet also included some political prisoners and exiles.⁴⁸ The effect was to virtually guarantee that the courts could not punish officers for their actions.

Chilean military courts also have broad jurisdiction, which at times extends to civilians. Article 276 of the Military Justice Code allows the armed forces to imprison civilians for saying virtually anything: "Anyone who causes any disturbance or disorder, through speaking, written word, or any other medium, or causes anything to be known by the troops intended to cause them disgust or indifference to the service, or criticizes that service, will be punished with...military imprisonment...if cadet, soldier or non-military individual."⁴⁹ In addition, if the Supreme Court hears a case that originated in an army court, the Auditor General of the army is integrated temporarily as a Supreme Court justice.

Given these constraints, the civilian judiciary was not a prominent institution in terms of civil-military relations in the first years after the military left power. Then in 1993 the Supreme Court found retired General Manuel Contreras guilty of being the "intellectual author" of the 1976 murder of Orlando Letelier in Washington, DC. In 1995, after nearly two years of appeals, the court sentenced Contreras to seven years in prison.⁵⁰

But for four months, with the support of both the army and the navy Contreras refused to go to prison. The military did not trust the Minister of Justice, Soledad Alvear, and therefore entered into negotiations with Defense Minister Pérez Yoma instead. Contreras did not surrender until the government made a number of concessions. These included an army pay raise, a declared end to the corruption scandal plaguing Pinochet, an agreement to provide mixed prison custody that would include the army, and the assurance that the government would not actively pursue more cases involving human rights violations.⁵¹

The fact that Contreras ultimately went to prison, however, demonstrated that the judicial system could function even in the face of military opposition.

In 1999, the Supreme Court made an even bolder decision. In June, the court denied application of the 1978 amnesty to five officers involved in the so-called "caravan of death."⁵² The decision meant a reinterpretation of the amnesty, as the court declared that the amnesty would not cover any case where the victim's body had not been found.⁵³ The armed forces and national police were unified in opposing this decision. They entered into negotiations with the government to find a way to overturn or at least alter the judgment.⁵⁴

Changes in the application of the amnesty will have a major impact on Chilean civil-military relations. The armed forces believe they deserve the amnesty, especially since, in their view, the country suffered a state of war during the 1970s.⁵⁵ From that perspective, both sides committed lamentable excesses but that did not justify forcing officers to be judged or to stand as witnesses in civilian courts. Pinochet's replacement as army commander in chief, General Ricardo Izurieta, stated that any judgment of officers "necessarily demands judgment of those who provoked the political crisis that caused the intervention."⁵⁶ In the eyes of the military, that would include many civilians still prominent in politics. Given these very strong beliefs, the military will certainly be active in finding ways to avoid civilian judgment.

Like congress, the Chilean judiciary has come a long way since the end of the military government. The courts have long been criticized for being soft on human rights and too quick in its application of the amnesty. The Contreras case demonstrated that not even one of the most prominent architects of repression was immune from prosecution. The long-term effects of the reinterpretation of the amnesty remain to be seen, but at the very least the case revolving around the "caravan of death" shows that pursuing human rights in Chile is not a futile exercise. The judiciary, therefore, is stronger than ever although only more human rights cases will demonstrate whether or not the court's decision will continue to be applied. To be effective, judges would not feel constrained when examining cases involving military officers.

CONCLUSION

During the 1990s, the Chilean armed forces, most notably the army, have often circumvented political institutions in order to achieve their goals. Even though the military regime under General Pinochet constructed the institutional rules, the army has found that those institutions do not necessarily conform to its interests. However, instead of accepting that state of affairs, officers

have found other channels to exert influence. As Pion-Berlin and Arceneaux note, a focus on institutions requires that "soldiers not have the capacity or at least the desire to repeatedly disregard official channels by fulfilling their wants outside of them."⁵⁷

Time and again, the military in Chile did precisely that. In addition, civilians were unable to impose costs as "punishment" for utilizing less formal points of contact. In many cases, government officials accepted that state of affairs, if grudgingly, because they believed that *some* sort of dialogue was preferable to none.

Of the four institutions under examination, the Defense Ministry has clearly been the least effective. The military often refused to deal with the Defense Minister. Only one minister, Edmundo Pérez Yoma, ever established a rapport with the military leadership. But a strong political institution cannot be based on an individual. As yet, the military has not shown itself willing to accept the leadership and authority of the Defense Ministry as an institution.

The National Security Council has not consistently been an effective institution either. For their own reasons, both the military and civilian policy makers periodically found themselves reluctant to convoke the CSN even in the face of serious civil-military tension. At the same time, the CSN's very structure makes it an essentially undemocratic institution. As a result, following its institutional rules may very well *not* be beneficial to democracy until those rules are reformed.

Both the judiciary and congress, meanwhile, have slowly become stronger institutions. In the Contreras case, the armed forces defied judicial ruling and successfully held out for concessions. But the fact that Contreras was eventually imprisoned, combined with the more recent move toward reinterpretation of the 1978 amnesty signifies an important assertion of judicial power. There can be little doubt that the armed forces will seek to avoid sending its officers to civilian courts, yet time is required to judge how successful they will be in that endeavor over the long term. Furthermore, only reform of the military code of justice and the organic laws of the armed forces will alter the structure of military justice and its relation to the civilian courts.

Congress has increasingly flexed its political muscle. Much more meek during the Aylwin years, when it jettisoned a controversial investigation into illicit dealings in which General Pinochet's son was involved, in subsequent years its members gained the confidence necessary to face Pinochet squarely. The constitutional accusation against him was ultimately defeated, but the fact that congress (as well as the entire country) engaged in an open debate about the legacies of the military regime signified that progress was being made.

Given the very uneven performance of Chilean political institutions

with regard to the relationship between civilian governments and the military, as yet the military's interests and goals are defined largely independently those institutions. Effective institutions not only constrain political actors, but also begin to become part of the calculation of goals. If institutions can be avoided, then political actors need not take them into consideration at all times. Regardless of institutional rules, the Chilean military has become accustomed to striking a deal of some sort outside the auspices of formal channels when pursuing its interests. In such cases, neither an institution's autonomy nor its concentration of authority is very relevant. On the other hand, the military's threat of using force has become somewhat less credible; bargaining is an improvement over bayonets. Perhaps over time the institutional leverage that favors the armed forces in the bargaining structure may also be reformed. To date, however, there is at best a stalemate.

Constitutional and institutional changes in postauthoritarian Chile are not easy, requiring extraordinary majorities and offering certain actors special veto points, especially the armed forces. If civil-military relations are to be democratized and if civilian authority is to be enhanced then civilian governments must find ways to persuade the military leadership to utilize formal institutions. At the same time, they must also work on reforming undemocratic institutional legacies left by the military regime.

The fundamental issue at stake is whether the military will increasingly follow democratic institutional rules or if circumvention becomes the norm. Effective institutions represent part of the foundation of democracy. Making those institutions more effective by channeling civil-military relations through them will further strengthen that foundation. But in Chile this requires significant reforms in the basic constitutional and institutional framework. The institutional approach is a useful framework for civil-military relations, especially if the historical continuity and strength of institutions that frame civil-military relations are examined empirically.

NOTES

1. For summaries of the case, see "Vuelco inesperado," *Qué Pasa* December 21-28, 1998; "El otoño del general," *Qué Pasa* April 19-26, 1999.
2. For example, Hunter (1997) argues that Brazil has advanced considerably toward subordination of the military to civilian rule while Zaverucha (1993) asserts exactly the opposite. With regard to Argentina, Pion-Berlin (1997) argues the former and McSherry (1997) the latter. See Wendy Hunter, *Eroding Military Influence in Brazil: Politicians Against Soldiers*. (Chapel Hill, NC: The University of North Carolina Press, 1997); Jorge Zaverucha, "The Degree

- of Military Political Autonomy during the Spanish, Argentine and Brazilian Transitions." *Journal of Latin American Studies* 25 (1993): 283-299; David Pion-Berlin, *Through Corridors of Power: Institutions and Civil-Military Relations in Argentina*. (University Park, PA: The Pennsylvania State University Press); J. Patrice McSherry, *Incomplete Transition: Military Power and Democracy in Argentina*. (New York: St. Martin's Press, 1997).
3. James G. March and Johan P. Olsen, "The New Institutionalism: Organizational Factors in Political Life." *American Political Science Review* 78, 3 (1984): 160.
 4. As Thelen and Steinmo note, new institutionalists introduced "the notion that institutional factors can shape both the objectives of political actors and the distribution of power among them in a given polity." Kathleen Thelen and Sven Steinmo, "Historical Institutionalism in Comparative Politics." in Steinmo et al. (eds), *Historical Institutionalism in Comparative Politics*. (Cambridge: Cambridge University Press, 1992), p. 6. This argument is echoed elsewhere: "Institutions do not just constrain options: they establish the very criteria by which people discover their preferences." Paul J. DiMaggio and Walter W. Powell, "Introduction." in Walter W. Powell and Paul J. DiMaggio (eds.). *The New Institutionalism in Organizational Analysis*. (Chicago, IL: The University of Chicago Press, 1991), p. 11; Thomas A. Koelble, "The New Institutionalism in Political Science and Sociology." *Comparative Politics* 27, 2 (1995): 231-243; Ellen M. Immergut, "The Theoretical Core of the New Institutionalism." *Politics & Society* 26, 1 (1998): 5-34.
 5. Pion-Berlin, *Through Corridors of Power: Institutions and Civil-Military Relations in Argentina*.
 6. He defines institutional autonomy as "an agency's capacity to act independently from others" and concentration of authority as "the number of actors/units involved in formulating and implementing policy." *Ibid.*, pp. 36-37.
 7. "Whether they want to or not, soldiers must contend with governmental characteristics that either predate them, are not of their own choosing, or are not easily circumvented." *Ibid.*, p. 28. On the issue of losing control of institutions, see also Robert Grafstein, "The Problem of Institutional Restraint." *Journal of Politics* 50, 3 (1988): 577-599.
 8. Vivien Lowndes. "Varieties of New Institutionalism: A Critical Appraisal." *Public Administration* 74 (Summer 1996): 182.
 9. Vivien Lowndes. "Varieties of New Institutionalism: A Critical Appraisal." *Public Administration* 74 (Summer 1996): 182.
 10. John W. Meyer and Brian Rowan, "Institutionalized Organizations: Formal Structure as Myth and Ceremony," in Walter W. Powell and Paul J. DiMaggio (eds.), *The New Institutionalism in Organizational Analysis*, p. 58.
 11. *Ibid.*
 12. *Ibid.*: 43; Lowndes, "Varieties of New Institutionalism: A Critical Appraisal," pp. 192-3; Kathryn Sikkink, *Ideas and Institutions: Developmentalism in Brazil and Argentina*. (Ithaca: Cornell University Press, 1991), p. 23; Thelen and Steinmo, "Historical Institutionalism in Comparative Politics," p. 2.

13. The phrase came from a speech given a month after the coup. Quoted in Augusto Pinochet Ugarte, *El día decisivo*. (Santiago: Estado Mayor General del Ejército, 1982), p. 167. He asserted that a new constitution would become "the supreme expression of the new institutionality, as the destiny of Chile will strengthen within its model."
14. Article 90 of the 1980 constitution states that the armed forces "exist for the defense of the Fatherland, are essential for national security, and guarantee the institutional order of the Republic." For the constitution on-line, see <http://sun-site.dcc.uchile.cl/soc.culture.chile/old/Constitucion80.html>
15. Each branch of the armed forces, along with the national police and the undercover civilian police, has a corresponding subsecretary in the Defense Ministry.
16. "En lo que estamos metiendo," *Hoy* February 1, 1998.
17. General Jorge Ballerino, interview with the author, Santiago, April 20, 1998. For a discussion of the so-called "ejercicio de enlace," see Rafael Otano, *Crónica de la transición*. Santiago: Planeta, 1995; Ascanio Cavallo, *La historia oculta de la transición*. Santiago: Grijalbo, 1998.
18. On the other hand, Aylwin did fire Marcos Sánchez, who was similarly disliked by the army.
19. See Otano, *Crónica de la transición*, chapter 22.
20. Marcos Sánchez, interview with the author, Santiago, December 1, 1997.
21. General Jorge Ballerino, interview with the author, Santiago, April 20, 1998.
22. Minutes were kept of those meetings as well. The two protagonists were General Jorge Ballerino, who was the head of Pinochet's Advisory Committee, and Enrique Correa, who was General Secretary of the Government, a position that has no formal ties to the military at all. See, for example, "El último acuerdo del Boinazo," *Qué Pasa* April 11-18, 1998.
23. "Las razones de Pérez Yoma," *Hoy* January 31-February 6, 1994.
24. Dauno Tótoro Taulis, *La cofradía blindada*. Santiago: Planeta, 1998: 110-112.
25. In September 1976, Letelier, along with U.S. citizen Ronni Moffitt, was killed by a car bomb in downtown Washington, DC.
26. For a more detailed discussion of the crisis (as well as the others), see Gregory Weeks, "The Long Road to Civilian Supremacy Over the Military: Chile, 1990-1998," *Studies in Comparative International Development*, forthcoming.
27. "El caso Lepe: Juegos de guerra," *Hoy* November 10-16, 1997. Pérez Yoma had a tense relationship with a number of other high-level government officials, in part due to contrasting ideas about how to deal with the armed forces.
28. "Recepción al rojo vivo," *Qué Pasa* January 10-17, 1998.
29. "Ascencio denuncia presión militar," *La Epoca* April 14, 1998.
30. See Weeks, "The Long Road to Civilian Supremacy Over the Military: Chile, 1990-1998."
31. "Ministro Pérez Yoma II, el regreso," *La Tercera* June 22, 1999.
32. The constitution originally gave the armed forces a 4-3 edge over civilians, which was changed to 4-4 through the plebiscite. The other important reform was to amend article 96(b), the provision that gave the CSN the authority to "represent" its views to any organ of government ("representar a la autoridad").

The new provision allowed the council only to "make known" ("hacer presente") its views. The semantic difference was considered significant in Chilean law and would reduce the CSN's authority to force action. See Mark Ensalaco, "Military Prerogatives and the Stalemate of Chilean Civil-Military Relations." *Armed Forces & Society* 21, 2 (1995): 255-270.

33. Jaime Guzmán, the leading civilian intellectual of the military regime, summed up the CSN's basic purpose by stating that it should be the forum through which "the Armed Forces can intervene in a regular form in the life of the country, intervention that should be limited obviously...to its specific nature, which is to be the guarantors of national security not only in an exceptional manner to confront a crisis, but in a normal and permanent form, in order to prevent such crises from occurring." *Actas oficiales de la comisión de estudio de la nueva constitución política de la República*, Sesión 379, May 31, 1978: 2731-2733.
34. An official army statement asserted that "the meeting of the body of generals of the Army today was carried out in conformance with the period of military planning." "Ola de rumores por conferencia de Generales," *El Mercurio* May 29, 1993.
35. "Expertos opinan sobre posibilidad de citar al Consejo de Seguridad," *El Mercurio* June 2, 1993; "No se justifica convocar al Consejo de Seguridad," *El Mercurio* June 3, 1993.
36. "Cosena respalda a Frei en gestiones por 'Caso Pinochet'," *La Tercera* November 11, 1998; "Cosena considera que fallo de Cámara de los Lores vulnera soberanía chilena," *La Tercera* November 26, 1998; "Cosena repudia resolución del gobierno inglés," *La Tercera* December 11, 1998; "Razones humanitarias se analizaron en el Cosena," *La Tercera* March 26, 1999.
37. For example, a member of the conservative Unión Democrática Independiente (UDI) criticized the government for failing to defend the military from press attacks: "Protected by freedom of the press, practically every day in the most prominent of their publications, some trash is vomited out against some officer or against the institution." *Cámara de Diputados, Sesión 28*, January 10, 1991.
38. Deputy Vicente Sota (former President of the defense Committee in the Chamber of Deputies), interview with the author, May 6, 1998.
39. I am grateful to Eugenio Foster, former executive secretary of the Defense Commission in the Chamber of Deputies, for pointing this out to me, Valparaíso, April 17, 1998. The problem of having no experts is evident, but Foster asserted it was beneficial since it left the committee completely autonomous from outside influence.
40. Each district has two seats. In order to win both seats, a party (or, more commonly, a party coalition), must win over two-thirds of the district votes. If not, then the second place party also wins a seat.
41. "¿Y la justicia militar?" *Hoy* July 7-13, 1997. The general model of the proposed reforms were similar to those carried out in Spain in 1985, where the jurisdiction of civilian courts was greatly expanded. This alone was enough to cast suspicion on the proposal in the minds of Chilean military leaders, who

- looked very unfavorable on the diminution of the Spanish military's political influence. For example, see Rodrigo 1990.
42. Francisco Rojas Aravena, "Chile y el gasto militar: un criterio histórico y jurídico de asignación." In *Gasto militar en América Latina: Proceso de decisiones y actores claves*. (Santiago: CINDE/FLACSO, 1994), pp. 255-257.
 43. For a discussion of the laws governing the military budget, see Mario Duvauchelle Rodríguez, *Las Fuerzas Armadas y Carabineros de Chile: su regulación constitucional y orgánica constitucional*. (Santiago: Colección Jurídicos, 1994), pp. 173-176.
 44. *Ibid.*, p. 268.
 45. Eduardo Santos, "Formulación de presupuestos de defensa y destino del gasto." *Fuerzas Armadas y Sociedad* XI, 1 (1996): 47. Defense figures in Chile are often made confusing by the fact that sometimes the national police are included and sometimes not. The 2.64 percent does not include them, and the entire budget with the national police was 3.63 percent of GNP.
 46. "Texto completo: Acusación constitucional en contra de Augusto Pinochet Ugarte," *La Hora*, March 17, 1998.
 47. One socialist member of congress referred to Pinochet as a "deteriorating caudillo" and a clone of Caligula. *Cámara de Diputados, Boletín de Sesiones, Sesión 26*, January 14, 1998: 12.
 48. See Brian Loveman, *Chile: The Legacy of Hispanic Capitalism*. (New York: Oxford University Press, 1988), p. 326.
 49. In 1993 Genaro Arriagada, a prominent political analyst and advisor to candidate Eduardo Frei, was charged under article 276 and forced to present himself at a military court. Arriagada had made disparaging comments about the army's intelligence service. The charges were later dropped, but the situation demonstrated the degree to which the military courts could influence civilians. For a discussion of the case, see "El papel de Frei," *Qué Pasa* June 5-12, 1993.
 50. Because of pressure from the United States, Pinochet excluded the Letelier case from the 1978 amnesty. See Ascanio Cavallo, Manuel Salazar and Oscar Sepúlveda. *La historia oculta del régimen militar*. (Santiago: Grijalbo, 1997), pp. 186-187.
 51. For further discussion of the Contreras case, see Cavallo op. cit.: chapter 27; "El largo camino a Punta Peuco," *Hoy* July 10-16, 1995; "El preso no. 2," *Hoy* October 23-29, 1995.
 52. A month after the coup, under Pinochet's orders, General Sergio Arellano traveled to both southern and northern cities along with fourteen other officers, executing at least 72 political prisoners along the way. "Suprema vería este lunes apelación de procesados en caso 'Caravana,'" *La Tercera* July 10, 1999.
 53. "Las condiciones de las FF.AA. para un acuerdo," *La Tercera* August 4, 1999.
 54. "Militares presionan al Gobierno por DD.HH.," *La Tercera* July 24, 1999.
 55. That sentiment has been reiterated many times. After his arrest in England, Pinochet sent an open letter to Chile that sums up the military's perspective. "While in this continent, and specifically in those countries that condemn me through spurious judgments, communism has murdered many millions of

human beings during this century, I am pursued for having defeated it in Chile, rescuing the country from a virtual civil war." "La carta que envió Pinochet," *La Tercera* December 11, 1998.

56. El mensaje de Arica," *Qué Pasa* June 14-21, 1999.

57. David Pion-Berlin and Craig Arceneaux, "Tipping the Civil-Military Balance: Institutions and Human Rights Policy in Democratic Argentina and Chile." *Comparative Political Studies* 31, 5 (October 1998): 636.

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