

WHERE NOW FOR CHILE?

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2022 has been quite some year for Chile. Following an uprising and street protests that began in 2019, a former radical student leader Gabriel Boric was sworn in as Chile's youngest ever president on 11 March 2022, and in July, following a year of deliberations, a constitutional convention proposed the world's most progressive constitution. But by 4 September, the promise was snatched away when Rechazo, or reject, chalked up sixty-two per cent of the vote. If accepted, it would have given the state a front-line role in providing social rights, increased environmental regulation and given the government wider responsibility for social welfare programmes. So, what went wrong? Moreover, where does Chile go now?

The roots of the failed constitutional draft lie in October 2019, when student protests erupted over a hike in metro fares. These protests escalated into a social uprising, or *estallido social*, which saw more than 1.2 million people take to the streets of Santiago to protest social inequality and were only halted by a governmental promise to navigate an inclusive process to a new constitutional text. Sections of the population whose perspectives have been historically under-represented or excluded from governance and policymaking were given a voice in that process (Hilbink, 2021: 225).

The process had a promising start; in October 2020 Chileans were almost unambiguous in their welcome of the possibility of a new constitution, with seventy-eight per cent of voters supporting writing a new constitution and seventy-nine per cent saying an elected constitutional convention should write it (Gay et al., 2022). That process was revolutionary in its scope. Gender and indigenous quotas ensured that women made up fifty per cent of the delegates elected to it while twelve per cent were indigenous. The body was notably left-

wing, young, feminist, and inexperienced. As a result, the proposed draft text strongly emphasised indigenous self-determination and the protection of the environment, dismantling the highly privatised water rights system, insisting on gender equality in all public institutions and companies, and respect for sexual diversity.

But with its rejection, for now at least, the partially amended version of the Pinochet 1980 constitution remains in place. General Pinochet ruled Chile brutally from 1973 to 1990. His constitution was the postcard for Latin American 1980s neoliberalism (Taylor, 2006: 1). Influenced by the so-called “Chicago Boys”, United States (US)-educated economists who advocated widespread deregulation and privatisation, in the 1980 constitution, the state plays a subsidiary role, meaning that it can only intervene where the private sector cannot (Couso, 2017). The result is that large swathes of life in Chile are privatised, with dramatic differences between public and private education and health, as well as myriad conflicts over water and other natural resources such as copper and lithium (Alemparte, 2022).

The failed Chilean new constitutional experiment is puzzling and needs to be explained in the context of the crisis of democracy. We believe combining the following considerations can contribute to sketching an explanation.

Limitations of the process

For three decades, right-wing Chilean parties stood in the face of change and only accepted partial reforms once they could no longer defend or benefit from them (Zúñiga et al., 2021). Following the 2019 crisis, the overwhelming popular clamour could not be ignored and right-wing parties had to accept the possibility of significant constitutional changes (Heiss, 2021: 39). However, they bargained to set up a process fraught with obstacles and without second opportunities (Verdugo and Prieto, 2021: 162). Consequently, the process faced severe limitations. These included: a constrained budget; a lack of support for technical logistics, especially under president Piñera’s administration; and a tight schedule for debating the most fundamental issues.

Turmoil in the convention

Widespread criticism of political parties led to the creation of independent lists, which meant many non-political party independent candidates were elected to the constitutional convention. These candidates included academics and activists, but others emerged from street protests and were politically engaged by the uprising. However, few of the 155 candidates had political experience and were given only twelve months to agree and write an entirely new constitution, a seemingly impossible task. The process was convoluted and bureaucratic. Many delegates had issues they were elected on: indigenous rights, water, education, and so on. That independence and inexperience caused many unforced errors and were the focus of much negative coverage in the media. Although many of the clauses in the draft were technically well-supported, many debates included no thought about the political realities and likely counterarguments to different proposals. In a scenario where social networks amplify extreme views and polarisation dominates the public sphere, drafting clauses without considering political consequences was possibly almost irresponsible. The general political environment also played a role: there was controversy around some of President Boric's close confidants resigning; a worsening security situation in the southern Chilean region of Araucanía; and increased crime more generally. Other controversies around the use of the Chilean flag beset some rallies.

A further factor leading to the rejection of the text was the role performed by the political right in the convention. The constitutional amendment that created the Constitutional Convention established a two-thirds quorum to pass every provision. These rules were originally intended to give a veto in favour of the right-wing parties to block radical reforms, but they won only a quarter of the seats in the election. This meant many proposals passed without support from established parties in the centre-right and right. Although the draft enshrined liberal rights, contained checks and balances, and a decentralisation process managed by congress, the right-wing delegates soon started to resent not being part of the negotiations. With a huge voice in the media and capacity for shaping public opinion, they exploited every programmatic ambiguity with the worst-case interpretation, including many

false statements, transmitting a permanent feeling of discord in wider public opinion.

Deficits in deliberation and public involvement

The lack of funding for broad civic participation in the convention's deliberations, plus the necessity to comply with tight deadlines, shaped an internal political pragmatism that was detrimental to a wider democratic debate in the development of the proposal. The draft, written mainly by the left and centre-left parties, resulted from a myriad of closed negotiations that gave each leftist group its own clause. However, there was little involvement outside the Convention.

Passing an entire constitutional text was always going to be an uphill struggle, with people disagreeing on various aspects in good and bad faith. The convention constantly struggled to agree on a text, and constitutional maximalism was overused. Ultimately, it failed to explain a proposal that *The New York Times* described as one of the world's most expansive and transformational national charters (Nicas, 2022). People hardly understood what changes the text proposed and what they meant in everyday life. For example, in Petorca, a city severely affected by the drought caused by water privatisation, or Alto Bío Bío, a mainly indigenous community, the proposed constitution was rejected, though it recognised the human right to water or autonomy rights for indigenous communities. Indeed, indigenous issues were particularly controversial, with provisions on recognising customary law being misrepresented as allowing Indigenous communities to flout the law.

The dirty war on the media

Chile is probably one of the most concentrated media markets in the world, with two economic groups associated with right-wing sectors controlling more than ninety per cent of the national press (Coddou and Ferreiro, 2016). While television is a mix of public and private enterprises, radio is dominated by a few private consortiums (Mellado et al., 2012: 64). In this context, conservative groups have privileged access to agenda setting and shaping public debate.

In the last week of March 2022, the weekly *Cadem Plaza Pública* poll placed Approval for the constitution ten points above the opposite option (forty-six vs thirty-six). However, a turnaround left Reject six points above (forty-six vs forty) one week later. That week, the right began spreading extreme and unrealistic interpretations about provisions on pensions, arguing that pension savings would be expropriated. The strategy was repeated in other sensitive areas such as health (there will be only public hospitals, and waiting lists will increase), housing (home ownership will not be guaranteed), and education (private schools will disappear) (Segovia and Toro, 2022). There were also false allegations that the proposed constitution banned private property, allowed abortion into the ninth month of pregnancy, and allowed private companies to count votes, among many more (Villegas, 2022). The research found that some sixty-five per cent of respondents reported encountering misinformation in the last week of July 2022 by public polling company Datavo (Reuters, 2022).

This disinformation offensive covered almost five months (three outside the legal campaign period). A journalistic investigation detected at least thirty-six unregistered organisations campaigning on social media outside electoral regulation while expenditure on political advertising on YouTube, TikTok and Google was not transparent (Segovia et al., 2022). Of the total spending on Meta platforms by unregistered organisations, those that campaigned for rejecting outspent by far those that campaigned for accepting the new text; roughly \$127,600 (116,000,000 Chilean pesos) versus \$727 (661,000 Chilean pesos) for those that supported approval (Segovia et al., 2022).

So how will Chile advance now?

The *Cadem Plaza Pública* poll released after the referendum demonstrated that sixty-seven per cent of Chileans still favour a new constitution (CADEM, 2022). Meanwhile some right-wing parties (UDI, RN and Evopoli) published a document outlining some general points and specific commitments, including a commitment to a guarantee of social rights, which was discussed

in 2005 during the constitutional reform led by Ricardo Lagos, a Chilean lawyer, economist and social-democratic politician who served as president of Chile from 2000 to 2006, but opposed by the right (Pareja and Roblero, 2022). However, at the time of writing (September 2022) the parties have not clarified how the discussion on a new constitution will be conducted now that the original draft has been rejected.

The defeat is certainly a rebuke to newly elected leftist President Boric, a long-time campaigner for better public education, more social justice, and equal opportunities (Cabalin, 2012). Boric's priority will be establishing how the process should be continued. Writing a new draft with broad public support will be an enormous challenge. Campaigners hope Chile's commitment to democracy remains firm and includes citizens in an eventual new process. It seems likely that if new elections are held to elect another constitutional convention, political parties may make it far more difficult to elect independents, thus giving the parties more control over the agenda and the text. A cabinet reshuffle brought in more cabinet members from the centre-left (rather than the hard-left). Street riots started again following the rejection, indicating people's anger was still there. Chile will probably have a second chance, but a period of general social unrest could return if that process fails again.

Comparative constitutional studies show that constitutional referendums are unsuccessful without elite involvement or a broad political consensus. It is precisely here where the Chilean experience failed. The electoral results and the procedural rules of the Convention provided no incentives to include elites in the broader constitutional agreements. Moreover, the lack of understanding of broader political and societal consensus provided the groundings for a constitutional debate plagued by disinformation and political naivety. In this scenario, the lessons of the Icelandic and Irish cases of deliberative democracy could provide some way forward for Chileans. In the failed Icelandic process, the lack of political support by the elite, as represented by formal political parties, was allegedly one of the leading causes of one of the most interesting cases of democratic innovations.

In the successful Irish case, evidence shows that democratic innovations such as citizens' assemblies provided the grounding for broader societal consensus that sorted out contentious issues through public deliberation followed by referendums (Farrell and Suiter, 2019). Chilean politics must act smartly and strategically to include democratic innovations into formal political ecosystems that could provide a way out of the current Chilean political conundrum.

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