



Photo by Matías Garrido Hollstein.

CHILE

Flags representing Indigenous peoples fly over a protest in Santiago's Plaza Baquedano, October 2019.

# After Fifty Years, Can Chile Move Past the Legacy of Pinochet's Constitution?

By Antonia Mardones Marshall

**T**he 50<sup>th</sup> anniversary of the military coup in Chile stirs up many emotions in a country where justice for the victims of state terrorism has been exceptionally scarce and where political divisions are still very present, perhaps now more than ever since the return of democracy. While it can be hard to look back on this dark period in our national history, this anniversary represents an important opportunity to reflect on the meaning and value of democracy.

The act of remembering and reflecting is especially relevant in a historical moment in which we observe the worldwide advance of conservative forces pushing back against many of the rights conquered in the past half century. While socioeconomic and environmental crises seem to announce the exhaustion of the neoliberal model and a feeling of poignant uncertainty spreads throughout society,

political forces are increasingly polarizing and the threat of new forms of authoritarianism is more evident than ever.

Chile has not been exempt from these global political trends. While praised for its democratic stability and economic growth during the past three decades, the country had rarely been in the spotlight since the jubilant return of democracy. This mild-mannered nation-state status changed drastically in October 2019, when millions of people throughout the country took to the streets in the largest protests in Chile's democratic history.

These protests were not organized by any political party or movement and had no unifying demands. They represented the spontaneous response of wide sectors of society overwhelmed by feelings of precariousness, distrust of politicians, and discontent with the prevailing socioeconomic model.

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After a month of continuous social unrest, Chile's various political parties reached an agreement to call for a referendum in May 2020 to decide whether the Pinochet-era constitution should be replaced by a new charter written democratically by elected assembly members. The Constitution of 1980 had been identified by leftist and progressive political parties and social movements as responsible for institutionalizing the “neoliberal experiment” in Chile and thus as a main obstacle to enacting reforms that could bring more social justice to the country.

The global crisis of the COVID-19 pandemic in 2020 had the double effect of putting an end to the massive street protests while delaying the constitutional plebiscite. Finally, on October 25, 2020, nearly 80 percent of Chileans voted in favor of engaging in a democratic process to replace the Constitution of 1980 with a new charter written by a Constitutional Convention elected for that exclusive purpose. In May 2021, the election of the convention members took place under unprecedented rules that secured gender parity, reserved seats for Indigenous peoples, and allowed for the participation of individuals with no specific political affiliation.

For the first time in Chilean history, the election of an extraordinarily diverse convention included equal numbers of men and women, representatives from the 10 Indigenous groups recognized by the Chilean state, and a diverse group of independent members, many of them activists representing social movements. The Constitutional Convention was charged with drafting a proposal for a new constitution within one year of July 4, 2021, after which the proposal would be submitted for a new national referendum.

Yet, after a year of work, the proposed constitution that the convention members presented to the country was rejected by 62 percent of the population in a national referendum on September 4, 2022. This was the first election in Chile's history that made voting mandatory for all adult citizens,<sup>1</sup> bringing to the polls close to five million new voters.<sup>2</sup> Furthermore, this event marked the first time in world history that a country rejected a constitution written by a democratically elected assembly.

In the wake of the 2022 plebiscite, traditional right-wing politicians appropriated the referendum's result, interpreting it as a triumph of conservative forces. Feeling empowered, reactionary political leaders began to attack many of the ideas that were central to the rejected proposal,

in particular those that would grant differentiated rights and promote the political participation of actors historically excluded from decision-making processes, such as Indigenous peoples, women, and the LGBTQI+ community.

Right-wing leaders—including those from the traditional right-wing coalition Chile Vamos (Let's Go Chile) and from the more recently created radical right-wing party, the Partido Republicano (Republican Party)—have been successful in convincing growing sectors of society that the idea of “plurinationality” is a threat to the unity and sovereignty of the Chilean nation, that gender parity rules go against fair competition in political elections, and that LGBTQI+ rights are part of an ideological gender agenda promoted by international

organizations like the United Nations to corrupt youth. These reactionary efforts are a backlash against the process of democratization that the country has been experiencing in recent decades and particularly since the social unrest of 2019.

Because a vast majority of Chileans voted to replace the Constitution of 1980 in the 2020 plebiscite and this vote is still valid, the rejection of the proposed constitution kicked off another attempt at a new constitution. However, the initial enthusiasm from important sectors of society during the first constitutional process has been replaced by a generalized feeling of disappointment, distrust, and exhaustion. The exuberant momentum towards a new constitution feels like a dream from which we were

abruptly awoken, a fractured relationship lost in the past without the possibility of closure.

In contrast to the previous attempt, the agreement reached in Congress for this second constitutional process allowed political parties to name members for an Expert Commission to write the first draft of the new constitution. This time, the same political parties that had been the target of the 2019 protests were paradoxically the ones to designate the people in charge of drafting the constitution—or at least a first version of it. This draft constitution would be the starting point from which an elected Constitutional Council would work, presenting amendments and proposing a final text to the country to be approved or rejected in a third national plebiscite on December 17, 2023.

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During the Constitutional Convention's opening on July 4, 2021, Elisa Loncón (right) and Jaime Bassa (left) lead a moment of silence for those killed during Chile's struggles.



Photo by Cristina Dorador.

1. Until 2012, the vote was mandatory but only for those who voluntarily registered in the electoral rolls. Between 2012 and 2022, registration to vote was automatic and voting was voluntary.

2. In a column published in the CLAS blog, I analyze some of the factors that can explain why the overwhelming majority of people in Chile voted for the rejection option: <https://clasberkeley.wpcmsstaging.com/2022/10/25/chiles-constitutional-process-what-went-wrong-and-how-to-move-forward/>.

In a polarized political climate, on May 7, 2023, the people of Chile participated in an election to choose members for the new Constitutional Council, the fourth constitution-related election in which Chileans have engaged in less than three years, for the second time with a mandatory vote for all adult citizens. This election of council members once again included a rule of gender parity to ensure equal number of women and men on the council. However, in contrast to the past process, this election did not allow for the participation of candidates independent from political parties. Also, only one member elected by Indigenous peoples was able to join the council: Alihuen Antileo, a representative from the largest Indigenous group in Chile, the Mapuche.<sup>3</sup>

Although polls had been showing the Partido Republicano as the favorite for this election, nobody expected the party to sweep the election. This alt-right party led by ex-presidential candidate José Antonio Kast took 23 of the council's 50 seats, giving them the 2/5 of votes needed to veto any proposal in the council.<sup>4</sup> With an additional 11 seats gained by Chile Vamos,<sup>5</sup> the right-wing parties surpass the 3/5 of votes that council members need to approve amendments to the Expert Commission's constitutional draft. Partido Republicano members had adamantly opposed both the first and second constitutional processes. Paradoxically, they now have the upper hand in drafting a constitution to replace the Pinochet-era charter they wanted to maintain from the start.

The other 16 seats on the Constitutional Council went to parties of the leftist government coalition, particularly the Partido Comunista (Communist Party), the Frente Amplio (Broad Front), and the Partido Socialista (Socialist Party), which for the first time broke its historical alliance with more centrist parties.<sup>6</sup> The government coalition now finds itself in the uncomfortable position of either supporting a constitution written by a majoritarian pro-Pinochet council or, after three years of constitutional debate, rejecting the

3. However, some political parties included Indigenous candidates in their lists, and two Indigenous candidates of the *Revolución Democrática* (Democratic Revolution) party, Kinturay Melin and Julio Ñanco, were elected by the general population.

4. The total seats in the council is actually 51, counting the extranumerary seat won by the Indigenous candidate, Alihuen Antileo. However, one of the elected Partido Republicano candidates, Aldo Sanhueza, presented his resignation to the council after the feminist movement protested his participation (in 2019, he had been accused of sexual abuse). However, the Election Qualification Court rejected Sanhueza's resignation on the grounds that council members have not yet taken over their posts and it is not legal to renounce beforehand. Sanhueza did not appear at the council's inauguration ceremony, but traveled outside the country. His de facto refusal to participate in the constitutional process left the council with 50 members and the Partido Republicano (from which he resigned) with 22 seats.

5. Chile Vamos was established in 2015 by three parties: Unión Demócrata Independiente (UDI, Independent Democratic Union), Renovación Nacional (National Renovation), and Evolución Política (Evópoli, Political Evolution).

6. This coalition also included the Partido Liberal (Liberal Party), the Federación Regionalista Verde Social (Regionalist Green Social Federation), and Acción Humanista (Humanist Action). The Frente Amplio includes three political parties with roots in the 2011 Chilean student movement, from which President Gabriel Boric emerged as a leader: *Revolución Democrática* (Democratic Revolution), Comunes (In Common), and the party of President Boric, *Convergencia Social* (Social Convergence).

proposed constitution and being resigned with trying to reform the Constitution of 1980 in Congress when the political environment becomes more propitious.

The big losers of the elections were the parties of the traditional center-left coalition: not one of them was able to secure a seat on the council. The Partido Socialista's switch from the Socialismo Democrático (Democratic Socialism) coalition to the Apruebo Dignidad coalition marked another shift in the political panorama.<sup>7</sup> The Partido Radical (Radical Party) and the Partido por la Democracia (PPD, Party for Democracy) decided not to join the constitutional council election in a common list with the government coalition, but instead allied themselves with the Partido Demócrata Cristiano (PDC, Christian Democratic Party), with disastrous electoral results. The traditional right-wing coalition, Chile Vamos, also lost a large portion of their electoral base to the Partido Republicano. Until the election of President Gabriel Boric in December 2021, the two traditional coalitions had governed Chile since the return of democracy. Their loss of power may signal that people are, once again, mostly voting against "politics as usual."

Indeed, invalid and blank votes constituted the third majority of the constitutional council members election—nearly 22 percent of total votes—which confirms the theory of a protest vote. So, right-wing council members should be wary of interpreting their election as demonstrating majoritarian support for their ideas. Now the Partido Republicano must decide if they will be an honest broker in a constitutional debate they never wanted and reform the Constitution of 1980. They can support a new constitution with moderate changes that can represent broad sectors of society, so that this new charter can be approved and the country can turn the page and move forward. Or they can press for a partisan constitution that may be rejected. Front of mind is the impact this choice may have on the party's presidential aspirations in 2026.

While this new process represents a second opportunity to replace the Pinochet-era constitution for one written in democracy, it also presents a risk. If the next draft is not substantially different from the one still in force, it will legitimize a socioeconomic model that millions of people protested against in the first place. From my perspective, what is most crucial for a new constitution is that it seek to

7. The Socialismo Democrático (Democratic Socialism) coalition was created in 2021 by the Partido Socialista, the Partido Liberal, the Partido por la Democracia, and the Partido Radical. The creation of this coalition meant the isolation of the more-centrist Partido Demócrata Cristiano and the end of the historical alliance between socialists and Christian Democrats. Socialismo Democrático supported the election of Boric against the Partido Republicano presidential candidate, José Antonio Kast, and was then called to be part of the current administration. Apruebo Dignidad was created in 2021 to unite leftist parties and movements in a broad coalition, which included the Frente Amplio and the Communist Party, among others. This coalition presented a list for the election of constituent council members and for congressional candidates in 2021. After internal primaries, Apruebo Dignidad also presented Gabriel Boric as their candidate in the 2021 presidential elections.

enable the possibility of social change, instead of preventing it. Societies are in constant transformation, and we need a constitution that is able to adapt to new times and to secure and promote the political participation of civil society. The constitution thus needs to allow for the economic, social, political and cultural democratization of society.

The idea of democratization is particularly relevant given the context that gave rise to Chile's current constitution: it was written by the military junta and a designated commission and imposed in a fraudulent plebiscite in 1980 (Fuentes, 2013). According to former senator Jaime Guzmán (1979), who is considered the intellectual author behind the Constitution of 1980:

The Constitution must ensure that, if our adversaries manage to govern, they are constrained to follow an action not so different from the one we would desire, because—allow me the metaphor—the margin of alternatives that the field imposes on those who play in it is small enough to make it extremely difficult to do otherwise. (my translation)

Guzmán's ideal was a protected democracy in which the constitution would make it very difficult to apply substantial changes to the neoliberal economic model imposed during the dictatorship, regardless of who occupied the presidential seat. Thus, the Constitution of 1980 not only sought to reverse the transformations achieved during the Allende era—in particular those related to policies promoting the redistribution of wealth—but also included a series of authoritarian enclaves and "locks" that prevented the political participation of a large portion of the population, given the obstacles they would discover when calling for social change. This constitution was meant to prevent the unfolding of democratic politics when, in the future, the military government left power. It was the opposite of democratization.

In this regard, it is crucial that a new constitution recognize the rights of those sectors that have been historically excluded, both decentralizing and deconcentrating power. Some important ideas from the rejected proposal that need to be discussed again relate to: how to ensure that people in marginalized territories throughout the country have a say in decisions that affect their environment, development, and well-being; how to secure reproductive rights for women and LGBTQI+ communities, as well as how to ensure their effective economic and political participation at all levels of society; and how to recognize Indigenous peoples' rights to land and self-determination.

These are precisely the issues the Partido Republicano and the traditional right-wing parties oppose the most. According to Antonia Rivas, a Chilean lawyer and anthropologist

specializing in Indigenous rights and one of the Expert Commission members assigned by the left-wing coalition:

In the Expert Commission, when we discuss the meaning of a social and democratic rule of law and what social rights the constitution should include, we just think differently and can't convince each other. What we are betting on is that we will arrive at an enabling constitutional proposal that opens spaces for democracy and political deliberation so whoever governs can move their program forward, with limits on the guarantee of people's rights and mechanisms for complaining when those rights are not secured. Since it will be difficult to include an expansive catalogue of rights, it is crucial that the new constitution includes a broad anti-discrimination clause and categorically recognizes the constitutional status of international treaties, something that is at risk with the actual composition of the Constitutional Council. (personal communication, May 10, 2023, my translation)

Given these adverse circumstances, the best option for progressive parties and movements today seems to be the push for a minimalist constitution that enables political debate and allows the advance of legislation promoting substantive equality.<sup>8</sup> Overall, this new constitution needs to open spaces for political participation by society's subaltern groups, surpassing the representative democracy that today is in crisis. Only in this way will it be able to adapt to an ever-changing society and find the legitimizing power it needs to be approved and appropriated by the people.

On the 50<sup>th</sup> anniversary of the military coup, Chile deserves a new social contract that can finally put an end to the authoritarian enclaves that have prevented political participation and debate, a new constitution that can enable the social transformations society needs so no one feels left behind. In an increasingly polarized political climate, it remains to be seen whether, as a country, we are up to the task or we will need another political cycle of crisis and unrest to realize that the world's neoliberal experiment has long since failed.

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References for this article are online at [clas.berkeley.edu](https://clas.berkeley.edu).

8. The idea of "substantive equality" recognizes that there are structural and cultural conditions that prevent the political participation of marginalized groups and thus the need to enact policies that counter the pervasive persistence of discrimination and exclusion against women and minorities. It contrasts with the idea of "formal equality" that right-wing parties defend, by which measures such as gender parity and reserved seats for Indigenous peoples in elections are considered unfair because they would interfere with the democratic principle of "one person, one vote."