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Chile at the Crossroads: From the 2019 Social Explosion to a New Constitution¹

Hugo Rojas²

ABSTRACT

The dictatorship of Augusto Pinochet imposed the 1980 Constitution and the neoliberal economic model, the two main beams that have shaped socio-political life in Chile for the last four decades. Various factors have led to a profound questioning of the current institutionalism. These factors include dissatisfaction with the political-economic model, social inequality, and a lack of opportunities and social mobility for broad sectors of the population. This document explains the social causes and political consequences of the October 2019 social explosion. A year later, a referendum was held in which most voters agreed with the idea of creating a Constitutional Convention to draft a new constitution. In May 2021, the 155 members of the Convention were elected, with gender parity and seats reserved for Indigenous peoples. The ongoing Chilean experience shows how social mobilization can undo straitjackets as tightly bound as a neoliberal economic model and a constitution imposed during a dictatorship that did not represent most citizens. Thanks to the mobilizations and pressures from the

¹ Presented at “Resistance and Transformation: Mapping Critical Geographies and Alternative Possibilities in Legal Scholarship and Praxis for the Next Twenty-Five Years,” *LatCrit XXI Biennial Conference*, University of Denver, October 8–9, 2021. Discussions held at Sociedad de Análisis Jurídico del Uruguay on May 21 and Nov. 25, 2021, and at the “Socio-Legal Studies Association Annual Conference 2022,” University of York, April 6–8, 2022, expanded the scope of the original arguments. I particularly thank the comments made by Ashley Beeman, Wyatt Fisher, Lia Fulgaro, Niloofar Irani, Ericka Kendall, Jillian Moody, Carsen Nies, and Miki Saito.

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grassroots of society, there is a concrete opportunity to redesign the Republic of Chile through broad political consensus.

Keywords: Authoritarian enclaves, social explosion, constituent assembly, Chile.

I. INTRODUCTION

This text explains how the social and political process that began in Chile after the social explosion of October 18, 2019, has been carried out. Intense, massive, and violent social mobilizations and state repression have triggered political discussions that could apparently culminate in the approval of a new Constitution in 2022.³ Chileans have felt challenged in these last two years, and political conversations have proliferated both in intimate circles and public scenarios, even despite the restrictions of circulation imposed during the pandemic. The number of reflections and self-criticisms offered by public intellectuals and journalists about the social explosion is impressive.⁴ Social networks have also played a fundamental

³ María Cristina Escudero & Alejandro Olivares, *From the Dance of Those Left Out to a New Constitution: Channeling the Chilean Social Unrest*, in *THE SOCIAL OUTBURST AND POLITICAL REPRESENTATION IN CHILE 173–92* (Bernardo Navarrete & Víctor Tricot, eds., 2021).

⁴ See, e.g., SALTAR EL TORNQUETE: REFLEXIONES DESDE LAS JUVENTUDES DE OCTUBRE (Sol Alé, Klaudio Duarte & Daniel Miranda, eds., 2021); PATRICIO FERNÁNDEZ, *SOBRE LA MARCHA: NOTAS SOBRE EL ESTALLIDO SOCIAL EN CHILE* (2020); CLAUDIO FUENTES, *LA TRANSICIÓN INACABADA. EL PROCESO POLÍTICO CHILENO 1990-2020* (2021); MARIO GARCÉS, *ESTALLIDO SOCIAL Y UNA NUEVA CONSTITUCIÓN PARA CHILE* (2020); *POLÍTICA Y MOVIMIENTOS SOCIALES EN CHILE: ANTECEDENTES Y PROYECCIONES DEL ESTALLIDO SOCIAL DE OCTUBRE DE 2019* (Manuel Antonio Garretón, coord., 2021); LAURA LANDAETA & VÍCTOR HERRERO, *LA REVUELTA* (2021); CARLOS PEÑA, *PENSAR EL MALESTAR. LA CRISIS DE OCTUBRE Y LA CUESTIÓN CONSTITUCIONAL* (2020); CARLOS RUIZ, *OCTUBRE CHILENO. LA IRRUPCIÓN DE UN NUEVO PUEBLO* (2020); EUGENIO TIRONI, *EL DESBORDE. VISLUMBRES Y APRENDIZAJES DEL 18-O* (2020); *LA REVUELTA DE OCTUBRE EN CHILE: ORÍGENES Y CONSECUENCIAS* (Carlos Peña & Patricio Silva, eds., 2021).

role in facilitating and promoting the exchange of ideas, perceptions, and discussions on the proposals discussed publicly.⁵

Chilean society is at a complex crossroads from both political and constitutional points of view. First, Chileans have had to face a question that perhaps for too many years they tried to avoid: How to peacefully confront those authoritarian enclaves and legacy of the dictatorial past (1973–1990) that have remained during more than thirty years of transition? Second, Chileans are also discussing the most appropriate mechanisms and ways to successfully come out of this crossroads: How to establish—democratically and within the rule of law—the institutional, political, and constitutional bases of a new Republic of Chile? This would also need to be done in such a way that it contributes to more equitable and harmonious relations between the different social sectors. It would also need to stand the test of time.

It is true that during the transition (1990 onwards) numerous constitutional reforms were carried out,⁶ as well as adjustments to the

⁵ See Daniela Grassau et al., *Estudio de Opinión Pública: Uso y Evaluación de los Medios de Comunicación y las Redes Sociales Durante el Estallido Social en Chile*, FACULTAD DE COMUNICACIONES (Dec. 4, 2019), <http://comunicaciones.uc.cl/investigadores-de-nuestra-facultad-realizan-encuesta-sobre-el-uso-y-evaluacion-de-los-medios-de-comunicacion-durante-el-estallido-social-en-chile/> [<https://perma.cc/KUF7-7S9A>]; Javiera Rossel, *Motivaciones en el Uso de las Redes Sociales en Momentos de Crisis Política, Chile, Octubre de 2019* (Master's thesis, Universidad de Chile, 2020), <http://repositorio.conicyt.cl/bitstream/handle/10533/246604/Tesis%20Javiera%20Rossel%20entrega%20final.pdf?sequence=1> [<https://perma.cc/2E6S-4EQM>]; Víctor Jiménez Barrado, *Cartografía Digital Disidente: El Caso de Santiago de Chile durante el Estallido Social de 2019*, 21(2) VEGUETA. ANUARIO DE LA FACULTAD DE GEOGRAFÍA E HISTORIA 59–78 (2021), https://accedacris.ulpgc.es/bitstream/10553/111312/1/Cartografia_digital_disidente.pdf [<https://perma.cc/VP9B-3HG3>].

⁶ CLAUDIO FUENTES, *EL PACTO: PODER, CONSTITUCIÓN Y PRÁCTICAS POLÍTICAS EN CHILE, 1990–2010* (2012); Claudia Heiss & Patricio Navia, *You Win Some, You Lose Some: Constitutional Reforms in Chile's Transition to Democracy*, 49 *LATIN AM. POL. & SOC'Y* 163–90 (2007).

neoliberal model to make economic growth more equitable.⁷ In the seven governments of the transition, the only President who mentioned in her program that she was committed to drafting a new constitution, based on citizen participation, was Michelle Bachelet during her second government (2014–2018).⁸ However, that was unfortunately not the first time the right-wing stymied collective progress.⁹ When President Sebastián Piñera took office in March 2018, one of his first measures was to annul the constituent process initiated by Bachelet.¹⁰

It is important to clarify that bottom-up social pressures have initiated this new process of discussing the future. The social explosion has been the materialization of a deep social malaise with the economic system and the 1980 Constitution, both imposed by Augusto Pinochet’s dictatorship, despite all the corrections and reforms approved during the transition years.¹¹ The political-economic elites purposefully ignored the cries of most of the population who wanted to trust in the goodness of a political-economic model that would supposedly provide them with the

⁷ See EDGARDO BOENINGER, *POLÍTICAS PÚBLICAS EN DEMOCRACIA. INSTITUCIONALIDAD Y EXPERIENCIA CHILENA 1990-2006* (2007); PAULO HIDALGO, *EL CICLO POLÍTICO DE LA CONCERTACIÓN 1990-2010* (2011).

⁸ See HACIA UNA NUEVA CONSTITUCIÓN: BALANCE DE LA ETAPA PARTICIPATIVA DEL PROCESO CONSTITUYENTE ABIERTO A LA CIUDADANÍA (Carolina Meza & Hugo Rojas coords., 2017).

⁹ CLAUDIO FUENTES, *LA TRANSICIÓN INACABADA: EL PROCESO POLÍTICO CHILENO 1990–2020*, 24–33 (2021). According to Lisa Hilbink, “In addition to being a symbol of the dictatorship, the existing (1980) Constitution has served as a tool for entrenching the radical free-market model imposed by the military regime, effectively limiting the scope of majority decision making and preventing reforms that would strengthen the public sector and more equitably distribute wealth and power.” Lisa Hilbink, *Constitutional Rewrite in Chile: Moving toward a Social and Democratic Rule of Law?*, 13 HAGUE J. ON RULE LAW 225 (2021).

¹⁰ Noam Titelman, *La Derecha Chilena en su Laberinto*, NUEVA SOCIEDAD, Sept.–Oct. 2020, at 4.

¹¹ PATRICIO ZAPATA, *LA CASA DE TODOS Y TODAS. LA NUEVA CONSTITUCIÓN QUE CHILE MERECE Y NECESITA* (2020); *¿MALESTAR EN CHILE? INFORME ENCUESTA CEP 2016* (Ricardo González, coord., 2017).

opportunities, guarantees, and social protections they longed for.¹² However, this did not happen, and the pressure cooker began to boil slowly, with millions of Chileans demonstrating in the streets during the spring of 2019 against the political-economic model.¹³

II. CAUSES OF THE OCTOBER 2019 SOCIAL EXPLOSION

In the last three decades, Chile has been considered an outstanding country in the international community: (1) It has maintained a sustained economic growth rate since 1985;¹⁴ (2) the percentage of people living in poverty has decreased considerably, from 50% in the aftermath of the dictatorship to less than 10% today;¹⁵ (3) it has promoted free-market and

¹² Claudia Garrido, *Élite y Revuelta Popular en Chile: Interpretaciones de la Desigualdad*, 12 ENCRUCIJADA AMERICANA 20–38 (2020); Matías Bargsted & Luis Maldonado, *Party Identification in an Encapsulated Party System: the Case of Postauthoritarian Chile*, 10 J. POL. LATIN AM. 29–68 (2018).

¹³ Nicolás Somma et al., *No Water in the Oasis: the Chilean Spring of 2019-2020*, 20 SOC. MOVEMENT STUD. 495 (2020).

¹⁴ Andrés Solimano, *Three Decades of Neoliberal Economics in Chile: Achievements, Failures, and Dilemmas*, in ACHIEVING DEVELOPMENT SUCCESS: STRATEGIES AND LESSONS FROM THE DEVELOPING WORLD 321–59 (Augustine K. Fosu, ed., 2013).

¹⁵ The accuracy and methodologies that have been used by the Ministry of Social Development and Family to measure poverty indicators has been criticized and improved, especially the “National Socioeconomic Characterization Survey” (CASEN) that has been applied periodically since 1990. See *Encuesta Casen [CASEN Survey]*, Ministerio de Desarrollo Social y Familia de Chile, observatorio.ministeriodesarrollosocial.gob.cl/encuesta-casen [https://perma.cc/F8M8-2539]. This Ministry presented in January 2015 a “New Methodology for Measuring Income Poverty” (NMMPI) and a “Methodology for Measuring Multidimensional Poverty” (MMPM). See MINISTERIO DE DESARROLLO SOCIAL, INFORME DE DESARROLLO SOCIAL 2015 (2016), https://www.desarrollosocialyfamilia.gob.cl/pdf/upload/IDS_INAL_FCM_3.pdf [https://perma.cc/DDZ7-SLGE]. If the measurements were more demanding, then the percentage of the population below the poverty line would be much higher than the figures that have been reported to the public all these years. Despite the above, there is no doubt that in the last 35 years the Chilean economy has grown steadily, paying attention to macroeconomic indicators, which has benefited households of different social classes, although in dissimilar ways.

commercial exchange;¹⁶ and (4) it has made a supposedly successful transition to democracy, enjoying institutional stability, modernizing the state apparatus, and holding periodic and democratic elections that have even allowed the alternation of power between two coalitions, one center-left and the other right-wing.¹⁷ However, this image—so frequently emphasized by the political-economic elites and projected abroad—eluded or avoided addressing a set of deep problems in the political, cultural, economic, and legal spheres.

The social contract that governs Chile is made up of two main beams that guide daily social interactions and the articulations between the different subsystems: the neoliberal economic model and the 1980 Constitution.¹⁸ Both were imposed without the possibility of democratic deliberation on the content of the core of the political-economic system.¹⁹ To ensure the permanence in time of a diktat of this magnitude, the dictatorship took care of establishing “authoritarian enclaves” and, as Fernando Atria points out, a set of locks or traps that make it difficult to be replaced or modified.²⁰ For example, constitutional reforms and the main laws that regulate both the economy and political activity require high quorums to be approved in Congress.²¹ This explains why right-wing parliamentarians have been able to block attempts at substantive reforms to the model, as during the

¹⁶ For a critical view see Marcus Taylor, *Success for Whom? An Historical-Materialist Critique of Neoliberalism in Chile*, 10 HIST. MATERIALISM 45–75 (2002).

¹⁷ HUGO ROJAS, PAST HUMAN RIGHTS VIOLATIONS AND THE QUESTION OF INDIFFERENCE: THE CASE OF CHILE 8–17 (2022).

¹⁸ See Margot Olavarría, *Protected Neoliberalism: Perverse Institutionalization and the Crisis of Representation in Postdictatorship Chile*, 30(6) LATIN AM. PERSP. 10–38 (2003); Benjamín Alemparte, *Towards a Theory of Neoliberal Constitutionalism: Addressing Chile’s First Constitution-Making Laboratory*, GLOB. CONST. 1–27 (2021).

¹⁹ FERNANDO ATRIA ET AL., EL OTRO MODELO: DEL ORDEN NEOLIBERAL AL RÉGIMEN DE LO PÚBLICO 19–24 (2013).

²⁰ See FERNANDO ATRIA, LA CONSTITUCIÓN TRAMPOSA (2013).

²¹ For further background on the creation and imposition of the 1980 Constitution see ROBERT BARROS, CONSTITUTIONALISM AND DICTATORSHIP: PINOCHET, THE JUNTA, AND THE 1980 CONSTITUTION (2004).

transition to democracy they have always had more than one-third of the parliamentarians. Despite being an electoral minority, since 1990, the right-wing parties have secured enough seats in Parliament to block all those reforms with which they do not agree.²²

The neoliberal model and the Constitution have not yet enjoyed social legitimacy.²³ This is despite the efforts of right-wing parties, think tanks, universities, and related media to show the goodness of the political-economic system, by virtue of which Chile would soon be able to be a modern and developed country. Basically, the model and the current Constitution were straitjackets that were not unbuttoned during the transition to democracy because the keys to the locks were in the pockets of the right-wing parties' leadership, and only when they were willing to refresh the most important norms was it possible to introduce modifications and innovations. It is undeniable that the neoliberal model has allowed a sustained growth of the country's economy, but the pace and intensity of this growth has been very unequal among the different social classes.²⁴ While the most privileged sectors have become richer and globalized, the most vulnerable sectors find it increasingly difficult to cover their most basic needs, and the middle classes find themselves with high levels of indebtedness.²⁵

The social protection system that currently exists is insufficient. In Chile there is no welfare or social state.²⁶ On the contrary, the neoliberal model

²² Tomás Moulian, *El sistema de partidos en Chile. 1990-2009*, 20 VEREDAS. REVISTA DEL PENSAMIENTO SOCIOLOGICO 151–75 (2010).

²³ Claudia Heiss, *Legitimacy Crisis and the Constitutional Problem in Chile: a Legacy of Authoritarianism*, 24 CONSTELLATIONS 470–79 (2017); see also Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118(6) HARV. L. REV. 1787–1853 (2005).

²⁴ See generally Ashley Davis-Hamel, *Successful Neoliberalism? State Policy, Poverty, and Income Inequality in Chile*, 87 INT'L SOC. SCI. REV. 79 (2012).

²⁵ Carolyn Lenderts, *Chile, Menos la Solidaridad: El Presente y Futuro de Desigualdad Económica en Chile*, INDEPENDENT STUDY PROJECT (ISP) COLLECTION (2017).

²⁶ Claudio Nash, *Estado Social y Democrático de Derechos en Chile. Tan Lejos y Tan Cerca*, 18 DERECHO Y HUMANIDADES 73–84 (2011).

has given the state a “subsidiary” role.²⁷ The Chilean neoliberal state model requires special laws passed with a high quorum of parliamentarians to intervene in the economic sphere.²⁸ What has happened in more than forty years is that, according to the 1980 Constitution, the state can enter the markets only when the private sector is unable to meet the demand for services in such important areas as health, education, housing, and social security. Significantly, state participation must be approved in the National Congress by a specific law that requires a higher quorum than an ordinary law.

Unfortunately, the parties of the center-left coalition (*Concertación*) were reformist and, with pragmatism, settled for gradual adjustments. If one reviews the “Government Program” of the *Concertación*, presented to the country during the 1989 presidential and parliamentary elections, it announces the pillars of the commitments that such parties assumed with the citizenry in the first years of the transition.²⁹ This document does not state the intention of replacing the 1980 Constitution. It simply lists the constitutional reforms to be promoted. Nor did the *Concertación* leaders tell the country that they would seek a new social pact. What the program does state is a commitment, through constitutional reforms, to guarantee the right to the satisfaction of basic needs.³⁰ The *Concertación’s* strategy can be synthesized in the following formula: negotiate with the right, as far as possible.³¹

²⁷ Christian Viera, *El Problema Constitucional Chileno: ¿Superar el Estado Subsidiario?*, 58 *POLÍTICA. REVISTA DE CIENCIA POLÍTICA* 49–63 (2020).

²⁸ CLAUDIO FUENTES, *LA TRANSICIÓN INACABADA: EL PROCESO POLÍTICO CHILENO 1990-2020*, 24 (2021).

²⁹ *CONCERTACIÓN DE PARTIDOS POR LA DEMOCRACIA, PROGRAMA DE GOBIERNO 12 (1989)*.

³⁰ *Id.*

³¹ Claudio Fuentes, *Shifting the Status Quo: Constitutional Reforms in Chile*, 57 *LATIN AMERICAN POLITICS AND SOCIETY* 99–122 (2015).

Despite the mobilizations against Pinochet in the 1980s, the *Concertación* leaders chose to demobilize society during the transition.³² Young people have been the ones who have raised their voices and protested massively in the streets against the political-economic model. Indeed, high school students mobilized in 2006, in the so-called March of the Penguins, to introduce improvements to the educational system.³³ Subsequently, the massive and creative mobilization of college students in 2011 aimed at modifying the undergraduate education financing system and moving towards free education.³⁴ The following sections develop five arguments that explain the main causes of the 2019 social outburst.

A. Social exclusion and fragmentation

In the last decade, there has been a growing sense of social unrest with the political-economic system, particularly in the less favored sectors of Chilean society. That feeling of malaise has been formidably well captured by the rap singer Portavoz (Andi Ferrer Millanao), in the song “El Otro Chile” [The Other Chile] from his album “Escribo Rap con R de Revolución” [I write Rap with R for Revolution 2012].³⁵ The song is a stark criticism of the political-economic model, showing the great contrasts

³² Patricio Silva, *Doing Politics in a Depoliticised Society: Social Change and Political Deactivation in Chile*, 23 BULL. LATIN AM. RSCH. 63 (2004).

³³ Ivette Hernández Santibáñez, *Which Education for Which Democracy?: The Case of the Penguins’ Revolution in Chile*, in EDUCATION AND SOCIAL CHANGE IN LATIN AMERICA 185–202 (Sara C. Motta & Mike Cole, eds., 2013).

³⁴ Nelly P. Stromquist & Anita Sanyal, *Student Resistance to Neoliberalism in Chile*, 23 INT’L STUD.SOCIOLOGY EDUC. 152 (2013); Indira Palacios-Valladares, *Chile’s 2019 October Protests and the Student Movement: Eventful Mobilization?*, 40 REVISTA DE CIENCIA POLÍTICA 215 (2020); Sofía Donoso, *El Movimiento Estudiantil Chileno y su (Re)Articulación con la Política Institucional*, in POLÍTICA Y MOVIMIENTOS SOCIALES EN CHILE 77–102 (Manuel Antonio Garretón, coord., 2021).

³⁵ Portavoz, *El Otro Chile*, YOUTUBE (2012), <https://www.youtube.com/watch?v=Qgq3Qr41wRk> [<https://perma.cc/PWP6-7W95>]. The video has more than 26 million YouTube views, which is impressive considering that the population of Chile is only 18.5 million inhabitants.

between the different social classes, and, in particular, the difficulties of the middle class and the anonymous Chile:

I come from the Chile of the majority / . . . / The one that is in the vein of my poetry / The Chile of my sequels, of my sorrows and my joys / . . . / We live in a segregated society / And it is no coincidence: the wealthy class always wanted it that way / . . . / I'm talking about the Chile I come from / I'm sorry, but if one day I shout 'Viva Chile' / It will be the day when Chile really belongs to the people, free.³⁶

Several studies report on the lack of equal opportunities and their consequences in the lives of Chileans. A particularly revealing text corresponds to *La Desigualdad*, published by José Bengoa, Francisca Márquez and Susana Aravena in 1999.³⁷ In this text, the authors recount the voices of thirty-eight ordinary interviewees, from diverse localities and activities, who share their aspirations, frustrations, and pains in transitional Chile. In addition to the contrasts between the different social classes, the levels of nepotism and lack of meritocracy at all levels and institutions have also been empirically demonstrated. In 2006, Eduardo Engel and Patricio Navia published *Que gane "el más mejor"* [May the best win], where they showed the enormous gaps in opportunities and information asymmetries.³⁸ Since 2005, the Foundation for the Overcoming of Poverty has periodically published *Umbrales Sociales para Chile* [Social Thresholds for Chile].³⁹ These reports explain the implications of the lack of minimum social guarantees for the entire population. In 2017, the United Nations

³⁶ *Id.* (Hugo Rojas trans.).

³⁷ JOSÉ BENGOA, FRANCISCA MÁRQUEZ & SUSANA ARAVENA, *LA DESIGUALDAD. TESTIMONIOS DE LA SOCIEDAD CHILENA EN LA ÚLTIMA DÉCADA DEL SIGLO XX* (1999).

³⁸ See generally EDUARDO ENGEL & PATRICIO NAVIA, *QUE GANE "EL MÁS MEJOR." MÉRITO Y COMPETENCIA EN EL CHILE DE HOY* (2006).

³⁹ See *Umbrales Sociales Para Chile*, FUNDACIÓN SUPERACIÓN DE LA POBREZA, <http://www.superacionpobreza.cl/cp/umbrales-sociales/> [<https://perma.cc/CLK6-QTUX>].

Development Programme (UNDP) published *Desiguales* [Unequal].⁴⁰ Despite the economic progress made since the dictatorship, this book empirically demonstrates that the opportunities for this progress are concentrated in the wealthiest 1%, and “this type of concentration generates problems of social coexistence and questions about the legitimacy of the development model.”⁴¹

These and other bodies of research explain the difficulties of the middle class and more vulnerable sectors, the barriers to social mobility, and the lack of meritocracy.⁴² The most painful aspect of social exclusion is not feeling recognized or valued, as exclusion undermines people’s dignity. For example, “mistreatment for reasons of social class or gender crystallize the problem of inequality in everyday life, especially in the popular sectors, and for many people [is] the yardstick for measuring structural inequalities that are sometimes more difficult to perceive or measure.”⁴³

B. Inequality and indolence of the economic elite

The richest 1% of the country should make a severe self-assessment because they have bet on the economic growth of the country all these years while neglecting the importance of improving income distribution. Having accumulated enough wealth to ensure their lives and that of their descendants, why not make it a priority for all workers to increase their purchasing power? According to Marco Kremerman and Gonzalo Durán,

⁴⁰ PNUD, DESIGUALES. ORÍGENES, CAMBIOS Y DESAFÍOS DE LA BRECHA SOCIAL EN CHILE (2017), <https://www.cl.undp.org/content/chile/es/home/library/poverty/desiguales-origenes--cambios-y-desafios-de-la-brecha-social-en-.html> [https://perma.cc/RAB9-A9KV].

⁴¹ *Id.* at 354.

⁴² See MICHAEL FÖRSTER & CÉLINE THÉVENOT, DESIGUALDAD DE INGRESOS, MOVILIDAD SOCIAL Y TENDENCIAS DE LA CLASE MEDIA EN CHILE Y EN LA OECD (2018), http://www.desarrollosocialyfamilia.gob.cl/storage/docs/1-_Inequality_middle_class_and_mobility_in_Chile_and_OECD_countries_FINAL.pdf [https://perma.cc/VVV2-RYCT].

⁴³ PNUD, *supra* note 40, at 199.

68.9% of workers earn less than 550,000 pesos per month (equivalent to \$687 USD).⁴⁴ It is true that some business groups finance quality educational programs for those who do not have the possibility of receiving a good education, but this could be a generalized practice.⁴⁵ If one reviews the donations received by universities, it is evident that the business community is ideologically supporting some institutions and not others, in circumstances where universities are at the service of the generation and transmission of knowledge.⁴⁶ Unfortunately, the mission of the foundations that some businessmen finance is to maintain the status quo and ensure that public policies do not modify the political-economic model.

C. Increasingly bourgeois political class

Various surveys show that citizens have the perception that the traditional political class has distanced itself from the daily problems of the people.⁴⁷ The promises made in the electoral campaigns have repeatedly not

⁴⁴ MARCO KREMERMAN & GONZALO DURÁN, LOS VERDADEROS SUELDOS DE CHILE. PANORAMA ACTUAL DEL VALOR DE LA FUERZA DEL TRABAJO USANDO LA ESI 2018 (2019), <https://ciperchile.cl/wp-content/uploads/Los-Verdaderos-Salarios-ESI-2018.pdf> [<https://perma.cc/EGF9-WNGT>].

⁴⁵ Magdalena Aninat has done empirical research on this topic and has a more optimistic view on the increase of philanthropy. However, it would be good to disclose the names of donors and grantees, and thus corroborate whether donations are contributing to greater social equity or to the preservation of social structures and hierarchies, particularly when it comes to donations received by elite universities. MAGDALENA ANITAT & ISIDORA FUENZALIDA, INSTITUTIONAL PHILANTHROPY IN CHILE. PHILANTHROPY AND SOCIAL INVESTMENTS MAPPING (2017), <https://cefis.uai.cl/assets/uploads/2020/07/institutional-philanthropy-in-chile-cefis-uai-final-2017.pdf> [<https://perma.cc/R56S-GQCZ>]; Magdalena Aninat, *Visión y práctica de los aportes sociales de los empresarios en Chile*, 142 ESTUDIOS PÚBLICOS 81 (2016), https://www.cepchile.cl/cep/site/docs/20160621/20160621162825/03__aninat_142.pdf [<https://perma.cc/KXY7-KGXT>].

⁴⁶ Ernesto Vargas & Claudia Martínez, *Evaluación del Sistema de Franquicias Tributarias Para Donaciones a Universidades en Chile*, 12 TRABAJOS DE INVESTIGACIÓN EN POLÍTICAS PÚBLICAS, DEPARTAMENTO DE ECONOMÍA, UNIVERSIDAD DE CHILE (2012).

⁴⁷ Rodrigo Márquez, *La distancia entre la ciudadanía y las élites. Una mirada desde el informe "Desarrollo humano en Chile,"* 140 ESTUDIOS PÚBLICOS 83 (2015).

been fulfilled, increasing the distrust and unease of the electorate. For example, in the last presidential election, Piñera promised the country growth and welfare, but even those who voted for him have ceased to support him (only 16% of the population support him).⁴⁸

One of the problems not properly resolved in Chile is the financing of political campaigns, which has allowed the capture of the political class by the business elite.⁴⁹ In *Poderoso caballero* [Mighty Gentleman] (2013) and *Los reyes desnudos* [The Naked Kings] (2018), Daniel Matamala has reported on the opaque braid between politics and money,⁵⁰ and despite all the advances in the different agendas of probity and transparency that have been implemented in the thirty years of transition to democracy, progress in this area is still insufficient. Argumentative fallacies abound in public discussion, and at times it seems that the political class is incapable of discussing ideas without attacking those who think differently. Given the inefficiency of the formal channels within the democratic system for expressing citizen discomfort and demands, the spaces for political participation and public deliberation have been reduced to marches and protests in the streets or self-convened dialogues by civil society (*cabildos*).

D. Lack of public deliberation and citizen participation

In general terms, the political class of the traditional parties has not encouraged citizen participation in public decision-making.⁵¹ On the contrary, professional politicians of the ruling parties during the transition

⁴⁸ Centro de Estudios Públicos, *Encuesta Nacional de Opinión Pública N° 85*, (Sept. 2021) <https://www.cepchile.cl/cep/encuestas-cep/encuestas-2010-2021/estudio-nacional-de-opinion-publica-n-85-septiembre-2021> [<https://perma.cc/3YXY-D9EU>].

⁴⁹ See RENATO GARÍN, *EL LOBBY FEROS Y LA SOCIEDAD DE LAS INFLUENCIAS* (2016), RENATO GARÍN, *LA FRONDA. CÓMO LA ELITE SECUESTRO LA DEMOCRACIA* (2017).

⁵⁰ See DANIEL MATAMALA, *PODEROSO CABALLERO. EL PESO DEL DINERO EN LA POLÍTICA CHILENA* (2013); DANIEL MATAMALA, *LOS REYES DESNUDOS* (2018).

⁵¹ Juan Pablo Luna & Rodrigo Mardones, *Chile: Are the Parties Over?*, 21 J. DEMOCRACY 107–21 (2010); Herwig Cleuren, *Local Democracy and Participation in Post-Authoritarian Chile*, 83 EUR. REV. LATIN AM. AND CARIBBEAN STUD. 3–18 (2007).

favored social demobilization. The main recommendation formulated in 2004 by the United Nations Development Program (UNDP), in *La democracia en América Latina* [Democracy in Latin America],⁵² was to move from an electoral democracy to a more participatory and robust democratic culture. Unfortunately, this recommendation was not implemented in Chile.

The media also have a share of responsibility in this crisis because, rather than contributing to public debate, they have trivialized society. The media, and especially television, influence the priorities of citizens and their daily conversation topics. Instead of promoting investigative journalism and quality discussions on issues of public relevance, channels are content to compete for ratings and easy tuning with reality shows and entertainment. Channels should perform serious self-examination and ask themselves about their programming and contents: Who do they give a platform to talk nonsense every day and lull the silent majority to sleep? It is enough to see how the channels approached those critical days of spring 2019: broadcasters and opinion makers with low levels of academic training, incapable of understanding the causes of social problems, limiting themselves to commenting on specific cases, without abstract thinking or control of their emotions. By demanding self-financing, the public television channel behaves as one more private channel, renouncing the principles by virtue of which it was created in the '60s.⁵³

⁵² See PROGRAMA DE LAS NACIONES UNIDAS PARA EL DESARROLLO, *LA DEMOCRACIA EN AMÉRICA LATINA: HACIA UNA DEMOCRACIA DE CIUDADANAS Y CIUDADANOS* (2004).

⁵³ Valerio Fuenzalida, *Televisión Pública y Cambio Digital. Tecnología TV – Audiencias – Formatos*, 20 PUNTO CERO 31–46 (2015); Valerio Fuenzalida, 11 *La Reforma de TVN en Chile: Logros y Problemas*, REVISTA DE ECONOMÍA POLÍTICA DE LAS TECNOLOGÍAS DE LA INFORMACIÓN Y COMUNICACIÓN (2009).

E. Individualism and consumerism

The diagnosis formulated more than twenty years ago by Tomás Moulian in *Chile Actual: Anatomía de un Mito* [Chile Today: Anatomy of a Myth] (1997) and *El consumo me consume* [Consumption consumes me] (1998) is not only still valid, but it has become even more extreme: Chileans are driven by greed and the unbridled consumption of dispensable goods.⁵⁴ Since the dictatorship, the market has become the main articulator of public decisions.⁵⁵ Ostentation is not frowned upon; on the contrary, it is exhibited and applauded. The social pressure to consume makes Chileans work more hours than is reasonable and to appear wealthier than they are. One way to address rising social pressure to consume is to bolster access to education. Increasing the cultural density of the citizenry requires strengthening the levels of access to culture and promoting reading from an early age. Improving the financing and quality of public education is at this point a moral duty to future generations. For example, 84% of Chileans do not understand what they read.⁵⁶

III. SOCIAL VIOLENCE, STATE REPRESSION AND HUMAN RIGHTS VIOLATIONS

The 2019 protests began on October 7, with several high school students jumping the turnstiles of Santiago's Metro, evading payment of the fare. This was a reaction to the decision by the expert committee to increase the price by 30 pesos (equivalent to five cents USD).⁵⁷ The government, and especially the police, responded in the worst way by arresting the students,

⁵⁴ See TOMÁS MOULIAN, CHILE ACTUAL: ANATOMÍA DE UN MITO (1997); TOMÁS MOULIAN, EL CONSUMO ME CONSUME (1998).

⁵⁵ See Guillermo Guajardo Soto, *Neoliberalism as a Capitalist Revolution in Chile: Antecedents and Irreversibility*, 72 PAOLO SYLOS LABINI Q. REV. 135 (2019).

⁵⁶ CONSEJO DE LA CULTURA & CENTRO DE DATOS MICRODATOS - UNIVERSIDAD DE CHILE, ESTUDIO DE COMPORTAMIENTO LECTOR, (2019) <https://www.caractergames.com/la-comprension-lectora-en-chile> [<https://perma.cc/4X89-LS9W>].

⁵⁷ LAURA LANDAETA & VÍCTOR HERRERO, LA REVUELTA 33 (2021).

which caused even more trouble. A week later, the organization of the students' campaign became massive, coordinated through social networks.⁵⁸ But this time, the students' annoyance was in tune with the frustration of multiple sectors tired of corporate abuses and the levels of inequality; hopeless with the economic-political model and public institutions; indebted in a commodified country; and annoyed with a political class that is increasingly corrupt and distant from ordinary citizens.⁵⁹

Certainly, the increase in Metro fares was only the trigger for the Chilean Spring. From October 18, 2019, on, protests happened daily in different cities of the country, with high levels of violence.⁶⁰ Even though Piñera declared a state of emergency, the largest march in the history of Chile took place, with more than one million people in Plaza Italia (now known as Plaza de la Dignidad), in Santiago. Police repression during the days of protest was extremely harsh and human rights were severely violated in the streets.⁶¹ If the social mobilizations continued, Piñera eventually would have had to resign.

⁵⁸ *Id.*

⁵⁹ President Sebastián Piñera stated on October 8, 2019, that Chile “is a true oasis within a Latin America convulsed in political matters.” That same day the Minister of Economy, Juan Andrés Fontaine, mockingly suggested Santiago residents to get up earlier and thus take advantage of the cheaper Metro fare. Faced with criticism for the increase in inflation, the Minister of Finance, Felipe Larraín, suggested citizens to take advantage of buying flowers because they had not gone up in price. Although both ministers apologized, they were subsequently removed from their positions. In February 2019, Matías Pérez Cruz, businessman and manager of one of the two main gas distribution companies, arrogantly confronted and expelled three women who had sat on the shore of the lake where he enjoyed with his visitors at his vacation residence, all of which was recorded with a cell phone and disseminated on social networks. These are just a few examples of statements that caused social irritation, as they showed the arrogant and dismissive attitude of the political-economic elite towards the needs of most of the population, which was already showing signs of tiredness in the face of the daily abuses of the dominant sectors.

⁶⁰ See LAURA LANDAETA & VÍCTOR HERRERO, *LA REVUELTA* (2021).

⁶¹ *Chile: Police Reforms Needed in the Wake of Protests*, HUM. RTS. WATCH (Nov. 26, 2019), <https://www.hrw.org/news/2019/11/26/chile-police-reforms-needed-wake-protests> [<https://perma.cc/HLZ3-F8QU>].

More than a simple outburst, October 2019 was a “social explosion”: Chilean men and women came out to protest against kleptocracy. The criticism was extremely harsh on the functioning of democracy. The citizens’ perceptions were as follows: a considerable number of politicians, and especially parliamentarians, were controlled by a group of businessmen who have illicitly financed the political campaigns of the parties that governed the country for thirty years.⁶² Businessmen and politicians have managed to evade justice or have received very minor sanctions, for example, attending private lessons on ethics at an elite university.⁶³ There is a perception that part of the political power has been captured by the economic power of some unscrupulous businessmen who have flouted the rules of the democratic game and, incidentally, committed tax crimes.⁶⁴ Criticism has also shown that meritocracy is a myth, since the purchasing power and contact networks of parents are factors that influence the reproduction of social positions and hierarchies, affecting the possibilities of social mobility based on merit and effort. For example, the purchasing power of parents has a serious impact on the quality of their children’s education and on the opportunities they will have in their higher education and work careers.⁶⁵ These barriers to meritocracy generate frustration, disappointment, and anger, and this malaise merits further investigation. Chile continues to be a modest country at the end of the American continent.

At first, the movement of October 2019 was underestimated by the political-economic establishment, as if those who protested were hooded rebels, criminals, unemployed and/or anarchists, financed by drug

⁶² CARLOS TROMBEN & IGNACIO SCHIAPPACASSE, *TODO LEGAL: LOS GRANDES ZARPAZOS DE LA ELITE FINANCIERA CHILENA (1973-2021)* (2022).

⁶³ JOYITAS. *LOS PROTAGONISTAS DE LOS MAYORES ESCÁNDALOS DE CORRUPCIÓN EN CHILE* (Juan Cristóbal Peña, ed., 2021).

⁶⁴ *Id.*

⁶⁵ ALBERTO MAYOL, *NO AL LUCRO. DE LA CRISIS DEL MODELO A LA NUEVA ERA POLÍTICA 202–11* (2012).

trafficking, or the *barras bravas* of soccer teams. It is true that in the days of protests there was extreme violence and radicalized groups destroyed public and private property. But, behind these protests there was a social mobilization that, despite the pandemic, had been articulating itself politically and today has become a political group of significant importance in the constitutional discussion.

In the following weeks and months, Chileans were faced with a level of state violence that had not been seen since the 1973–1990 military dictatorship. Civil society activists and human rights experts reacted swiftly during the crisis to prevent human rights violations from continuing and to demand accountability. Protesters were able to register and report state violence much more rapidly than in the past, and many of the abuses committed during the recent unrest are currently being investigated by the National Institute of Human Rights (INDH),⁶⁶ prosecutors, and courts. The INDH, an independent state-funded institution, has become a powerful human rights observer, promoter, and defender. The figures on repression are not entirely clear yet, and the necessary work to systematize state violence against citizens is still pending, in addition to a critical review of the capacity of the justice system to process volumes of cases such as those that occurred during the social unrest.⁶⁷ The background information available at this time is as follows:

- Between October 18 and December 7, 2019, more than 12,700 people required emergency care at a public

⁶⁶ Johanna Guala Maldonado, *Estallido Social y Violaciones a los Derechos Humanos en Chile*, 1 REV. ESP. REG. 95–108 (2021).

⁶⁷ CENTRO DE ESTUDIOS DE JUSTICIA DE LAS AMÉRICAS, EVALUACIÓN DEL SISTEMA DE JUSTICIA DE CHILE ANTE LAS VIOLACIONES DE DERECHOS HUMANOS OCURRIDAS EN EL CONTEXTO DE LA PROTESTA SOCIAL, (2020) [https://biblioteca.cejamericas.org/bitstream/handle/2015/5664/Evaluaci%
c3%b3n%20del%20sistema%20de%20justicia%20-%20CL.pdf?sequence=11&isAllowed=y](https://biblioteca.cejamericas.org/bitstream/handle/2015/5664/Evaluaci%c3%b3n%20del%20sistema%20de%20justicia%20-%20CL.pdf?sequence=11&isAllowed=y)
[<https://perma.cc/HT3X-5W7C>].

hospital for incidents that occurred as part of the protests, as reported by the Ministry of Health.⁶⁸

- Between October 2019 and March 2020, 8,827 citizens filed charges for human rights violations,⁶⁹ including 388 cases of sexual violence, and 460 cases of eye loss or damage (mostly from the impact of pellets, buckshot, and tear gas cartridges).⁷⁰ The Medical Association and the Ophthalmological Society warned the country that the number of eye injuries exceeded that observed in any other country in the world in contexts of social crisis.⁷¹

⁶⁸ OFICINA DEL ALTO COMISIONADO DE NACIONES UNIDAS PARA LOS DERECHOS HUMANOS, INFORME SOBRE LA MISIÓN A CHILE, 30 DE OCTUBRE - 22 DE NOVIEMBRE DE 2019, (2019),

https://www.ohchr.org/Documents/Countries/CL/Report_Chile_2019_SP.pdf [<https://perma.cc/GQ3V-FD4S>]; AMNISTÍA INTERNACIONAL, OJOS SOBRE CHILE: VIOLENCIA POLICIAL Y RESPONSABILIDAD DE MANDO DURANTE EL ESTALLIDO SOCIAL, (2020) https://amnistia.org.mx/contenido/wp-content/uploads/2020/10/Chile-report_AMR-22_3133_2020_FINAL.pdf [<https://perma.cc/3CEN-WM9R>]; Human Rights Watch, *Chile: Events of 2019* (2020), <https://www.hrw.org/world-report/2020/country-chapters/chile#> [<https://perma.cc/VNF9-SRZ5>].

⁶⁹ Javiera Matus, *Fiscalía Cifra en 8.827 las Víctimas de Violencia Institucional en la Crisis*, LA TERCERA, (July 18, 2020), <https://www.latercera.com/nacional/noticia/fiscalia-cifra-en-8827-las-victimas-de-violencia-institucional-en-la-crisis/TTDPQXATBRD4DAQNGA2VIEKAHU/> [<https://perma.cc/V4HF-HPVY>]; MINISTERIO PÚBLICO DE CHILE, ESTADO DE SITUACIÓN DE LAS PRINCIPALES INVESTIGACIONES DE VIOLENCIA INSTITUCIONAL ASOCIADAS A LA CRISIS SOCIAL (2021), <https://www.ciperchile.cl/wp-content/uploads/documento-01-1.pdf> [<https://perma.cc/HZE3-UQ8R>].

⁷⁰ INSTITUTO NACIONAL DE DERECHOS HUMANOS, REPORTE GENERAL DE DATOS SOBRE VIOLACIONES A LOS DERECHOS HUMANOS (2020), <https://www.indh.cl/bb/wp-content/uploads/2020/03/Reporte-general-18-03-2020-de-datos-sobre-violaciones-a-los-derechos-humanos-v04.pdf> [<https://perma.cc/33T9-JQ7U>]; INSTITUTO NACIONAL DE DERECHOS HUMANOS, INFORME ANUAL: SITUACIÓN DE LOS DERECHOS HUMANOS EN CHILE 2019. SOBRE LA SITUACIÓN DE LOS DERECHOS HUMANOS EN CHILE EN EL CONTEXTO DE LA CRISIS SOCIAL (2019), <https://bibliotecadigital.indh.cl/bitstream/handle/123456789/1701/Informe%20Final-2019.pdf?sequence=1&isAllowed=y> [<https://perma.cc/L8TW-S4Y7>].

⁷¹ COMITÉ PARA LA PREVENCIÓN DE LA TORTURA, PREVENCIÓN DE LA TORTURA Y SITUACIÓN DE LAS PERSONAS PRIVADAS DE LIBERTAD EN CHILE. PRIMER INFORME ANUAL 2020 51 (2021), <https://mnpt.cl/wp-content/uploads/2021/09/74830-INFORME-ANUAL-CPT-INTE-web-INDH.pdf> [<https://perma.cc/RBR4-D96M>].

- In the first few months of protests, prosecutors investigated 466 state agents, of whom 93.2% are police.⁷²
- Between October 18, 2019, and June 30, 2020, the Office of the Ombudsman for Children's Rights reported 818 cases of minors and adolescents who were victims of state repression.⁷³
- As of July 2020, the INDH had filed 2,988 criminal complaints on behalf of 3,436 individuals in the context of the social crisis.⁷⁴ The vast majority of the complaints (2,870) correspond to acts of torture and inhuman or degrading treatment.
- Between October 18, 2019, and January 31, 2020, 23,274 people were detained, and judges ordered preventive detention in 1,615 cases.⁷⁵ As of March 16, 2020, the number of people remanded in custody for offenses associated with the social outburst increased to 2,180.⁷⁶ It should be noted that more than 2,000 arrests were later declared illegal.⁷⁷

⁷² INSTITUTO NACIONAL DE DERECHOS HUMANOS, INFORME ANUAL 2020 (2021), <https://ia2020.indh.cl/> [<https://perma.cc/J58F-V9LV>]; Mauricio Weibel, *Balance Penal del Estallido: Fiscalía Investiga a 466 Agentes del Estado y Gobierno Acusa a 3.274 Personas de Cometer Actos Violentos*, CIPER CHILE (July 15, 2020) <https://www.ciperchile.cl/2021/04/19/estallido-social-fiscalia-ya-cerro-sin-responsables-541-causas-por-violaciones-de-dd-hh-contra-menores-de-edad/> [<https://perma.cc/4HKZ-ZZED>].

⁷³ DEFENSORÍA DE LOS DERECHOS DE LA NIÑEZ, INFORME ANUAL 2020. DERECHOS HUMANOS DE NIÑOS, NIÑAS Y ADOLESCENTES (2021), <https://www.defensorianinez.cl/informe-anual/> [<https://perma.cc/5R5F-FKXD>].

⁷⁴ INSTITUTO NACIONAL DE DERECHOS HUMANOS, INFORME ANUAL 2020 (2021), <https://ia2020.indh.cl/> [<https://perma.cc/89ER-5KFA>].

⁷⁵ PODER JUDICIAL, ESTUDIO DE LAS CAUSAS DEL ESTALLIDO SOCIAL (2020), <https://www.t13.cl/noticia/nacional/Cifras-del-Poder-Judicial-revelan-aumento-de-777-en-detenciones-ilegales-desde-el-estallido-social> [<https://perma.cc/RSR5-75LX>].

⁷⁶ *Id.*

⁷⁷ DIRECCIÓN DE ESTUDIOS DE LA CORTE SUPREMA, EL ROL DEL PODER JUDICIAL EN EL CONOCIMIENTO DE LAS ACCIONES JUDICIALES RELACIONADAS AL ESTALLIDO SOCIAL (2020), <https://www.diarioconstitucional.cl/wp->

- Meanwhile, the government has filed legal actions against 3,274 civilians in relation to the protests, for crimes such as public disorder (18.6%), fires (4.9%), and attacks on members of the police and armed forces (3.6%).⁷⁸ The government has faced criticism for its lack of transparency regarding the alleged abuses and its slow investigation of claims of human rights violations.⁷⁹
- In all these months, the judiciary has issued only four convictions.

IV. THE AGREEMENT FOR SOCIAL PEACE AND A NEW CONSTITUTION

On November 15, 2019, most of the political parties with parliamentary representation signed the Agreement for Social Peace and a New Constitution.⁸⁰ The document begins by stating that “in the face of the serious social and political crisis . . . we have agreed on an institutional solution whose objective is to seek peace and social justice through an

content/uploads/2020/11/Articulo-Estallido-Social.pdf [https://perma.cc/3WXF-ACLY]; DIRECCIÓN DE ESTUDIOS DE LA CORTE SUPREMA, ACTUALIZACIÓN DE ESTADÍSTICAS RELATIVAS A CAUSAS DE VIOLACIONES DE DERECHOS HUMANOS EN EL PERÍODO DEL ESTALLIDO SOCIAL (2020), <https://www.diarioconstitucional.cl/wp-content/uploads/2020/11/Publicacion%CC%81n-Estadi%CC%81sticas-estallido-social.pdf> [https://perma.cc/K9LT-HCBL].

⁷⁸ CARABINEROS DE CHILE, CARABINEROS EN CIFRAS. CUENTA PÚBLICA 2019 (2020), <https://es.scribd.com/document/458968487/Cuenta-Publica-de-Carabineros-2019> [https://perma.cc/BY3X-HVAG].

⁷⁹ Ministerio Público, *Estallido Social: 62 Imputados Han Sido Formalizados por Violencia Institucional* (Aug. 28, 2020), http://www.fiscaliadechile.cl/Fiscalia/sala_prensa/noticias_det.do?noticiaId=18474 [https://perma.cc/WE5Y-ES9G].

⁸⁰ The Agreement was signed by: Fuad Chahin (Christian Democrat Party), Mario Desbordes (National Renovation Party), Álvaro Elizalde (Socialist Party), Hernán Larrain (Evópoli), Carlos Maldonado (Radical Party), Heraldo Muñoz (Party for Democracy), Catalina Pérez (Democratic Revolution Party), Luis Felipe Ramos (Liberal Party), Javiera Toro (Partido Comunes), Jacqueline van Rysselberghe (UDI), and Gabriel Boric.

unquestionably democratic process.”⁸¹ Therefore, the parties committed to calling a plebiscite to decide whether to initiate a constituent process. It was agreed to consult the citizens on the following questions: (a) “Do you want a new Constitution?” (I approve or I reject), (b) “What kind of body should draft the new Constitution?” (Mixed Constitutional Convention⁸² or Constitutional Convention⁸³). The Agreement also established the most important rules of the constituent process: the sole purpose of the constituent body is to draft the new Constitution; the constituent body must approve the rules and voting regulations by a quorum of two-thirds of its members; and the term for drafting the new Constitution is nine months, extendable for another three months. Finally, it was agreed to hold a mandatory ratifying plebiscite in which the population will be asked whether it approves the constitutional text drafted by the constitutional body. If most voters approve the new Constitution, it will come into force immediately once published, repealing the 1980 Constitution.⁸⁴

The signing of the agreement calmed tempers, and the moderate social sectors supported the political solution found by the parties to confront the crisis.⁸⁵ After the Agreement, mobilization continued, but political discussion began to take place through institutional channels, with parties playing a greater role in searching for peaceful solutions. The Agreement established that the parties had to appoint a Technical Committee, with an equal number of members from the opposition and the government. Thus,

⁸¹ ACUERDO POR LA PAZ SOCIAL Y LA NUEVA CONSTITUCIÓN (Nov. 15, 2019), https://www.senado.cl/senado/site/docs/20191114/20191114134609/pdf_acuerdo_por_la_paz_social_y_la_nueva_constitucion.pdf [<https://perma.cc/8A7S-JH63>].

⁸² *Id.* at § 3: “The Mixed Constitutional Convention shall be composed in equal parts of members elected for that purpose and sitting members of parliament.”

⁸³ *Id.* at § 4: “In the case of the Constitutional Convention, its members shall be elected entirety for this purpose,” in accordance with the rules for the election of deputies.

⁸⁴ *Id.*

⁸⁵ Emmanuel Fariás Carrión, *Pronunciamiento Institucional del Neoliberalismo Chileno: Análisis del Acuerdo Nacional por la Paz y la Nueva Constitución*, 27 REVISTA TEMAS SOCIOLÓGICOS 193–217 (2020).

the Technical Committee was composed of fourteen experts in constitutional law and/or political science, five of whom were women,⁸⁶ and held intense working sessions between November 25 and December 6, 2019.⁸⁷

On December 24, 2019, Law No. 21,200 was published, which amends Chapter XV of the 1980 Constitution and establishes the procedure for drafting a new Constitution, in consideration of the Political Agreement of November 15 and the document signed by the Technical Committee on December 6. The fourteen new articles incorporated in the Constitution refer to: the plebiscite;⁸⁸ the Convention;⁸⁹ the candidates' requirements and incompatibilities; the functioning and composition of the Convention; the procedure for complaints before the Supreme Court for infringement of the rules of procedure applicable to the Convention;⁹⁰ and the ratifying plebiscite in which it will be asked, "Do you approve the text of the New Constitution proposed by the Constitutional Convention?"⁹¹

An important rule corresponds to the final paragraph of the new Article 135, which establishes that "the text of the New Constitution submitted to plebiscite shall respect the character of the Republic of the State of Chile, its democratic regime, the final and enforceable judicial sentences, and the international treaties ratified by Chile, and which are in force."⁹² This last part of Article 135 has generated debate, as it limits the scope of action of

⁸⁶ The seven representatives of the government and the right-wing parties were Isabel Aninat, Arturo Fermandois, José Francisco García, David Huina, Ernesto Silva, and Sebastián Soto. The seven representatives of the opposition were Sebastián Aylwin, Cristina Escudero, Pamela Figueroa, Claudia Heiss, Emilio Oñate, and Alejandra Zúñiga.

⁸⁷ See Audiovisual Records of the Technical Committee meetings, https://www.bcn.cl/procesoconstituyente/detalle_cronograma?id=f_cronograma-2 [<https://perma.cc/7QX9-ZZNA>].

⁸⁸ See Article 130 of the Constitution.

⁸⁹ See Article 131 of the Constitution.

⁹⁰ See Article 136 of the Constitution.

⁹¹ See Article 135 of the Constitution.

⁹² *Id.*

the Convention: the new Constitution could not transgress any international treaty, including free trade treaties.

Further measures to promote democracy and social justice were also taken. On March 20, 2020, Law No. 21,216 was approved, establishing a mechanism to ensure gender parity in the Convention. A political agreement was also reached to ensure seventeen seats for representatives of Indigenous peoples or communities.⁹³

The plebiscite was originally scheduled for April 26, 2020, but was suspended because of the pandemic. The consultation was finally held on October 25, 2020. 50.86% of adults voted, close to 7.5 million people, and 78.27% voted in favor of the idea of initiating a constituent process, while the remaining 21.73% voted for the rejection option.⁹⁴ Regarding the type of constituent body, 78.99% voted for the Constitutional Convention and 21.01% for the alternative Constitutional Mixed Convention.⁹⁵

From that moment on, rapid conversations began within the political parties and civil society organizations, some of which were formed specially to compete electorally. The elections of the 155 representatives who form part of the Constitutional Convention were held on May 15–16, 2021: 41.51% of the citizens (close to 6.2 million people) voted in this election. In all, 1,374 candidates from all political sectors ran for office, including numerous independent candidates.

Right-wing candidates obtained 37 seats (23.9%); Concertación (Lista del Apruebo) obtained 25 seats (16.1%); Apruebo Dignidad, which includes the Communist Party and the Frente Amplio, obtained 28 seats (18.1%); Independents received 24 seats (15.5%); and 17 seats were reserved for representatives of Indigenous peoples (11%). The Convention represents

⁹³ See Law No. 21,298 (Dec. 23, 2019).

⁹⁴ Details of the results of the Oct. 25, 2020, plebiscite can be found at the following: PLEBISCITO NACIONAL 2020, <https://plebiscitonacional2020.cl/> [<https://perma.cc/6PM7-KPQL>].

⁹⁵ *Id.*

the real Chile much better than the current composition of the Congress, because many of the Convention members are ordinary citizens with no previous trajectory of political leadership or political party membership.

To approve the new constitutional norms, two-thirds of the representatives must vote in favor. As can be seen, no single sector has sufficient power to veto an agreement reached by all the others. This opens a scenario of complex and multiple bilateral and multilateral negotiations in the Convention. It should be noted that the strategy of the right-wing parties was to support the rejection vote in the 2020 plebiscite and ensure that at least one-third of their candidates were elected in the Convention. Neither one nor the other happened, so the right-wing, for the first time in more than three decades of successive democratic governments in the prolonged political transition to democracy, will not be able to veto the agreements reached by the other political sectors. In any case, the dispersion of political opinions in the opposition is so great that it is impossible to ensure that these representatives will agree on all substantive issues with votes exceeding two-thirds of the members of the Convention.

It is instructive to examine the strategies and devices employed during a pandemic-era electoral campaign. This is the election in which campaign spending had the smallest effect on the outcome. Social networking marketing strategies have been critical. Health restrictions have precluded cities' streets and squares from hosting large events and rallies. Street advertising expenditures were also lower than in previous elections. Political marketing campaigns emphasized media appearances (e.g., forums and interviews on local radio or television stations) and social media. This enabled smaller candidacies to make their proposals and campaign messages heard despite their limited resources.

V. THE CONSTITUTIONAL CONVENTION

In the October 2020 plebiscite and in the May 2021 elections, the citizenry has been clear: The vast majority wants a new social pact, a more

inclusive social contract. For example, a significant number of recently elected candidates have said that among their priorities is the recognition in the new Constitution that Chile is a “plurinational” country.⁹⁶ Most of them also intend to revise the rules regarding natural resources, particularly water rights and mining. Above all, citizens have supported candidates who are in favor of a social protection system. The pressure and stress felt by ordinary citizens are too strong, having to face practically alone all the adversities, risks, uncertainties, and living costs.

It should not be forgotten that the right-wing parties sat down to negotiate in November 2019 because, faced with the social mobilization that had the country practically paralyzed, the government was on the ropes. The skills of some leaders of the right-wing parties allowed them to demand when signing the Agreement that two-thirds approve the norms of the new Constitution of the members of the Convention. Obviously, what the right-wing intended to do was to make sure once again that with enough seats, they could control the discussion and even block the process so that the new Constitution would say what they were willing to concede. Then, most of the right-wing campaigned so that in the October 2020 plebiscite citizens would vote for the rejection option. With a certain lack of enthusiasm, the government chose not to get directly involved in the plebiscite with a particular position, avoiding inviting its electorate to vote for or against the idea of initiating a constituent process. Due to the fact that the right-wing did not achieve the one-third goal, it has recently adopted a more affable demeanor, claiming to be more receptive to dialogue and emphasizing the importance of the Constitution representing all sectors of society; however, at this point, this shift in attitude will hardly convince the rest of the Convention.

⁹⁶ See SALVADOR MILLALEO, POR UNA VÍA “CHILENA” A LA PLURINACIONALIDAD: INTERVENCIONES DE UNA DÉCADA, 2010–2020 (2021).

The first session of the Convention took place on July 4, 2021, in the gardens of the former Congress. Dr. Elisa Loncón, university professor and Mapuche representative, was elected president of the Convention, and Dr. Jaime Bassa, university professor and representative of Valparaíso, was elected vice-president.⁹⁷ From that date, the public discussion regarding what will be the basis for the new Republic that citizens yearn for has begun. Eight provisional committees were created: Regulations; Human Rights; Budget; Ethics; Communications, Information, and Transparency; Citizen Participation; Equity and Territorial Justice; Decentralization; Indigenous Participation and Consultation, as well as an External Allocations Committee. The board was also expanded to include seven assistant vice presidents. The first few months were spent drafting internal operating rules that were then approved in early October 2021.

Having completed this preliminary work and coinciding with the commemoration of two years since the massive social mobilizations of the social outbreak, on October 18, 2021, the substantive discussions began in the seven thematic committees created for drafting the norms of the new constitution: Constitutional Principles; Fundamental Rights; Political System; Decentralization; Environment; Justice Systems; Knowledge Systems, cultures, science, technology, arts, and heritages.⁹⁸

VI. MAIN CONSTITUTIONAL DEBATES AND INSTITUTIONAL CHALLENGES

The lack of welfare or social state has been more evident than ever during the COVID-19 pandemic. Desperate to have enough money to pay for basic services, food, and housing, and without sufficient support from

⁹⁷ As previously agreed in the Convention, six months later there would be a change in the board, so at the beginning of January 2022 there were internal elections. The new President of the Convention is Dr. María Elisa Quinteros and the new Vice President of the convention is Dr. Gaspar Domínguez.

⁹⁸ EL MERCURIO, Oct. 4, 2021, at C4.

the state, individuals have resorted to withdrawing money from their retirement accounts. Frustratingly, Parliament has passed laws to withdraw from retirement accounts instead of providing social aid. If you examine the proposals of the Convention members, you will see that many of them want to change the social welfare system, the private insurance system to cover health expenses, the financing of higher education, and recognize Indigenous peoples' rights.⁹⁹ Citizens are tired of the Euro-hetero-patriarchy,¹⁰⁰ classism, racism, discrimination, and abuses of the most privileged sectors.

This Section identifies and systematizes sixteen issues of the utmost importance that have been raised by citizens organized in local and self-convened meetings, in demands expressed through mobilizations and street protests during 2019, and in the process of participatory discussion of a new Constitution carried out in the second government of Bachelet (2014–2018). These sixteen issues are grouped into three categories covering institutional principles, fundamental rights, and state organization. Surely these areas of discussion will require the members of the Convention to pronounce themselves in the committees and plenary. These 16 issues are likely to form the core of the public debate. As there is no consensus among all political sectors on each of these issues, the exercise of identifying and specifying them may make a concrete contribution to the ongoing debate.

A. Institutional Principles

1. Welfare or Social State: The 1980 Constitution maintains the liberal tradition of defining the State. It is argued that the State has been granted a

⁹⁹ See Plataforma Contexto, *Recurrencia de Temas Seleccionados en Programas Constituyentes*, <https://laconstituciondelconfianza.cl/articulo/las-tem%C3%A1ticas-m%C3%A1s-mencionadas-en-los-programas-de-los-155-constituyentes-electos> [https://perma.cc/4UZZ-GTK5].

¹⁰⁰ See Frank Valdés, *Unpacking Hetero-Patriarchy: tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins*, 8 YALE J. L. & HUMANITIES 161–211 (1996).

“subsidiary” role in the provision of social services, having to intervene when the private sector is not able to solve the social demands of health, education, housing, etc.¹⁰¹ Since, to date, the State has not sufficiently guaranteed economic, social, and cultural rights, one of the citizens’ demands is that the State’s welfare or social role be expressly stated.¹⁰² This means that public agencies should assume the responsibility of offering a set of minimum social guarantees to all citizens, providing the corresponding services to the extent that there are needs that have not been met autonomously by individuals.

2. Plurinational State: Chilean constitutionalism has relied on the figure of the nation state, as if there were only one people or nation in the country. But that vision has meant not only constitutionally ignoring the existence of several Indigenous peoples in the country, but has also implied the lack of recognition of their collective rights. The historical dispossession of their lands, assimilationist, and liberal policies, and the persistent humiliation and aggression by the dominant sectors of Chilean society are the deep roots of the conflicts that have occurred in southern Chile since the mid-1990s.¹⁰³ That is why it has been proposed that the new Constitution expressly states that Chile values and promotes cultural diversity, recognizing the collective rights of Indigenous peoples.¹⁰⁴

¹⁰¹ See Christian Viera, *Estado Social Como Fórmula en la Constitución Que Queremos*, in JAIME BASSA, JUAN CARLOS FERRADA & CHRISTIAN VIERA (EDS.), *LA CONSTITUCIÓN QUE QUEREMOS: PROPUESTAS PARA UN MOMENTO DE CRISIS CONSTITUYENTE* 87–110 (2019).

¹⁰² Cristián Viera, *Estado Social como fórmula en la Constitución chilena*, 21(2) *REVISTA DE DERECHO (COQUIMBO)* 453–82 (2014).

¹⁰³ JOSÉ BENGUA, *HISTORIA DE UN CONFLICTO: EL ESTADOS Y LOS MAPUCHES EN EL SIGLO XX* (1999).

¹⁰⁴ See SALVADOR MILLALEO, *POR UNA VÍA “CHILENA” A LA PLURINACIONALIDAD. INTERVENCIONES DE UNA DÉCADA (2010–2020)*, (2021); Gonzalo Aguilar et al., *The Constitutional Recognition of Indigenous Peoples in Latin America*, 2 *PACE INT’L L. REV. ONLINE* 44 (2010); Hugo Rojas, *Stop Cultural Exclusions (in Chile)! Reflections on the Principle of Multiculturalism*, 55 *FLA. L. REV.* 121 (2003); HUGO ROJAS, *EL PRINCIPIO DE LA MULTICULTURALIDAD: UNA PROPUESTA JURÍDICA PARA PROMOVER Y PROTEGER NUESTRA DIVERSIDAD CULTURAL* (2022).

3. Democratic State: The 1980 Constitution establishes that sovereignty is exercised periodically through elections and plebiscites, and through the authorities mentioned in the Constitution itself (Article 5.1). This means that a model of representative democracy governs Chile. However, in view of the crisis of representation and distrust of the actions of authorities, the convenience of moving towards a model of democracy that considers various mechanisms of direct participation in public decision-making has been raised. Among such mechanisms could be considered the popular initiative of law, mandatory consultations, direct participation in discussions at the local level, strengthening the powers of neighborhood councils, creating citizen councils, etc.

4. Gender equity: Strong criticisms have been levied against the heteropatriarchy that has historically prevailed in power relations both within households and in social coexistence.¹⁰⁵ The current regulations and public policies implemented by the governments of the political transition to democracy have been insufficient to advance towards greater levels of justice and gender equity. Feminist organizations and sexual minorities, in addition to the most progressive sectors of Chilean society, believe that the Constitution should not be neutral in these matters.¹⁰⁶ One proposal is to include gender quotas in positions of popular representation to ensure equal participation in public bodies.¹⁰⁷

¹⁰⁵ In 2018 there were numerous mobilizations in Chile led by the feminist movement, with the intention of denouncing and preventing acts of violence and discrimination that women and sexual minorities suffer in Chile. See MAYO FEMINISTA. LA REBELIÓN CONTRA EL PATRIARCADO (Faride Zerán, ed., 2018).

¹⁰⁶ LA CONSTITUCIÓN FEMINISTA (Bárbara Sepúlveda & Florencia Pinto, coords., 2021).

¹⁰⁷ Lieta Vivaldi, *Proceso constituyente y feminismo*, LA TERCERA (Mar. 28, 2021) <https://www.latercera.com/opinion/noticia/proceso-constituyente-y-feminismo/67JQA7YMMNDPXENDLL5VNK5UNY/> [<https://perma.cc/W59S-7KVH>].

B. Fundamental Rights

5. Right to education: Article 19 No. 10 of the Constitution recognizes the right to education. This article determines that the State must ensure the exercise of this right. It also mentions that the State must finance a free education system. Article 19 No. 11 recognizes the freedom of education and the right of parents to choose the educational establishment for their children. However, nothing is said about the quality of public education. It is well-known that the education received by students is dissimilar, depending mainly on the purchasing power of the parents. Citizens demand quality education for all schoolchildren.¹⁰⁸

6. Right to health: Article 19 No. 9 recognizes the right to health protection, and the State must protect access to healthcare and coordinate actions related to health. It also recognizes the right of each person to choose the health system they wish to join, whether public or private. Those who disagree with how health has been regulated in the Constitution point out that the right to health should be expressly recognized, and a public health model with quality standards should be ensured. As in the case of education, the commercialization of health has been criticized. Suffice it to point out that during 2020, health insurance companies reached 82 billion pesos in profits (equivalent to \$109 million USD).

7. Right to housing: The 1980 Constitution makes no reference to a right to housing. It is worth noting in this regard that Article 11 of the International Covenant on Economic, Social, and Cultural Rights, adopted by the United Nations General Assembly in 1966, recognizes the right of everyone to an adequate standard of living for themselves and their families, as well as the right to continuous improvement of living conditions, which includes the right to adequate housing.

¹⁰⁸ See Constanza Salgado, *El derecho a la educación en una nueva Constitución*, in LA CONSTITUCIÓN QUE QUEREMOS: PROPUESTAS PARA UN MOMENTO DE CRISIS CONSTITUYENTE 213–40 (Jaime Bassa, Juan Carlos Ferrada & Christian Viera, eds., 2019).

8. Right to strike: Article 19 No. 16 of the Constitution does not expressly recognize the right of workers to strike. It only states that State employees and employees of institutions that provide public utility services or whose suspension could affect health, economy, supply, or national security may not go on strike. The standard desired by unions is that the new Constitution should move towards the provisions of Article 8.1.d of the International Covenant on Economic, Social and Cultural Rights, i.e., that the right of workers to strike be expressly recognized. This would strengthen the power of unions in collective bargaining.¹⁰⁹

9. Water rights: Art. 19 No. 24 of the Constitution states that the rights of individuals over water, recognized or constituted in accordance with the law, grant their owners “property rights” over them. This provision deserves to be discussed because it validates the water rights concession system, i.e., the water mercantilization and privatization model. Farmers, peasants, and Indigenous peoples are currently affected by the commodification of water. But water use should be rational, fair, equitable, and sustainable.

10. Social security: Art. 19 No. 18 enshrines the right to social security. It also establishes the role of the State in this area: to guarantee access to the enjoyment of uniform basic benefits granted by public or private institutions and to supervise the exercise of this right. The criticisms that the pension funds administrators’ system (known as AFP) has received in Chile are well known, and it is likely that the principles that should guide social security, establishing higher levels of intergenerational solidarity, will be discussed in the Convention.

¹⁰⁹ See Daniela Marzi & José Luis Ugarte, *Trabajo y Constitución*, in *LA CONSTITUCIÓN QUE QUEREMOS: PROPUESTAS PARA UN MOMENTO DE CRISIS CONSTITUYENTE* 277–302 (Jaime Bassa, Juan Carlos Ferrada & Christian Viera, eds., 2019).

C. State Organization

11. Decentralization: Article 3 of the Constitution states that the administration of the State shall be decentralized or deconcentrated, and that regionalization and equitable and supportive development among regions, provinces, and municipalities shall be promoted. The new Constitution should grant more powers to municipalities and regional governments, since currently the decision making is in the so-called civic neighborhood, in Downtown Santiago. It might even be convenient to discuss the current territorial organization of the State of Chile, reviewing the conformation of regions, provinces, and municipalities.

12. Attenuated Presidential system: The 1980 Constitution maintained the presidential regime as the form of government. The powers of the President are excessive and almost unlimited. For example, the Presidency has broad legislative powers. It has exclusive initiative for a set of matters and can set the pace of the processing of bills in Congress with the system of urgencies, etc. Considering the political pluralism that characterizes Chilean society, and the advantages of the proportional electoral system, it is plausible to discuss the convenience of moving towards a parliamentary regime. This would considerably increase the coordination between the Executive and the Legislative branches. Certainly, it makes no strategic sense for one of these powers to be in Santiago while the other is based in Valparaíso. If the idea of establishing a parliamentary system does not succeed, there should be enough votes in the Convention to at least approve a semi-presidential regime, reducing the attributions of the Presidency of the Republic and the Executive.

13. Unicameral Parliament: Currently the duplication of parliamentary debate is absurd and affects the capacity of Congress to respond in a timely manner. It would be preferable to have a single chamber, composed of a reasonable number of parliamentarians, which, in practice, would allow them to fulfill both their representative duties and the dedication required for their legislative work. Perhaps the Senate could be replaced by a second

chamber that pays attention to regional issues, given the diversity of the problems in the different areas of the country. If this idea succeeds, all the norms that regulate the parliamentary processing of bills would have to be reformed. It should be mentioned that it is essential to establish in Congress a team of staffers to collaborate in the research and legal-political activities that are essential for parliamentary discussion.

14. Legislative quorums: The 1980 Constitution established especially high quorums for the approval of all important laws. In practice, what has happened is that minority sectors have prevented the approval of reforms to organic constitutional laws and laws that require qualified quorums. Eventually, the majority of the representatives in Congress could discuss the types of laws identified in the Constitution and lower their approval quorums.

15. Transformation of the Constitutional Court: After the 2005 constitutional reform, the Constitutional Court has become a *de facto* third legislative chamber. This means that every time a group of parliamentarians is dissatisfied with the bills being approved, they can appeal to the Constitutional Court and prevent their approval. Article 93 of the Constitution is the norm that has generated the most controversy. The Constitutional Court carries out a mandatory control of organic constitutional laws and resolves questions of constitutionality that arise during the processing of bills or constitutional reform bills and treaties submitted to Congress for approval. It has been argued that the Constitutional Court has acquired excessive power that affects the legislative process.¹¹⁰ Therefore, it is argued that it would be sufficient to ensure a *posteriori* control of the constitutionality of laws. Such control could be perfectly well placed in the Supreme Court, as in the United States.

¹¹⁰ FERNANDO ATRIA, LA CONSTITUCIÓN TRAMPOSA 54 (2013).

16. Economic activity of the State: Article 19 No. 21 of the Constitution allows the State to develop entrepreneurial activities or participate in them only if expressly and specifically authorized by a law of qualified quorum. The general rule is that the private sector carries out entrepreneurial activities. But it happens that in Chile, there are natural resources whose exploitation could benefit the entire population, such as copper or lithium. Therefore, the economic role of the State will surely be discussed in the constituent process.

VII. FINAL COMMENTS

Several social phenomena are intertwined in this process of constitutional discussion and need to be better understood. For example, in the May 2021 election, only 41.5% of the people who could exercise their right to vote chose to do so. It is necessary to understand what happens to the 58.5% who chose not to vote. Some hypotheses that would be interesting to test are related to indifference, political apathy, hopelessness, fear of contagion, ignorance, or misinformation.

Just as the big winners of the May 2021 election were the left (Communist Party and *Frente Amplio*) and the independents (The People's List, the List of Non-Neutral Independents, and other independent candidates), the big losers were the parties of the old and worn-out *Concertación* and the right-wing ruling parties.¹¹¹ It will be interesting to see what the traditional parties do, what lessons and self-criticisms they propose, and how they reformulate themselves to try to re-enchante an electorate that has preferred not to vote or has opted to support other electoral alternatives. There is no doubt that the electoral results were a surprise for the political establishment, and they have acknowledged that

¹¹¹ *Elecciones en Chile: Candidatos Independientes y de la Oposición Dominan la Asamblea que Redactará la Nueva Constitución*, BBC (May 17, 2021), <https://www.bbc.com/mundo/noticias-america-latina-57139669> [<https://perma.cc/EKN5-EVNY>].

the electoral defeat they suffered was tremendous. The political talks and negotiations of these last months have been as dizzying as disorderly, affecting even more the credibility of the political parties. Times are running against the parties that governed during the transition because 2021 has been teeming with elections.¹¹²

It is also urgent to understand the growing contempt for public institutions. Increasingly frequent citizen criticism of the rule of law and distrust of political authorities and public officials are reflected in public opinion polls. For example, the levels of approval of the government, congress, the judiciary, the police, and political parties are worryingly and dangerously decreasing. Mistrust in public institutions facilitates the appearance of other actors on the scene, as has been happening with an increased presence of organized crime in the country's main cities, and violence between indigenous and non-indigenous people is also rampant.

¹¹² As noted, on May 15–16, 2021, members of the Constitutional Convention were elected. In addition, on June 13, 2021, the second round of the election of governors took place, and on July 18 and August 21, 2021, the presidential primaries were held. The results of the November 21 parliamentary elections indicate that none of the political conglomerates obtained a majority in the Chamber of Deputies or in the Senate. The next government will not have the majority it needs to pass legislative reforms. This can become a complex issue as the opposition can block the legislative agenda. A great deal of wisdom, prudence and negotiation skills will be required to reach multilateral agreements. In the December 2021 presidential election, the leftist candidate and former student leader, Gabriel Boric, won by a wide margin. The strategies developed by the new government, in parallel with the work of the Constitutional Convention, will be extremely important since the political scenario would become extremely complex in Chile if the rejection option triumphs in the plebiscite to ratify the new Constitution. The failure of the institutional options to repeal Pinochet's Constitution could trigger a new social crisis in the country, even greater than the one of October 2019. I have the impression that the right-wing parties have not anticipated the complex implications that the victory of the rejectionist option could have. It would be reasonable for them to have a more cooperative and constructive attitude now that they will be in the opposition for the next four years.

According to Gabriel Bocksang, Chile's rule of law "is seriously compromised."¹¹³

The constituent process should be conceived as an opportunity to discuss in a participatory and democratic manner the principles that orient or guide the way in which Chilean men and women organize themselves politically and enshrine their fundamental rights. As a group of constitutional law professors have said: "If the process is clearly democratic, welcomes social pluralism, exhibits a high-minded discussion and excludes violence, it will demonstrate the value of democracy to channel conflicts and the strength of collective solutions for a life in the community."¹¹⁴ It is to be hoped that the constitutional discussion is carried out peacefully and democratically, that the approved Constitution will represent the vast majority of Chileans, and that it will last in time. The academy should support this budding constituent process through reflections, diagnosis, and proposals, and thus collaborate to strengthen and promote democracy, the rule of law, and fundamental rights. With the approval of a new Constitution, not only will the transition to democracy come to an end, but it is also likely that the Republic of Chile will be re-founded from its foundations.

Finally, it should be remembered that Article 142 of the Constitution states that if in the ratification plebiscite citizens reject the draft Constitution presented by the Convention, then the 1980 Constitution will remain in force. This scenario would obviously not be advisable because that would mean the failure of the institutional mechanisms to reach basic consensus on the type of country Chileans want for the future. Without such

¹¹³ Gabriel Bocksang, *En defensa del Estado de Derecho*, EL MERCURIO (Apr. 24, 2021), <https://derecho.uc.cl/es/noticias/derecho-uc-en-los-medios/28367-decano-gabriel-bocksang-en-defensa-del-estado-de-derecho> [<https://perma.cc/C97W-NYMR>].

¹¹⁴ See COMISIÓN UC PROCESO CONSTITUCIONAL, REFLEXIONES EN TORNO AL PROCESO DE ELABORACIÓN DE LA NUEVA CONSTITUCIÓN (2021), <https://www.uc.cl/site/assets/files/13232/reflexiones-en-torno-al-proceso-de-elaboracion-de-la-nueva-constitucion.pdf?it=site/efs/files/13232/reflexiones-en-torno-al-proceso-de-elaboracion-de-la-nueva-constitucion.pdf> [<https://perma.cc/Q3TG-PSJU>].

basic agreements on the substantive issues mentioned in this document, reaching a shared project among all sectors would not only be even more difficult in the coming years but could jeopardize the democratic system itself.