

Chile's Two Constitutional Reform Referenda 2022–2023: Symptoms of Democracy Development in Latin America

Roland Benedikter · Miguel Zlosilo · Carlos Cruz Infante

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Abstract Chile is a special case of democratic evolution in Latin America and in many fields not representative of other nations on the continent. Nevertheless, the countries' attempts to reform its constitution have been subject to close observation both in its geopolitical area and internationally. This article discusses the state and transformation patterns of Chile's democracy in light of the two constitutional reform referenda of 2022 and 2023 and derives insights for the global community of democracies.

Keywords Chile · Latin America · Constitutional reforms · Governance · Future of democracy

✉ Roland Benedikter
Center for Advanced Studies, Eurac Research, Drususallee 1, 39100 Bozen, Italy
E-Mail: roland.benedikter@eurac.edu

Miguel Zlosilo
Artool, Santiago de Chile, Chile
E-Mail: mzlosilo@gmail.com

Carlos Cruz Infante
Deheza Ltd., London, UK
E-Mail: c.cruz.infante@gmail.com

Chiles zwei Verfassungs-Reform-Referenden 2022–2023: Symptome der Demokratieentwicklung in Lateinamerika

Zusammenfassung Chile ist ein Sonderfall demokratischer Entwicklung in Lateinamerika und in mehreren Bereichen nicht repräsentativ für andere Nationen des Kontinents. Doch die wiederholten Versuche des Landes, seine Verfassung zu reformieren, wurden sowohl im geopolitischen Umfeld wie international genau beobachtet. Dieser Beitrag erörtert Zustand und Transformationsmuster der chilenischen Demokratie im Lichte der beiden Verfassungsreform-Referenden von 2022 und 2023 und leitet Lehren für die globale Gemeinschaft der Demokratien ab.

Schlüsselwörter Chile · Lateinamerika · Verfassungsreform · Regierungsführung · Zukunft der Demokratie

1 Introduction

How Latin America's democracies anchor, structure and govern themselves in terms of values; how, to this end, they adapt and develop their societal fundamentals by reforming their constitutions; and, even more importantly, how open societies in the Global South evolve their self-conceptions are major concerns for the global community of democracies. This has become particularly true in the midst of their decreasing number and increasing macro-competition with autocratic powers now branded as “systemic rivals” by the EU and the U.S. such as China and Russia. While Chile is a special case of democratic evolution in Latin America and in many fields not representative of other nations on the continent, the countries' attempts to reform its constitution have been subject to close observation in its geopolitical area and internationally (Nolte 2022). Two constitutional reform referenda, in September 2022 and December 2023, have exemplified the symptomatology of transition at the interface of constitutional, ideological and political implications, manifesting exemplary light and shadows in the process. This text discusses the state and transformation patterns of Chile's democracy in light of these two referenda. In conclusion, we draw on options and perspectives, including input provided by the evolving cooperation with international civil drivers of democratic governance and rule-of-law development such as the European Union (EU).

On 17 December 2023, Chileans voted on a new constitution for the second time in fifteen months (Candia et al. 2023). The first proposal had been rejected in a popular referendum just over a year previously, on 4 September 2022 (Benedikter and Zlosilo 2022a, 2022b). Given the public turmoil which incessantly accompanied the process throughout all of its stages, including aspects of deepening ideological and social polarization, it was no surprise that, like the first referendum, the second reform draft of December 2023 was once again rejected by a clear majority of voters, with around 56% voting “no” and 44% “yes” (Candia et al. 2023).

Interestingly, while the first proposal of 2022 was strongly left-leaning, the second of 2023 was openly right-oriented. This switch of poles was not least due to the notorious rollercoaster of sharp voter swings in Chilean elections, which many have

interpreted as a sign of a still “juvenile democracy” of voters who regularly alternate exaggerated hopes and disillusionings; and with political victors who regularly try to actively undo the work of their predecessors and take it to the opposite policy, thus undermining stable progress (Benedikter and Zlosilo 2017; Benedikter et al. 2021). The fact that both plebiscites ended with negative results despite their clear, yet opposed ideological inclinations pointed to the challenge that one-sided policies can neither process nor progress the structural fundamentals of democracy appropriately. The reason for this is that democracy is by definition a spectrum of co-existing “incommensurable” positions which must structure their fundamental incompatibility to minimal basic consensus (Lyotard 1988). The double rejection of the two reform texts thereby showed that it is only on the middle ground where ideological, social and political poles meet that democracy works positively. Thus, such a new middle ground for joint progress, also with regard to democracy itself and its constitutional fundamentals, is needed to evolve Chile's societal fundament, and it obviously hasn't yet been found in the Andean nation. Third, the two negative results pointed to the perspective that democracy in Chile and in Latin America needs more outside input to refresh itself and to become more balanced and resilient. Given the profound adversities that separate the continent from influences of the United States' democracy model due to the history of the area (Kat 2022), the historically and contextually most suitable middle-ground-oriented model for Latin America's democratic future could be a more accentuated cooperation with the European Union's advice for rule-of-law improvements and constitutional refinement.

2 Chile's Constitutional Reform Process: A long *Short Story* of Metamorphoses

The recent Chilean constitutional reform process began as a theoretical idea in 2018. It was spurred by the massive social protests and violent demonstrations of 2019–2020 against rising inequality which ultimately turned against the – in essence – still Pinochet-originating constitution of 1980. It was an upheaval branded as an *estallido social* or “social explosion” (Gordon-Zolov 2023), which disrupted the basic democratic consensus of what was once considered the most peaceful and stable country in Latin America (Bunyan 2019).

A new Chilean constitution has been desired, particularly by the left and the center-left of the country, since the constitution of 1980 came into effect, because it was approved during the dictatorship of Augusto Pinochet Ugarte (1973–1990) without meeting a series of minimum standards of legitimacy (Lankes 2022). Thus, the need to change Pinochet's constitution was raised from the start because, according to its critics, it had original defects and primarily aimed at formalizing the model of society imposed by the dictatorship. In 2019, political expert Claudia Heiss pointed out that

the problem we [in Chile] have is that this constitution does not have democratic legitimacy, because it was made by a dictator with a political objective: to prevent some things from being possible in the normal democratic political

game. A democratic constitution has to establish a level playing field. The rules we have do not establish that level playing field, but rather an uneven one, because the objective of this constitution was to prevent some political decisions from being made. (Albert 2019)

According to Heiss,

this has directly to do with what is at stake: the lack of protection that citizens feel in the face of old age, illness, or low salaries. Everything that the protests [against the existing constitution] call ‘abuses’ is because we [in Chile] fundamentally lack social protection. While in other [democratic] constitutions there are economic and social rights [of citizens], in Chile’s constitution it was established that there are ‘freedoms’, which are not rights. (Albert 2019)

As Heiss underscored, as a consequence of such an arrangement Chile featured a structurally weak subsidiary state, with the orientation of the public system putting the freedom to offer services by the private sector first, not the need to guarantee that these services were covered equally for the whole population. This made Chile’s welfare state an ambiguous endeavor, differentiating it from other Western models and particularly from Europe. Furthermore, Chile’s constitution is eager to protect the status quo by means of a vast variety of mechanisms that make it very difficult to change it. It does so mainly by the ubiquitous requirement of large parliamentary majorities.

Despite this founding history, it has been asserted that the constitution that has to be reformed is ultimately not that of Pinochet, but rather that of Ricardo Lagos (Noema 2022). This considers the fact that an important constitutional reform was already carried out during Lagos’ presidency (2000–2006) in 2005. In it, a series of authoritarian enclaves left by the military government were smoothed out or eliminated and the oversight powers of Congress were increased, but with the ultimate goal to ensure that the original text maintained its validity for reasons of stability and continuity of an – in essence – successful economic history (Fuentes 2011, 2015).

Over the long run though, many believed Lagos’ constitution was only the first step toward a more solid juridical anchoring of “real democracy”. A more ambitious project appeared necessary that would take the step from Lagos’ eclectic reforms to a veritable constitutional process started from scratch. A posteriori though, it appears plausible that the origins of this urge to write a completely new constitution were more symbolic and ideological than technical, that is, nothing indicates that it was not possible to reform the Lagos constitution to achieve the required objectives. The main political issue was to erase Pinochet’s footprint to give democracy a historically more independent fundament.

Among those who indicated that a new constituent process was indispensable, the argument proliferated that

a Constituent Assembly could incorporate groups that have been historically marginalized and that continue to be marginalized by the current [ultimately

Pinochet-based] Constitution. They could have a much more representative and incident presence, for example, indigenous peoples and people from remote regions, including equal participation of men and women. (Albert 2019)

Yet the catalysts for the recent – most serious and deep-reaching – constitutional reform process were the waves of social unrest of 2018 (Benedikter et al. 2018) and 2019–2020. These pushed the second government of Sebastián Piñera (2018–2022) to start the process reluctantly. This endeavor immediately encountered strong opposition from the more traditional right, which held that just starting such a process was a betrayal of the nation's principles and identity. The public anger about social inequality of 2018 and 2019–2020 favored populist speech focused on slogans such as “it's not 30 pesos [i.e., a cheap issue], it's 30 years [of abuse based on Pinochet constitution]”. In general, slogans were heard which shared a joint motive in the demand to draft a new constitution for a more just society. The subsequent two failed attempts of 2022 and 2023 temporarily stopped the process and enforced a rethinking of its goals and implications.

3 Analyzing the Two Constitutional Reform Attempts

After the two failed reform attempts of 2022–2023, the path ahead to a third, perhaps more balanced new constitutional text remains open. It is shadowed by the uncertainties that unaccomplished reforms left behind, generally weakening the credibility of institutions and political actors, if not of the “political class” in Chile itself. Second, the path ahead is burdened by an increasingly complex situation within the greater moving framework of re-globalization (Benedikter 2021), i.e., the expanding multipolarity of open versus closed societal systems across the globe which now compete for the Latin American continent in particular, and the Global South in general (Benedikter 2022; Benedikter 2023). Against this backdrop, Chile's situation after the two failed reform attempts can be seen, with all due restrictions, as to some extent symptomatic of the volatile situation of democracy in the larger Latin American context, including its fluid and often contradictory relations with the EU.

When the two rejected constitutional proposals of 2022 and 2023 are analyzed, a common element is observed. Both texts were prepared by a circumstantial majority, first from the left and then from the right. The result was that maximalist texts were generated which sought to represent a vision of society to be ideologically imposed by the majority in charge upon the defeated minority. In the first instance, the left-leaning process, the famous phrase “We play the music” was coined (El Mostrador 2021), meaning that the left believed they had a free hand to do whatever they wanted in writing the new constitution. In the second instance, despite the fact that the political right showed a somewhat greater willingness to incorporate views and arguments of the left into the process, the text result was similar, i.e., a constitutional draft which de facto did not represent all Chilean citizens.

Generalizing this for the Latin American context, a first lesson of the process became evident. When the following conditions are present, it is unlikely that a constitutional reform process may come to a successful conclusion:

- If there is a continuous pendulum political movement: i.e., if there is no ideological majority with electoral continuity in at least two consecutive elections.
- If there are majorities which by themselves fulfill the quorum needed for rewriting the constitution: i.e., if the winning coalition has all the necessary votes to approve the text without the need for serious and in-depth negotiation with the opposition.
- If the political system is in crisis of legitimacy: i.e., if political parties and authorities do not have sufficient credibility or leadership to direct the process with civil authority and sustainability in public acceptance and respect.

All three elements came together in the processes leading up to both rejected Chilean reform referenda, making it – right from the start – almost impossible for the processes to succeed. Yet both texts also presented some positive approaches which were innovative and could have been consensual from a merely democratic standpoint. For example, some elements of the first text were concerned with founding the basis of a more equal society, with the protection of natural resources and with progressive changes in the political system (Molina 2022). At the formal level, the length of the first text was criticized, since it was above international parameters.

As always, there were different opinions and expert judgements about both text proposals, for example among the scientific study centers that analyzed the texts. One view came from the Equality Institute. With regard to the first, left-leaning proposal of 2022 it highlighted:

The consecration of a social and democratic rule-of-law state. Strengthened labor rights. Parity democracy and the gender approach as a transversal aspect of all institutions. A democratic system which better balances power between the executive and the legislative, and various mechanisms of direct or participatory democracy. An ecological state and the effective decentralization of the central state through the formal establishment of regional institutions, functions and rights. (Navarrete 2022)

At the opposite pole, the Jaime Guzmán Foundation criticized the 2022 proposal, stating that

we went from a first article [in the constitution] which talks about the person and the family [as founding principles] to one that says that ‘Chile is a state’ [meaning the priority of state authority over citizens]. This drive can be seen in the exclusion of the preferential right of parents to educate their children and the concept of duties; in the consecration of the right to free abortion without the option of conscientious objection; and in the exclusion of true freedom to choose in matters of health. Or even in the projected [socialist] pension system, for example. (Navarrete 2022)

Regarding the second, conservative proposal of 2023, it was widely observed that although the – then – majority (the center-right) showed some inclination to work with the – then – minority (the center-left), a similar phenomenon of one-sidedness occurred:

No one was [formally] marginalized from building agreements, but you have to have the will to want to be part of those agreements [...] [The motto of the left was:] Either you give me what I want or I don't join the agreement. This attitude is a form of conscious self-exclusion. (Laborde 2023a)

Curiously, the issues that were criticized in the first text were repeated vis-a-vis in the second, for example, the issue of length. With regard to the conservative draft of 2023, leftist critic Antonia Rivas assessed that “[t]his is a maximalist proposal, long and with too much legislative content” (Sanhueza and Laborde 2023). This was exactly the same motif that the right had criticized with regard to the leftist first text of 2022. It shows that when the constitutional debate is approached from the view of ideology, it is improbable to impossible that an intermediate joint conclusion will be reached, since objectivity is fooled by passion.

4 Latin America's Democratic Trajectory and Europe

More important than the sheer domestic dimension of the two constitutional reform attempts in Chile is that the overall process to some extent mirrors the uncertain, yet open trajectory of Latin American democracy. The surrounding region has been closely observing the Chilean process. Experiences with constitutional reform attempts in Venezuela, Ecuador and Bolivia have been notably detrimental to their systems. Consequently, it is crucial to assess the complexities of the most recent constitutional referendum, i.e., that of December 2023, and to obtain lessons both for Chile, other processes in the neighborhood and outside observers.

Over the course of the 2000s, the EU – which considers itself as an international helping force in democratic developmental and regulation-establishing matters and as a rule-of-law adviser – has been establishing closer and closer ties with Chile. It sees the Andean nation as an anchor point for common policies and values in Latin America, and the constitutional reform attempt as a chance for tighter relations. For the EU, the constitutional reform processes in Chile in particular and other Latin American nations in general can in turn serve as a substantial learning process about the new global network of democracies and its inherent trends – especially as the current phase of re-globalization is creating a more multipolar world (Benedikter et al. 2022) in which it is still unclear in many areas whether more restrictive or more open societal perspectives will prevail, and what the future of the relation between globalization, multipolarity and democracy may be (Steger et al. 2023).

5 The EU's and Chile's Joint “Framework Building” Around the Referendum

What is at stake for the future can be best understood by the relation of any envisaged new Chilean constitution to the EU's basic blueprint which has formed a kind of loose point of reference for Chile's democratization process since the 1990s. When in September 2022 the first draft of the new constitution was rejected by

the majority of Chilean voters, the EU declared that it was ready to further assist in creating a participatory process (as much as possible) for the citizens, to help with any content creation where it was wished for by Chile's citizens, and to secure the democratic handling of the outcome. With regard to all this, the EU pointed to the existing EU-Chile Association agreement of 2002 (European Commission [n.d.](#)) which in 2022 underwent a process of "modernization". In December 2022, i.e., just a few months after Chile's constitutional referendum, it proceeded to the current EU-Chile Advanced Framework Agreement (European Commission [2023](#)). The EU stated that this new, more modern, multidimensional and timely agreement

will pave the way for the further deepening of our extensive cooperation in areas such as multilateralism, democracy, human rights, gender equality and climate action, inclusive and sustainable development and new trade opportunities. (Strategic Communications EU [2022](#))

While the EU-Chile Framework Agreement aims at regulating mainly trade and economic relations, its recent update actively and consciously included "democracy", thus mirroring interests on both sides of the pond. It is expected that this may also unfold a positive impact on Chile's further path institution-wise. A preceding "Mission to Chile" by members of the EU parliament in June 2023 underscored this and noted

a willingness from the whole political spectrum, including the far right, to convey a consensual message on the importance of reaching a non-partisan balanced text in view of the plebiscite. (De Meo et al. [2023](#))

It also highlighted "[t]he positive perception about EU-Chile relations and a willingness to deepen collaboration in a number of areas, in particular digital, cyber and data protection where the EU's model is seen as a reference point." (De Meo et al. [2023](#))

Another common point between Chile and the EU is their joint development of the sovereign green bonds frameworks (Madeira and Pérez [2023](#)). The 27. meeting of the Joint Parliamentary Committee EU-Chile on December 4–5, 2023 in Brussels discussed the constitutional referendum (European Parliament [2023](#)) and in a joint declaration stated that the envisaged extension of relations aimed particularly at sharing "common values" and socio-political approaches (Comision Parlamentaria Mixta UE-Chile [2023](#)), leaving a more direct reference to any new constitution open but probable.

6 Requirements for the Future and Main Challenges

After the negative outcome of the 2023 referendum the Chilean government assured that the process ended there, formally recognizing the 1980 Pinochet-imposed constitution, as reformed by leftist President Ricardo Lagos in 2005, as the only ruling constitution of the Republic of Chile. However, it is unlikely that this situation will remain stable for long. Since the 2010s, Chileans, like many other Latin Americans, have continuously expressed institutional distrust and discontent about

excessive income and wealth inequality and the extractive structure of the economy (Infante 2022). Although those malaises do not necessarily pertain to the constitutional realm but rather that of public policy, former President Michelle Bachelet (2014–2018) once again actively situated the *Magna Carta* at the center of the debate. This move co-established the idea that by changing the constitution many of the negative public issues of Chilean society would abruptly end (Verdugo and Contesse 2018). Moreover, Bachelet's constitutional debate attempt consciously excluded political parties and the political elite, with twofold consequences. On the one hand, this de-legitimized politicians and Chile's National Congress, which is vital to constitutional amendments due to the country's institutional framework. On the other hand, with this approach Bachelet ultimately boycotted herself. As Verdugo and Contesse (Verdugo and Contesse 2018) concluded: “[p]opular participation is required for both normative and practical reasons, and an elite political consensus is required to secure the effectiveness of the process.” Bachelet did not care sufficiently about the elitist part of the equation.

If one takes a closer look at the reasons why the constitutional reform process of 2018 to 2023 failed, it becomes obvious that the two biggest problems were voter fatigue (Malinowski 2023) and the strong oscillation of electoral preferences between leftist and rightist inclinations of the middle class and, more generally, on the side of the middle strata of Chilean society (Altman et al. 2023). A third problem was the sharp contradiction between the two constitutional drafts which, as mentioned, were strongly leftist-oriented in the 2022 instance and right-leaning in 2023 (Ramos Miranda et al. 2023).

While the EU has been careful to stay out of respective judgements in order to avoid the accusation of interference, it remains unclear to what extent the proposed 2023 enshrinement of “curbing the right to strike, guaranteeing the swift expulsion of undocumented migrants, protecting the right to life of the unborn and affirming the right to use private pension, education and health systems” (Nugent 2023) into the new Chilean constitution will be considered compatible with the main “values” of the EU (Stott 2023).

To take just one example of the dubious standing of “values” such as the right to vote in today's Chilean socio-political ecosystem, the first of the three reasons for the double failure of the referenda was *voter fatigue*. This led to general political skepticism – a factor that usually pushes voter segments to simplistic or populist positions. According to Chile's Electorate Service (Servicio Electoral de Chile 2023), voters were required to express their intentions in 20 different elections within three years between 2020 and 2023. That makes an impressive average of 6.66 elections per year, or one every 2 months. As is to be expected, Chileans arrived at the December 2023 referendum tired and disenchanted with voting. Indeed, according to CADEM Research, a local pollster, in November 2023, weeks before the plebiscite, 54% of respondents were either only slightly interested or uninterested in the referendum (Plaza Pública 2023). A survey by the prestigious Chilean think tank Centro de Estudios Públicos (CEP) found that immediately before voting 62% were undecided whether to approve or reject the reform proposal, which points to widespread disinterest (CEP 2023). As a point of reference, regarding the 2022 constitutional referendum, the same pollster reported that half of those questioned were undecided.

7 Democracy in Transition

Taking the two failed referenda, voter participation in such a primordial question and the constitutional debate more generally as a measure, the Chilean public's attitude toward the country's democracy must be considered as worrying. Recent surveys indicated that 69% of the interviewees thought Chile's political situation was "bad or very bad". Moreover, 70% claimed that politicians should reach agreements even if in doing so they had to compromise their principles.

Such democracy-adverse responses indicate that Chilean voters resented the excess of public consultations and the apparently never-ending constitutional reform process since the 2000s. Unlike the 2022 plebiscite campaign, in which President Boric *viva voce* supported the rejected first constitutional draft (Navia 2023), in the 2023 campaign the government was cautious about taking sides directly for either of the "yes" or "no" options (Laborde 2023a, 2023b; Laborde and De la Fuente 2023). Nevertheless, some unfortunate actions of the Boric administration undermined the system's legitimacy. The most controversial case involved high-level pro-government politicians, including some ministers, who assigned public funds to non-governmental organizations (NGOs) headed by their political "no" fellows (Sanhueza 2023a). As a consequence, around two-thirds of those citizens questioned in polls believed that "everyone or almost everyone" in the government and Congress was involved in some sort of corrupt practices (Sanhueza 2023a).

This picture of democracy is to some extent opposite to that of the European Parliament's Spring 2023 Survey on "Democracy in Action" carried out in June 2023, one year before the European elections in 2024 (Laborde 2023b). In it, it became clear that the interest of EU citizens in European elections has recently risen by large margins of up to 9%. Threatened by war, democracy is seen as the widely appreciated core value of European societies, and a clear majority of citizens is satisfied with how democracy works. In times of the nearby Russian war in Ukraine (Benedikter 2022), EU citizens believe increasingly that "democracy is what makes us", which is one of several effects of the Russian threat. As the European Parliament report stated,

An absolute majority of EU citizens are satisfied with seven of ten different aspects of democracy. Free and fair elections (70%), freedom of speech (70%), and respect for fundamental rights (66%) are the aspects that generate the most satisfaction. (European Union 2023)

It may appear paradoxical that Chile's democracy, untouched by armed conflict, is in internal turmoil while the threatened democracies of the EU are strengthening their values and have seen the majority of their citizens unify around their systems. The lessons to be learned from this situation relate to the reflex of self-protection of systems from outside threats as well as to the respective increase in awareness of the broader public, including in the European public discourse.

In such situations the question is whether there can be a win-win situation in mutual learning for the two partners about the mechanisms involved. The answer may depend on the improvement of trans-continental communication practices as much as on democracy education, the exchange of best practices and the shared

evolution of an advanced good governance comparison index. In addition, more systemically introduced global education curricula, for example according to the UNESCO model of “global citizen education” (UNESCO n.d.), and the introduction of instruments such as the “Futures Readiness Index” (Dubai Future Foundation n.d.) for broader segments of the population could be valuable joint instruments to improve and widen dialogue on democracy and to advance the mutual awareness of how the ecosystems of Chile and the EU are ultimately interrelated.

8 Chile's Path Ahead: Mixed Expectations

Surrounding the five-year-old constitutional process, the economic and social scenario of Chile looks mixed to the public as a delayed consequence particularly of the Covid-19 years (2020–2022). Chile's Minister of Finance, Mario Marcel, stated that the economy grew 0% in 2023 (De la Fuente 2023a). Accordingly, unemployment continued to rise and inflation failed to recede substantially (De la Fuente 2023b). On the contrary, these variables registered worse levels than historical averages. As a result, 52% of Chileans in 2023 thought that the country's economic situation was “bad”, and only 44% perceived it rather as “regular”, as *Criteria* asserted (Navia 2023).

Against this backdrop, the expectations of – in general skeptical – voters concerning a potential further constitutional process have varied significantly. According to CEP, in December 2023 29% advocated for the election of a new Constitutional Assembly to elaborate a third constitutional proposal, even before the referendum about the second text had happened. Twenty-six percent preferred maintaining the current *Magna Carta*. Lastly, 19% supported the idea of the National Congress undertaking further reform attempts to the existing constitution.

Anticipating these preferences, President Boric officially declared that the constitutional process would end with the second referendum whatever the outcome of the vote (Laborde 2023a, 2023b; De la Fuente 2023a, 2023b). The government promised to guarantee either maintaining the constitution in force or implementing the new one if it was approved. Despite the president's official posture, political referents such as the pro-government Senator Quintana have been pressuring to extend the constitutional debate (Ojeda 2023).

9 Two Groups Advancing Four Views

As with most referenda, the December 2023 one presented two options to voters: approving a new constitutional draft or rejecting it. However, there was no consensus in the ideological spectrum towards voting *nay* or the *yay*. Furthermore, conservatives, the center and the center-left factions were distributed randomly between both sides, while only the far-left decidedly advocated for the *nay*.

The lack of consensus even within blocs, ideologies and parties was due to the nature of the reform constitutional drafts presented. The first one, submitted to balloting in 2022 and elaborated by mostly leftist representatives, was considered by

many as partisan and particularistic, fiscally irresponsible and too broadly conceived to be a *Magna Carta* (The Economist 2022). Even two of the three former center-left presidents called on Chileans to reject the proposal (cf. Zlosio and Infante 2022). In contrast, the 2023 second constitutional draft was delimited by a transversal experts committee named by the political parties. Then, an elected Constitutional Assembly – this time, mainly rightist – worked around the expert’s recommendations. As a result, although the second proposal came out much more moderate than the first one, it still showed a marked conservative character.

Taking this already complex framework into account, in essence, voters in the second plebiscite were confronted with *four* argumentation patterns. These could be divided according to their relation to one of the two groups of “yes” and “no”.

First, the “yes” camp. There were *two* main groups among those in favor of the second constitutional proposal. On the one hand, there were those convinced that the second, rather conservative draft was the best option to keep Chile on track for the next decades until the middle of the century. In this faction sat, for example, center-right former president Sebastián Piñera, who led the country between 2018 and 2022, facing both the social upheaval of 2018 and 2019–2020 and the Covid-19 pandemic. Piñera held that “[t]he [2023] Constitutional Commission’s proposal is not only infinitely better than that of the failed [2021–2022] Constitutional Convention, but also better than the current constitution” (Ex-Ante 2023). He also underscored the draft’s procedural legitimacy, in sharp contrast to the one established under Pinochet’s dictatorship.

But besides those who sustained it out of conviction, there were also those who said “yes” to the second text proposal just to end the constitutional process, even if the proposal did not completely fulfill their expectations. This echoed what happened in 2022 when the leftist supporters of the first new constitutional draft saw an opportunity to pass a left-oriented chapter. In sum, this group argued that the 2023 draft was procedurally legitimate and would have brought some certainty for business and investment, allowing the country to regain its well-known stability from an institutional and economic point of view. As some of this second “yes” group pointed out, approving the constitutional proposal would “make Chile boring again” (in the good sense). A clear example of this posture was center-leftist and Christian Democrat former president Eduardo Frei Ruiz-Tagle. He said that “I will vote in favor [...]. We must close this stage, and recover the [country’s] lost stability. We cannot commit the same mistakes for a third time” (Sanhueza 2023b). Ruiz-Tagle also affirmed nevertheless that the draft did not represent his thinking. Regardless, he opined that Chile had to once and for all put an end to the social and judicial uncertainty to regain foreign investors’ trust.

Second was the “no” camp. There were also two factions among those rejecting the proposal. The first stated that the draft did not represent the interests of all the country’s inhabitants, and that it failed to establish a social market economy according to the citizens’ demands which had triggered the constitutional reform process from 2018 on in the first place. Some of this group affirmed that the draft suffered from over-representing particular conservative interests. This faction featured the former center-left president Ricardo Lagos Escobar and the leftist Michelle Bachelet (Cooperativa.cl 2023). Lagos argued that the elected, predominantly right-

ist assembly “dismantled” the expert’s work already from early on. As many others did with regard to the first referendum, he sustained that a partisan draft provided no chance to represent the Chilean nation as a whole. Bachelet wielded the same reasoning. Another relevant group holding this stance were notable center-left intellectuals (Ojeda and Fuentes 2023). They had rejected the first draft and shared Lagos’ and Bachelet’s views on why to reject the second one. However, they added that no matter what the results of the second referendum were, the “constitutional issue” would remain open because there would be no consensus or large majority among Chileans on the issue in the near future.

A second group of – different – nay-sayers affirmed that, at this point, it would have been better to reject the reform drafts altogether and preserve the 1980 constitution, reformed by Lagos in 2005 while in office. In this group, the mix of advocates was even more interesting. On the one hand, some of the far-right Republicans – the party that got the most votes for elaborating the second text proposal – claimed that the final draft was a far cry from the 1980 legacy of Pinochet, whom they continued to support (Jiménez 2023). On the other hand, some center-left public figures, such as Senator and former minister of Interior and General Secretary of the Organization of American States (OAS), José Miguel Insulza, held that the referendum draft was a too far-right with respect to the constitution in place (Navarrete 2023). This sector argued that sticking to the existing constitution would prevent the country from uncertainty.

10 Conclusion: Lessons Learned from the Chilean Process

The lessons learned from the Chilean experience of two constitutional reform referenda show that constituent processes are far from being the universal remedy to the disease. The crisis of democracy in Latin America cannot be resolved with re-foundation milestones. Before a constitution can be reformed it is first necessary to provide a legitimized political system and powerful, yet compromise- and inclusion-leaning leadership that allows this type of fundamental reform to be successfully, i.e., inclusively, completed. The remedy can be worse than the disease when “reform” processes are triggered to take advantage of minorities and allow the vision of society of majorities to be imposed on all others.

This was confirmed in the Venezuelan case, where the constituent process brought more benefits to the political leaders who imposed themselves than to the population which continues to live in poverty. In the case of Brazil, a new constitution is wishful thinking because there are no resources to put into practice what the drafts indicate, for example on issues of child malnutrition.

The conclusion can only be that the recent constituent processes in Latin America have generated a mirage poorly connected with the realities on the ground. On the contrary, in times of constitutional reform referenda Latin American citizens continue to thirst for more just and inclusive societies, where well-distributed progress allows them to have a better quality of life. This thirst puts the democratic system at risk in the face of the rise of populist leaders and the continued fear of military coups in some countries in the region.

11 Outlook: How to Further Progress Democracy in Latin America?

The second constitutional referendum in Chile in December 2023 marked a milestone not only in the Andean nation's history, but to some extent also in the history of democracy in Latin America. It came at a time when Chile grappled with a profoundly intricate and uncertain scenario. The nation remained far from achieving its 4% GDP growth goal while dealing with an oscillating political spectrum, which contributed to an ongoing debate on its national identity. Adding to this were 2022 and 2023 corruption scandals and a government falling short of meeting citizens' priorities in everyday life.

In this situation, some suggested turning to the better utilization of direct democracy, notably practiced, for example, by European countries (The Economist 2016) in the 2010s or by the U.S. State of California in the 2000s (The Economist 2011). Yet this model has not consistently produced socially favorable outcomes in the region, as recent research has shown (Marien and Kern 2018). Respective Latin American attempts in Venezuela, Ecuador and Bolivia have demonstrated insufficient results.

Looking forward to the rest of the decade, Chile seems to be treading a path towards a "fractured democracy": an over-representation of interest groups and minorities under the sign of formal pluralism, widespread dissatisfaction, and normative imposition rather than consensus characterizing constructive democratic macro- and meso-processes. A more prudent course for Chilean democracy might now involve reconsidering the ongoing constitutional reform process. Focusing on reforming the existing constitution in close cooperation with rule-of-law-oriented democratic partners such as the EU with an interest in strengthening open dialogue and cooperation could offer both domestic and international anchor points while streamlining discussions within Chile's National Congress concerning the country's institutional framework towards the more moderate center. By including an impartial observer such as the EU which shares Chile's democratic values, the country would benefit in at least two aspects. Firstly, the EU presence could contribute to depolarizing the discussion and act as a buffer for domestic quarrels. Secondly, as the experience of Chile as an active member of the OECD has shown, developing countries can benefit from collaborating with developed economies and their allied bodies, also improving their democratic policies and institutional quality (Pezzini 2020).

As a result, a successful constitutional solution for Chile could serve as a reference for the rest of Latin America. Throughout the region, social discontent tends to manifest in cathartic manners rather than through institutional routes, and trust in public governance remains low (OECD 2024). Scholars Mainwaring and Pérez-Liñán (2023) summarized that "[p]oor governance outcomes in most Latin American countries have contributed to dissatisfaction with democracy, creating opportunities for authoritarian populists who criticize the perceived failures of the establishment". The two Chilean reform referenda of 2022 and 2023 were no exception from this trend. Citing other examples, with regard to Argentina observers noted that

Carlos Menem, Argentinian president throughout the 1990s, pursued essentially a 'Miami Consensus' agenda – though his critics saw his presidency as

somewhat autocratic. Argentina's radical free market economic policies ended in severe crisis in 2001–2003, for which they were largely blamed. Argentina then moved to the left as a reaction. (Doyle 2018)

As a consequence, from 2003 to 2023, left-wing Peronism ruled (Muno and Pfeiffer 2023), de facto eroding the country's democracy (Suggs 2021).

Likewise, regarding the most recent political crisis in Peru in 2022, Simeon Tegel (2023) stated that

the fury over [President Pedro] Castillo's dramatic ouster [was] deeply bound up with issues of identity, stark economic inequity, and the long-term failure of Peru's radically laissez-faire economic model to fairly distribute the benefits of its boom of the last two decades.

Moreover, Phillip and Panizza (2011) observed that with Argentina "There is an evident similarity in political trajectory with Venezuela, Bolivia and Ecuador".

Since the 2000s, all the latter three have struggled with adhering to the rule of law, thus weakening their democracies. Only Uruguay seemed to offer a counterpoint when analyzing Latin Americans' wide-spread discontent. As observers wrote, Uruguay's "imperfect success" amidst a region in social upheaval has been due to the fact that the country's social safety net strengthens democracy *and* capitalism (Winter 2023).

This social market democracy approach could prevent Uruguayans from the excess of uncertainty and frustration that a totally free market economy may lead to, according to the experiences in other Latin American nations.

From the view of the European Union as the only global player, which indeed has practiced such a "social market democracy" particularly in its German-speaking areas since the 1950s, the Chilean referenda of September 2022 and December 2023 can be considered less as turning points than as profound and multi-versal learning grounds. In turn, Chile's constitutional reform process could take immense profit from the rule-of-law fostering experience of the EU. Vice versa, what is plaguing the Chilean votership are trends and topics that are highly relevant for the EU's future, too.

A more in-depth mutual learning process could thus be a win-win-combination for both actors. In this regard, authorities and representatives from both sides should more closely cooperate in order to take their conclusions not only for the future of the EU-Chile Advanced Framework Agreement, but – equally important – for the development of the democratic framework in Latin America, and for the perspectives of global democracy as a whole. The debate on how the model of "social market economy" proposed by the EU can be practically helpful for Chile, and Latin America in general, is a topic that should be taken up again and expanded over the coming years by both actors to avoid new turns towards radical socialism and to strengthen democracy at home and abroad.

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