

# Constitution-Making in the 21st Century: Lessons from the Chilean Process

## Introduction to the Symposium, “Constitution-Making in the 21st Century: Lessons from the Chilean Process”

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Expressions of social discontent that trigger deep political reform appear to be a sign of the times. Emerging political actors challenge delegitimized political elites with promises of a closer relationship with electorates, new rules to fight corruption, and more open access to the benefits of economic growth. Often, however, reforms in recent decades have weakened instead of strengthened democracy, leaving political systems less fair and more exclusive than before. The Chilean constitution-making process of 2021–2022 reasonably raised hopes for a different outcome.

Constitution-making may seem like an attractive new start for political systems in crisis. Like other such experiences, Chile had visible social discontent with the functioning of its democracy and a growing gap between citizens and elites. Unlike other experiences, however, it carried a constitutional problem that was a legacy of dictatorship (Heiss 2017). The military regime led by Augusto Pinochet (1973–1990) perpetuated institutional limitations on pluralism and on the possibility to implement redistributive social policies through the 1980 Constitution, enacted by decree that year. After the transition to democracy, the constitutional text experienced several reforms but maintained core anti-democratic features (Ruiz-Tagle 2021).

The exceptional economic growth that accompanied the first years of democracy began to recede at the end of the

commodities “boom.” Chileans became increasingly more critical of a political system that had proven to be unable to build social safety nets in areas including health, education, pensions, and environmental protection. Furthermore, it remained highly exclusionary of women, indigenous groups, and gender and sex diversity, among other areas (Somma et al. 2021).

As voter turnout and public support for political parties steadily decreased (United Nations Development Program Chile 2017), a wave of unprecedented protest movements with different social, environmental, and political agendas emerged (Donoso and von Bulow 2016). On October 18, 2019, after more than a decade of these manifestations, a massive social uprising shocked the political system, opening the way for—until then—an unsupported democratic constitution-making process (Escudero 2021). President Michelle Bachelet previously sought to replace the constitution in 2014–2018 but failed in her efforts. This time, a broad political agreement allowed Congress to set the rules for the process through several constitutional reforms, including changing the dates of the electoral schedule due to the COVID-19 pandemic (Figueroa 2021). As a result, the presidential and parliamentary elections of 2021 occurred in the middle of constitution-making.

The process began with a voluntary referendum vote on October 25, 2020, with a 51% voter turnout. Of the total turnout, 78% of voters supported constitutional change and 79% expressed preference for a wholly elected constituent assembly—called the Constitutional Convention—instead of one composed of half of the newly elected delegates and half of the members of Congress. On May 15 and 16, 2021, the election for the Constitutional Convention, also with a voluntary vote, convoked only 43% of the electorate. To grant legitimacy to the Convention, independents were allowed to compete in lists, like political parties (Suárez-Cao 2021). This was key, given the proportional D’Hondt electoral system. Gender parity was guaranteed for the first time in a national constituent body, resulting in the election of 77 women and 78 men; 17 seats were reserved for indigenous representatives.

The May 2021 election gave a resounding victory to left-leaning groups but with as many as two thirds of the 155-body not belonging to any political party. The high fragmentation of the Constitutional Convention, composed of 12 groups, contributed to the difficulty in creating disciplined negotiating blocks (Fuentes 2023). After one year of work, between July 2021 and July 2022, the draft proposed by the Constitutional Convention was rejected in the September 4, 2022, referendum

by 62% of voters—this time with 86% turnout due to a mandatory vote established in 2019. In December 2022, a third attempt to replace the Constitution began through a new political agreement, ending with a referendum in December 2023.

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The articles in this symposium analyze the failure of the 2021–2022 constitution-making attempt from different perspectives. They shed light on possible warnings for comparable experiences of deliberative democratic constitution-making in the context of high political disaffection, as well as on the particular constitutional problem in Chile. Many lessons can be drawn from this attempt at writing a new constitution. The articles discuss empirical aspects to draw broader conclusions about constitution-making in societies marked by social unrest. Gabriel L. Negretto and Philip Keefer address the disconnect between voters and their representatives at the Constitutional Convention. Sergio Huertas-Hernández and Valeria Palanza delve into the constitutional discussion that emerged around the concentration of power in the executive, focusing on the use of the “presidential urgency” to control the legislative agenda. Yanina Welp discusses three fallacies undermining participatory constitution-making in the cases of Chile and Iceland: the alleged moral or epistemic superiority of “the people”; the aspiration to replace representation with direct participation; and the expectation to overcome legitimacy deficits merely by introducing direct-democracy mechanisms.

Catherine Reyes-Housholder, Julieta Suárez-Cao, and Javiera Arce-Riffo address the resilience of the gender-parity rule after the rejection of the 2022 draft, and they discuss the costs and benefits attributed by different actors to its legitimizing capacity. Because many attribute the rejection of the draft to its plurinational features, Rodolfo Disi Pavlic analyzes

the role played by indigenous politics in the September 4 referendum. Joaquín Rozas-Bugueño examines the gap between politics and civil society expressed in discussions during the Constitutional Convention, as well as the unusual majority of independents in this body. Finally, Claudia Heiss and Julieta

Suárez-Cao distill some lessons that may prove useful for future attempts at constitutional change.


#### CONFLICTS OF INTEREST

The authors declare that there are no ethical issues or conflicts of interest in this research. ■


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