

Countermajoritarian Institutions and Constitutional Stability

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“So that one cannot abuse power,
power must check power.”
Montesquieu, *Spirit of the Laws* (1989[1748]).

1. Introduction

Most democratic constitutions fail to endure. The estimated half-life of a democratic constitution adopted between 1789 and 2005 is just sixteen years (Elkins, Ginsburg and Melton 2009:135). The purpose of this paper is to explore some of the conditions that support constitutional and democratic survival. For democracy to survive, it must be self-enforcing in the sense that all parties with the power to disrupt democracy – such as an incumbent who may refuse to honor an electoral defeat or another group who might use force to take power – choose not to do so, instead honoring the rules (Przeworski 2006, Mittal and Weingast, 2010).

Building on this perspective, we provide a new model of a self-enforcing constitution to address a series of questions: Why do some authoritarian regimes

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democratize while others remain stable? Why do some countries sustain stable democracy while others fail?² How does constitutional design contribute to the emergence of self-enforcing democracy? With respect to the last question, we observe that many successful cases of democratization involved specific types of countermajoritarian features that constrain the power of elected majorities; for example, malapportionment may benefit the old, authoritarian elite; an upper chamber may represent geographic units, or other forms of veto power over majorities. These questions identify core problems of democratization.

Our approach to answering these questions joins two literatures. The first involves models of democratization based on citizens' threats to elites' economic interests, such as Acemoglu and Robinson (2000,2006) and Boix (2003). These works argue that authoritarians choose democracy when forced to by opposition groups; specifically, when the authoritarians find that the costs of sharing power are lower than attempting to sustain their regime in the face of potentially violent opposition. The second literature is a small group of scholars who model issues in self-enforcing democracy, such as Alberts (2008), Inman and Rubinfeld (2008), Mittal and Weingast (2010), Przeworski (1991, 2006), Fearon (2010), and Weingast (1997). Combining these two literatures, we show that successful democratic transitions are a product of the balance of power between opposing groups and constitutional design choices that lower the costs of upholding the democratic bargain.

² Since the beginning of the "third wave" of democracy in 1974, the record of democratic success is mixed. On the one hand, most of the 63 countries that experienced a democratic transition during this period have, so far, remained democracies (Diamond 2008:54-55). Others, however, have either returned to new forms of authoritarian rule (Russia, Nepal) or limped along with unconsolidated and crisis prone democratic regimes (Ecuador, Bolivia).

We begin with an authoritarian in power and an opposition seeking democratization. When the latter is insufficiently strong – that is, incapable of imposing sufficiently large costs on the authoritarian regime – the authoritarian regime is stable. Democratization arises when the opposition can threaten the authoritarian with sufficient costs that it prefers democratization over attempting to retain authoritarian power (Acemoglu and Robinson, 2006; Boix, 2003).

This insight is important for understanding democratization. Nonetheless, it provides an incomplete understanding of democratization. Although revolt, disorder, disruptions, and violence by the opposition impose costs on the authoritarian regime, so too does democracy. Democratization typically imposes large costs on the authoritarian regime and their constituents; for example, democracy may result in reprisals or expropriation, or it may open the door to previously suppressed sources of conflict (ideological, ethnic, religious, economic and so forth). We argue that the struggle to democratize is therefore not simply about redistribution from the elite protected by the authoritarian regime to the masses who support democratization. Rather, it often entails a broader range of conflict. Moreover, a critical element missing from the Acemoglu and Robinson and Boix framework is the extent to which constitutional design can facilitate the peaceful resolution of conflicts and promote a transition to self enforcing democracy.³ Also missing from this literature is the attention to what sustains democracy over time given that political leaders have the power to subvert it.

³ Acemoglu and Robinson (2006,207-11) have a short section on this issue, but it is not the central concern of the book.

Democratization processes frequently involve constitutional negotiations that reduce the stakes of democracy by protecting the interests of the incumbents (Mittal and Weingast 2010). When democratizing, authoritarian regimes often seek constitutional arrangements that contain countermajoritarian features designed to constrain majorities *ex post*. These features lower the costs of democratization for the authoritarian regime and its supporters, and provide incentives to refrain from reversing democracy. Many successful cases of democratizations are characterized by institutional features crafted to constrain majorities, including the early United States under the new Constitution; Great Britain in the early reforms; Germany's initial steps toward democracy in 1871; and many 20th century cases of democratization, including Spain, Chile, South Africa, and Uruguay. To succeed, constitutional provisions must be self-enforcing in the sense that the players have incentives to abide by them.

One of the main lessons of our approach, indicated in the Montesquieu headnote, is that successful democratization and subsequent constitutional stability require incentives for both pro-authoritarian and pro-democratic groups to adhere to the constitutional bargain once the new constitution is in place. The initial transition to democracy may occur when the threat of social unrest is such that the costs of repression outweigh the costs of adopting democratic institutions. Sustaining democracy thereafter involves the reciprocal ability to impose costs on the other group for deviating from the constitutional bargain.

This paper proceeds as follows. Section 2 discusses a range of democratizations with countermajoritarian features. Section 3 presents our model

of self enforcing democratization. Section 4 studies the implications of the model for the questions raised above. In Section 5 we provide an in-depth examination of Chile. Section 6 raises some potential extensions. Our conclusions follow.

2. Countermajoritarian Constitutions and Successful Democratization

The democratization literature is replete with examples of “third wave” political transitions or historical cases of democratic development whose success is attributed to a high degree of accommodation among elite actors (Lijphart 1977, O’Donnell and Schmitter 1986, Linz 1990, Valenzuela 1990, Huntington 1991, and Higley and Gunther 1992). Such accommodation is linked to the creation of institutional frameworks capable of processing conflict peacefully, thereby promoting stable democracy. An important characteristic behind many of these success stories is the presence of countermajoritarian constitutional features aimed at protecting the fundamental interests of groups key to democratization, particularly those with the ability to overthrow democracy.

Countermajoritarian constitutional provisions come in many varieties, but all share the common characteristic of protecting the rights and interests of minorities from infringement by a majority. Many of the standard rights entrenched in democratic constitutions are meant to guard against the abuse of power by majorities, and thus can be considered countermajoritarian elements. Other countermajoritarian provisions, however, are more narrowly conceived and often respond to unique, contextual circumstances. Given the variety of

countermajoritarian provisions and their role in a number of successful transitions to democracy, it is useful to distinguish among them.

Countermajoritarian provisions can be classified along two dimensions: the form they take (whether they create structures or procedures), and their scope (whether they protect diffuse interests or the interests of a targeted group within the population). A constitutional court with judicial review illustrates a countermajoritarian structure providing diffuse protection. The court's power to reverse majority decisions infringing constitutional rights, for example, is a potent means of protecting a wide range of minority interests.

Examples of countermajoritarian structures that provide targeted protections include legislative bodies with territorial representation; advisory councils with veto power over elected officials' decisions; appointed legislative members or bodies; and federalism. Territorial representation in the legislature protects the interests of citizens in sparsely populated areas by giving their vote equal weight with densely populated areas. Appointed councils and legislative bodies dilute the power of elected officials and limit their impact on policy making. Federal systems can devolve critical policies to regional (and more homogeneous) levels of government, protecting against overly onerous redistribution or expropriation and privileging local concerns.

Countermajoritarian procedures providing diffuse protections include guarantees of basic civil and political rights; limits on government power; and the requirement of a super-majority to pass certain types of laws (including but not limited to constitutional amendments). Targeted countermajoritarian procedures,

on the other hand, include electoral rules that over-represent certain groups; power sharing; special protections for certain groups or organizations; and restrictions on the legal prosecution of former regime officials for human rights abuses or other violations (as in Uruguay, Chile, South Africa, and former communist regimes in Eastern Europe.)

Countermajoritarian provisions vary in their long term effect on democracy, once the immediate transition period ends. In this regard, these provisions can be conceptualized as ranging along a continuum from moderate, “democracy-enhancing” to extreme, “democracy-eroding” effects. At the democracy-enhancing end of the continuum are constitutional provisions necessary for baseline democratic functioning, such as guarantees of fundamental civil and political rights. Moderate examples of institutional engineering can also be situated toward this end of the continuum (such as electoral rules that moderately over-represent rural as opposed to urban voters, or a bi-cameral legislature in which one house gives equal representation to geographical units of the state while in the other house representation is based on population).

At the opposite end are more extreme democracy-eroding features that severely limit popular sovereignty and potentially undermine democratic legitimacy. The presence of extreme countermajoritarian provisions may place a regime in the territory of “democracy with adjectives,” signifying a type of diminished democracy (Collier and Levitsky 1997).⁴ Extreme countermajoritarian

⁴ “Democracy with adjectives” refers to the various labels for diminished types of a democratic regime, such as “tutelary” or “protected” democracy, where the elected government

provisions include those that exclude certain groups from suffrage rights or fielding candidates for office, award some seats in the legislature by appointment rather than free elections, or prohibit elected officials from policymaking in specified areas, such as military affairs.

Numerous cases demonstrate the various ways in which countermajoritarian constitutional features contributed to democratic survival. After a cycle of civil wars, Uruguay's 1919 Constitution established power sharing between the country's two major parties by means of a 9 person collegial executive. This and other power sharing arrangements (through electoral rules and administrative posts) contributed to Uruguay's record as one of the most long-lived and successful democracies in Latin America. Colombia, although long troubled by violence, is another enduring Latin American democracy whose longevity is due in part to the adoption of counter-majoritarian constitutional provisions. The "National Front" power-sharing pact lasted from 1958-74. This agreement (incorporated into the Constitution by means of a 1957 plebiscite) stipulated that the country's two major parties would alternate in the presidency; it also divided all elected and administrative positions evenly between them. In the Chilean transition, the 1980 Constitution (discussed in section 4 below) included countermajoritarian elements such as electoral rules designed to over-represent supporters of the Pinochet regime, appointed Senators, and reserved policy domains. These provisions limited the elected Government's authority and protected the interests of pro-authoritarian groups by restricting policymaking on

lacks full power to govern; "limited" democracy, in which some segments of the population are denied suffrage, or "illiberal" democracy, where civil liberties are curtailed.

the part of elected officials. In the ante-bellum United States, federalism combined with the balance rule (equal representation of free and slave states) and the three-fifths clause (allowing additional representatives for Southerners by counting slaves as equal to three-fifths of a white person) to protect the interests of slaveholders (Weingast 1998).

In other regions and contexts, successful democratic transitions in Portugal, Spain, Poland and South Africa were characterized by constitutions and pacts that restricted the ability of majorities to implement their preferred policies. From 1976 until it was amended in 1982, Portugal's constitution gave the Council of the Revolution (predominated by the military) the power to pass their own laws and to judge the constitutionality of all laws passed by the legislature. Spain's Constitution of 1978 guaranteed the special status of the Catholic Church, established a quasi-federal system, and included an electoral system with a rural bias favoring groups that supported the previous authoritarian regime. In the 1989 elections to the Polish legislature (the *Sejm*), only 35% of the seats were freely contested; the Communist military government appointed the remaining seats. Finally, South Africa's 1996 Constitution provided for proportional power sharing in the Cabinet for any party winning at least twenty seats in the legislature and a federal system that devolved important taxation and spending issues to regions (reducing redistributive costs for the white population). The South African constitution also requires a two-thirds majority in both houses of the legislature to amend the constitution (Inman and Rubinfeld 2007).

Depending on the nature of the countermajoritarian rule, the composition of the protected minority or the effect of the provision (or both) may change over time. The critical point is that these types of provisions contribute to successful democratization based on the logic that, to succeed, all parties to the pact to democratize must believe themselves better off under the newly established institutional agreements. Without this condition, they are not likely to agree to democratization or, having agreed to it, are likely to subvert it (Mittal and Weingast 2010). Where this condition is fulfilled, however, opposing groups are more likely to uphold the formal rules of democracy and process a broad range of conflicting interests within democratic institutions, including the modification of targeted countermajoritarian provisions that initially facilitated the transition to democracy but subsequently proved harmful to democratic stability. This perspective allows us to see that even extreme democracy-eroding countermajoritarian provisions may allow evolution toward constitutional stability if, as in the case of Chile, such provisions are eventually modified peacefully, within the framework of the formal constitutional rules.

These observations fit within the larger democratization literature's emphasis on the importance of pacts to democratic transitions. Constitutions are pacts establishing the formal rules of the game of democratic politics and governance. As with other pacts, they must be self-enforcing to endure (Mittal and Weingast 2010). The new institutional framework created by the constitution is, in large part, responsible for providing credible protections to opposing

groups. Countermajoritarian provisions are an essential building block of credible protection.

We now turn to a model of these agreements to see how and under what circumstances they work.

3. The Model

We develop our full model of self-enforcing democracy in two steps, beginning with a simple model and then adding complexity. The first parallels an aspect of the approaches in Acemoglu and Robinson (2001, 2006) and Boix (2003), two of the leading models of democratization. In our second model, we relax two of the key assumptions used by Acemoglu, Robinson and Boix and incorporate several new elements. Before beginning, we raise an important feature of democracy central to Acemoglu and Robinson's approach; *viz.*, democracy potentially provides a commitment device on the part of the elite to redistribute over time. We abstract from this point, instead focusing on two other features of democracy, the role of constitutional design and the potential for leaders to subvert democracy.

We consider a political environment with two players: G1 represents an incumbent authoritarian and its supporters who initially hold power, and G2 is the principal opposition group. In general, we think of the opposition group, G2, as being larger in size than the authoritarian faction and therefore constituting a majority of the population. The two sides can also be conceptualized as warring

factions from different regions or two opposing groups seeking different policies on a left-right spectrum.

3.1. Model 1

Our approach relies on an extensive form game with perfect information and begins with G1 holding power (Figure 1). The sequence of interaction is as follows. At the outset of the game, G1 has two choices. First, G1 can adopt a majoritarian system where the median voter in the electorate determines policy outcomes. Second, G1 may decide not to democratize, attempting to maintain the authoritarian regime. G2 must then decide whether to challenge or acquiesce. The potential types of challenges include a range of tactics that imposes costs on G1, such as a revolution, secession, riots, a general strike, and other forms of disruption and disorder. We assume that challenges impose costs on both sides and lead to a move by nature that determines which player wins the challenge. For ease of exposition, we suppress the move by nature, representing it through an expected value on the allocation of distributive payoffs after the challenge. The group that wins the challenge sets policy to its ideal point. We let p be the probability that G2 wins the challenge.

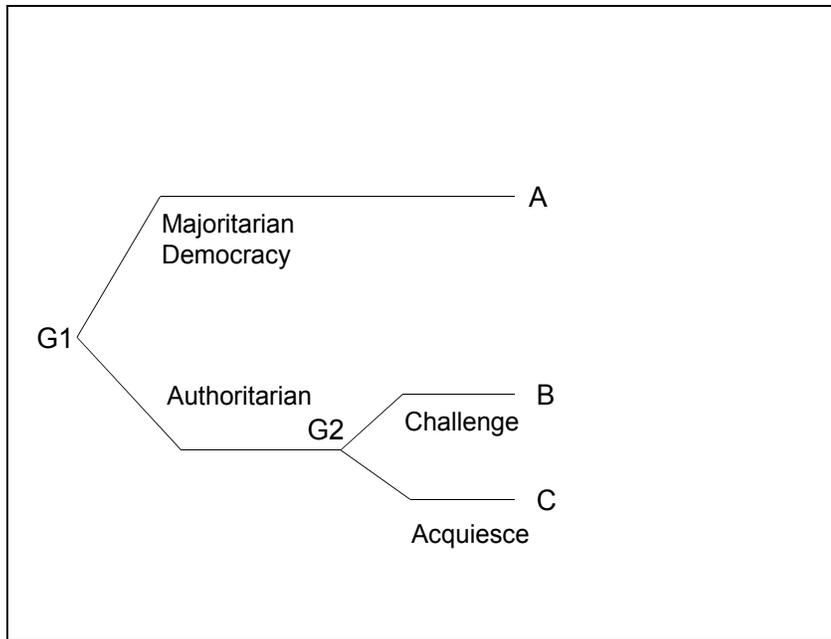


Figure 1: Model 1.

3.1.1. Payoffs

We assume that ideological policy exists on a standard one-dimensional policy space, X , equal to the real line. Each group possesses an ideal point over the ideological policy space, $X_i \in X$. We also assume that the ideal point of G_1 is to the right of the median voter, which, in turn is to the right of G_2 : $X_2 < X_m < X_1$. Additionally, we assume that challenges are costly. Challenging creates turbulence in the economy and destroys economic wealth for both groups (Acemoglu and Robinson 2006, 120-121). We denote the reduction in group i 's payoffs due to a challenge as C_i .

Taken together, we assume quadratic preferences over these two dimensions of utility, (x, C_i) , where x is a policy resulting from political choice. Thus, each group's utility is decreasing in the distance between the policy and its ideal point and as the costs due to challenges rise.

We model each group's payoffs at the 3 terminal nodes of the game. For simplicity, these terminal nodes can be labeled as $T = \{A, B, C\}$. The reduced form representation of each group's utility at terminal node t can be represented as: $u_i(T)$.

3.1.2. Analysis

Since this is a game of perfect information, the appropriate equilibrium concept to solve the game is subgame perfection. To analyze the equilibria of the game, we use backward induction. Thus, we analyze each player's strategies beginning with the terminal nodes of the game and then work backward toward the beginning of the game. This equilibrium of this game depends on the relative payoffs associated with various parameters.

First, we analyze the authoritarian subgame where G1's initial choice is to continue the authoritarian regime. G2 must then decide whether to challenge the authoritarian regime or acquiesce. G2 will challenge *iff* it receives a greater payoff from challenging than acquiescing, $u_2(B) > u_2(C)$. Thus, when G2 chooses to acquiesce, authoritarian rule continues. In contrast, if G2 prefers to launch a challenge, the outcome is node B. Since G1 can set policy at its ideal point at node C, G1 receives a higher payoff at this node than any other terminal node in the game.

Looking at the first node of the game, G1 must decide between majoritarian democracy and continuing authoritarian rule. Suppose p , the probability that G1 wins the challenge, and C_i are such that G1's preferences

rank the outcomes as C, A, B; that is, G1 prefers authoritarian rule first, majoritarian democracy second, and fighting third. If G2 prefers not to challenge in the authoritarian subgame, G1 will choose to maintain the authoritarian regime. If G2 prefers to challenge, then G1 will choose majoritarian democracy.

This game captures one of the main theses of Acemoglu and Robinson (2006) and Boix's (2003): democratization occurs when the opposition is sufficiently strong so that the incumbent regime prefers to democratize rather than face the challenge. The model shows that G1 will not democratize when G2 lacks the ability to threaten a challenge (that is, it prefers C to B) in the authoritarian subgame. If G2 credibly threatens a challenge so that G1 is worse off attempting to maintain the authoritarian regime, G1 will democratize.

3.2. Model 2

Model 1 makes two critical assumptions. First, it assumes that the only strategy choices available to authoritarian regimes facing an opposition strong enough to challenge it is to establish a majoritarian democracy or to remain steadfast in the authoritarian regime and face a challenge. In many cases, however, authoritarian regimes have a third option of establishing a democracy with countermajoritarian provisions that protect the authoritarian's interests by preventing policy outcomes under democratization from moving completely to the median voter's ideal point. In these cases, democratization occurs, but with constitutional restrictions that force those in power to deviate from majoritarian/median policy outcomes; for example, in the direction of the

authoritarian's interests. The discussion of countermajoritarian provisions in section 2 suggests both the range and applicability of these constitutional features.

Second, model 1 assumes that G2 has no strategic choice after the establishment of the majoritarian democracy; instead G2 automatically implements the will of the median voter.⁵ In some cases, however, G2 is likely to have both the incentive and the ability to subvert majoritarian democracy to move policy toward its ideal point away from the median.⁶ Similarly, in a countermajoritarian democracy, G2 may also have incentives either to renege on the constitution and establish a majoritarian democracy or to subvert the constitution entirely by moving policy outcomes to its own ideal point.

In our second model, we relax both of these assumptions. The sequence of play for this game is shown in Figure 2. As in model 1, the game begins with G1 holding power. G1 has an initial choice among three options. It can decide to continue the authoritarian regime or it can adopt a majoritarian system as in model 1. However, G1 now has an additional option: it can opt for democracy with countermajoritarian constitutional provisions.

⁵ For instance, Acemoglu and Robinson (2006, p. 94, 98) assume that “the policy that wins in a direct democracy must be the ideal point of the median voter.” This assumption is made in many of the previous models of democratization in the comparative political economy literature.

⁶ Spain in 1936, prior to the outbreak of the Civil War, provides an example. Here, the left wing Popular Front government threatened to enact more advanced social policies than would be supported by the median voter (Carr and Fusi 1981:3). Similarly, in Venezuela, the victory of Acción Democrática's presidential candidate in the 1948 elections was followed a short nine months later by a military coup that rescinded numerous reforms that had alienated domestic business groups, the Catholic Church, and other more conservative elements (Coppedge 1994:324).

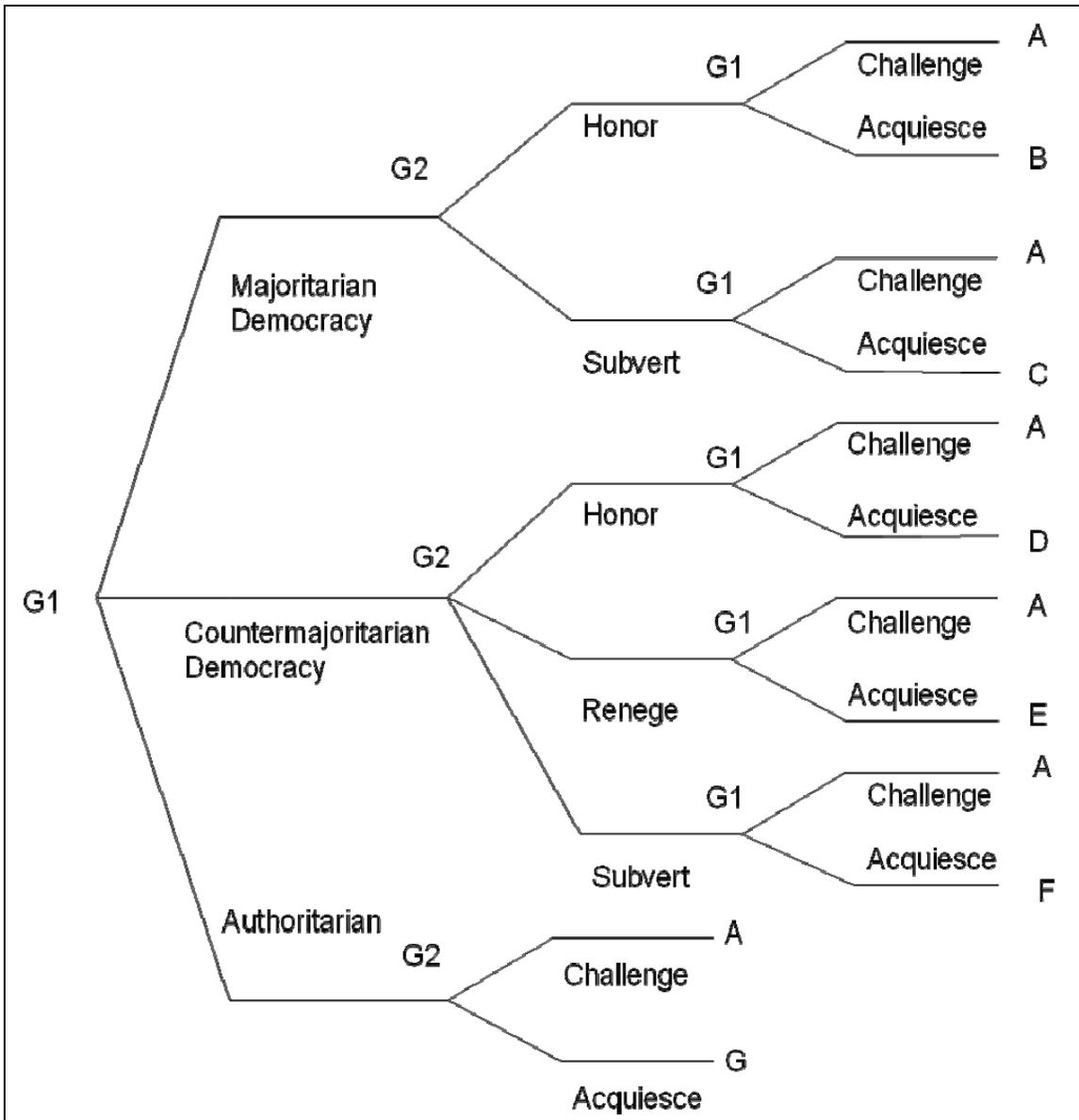


Figure 2: Model 2.

If G1 attempts to maintain an authoritarian regime, then, as in model 1, G2 decides whether to challenge or acquiesce. If G1 chooses to initiate majoritarian democracy, G2 takes power and must next decide whether to honor the institutions or to subvert. In either case, G1 then must decide whether to challenge or acquiesce.

Finally, if G1 chooses to negotiate a countermajoritarian constitution, G2 takes power and must decide whether to honor the constitution, renege on the constitutional bargain and institute majoritarian rule, or subvert the constitution to increase its own power (as in the majoritarian subgame). After observing G2's choice, G1 then decides whether to challenge or acquiesce. As with model 1, we assume that challenges impose costs on both sides and lead to a move by nature that determines whether the form of de jure institutions changes.⁷

3.2.1. Payoffs

The outcomes of the countermajoritarian subgame are determined in part by the institutional constraints established by the constitution. If G2 honors the constitution, it must set a policy subject to constitutional constraints, resulting in X_{cj} . If G2 reneges on the constitution by instituting majoritarian democracy and G1 does not challenge, then G2 sets a policy outcome at the preferred outcome of the median voter, X_m . If G2 subverts the constitution and G1 does not challenge, G2 sets policy at its own ideal point, X_1 . Alternatively, if G1 challenges G2's choice in the countermajoritarian subgame, the group that wins is determined by a move by nature, which we represent through an expected payoff for each group.

We make four assumptions about the model:

- (A1) The probability that G1 (G2) wins a challenge is p ($1-p$) regardless of who initiates the challenge.⁸ [NOTE TO READER: The next draft will

⁷ In the figure, we suppress the move by nature, representing it through an expected value on the allocation of distributive payoffs after the challenge that affects each side's expected utility. Below we explicitly analyze the probabilities.

⁸ This is clearly a simplifying assumption, and it holds in many cases. In the Chilean and

generalize this, allowing three different probabilities of success for G1, depending on the subgame.]

- (A2) A challenge results in one of two outcomes, depending on who wins. If G1 wins, it imposes its ideal X_1 . If G2 wins, it imposes its ideal X_2 .
- (A3) The costs of challenging, C_i , are constant across the different subgames.
- (A4) Finally, we assume that the idea points are ordered as follows:

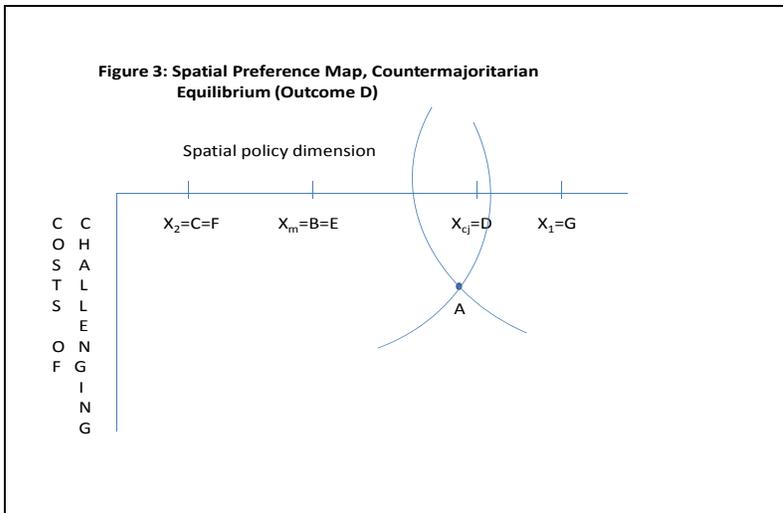
$$X_2 < X_m < X_{cj} < X_1. \quad (\text{Ineq 1})$$

In general, we will assume that X_m is closer to X_2 than X_1 ; and X_{cj} is closer to X_1 than X_2 , but in some cases, we will explicitly relax this assumption.

These assumptions have several implications: First, when G1 challenges in either the majoritarian or the countermajoritarian subgames, the outcome is the same, labeled A at each terminal node where a challenge occurs. The same outcome (A) occurs when G2 challenges in the authoritarian subgame. The terminal nodes can therefore be labeled as $T=\{A, B, C, D, E, F, G\}$. Second, when G1 chooses to acquiesce in the majoritarian subgame, $B = X_m$ and $C = X_2$. Third, when G1 chooses to acquiesce in the countermajoritarian subgame: $D = X_{cj}$, $E = X_m$, and $F = X_2$. Fourth, in the authoritarian subgame, $G = X_1$.

The above assumptions afford many payoff configurations, depending on the various parameters and the location of the four outcomes. Figure 3 provides a spatial configuration of the preferences consistent with these assumptions. In the figure, raising (lowering) C_i moves A down (up). Similarly, raising (lowering) p moves A to the right (left).

Spanish cases, for example, the army (supporting G1) remained independent of the new government in the earlier transition. The assumption also held for the American Civil War where what mattered was not which side held the national government, but the relative resources of the two regions.



3.2.2. Analysis

In this subsection, we consider several sets of preferences, each resulting in a different equilibrium outcome.

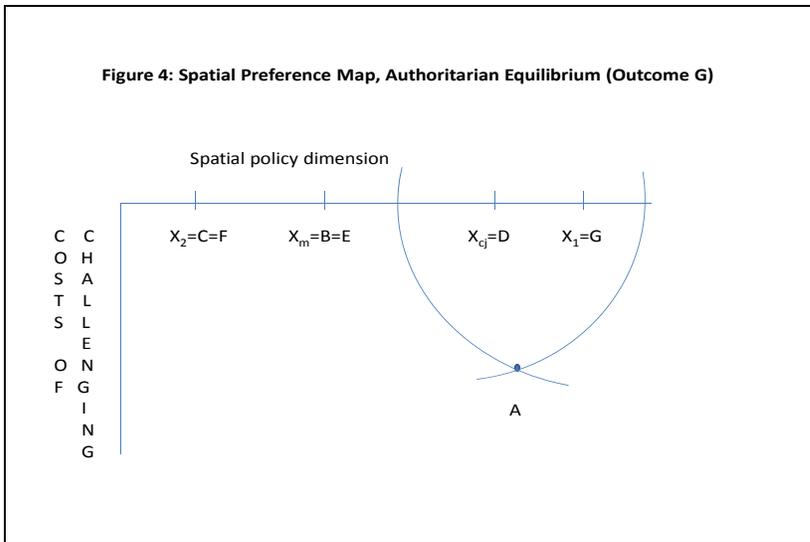
Equilibrium counter-majoritarian democratization. We begin with the preference configuration of figure 3 (recall that X_i is G_i 's ideal point). For now assume that X_{cj} is exogenously given. In the majoritarian subgame: if G_2 honors, then G_1 will challenge if C_1 is not too large: challenging yields outcome A: $pX_1 + (1-p)X_2 - C_1$, whereas acquiescing yields outcome B, X_m . If G_2 subverts, and G_1 challenges, the outcome is A, whereas acquiescing yields outcome $C = X_2$. Given the preference configuration of figure 3, G_1 prefers A to both X_m and X_1 , so regardless of G_2 's choice, it will challenge. In the counter-majoritarian subgame: If G_2 honors, then G_1 will acquiesce: challenging yields $A = pX_1 + (1-p)X_2 - C_1$, whereas acquiescing yields outcome $D = X_{cj}$, which by preference configuration in figure 3 it prefers to A. If G_2 chooses to renege, we duplicate the first calculation in the majoritarian subgame (G_1 chooses challenge); and if G_2

chooses to subvert, we duplicate the second calculation in the majoritarian subgame (G1 chooses challenge). Given the preferences in figure 3, G2 will choose to honor ($u_2(D) > u_2(A)$); and G1 will honor ($u_1(D) > u_1(A)$). In the authoritarian subgame, G2 will challenge when C_2 is not too large: challenging yields A: $pX_1 + (1-p)X_2 - C_2$; whereas acquiescing yields G, X_1 . Thus, when p and C_2 are not too large so that $u_2(A) > u_2(G)$, G2 will challenge. Given these choices in the subgames, G1 will choose countermajoritarian democratization at the first node.

To summarize the logic that supports the countermajoritarian constitutional equilibrium: inequality (1) specifies the relationship among the outcomes; p and C_1 are such that G1 prefers A to X_m , and D to A; and p and C_2 are such that G2 prefers outcome A to G and D to E and A.

Authoritarian equilibrium. In comparison with figure 3, if C_2 is large (or if p is large), then G2 prefers to acquiesce in the authoritarian subgame. In this case, G1 chooses to maintain its authoritarian regime, and this is an equilibrium. This behavior results in outcome G, the best possible for G1.

Figure 4 illustrates a spatial configuration that supports this case. In comparison with figure 3, A is much lower – reflecting larger costs of challenging, C_i , so that $X_1 = G$ is inside G2's indifferent curve through A. The outcomes of the other two subgames necessarily produce lower utility for G1.



A majoritarian equilibrium. Consider again the preference configuration in figure 3. Suppose that X_m moves close to X_{cj} (specifically, X_m moves inside G_1 's indifference curve through A), all other points remain the same. The new outcome relationships generate preferences that produce an equilibrium in the majority subgame whereby, if G_2 honors, G_1 will acquiesce. The same logic means that, if G_2 reneges in the countermajoritarian subgame, G_1 will acquiesce. Moreover, because in this subgame G_2 prefers renege/acquiesce to both honor/acquiesce and subvert/challenge, it will renege on the countermajoritarian institutions and impose majoritarian democracy. In this case, at the first node, G_1 is indifferent between choosing the majoritarian and the countermajoritarian subgame (and prefers both those outcomes to the outcome of the authoritarian subgame, A). This case arises in the presence of inequality (1); when p and C_1 are such that G_1 prefers X_m to A; and p and C_2 are such that G_2 prefers A to G.

This special case, requiring that X_m is close to X_{cj} , produces a counter-intuitive result. It arises when the majority of the population's policy orientation is

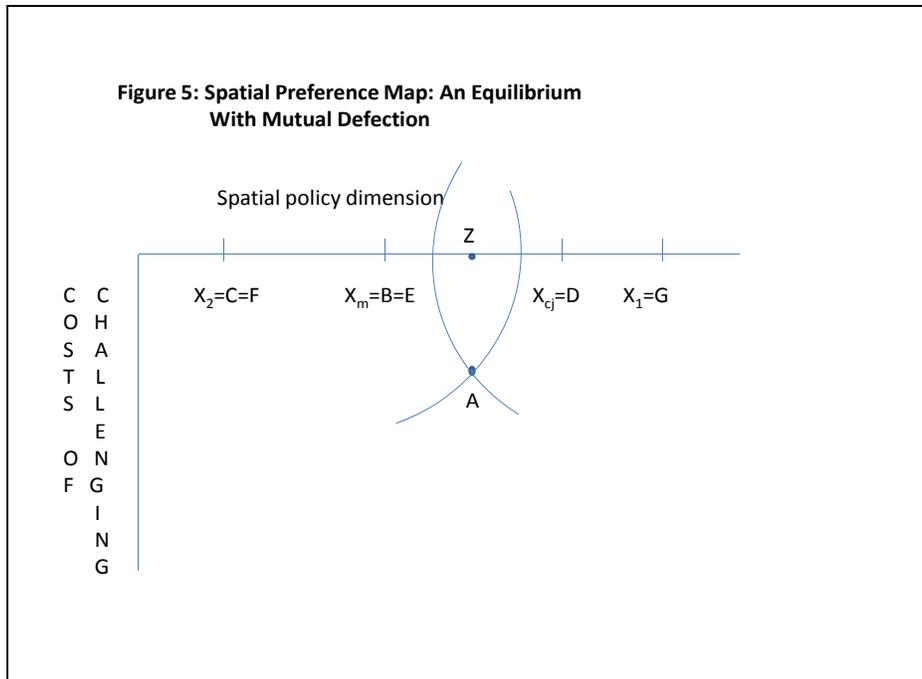
closer to G1 than to G2. Oddly, despite this situation the authoritarian cannot assure itself of a countermajoritarian constitution. From the authoritarian faction's point of view, it is not worth fighting to maintain countermajoritarian institutions when the majoritarian policy outcome is close to the outcome that results from countermajoritarian institutions.

This special case is one of the few circumstances where we expect a democratic transition to result in majoritarian political institutions. However, we suspect that X_m will rarely be this near X_{cj} unless G1 is very weak (i.e., C_1 is very high and p is low). The main implication is that democratizations will rarely result in majoritarian political institutions.⁹

Comparing the countermajoritarian equilibrium in figure 3 to this majoritarian equilibrium, we find that majoritarian democracy emerges where it is not very costly to G1; but when it is costly, G1 engineers a credible countermajoritarian constitution. In both of these cases, the amount of policy movement from X_1 , the policy under the authoritarian regime, is not very dramatic.

An equilibrium with fighting. Suppose that p is considerably lower than we assumed in figure 3. This results in the spatial configuration of preferences in figure 5, which places the outcome of challenges by G1 (e.g., A) and challenges by G2 (outcome A) up and to the left in comparison with those in figure 3.

⁹ For example, this situation may occur with a moderate to conservative society that nonetheless rejects the repression under authoritarian rule. As a possible illustration, Uruguay restored democracy in 1984 by simply restoring the prior constitution with no added countermajoritarian features.



Suppose as well that institutions are difficult to mold so that the only possible outcomes on the policy space are X_2 , X_m , X_{cj} , and X_1 . Then, in the majoritarian subgame, G2 is indifferent between honoring and subverting because G1 challenges in both, yielding the same outcome. In the countermajoritarian subgame, G2 also chooses to subvert (it prefers A over D) and G1 will challenge (it prefers A over $F = X_2$). In the authoritarian subgame, G2 will challenge. In short, challenging is the outcome of every subgame, so G1 is indifferent among them. In this setting, violence occurs in equilibrium. The reason is the mix of the non-malleability of institutions in combination with the threat point: none of the four possible outcomes Pareto-dominates the challenge outcome. In every subgame where a player can challenge, they prefer challenging to acquiescing. In principle, a policy such as Z would make both parties better off than fighting. But the lack of institutions to sustain Z means that

Z is not an option.¹⁰ Instead both parties prefer to challenge than accept another outcome.

An equilibrium with X_{cj} endogenous. Consider again the preference configuration of figure 3. Suppose that X_{cj} is endogenous and that institutions are sufficiently rich to allow them to be constructed to support any point in the policy space. In terms of the game, this means that, at the first node of the countermajoritarian subgame, when G2 chooses to honor, it also chooses the location of X_{cj} .

In this setting, G2 will set X_{cj} so that G1 just prefers X_{cj} to A (that is, G2 will set X_{cj} where G1's indifference curve through A crosses the horizontal line in figure 3). To see this, recall the countermajoritarian equilibrium. As before, G2 will challenge in the authoritarian subgame, yielding A. The placement of X_{cj} yields maximum benefits along the policy line to G2 subject to G1 preferring X_{cj} to A. If G2 reneges or subverts in the countermajoritarian subgame, G1 will challenge, yielding A. If G2 honors, then G1 will acquiesce. By construction of X_{cj} , G1 prefers X_{cj} (honor) instead of A (reneging or subverting), and so too does G2. The equilibrium choices in the majoritarian and authoritarian subgames are as before, so G1 prefers the outcome of countermajoritarian democratization to that of either majoritarian democratization or attempting to maintain the authoritarian regime. Self-enforcing countermajoritarian democracy occurs in this equilibrium, but with the institutions more favorable to G2 than G1 when X_{cj} was exogenous (or when G1 sets X_{cj}).

¹⁰ This argument parallels Fearon's (1995) classic argument about why wars occur.

This model affords interesting comparative statics depending on the relative power of the two groups. The less favorable is the threat point to G1 (that is, the lower is p or the higher is C_1), the further toward X_1 is X_{cj} .

4. Implications

An important implication of the approach is that democratization is more likely to occur when the countermajoritarian option is available to an authoritarian than when majoritarian democracy alone is available. In comparison with model 1, the additional option of constitutional restrictions afforded by the countermajoritarian subgame in model 2 means that G2 does not have to be capable of imposing as high a cost on G1 in order to induce G1 to abandon the authoritarian regime and establish a democracy.

To see this, in model 1 when G2 prefers B to A, then G1 will choose majoritarian democratization whenever $X_m \geq pX_1 + (1-p)X_2$. In model 2, G1 will choose countermajoritarian democratization whenever $X_{cj} \geq p'X_1 + (1-p')X_2 - C_1$. Because G1 prefers X_{cj} to X_m , $p' < p$: the minimum strength of G2 necessary to force the authoritarian to democratize is lower. Moreover, the bigger the utility difference between X_{cj} and X_m , the lower is the minimum p' necessary for G1 to choose democratization. Put simply, the countermajoritarian features make democratization less costly for G1 than in a purely majoritarian system. Of course, countermajoritarian democracy may also impose onerous restrictions on majorities.

The model reveals important insights into the circumstances that sustain democracy. In a two group setting with an authoritarian incumbent (G1) and a principal opposition group (G2), both sides have the opportunity to defect from the bargain. The model shows that the transition to a self-enforcing democracy arise with the reciprocal ability of both groups to punish each other for defecting. Self-enforcing democracy therefore requires that both sides have incentives not to defect. In terms of model 2, G2 must be strong enough to challenge G1 if it attempts to maintain the authoritarian regime. Further, G1 must be strong enough in the democratic regime to prevent G2 from renegeing on the countermajoritarian constitutional features.

This result adds to the literature on democratic transitions: Paralleling Acemoglu and Robinson (2006) and Boix (2003), the model shows that an authoritarian regime is stable when the opposition group G2 is insufficiently strong to challenge it. But, equally importantly and missing from those accounts, the maintenance of self-enforcing democracy in model 2 requires that the authoritarian group in power, G1, be sufficiently strong after the transition to ensure that G2 has incentives to honor the constitutional bargain once it gains power. If this latter condition fails, then G2 may well prefer to attempt to maintain the authoritarian regime and fight G1, resulting in disorder or civil war. Thus, our model demonstrates institutional and contextual foundations of self-enforcing democratization, and therefore, long term democratic survival. In the (countermajoritarian) democratization equilibrium, both sides have the ability to

punish the other for defection, and therefore maintain democracy. This analysis suggests that if one side is too strong democracy is not stable.

The institutional aspects of our approach contrast with the models in Boix (2003) and Acemoglu and Robinson (2000, 2006). Precisely because majoritarian democracy can be median driven, or through subversion can result in policy outcomes beyond the median, authoritarians are likely to resist this form of democracy. They are more likely to initiate a democratic transition and subsequently refrain from overthrowing democracy when a third option is pursued: democracy with constitutional constraints that mitigate the effects of unconstrained, median-driven majority rule.¹¹

These ideas yield an important prediction. Although we observed that majoritarian democratization was possible in model 2, we also suggested that the circumstances producing it were not very likely. This implies that when authoritarians democratize they are more likely to achieve stable democracy when it is countermajoritarian than when it is not.

This insight with respect to countermajoritarian democracy helps explain another frequent feature of most democratizations emphasized in the substantive literature but missing from existing models: pacts. A pact is an agreement that defines the rules governing the exercise of power and provides guarantees for the vital interests of those entering into the pact (O'Donnell and Schmitter 1986:37). Pacts often occur when neither competing group can unilaterally impose its preferred solution on the other. While they acknowledge

¹¹Indeed, the availability of the constitutional democracy with countermajoritarian features means that G1 is unlikely to voluntarily establish a majoritarian democracy (subject to the qualification above – when X_m is close to X_{c_j}).

that pacts are not always viable, O'Donnell and Schmitter (1986:38-39) argue that pacts strongly enhance the probability of establishing a viable democracy.¹²

In contrast, pacts play no role in the Acemoglu, Robinson, and Boix approach. The authoritarian has nothing to negotiate over. In our approach, pacts emerge naturally at the moment of constitutional bargaining that creates the constitution, typically with countermajoritarian features, and the credible commitments to maintain those features. Our model helps explain why some pacts pave the way for self enforcing democratization while others fail: those that succeed not only include countermajoritarian features protecting one or both parties to the pact, but they also involve the reciprocal ability to punish the other if the other defects. In terms of the model, pacts construct the appropriate location for X_{cj} . Self-enforcing pacts are those consistent with the countermajoritarian equilibrium (when X_{cj} is exogenous) or with the endogenous countermajoritarian equilibrium. In both cases, both G1 and G2 must be better off at X_{cj} than at the threat point of mutual defection.

The results of model 2 also parallel an insight from Przeworski (1991, chapter 2) and Mittal and Weingast (2010): successful transitions to stable democracy reduce the stakes of power. The model shows that democratization is more likely in the face of limits on the power of majorities. When the stakes are too high (majority movement to the median or beyond the median toward G2's

¹² Spain, Portugal, Venezuela, Colombia and (to a lesser extent) Brazil all experienced pacted democratic transitions which, according to O'Donnell and Schmitter, seemed to presage viable democracy. In contrast, with the exception of Costa Rica, O'Donnell and Schmitter (1986: 45) did not view as promising the prospects for democratic consolidation among the unpacted democratic transitions that occurred in Peru, Ecuador, Argentina, Bolivia and the Dominican Republic.

ideal) so that policy movements are too costly for the authoritarian, the latter is more likely fight to remain authoritarian, possibly leading to civil war and other forms of disorder.

Another aspect of the Acemoglu, Robinson, and Boix approaches is that a central feature of democracy concerns redistribution from the rich to the poor, as represented by the median. Viewing the policy space in our models as representing the degree of redistribution, the main lesson is that some redistribution takes place, but the countermajoritarian features of the constitution are designed to place limits on the extent of that redistribution (see also Ansell and Samuels 2009). The creation of democracy with countermajoritarian features helps explain why so many of the early democratizations in Western Europe and the Anglo-American countries of the 19th and early 20th centuries involved relatively little redistribution, at least for several generations.

The model implies that successful democracy, beyond simply holding elections, requires attention to constitutional design; specifically, the inclusion of countermajoritarian features that protect one or more parties to the constitutional pact creating democracy. Without such protections, those in power are less likely to accept democracy in the first place. Without credible commitments to honor such features, self-enforcing democracy is a less likely outcome. As we have noted, a large proportion of successful democratizations have these features.

Finally, the model also provides an answer as to why we observe such different outcomes of attempts at democratization across different countries. Different parameter values lead to different equilibria: some countries will remain

authoritarian (e.g., when G2 is weak), while others successfully create democracy that lasts more than a generation. In yet other cases, democratization may occur followed by some form of democratic failure (such as subversion or coups); for example, when G1 is not sufficiently strong after the transition; or when G2 loses strength so that G1 challenges.

5. Applying the Approach: Chile, 1973-Present

Chile's transition to democracy in 1989 illustrates the model's predictions. Our point in developing this case is not prove our model using a single example, but instead to show how countermajoritarian institutions work in practice.

Specifically, we argue that self-enforcing democracy with countermajoritarian features is established when:

- A democratic opposition (G2) poses a credible challenge to an authoritarian regime (G1), leading to the initiation of a democratic transition with countermajoritarian constitutional provisions;
- G1 is sufficiently strong to present a credible challenge to G2 if it reneges on the constitutional bargain;
- G1 receives a higher payoff from upholding the constitutional bargain as opposed to challenging and attempting to bring back authoritarian rule.
- G2 receives a higher payoff from upholding the constitutional bargain as opposed to attempting to establish majoritarian democracy or subverting the government to establish its own policy preferences.

The 1973 military coup deposed Chile's socialist President Salvador Allende Gossens, beginning seventeen years of authoritarian rule under a military junta led by General Augusto Pinochet. An important element behind the consolidation of the military's hold on power in the years after the coup was the

judgment on the part of economic elites and other sectors that the Allende period represented “a definitive threat to their existence” (Garreton in O’Donnell, Schmitter and Whitehead 1986:100). The remainder of the 1970s witnessed severe repression, economic transformation toward a free market model, and a largely silent civil society. At the same time, a commission appointed by the junta elaborated a new constitution as a means of securing the regime’s legitimation and institutional foundations. This text was approved in a 1980 referendum and took effect in March 1981.¹³

The Constitution of 1980 formed the cornerstone of the military regime’s foundational project, which centered on revitalizing the economy, preventing the resurgence of Marxist ideology, and restructuring Chilean politics by creating a so-called “protected” democracy with a guiding role for the military (Barros 2002). The constitution contained transitory articles extending military rule until 1989 as well as permanent articles that would go into effect after a plebiscite scheduled for 1988. The purpose of the 1988 plebiscite was to approve the military’s candidate for president, which would presumably be Pinochet. If the military’s candidate won, he would hold power for another eight years. If he lost, however,

¹³ Lack of unanimity within the junta and among regime supporters on the desirability of indefinitely prolonging military rule as opposed to establishing a constitutional basis for the regime and a timetable for the reintroduction of some democratic elements ultimately led to the adoption of the Constitution. An increase in international pressure in the latter half of the 1970s and a more critical stance on the part of the Catholic Church and pro-regime communications media also contributed to Pinochet’s decision to finalize the constitution. (Garreton 1986)

open elections would be held in 1989 for president and for a bicameral legislature.¹⁴

The Constitution's permanent articles included extreme countermajoritarian provisions commonly referred to as "authoritarian enclaves" because they removed areas of authority and decisionmaking from elected officials. These included nine designated Senators (out of a total of 26), a National Security Council dominated by the military and endowed with broad powers, restrictions on the president's power to appoint and remove the heads of the military services, and the exclusion from politics of individuals, parties or movements deemed hostile to democracy (Valenzuela 1994:205-8). Amending the constitution required a large super-majority and passage by two consecutive legislatures. These features placed Chile's constitution (until 2005) at the far extreme "democracy-eroding" end of our continuum.¹⁵

The plan to hold a plebiscite, which appeared to be a safe bet for Pinochet in 1980, turned out to be instrumental to the unraveling of the authoritarian regime and Chile's return to democracy. As 1988 approached, the democratic opposition seized the opportunity afforded by the plebiscite to challenge the regime. Previously divided parties of the center and left formed a coalition,

¹⁴ See Barros (2002) for the events surrounding this period and dynamics within the junta. See Magaloni (2008) and Cox (2009) on the rationale for holding elections in authoritarian regimes.

¹⁵ The authoritarian enclaves were removed by the legislature in 2005. The electoral system designed by the military regime remains un-reformed, but is not technically an authoritarian enclave, nor can it be classified as un-democratic.

registered voters, and carried out a highly effective “Campaign for the No.”¹⁶ Pinochet, who thought himself invulnerable, lost the plebiscite 54% to 43%.

The regime’s defeat initiated the strategic interactions described in the authoritarian and countermajoritarian subgames (Figure 2). The result of the vote demonstrated the strength of popular opposition to the authoritarian regime and paved the way for democratic elections in 1989. Consistent with the model, G2’s strength in the authoritarian subgame led G1 to initiate a democratic transition in which extreme countermajoritarian provisions lowered the stakes for the regime and its constituents.¹⁷ As shown in Section 3, Figure 5, the countermajoritarian policy outcomes are endogenous to the Chilean case.

Further evidence of G1’s perception of G2’s strength can be adduced from the negotiations carried out between the center-left democratic opposition, the regime, and its allies on the right during 1989, resulting in the adoption of fifty-four constitutional reforms. The reforms maintained the extreme countermajoritarian character of the constitution but eliminated some provisions and softened others. For example, the total number of elected Senators was increased from 26 to 38, diluting the impact of the nine un-elected Senators; the super-majority for amending the constitution and organic constitutional laws was slightly reduced; the requirement that constitutional amendments be passed by

¹⁶ Other factors contributed to the authoritarian defeat. For example, during the 1980s the regime’s the regime’s bases of support began to fragment due in part to an economic crisis and the effects of the Latin American debt crisis, which hit Chile particularly hard.

¹⁷ Although Pinochet wanted to ignore the plebiscite results and hold on to power, other members of the junta refused to go along (Londregan 2000:80). They (and others in the military) were interested in a “soft landing” and a return to military as opposed to political concerns. (Valenzuela 1994:212) The Constitution’s provisions provided assurances of the continuation of their institutional project for the country.

two consecutive legislatures was dropped; and the provision (aimed at the Communists) of banning political participation of anti-democratic groups was removed. The autonomy of the Armed Forces was maintained, as were mechanisms for military oversight of Chile's political institutions and the continuation of Pinochet as head of the Army until 1998. Moreover, organic laws issued by the junta created an electoral system that overrepresented right wing parties, established a guaranteed source and minimum level of funding for the military, and provided for military involvement in naming members of the Constitutional Court, regulatory and semi-autonomous agencies. Finally, the constitution also protected right wing interests by establishing an independent central bank and enshrining the inviolability of private property, a principal source of conflict in the period prior to 1973 (Scully 1996:106-7, Valenzuela 1994:214-15). These institutions provided the framework in which subsequent elected governments operated.

As the model suggests, mutual awareness of each sides' reciprocal ability to inflict punishment helped foster the transition, the 1989 negotiations and elections, and the opposition's acceptance of an extreme countermajoritarian constitutional framework. The military regime (G1), cognizant of the fact that they lacked the support of a majority of the population, moderated its strategy, engaged in negotiations to secure the survival and legitimation of their basic constitutional design, and held elections. As Siavelis notes, "the military and its allies were concerned that if they did not negotiate and appeared inflexible, the opposition might succeed in building a popular movement to do away with

Pinochet's entire institutional framework (Siavelis 2008:193). The democratic opposition (G2), acutely aware of both the military's strength and the fact that more than 40% of the voters in 1988 supported continued military rule, pursued a moderate strategy in which it accepted a return to civilian rule under an extreme countermajoritarian constitution.

Mutual Restraint: Governance Under the 1980 Constitution

Patricio Aylwin, the Christian Democratic candidate of the center-left coalition *Concertación por la Democracia*, won the 1989 presidential elections and took office in March 1990.¹⁸ The *Concertación* won a majority in the legislature's lower house, the Chamber of Deputies, and a plurality in the Senate. The effects of the regime's electoral law (which over-represents second place winners, which have consistently been parties on the right) combined with the nine designated senators to mean that the government lacked enough votes to pass legislation on its own. The right consistently held a veto over policymaking.

The model helps interpret these events. The authoritarian regime valued the countermajoritarian constitutional provisions, restricting the behavior of an elected democratic government, and so chose this route for democratization rather than majoritarian democracy which could have proved disastrous for their interests. Further, according to the countermajoritarian subgame in model 2, G1's

¹⁸ The *Concertación por la Democracia* is a coalition of center left and left wing parties which won all presidential elections from 1990 through 2005. Chile's other main political grouping, a center-right coalition, was called *Alianza por la Democracia* until changing its name in mid-2009 to *Coalición por el Cambio*. The *Coalición's* presidential candidate, Sebastián Piñera, won the presidency in 2009.

strength and credible threats to punish defections from the constitutional bargain raised the payoffs to G2 for working within constitutional constraints.

This picture accurately describes the situation in Chile in the aftermath of the return to civilian rule. The Chilean military at the time of the transition and for some time afterward was considered to be a significant threat to democracy (Linz and Stepan 1996:205). Even before President Aylwin took office, the military made it clear that any violation of the constitution would provoke military intervention. In June 1989, army generals issued a warning that they would resort to the “legitimate use of force” against anyone attempting to ignore the constitution. Several months later, sending a clear signal with respect to the future government’s handling of military involvement in human rights violations during the dictatorship, Pinochet declared that the military would not allow any of their members to be vilified for their actions aimed at saving Chile (*Latin American Weekly Reports* July 6, 1989, Sept. 7, 1989). Furthermore, when the transition began, Pinochet’s authoritarian project commanded a considerable degree of support among business elites, producer organizations, and parties of the right (the UDI and RN) (Siavelis 2008:196). *Concertación* leaders understood that the support of business elites was critical to the success of the transition (Boylan 1996).

Given the credible military threat, democratic elites in Chile viewed reneging or subverting the constitution as undesirable. Indeed, despite the fact that it did not relish operating under the military-imposed constitution, the opposition (and subsequently the new government) “wanted to avoid giving

Pinochet any excuse to renege on the constitutional deal that had been struck”
(Siavelis 2008:193)

Examining the Aylwin administration's actions in three areas provides evidence supporting the model's insights that a transition to self-enforcing democracy rests on the reciprocal ability of opposing groups to punish each other for defecting from the constitutional bargain and, furthermore, that countermajoritarian constitutional provisions sustain an equilibrium wherein opposing groups' best strategy is to honor the constitution, constraining majoritarian policymaking. In three highly contentious areas – human rights violations by the military, economic policy, and constitutional reform – the Aylwin government (1990-94) as well as subsequent *Concertación* administrations worked within institutional constraints and pursued moderate policies. The strength of the military and the Right generated strong incentives for each successive *Concertación* government to honor the constitutional bargain. In so doing, the government, of necessity, took into account the interests of the military and right wing groups and incorporated them into policymaking. In turn, as the model predicts, given the strategic choice of democratic governments to honor the constitution, the best strategy for the military and its allies on the right was to acquiesce.

Civil-military relations, and particularly the issue of past human rights violations by the military arguably, posed the most delicate challenge for the new democratic government. The composition of the courts and the counter-

majoritarian structure of the Senate,¹⁹ in combination with occasional warning signals by the army, forced the Aylwin administration to move slowly on addressing past human rights violations. President Aylwin issued a public rebuke to Pinochet in 1990 for the military's explicit threats to the government,²⁰ but sensitive issues – such as the application of the military's self-granted 1978 amnesty, the transfer of human rights trials from military to civil courts, and a date at which such trials would end – continued to be debated through the succeeding *Concertación* administrations of Presidents Eduardo Frei and Ricardo Lagos.

The gradual, negotiated approach produced slow progress. The administration set a pragmatic course by adopting a policy of “justice within the possible” (*justicia posible*), such as clarification of the truth and material compensation to victim's families, but stopping short of trial and punishment of the perpetrators (Rabkin 1992).²¹

In this context, the Aylwin government's economic policy was similarly moderate, steering a course between the Scylla of right wing revolt and the Charybdis of social unrest. “Growth with Equity” was the government's slogan.²²

¹⁹ During the Aylwin administration the Concertación was 2 votes short of a simple majority and six votes short of the super-majority needed for constitutional amendments.

²⁰ In December 1990 the army garrisoned its troops, fueling speculation of a coup, as military leaders (including Pinochet's son) were the focus of judicial and congressional investigations. In 1993, unhappy over a court ruling that could make it easier to investigate human rights cases, army units dressed in battle fatigues, with armored transport vehicles and anti-tank missiles, surrounded public buildings in downtown Santiago.

²¹ A round table dialogue on human rights abuses was initiated during the Frei administration with the participation of the Minister of Defense. During the Lagos administration (2000-2005), the armed forces finally accepted that human rights investigations should be handled in civilian rather than military courts (a bone of contention since 1990) (Siavelis 2008:198-99).

²² The slogan was so successful that it was still invoked in 2009 by President Michelle Bachelet. (<http://www.as-coa.org/article.php?id=1898>).

In the early years of the transition, the likelihood of a backlash from conservative elites if the new government strayed too far from Pinochet's economic model was high. But ignoring the needs of the middle and lower sectors also posed grave risks (Siavelis 2008:182, Boylan 1996). In particular, the Aylwin government was concerned with the possibility of popular demands for immediate benefits that would endanger sound economic policy, trigger inflation, and undermine democratic stability (Weyland 1997:40). Reacting to these forces, the government pursued a strategy that balanced fiscal prudence and sound macro-economic policies with targeted increases in social spending to address the growth in poverty and inequality that took place during the Pinochet years.²³

The Aylwin administration's first piece of legislation was a major tax reform bill negotiated with business groups and the right wing RN party. As Boylan notes, the government wanted more than it got, but the *Concertación's* lack of votes in the Senate made right wing support necessary. The bill's moderate character reassured the right with respect to the government's economic approach. At the same time, the government used the increased revenue to finance new spending on social programs. Despite the expectations that the government would respond to popular demands for social justice, "the reform was tailored far more to the interests of an economically powerful and politically visible business class" (Boylan 1996). Cautious spending, sound management of the economy, and attention to the demands of Chile's business and landholding

²³ In 1987, 44.7% of Chileans lived in poverty and 16.8% were classified as indigent. Scully 1997:101.

groups continued through successive Center-Left administrations.²⁴ Chile's growth rates since the return of democracy have been consistently high, inflation has been kept under control, poverty rates have declined, and in 2005 the country had the highest GDP per capita in South America.

Finally, President Aylwin and all subsequent *Concertación* presidents repeatedly tried to amend the Constitution's authoritarian enclaves, but these attempts were always according to the constitutionally mandated procedures for amendment. As in other policy areas, the threat of punishment for defecting (for example, trying to impose constitutional changes) combined with the lack of votes to enact reforms to force *Concertación* governments to negotiate with parties on the right, for the most part unsuccessfully.²⁵

No comprehensive reforms passed until 2005, during the administration of Socialist President Lagos. These reforms eliminated all nonelected Senate seats, altered the composition of the National Security Council and made it a purely advisory body, and restored the president's powers to name, fire, and promote high level military officials. Several changes from 1989 to 2005 facilitated the constitutional revision within the rules. Over time, both sides had moderated. Although the military and right wing groups still had sufficient power to disrupt the government, they had redefined their interests. Over time more and more segments of right and military came to support the median's position, especially

²⁴ Scully (1997:112-13) notes that the authoritarian enclaves within the Constitution reinforced consensus building and attention to the demands of groups outside the Center-left coalition, such as business and landholding elites, as well as providing a legal and institutional framework to reinforce policies of economic liberalization.

²⁵ Under the Aylwin administration a municipal reform bill was passed, allowing for direct elections at the local level.

as the median had come to accept the system and the results it produced. Moderation and growth set the stage for consensual removal of these provisions. The center-left government found it could retain power and produce growth through moderation. Although the constitutional changes eliminated the targeted protections provided by the authoritarian enclaves, the right had become less worried about the consequences.

A frequent question is how to explain Chile's "exceptionalism" in achieving a stable, consolidated democracy; maintaining a sound economy; and avoiding populist pressures, particularly in the Latin American context. Common answers include social learning from the mistakes of the past, the narrowing of ideological differences, the strength of Chile's parties, the presence of other encompassing organizations capable of pursuing collective goods, and the influence of Chile's prior experience with democratic governance (Scully 1997, Weyland 1997, Siavelis 2008, 2006).

These approaches identify important contributing factors, but overlook the central role played by the constitution's countermajoritarian features and the power relations that helped to enforce them. We conclude our discussion of Chile's transition by pointing to a paradox: While many scholars now recognize the importance of incentives for consensual governance generated by the constitution's extreme countermajoritarian features, the tendency is to take a negative view of such provisions because they inhibit full democracy (Scully 1995, 1997, Linz and Stepan 1996). To be sure, democracy in Chile could not be considered consolidated until the un-democratic provisions of the constitution

were removed, as Linz and Stepan (1996:215) observe. Yet, at the same time, these provisions helped ensure that Chile's democratic transition would lead to self-enforcing democracy while preventing a disastrous return to military government. Consistent with the model, countermajoritarian provisions allowed a democratic transition without threatening the right, which maintained the power to challenge the government by taking back control at any time. The countermajoritarian institutions led to a relatively quiescent military and a center-left government that moderated its policies and protected issues deemed critical by the right. At the same time, these policies produced growth and moved toward greater equity. In combination, moderation and growth provided the opportunity for removing the most onerous countermajoritarian provisions down the line. Although Chile's countermajoritarian provisions were at the extreme end of the continuum, the larger lesson is that institutionalized protections for the interests of all key groups (particularly those with the power to subvert democracy) and the reciprocal ability to punish defections from the constitutional bargain are critical for a transition to sustainable democracy.

6. Conclusions

In this paper, we study two issues at the heart of democratic development: why do some authoritarian regimes democratize, and why do some countries sustain stable democracy? We develop a new model of democratization and show that these questions are not independent but intimately related. Members of an authoritarian regime worry not only about the immediate consequences of

democratization, but also about its long-term stability; specifically, whether the majority that takes over after elections will honor the constitution or subvert it. Central to our model is the insight that the design of democratic institutions is critical for stable democracy.

This view contrasts with that in the recent literature emphasized by Acemoglu, Robinson (2006), and Boix (2003). These scholars highlight the role of redistribution as a major motive for democratization, backed up by a threat from the masses to use violence and disorder as a means of forcing a rich elite to democratize. Their approach ignores the problem of upholding the constitutional bargain and maintaining democracy after a transition, when the de facto power of citizens often wanes. Understanding the creation of stable democracy requires attention to how self-enforcing democracy comes about and to the mechanisms that undergird credible commitment to constitutional bargains.

Our work is nonetheless in the spirit of this literature. Both model 1 and model 2 incorporate features of the Acemoglu and Robinson framework, in particular the notion that an authoritarian regime initiates democracy because of the threat from the majority opposition. We then add to this framework in two ways. First, we allow democracy to occur through constitutional design with counter-majoritarian features that constrain the policy discretion of the majority and protect the authoritarian regime and its constituents *ex post*. Second, we explicitly model the question of democratic stability. Not only must the authoritarians choose to democratize rather than retain an authoritarian regime; but, once in power, the opposition must choose not to subvert the system.

We show that the relative power of each group matters; in particular, the reciprocal nature of threats is central in explaining the adoption of a countermajoritarian constitution; *and* it helps to sustain democracy after the transition. We suggest that stable democracy arises where the opposition poses a credible threat to the authoritarian regime; but that constitutional stability occurs when the constituents of the former regime have the ability to impose sufficient costs on the new, democratic leaders if they try to subvert the constitution. Another result concerns the relative strength of the opposition. In contrast to majoritarian democracy, countermajoritarian democracy imposes lower costs on the authoritarian regime. Authoritarians will therefore democratize with countermajoritarian features in the face of weaker threats than it would when the only option is majoritarian democracy. In our framework, sustainable democracy is more likely to occur when countermajoritarian institutions are adopted.

Finally, we suggest that democratization is not simply about redistribution. While democracy is less likely to be stable where massive redistribution is a possibility, as exhibited by Chile in 1973 and Kenya in 2008 (Ansell and Samuels 2009), where democratization involves constitutions containing targeted countermajoritarian features, policy is likely to be more moderate. Rather than centering on conflict involving redistribution, in our framework, sustainable democracy hinges on the ability to adopt institutions that at once allow policy change in favor of the majority but that also lower the costs of adhering to the constitutional pact.

Countermajoritarian provisions are common features of successful democratizations. By reducing the stakes of political decisionmaking, these provisions lower the probability of disruptions, in particular, the probability of a coup. In contrast, many majoritarian transitions fail because the stakes are too high, resulting in disruptions or violence rather than a self-enforcing democracy. When threatened, groups use extra-constitutional actions to protect themselves, destroying democracy (Mittal and Weingast 2010).

The Chilean case illustrates the model: The new constitutional arrangements adopted at the end of the authoritarian regime gave both sides incentives to honor the countermajoritarian constitution. In particular, the opposition demonstrated that it had enough strength to challenge (disrupt) the regime in the late 1980s when it forced the regime to negotiate and initiate a transfer to civilian rule. But the transition occurred with extreme countermajoritarian provisions that protected the interests of the former regime's constituents on the right. The left's willingness to honor the constitution allowed it to gain power, but the countermajoritarian provisions forced it to moderate its policies. Over the long run, however, the left in power slowly came to control some of the veto enclaves and, fifteen years later, altered the constitution to remove them. Importantly, the democratically elected governments chose to alter the constitution within the provisions allowing for amendment rather than to renege on the countermajoritarian provisions and toss them out. The Chilean case also suggests the important role of countermajoritarian provisions in allowing a phased transition to democracy over more than a decade in a way that

is unlikely to have occurred had the opposition been able to force majoritarian democracy.

Another feature of the Chilean case illustrates the difference between our approach and that of Acemoglu, Robinson, and Boix: in the presence of the countermajoritarian constitution, the left's moderation limited redistributive policies. The left's economic policies under its platform of "growth with equity" led to continued economic growth along with significant reductions of poverty, making a large proportion of Chilean population better off. Whereas the Allende regime prior to the 1973 coup threatened massive redistribution from the right, the new constitutional institutions favored moderate policies that complemented economic growth. In the long run, the left government's moderation helped maintain support among the population while not alienating the business elite, protecting their property and businesses and promoting growth, ultimately allowing the removal of the most egregious, democracy-eroding countermajoritarian constitutional features.

Other successful democratizations illustrate both these points: the countermajoritarian features of the constitution and restraints on redistribution. The American case involved a range of strong countermajoritarian constitutional features protecting slavery, including the three-fifths clause, federalism, and the informal constitutional norm of the balance rule (Weingast 1998). The latter, for example, granted Southerners a veto over national policymaking, preventing any attempt by the national government to alter rights in slaves. As the party of majority rule and free soil, the rise of the new Republican party threatened these

countermajoritarian institutions, causing Southern secession. Neither the national nor state governments engineered significant redistribution during this era, which became important only during the 1930s, nearly 150 years after the Constitution.

Another canonical case in the recent democratization literature concerns the transition in 19th century Great Britain. Democracy emerged through a series of steps – the various “Reform Acts” of 1832, 1867, and 1884 and the Redistribution of Seats Act of 1885. But these laws created neither majoritarian democracy nor significant redistribution. Instead, they created a countermajoritarian democracy which gave a major constituency of the previous oligarchic regime a veto over policymaking through the budget process (only ministers can make spending proposals) and to an extent, the House of Lords. These processes prevented any major redistributive act. Significant redistribution did not begin with the critical Second Reform Act of 1867, but only after the conclusion of WWI in the twentieth century, fifty years later.²⁶

We conclude with several observations concerning the importance of countermajoritarian constitutions for sustainable democracy. First, we have emphasized that countermajoritarian features in many cases make democracy more likely – the lower stakes means the authoritarian regime and their constituents will fight less and will turn to democracy earlier if they feel the countermajoritarian features protect them *ex post*. Second, the reciprocal punishment mechanisms at the heart of our model are not the only way to protect

²⁶ As North Wallis and Weingast (2009, ch 6) suggest, democratization in Great Britain did not concern redistribution of wealth, but granting the disenfranchised the same rights as the narrow, previously enfranchised elite: rights to the courts, to participate in markets, to be free from arbitrary actions by the elite against them.

democracy and countermajoritarian restrictions. As Fearon (2006), Mittal and Weingast (2010), and Weingast (1997) show, democracy also involves a coordination problem for the opposition and the citizenry more broadly. An alternative (and potentially complementary) means of protecting the constitution arises when constitutions create focal solutions to this coordination problem so that citizens react in concert against constitutional violations, regardless of their source (that is, violations by G1 or G2). Third, creating countermajoritarian features at the inception of democratization may at first involve inimical features, including the protection of drug lords, protection of slaveholders, privileges for the military, or protection of old, large landholders who hold most of a society's wealth. As the case of Chile suggests, however, when these features create a stable regime that protects the former authoritarians, they may also help pave the way toward self-enforcing majoritarian or moderate countermajoritarian democracy in a way that moving all at once to majoritarian democracy would fail to accomplish. Many of the historic cases of democratization involved steps toward fuller democracy, as the British case suggests.

In toto, these observations suggest that democracy is not simply about redistribution; indeed, redistribution may be a secondary motivation (Ansell and Samuels 2009). Instead, countermajoritarian provisions that limit redistribution and other policies adverse to the previous authoritarian regime and its supporters are often at the core of successful democratization.

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