

# CHILE'S 1980 CONSTITUTION: THE RISE AND FALL (?) OF A FAR-RIGHT PARADIGM

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## Introduction: How Augusto Pinochet's Constitution Came into Existence and How it Endured until 2022<sup>1</sup>

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### Abstract

For the past forty-two years Chile has been governed according to the infamous 1980 Constitution. Bequeathed to the country by its military dictator Augusto Pinochet, this text was originally designed to sustain an infinite de facto dictatorship in Chile. While this did not happen, and despite having been repeatedly amended since 1989, the 1980 Constitution is still considered an illegitimate text by most Chileans, as the 2020 Chilean national plebiscite has illustrated. The introduction provides a genealogy of the 1980 Constitution, explains the right-wing ideology underpinning it, and explores the scholarly debates over its supposed merits and the feasibility of its replacement with a new constitution.

**Keywords:** 1980 Constitution; Augusto Pinochet; dictatorship; the Chilean Right; Jaime Guzmán

### Resumen

Durante los últimos cuarenta y dos años Chile se ha gobernado bajo la infame Constitución de 1980. Legado al país por su dictador Augusto

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Pinochet, este texto había sido diseñado originalmente para sostener una dictadura infinita en Chile. Aunque esto no sucedió, y a pesar de haber sido enmendada repetidas veces desde 1989, la Constitución de 1980 todavía es considerada un texto ilegítimo por la mayoría de los chilenos, como lo ilustró el plebiscito nacional chileno de 2020. La presente introducción proporciona una genealogía de la Constitución de 1980, explica la ideología derechista que la sustenta y explora los debates académicos sobre sus supuestos méritos y la viabilidad de su reemplazo por una nueva constitución.

**Palabras clave:** Constitución de 1980; Augusto Pinochet; dictadura; la derecha chilena; Jaime Guzmán

As of January 1st 2023, when this introduction is being sent to print, the Chilean Republic continues to be governed according to the 1980 Constitution. On September 4, 2022, Chile's citizens were summoned to a national referendum to decide whether or not to replace this constitution with a new one. This new constitution, drafted from July 2021 to July 2022 by a specially elected Constitutional Convention, was rejected by 62 to 38 percent in favor. This result was hardly imaginable less than two years prior. Following a year of protests—which initially began following a metro fare hike in Santiago but soon grew into a demand for a new constitution written “by the people for the people”—, on October 25, 2020, more than seven and a half million Chileans voted overwhelmingly (78.28 - 21.72%) in favor of replacing the 1980 Constitution with a new one. In fact, with 79% of the voters preferring an original constituent assembly over a parliament-based commission, the Chilean public has exhibited just how profound its disdain was not only of the current constitution but of the political establishment that had sustained it. Explanations as to why Chileans rejected the new constitution abound. That the draft was excessively progressive and needlessly convoluted, is one common opinion. The political inexperience of the constitutional convention's members, and an aggressive right-wing rejection campaign (“Rechazo”), are also adduced as plausible explanations for the public's dislike of this new Magna Carta—a sentiment that, polls have shown, had been consistent since mid-April 2022.<sup>2</sup>

To understand why the Chileans decided to revoke the 1980 Constitution in the first place, one should perhaps begin by stating the obvious: this is one of the more polemical constitutions in Latin American history. Crafted under Augusto Pinochet's dictatorship by a handful of right-wing authoritarian intellectuals, it was ratified on September 11, 1980, in a national referendum that is now ubiquitously seen as illegitimate. Even if the constitution set the stage for Chile's democratic transition, the parliamentary system its architects envisioned was starkly different from that of contemporary Western democracies.

Consisting of multiple mechanisms of control—a system of appointed senators, special quorums for future amendments, and, most important of all, the Armed Forces’ supremacy over the executive branch—, the constitution was supposed to institute a *de facto* dictatorship with a sinister performance of parliamentary politics. The constitution also categorically prohibits the government from engaging in the national economy, for instance, through nationalizations, and includes ultra-conservative articles ranging from the denial of abortion rights to the acknowledgment of national minorities. Luckily, by amending the 1980 Constitution time and again since 1989, the Chilean democratic system gradually dismantled many of its anti-democratic clauses, thereby allowing a seemingly healthy parliamentary system to ultimately arise. Still, along with Peru, Chile is the only country in Latin America to have opted for such a constitutional continuity between dictatorship and democracy.<sup>3</sup> Therefore, it is no surprise that regardless of the revision of some of its contents, completed by 2005, for the vast majority of Chileans, nothing less than a complete elimination of this juridical text could be considered legitimate.

Why did it take so long for Chileans to invalidate this peculiar document? This special issue provides insight into questions such as this one. The 1980 Constitution has become a powerful political symbol for the Chilean Right in recent decades. While scholars are currently engrossed in Chile’s new constitutional process, the history of the 1980 Constitution has been brushed aside. This genealogy, we believe, is indispensable for accurately understanding the behavior of Chile’s political elites and voters alike.<sup>4</sup> The authors gathered in this issue question several prevailing assumptions regarding the intellectual origins of Pinochet’s constitutional process. Writing the history of a legal text such as the 1980 Constitution is a formidable task, given its symbolic and political weight in the Chilean public sphere. To make matters worse, many of the primary sources—especially the Junta’s own records—are still out of the reach of historians, who, as a result, rely on personal accounts and journalistic reports. With limited sources and time and amid a global pandemic, our contributors nonetheless worked intensively to produce a commentary that may inform the current public debate on Chile’s new constitution. For that, we would like to express our sincere gratitude as co-editors and fellow scholars.

The 1980 Constitution was unquestionably the military dictatorship’s chief intellectual project. On September 25, 1973, just two weeks after overthrowing elected president Salvador Allende in a violent coup d’état, the Junta assembled its so-called “constituent commission” to “study, elaborate, and propose a draft” for a “nationalist” constitution. With a twenty-seven-year-old jurist named Jaime Guzmán Errázuriz at its helm, the commission received an order to see to it that the “Marxist cancer” would be “extirpated” from Chile.<sup>5</sup> Their mission was far

from seamless, primarily because Chile had a longstanding constitution, namely the Constitution of 1925. And while the USA backed the toppling of Allende's government, the Armed Forces held differing ideas regarding what democracy meant and how it should be reconstituted. Of course, Chile was hardly the only country pledging to protect democracy from communist takeovers during the Cold War. Even so, Pinochet's men flirted with alternative ideas of civil representation that echoed the fascist-corporatist formulas prevalent at the time in places such as Franco's Spain.<sup>6</sup> Alongside Brazil, Pinochet's Chile thus pioneered a trend whereby Latin American military dictatorships sought to establish regimes where parliament was merely one of several representative "bodies" and in which the separation of powers was subordinated to the Armed Forces' veto power.<sup>7</sup> In doing so, they inspired like-minded military dictators—in Central America, for example—to follow similar paths.<sup>8</sup>

Before moving on, for those readers who are not well-acquainted with the intricacies of the dictatorship's history, we propose, somewhat didactically perhaps, to divide the constitution's history into three periods: The *phase of preparation* (1970 -1978), the *phase of resistance* (1978-1988), and the *phase of reform* (1989-2020). Sure enough, the 1980 Constitution's intellectual origins date back to the early nineteenth century and the conservative reaction to the European Enlightenment. More concretely, however, the intellectual groundwork for the 1980 Constitution began in 1925. Historians generally agree that by grounding a well-defined separation of powers, empowering democratic institutions, and enshrining the state's obligation to redistribute wealth, the 1925 Constitution shifted political power from ruling elites to the lower classes.<sup>9</sup> Henceforth, Chile's conservatives were forced to devise more sophisticated ways to sustain political power, such as clientelism and control over media outlets. Reluctantly, they also initiated social programs and mechanisms of wealth redistribution, the most prominent of which was President Jorge Alessandri's 1962 land reform. As historian Brian Loveman has famously argued, Chile's twentieth century could well be narrated through the prism of the political mobilization around this singular issue.<sup>10</sup> This notwithstanding, it did not take long for members of the Chilean Right to question the new parliamentary order. As early as the 1930s, some traditionalist intellectuals—Osvaldo Lira and Jaime Eyzaguirre, to name but two— demanded that the 1925 Constitution be replaced with an authoritarian state model. In the 1940s, they were joined by "nationalist" platforms such as Jorge Prat's proto-fascist journal *Estanquero*, which, in the name of a global anti-communist struggle, demanded that Chile's parliamentary system be replaced with a traditionalist and "corporatist" dictatorship.<sup>11</sup>

By the 1960s, the conservatives' strategies no longer sufficed for them to remain in power. In hindsight, even in their last electoral victory, that of Ales-

sandri in 1958, the conservatives attained the lowest percentages of popular support since the 1930s. Exacerbating their political weakening in the 1960s was the growing divide between two distinctive visions of economic development: the one, an early neoliberal (or “technocratic”) model, focused on opening up Chile to international markets and reducing the state’s involvement in the economy to a minimum; the other, social-democratic and expansionist, sought to bolster economic growth via sizable public investments and land reforms, thereby elevating the buying power of the working class. While Alessandri became synonymous with the former, Christian Democratic President Eduardo Frei and Socialist President Salvador Allende represented the latter—albeit with different intensity and ideological justifications. The issue was not merely economic performance but political power, or, better put, which of the two programs would have more appeal for the Chilean middle class and working class. As the 1965 and 1969 parliamentary elections indicated, despite the conservatives’ economic power, some three-quarters of all Chilean voters supported parties featuring redistribution of wealth in their programme. Chile’s right-wing sectors were not oblivious to this tectonic shift in public opinion. In 1966, they unified under the banner of the Partido Nacional (National Party)—a political conglomerate of right-wing parties that peddled anti-democratic and neo-fascist slogans in an effort to mobilize the middle classes, with only limited electoral success in the 1970 elections.<sup>12</sup>

The more concrete ideological components the 1980 Constitution were already present in the Guzmán’s texts from the late-1960s, published in right-wing journals such as *Portada* and *Qué Pasa*. Guzmán was the founder and leader of El Movimiento Gremial de la Universidad Católica de Chile (MGUC, or simply *gremialismo*), and his person, ideology, and role in Pinochet’s regime have been the focus of myriad scholarly analyses throughout the years.<sup>13</sup> In broad strokes, the gremialistas sought to distinguish themselves from fascist, corporatists, or totalitarian ideologies by underscoring the sacredness of private ownership. Sure enough, Guzmán wanted to replace Chile’s parliamentary democracy with an authoritarian “subsidiary” regime model wherein the state relegated most all powers to elite “intermediary societies.” In this sense, his ideology was hardly original. More often than not, he plagiarized his ideas from Pope Pius XI’s *Quadragesimo Anno* encyclical and the works of Francoist theorists such as Luis Sánchez Agesta and Gonzalo Fernández de la Mora. Still, Guzmán was the most charismatic and well-articulated thinker the Chilean Right had in the early 1970s. Born in 1946, he was also too young to be identified with the right-wing political establishment and was, therefore, in the eyes of the Armed Forces generals, an ideal candidate to design the regime’s state ideology.

That being said, the dictatorship's main justification for existing was not Guzmán's ideology but Salvador Allende's cataclysmic presidency. His tragic story is well known: A Marxist intellectual and presidential candidate since 1952, he was elected president in 1970 after gaining only thirty-six percent of the popular vote and being supported by a fragile coalition. Nevertheless, he went ahead with his "Chilean road to socialism"—a paradigm by which he sought to nationalize Chile's mining industries and other private enterprises, thereby establishing areas of "social property" ("áreas de propiedad social") alongside spheres of private economic activity. Although this was hardly a totalitarian communistic regime, for the Chilean conservative sectors, it represented the materialization of their deepest fears, namely the nationalization of private assets and the politicization of the working classes. With the backing of President Richard Nixon—who we now know, pledged to unseat Allende by "making the [Chilean] economy scream"—the right-wing sectors and industrialists mobilized their polity in a well-organized campaign of economic sabotage and political delegitimation.<sup>14</sup> Still, despite an acute economic crisis, Allende's opposition was unable to secure enough seats in the March 4 parliamentary elections to impeach him. Thus, they called upon the Armed Forces to violently put an end to the country's crisis. Indeed, Allende's tenure provided the Armed Forces with the perfect teleological narrative on the shortcomings of the 1925 Constitution in the face of international communism. In other words, the crisis of 1973 presented a singular opportunity to not wait until the next presidential elections in order to oust Allende and restructure Chile's political system to the advantage of the right-wing polity, its distinctive economic model, and reactionary Catholic ethics. In fact, the Armed Forces left Allende's main constitutional amendment—the nationalization of the copper industry—in place, thereby benefiting from his redistributionist policies when it suited them.

Examined more closely, it might seem odd that Chile's Armed Forces—which, unlike the cases of Argentina and Brazil, have seldom been involved in politics since the 1930s—would begin drafting a new constitution days after ousting an elected government. In effect, it would take more than three years for Pinochet to celebratedly pronounce his final goal: to "institutionalize" his dictatorship within a new constitutional order.<sup>15</sup> That is to say, dubbing Allende a Bolshevik and scapegoating him for Chile's democratic crisis did not suffice to eliminate the 1925 Constitution's legacies from one day to the next. Still, as far as we know, the decision to undo the 1925 Constitution was made before the coup. Indeed, the Junta's very first minute ("acta") of September 13, 1973, stated that "the promulgation of a new Political Constitution of the State is under study," directed by the "university professor Dr. Jaime Guzmán."<sup>16</sup> This was the onset of what soon became a fruitful, albeit not always harmonious,

symbiotic relationship between Pinochet and Guzmán. While never holding an official role, Guzmán was, beyond doubt, the regime's key public intellectual. From October 1973, he was a member of the Comisión de Estudios de la Nueva Constitución Política de la República de Chile (CENC), headed by Enrique Ortúzar Escobar. Although the commission was assembled rapidly, it operated slowly. In fact, only in May 1976 did the commission first begin discussing Chile's future electoral system, focusing on the technicality of voting and assessing that general elections could not possibly be held before 1983. Worse yet, the commission was riven between its two main theoreticians: Guzmán, and Christian Democrat Alejandro Silva Bascañán, who opposed Guzmán's proposal to break away from the 1925 Constitution's legacies.

Following a year of steep economic recession, in 1976, the Chilean economy stabilized, ushering in what became known as the Chilean neoliberal economic "miracle." Still, 1976 spelled further crisis for Pinochet. On September 21, 1976, the Chilean former diplomat Orlando Letelier was murdered in a car-bombing at the heart of Washington, DC. This was no ordinary political assassination: This event meant Pinochet's relationship with the USA was severely damaged, with the United States threatening Chile with economic sanctions and cutting it off from military aid.<sup>17</sup> Worse yet, two months later, Jimmy Carter was elected president. A staunch anti-Pinochet candidate, his presidency signified an immediate threat to the regime's survival. The regime responded to these threats with an overhaul that consisted of several steps. The first dramatic action was the dissolution of the secret police (DINA) and its replacement with a new organization named Central Nacional de Informaciones (CNI). Manuel Contreras, the man directly responsible for Letelier's murder, was sacked in the process. The regime's message to the Western world was clear: never again would Pinochet's regime be embroiled in an extra-judicial assassination abroad. Next, on July 9, 1977, Chileans turned on their TV sets to hear their dictator say that they would soon be living under a "democracy." More precisely, they were to coexist under a democracy that would be "authoritarian, protected, integrating, technified and of authentic social participation."<sup>18</sup> The "Chacarillas speech," as it came to be known, was followed up with further political action. First, Pinochet appointed the gremialista Sergio Fernández Fernández as minister of interior, setting the stage for the regime's "amnesty law" (Ley de Amnistía), which pardoned all those sentenced in military tribunals and establishing an equilibrium between the criminalities "of both sides."<sup>19</sup> In a parallel vein, Pinochet pressured General Gustavo Leigh to retire, thereby consolidating his political power.<sup>20</sup> In turn, by 1978, the stage was set for the regime's first referendum (or "consulta"), in which the Chilean public was requested to approve the "legitimacy" of the regime "directing the institutionalization process."



Behind the scenes, the Ortúzar Commission returned to work in earnest. Early in 1977, Silva Bascuñán was replaced by figures such as Luz Bulnes Aldunate and Raúl Bertelsen Repetto—people who, unlike the Christian Democrat they replaced, were not to stand in Pinochet’s way.<sup>21</sup> The commission was more than a rubber stamp for Pinochet’s whims; it was his ideological echo and guide. While we have no reason to believe that Pinochet ever spoke of a return to *parliamentary* democracy, it was Guzmán who steered the constitution to this final destination. By then, although Guzmán perhaps viewed parliamentarism as the only possible form that the regime’s institutionalization could take, he hardly believed in a parliamentary system in the Western European sense of the word. This fact was evident in the commission members’ interpretation of the phrase “authoritarian, protected, integrating, technified and of authentic social participation.” By “protected” democracy, the commission members understood “an ideologically neutral state” devoid of any redistributionist parties.<sup>22</sup> They explained the word “integrating” as an ethical state based on “the Christian humanist conception of man” and “the historical-cultural identity of the Homeland.” The term “authentic social participation,” they deciphered as a state where the administration and laws concerning the economy are beyond the reach of the masses, who can express their grievances via intermediary bodies, of which Parliament is but one. And by “authoritarian,” they understood the supremacy of the Armed Forces over the executive, legislative, and judicial branches. In 1978, the commission submitted an official draft of the constitution to be studied and approved by a new body named the State Council. Established in 1976 as an honorary body, it included ex-president Jorge Alessandri and was supposed to augment the constitution’s legitimacy.

It was at this point that the *phase of resistance* began. Unfortunately for Pinochet and Guzmán, the State Council took the liberty of thoroughly revising the draft of the constitution. By nullifying many of its authoritarian clauses—and, most importantly, underscoring the fundamental obedience of the Armed Forces to the elected president—the State Council’s revision seemed, in truth, much closer to the 1925 Constitution than to that devised by Guzmán and the Ortúzar Commission. Alas, this effort was futile. In July 1980, the draft of the constitution returned to the hands of the Junta leaders, who, together with Guzmán and Fernández Fernández hastily reformulated the text, returning it to its initial undemocratic version. A month later, on September 11, 1980, the Chilean public was called upon to ratify this final version in a national plebiscite.

By this time, the Chilean public sphere witnessed the first signs of disdain for both the constitution draft and the plebiscite. In 1979, Eduardo Frei and the Christian Democrats were the leaders of the political opposition to the dictatorship’s institutionalization and the referendum. “Vote No... with an exclamation



mark,” they begged.<sup>23</sup> They also proposed an alternative constitutional process (or “segunda via institucionalizadora”) based on the creation of representative constituent committees.<sup>24</sup> From the Right, Guzmán and the gremialistas became the targets of verbal attacks by the regime’s neo-fascist hardliners who still believed the regime’s institutionalization should result in a corporatist regime of some sort. Indeed, this network of ideologues operated freely in the public sphere in the daily *La Tercera* and periodicals such as *Avanzada*.<sup>25</sup> In the case of hardliner Carlos Cruz-Coke, his alternative proposal for a constitution defined Chile as an eternal dictatorship where the executive authority executes the people’s will through plebiscites and a legislative authority consisting of a mixture of “political” and corporatist (or “functional”) chambers.<sup>26</sup> Ultimately the hardliners’ center of gravity became Pinochet’s daughter, Lucía Pinochet.<sup>27</sup> The center she directed, La Corporación de Estudios Nacionales, quickly became the epicenter of their activity. The gremialistas, for their part, defended the constitutional process in journals such as *Qué Pasa* and *Realidad*, the latter designed almost entirely to promote the constitution.

Was the 1980 constitutional referendum representative? It is difficult to say. With an approval rate of 67.04 % it does appear that most Chileans voted in favor of the 1980 Constitution. But this statistic should not be taken as evidence of the Constitution’s legitimacy. The spectacle of the referendum was nothing more than a propaganda ruse that soon became the gremialistas’ central justification for the regime’s economic structure. Transforming into a political party (the UDI) in 1983, they could even portray themselves as Chile’s true democratic reformers.<sup>28</sup> Here is perhaps the moment to point out that Chile’s transition from dictatorship to democracy was one of the last transitions “of the third wave.” This phrase, which Samuel Huntington coined with a sense of praise but that ended up acquiring an entirely negative connotation, refers to a wave of democratizations in Southern Europe, Latin America, and post-Soviet Eastern Europe between 1974 and 1992.<sup>29</sup> Unlike the second wave of democratizations in post-WWII Europe, the “third wave” was characterized by institutional continuity, little to no transitional justice, and, more often than not, sweeping pacts of silence regarding the crime of the preceding regimes. Chile was no exception in this regard. Examined more closely, however, the “third wave” transitions also exhibited fairly diverse constitutional processes. In 1978, Spaniards were summoned in a national referendum to ratify Spain’s 1978 Constitution; in 1988, Brazilians were asked to perform the same act. Both constitutions were approved by vast margins but were entirely dissimilar. As political scientist Omar Encarnación has opined provocatively, the Spanish transitional process was elite-designed and, as such, more cohesive and effective than the Brazilian transition, where civil society played a considerable role

in the drafting of the constitutional text.<sup>30</sup> Where does the 1980 Constitution fit in the debate on historical “constitutional moments”? In a word: it does not. Chile’s 1980 Constitution cannot be equated with its Spanish or Brazilian counterparts. Unlike Spain in 1978 or Brazil in 1988, in 1980, Chile was not a newly established parliamentary democracy but a full-fledged dictatorship. One of the more murderous regimes in Latin American history, its secret police and state-led terror apparatus continued to operate until the 1990s. As such, all three constitutional referendums held under Pinochet’s rule were illegitimate inasmuch as they were offered to a terrorized populace as the only path for transitioning from living under a cruel dictatorship to living under a democracy that protected their very right to live. In other words, these were not referendums but forms of political blackmail. That these electoral spectacles excluded the votes of hundreds of thousands of Chilean forced exiles should only further make them a mockery for any true democrat worldwide.

Nevertheless, the 1980 Constitution ultimately became the pedestal on which Chile’s fragile democratic transition was to be conducted. The Constitution came to acquire this role due to a political trade-off that began in the early 1980s at the democratic opposition’s headquarters. Unfortunately, Frei’s “return” to politics was cut short, as was his life. In January 1982, he was poisoned to death by the dictatorship, as we have recently learned. Replacing him as head of the Christian Democratic party, Patricio Aylwin made a consequential decision: He accepted the 1980 Constitution as a *fait accompli*. Arguably, he did not have much of a choice given the circumstances. Still, following the example of their Spanish counterparts, he and his partners in the “Democratic Alliance” initiative believed that a Spanish-styled “pacted rupture” was also feasible in Chile.<sup>31</sup> Ricardo Núñez, the leader of the Chilean Socialist Party, followed suit in 1986 and accepted the 1980 Constitution as a lesser evil and a text that could be revised once Pinochet agreed to concede power after 1988.

This was wishful thinking at best. In truth, Pinochet’s constitutional process became even more unusual as the 1980s progressed. As historian Robert Barros has aptly put it, that a living autocrat would decide to become bound by a constitution of his own making was not a common sight in Cold War history.<sup>32</sup> This depiction is correct only so long as one assumes that the constitutional text did actually restrict Pinochet. To his mind, as well as to the minds of the hardliners, it did not. True, in September 1981, when the constitution came into effect, Chile was, juridically speaking, ostensibly a changed country. Equally important, if the State Council had any impact on the transitional process, it was in the insistence on a fixed schedule for the transition. Initially limited to five years, the transition period was extended by Pinochet to sixteen years, with a referendum set for 1988. Even so, in actuality, the country was at Pinochet’s

mercy in almost every sense of the word. This fact became ever more noticeable once Chile fell into one of the biggest economic crises in its history in 1982. To the powerful social unrest that followed, the regime retaliated with unprecedented police brutality and, later, with a modest liberalization of the political sphere. But even this modest reform did not mean at any point that Pinochet ever planned to retire before 1996, or allow a full restoration of democracy in Chile thereafter. Sure enough, his followers—Lucía Pinochet in particular—demanded that he revoke the constitution during the mid-1980s. As Pinochet began siding with the more nationalist-authoritarian sectors in his regime, the democratic opposition was compelled to moderate its demands so as to not infuriate the dictator—in particular after the failed attempt on his life in 1986.

Ultimately, it would take one properly conducted and internationally regulated referendum in 1988 to oust Pinochet. Even then, the regime pulled every trick in the book to secure Pinochet's "presidency" for eight more years. Ranging from candidate intimidation to police brutality and even murder—there was nothing the regime would not do to prevent its citizens from voting "No." After losing the referendum by a 55.9-44% margin, Pinochet stepped down only after having learned that the other Junta members would not support him in "overthrowing" the results.<sup>33</sup> As the head of the Armed Forces, he was still a menacing figure and a burden on the democratic transition in the years that followed. Still, the referendum did signal the ushering in of the *phase of reform*. Also known in the literature as Chile's era of "democratic consolidation," it was characterized by a slow and frustrating process of dismantling the constitution's authoritarian clauses through political bargaining.<sup>34</sup> This phase began with yet another—much more democratic—referendum on several basic constitutional reforms, the most important of which were the limitation of the Armed Forces' right to issue a state of emergency and an increase in the number of elected senators to allow an efficient parliamentary system to operate. The results were unequivocal: 91.25 % of the voters (and a 93% turnout of eligible voters) approved of the amendments—a far higher approval rate compared to the September 1980 referendum.

When, in December 1989, the Chilean public finally participated in the first general elections since 1970, two other truths arose. Firstly, it became evident just how cunning Patricio Aylwin's decision to endorse the 1980 Constitution had really been. With almost double the votes of his right-wing rival, Hernán Büchi, Aylwin appeared not merely as the leader of the well-organized center-left parties' conglomerate (the Concertación) but also as a symbol of moderation and of Chile's potential national reconciliation. This exceptional popularity allowed him to form the National Commission for Truth and Reconciliation Report to investigate the dictatorship's crimes, meeting with slight resistance on behalf

of the Armed Forces. On the other hand, given the constitution's configuration, Aylwin did not enjoy a majority in the senate. Due to this, the newly elected president had little hope of promoting further far-reaching changes to the 1980 Constitution. Those would have to wait until 2005, when, under president Ricardo Lagos, a far more substantive wave of constitutional amendments were enacted. Only then was Chile relieved from Pinochet's undemocratic systems of appointed senators and senators-for-life.

Following the 1989 reforms, the Chilean scholarly world was initially fixated on the question of whether amending Pinochet's constitution could guarantee a healthy separation of powers and the protection of civil liberties in the future.<sup>35</sup> Only later, especially after the 2005 reforms, did specialists begin to deliberate over the nature of the political trade-off implicit in the constitution's overhaul.<sup>36</sup> A heroic story about moderate reformers amending an authoritarian constitution against all odds now gave place to a more somber tale in which the democratic opposition's aspirations to "deepen" Chile's democracy were fulfilled in exchange for the continuity of its neoliberal model, "without openly acknowledging the incompatibilities between them," in Rosalind Bresnahan's words.<sup>37</sup> Sure enough, by the time President Michelle Bachelet took office in 2006, the 1980 Constitution was still a highly polarizing political entity. For left-wing Chileans, it represented a draconian residue from the time of the dictatorship that, after being approved by terrorized citizens, tilted political power decidedly to the right.<sup>38</sup> For Chilean conservatives, the constitution became synonymous with a regime of authority that had stabilized Chile politically and enabled Chile's so-called "economic miracle," and that, in turn, served as an adaptable platform for further democratic consolidation. This chasm, opined Javier Couso, meant that a crisis of representation in Chile was imminent.<sup>39</sup> Others began mulling over what one should expect from a political constitution in contemporary times. By considering the 1980 Constitution as a charter ensuring civil liberties and democratic pluralism, they set aside questions regarding the connection between the constitution and Chile's neoliberal economic model. The dialogue between George Tsebelis and Patricio Navia is a case in point of how this debate played out. While Tsebelis stressed that Chile is not likely to overcome its political status quo, he also remarked that modern constitutions rarely touch on issues such as the redistribution of wealth. "The constitution of a country is not the place to include good ideas but workable compromises," he argued.<sup>40</sup> Navia, for his part, found a silver lining in Chile's constitutional imbroglio. Despite its obvious illegitimate origins, he said, the 1980 Constitution should be a source of pride for all Chileans. After all, they obtained a "consolidated and inclusive" democracy despite Pinochet's original aims.<sup>41</sup> Navia even equated this dynamic to "adoptive parents" raising a decent

adult out of a child who came to the world “as a result of rape.”<sup>42</sup> Whether or not one concurs with such analogies, one may still agree that, after 2005, the 1980 Constitution was nearing the standards of such documents in the Western hemisphere, at least as far as the defense of democratic institutions and separation of powers were concerned.<sup>43</sup> Why, then, go through the hassle of replacing a seemingly functional legal structure?

Political scientist Camila Vergara has attempted to answer this question recently. She argues that the *raison d’être* of the 1980 Constitution has always been to insulate the neoliberal model against those who, in a democracy, might question it, and adds that one of the Constitution’s basic tenets and aspirations continues to be the prevention of government interference in the economy. Moreover, by pointing out how authoritarian legality and ultraconservative morality are the two other pillars of the 1980 Constitution, Vergara questioned whether a trade-off between civil liberties and neoliberalism had even actually occurred in Chile. On top of that, she pointed out that as the neoliberal order was left intact, an accelerated concentration of wealth in the hands of a tiny few oligarchic families is still taking place in Chile. This “oligarchization of power” has translated into a systemic corruption of the country’s political system on both the right-wing and left-wing spectrums of the political sphere. As a result, in the last two decades, Chileans have witnessed further privatization of their civil services, subsequently driving them to a state of political apathy in the face of the seeming impossibility of ever changing the social contract binding them, she lamented.<sup>44</sup>

While it is still too early to reach definite conclusions on the meanings of Chile’s latest constitutional crisis, two points should be highlighted. First, one cannot truly understand the progressiveness of the draft of the new constitution put forward in 2022 separately from the wording of the 1980 Constitution. This fact is perhaps most evident in the draft’s seeming deconstruction of the “unity of the Chilean State,” which has already been harshly criticized by constitutional specialists.<sup>45</sup> One might argue that the question of whether a nation-state represents the “people” which is comprised of various “nations” is an ontological debate that should be left to philosophers and historians. Indeed, these questions were not what drove Chileans to the streets in 2019. Still, if we are to interpret the 2022 draft as a redundant post-nationalist experiment, we must at least bear in mind that it appears as the precise antithesis of Pinochet’s “nationalist” 1980 Constitution. Furthermore, it is crucial to note that a narrative of national consensus is what underpins any successful modern constitution. Indeed, constitutions attain legitimacy not necessarily from their claim to universal constitutional law standards or from an obligation to social justice but from the manner in which they have been devised as a collective act of reconciliation. Chileans’ rejection of the 1980 Constitution stems not only from

their positions over the legitimacy of Pinochet's dictatorship, its criminality, and the economic system it had enshrined and immortalized but also from how they perceived this legal framework as the work of a paternalistic minority group. It is nevertheless also clear that most Chileans did not recognize the 2022 draft as a symbol of consensus. It is also very likely that, having lived through Allende's "Chilean road to socialism" and Pinochet's neoliberal "silent revolution," most Chileans are wary of becoming Latin America's progressive vanguard. Once the ideological pendulum stabilizes, a new deliberation on how to promote and secure an ideological consensus in Chile must arise. One thing is certain: since 2019, Chileans have shaken off decades of political apathy and are increasingly demanding to be involved in designing a more just society.

The ultimate goal of this issue is not simply to pass judgment on the 1980 Constitution and its longevity (this is easy to do) but to pose novel questions regarding constitutional moments, the narratives underpinning them, and the ethics behind the social contracts they bequeath to generations born years after these were engraved in stone. The 1980 Constitution may have begun as a "nationalist" text but it has acquired meanings for Chile's right-wing polity that go beyond questions linked to the role of modern states. Thus, the history of the 1980 Constitution, we believe, is immensely important for Latin American audiences. Nowhere are questions regarding the link between constitutions and social inequality and political polarization as evident as in Latin America, where social inequalities dating back to the first colonial period have fused with a dependency on the USA's markets and financial institutions. Therefore, when discussing whether "good ideas" regarding social equality should be enshrined in the constitution of Chile—the country with the highest inequality rates in the OECD—one cannot equate such a collective decision to those faced in the past by European or Anglo-American nations.<sup>46</sup> If Chile is to become the Global South's forerunner in building a constitution "for the people," the lessons of the rise and imminent fall of the 1980 Constitution should be thoroughly studied.

The following in-depth articles provide perspectives on the 1980 Constitution's far-right intellectual origins. The 1980 Constitution was no ordinary "elitist" constitution; rather, it began as a text comprised of easily-spotted anti-democratic concepts designed to override the parliament's powers and the principle of separation of powers as such. Who ultimately defined the 1980 Constitution's discourse? Were these Guzmán and the commission members or Pinochet, who had commissioned the text in the first place? Naturally, these questions cannot be answered easily. Historian Jorge Olguín has fairly recently posed that the Junta members were more ideologically driven than one might assume, and had a decisive impact on the last-minute revision of the text in August 1980.<sup>47</sup> **José Manuel Castro's** analysis contributes to this intricate

debate. His analysis focuses on Jaime Guzmán and examines how he and the “gremialistas” fashioned the constitutional process’s conceptual toolkit between 1973 and 1979. First, they confirmed that the military regime represented “a new historical phase” and could thus legitimately redefine Chilean democracy according to perennial values as it understood them. Second, they undertook the paradoxical task of integrating democratic constitutionalism with essential components of 1930s corporativism. While rarely declaring that fascism and Pope Pius XI’s encyclical *Quadragesimo Anno* were their references, they upheld two interlinked concepts: “intermediary societies” and the “subsidiary state.” According to Castro, the fantasy underlying these vague terminologies was that of unelected intermediary bodies regulating social life alongside parliament. While Guzmán’s disregard of the principle of separation of powers and popular sovereignty is noteworthy, so is the fact that once his terminologies shifted from being theoretical abstractions—traced in Castro’s article—to become state policy, their actual importance resided in how they justified the regime’s extreme neoliberal reforms.

Next, our contributors explore the internal and external pressures that propelled Chile’s constitutional moment in the late 1970s.<sup>48</sup> In his article, **Philipp Kandler** views the 1980 Constitution as the dictatorship’s main tool to counter international criticism over human rights violations. He describes a four-stage dynamic where the Armed Forces first sought to propagate their anti-communist narrative abroad; once this strategy failed, they turned to use the constitutional process as the utmost justification for the regime’s continuation. This effort reached its climax after 1982 amidst the regime’s economic and social crisis. In short, the 1980 Constitution, Kandler suggests, was the most enduring strategy to brush aside the international community’s human rights protection apparatuses and make the democratic opposition accept the constitutional framework.

**Daniel Kressel** focuses on the right-wing resistance to the 1980 Constitution. Abhorring Pinochet’s neoliberal reforms, a distinctive neo-fascist cohort loudly demanded that the 1980 Constitution be replaced with a fascist-corporatist state model. To boost their prestige, these so-called “hardliners” collaborated intimately with neo-fascist Spaniards who underwent a similar anti-democratic radicalization at that time amid the Spanish transition to democracy. Ironically, the neo-fascist alternative benefitted the 1980 Constitution, Kressel also demonstrates. For one thing, it allowed Pinochet to entertain far-right pipe dreams, thereby keeping both the gremialistas and the democratic opposition in a state of anxiety and complacency. For another, it meant Guzmán and the gremialistas could portray the 1980 Constitution as a moderate position clamped between two totalitarian projects, namely communism and fascism, thereby facilitating their rehabilitation as a political party in the mid-1980s.



## Notes

1. The special issue was conceived following a conference at the Institute for Latin American Studies (LAI) at the Free University of Berlin in April 2021. The authors would like to thank Isabel Torres Dujisin, Camila Vergara, Claudia Stern, and Jorge Olguín Olate for contributing to this introductory text, as well as the Institute for Latin American Studies for hosting the conference.
2. <https://www.as-coa.org/articles/poll-tracker-chiles-constitutional-referendum>
3. For a comparison between Chile and Peru and the rest of Latin America, see Claudio A. Fuentes, “A Matter of the Few: Dynamics of Constitutional Change in Chile, 1990-2010,” *Texas Law Review*, 89 (2011-2010), pp. 1741-1775.
4. In a way, our special issue is a continuation of the previous special issue “Los legados de represión y exclusión en Chile ante la oportunidad de la nueva constitución,” *Iberoamericana* 21:77 (2021), pp. 239-270.
5. *República de Chile: Actas oficiales de la comisión constituyente, sesión II celebrada en 25 de septiembre 1973*, p. 2; *República de Chile: Actas oficiales de la comisión constituyente, sesión III celebrada en 26 de septiembre 1973*, pp. 2-3.
6. Renato Cristi, “The Metaphysics of Constituent Power: Schmitt and the Genesis of Chile’s 1980 Constitution,” *Cardozo Law Review*, 21 (1999-2000), p. 1749.
7. On this era and its endpoint in the 1990s, see Merilee Serrill Grindle, *Audacious Reforms: Institutional Invention and Democracy in Latin America* (Baltimore, MD: Johns Hopkins University Press, 2000); J. Patrice McSherry, *Incomplete Transition: Military Power and Democracy in Argentina* (New York: St. Martin’s Press, 1997); Manuel A. Garretón Merino, *Incomplete Democracy: Political Democratization in Chile and Latin America* (Chapel Hill: University of North Carolina Press, 2003).
8. Molly Avery, “Promoting a ‘Pinochetazo’: The Chilean Dictatorship’s Foreign Policy in El Salvador during the Carter Years, 1977–81,” *Journal of Latin American Studies*, 52:4 (November 2020), pp. 759-84.
9. Julio Heise González, *150 años de evolución institucional* (Santiago, Chile: Editorial Andrés Bello, 1996), p. 127; Renato Cristi, *La República en Chile: teoría y práctica del constitucionalismo republicano* (Santiago, Chile: Ediciones LOM, 2006), p. 116.
10. Brian Loveman, *Struggle in the Countryside: Politics and Rural Labor in Chile, 1919-1973* (Bloomington: Indiana University Press, 1976).
11. Carmen Fariña Vicuña, “El pensamiento corporativo en las revistas ‘Estanquero’ (1946-1955) y ‘Política y espíritu’ (1945-1975),” *Revista de Ciencia Política*, 12:1-2 (1990), pp. 119-42.
12. On the left-wing mobilization and right-wing reaction see Marcelo Casals Araya, *El alba de una revolución: La izquierda y el proceso de construcción estratégica de la “via chilena al socialismo” 1956-1970* (Santiago, Chile: LOM Ediciones, 2010); Marcelo Casals Araya, *La creación de la amenaza roja: Del surgimiento del anticomunismo en Chile a la “Campaña Del Terror” de 1964* (Santiago, Chile: LOM Ediciones, 2016).
13. See for example Carlos Huneeus, *The Pinochet Regime* (Boulder, CO: Lynne Rienner Publishers, 2007), pp. 225-270; José Manuel Castro, *Jaime Guzmán: ideas y política 1946-1973* (Santiago, Chile: Ediciones Centro de Estudios Bicentenario, 2016); Renato Cristi, *El pensamiento político de Jaime Guzmán: autoridad y libertad* (Santiago, Chile: LOM Ediciones, 2000).
14. “Meeting with President on Chile at 15:25, September 15, 1970. Present: John Mitchell and Henry Kissinger,” National Archives, RG 59, Chile–ITT–CIA 1963–1977, Lot 81D121, Chile ITT.

15. On this process see Felipe Reyes & Guido Arroyo, *Chacarillas: Los elegidos de Pinochet* (Santiago, Chile: Editorial Alquimia, 2019); Huneus, *The Pinochet Regime*, pp. 152-162.
16. Acta de la Junta no. 1, September 13, 1973.
17. For more on Pinochet and Operation Condor's "Phase III" of international assassinations, see J. Patrice McSherry, *Predatory States: Operation Condor and Covert War in Latin America* (Rowman & Littlefield Publishers, 2012), p. 5; also see John Dinges, *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents* (New York: New Press, 2004).
18. His speech was allegedly written by Guzmán, see Huneus, *The Pinochet Regime*, p. 357; Cristi, *El pensamiento político de Jaime Guzmán*, p. 12.
19. Sergio Fernández Fernández, *Mi lucha por la democracia* (Santiago, Chile: Editorial los Andes, 1994), pp. 29-31.
20. This was perhaps one of the most severe moment of conflicts within the leading Junta, following an interview to *Corriere Delta Sera* on July 18 1978, in which he criticized Pinochet's leadership.
21. Raúl Bertelsen Repetto was a specialist of Francoist Spain's constitutional framework as well as an Opus Dei member and authoritarian theorist, see for example Raúl Bertelsen Repetto, *El Senado en España* (Madrid: Instituto de Estudios Administrativos, 1974); Raúl Bertelsen Repetto, *Control de constitucionalidad de la ley* (Santiago: Ed. Jurídica de Chile, 1969).
22. Actas oficiales, sesión 296, June 9, 1977, p. 1156.
23. "Manuel Sanhueza: el primer acto de restauración de la democracia será declarar inexistente este código autocrático," *APSI*, 80 (August 26, 1980), pp. 7-8.
24. "Asamblea constituyente requisito democrático," *APSI* 58 (July 1, 1979), p. 1.
25. Manuel Fuentes Wendling, "Terrorismo comunista," *Avanzada*, 32 (December 1981), pp. 17-18; see also, Díaz Nieva, "Avanzada Nacional: La derecha a la derecha de Pinochet".
26. Carlos Cruz-Coke Ossa, "Hacia una constitución nacionalista," *Revista de Derecho Público*, 18 (July-December 1975), pp. 317-326.
27. Gonzalo Vial Correa, *Pinochet: La Biografía* (Santiago, Chile: Aguilar, 2002), p. 422.
28. On this party and its discourse, see Víctor Muñoz Tamayo, *Historia de La UDI: generaciones y cultura política (1973-2013)* (Santiago, Chile: Ediciones Universidad Alberto Hurtado, 2016).
29. Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991).
30. Omar G. Encarnación, *The Myth of Civil Society: Social Capital and Democratic Consolidation in Spain and Brazil* (New York: Palgrave Macmillan, 2003); see also Daniel McDonald, "Making the 'Citizen Constitution': Popular Participation in the Brazilian Transition to Democracy, 1985-1988," *The Americas*, 79:4, pp. 619-652, doi:10.1017/tam.2022.7
31. Patricio Aylwin, *Un desafío colectivo* (Santiago, Chile: Planeta, 1988), p. 127; more on the Spanish-Chilean collaboration see Daniel Gunnar Kressel, "'Getting off the Tiger': The Spanish Transitional Model and Its Influence on the Democratic Transitions in Argentina and Chile, 1977-1990," *Global Society*, 33:3 (July 3, 2019): pp. 316-31.
32. Robert Barros, *Constitutionalism and Dictatorship: Pinochet, the Junta, and the 1980 Constitution* (New York: Cambridge University Press, 2002), pp. 1-3.
33. <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB413/docs/nodiajuntameeting.pdf>

34. For more on the meaning of “gradualism,” see Claudio Fuentes, “Chile: Democratization through Constitutional Reforms,” in Detlef Nolte & Almut Schilling-Vacafflor (eds.), *New Constitutionalism in Latin America: Promises and Practices* (Burlington, VT: Ashgate Pub, 2012), p. 243; Isabel Torres Dujisin, “Memory and the Recent Past: Chile, from revolution to repression,” in Trever Hagen & Anna Lisa Tota, *Routledge International Handbook of Memory Studies* (New York: Routledge, Taylor & Francis Group, 2016), pp. 371-381.
35. See for example Fernando Ignacio Leiva & James Petras, “Chile: The Authoritarian Transition to Electoral Politics: A Critique,” *Latin American Perspectives*, 15:3 (July 1988), pp. 97-114; Gideon Rahat and Mario Sznajder, “Electoral Engineering in Chile: The Electoral System and Limited Democracy,” *Electoral Studies*, 17:4 (December 1998): pp. 429-42.
36. Claudia Heiss and Patricio Navia, “You Win Some, You Lose Some: Constitutional Reforms in Chile’s Transition to Democracy,” *Latin American Politics and Society*, 49:3 (2007), pp. 163–90; Claudio Fuentes, “Shifting the Status Quo: Constitutional Reforms in Chile,” *Latin American Politics and Society*, 57:1 (2015), pp. 99-122.
37. Rosalind Bresnahan, “Chile Since 1990 The Contradictions of Neoliberal Democratization,” *Latin American Perspectives*, 30:5 (September 2003), p. 3; on the limits of Chile anti-poverty programs of the 1990s see Marcus Taylor, *From Pinochet to the ‘Third Way’: Neoliberalism and Social Transformation in Chile* (Ann Arbor, MI: Pluto Press, 2006), pp. 172-196; see also Peter Winn (ed.) *Victims of the Chilean Miracle: Workers and Neoliberalism in the Pinochet Era, 1973-2002* (Durham, NC: Duke University Press, 2004).
38. Rahat and Mario Sznajder, “Electoral Engineering in Chile.”
39. Javier Couso, “Trying Democracy in the Shadow of an Authoritarian Legality: Chile’s Transition to Democracy and Pinochet’s Constitution of 1980,” *Wisconsin International Law Journal*, 29 (2012-2011), p. 393.
40. George Tsebelis, “Veto Players and Constitutional Change Can Pinochet’s Constitution Be Unlocked?” *Política y Gobierno*, 25:1 (June 2018), pp. 3–30.
41. Patricio Navia, “¿Si puedes repararla, para qué reemplazarla? Democratizar la Constitución de Pinochet en Chile,” *Política y Gobierno*, 25:2 (September 2018), pp. 485-499; see also Patricio Navia, “Living in Actually Existing Democracies: Democracy to the Extent Possible in Chile,” *Latin American Research Review*, 45 (2010), pp. 298-328.
42. Navia, “¿Si puedes repararla, para qué reemplazarla?”
43. Fuentes, “Chile: Democratization through Constitutional Reforms,” p. 243.
44. Camila Vergara, *Systemic Corruption: Constitutional Ideas for An Anti-oligarchic Republic* (Princeton, NJ: Princeton University Press, 2020).
45. Ruben Martínez Dalmau, “Chile: Apuntes de urgencia sobre el referéndum constitucional,” *Latinoamérica 21*, September 7, 2022.
46. <https://data.oecd.org/inequality/income-inequality.htm>; on Chile’s persistent inequality rates, see Ramón López & Sebastian J. Miller. “Chile: The Unbearable Burden of Inequality,” *World Development*, 36:12 (December, 2008), pp. 2679-95.
47. Jorge Olgún Olate, “The Chilean Right and the Legitimizing Principles of the Pre and Post Coup d’état of 1973,” *Izquierdas*, 38 (February 2018), pp. 141-63.
48. Brian Loveman, “Military Dictatorship and Political Opposition in Chile, 1973-1986,” *Journal of Interamerican Studies and World Affairs*, 28:4 (1986), pp. 1-38.