

**Public Participation, Political Institutions  
and Democracy in Chile, 1990-1997**

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# Public Participation, Political Institutions and Democracy in Chile, 1990-1997

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In spite of an almost overwhelming optimism about the wave of democracies that has swept the Third World in the last decade, it is unclear how sustainable many of these democracies really are. While it is true that first time in history, most Latin American countries today have regular elections and other important elements of democratic rule- it is also true that many of these democracies risk becoming stagnated, overly centralized, and exclusive, or that they may not be able to produce the results that their populations demand (such as a reduction of income inequality, or increased political participation). A number of political theorists have warned against falling prey to the fallacy of electoralism, the idea that a country is fully democratic and will stay that way for the foreseeable future just because they have instituted regular elections. Others have similarly questioned the “depth” of existing democracies, asking whether or not they are likely to survive the intense pressures generated by globalization, for example, or overcome problems such as authoritarian pasts (Chile, Argentina), governmental fragmentation (Brazil), the re-emergence of populism (Ecuador), clientelism (Mexico, Brazil), or the centralization of political power by “authoritarian democrats” (Peru).

There is no doubt that Chile has experienced a successful transition to democracy. Over seven years have passed since that March day in 1990 when power was passed from General Pinochet to Patricio Aylwin, almost four years have passed since Eduardo Frei was chosen as Aylwin’s successor in a democratic election, and new legislative elections which could substantially alter the balance of power in the parliament are on the near horizon. At the same time, numerous civil and political rights have returned to Chile, public policy is made, in general, in an atmosphere of partisan compromise -and not vicious polarization- economic growth is high and stable, and poverty levels are declining. Chile stands firmly as a functioning democracy in South America.

And yet Chileans are far from satisfied with politics, tending to see the Chilean political system as fundamentally undemocratic, and voicing skepticism

over the idea that Chile might truly be a democratic country<sup>1</sup>. Public opinion polls show high levels of apathy, especially among youth, and public participation in politics is practically non-existent<sup>2</sup>. Occasionally, bursts of student protest or public sector strikes appear on the scene, but they are sporadic and usually end as abruptly as they begin. More and more articles appear in the press or in academic journals which complain that politics and decision-making in Chile is limited to an elite political class and that public policies -while often successful- are negotiated among political parties and the executive branch without real input from broader society. In public policymaking, for example, which will be the focus of this paper, there are very few stakeholders. That is, those who are directly involved or invested in the making of most public policies are limited to those members of the political class, to technocrats, or to the few experts who are invited from outside the formal political system to provide their opinions.

In this context, a widespread debate has emerged among social scientists -a debate which echoes old and classic discussions over the meaning and nature of democracy itself- over how to deepen Chilean democracy. As discussion over transition to democracy has shifted to discussions about consolidation of democracy, students of Chile have been asking what steps can be taken to both increase and improve citizen participation in politics. While this debate has fallen under a number of different headings, it is essentially about this: how can Chilean democracy be expanded to include the participation of broader sectors of society?

In democratic theory, there are two fundamental approaches, each emerging from long-standing discussions in the field, to the problem of citizen participation: the first might be called the push approach and the second, the pull approach. Each approach locates the responsibility -and the potential- for increasing citizen participation in a different sphere. The push approach, which might also be called a societal approach, sees public participation as arising from within society itself. In short, this position argues that participation increases when society *demand*s to participate. Social movements originate at the base, small organizations are formed which then grow and attract adherents. These groups form the ever-

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1 Based on extensive public polling data, for example, Marta Lagos (1997: 135) concludes that Chileans perceive power to be in the hands of unelected actors (large entrepreneurs, the military). Disenchantment with politics rose from 20 to 45 percent within 18 months after the restoration of democracy in 1990, and has increased steadily since then, albeit at a more moderate pace.... Faced with this situation, Chileans are expressing their frustration by adopting an attitude of skepticism about the system. They are doing so, moreover, against a backdrop of robust economic growth....

2 A 1995 survey found that, given four choices (very, somewhat, little, and not at all) about half the Chileans surveyed said that Chile was little or not at all democratic, while 44% agreed that it was somewhat democratic. Only 3% agreed that Chile was very democratic (FLACSO, 1995: 23). Meanwhile, voter registration among youth is down dramatically. Chilean youth have participated less in electoral politics since the landmark election of 1989. In 1989, 18.2 percent of the total vote came from those between 18 and 24 years of age. In municipal elections in 1996, however, the figure was 9.1 percent (La Tercera, August 12th, 1997).

expanding nucleus of civil society, which become vibrant by feeding on its own energy. Civil society forces a closed state to open up. In doing so, social movements create alternative models of action, stand resolutely on moral issues (such as human or civil rights), incorporate novel discourses (such as gender or environment), utilize creative strategies for participating (such as speak-ins or civil disobedience), and push political culture in the direction of citizen awareness and involvement. Further, by building organizations -from soup kitchens to environmental groups to unions- civil sector actors make themselves heard by decision-makers and begin to wield real power. The societal approach, therefore, looks to social movements themselves for answers about citizen participation: its practitioners might interview social activists, examine base-level organizations (Oxhorn), try to understand cultural shifts by looking at public opinion surveys (FLACSO) or by seeking to understand deep-rooted cultural patterns (Seligman, 1992), focus on the ways in which civil society claims new public spaces (Castells) or creates a counter-hegemonic project (Gramsci, Keane, 1998, Havel), or concentrate on the ways that civil society has been effected by economic trends (Oxhorn; Rueshemeyer, Stephens and Stephens).

The second approach, a “pull” approach, sees the state and political institutions as the source of increasing citizen participation. What is important here is the ways in which the state *structures* political activity (Stepan, 1985; Steinmo, 1992; Skocpol, 1985). If the state is locked shut, if decisions are made behind closed doors, if civil sector actors are ignored when they speak, then political participation tends to be weak. If, on the other hand, political institutions are structured in ways that allow for meaningful participation by citizens, then civil society will rise to the occasion and take advantage of these openings: groups and individuals will channel their energy in productive and participatory ways. According to this approach, the state pulls or *invites* citizens to participate. A pure state-oriented approach would therefore focus entirely on constitutional and political design (Sartori, Liphardt, Mainwaring, Valenzuela), asking questions about formal mechanisms which exist to encourage citizens to become involved in politics.

The answer to the problem of citizen participation, of course, lies somewhere between these two approaches. The reality, as Alexis de Tocqueville pointed out over a hundred years ago, is that there is a nuanced relationship between political institutions, on the one hand, which encourage certain types of political participation, and civil society, on the other hand, where demands emerge and people mobilize according to social movements. Over time, for Tocqueville, the complex interplay between push and pull socialize people to act in certain predictable ways.

Social science scholarship on Chile has tended, when addressing the issue of citizen participation at least, to focus on the societal, or push, approach<sup>3</sup>. Largely in response to the massive mobilization of civil society during the campaign for the NO, social scientists have looked to civil society for explanations concerning its current weakness. One major exception to this is the debate over decentralization, the discourse of which has tended to revolve around both institutional design and political participation.

Nonetheless, this is changing. Numerous commentators from various fields have started to advocate greater institutional links between state and civil society (e.g. Rehren), broadening participation through political institutions and creating mechanisms for citizens to contribute to the public agenda (e.g. Varas, 1997), and establishing (or re-establishing) institutional channels for popular participation (e.g. Garreton, 1992).

This article contributes to that discussion. While explicitly denying that increasing public participation is entirely a state-based problem, it nonetheless argues that the structure of the state and political institutions does matter. Similarly, it does not suggest that broadening institutional channels will *alone* solve all problems of political participation. In fact, it is possible, even likely, that the opening of political institutions may be met in some cases with no increase in participation: people might *not* use available institutions. However, if increasing political participation is seen as a push *and* pull phenomenon, then the political institutional side of the equation is important. To facilitate discussion, the article is limited to political participation in one arena of politics public policymaking: that is, the formulation and implementation of specific policies by government actors.

This article attempts to operationalize the concept of broadening participatory political institutions. Except in the case of decentralization, as mentioned above, social scientists and political actors have often not specified exactly which political institutions they mean; how or why those political institutions can or should be changed; and what the results are hoped to be.

Not including this introduction and the conclusion, this article is divided into three sections. The first section briefly examines democracy and participation in Chile. The second section discusses political institutions through the lens of democratic theory, developing the concept of stakeholdership in policymaking and leading to an operational definition of five categories of political institutions

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<sup>3</sup> This is not true, incidentally, in broader areas of social scientific research in Chile. For example, many of the questions about the Chilean transition to democracy have focused on -and still focus on- such institutional design issues as presidential versus parliamentary systems (Mainwaring, Scully), the binomial system (Fuentes and Siavelis), and simultaneous elections (Saffirio).

which can increase citizen participation. The third section examines these institutions in Chile. The conclusion attempts to pull together some broad lessons about the potential for deepening and consolidating Chilean democracy.

## Public Participation in Chile

Chile, as many Latin American countries, finds itself caught between two profound fears, both emanating from historical experience, in terms of public participation and democracy. The first is a fear of populism and the related fear of a descent into chaos. Populism, seen by many as an *overly* participatory form of interest articulation, in which popular leaders drive the country into debt and create severe economic problems while trying to cater to broad based swings in public opinion, represents, to some degree, the historical conceptualization of democracy in much of the region. Countries such as Peru and Argentina, for example, wracked by populist governments, equate democracy only ambiguously with success, and in some cases (e.g. Peru) with failure. Joseph Schumpeter's admonition that the "mob is capable of nothing other than a stampede" seems to ring somewhat true as a form of mobocracy appears to have characterized democratic experiences in some Latin American countries. Further, political polarization and the descent into social chaos which Chile experienced in the 1970s also seems, to many people, connected to democracy itself: hence the ability to of the military regime to justify itself as necessary to restore order in a system that had become too democratic.

This leads naturally to a second fear. Although every year it fades -at least in Chile since 1990- there remains an abiding if subtle worry that any movement towards chaos will result in the need for the military to reassert itself. In Chile, the military is highly unlikely to re-intervene. Nonetheless, painful memories of an authoritarian past form the foundation for proceeding with caution when it comes to increasing political participation. Not wanting to alienate the right-wing and seeking compromise instead of confrontation has been the basic mode of political activity in Chile since 1990. While this approach has been extremely sensible -and, arguably, is responsible for the success of Chile's transition to democracy- it nonetheless leaves little room for expanding public participation.

In the meantime, the very concept of the state has changed in Latin America. Largely as a result of global ideational shifts and of the hegemony of neoliberalism as a dominant paradigm, the state is seen less and less as the paternalistic and benefactor state of Keynesian descent which so greatly facilitated the populist project (as well as the socialist one). Instead, dominant actors and many social theorists in Latin America articulate a conceptualization of a rationalized, Weberian state *1990s style* (that is, slimmed down to the bare minimum and dominated by technocrats), in which modern bureaucracies tackle scientific problems with hard-nosed and dispassionate solutions. This tendency

has further inhibited participation, since the populace at large, which already seems to have a bad reputation (especially among the political elite) for solving problems, is often seen as unable -yet- to actively participate in solving the complex and technical problems of modern government. While there exists an abstract and vague hope that citizens may *one day* be educated or modern enough to participate more, this argument suggests that they are certainly not ready to do so now.

These tendencies -two fears and a resulting basic distrust in the citizenry<sup>4</sup>, and the technocratization of political life- lead to the logical conclusion that keeping popular impulses at bay is required, at least in the short -to medium-term, until basic problems are resolved and more citizens can be slowly, piecemeal, incorporated into public life.

What is most interesting about this debate is that it makes a certain amount of sense, but only according to the logic of transitions. Chile, in fact, has amply demonstrated that during a transition from authoritarian rule to democracy, a certain amount of pact-making, compromise, and building of mutual trust and meaningful dialogue are perhaps the best route (Schmitter and Karl, Weyland).

But Chile today- at least according to the vast majority of political actors, from ex-president Aylwin to Pinochet himself- is *no longer in a period of transition*, having subtly but securely moved into a new phase which many people refer to as consolidation of democracy<sup>5</sup>. Moreover, as Schmitter and Karl and others have pointed out, the logic of consolidation is based on different epistemological assumptions than the logic of transition. If, indeed, Chile's transition is secure, it is now time to rethink the foundations of the new phase. In short, should the same fears be given primacy? Or -as this article argues- is there a profound danger, in terms of the sustainability of democracy itself, in pursuing consolidation while operating under the logic of transition?

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4 A basic distrust of the citizenry is, of course, hardly new either to democratic theorists or to Latin America, as is amply demonstrated in the writings of, for example, Schumpeter, Michels, Mosca, and other elite democratic theorists. In the Latin American case, however, this tendency has arguably been even more pronounced (see Chalmers).

5 I do not like this term myself, as I consider it teleological (see O'Donnell). It may be better to see Chilean democracy not in terms of the transition/consolidation dichotomy, but as a type or a breed of democracy, for example as a Schumpeterian or delegative democracy. The usefulness of the concept of transition, however, should not be lost, nor should Schmitter and Karl's point that the two processes stem from different foundations and thus follow different logics.

## Political Institutions, Democracy, and Stakeholdership

Public participation through rationalized channels and strong political institutions is the antithesis of mobocracy, populism or chaos. While a certain amount of elite bargaining may be necessary to initiate and sustain a transition to democracy, the deepening of democracy depends on the degree to which citizens are incorporated into the business of government through representative and deliberative institutions. While these institutions include the right to vote in free and fair elections, they go far beyond that single institution, as will be discussed below. The creation of these fundamentally *republican* institutions<sup>6</sup>, furthermore, represents an alternative to populism which is both democratic and modern. Instead of abundant but unorganized and politically polarized societal activity -either under populism or as resurgent and oppositional society reacting to authoritarian repression and seeking, as Gramsci might say, to create a counter-hegemonic project- political institutions, properly created, can process demands from the base in rational, stable and profoundly democratic ways.

Discussing the relationship between state and society after eight years of authoritarian rule in Chile, Alfred Stepan (1989) noted that state power grew under the dictatorship while the power of civil society declined. In his analysis of state and society relationships, Stepan used a model similar to the one posited here -that of the "reciprocal relationships between the power of the state and the power of civil society"- to see how civil institutions were "emasculated", "strengthened", or "recomposed" by state activity from 1973-1981 in Chile (1989: 317 - 20). Stepan suggests that the "organizational arrangements of states, the existing patterns of state intervention in economic and social life, and the policies already in place all influence the social interests pursued in politics. Some potential groups activities are activated, others are not. Some demands are pressed; others are not imagined or considered inappropriate given the kind of state structure and established policies with which social actors must deal" (Evans, et. al: 253).

An institutionalist approach to the study of popular participation and civil society argues that "[b]y shaping not just actors' strategies... but also their goals, and by mediating their relations of cooperation and conflict, institutions structure political situations and leave their own imprint on political outcomes (Steinmo: 9). Accordingly, institutionalist thinkers have noted that "the organization of political life makes a difference" (March and Olsen: 734 - 48) and that institutions themselves should be examined as central features of a given political system<sup>7</sup>.

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6 Here I allude to the republican tradition, stemming from Rousseau and Montesqueue, as well as from parts of the American tradition, such as the Anti-Federalists and Paine.

7 The focus of these discussions lies in an understanding of state-society relationships. In general, the state is seen as a set of institutions, backed by the legitimate monopoly of coercive force, which provide a normative order... (Weber). The phrase civil society has a long and complicated history, with different meanings attached to it by different authors (Bickford). The simplest

The relationship between political institutions and civil society has been an underlying current in political thought since Toqueville's *Democracy in America*. Institutional thinking has inspired a resurgence of Tocqueville's approach, which emphasizes a direct relationship between democracy, on the one hand, and the relationship between political institutions and civil society, on the other. For these researchers, political institutions create a context for the potential of a democratic civil society; and societal pressures push for institutional reform which would directly expand or democratize civil society. While this approach has been fairly well researched in the context of American politics in particular<sup>8</sup>, its application in the context of the Third World is fairly recent<sup>9</sup>.

Robert Dahl has provided political scientists for years with a working definition of polyarchy, and a consensus has formed that polyarchy must be an important element of democracy. Other theorists (e.g. Schmitter and Karl) have taken the definition of democracy further. This article continues that line of thinking by agreeing that democracy means substantially more than elections. Democracy must also include other institutional mechanisms for public participation. In particular, democracy should include some (preferably fairly broad) degree of citizen stakeholderhood in the making of public policy<sup>10</sup>. The fundamental assumption behind this idea is that public policy is greatly improved if greater numbers of those affected by it can directly participate in its formulation. As part of the democratic process, policymaking benefits from incorporating different ideas and opinions beyond just those of politicians. Furthermore, by believing that they have meaningful influence, or that they are listened to by decision-makers, people become more fully invested in policy decisions. They are more likely to obey rules which they believe they helped create; they are more likely to see policy as legitimate if they have put some of their own time and energy into helping create it. In a broader sense, therefore, stakeholderhood in policymaking is an essential ingredient to a strong democracy. In North America and Europe, for example, over time many countries have endeavored to make policymaking more participatory and democratic by creating

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definition for civil society is the multiplicity of associations between the state and the family (Keane)

- 8 A large number of publications look at the relationship between political institutions and civil society in the American context, many of which reflected on particular movements (consumer rights, women's issues, etc.) or on local or neighborhood politics. To cite just a few: See Boyte, McFarland, Truman, and Freeman.
- 9 See Bickford (1995). Some of the works that use this perspective in the Third World context include Norton (on the Middle East); Harbeson, Rothchild and Chazan (on Africa); Oxhorn; Loveman; and Bebbington, et. al (on Latin America).
- 10 This concept is largely drawn from the literature on democratizing businesses by integrating both workers and management into decision-making, long-term planning and workplace conditions. Parallel to this literature have been studies in the field of public policymaking (e.g. beginning with Lowi and Wildafsky and including more recent work by, for example Margaret Weir; Edwin Amenta and Theda Skocpol).

institutions (such as public interest law, plebiscites, public forums) which allow citizens to become stakeholders in policymaking. In many new democracies, by contrast, public participation is often limited and institutions which foster stakeholderism are either weak or non-existent. Furthermore, it is likely that the chances that new democracies will be sustainable is directly related to how comprehensively stakeholders are included in the policymaking process<sup>11</sup>.

By contrast, there is growing evidence that when policy is made entirely from above, with few legitimate channels for citizen participation, citizens become frustrated and alienated from governmental processes. The political elite becomes almost as far removed from the mass of citizens as authoritarian regimes (albeit without the same level of repression). Elite -or Schumpeterian-democracies, even if they have competitive elections, thus run the risk of alienating citizens and causing democracy to decay, or worse<sup>12</sup>.

The term “stakeholder” comes, originally, from the time of the American Homestead Act, when American pioneers were legally entitled to take out a claim on a piece of land, and the government would guarantee ownership (Novack, 1996: 19). A “stakeholder” was a person who had a (legitimate and enforceable) claim on ownership of land. Stakeholderism, furthermore, was associated with the public interest and general welfare; the Homestead Act rested on the foundation of Jeffersonian republicanism which saw the small landowner as the basis for a free society. In this way, stakeholderism was associated with citizenship. A citizen, according to this notion, owned a “stake” in society and, by extension, in the government which ruled society (especially since early notions of citizenship were closely tied to land ownership).

This thesis defines stakeholderism as the degree to which citizens can reasonably and accurately claim (or “hold”) a “stake” in governmental decisions. A “stake”, according to Websters, is defined as an “interest or share in an undertaking”. Stakeholderism is, of course, a metaphor. What, after all, does it mean to “own” a part (or share) of a “governmental decision”? The answer lies in a philosophical approach to the meaning of ownership and property. Theorists as different as John Locke, Rousseau, and Marx have understood ownership to be strongly linked to labor. According to Locke, for example, in a “state of nature”, man has only “his own person” as property (§. 27). Labor is an extension of the self. When man uses his labor to create or appropriate some thing, he is mixing his labor with that thing and it becomes his: “That labor put a distinction between them and common: that added something to them more than nature... had done;

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11 The principle variables affect the sustainability of democracy -that is, the likelihood that democracy will last and thrive into the foreseeable future- are discussed in some depth in Przeworski et. al.

12 O'Donnell has treated this problem in a number of recent essays. He refers to what I call Schumpeterian Democracies as Delegative Democracies.

and so they became his private right” (§.28). This is how something moves to the state of being privately owned. For example, when a man picks an apple, the apple becomes his because he has mixed his labor (an extension of his own person) with the apple in order to pick it. But if he did not pick it, it would have remained useless, dangling on the tree. In fact, for Locke, God gave the world specifically “to the use of the industrious and rational (and labor was to be his title to it)” (§. 34). Rousseau (1984: 118) echoes this idea: “It is his labour alone which, in giving the cultivator the right to the product of the land he has tilled, gives him in consequence the right to the land itself”.

For Marx, of course, the difference between communism and capitalism hinges on the fact that, under capitalism, the product of a person’s labor becomes “estranged”, as it “is the property of the capitalist and not that of the laborer, its immediate producer” (350). For Marx, the core question in understanding society was the relationship between the laborer and the objects of his production. As such, rightful ownership of a product must be assigned to the laborer (and not the capitalist). In this sense, for Marx -as for Locke and Rousseau- ownership and labor are closely intertwined.

By definition, all democratic governments have mechanisms to foster stakeholderhood. The first of these is the vote. Recognized throughout the history of democracy as its defining feature, universal suffrage has long been seen, whether stated as such or not, at the core of stakeholderhood. Political parties are a second major mechanism through which democratic governments encourage stakeholderhood. Because they connect leaders with popular followings, political parties allow interests to be aggregated and more clearly represented. In particular, political parties are “agencies for forging links between citizens and policy-makers. Their *raison d’être* is to create a substantive connection between rulers and ruled” (Lawson, 1980: 3).

These mechanisms encourage stakeholderhood and thus, all things being equal, can contribute to high-quality democracy and democratic sustainability. However, since this thesis focuses on governmental decision-making, the remainder of the discussion will examine the ways in which citizens can have a stake in governmental decisions through either active political participation in the formulation of those decisions *or* the realistic possibility that they can actively participate if they choose to do so, since it is neither likely nor desirable that *all* citizens will participate actively in *every* decision. The primary way in which governments encourage stakeholderhood is, simply put, through political institutions which encourage “voice” over “exit” (Hirshman, 1970).

## Political Institutions and Stakeholdership in Chile

Chile represents a best case for this study, and a fuller understanding of Chile will help students of other countries and regions -both comparativists and area specialists- to clarify what is meant by a participatory political institutions. Chile is touted around the world by institutions such as the World Bank and the IMF as a model for democratic transitions. Its economy, the legitimacy of its democratic institutions, the return to Chile of numerous basic freedoms, and the ability of lawmakers to consistently introduce and pass new legislation are all cited as reasons that Chile has made it moved from an authoritarian regime to a democratic one. However, from a perspective of stakeholdership, how democratic *is* Chile in 1997? In fact, very few political institutions exist in Chile today which foster stakeholdership.

If political institutions are the “formal organizations and informal rules and procedures that structure conduct” (Steinmo, et. al., 1992: 2), what *specifically* are the political institutions, rules and procedures that increase public participation in a post-transition democracy such as Chile? They can be classified into six main categories. Under each category I have listed some possible examples of political institutions. These are not meant to be exhaustive. In fact, different societies might accomplish these goals in varying ways. The examples given here are, however, relevant for the Chilean case.

What, then, are the political institutions in Chile which might foster public participation? How can public demands be channeled into the policymaking process?

Beyond the broadest mechanisms of democratic participation (voting and political parties) there are a vast array of different ways -in theory, as well as in practice in many countries, both regionally and globally- that citizens can participate in the business of making decisions that will affect their lives. One of the most important of these is forming associations, institutions, and other forms of non-state organizations which allow citizens to articulate their interests in ways that go beyond voting. Another involves the communications media. A third is through protest or direct action (such as blocking traffic to protest urban air pollution). A fourth might stem from individual initiative, such as through public interest law or class action suits.

Every democracy is constructed differently, and there is no right system. Liphart’s outline of twenty-one existing democratic systems is an excellent attempt to examine a variety of different democratic arrangements, which vary according to a number of considerations. Seeing democracy through the lens of this abundant variety, which may include corporatist, pluralist or consociational aspects, for example, we might even expand Liphardt’s list to include democratic

elements in regimes which cannot be classified as fully democratic. For example, Bayart validly suggests that in Africa the potential of democracy might be more convincingly revealed by the creation of small collectives established and controlled by rural or urban groups (such as local associations), rather than by parliaments and parties, instruments of state, of accumulation and alienation (Bayart: 125).

At the same time, however, cultural relativism must not cloud the fact that there are ways to see both the rich variety of democratic forms while not deviating from a core understanding of democracy. In this way, the culturally relativist arguments of those who argue for the Asian model of democracy, including in that category the (fundamentally illiberal) violation of basic rights, must be refuted.

For its part, Chilean democracy contains corporatist and pluralist elements, a legalistic political culture, a long history of strong political parties, and strong and centralized executive power, among other aspects. Historically, corporatism -what Schmitter calls state corporatism as opposed to the societal corporatism of, for example, Scandinavia- has played a major role in Chilean democracy. More recently, Chileans have integrated elements of pluralism into their democratic system. Today, it is fair to say, there is a strong belief among Chileans in the value of pluralist political institutions.

The discussion below suggests three different broad categories of public participation<sup>13</sup>: *legislative branch inclusion* (the institutional arrangements and

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13 An additional category, *political decentralization*, is beyond the scope of this paper. Drawing on the "popular participation" strand of democratic theory [For example, see Pateman (1991); and Arblaster (1987)] it can be suggested that participation in small-scale democratic institutions provides an "educative function" (e.g. John Stuart Mill), likely to support democratic governance. As Pateman (1991: 30-1) suggests, "if individuals in a large state are to be able to participate effectively in the government... then the necessary qualities underlying this participation have to be fostered and developed at the local level". In other words, political decentralization to smaller, more participatory units provides a mechanism by which citizens can become intimately involved in political life, learn the art of politics and contribute directly to decision-making. In Chile, the subject of decentralization has been on the public agenda for a long time, and has been discussed at length by national, local and municipal leaders and scholars [see for example, Ahumada (1998); MIDEPLAN, (1992); and Sergio Micco and Reinhardt Friedman, (1992)]. A serious effort towards decentralization began in the 1980s under the authoritarian regime. Motivated less by political participation *per se* (i.e. seen as an inherent good), the foundation of this effort was the neoliberal economic model, which sought efficiency in both human and fiscal resource allocation. In this way, a major objective behind the military regimes decentralization initiatives was to remove the State from its role as the principal actor in the definition of the country's economic and social development. This was done primarily by delegating administrative powers to the regional governments and off-loading State responsibilities in areas such as health and social welfare to the private sector. Nonetheless, the central government maintained almost exclusive control of local funds and resources, and, until 1992, municipalities were not constitutionally recognized as governing institutions. To date, decentralization in Chile has been conceived and

mechanisms which provide access points for non-state actors into the legislative process); *executive branch inclusion* (ways in which citizens can interact directly with the executive branch); and *legal institutions* (laws and legal rules which promote monitoring of public activities, transparency and participation through legal channels). In addition, a fourth category touches upon questions of access to information; and what I call soapbox rules, or institutions which foster speaking out on issues and the use of public spaces.

It is important to note that the details under each of these headings might be substantially different in different countries, and the careful analyst will, first, consider the ways in which history and culture have fashioned the democratic system of the country being examined; and, second, listen to demands being made *within* that system for how to further democratize it. Accordingly, each of the categories below begins with a general description of how it fits into any democratic system, but quickly moves into a discussion of the ways in which Chileans have worked to expand or democratize these areas.

## 1. Legislative Branch inclusion

The legislative branch is, by definition, the locus of law-making in a political system. In democracies, some important percentage of legislators are elected, and they have the power to make decisions concerning meaningful issues which affect the citizenry. These decisions result in the creation or amendments of laws, regulations, legal norms, rules, and policies which are binding and enforced by the state. All democracies have a legislative branch of government, although these might take different forms. Most broadly, the legislative and executive branches may be fused, as in a parliamentary system. More specifically, on a case-by-case basis, legislatures might be strong or weak, divided into various different arrangements of houses and committee systems, and each of these houses may be more or less meaningful or symbolic.

The Chilean legislative branch is composed of two houses -the Senate and the Chamber of Deputies- the majorities of which are popularly elected according

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controlled almost exclusively from the central administration, and the transfer of state responsibilities has not been accompanied by a legal framework which recognizes local rule and by a better distribution of public funds to regional and local entities. In short, local governments have little power or freedom to raise and allocate their own funds, and to determine their own public programs and policies. In addition, local government structures are *themselves* not extremely participatory, and tend to be dominated by partisan interests (especially through political parties), tend to reproduce the logic of centralism and presidentialism found on the national level, and often do not recognize the role which social groups and associations could play in the decision making process. For this, adequate channels for participation could be provided and ensured, along with accountability mechanisms which promote civic oversight of government actions.

to voting districts<sup>14</sup>. The legislative branch is, however, compromised (in terms of democracy) by two authoritarian enclaves or, more specifically, constitutional mechanisms through which the military government was able to maintain some control after the transition to democracy. From 1988 - 1990, after the plebiscite which unseated the authoritarian regime, but before the democratic government took power, representatives of the military government and representatives of the Concertación negotiated certain changes to the constitution. Left untouched, however, in these negotiations were a number of provisions in the 1980 constitution, including two which directly affected the legislative branch: the binomial electoral system and the designated senators.

The binomial electoral system is a complex electoral arrangement which allows for the over-representation of the second-highest vote-getting parties (in practice, often the center-right) and for an under-representation of the highest vote-getting parties (often the center-left). Third parties are at a strong disadvantage. This electoral system -which is neither strictly majoritarian nor proportional- creates a two-party logic, and almost guarantees that, at least in the 1990-1997 context, the right will be represented beyond its vote-getting ability<sup>15</sup>.

In addition to the thirty-eight elected senators, the 1980 constitution also allows for the appointment of nine institutional or designated senators. With the exception of ex-presidents of the Republic, who have the option of becoming lifetime senators after they are finished their presidential terms, the other designated senators have a term of eight years. They are chosen according to a specific formula (article 45 of the Constitution), and include two ex-Supreme Court ministers; an ex-Controller General; four ex-military chiefs (one each from the Army, Air Force, Navy, and Police); an ex-rector of a state-recognized university; and an ex-minister chosen by the President.

These two authoritarian enclaves greatly reduce the potential of full democracy in the legislature, and strongly limit participation. First, the binomial system violates the principle on one-citizen, one-vote, which is an inherent principle in democracies<sup>16</sup>. Second, this system compromises the Chilean

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14 Deputies are elected according to sixty districts, which each elect two deputies every four years. Senators, except the designated senators, are elected for eight years, according to nineteen *circunscripciones* (there are thirteen regions -provinces- in Chile. Each of these elects one senator each, except for six of the regions, which are divided into two *circunscripciones*, and therefore elect two senators each).

15 For a description of this system, see Norguiera. For a critical appraisal which includes a concrete proposal for electoral system reform, see Fuentes and Siavelis.

16 Although it should be noted that other democracies violate this principle: for example, the Canadian system provides for over-representation of its under-populated Maritime provinces. Furthermore, while many political actors disagree with the binomial system, many are also worried to change it. For example, some political actors worry that a return to proportional representation could lead to a return to the problems of the 1960s, and ultimately to the collapse of

Parliament in terms of *representation*, by skewing election results. It is, for example, possible (even common) for a candidate with a high percentage of the vote to lose, while another candidate, with a lower percentage of the vote, might win.

Second, the designated senators represent a clearly undemocratic check on parliamentary power. While numerous systems, including the British and Canadian systems, for example, have non-democratically elected senators, rarely do they have the ability to substantially alter legislation which has been formulated through the democratic process. In Chile, however, the designated Senators, especially when acting in concert with the elected senators from the right, can -and do- greatly affect the outcome of the legislative process. This has been most pronounced in issues which deal with the military or address past human rights abuses by the authoritarian regime.

In addition to these two constitutional mechanisms, which are direct legacies of the authoritarian government, there are a number of other provisions which impede public participation and inclusion in the legislative branch. Through a variety of mechanisms, the legislative branch is unable to define most of the legislative agenda thus making it difficult for non-state actors to influence this agenda by acting through the legislature. One of the most important of these is the fact that only the executive can introduce bills (*proyectos de ley*) which concern the national budget, public administration, and taxation (see below). For all bills concerning money matters, in short, the legislative branch can only *accept* the budget proposed by the president or *diminish* spending on certain line items. This executive prerogative actually goes far deeper -for example, the executive has the power to *prioritize* the legislative agenda<sup>17</sup>- making the executive branch by far the most powerful actor in Chilean politics, as will be discussed in more depth below.

In sum, the legislative branch in Chile is both weak (compared to the executive) and compromised (in terms of democracy). Nonetheless, there do exist some institutional mechanisms to encourage citizen participation in the business of the legislature.

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Chile's political system. According to DC Senator Valdes, for instance, "there is no doubt that the proportional representation election system led to the crisis of 1973. One of the reasons our political system collapsed in 1973 was because of the proliferation of parties within the government of President Salvador Allende. Allende told me on numerous occasions how difficult it was to lead with such a large number of parties to deal with". Valdez said he does not favor the current binomial majoritarian system, but would be very cautious in advocating a return to proportional representation (El Mercurio, 22 September 1997).

17 This is done by the provisions for different kinds of urgency which the executive can attach to any bills it sends to congress.

One last point needs to be made: any analysis of the legislative process in Chile needs to be attentive to the role of the committee system in formulating legislation. In Chile, as in most democracies, the lions share of all legislative work is done in committees (*comisiones*). The Chilean committee system, however, is comparatively more closed to public inspection -and public participation- than many democratic systems (although not necessarily more so than most other countries in the region).

### **a. Direct participation of citizens in legislation.**

The citizen initiative, such as exists in some other countries in the region (e.g. Colombia) does not exist in Chile: individual citizens may not directly introduce legislation. Instead, as in many democracies, they must act through their parliamentary representatives. A fuller understanding of the ways in which individuals or groups of Chileans can introduce legislation by, for example, lobbying or putting pressure on representatives, would require a sociological examination beyond the scope of this paper. In fact, there is no doubt that *informal* rules over activity *outside* the formal political process -such as having contacts in high places (*pitutos*), including family members or friends from university- govern the ways in which an interested individual might influence the legislative process.

In terms of formal mechanisms which allow citizens to contribute to the formation of legislation, however, there are very few channels available. Perhaps the clearest of these is the ability to testify before the relevant committee concerning a particular bill before congress. Although interested citizens can call the secretary of a committee and request to testify (or, for that matter, directly contact the Chair of the committee or one of its members), the norm is for a member of the committee to suggest a name to the Chair. The Chair has little formal power to deny such requests, and is likely to accept the suggestion. Generally, the reasons that committee Chairs deny such requests is because he or she considers them frivolous or because of time limitations. Those invited to testify before committees are almost always considered to be experts in the field relevant to the legislation<sup>18</sup>.

It is important to note, however, that the political culture of legislative committees tends to be dominated by technical questions. Since the parameters of pending legislation are usually hashed out *before* a bill arrives in committee, committee members tend to dedicate themselves to straightening out the details

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18 The information in this section comes primarily from interviews with Adrian Alvarez, the Secretary of the Comisión de Legislación, Constitución y Justicia de la Cámara de Diputados, and Javier Rosselot, the Secretary of the Comisión de Hacienda de la Cámara de Diputados (both on October 14th, 1997), as well as with a number of diputados and senators.

and getting the technical side figured out<sup>19</sup>. Consequently, committees usually solicit experts in technical matters -such as lawyers, legal scholars and judges on judicial reform; or accountants and economists on tax reform- for specific questions concerning, for example, the *wording* of the legislation, or the specific effects that the legislation might have on particular groups.

The public can also participate in the business of the legislature through public forums (*Audiencias Públicas*) in which citizens are invited to give their opinions and voice criticisms. There are no specific provisions for public hearings in the full legislature<sup>20</sup>, although sometimes public hearings are called for specific issues. For example, during legislative discussions of the Indigenous Law (*Ley Indígena*) and the Environmental Law (*Ley de Medio Ambiente*), parliamentary members did call for public hearings at the level of the legislature. At the committee level, however, public hearings are required, according to the most recent procedural norms. Specifically, each committee must open up discussion of all bills under consideration for at least one hour to the public. In this case, the public is defined as organizations and entities which have a direct interest in the bill (Parada: 474). In order to be included in these hearings, an organization must petition the secretary of the committee in advance, who can then decide, in consultation with committee members, if the organization fits the requirement. Public hearings are only required at a particular stage of the process: at the moment of the Study of the Bill, which is the formal mechanism by which a bill is introduced to a committee.

## b. Lobbying

Lobbying rules, although problematic in their own right, are arguably a form of direct citizen input<sup>21</sup>. However, lobbying, while essentially a democratic form of participation, must be regulated by the state. Since lobbying allows groups and individuals with the resources to mount effective lobbying campaigns, and thus gain disproportionate access to parliamentarians, there is a gray area between lobbying and corruption. In Chile, lobbying to the point of corruption is *Tráfico de Influencia*, which is forbidden by law.

Lobbying takes place in Chile, as in all democracies. However, it remains totally unregulated. The only check on lobbying in Chile is through nascent (and

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19 Interviews with Adrian Alvarez and Javier Rosselot (October 14th. 1997).

20 The *Ley Organica del Congreso Nacional* (art. 20) suggests that each House may choose ways in which to include the public in its decision-making, which suggests a potential for future expansion of public hearings.

21 Lobbying, based on the American experience, must be viewed critically in terms of fostering democratic civil society. On the one hand, lobbying rules in the United States allow civil sector organizations to have direct access to governmental decision-making. On the other hand, US rules around lobbying facilitate the ability of wealthier groups to have greater access.

often unenforced) laws on Tráfico de Influencia and other forms of corruption. Specifically, parliamentarians conduct is governed by the Penal Code and the Civil Code, which contain rules about bribery and influence peddling. In addition, the Report of the National Commission on Public Ethics (see below) makes further recommendations concerning corruption and conflict of interest, although many of these recommendations are not yet law.

### **c. Publicity of legislative activity**

Public participation in a democratic polity requires transparency: either through the media (discussed below) or through concrete linkages between governmental decisionmakers and the public, citizens require access to information about what decisions the government makes, and how political actors arrived at those decisions.

In order for a government to be sufficiently transparent to be considered democratic, laws, policies, rules, procedural norms and regulations must be visible and accessible to the public. This is for two reasons: first, so that the public can hold government actors themselves (as well as other actors) *accountable* to the extant laws; and, second, because citizens must be aware of the laws and policies in order to effectively argue that they need to be changed and improved. Thus governmental secrecy threatens democracy.

If the publication and dissemination of laws, rules, policies and regulations were the only measurement of democracy, Chile might well be the most democratic nation on earth. Because of a legalistic political culture and a long history of solid legal institutions, the average Chilean has far better access to the *outputs* of governmental decisionmaking than, for example, the average American, Canadian or Argentine. Laws are published in newspapers and in small, inexpensive volumes sold on streetcorners. Many a commuter has been observed reading through the *Código Civil*, for example, while sitting on a bus in Santiago.

But the publication of governmental outputs and products is one thing. Another thing is the transparency of the *process*. Transparency also suggests that the internal workings of government and bureaucracy -how decisions are made, for example, and what power relationships exist- become visible, examined critically and analytically, and become open to inspection. Citizens in a democracy should know -or be able to find out- what positions their representatives take on key issues, how they voted, what their relationships are with certain constituencies and interest groups, and what their moral, religious or political beliefs are.

On the broadest level of political decision making in Chile, mechanisms for transparency do exist. For example, parliamentary debates are televised and, later, printed, published, and stored in public libraries. Politicians often hold press conferences, or send press releases to media outlets. The Internet is being used more and more to disseminate legislative activity to Chileans and also to other legislatures in the region<sup>22</sup>. The Library of Congress, which houses all congressional materials, is well-organized and highly accessible for both basic and advanced research.

There are, however, at least two ways in which some Chileans have suggested transparency could be improved by the institution of new rules. The first of these concerns the publication of votes: while the vote total is released to newspapers, what is not released to newspapers is *who* voted (i.e. which parliamentarians voted *for* or *against*). Therefore, it is difficult to appraise a particular candidate based on his or her voting record, since this is not public knowledge<sup>23</sup>.

Secondly, while the debates in Parliament are public (indeed, they are both televised and published), the debates in *committee*, where a great deal of important discussion and debate goes on, are completely closed to the public -no committee is open to public observation, including to the media-. While an argument can easily be made for the secrecy of some committee activity in a democracy (such as those issues concerning national defense), it is more difficult to argue that all committee activity should be closed from public scrutiny.

#### d. Accountability and Written Rules

The establishment of rules allow for civil sector groups, as well as intrastate agencies, to hold the legislative branch *accountable* for its activities. This is especially true when these rules are clearly defined, written, and agreed upon by the legislature itself.

Numerous rules on legislative activity already exist, including the most basic texts governing parliamentary activity. The Constitution of 1980, for example, contains certain controls against conflict of interest, such as prohibiting parliamentarians from working in businesses that have contracts with the state (articles 54,55). The *House of Deputies Rule Book* and the *Senate Rule Book* concentrate mostly on procedural norms, although these are important, in terms of participation, since they outline requirements for task forces, investigative committees, and public hearings. Beyond these texts, there are also rules in the

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22 Interview with Adrian Alvarez (October 14th, 1997).

23 Sometimes this information is published, and often it is not - what is important is that there is no rule saying it must be. (Interview with Juan Pablo Illanes, editor of *el Mercurio*, July 7, 1997).

Civil and Penal Codes which govern parliamentary activity, applying criminal and civil penalties to parliamentarians who engage in corrupt activities.

In 1994, President Frei convened a commission to study parliamentary conduct. The resulting *National Report of the Commission on Public Ethics* was the basis for two bills sent by Frei to Congress. The first, on Administrative Accountability (*Probidad Administrativa*), cleared the House after two and a half years and currently is being debated in the Senate. The second bill, which is loosely based on the American Freedom of Information Act of 1966, outlines public access to state information<sup>24</sup>. It has yet to clear the Cámara de Diputados, its house of origin. In addition, recent discussions about corruption in Chile (such as the case of Supreme Court Minister Servando Jordán) have prompted a proposed Parliamentary Conduct Code currently being discussed in Congress. At the time of this writing, the Parliamentary Conduct Code, which includes a large number of specific norms for all legislative activity, has stalled in the House of Deputies, where a number of deputies worry that it might infringe on their private lives<sup>25</sup>.

All three of these initiatives, if and when they clear legislative hurdles, will represent major steps forward in terms of democracy and accountability. Together, they would establish written norms governing the accessibility of governmental information to citizens; norms on conflicts of interest, contracts and bidding practices; clearer definitions of corruption and misuse of influence; norms regulating lobbying; rules governing donations to parliamentary campaigns and legislators (including speaking fees and stipends); and rules supporting more transparency of governmental financial matters.

## **2. Executive Branch inclusion**

It is clear that the executive branch is the single most important locus of political power in Chile and probably always has been. Historical treatments of Chile's executive branch put emphasis on the Portalian state, institutionalized by the Constitution of 1833, which sought stability, law and order and the effective government through a strong centralizing government, in order to set the citizens on the straight path of order and virtue (Loveman: 136). This tradition was given new life and strength during the military years: the 1980 Constitution was drafted by the Pinochet administration with the purpose of conferring "short-term juridical legitimacy on military rule and (creating) a permanent legacy of strong executive authority<sup>26</sup>".

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24 Interview with Jose Zalaquett, University of Chile School of Law, October 27, 1997.

25 *La Epoca*, 21 October 1997, p. 14

26 Constable and Valenzuela, p. 71.

The Executive branch of Chilean government has been called a “super-presidential” system<sup>27</sup>. In areas of law-formation (legislative powers) as well as other areas of presidential authority (non-legislative powers), the Chilean president has a stronger role than most presidents in democratic systems, making the president the most important political actor in the nation and diminishing the role of other branches of government to counterbalance the executive.

Among the powers granted to the President is executive urgency: at any stage of the process, a law may be declared urgent by the President. Congress must then expedite the discussion and passage of the law, moving it ahead of other agenda items, according to the constitution (Article 71). Similarly, the Constitution provides for the President to call the Legislature in extraordinary session, during which the Congress can only consider proposals put forth by the Executive (Article 52). Both of these options were used frequently by the Aylwin Administration<sup>28</sup> and continue to be used by the Frei Administration. These two prerogatives provide the executive with a very strong agenda-setting ability throughout the legislative process.

Perhaps the most powerful structural aspect of the executive branch of the Chilean presidency is the executive initiative, which give the executive the exclusive power to introduce any and all budgetary legislation (article 62). This means that the president has almost complete authority over the budgetary process. After the President submits the budget, Congress can only reduce or approve the expenditures listed in the budget; they may not increase or redistribute them. Since most significant legislation involves some type of expenditure, or deals with a social or economic question of the type described in Article 62, this is a strong power indeed.

Finally, the President has the added advantage over the legislative branch of having at his disposal all the resources -the form of Ministries, staff, experts, and advisors- of the executive branch of government. This is in stark contrast to the underfunded and overworked deputies and senators.

In short, the presidential powers of the post-Pinochet executive branch have been expanded and the President is the most important and influential political actor in Chile today. This is problematic because the traditional checks-and-balances of the democratic model have been diluted, leaving a potential for future abuse.

Given all this, it is not surprising that reforms seeking to make Chile more participatory and democratic have often stressed constitutional and statutory

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27 Shugart and Carey, (1992) p. 129

28 El Mercurio, 8 October 1992, p. C2

changes in the rules that govern the executive. While the more dramatic of these have met with strong opposition from the executive itself, there are currently attempts under way to democratize the executive and its ministries (Frühling). In particular, within the executive, MIDEPLAN has played a strong role in seeking participatory reform in decision-making around social policy (MIDEPLAN). Additionally, some other mechanisms already exist or are currently being proposed by various political actors in Chile.

### **a. Task Forces and Appointed Committees**

One mechanism through which the executive branch can invite the participation of non-state actors is through the formation of advisory councils, task forces and ad hoc committees, appointed by state agencies but composed of a combination of state and non-state actors. Task forces, according to this model, are given a particular mandate, provided with guidelines, and asked to make specific recommendations. In terms of democratic participation, task forces could, first, be composed of individuals chosen because either their expertise or the degree to which they represent elements of society. In this sense, task forces made up of purely partisan interests -or, equally as problematic, chosen only to imitate a partisan balance existing in the legislature- run the risks of not including broader sectors of society.

Secondly, task forces whose recommendations and opinions are promptly ignored will be less likely to contribute to democratization. This is because individuals invited to participate will tend not to accept the invitation, and because those who do participate will be frustrated if their recommendations are not taken seriously. In terms of democracy, furthermore, the value of task forces is that the government allocates a certain amount of *power* to a semi-autonomous group which is seen to be representative of broader society and whose expertise is greater than the expertise of government officials. Without at least some of this (real) power, task forces do little to increase or improve democracy.

In Chile, task forces have generally taken the form of *comisiones investigadores*, the most famous of which, of course, was the Rettig Commission, or Truth and Reconciliation Commission, appointed by President Aylwin to investigate human rights abuses during the authoritarian years. Without going into depth about this commission<sup>29</sup>, it should be noted that the Rettig Commission, in spite of its limited mandate, was a classic example of a democratic task force, involving people from numerous backgrounds and political persuasions. Its final published result, further, had a powerful and real impact, even though, in this case, its mandate limited this impact to symbolism.

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29 See the Rettig report itself, as well as Zalaquett (1991).

While task forces are generally appointed according to informal rules, written rules can also provide guidelines by suggesting, for example, which percentage of the task force must be constituted by members of civil societal groups, political parties, or individuals associated with the executive. This kind of written rules do not exist in Chile. The result, therefore, is that the members of *comisiones investigadoras* in Chile tend to be appointed according to party affiliation, leading to political horse-trading among the governmental entities which appoint them. The executive is, to some degree, able to escape this tendency. However, task forces appointed by the executive, and packed with clearly partisan supporters of the administration also run the risk of being taken less seriously.

## b. Contraloría General de la República

According to the Constitution, the office of the Contraloría General is charged with monitoring the executive branch to assure that it complies with all laws and to assure that legal requirements are met when the state collects and spends revenues. Established first in 1927, integrated into the constitution in 1942, and given a still stronger role in 1980, the Contraloría is fundamentally an office which oversees the activities of executive branch.

This institution would foster increased public participation if a mechanism existed to integrate complaints or input from civil sector organizations. As it stands, however, the Contraloría offers the potential of curbing executive-level corruption, but has little to contribute to public participation.

## c. Cámara de Diputados

The Chilean constitution further places the responsibility for oversight of the executive branch in the Cámara de Diputados. Specifically, the Cámara may, by majority vote, adopt agreements or make recommendations to the executive, as well as make specific demands for information. The executive is then required to respond within thirty days. This rule was invoked, for example, when two deputies demanded that the executive release to the Cámara information concerning Supreme Decrees secretly enacted under Pinochet<sup>30</sup>. In addition, as discussed in more depth below, the Cámara can use, and has used, Article 48 of the Constitution as a justification for forming Investigative Committees and Task Forces which research and report on specific questions concerning the executive<sup>31</sup>.

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30 Although the executive branch complied with this demand, only selected parts of this information was then released to the public.

31 Specific details about these commissions can be found in the Reglamento de la Cámara de Diputados.

More dramatically, members of the *Cámara* can also make accusations against the President and Ministers of state which they consider have gravely compromised the honor or security of the nation or openly infringed upon its laws (Article 48, N° 2). These accusations can lead to the forced resignation of the president (impeachment) or ministers if a majority of the *Cámara* votes in favor of the accusation. This rule has not been used since 1990, but does represent a potential threat to executive mismanagement or corruption.

Although the *Cámaras* monitoring role has great potential for increasing citizen participation, this power can also be used as a tool of partisan interests and, similarly, the exercise of this role can get tangled in partisanship. For example, in practice, many investigative committees have produced two separate final reports, one representing the government's position and the other representing the opposition's position (Frühling). In addition, the government is not required to follow the recommendations that arise from investigative committees, and there is usually little follow-up monitoring done to see how completely the government has complied. In general, in short, in the Chilean context -which is characterized by high degrees of partisanship- it seems that investigative committees, as they are currently constituted, do little to increase participation.

#### **d. Accountability and Written Rules**

In Chile, the Contraloría and the *Cámara de Diputados* has oversight power over the executive, and this power largely revolves around the existence of rules guiding conduct by the executive branch. Nonetheless, a number of commentators have suggested that there are still gaps in the legal framework covering the executive branch. These gaps, furthermore, limit the ability of civil sector groups to appeal to written materials when attempting to hold the executive branch accountable for its activity. For example, the National Commission on Public Ethics outlined the following three types of situations which are currently not covered by existing laws:

the receipt of gifts by members of the government; the fees that public officials receive through participation in speeches, discussions or seminars... [related to] their position in government; and all the expenses paid by private businesses [to government officials] during the installation or inauguration of an industry or economic activity (p. 31).

Other gaps also exist in Chile, such as rules which allow for the release of information by the executive branch to civil sector groups or individuals; rules which call for consultation with various groups in the formulation of policy; and rules which govern the openness of executive agencies (for example, by providing public hearings at regulatory agencies).

### 3. Legal Institutions

#### a. Laws for forming organizations and associations

If civil society is to be included in the business of government through institutional channels and mechanisms which invite or encourage its participation, there must also be laws which foster civil society itself, law, rules, norms and regulations which, in short, allow civil sector groups to reach their potential as organized and significant actors (Przeworski, Salamon). Of course, civil society is composed of a complex web of associations and groups- including everything from soup kitchens, to feminists or ecological discussion and activist groups, to large interest groups- and organizations need not always be formally or legally recognized as such. Nonetheless, for groups which choose to form themselves as legally constituted organizations, and which choose to participate in politics *as organizations*, there is a great deal that the state can do to facilitate their emergence and support their existence.

The attempt to understand and define civil society, and then to operationalize it in the context of different histories, traditions and cultures, has generated a vast literature. For the purposes of this essay, however, the discussion will be restricted to non-governmental organizations and non-for-profit associations that seek to participate in governmental decisions, which will be summarized in the abbreviation CSO (Civil Sector Organizations). Even more specifically, the discussion will center around non-profit and, especially, public interest CSOs<sup>32</sup>.

As Latin American countries seek to deepen and consolidate their democratic governments in the 1990s, the role of the non-profit sector, especially CSOs, remains immensely important. CSOs have been, and continue to be, key actors in strengthening of democratic institutions by holding democratic governments accountable to citizens, mobilizing and articulating neglected interests, and challenging political practices which still display authoritarian characteristics.

In Chile during the military regime (1973-90), non governmental organizations played a vital role by exerting pressure for change. Research institutions, human rights organizations, and other CSOs, many of which were strongly supported by international funders, helped contribute to the defeat of the authoritarian regime during a plebiscite in 1988. During the difficult time of democratic transition, these same groups were able to maintain their visibility and to support democratization by operating in the public sphere, where they produced and disseminated information, voiced concerns, and acted as a check against existing authoritarian enclaves.

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32 See Oliviera (1995), especially pp. iii - xxvi.

However, with the exception of specific periods of civil sector activity and political upheavals (for example, 1970-1973 and 1988-1990), non-profit associational life in Chile has traditionally been oriented towards charitable works. For example, a 1994 study by MIDEPLAN identified 567 non profit non-governmental organizations in Chile, approximately half of which were located in the Santiago region. Of these 567 groups, 336 (60%) were explicitly dedicated to alleviating poverty in Chile (MIDEPLAN, 1995: 82).

Political institutions support this focus by the CSO sector on religious, charitable, educational and artistic pursuits, especially in terms of rules on philanthropy (see below). More generally, Chilean laws which govern the formation of organizations place a great deal of power in the executive branch<sup>33</sup>.

The Chilean Constitution (art. 19) grants citizens the right to association, although associations contrary to morals, public order and state security are prohibited. CSOs -as well as corporations, businesses and other forms of associations- in Chile are legally constituted as juridical persons (as opposed to natural persons), and they have both the rights and obligations that all juridical persons have in Chile, stemming from their definition as a fictitious person able to exercise rights and incur civil obligations, and of being legally represented (Civil Code, Book 1, title 33). Technically, a non-profit juridical person -corporation or foundation- must be granted its status by the executive branch (in most cases, the Ministry of Justice). Article 548 of the Civil Code states that these organizations must further submit their mission statements, governing statutes and organizational structure to the executive branch where they will be subject to the approval of the president of the Republic by whom they will be approved if the president considers that they involve nothing contrary to public order, the law, or good custom. In short, a n CSO can only be approved at the discretion of the executive.

CSOs must provide certain information to the government, including sources of financing, basic membership information, and how the organization uses any profits that are made (although, incidentally, none of this information need be made public). CSOs are by law further required to have statutes which govern the organizations, embodied in a constitution which contains the Constitutive Act and the internal statutes governing the organization. This document must include the following information: the name and location of the organization; the goals that are pursued and the intended mechanisms to finance the attainment of these; the categories of partners, their rights and obligations, and conditions for inclusion and reasons for exclusion from the organization; and the structure of

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33 I am indebted to Felipe Viveros for much of this section, both from a conversation with him (10/6/97) and from his chapter *Legislación Vigente para el Sector Privado y Sin Fines de Lucro en Chile* (1995).

administration and control. Further, the internal governance -at least officially- of CSOs (according to Rules for Concessions of Juridical Personhood to Corporations and Foundations) must conform to a general structure outlined by law<sup>34</sup>.

Once the preceding information is given to the government, the organization can begin the process of obtaining a *concession* by the government as a Juridical Person. This concession is technically given by the president: Foundations and corporations are not juridical persons that have not been established as such by the law or that have not been approved by the president of the republic, and the president can refuse to grant this status to organizations. The concession process usually takes six to eight months to go through numerous bureaucratic stages, and it costs approximately US\$900.

The law does not specifically limit most of the activities that a CSO can undertake. They may acquire goods and services; they may act legally as a person and engage in civil commercial, administrative and labor agreements and contracts; they can invest their money in the national and international markets; and there is no fixed limit for the remuneration that an employee may receive.

CSOs can be dissolved according to a decision taken by the general assembly. They can also be dissolved by the government:

The President of the Republic will be able to cancel juridical personality of a corporation from the moment he concludes that the corporation is in violation of the law, public order or good tradition, or does not comply with the goals for which it was constituted, or violates its own statutes (art. 25, Reglamento sobre Concesion de Personalidad Juridica a Corporaciones y Fundaciones)

At the same time, the Chilean Constitution does not recognize tax immunity (i.e. tax-exempt status) for any organization or individual, guaranteeing, instead, equal treatment (according to established tax laws) for all persons. In principle, CSOs pay the same taxes as any other juridical person.

The Chilean income tax is divided into two kinds of taxes, taxes by categories and the Global Complementario. Category Taxes are: first category, which taxes profits on capital; and second category, which taxes profits on work.

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34 The details concerning the concession process, including the basic structure of NGOs, are outlined in article 6 of the Supreme Decree No. 110 (1979) of the Ministry of Justice, which contains the *Reglamento sobre Concesion de Personalidad Juridica a Corporaciones y Fundaciones*. Further details are outlined in the Civil Code, especially articles 550-554

The Global Complementario is a total sum of all profits from all sources. In principle, CSOs pay all of these, although non-profit organizations may ask for an exemption from the primary category taxes by soliciting the president. However, in practice, CSOs do not generally pay income taxes, not because of special status, but because they do not generate profits. The Value Added Tax (IVA) is applied to the regularized manufacture, production, or sale of goods and services. Because they generally do not engage in these activities, the vast majority of CSOs do not pay the IVA on their products.

Other taxes -such as inheritance taxes and taxes on donations or gifts, property taxes, and municipal taxes- can be exempted, on a case-by-case basis, when the purpose of these donations is charity, education, advancing science or other ends which are declared public goods by the President.

In sum, rules governing the creation of CSOs, in short, center around the executive branch, in particular, the Ministry of Justice. The President of the Republic must grant a concession in order for most CSOs to become formally organized, and the President can take away juridical personality. Furthermore, there are few real advantages to becoming formally recognized (such as tax exemptions), and the process is expensive and time-consuming. At the same, most organizations choose to be formally organized to avoid the penalties involved in acting publicly as an organization without juridical personality. In short, in terms of political institutions which foster civil society and encourage the formation of civil sector organizations, there is much room for improvement of the rules governing the formation of CSOs in Chile.

## **b. Financing Civil Society: State Assistance and Philanthropy**

Civil sector organizations require money to survive. Legal tax-exemptions (which generally do not exist in Chile) and *de facto* tax exemptions (which do exist) allow CSOs to dedicate larger percentages of their budgets to their work. Nonetheless, raising revenues has been a perennial problem for many organizations and associations, especially non profit ones.

There are a number of ways that organizations might raise revenues. In the broadest sense, there are two distinct *approaches* to the ways in which political institutions can channel financial resources to civil society. The first of these, the *corporatist* variant, is common in many European countries, especially in Scandinavia. According to this model, citizens aggregate into apex or encompassing organizations<sup>35</sup>. These organizations receive funding from the state according to formulae which consider how representative the organizations are

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<sup>35</sup> The classic text on corporatism is Schmitter. For an argument which looks at corporatist tendencies in post-authoritarian Chile, see Weyland.

and their relative importance (for example, an organization which has a certain number of registered members is automatically entitled to a certain percentage of funding allocated to civil society).

A second approach to interest articulation, the *pluralist* variant, stems largely from an American tradition of distrust of state interference in civil society. This variant seeks independent sources of funding for civil sector organizations, under the assumption that receiving funding from the state tends to co-opt organizations or neutralize their oppositional tendencies.

Both of these variants exist in Chile. The historical trajectory of corporatism in Chile, however, is more similar to what Schmitter called state corporatism than to what he called societal corporatism, which suggests that apex organizations have been seen as being *too* closely linked to the state (and the political class in general). Furthermore, in the context of neoliberalism and modernization of the state in Chile in the late 1990s, corporatist methods of financing civil sector groups are arguably less popular than advancing pluralist approaches.

At the same time, a good case can be made that the corporatist variant of interest articulation should not be abandoned altogether in Chile. Weyland, for example, has argued that the success of the 1990 tax reform in Chile was largely attributable to the ability of encompassing groups (Chile's largest union, the CUT; two major business associations; and the Ministry of the Treasury) to reach consensus in an atmosphere of negotiation and compromise overseen by the government<sup>36</sup>.

State financial assistance to secondary associations falls on a continuum between complete state funding (corporatism) to zero financial support. Government financial aid, however, must be seen in context: certain political actors, such as the state itself and large corporate interests, have access to financial resources which "easily dwarf the meager voluntary citizen and foundation contributions that fund reformers' advocacy efforts. Consequently... 'institutionalized methods must be found to finance legal representation for heretofore neglected public interests before agencies and courts'" (McCann: 62).

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36 However, the traditional corporatist model includes a strong role for organized labor, which is both weak and getting weaker in Chile. In 1989 workers covered by a collective bargaining agreement numbered 345,890, or 11.6 percent of total workers that year. Between 1989 and 1992 the number of unionized workers covered by contracts increased slowly, reaching 15.1 percent. But the figures began declining, and by 1996, only 11.8 percent of salary-earners, 423,099 workers, were covered by contracts. In other words, after seven years of political transition, the rates of negotiation coverage remain practically the same. Union affiliation followed the same trend. In 1989 the rate of union membership was 11.5 percent; in 1991 it grew to 14.4 percent, and in 1996 fell back to 12.4 percent (PET Economic Bulletin, July 1997. For rules governing unions and collective action, as well as information about the status of organized labor in Chile, see Dirección del Trabajo, 1997

Thus a fine line must be found in any democratic polity between complete government control (through financing) of non-governmental groups, and the marginalization of these groups through pauperization<sup>37</sup>. In countries (like Chile) where private philanthropy is uncommon, furthermore, the government might need to take pro-active steps (e.g. through tax exempt status, grants, loans, providing start-up funds, or subsidies) to directly support secondary associations.

In Chile, access to public money for non-governmental organizations comes from the state or municipalities, and is usually in the form of sub-contracting and consultancies. For example, executive agencies often sub-contract out specific tasks to CSOs, often through competitive bidding (*fondos concursables*)<sup>38</sup>. In addition, the government often uses information generated by Independent Academic Centers (IACs), universities, or other nongovernmental organizations, and often contract these organizations specifically to research selected topics. Frequently, contracts are given based on a process in which the government puts research projects up for competitive bidding (*licitaciones*) and awards contracts to CSOs. A large number of CSOs in Chile rely on this system for at least part of their funding and commit significant portions of their time and energy to sub-contracting or consultancies of this kind.

In terms of research and advocacy organizations, one of the primary mechanisms through which the government directly supports scientific (including social scientific) research in Chile is through FONDECYT (Fondo Nacional de Desarrollo Científico y Tecnológico), a national fund dedicated to research support for individuals and projects based at institutions (including, but not limited to, universities). FONDECYT's mission is realizing the scientific and technological potential of the Chilean population... [by] supporting the formation of professionals and researchers in basic and applied research... to develop new ideas and innovations that will improve the quality of life and increase [Chile's] global competitiveness. While FONDECYT grants are small, they nonetheless partially support a significant number of individuals working in the civil sector.

An additional rule that helps support civil sector organizations is that, according to Municipal Law, municipalities may give 7% of their annual budget to community organizations. The availability of this rule has emboldened some organizations to demand this extra funding<sup>39</sup>, although, in general, this support

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37 It is important to remember at this point that the definition of civil society includes autonomy from the state. Therefore, for example, financial assistance from government must come with no (or few) strings attached in order to remain consistent with the strengthening of civil society as understood here.

38 Although the process is often officially competitive, this process also frequently lacks transparency and it is unclear how the sub-contracts are awarded (interviews).

39 For example, FORJA, a legal advocacy NGO has succeeded in getting some municipalities to commit support for legal education and civil rights workshops and training.

tends to be allocated to local services, such as firemen and policemen's associations.

Beyond the scant availability of funding from state sources, Chilean CSOs must seek other ways to finance themselves. One possible element of the pluralist model, the American method -soliciting members who pay regular dues and, in turn, receive a publication or consider themselves a part of the organizations work by writing an annual check- does not, for a variety of reasons, work everywhere, and has not fared well in Chile. Organizations can also sell goods and services; engage in paid consultancies for government or private entities; seek government sources of financing, where they exist (see below); or solicit funds from the philanthropic sector, which, for the purposes of this paper, includes individuals, corporations and foundations of varying sizes.

While all of these methods are important, some theorists argue that philanthropy is among the better options, arguing for the need to ensure a vigorous base of private philanthropic support in order to guarantee a reasonable degree of independence and autonomy for the nonprofit sector. This is not to suggest that philanthropy is without problems. Often private giving comes with its own strings attached. However, balanced against government and earned income, it can help to provide a zone of autonomy that is crucial for the [nonprofit] sector (Salamon: 107).

The return of an elected government in Chile has presented new difficulties for the CSO sector, especially concerning financing. Ironically, due to the success of recent democratic changes, the funding from abroad upon which many CSOs had come to depend has declined sharply. As in other countries of the Andes and Southern Cone region of South America, the Chilean CSO sector now faces basic challenges of broadening their linkages to other groups in society and establishing new sources of domestic financial support to complement their historical funding from external sources.

Encouraging national philanthropy in Chile poses some distinctive problems. In addition to legal barriers such as low levels of tax exemptions and a lack of incentives for donors, philanthropy in Chile lacks a strong historical precedent. The country has a long statist tradition, with a history of governmental responsiveness, often through populist measures (consistent with state corporatism), to social problems. Except for a few important charitable institutions, many of the most active CSOs that have existed have been able to count on large portions of their funding from international agencies, while other organizations have been directly connected to political parties. These factors have meant that Chilean national philanthropy has traditionally been largely associated with charitable agencies of the Catholic Church, such as the Hogar de Cristo (Home of Christ).

At the same time, however, Chilean philanthropy is changing as the country adapts to new conditions. Market models of economic growth are creating new private sector wealth and there is a growing awareness among some business leaders of the need to assume broader social responsibilities, often through emerging national foundations (such as the Andes Foundation, the Miguel Kast Foundation, the José de la Dehesa Foundation and the Carmen Gaudi Foundation). Moreover, there is an incipient consciousness in Chile favoring nongovernmental solutions to social problems.

Nonetheless, in general, the philanthropic sector in Chile is small. Laws governing philanthropy, furthermore, emphasize giving to education, the arts and religious institutions. Even there, however, donations given to art, culture, health care, or education cannot exceed 10% of the donors income. This amount is registered as a cost for tax purposes (not, strictly speaking, a deduction). In addition, donors giving to non-profit institutions which are dedicated to research and dissemination in the arts and sciences, or those which undertake advocacy projects for the poorest sectors of society, can receive the same benefit. However, the municipality in which they work must certify that the groups are working for the benefit of people in extreme poverty. Some special laws exist concerning specific organizations, such as the Teresa de los Andes Foundation and the Alberto Hurtado Foundation.

Tax deductions, as such, are only available to donors who give to universities recognized by the state and private research organizations whose exclusive objective is research, education, or development and diffusion of culture and art. These donors can only give away up to 2% of their total earnings (as represented by the sum of the *global complementario*) and then receive 50% of that sum in tax deductions. These donations are further restricted by an upper limit of approximately US\$775,000 [Ley 18.985 (article 1) and Ley 18.681 (articles 1, 2)].

### **c. Public interest law<sup>40</sup>**

One important way that associational groups can interact directly with governmental decision-making -as well as upholding extant laws or creating of new ones- is through litigation, specifically in civil suits against corporations, individuals, or government itself. Litigation allows certain civil sector organizations, such as women's groups or human rights organizations, to pursue public goods through legal channels. At the same time, it serves the double function of reinforcing the legitimacy of *both* political institutions and civil sector organizations.

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40 Enrique Silva contributed to parts of this section.

For example, the way that a judicial system determines *standing* -those rules governing who may bring civil suits in courts of law- makes a difference in terms of whether or not civil sector actors will interact with government<sup>41</sup>. Legal standing in courts is a perfect example of an *access* point through which associational groups can interact directly with governmental decision-making. Similarly, the ability of outside parties to initiate (or collaborate in) class-action suits allows civil sector organizations (e.g. consumer rights organizations) to directly confront powerful actors (e.g. corporations). The rules of the game in judicial systems, therefore, help to determine how conflict will be managed in a society: if legitimate, legal channels exist for the negotiation of conflict, then democracy can be greatly strengthened.

Law in the public interest, as understood in the Anglo-Saxon legal tradition, has been a latent, if not foreign, concept within the Chilean and other Latin American legal systems<sup>42</sup>. However, this is changing, as judicial institutions are being looked upon to assume new prominence in regulating the state and in mediating relationships between government and civil society.

The essence of public interest actions lies within the notion that the private citizen or non-State institutions can be principal agents in the definition and oversight of the public good. Furthermore, public interest law not only broadens the universe of actors (e.g. third party actors) who are entitled to initiate legal action in defense of constitutionally sanctioned rights, but it also emphasizes State accountability. Within this context, the States responsibility is to provide the legal mechanisms that allow the citizenry to act as an integral check on both private sector and government actions, whether these actions are a violation of an individual or collective right, or failure to act on the publics behalf. An important philosophical issue, of course, is the basic debate on the definition and scope of the term public interest and who is entitled to defend it.

In Chile, the *state* has traditionally defined what is in the public interest and has acted as the sole guarantor of the common good, a tradition which suggests a narrow concept of the public and private realms. If the State has almost exclusive discretion and jurisdiction over the public realm, then the individuals sphere of influence is limited to the private realm, impeding the ability of that individual to act on behalf of a collectivity (i.e. society or societal interests as a whole). This traditional approach to the concept and term public undermines the spirit and scope of public interest law and its enabling mechanisms. Thus, the acceptance and further development of public interest law and actions faces the challenge of

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41 For an explanation of standing in courts of law and a fascinating argument on this point, see Stone. pp. 10-41.

42 The late Colombian legal scholar and president of FUNDEPUBLICO, German Sarmiento P., argued that public interest actions do have a legal base within Colombias roman law tradition, albeit the provisions are relatively obscure and seldom used (E. Silva).

broadening the political and social perceptions of the public sphere and interest, in particular who is entitled to define and defend it.

These shifts are taking place in Chile. In particular, the School of Law at Diego Portales University, as well as other legal scholars in Chile, have made significant contributions to a changing perception of law in the public interest in Chile. Furthermore, recent -and on-going- institutional reforms to the structure of the judiciary branch in Chile suggest that the new legal system currently being constructed might give a further impetus to law in the public interest<sup>43</sup>.

In the meantime, existing mechanisms for public interest law are currently being used. The clearest example of this is the concept of the *recurso de protección*. Article 19 of the Constitution, essentially the Chilean Bill of Rights, guarantees numerous civil rights and liberties to all Chilean citizens, including the rights to education, health and a clean environment. These rights, and others recognized by Article 19, have provided the basis for emerging practices of public interest law in Chile. Even more specifically, this article of the constitution recognizes the right to present petitions to authority, over any issue of public or private interest, with no limitation other than that these [petitions] be respectful and appropriate (Article 19, N° 14). The *Recurso* has been used to file legal claims against both the government and businesses. While this trend is not exactly new -for example, both the *Recurso* and statutory law were used frequently as mechanisms to challenge the military regime (Viveros, 1997: 97)- the use of these legal institutions has been broadened in recent years.

For example, this constitutional resource has been used most visibly for environmental causes, thus allowing citizens to claim that collective rights are violated by pollution and other environmental problems (Del Favero). In addition, the *Recurso* has been used to file suit the state for perceived abuses to prisoners and detainees; against companies which have discriminated against customers and employees; and for consumer rights. With regard to consumer protection, for example, the National Consumer Service (SERNAC), serves as the primary vehicle for protecting public interest in Chile. SERNAC, however, has worked within an environment typically adverse to public interest action, and has only recently made important gains in protecting consumers.

Public interest law also allows corporations to file legal claims against the state. In fact, In monetary terms, the bulk of the cases against the state relate to

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43 Although these reforms concentrate on major alterations (modernization) of the criminal justice system, the general and long-term effect may well be to foster a dynamism in the judicial system that has never existed in Chile. In particular, the creation of the *Ministerio Público* - or public prosecutors office - will allow for further pursuing law in the public interest (see Peña: 367). Civil actions, law in the public interest, class-action suits, and other mechanisms citizen access points may well be on the horizon (interviews: Carlos Pena, Jose Zalaquett, Juan Enrique Vargas).

state copper company Codelco. These cases include: Exxon Minerals International Inc. and Disputada Las Condes Mining Company S.A.; Sociedad Agrícola Lolco Limitada; the community of Galletue; the Quintero Port Company; and Chilgener, among others (La Epoca, October 28, 1997).

Largely because of the financial burden of defending the state against large corporations which have access to significant resources, the State Defense Council (CDE) -the agency charged with addressing these legal claims- is unable to adequately address many claims by NGOs and other civil sector actors. The agency's workload has risen by some 35 percent in the last three years, overburdening its staff and budget, as lawsuits against the state have risen from 15,969 cases in 1994 to 21,598 today. Each of the CDE's 145 attorneys is therefore responsible, on average, for 149 cases. In addition, these attorneys have administrative and investigative duties (La Epoca, October 28, 1997).

Nonetheless, public interest law is clearly becoming an important access point into governmental process, increasingly accepted -and used- by civil sector organizations and individuals. Furthermore, it is a field which has a great deal of potential in terms of democratization in Chile.

#### **4. Additional Institutions**

This paper has concentrated on three primary types of political institutions which can foster public participation in policymaking. There are, however, numerous other mechanisms which need to be explored further. This section briefly examines some of these other areas, leaving some areas of focus and additional questions to be addressed in future research.

##### **a. Soapbox Rules.**

Democracy requires laws and institutions that protect human rights and civil freedoms, including might be called "soapbox rules", or rules which allow individuals or groups to use public spaces to communicate ideas. One of the most important of these is freedom of expression, the category of rights which allow individuals to express and communicate their views publicly and which, in turn, allow them to receive information from the public sphere in order to make well-reasoned decisions. Since opinions and information are essential resources in decision-making at all levels, the freedom to communicate, to express ideas and to voice criticisms is an essential component of a democratic political process.

Since the end of its authoritarian period, Chile has established or expanded a number of basic democratic freedoms. In spite of this, however, numerous barriers to spirited public debate remain in practice, some legal and formal, others

cultural or informal. Even more than other Latin American countries where democratic traditions are weaker, freedom of expression remains a precarious right in Chile. Since 1990, numerous politicians, journalists and human rights activists have been prosecuted after making public accusations or political comments critical of public figures or institutions such as the armed forces, judiciary, congress or the police forces. These cases include Francisco Javier Cuadra, an ex-Minister of the Pinochet administration, who was prosecuted for alleging in a published interview that some unnamed members of congress were cocaine users; the arrest of a communist leader for referring in a speech to Pinochet as a blackmailer; and the conviction in a naval court of a former naval intelligence officer who tried to publish a treatise on military intelligence. Further, television (including cable) and music are controlled and censored in Chile, and such films as *The Last Temptation of Christ* have been cut from television programming.

Two institutions specifically contribute to limitations on freedom of expression, the scope of military jurisdiction and the State Internal Security Act.

First, rules governing societal activity in the Penal Code, the Aeronautic Code and the Military Penal Code, have allowed the military to claim jurisdiction over speech in public spaces. Since at least 1925, military jurisdiction has extended to non-military crimes, and actions undertaken by civilians, when these activities can be interpreted as affecting the military or military interests. This concept has been broadly interpreted to include a definition of military premises (including proximity to police or military vehicles) which serves to limit public space<sup>44</sup>, and speech which the military considers offensive. For example, human rights lawyer Hector Salazar and Manuel Cabieses, editor of a left-wing newspaper, have both been prosecuted in military courts for the crime of sedition for criticizing the police and army.

Second, the State Internal Security Act makes it a crime, punishable by up to 541 days imprisonment, to defame, insult or slander the president or the Republic, ministers of state, senators or deputies, members of the higher courts, the Controller General of the Republic, the Commanders-in-Chief of the armed forces, or the General Director of the Carabineros. This law has been used a number of times. One well-known example, mentioned above, is that of Francisco Javier Cuadra, an ex-Minister under Pinochet. In addition, in October, 1997, former student leader Arturo Barrios began his suspended sentence on charges of making slanderous remarks against former military government leader Gen. Augusto Pinochet. The student leader made remarks regarding Pinochet's responsibility for human rights violations during a student rally held September 11, 1994. At the time Barrios headed the University of Chile Student Federation

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44 Brett, Sebastian. p. 100-110.

(FECh). The Army took offense and sued the student leader under the State Internal Security Act<sup>45</sup>. Numerous other similar examples can be found.

In terms of freedom of expression<sup>46</sup>, in short, Chilean laws fall short of the requirements of international conventions such the International Covenant on Civil and Political Rights and the American Convention on Human Rights. Internationally recognized human rights monitoring groups -such as Human Rights Watch/Americas, the Center for Justice and International Law, and the Inter-American Commission on Human Rights- have found Chile to be in violation of accepted norms and agreements concerning freedom of speech and freedom to criticize governmental agencies publicly.

## **b. Communication and information flow.**

Governmental rules which encourage communication between state agencies and civil sector associations are another example of ways in which state/society relations can be fashioned to encourage civil sector activity. Based on the assumption that “information is power”, policy packages and legislation which encourage the dissemination of information from the decision-making level to society can be seen as inherently democratic, and likely to lead to a strengthening of civil society<sup>47</sup>. Since only informed actors can act effectively, furthermore, rules which facilitate the sharing of information can create more a more informed citizenry. This was the logic, for example, of societal pressure in the United States to pass the “Freedom of Information Act” in 1966, which allows all citizens to review most federal regulations, policies, research, and communications (McCann: 62). Another example of this would be rules which require the publishing in major newspapers of important governmental information such as legislative committee or assembly debates, public speeches, and laws.

No Freedom of Information Act currently exists in Chile, although a law currently being debated in Congress would allow for greater access to information<sup>48</sup>.

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45 El Mercurio. 15 October 1997.

46 Human Rights Watch/Americas is currently preparing an exhaustive report on this subject.

47 Of course, it matters what kind of information is disseminated, as well as from which sources or with what biases. In general, however, the argument is that *to the degree possible* (e.g. considering national security, etc.) governmental decision-making should be open to public scrutiny.

48 At the time of this writing, the Ley sobre Acceso a la Información Administrativa (BOL. 1511-07) is being discussed in the Comisión de Constitución, Legislación y Justicia of the Cámara de Diputados (Cámara de Diputados de Chile).

### c. The Mass Media

Numerous theorists on democracy have commented on the need for a free and balanced press and media as a necessary ingredient for democracy. For example, Sartori suggests that an authentic democracy cannot exist when public opinion is not derived from, and supported by, a polycentric structure of the communications media and the competitive interplay among them (quoted in Brünner: 51).

The Chilean mass media lacks the investigative and critical elements of the media in many other Latin American countries (e.g. Peru, Mexico). With the notable exception of radio, the ownership of the media is extremely concentrated in the hands of a small number of owners. The press, furthermore, lacks an investigative tradition, and newspaper articles, for example, tend often to be long quotations of government spokespeople instead of probing analysis. Finally, the result of seventeen years of authoritarian rule must also be considered. As Eugenio Tironi, Communications Minister under President Aylwin, commented in 1994, the Chilean media is extremely self-censored... nowhere in the media [can you find] criticism, even from the political opposition... we don't want to start conflicts that may lead to some kind of traumatic situation. Obviously, this invisible hand is the effect of old horrors... I think that in Chile there are still too many secrets<sup>49</sup>. The result of these factors can be shown by looking at the percentages of time spent on the following categories by the three major television channels: 23% on sports; 13% on crime and other issues of citizen security; 12% on social issues; 11% on politics; and 8% on economic issues (FLACSO, 1996: 59).

While an exploration of the Chilean media is beyond the scope of this paper<sup>50</sup>, three questions need to be addressed: first, to what degree have political institutions in Chile either limited or encouraged a free and balanced press? Second, what access points exist for the public in terms of the media (for example, public interest advertising or public access television)? And, third, what is the role of Television Nacional, which is itself a semi-governmental entity, in terms of broadening citizen participation.

Some Chilean rules have actually served to limit press freedom. Most important of these is the judicial authority to impose gag orders on the media. The prohibition on reporting on legal cases was instituted as a decree law during the authoritarian regime. But the practice has continued even with the since 1990,

49 Interview with Eugenio Tironi, *El Mercurio*, 7 March 1994.

50 For recent analyses of the Chilean media, see FLACSO (1997), especially the chapters by Brünner and Munizaga. Also see Flavio Cortés, "Modernización y concentración: los medios de comunicación en Chile", in Toloza and Lahera (eds) 1998, *Chile en los noventa* (Santiago: Presidencia de la República, Dirección de Estudios).

usually regarding highly sensitive, often human rights-related cases. Furthermore, attempts to lift previous bans -that is, those issued during the dictatorship- have been largely unsuccessful. For example, the ban on information related to a famous assassination attempt on Pinochet at Melacatón, which is approaching its 10th year anniversary, is one of the longest standing prohibitions. In 1990, a press gag was issued in the case involving the triple murders in 1986 of three Communist professionals -Jose Manuel Parada, Santiago Nattino and Manuel Guerrero- which eventually resulted in prison sentences for police agents. In 1993, the mass media was barred from reporting on the execution by military personnel of Spanish priest Juan Alsina, a homicide that occurred shortly following the military coup in 1973. The assassination of UDI Sen. Jaime Guzman came under a press ban in 1996.

Most recently, however, the Fourth Chamber of the Valparaíso Court of Appeals, responding largely to an outpouring of indignation over a press ban, revoked a gag order imposed by a Special Prosecutor on press coverage of a drug trafficking and money laundering investigation. The Special Prosecutor who imposed the ban (Judge Beatriz Pedrals) had said the gag order was necessary to the success of the investigation, basing her decision on Article 25 of law 16,643 on Abuses of Publicity, a 30-year-old law. However, the move unleashed a flurry of criticism from President Eduardo Frei, members of the Concertación majority and of the opposition, and the media. These critics called the ban a blow to freedom of information and stepped up talk of eliminating altogether the judicial capacity to impose such orders.

Currently, there is a broad consensus in the Chilean congress to discard the judicial authority to impose gag orders. In 1997, for example, the senate Constitution, Legislation and Justice Committee approved a resolution to repeal this discretionary capacity. Nonetheless, these reforms still linger in the Congress.

In terms of the second area mentioned above, there are no rules governing public interest advertising, except the rules which allot certain percentages of air time to political parties during elections. Advertising in the public interest, however, by governmental or non-governmental organizations, costs exactly the same as all other advertising and none of the media is required to devote any percentage of their time to these kinds of publicity. Moreover, the national channels often reject public interest advertising that they consider controversial. For example, the National Television Council (CNTV) recently decided to dismiss a petition by five legislators to obligate two television stations to show the Health Ministry's new public service AIDS announcements.

Finally, Televisión Nacional in Chile is financially autonomous from the government and operates as a private business. Although the Board is composed of political appointees, chosen to represent partisan balances, TV Nacional has not

taken on the broad public interest mandate that public television or state-owned television has in many other countries in the world, nor does TV Nacional have any internal regulations or bylaws which require public interest advertising.

## **5. The Truth about Chilean Policymaking or, the why none of this stuff matters argument**

There are two strong arguments, one theoretical, and another which applies directly to Chile, for arguing that none of these institutional mechanisms really makes a difference in terms of expanding popular participation. The first argument, which has been described in the first section of this article, is the push model of civil society, which suggests that state-led openings, changes in institutional structure, and new rules and norms -although they may be important- are far less important than changes which must go on within civil society itself. These changes may be cultural, they may be organizational, or they may be linked to international or domestic economic and political trends. This argument might be more colloquially elaborated as “what if we throw a party and no one comes?” In other words, civil society actors might not take advantage of new or improved political institutions.

Although this argument has some truth to it, this paper has argued that institutional arrangements *do* matter, even if they are not regularly used. The existence of institutional access points, of norms and written rules, of institutional channels to facilitate and encourage participation are an inherent part of a democratic political system. Moreover, their existence means they *can* be used by civil sector actors, and this itself provides an impetus for some groups and individuals to take advantage of them. In short, they represent an important democratic *resource*, which can be drawn upon by those who are inclined to participate.

Another version of this argument suggests that there is a danger that the only groups and individuals who would use new and democratized political institutions would be those who already have power and resources (including the education to know about them). This is always a threat in any democratic system. But it is not a reason to avoid democratization. The solution to this problem lies in guaranteeing that more citizens have power, including financial and educational resources.

The second argument against this paper is a very serious and complicated one. This paper has primarily assumed that policymaking and political decision-making occur in the executive branch and legislative branches of government. However, there is a strong argument to be made that Chilean policymaking often goes on *before* it gets to the official political level. For example, tax reform in

Chile since 1990 has generally been achieved according to the following pattern<sup>51</sup>: representatives of the major political parties (primarily the Concertación, especially the Christian Democrats, on one side of the table, and the Renovación Nacional party, on the other) have met outside of the formal parliamentary process to discuss and negotiate tax proposals. Meetings sometimes include representatives of large organizations (such as the major trade union or the major business associations). But these meetings almost always take place in offices in Santiago and are completely closed from any participation at all, in fact, they are *private* meetings. After months of negotiations of this type, the executive branch formally writes up a bill and presents it to congress. At this point, the *fundamentals* of the bill have been agreed upon by the major actors, and what remains to be done is to address the specific details of the bill before passing it into law.

This account of tax reform in Chile does not bode well for increased participation. If the meaningful decision-making (i.e. agreement on fundamentals) actually occurs *outside* the political process, then it is logical to conclude that greater participation in the official political process will not necessarily contribute to democratization. This argument, then, would turn our attention to a sociological perspective of political power in Chile. The focus would be, as C. Wright Mills and William Domhoff suggested about the United States in the 1950s, a power elite, and the solutions to broadening participation would lie in breaking up cozy networks within the political class and bringing political decision-making into the public realm.

This is a strong argument against this paper. However, the political institutions mentioned here may also serve to disaggregate the political power of a power elite as it may exist in Chile. In other words, even if this argument is true, new and expanded political institutions might still foster democratization; the major difference would be *which* political institutions. A partial answer to this would be rules that guarantee or facilitate equal access to education, especially to certain universities (such as the Catholic University and the University of Chile), and to social venues (such as the Club de la Unión); public interest law; and numerous institutions which foster linkages between civil sector organizations and the creation of the public agenda. In short, an institutional perspective would be useful even if a power elite exists in Chile and real decision-making mostly goes on in private settings. Finally, participatory reform in general can help to break up tight networks in the political class, which is exactly why members of the political class, as a whole, oppose them.

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51 Interviews with Fernando Agüero; Edgardo Boeninger; Jaime Gazmuri; Jaime Estévez; Olga Feliú; Jorge Lavanderos; Adrian Alvarez; Javier Rosselot; and Juan Pablo Illanes, among others.

## **The Future of Participatory Reform in Chile**

What emerges from preliminary research on these subjects is that the overall structure of Chilean democracy is weighted *against* broad-reaching public participation, inclusion of citizens into governmental processes, as individuals or groups, and stakeholderism in public policymaking. Political institutions do not foster public participation; in fact, Chilean politics is dominated by political institutions (such as senators appointed by the military and a skewed electoral system) that act to maintain a closed political system and to exclude citizens from participating as stakeholders in the design and formulation of public policy. Furthermore, it is clear that this is a basic weakness in Chilean politics and does not bode well for the long-term viability of democracy in Chile. While Chile is clearly a democracy, it is difficult to consider it a consolidated or deep democracy. Further, profound and troubling questions emerge concerning its long-term sustainability.

The burden for consolidating Chilean democracy falls on the second democratic administration since 1990, the administration of Eduardo Frei Ruiz-Tagle (1994-present). His predecessor, Patricio Aylwin (1990-1994), was confronted with a substantially different set of challenges, and was forced to operate under a different logic -the logic of transition from authoritarian to democratic rule- whereas Frei, who inherited a successful transition, has had the opportunity to deepen and strengthen Chile's political institutions. But President Frei has made few attempts to increase stakeholderism in policymaking. While civil society is quite weak in Chile -for reasons associated with Chile's history, including the economic, institutional and psychological legacies of authoritarian rule- pull approaches to vitalizing popular participation have only partially been attempted. In spite of rhetoric to the contrary, the Frei administration has not prioritized a program of participatory reform.

But there is another reason that institutional changes to increase public participation have been difficult to accomplish, and will continue to be difficult to accomplish in the near future. In short, the *rules for rule-making* favor the political right in Chile. Even now, some seven years after Aylwin assumed the presidency, the combined strength of the Chilean right-wing parties and the Chilean military creates an enormously powerful block -when acting in concert-against major institutional reform. While the military stays far removed from the daily business of governing -leading some commentators (e.g. Rabkin) to mistakenly infer that the Chilean military plays only a minor role in Chile today- the military has a great deal of strength when it comes to preventing changes in the political system and increasing public participation.

This article can hardly do justice to these themes. To fully understand the power of the military in Chile, for example -which is as much the power of

*discourse* as it is structural power- it is necessary to reflect on what Garretón has called National Security Doctrine, and also to refer back to the fear of populism and chaos mentioned earlier in this article. In keeping with National Security Doctrine, one of the primary goals of Pinochet was, quite explicitly, to eliminate politics from the Chilean scene. The correct task of government was thought to be administration, and politics was thought to be a hindrance to good administration. Pinochet sought the efficient, administrative, and de-ideologized state and he used the repressive power to achieve it. These values have become firmly entrenched in the Chilean political right. The designated senators, the far right UDI party and important members of the Renovación Nacional party (a center-right party) remain, in general, firmly committed to a bias against political participation.

Institutionally, the military during and since Pinochet became -and largely remains- a quasi-autonomous branch of government in Chile. In contrast to the traditional democratic model, in which the military is subordinate to the Executive and Legislative branches of government, the Military in Chile enjoys almost complete independence. This is true, first, because the military receives a guaranteed source of funding -10% of the sales of the state-owned copper company, CODELCO, regardless of profits-. Secondly, the constitution of 1980 assures that Commanders in Chief of the Armed Forces, including General Pinochet himself, have been unremovable until 1998. Third, article 45 of the 1980 Constitution, which described the process of designating the nine appointed senators, was not changed during the transition. Since all nine appointed senators were chosen (either directly or indirectly) by the military regime, it has been difficult for the Concertación and opposition parties to pass certain laws. This is further complicated by the fact that since constitutional reforms require a four-sevenths majority in Parliament, changing the institutional legacies of military rule have posed substantial challenges. In 1998, moreover, it seems that the new designated senators may well be even *more* clearly linked to the military than before, including the fact that Pinochet assumed a Lifetime Senator seat in March 1998.

The military has little to no power in the day-to-day operations of government. For example, in negotiations concerning tax reform and judicial reform, it seems apparent that the military has played almost no role at all. However, taken together, right-wing parties, the designated senators, the binomial system, the autonomy of the military, the breadth of military jurisdiction, and the mechanisms for perpetuating these institutions (such as the ways in which designated senators are appointed) create a context in which substantial institutional reform to foster public participation is exceedingly difficult. For example, the designated senators have on three occasions since 1992 provided the swing vote to prevent the Concertación from eliminating the nine designated senator positions themselves.

Finally, perhaps one of the biggest barriers to increased political participation in Chile is the simple fact that most people are not aware of *existing* institutions. Attempts have been made to deal with this problem, such as work being done by MIDEPLAN, such as the publication *Solidaridad: Guía Para La Acción* by FOSIS, which was distributed by the telephone company; and work being done by various NGOs, such as FORJA and PARTICIPA in public education around existing legal norms and basic rights.

## **Conclusion**

Beginning with the notion that democracy requires citizen participation, this article has argued that Chilean democracy can be deepened by institutional changes which provide channels and mechanisms for increased participation. The article has suggested that a pull approach, or a state-institutionalist approach, to increasing political participation is a valuable way to conceive of these changes.

Specifically, there are a number of mechanisms that can be implemented -in Chile as in any democratic system- to invite greater participation in the business of government and, in fact, Chilean political and civil sector actors are already pursuing many of these. This article has attempted to describe some of those mechanisms, their status in Chile, how and why they might contribute to increased political participation, and what their future might be. Specifically, the article has concentrated on three areas of government decision making and participatory reform: legislative branch inclusion, executive branch inclusion, and legal institutions. In addition, other institutions are also discussed briefly, such as access to information and the mass media.

Although blocked in many ways from participatory reform, largely by the military and the political right, Chileans nonetheless are attempting to broaden political participation. The biggest challenge is for political actors of all kinds -and especially civil sector actors- to pass some of the bills currently in congress, or currently being studied -as well as pressure to introduce new ones- which could enhance public participation in Chile. Among these, some of the most important would include following through on the many recommendations made by the National Commission on Public Ethics in 1994 (including public information laws); and building on the momentum generated by legal scholars to improve public interest law.

Increasing political participation in Chile is a stated objective of numerous political actors, from the president to members of grassroots organizations. Nonetheless, it has been difficult to achieve. However, there is progress being made towards these goals, and there is a great deal of potential, even within the existing *rules for rule-making*, that new participatory reform may soon take place

in Chile. Chilean democracy, this article has suggested, will be greatly enhanced if this occurs.

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