

# CURRENT HISTORY

February 2021

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## Chile’s Constitutional Moment

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Overnight on October 18, 2019, violent, destructive, and deadly protests exploded in Chile. Not since the end of the 1973–90 dictatorship of General Augusto Pinochet had Chile experienced such unrest. The protests shattered the country’s reputation as an island of political stability and economic success in South America, a region often viewed as restive and unpredictable. Yet social discontent had simmered under the surface for about two decades. The slow burn ignited when President Sebastián Piñera’s government hiked transit fares. Students, workers, pensioners, feminists, Indigenous peoples, and other disaffected citizens united to protest not just the fare hike itself, but a political and economic system they perceived as unjust and unresponsive.

The protests paralyzed the country for weeks and forced reluctant authorities into a massive concession: the Chilean people would decide whether or not the country needed a reboot. Protesters and critics traced Chile’s woes to the 1980 constitution, written during the dictatorship and still in force. An agreement forged on November 15, 2019, would send Chileans to the polls to answer two questions: Should the country write a new constitution? And if so, who should write it—members of Congress alongside everyday citizens, or citizens on their own? When Chileans voted on October 25, 2020, the proposal for an all-citizens constitutional convention won in a landslide.

In a span of just 12 months, Chile had made history several times over. Social movements often score some policy wins, but they rarely provoke the kind of sweeping institutional change that

Chile will now attempt. Constitutional conventions—especially those composed of specially elected delegates—are exceedingly rare in the modern era. Such conventions are usually convened immediately after countries conclude civil wars, as in Nepal in 2008, or during a transition from dictatorship to democracy, as in Tunisia in 2011, after the Arab Spring. Moreover, Chile’s constitutional convention will be the first in the world where men and women participate in equal numbers, since the rules require gender parity among the delegates.

There is still more drama to come. Chile will hold elections for convention delegates as the coronavirus pandemic continues and probably before any vaccine becomes widely available. The country next will face the daunting tasks of getting diverse stakeholders to agree on a new charter—and then getting voters to approve it in yet another referendum. If this process succeeds, Chileans will finally leave the legacy of Pinochet behind, more than thirty years after his departure from office.

### PROTEST EXPLOSION

Widespread discontent had manifested itself in Chile in the years before 2019’s *estallido*, or explosion. In 2006, nearly 800,000 high school and university students participated in strikes and occupations, demanding an end to the inequities between the public and private education systems. In 2016, hundreds of thousands of Chileans took to the streets in anger over the inadequate retirement support offered by the Pinochet-era private pension scheme. And in 2018, feminists protesting sexual abuse and patriarchal privilege marched throughout the country, while university students seized buildings and even entire campuses to denounce sexual harassment in education. That same year, Indigenous peoples—long subject to

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political, social, and economic exclusion and state violence—demonstrated after an armored police unit killed the grandson of a respected Mapuche leader. The unarmed youth was beaten and shot in the back of the head during a police raid.

The awakening that began in October 2019 carried new urgency, some of it violent. Entire swaths of the capital, Santiago, were destroyed by looting and attacks on property. No fewer than 80 of Santiago's 136 metro stations were damaged, and 11 were completely destroyed by fire. Similar riots broke out across the country. Demonstrations and property damage continued for weeks. Nearly 1 million people marched in Santiago at one point, about 5 percent of Chile's total population.

Throughout the country, police responded violently, drawing allegations of excessive force and human rights abuses, including torture. The Piñera administration ordered the military to patrol the streets and implemented the first curfew since the Pinochet regime, evoking jarring memories for those who had lived through the dictatorship.

The international media depicted the protests mainly as a response to the increased transport fees, but the fare hike was merely the tip of the iceberg. Protesters were reacting to three decades of injustice and inequality, fundamental problems that the political elite had frequently ignored. The privatized education, health care, and pension systems—all legacies of the Pinochet era—effectively created two Chiles: one where the rich enjoy high-quality private services, and another where the poor navigate threadbare, inferior public systems.

The police are viewed as corrupt. Members of Congress earn the highest salaries among lawmakers in the region. Companies profit at the public's expense: private enterprises charge high utility rates, collude to set prices for basic staples, and rake in fees for administering pensions. Overseeing all this was Piñera, a conservative who returned to the presidency in 2018 for a second term—a billionaire and one of the richest people in Chile.

Demonstrating the political elites' tone-deafness to protesters' systemic critiques, Finance Minister Juan Andrés Fontaine responded by suggesting that Chilean workers simply "get up earlier" to

avoid the subway's rush-hour rate. But the government's harsh response went beyond such ham-handedness. When political leaders dubbed protesters "terrorists and delinquents" and contended that the country was "at war with itself," they raised uncomfortable parallels with Pinochet's rhetoric. The late dictator had overseen one of the most brutal and violent regimes in Latin American history, with human rights abuses, disappearances, and torture—mostly of leftists.

Yet the government's response only threw more fuel on the fire. The protests continued and grew, making it clear that Chile had reached an inflection point. In the south, Indigenous protesters toppled statues of military generals associated with Spanish colonial rule. In Santiago, people continued marching even as hospitals filled with victims shot with *balines*—marble-sized bullets that punctured lungs and eyes. Far from deterring demonstrators, elite chastisement and state violence only spurred them further. Protesters called for Piñera's removal.

Piñera eventually did try to meet some of the protesters' demands. His government raised pension payments and the minimum wage, suspended the transit fare increases, reduced prices for medicine and electricity, and raised taxes on the rich while cutting salaries for members of Congress. Yet these reforms were too little, too late.

Protesters' initial demands had expanded to include scrapping the 1980 constitution. For many, it symbolized Pinochet's enduring political and policy influence, years after his death in 2006. By early November 2019, the Piñera government recognized that only a dramatic concession—agreeing to a process for writing a new constitution—could calm the nation.

## PINOCHET'S STRAITJACKET

The 1980 constitution was written by the Pinochet regime with no popular input. Pinochet came to power by overthrowing the democratically elected government of President Salvador Allende in 1973. Allende had promised a "Chilean road to socialism," drawing decisive battle lines between the right and the left. Three years into Allende's term, amid escalating violence, the military firebombed the presidential palace. Allende committed suicide rather than surrender. Pinochet set out to completely remake Chile.

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Pinochet's project was both economic and political, though his economic transformation is better known. He imposed on Chile a neoliberal economic model designed by the "Chicago Boys"—a group of University of Chicago-based economists inspired by Milton Friedman and joined by colleagues at the conservative Catholic University of Chile. They were committed to free markets, deregulation, and shrinking the state. Pinochet's constitution protected private property to such an extent that Chile became the only country in the world where even the water supply was privatized.

The constitution also implemented Pinochet's political goals. Pinochet and his advisers envisioned a system that had the outward appearance of democracy while actually limiting popular sovereignty, constraining policy options and making change difficult. Conservative Catholic jurist Jaime Guzmán led a group of 12 authors who drafted a constitution to implement this controlled, authoritarian vision of democracy. The charter cemented Pinochet's legacy and ensured his future influence in politics.

First, the constitution's authors concentrated policymaking authority in the president. Even today, the Chilean president is among the world's most powerful governing executives, enjoying broad budgetary discretion and lawmaking powers, including the ability to fast-track bills through the legislature. The Congress is correspondingly weak, with few capabilities to oversee or check the executive branch.

Second, the framers designed an electoral system for deputies and senators that would advantage the right and constrain the left. By allocating two seats per district for both houses of Congress, but requiring that the first-place party win double the votes garnered by the second-place party in order to take both seats, the system reduced parties' chances of sweeping any given district. Even if the right-wing coalition won just a third of a district's vote, it would be assured of winning one of its two seats.

Thanks to these electoral rules, known as the binomial system, the right became overrepresented in Congress when elections resumed. The constitution also bolstered the right's congressional veto power by requiring high quorums for legislative changes and constitutional reforms. As a further check, Guzmán and his allies created a Constitutional Tribunal, which could judge the constitutionality of legislation at any point in the

lawmaking process and thereby derail undesirable reforms.

Third, the constitution's authors protected the armed forces. The 1980 constitution prohibited presidents from hiring, promoting, or firing senior military leaders. Those in power during the dictatorship—including General Pinochet—retained their positions after the return of democracy. The constitution also established a National Security Council that could evaluate any issue that in its view might challenge "the bases of the institutional order or could threaten national security." Finally, the constitution gave the armed forces, and other institutions packed full of Pinochet appointees, the right to appoint 9 of the 38 senators.

Essentially, the 1980 constitution amounted to an institutional straitjacket. Elites had few ways and little inclination to alter the status quo, even after Pinochet left office. At first, their reluctance stemmed from fears that too much reform would generate the same instability that fueled Pinochet's 1973 coup. As time went on, the institutional design of the executive, legislative, and judicial branches bequeathed by the 1980 constitution circumscribed the ambition of any would-be reformers. The barriers to system-wide change were too high.

Nonetheless, Chile's process of democratization began to untie the straitjacket. Pinochet gambled and lost in a 1988 referendum on his rule, and democracy returned. The center-left governed for the next two decades and gradually replaced Pinochet appointees in key institutions, eroding the right's stranglehold on power. Popular mobilization ramped up in the mid-2000s, compelling the right to accept some reforms.

Presidents regained the ability to appoint, dismiss, and promote senior military officers. The appointed senators were eliminated, and limits were placed on the powers of the Constitutional Tribunal. Political authority was decentralized throughout the 2000s and 2010s, allowing for direct election of mayors and the creation of new regional councils.

Most notably, Piñera's predecessor, President Michelle Bachelet, spearheaded constitutional reforms that replaced the binomial system. These 2015–16 reforms created a new proportional representation system with new districts. New political parties formed, and more outsiders ran and won in the 2017 elections.

These piecemeal reforms could not fix economic and social inequality. Chilean elites might

tinker with the political system, but most appeared unable or unwilling to alter Chile's extreme version of the neoliberal model. The divide between the haves and have-nots continued to widen.

Yet generational replacement was occurring. Younger leaders like Giorgio Jackson, Camila Vallejo, Gabriel Boric, and Karol Cariola emerged, with no real memory of the 1973 coup or the dictatorship. They represented a new "generation without fear." Their visions were bolder and less constrained by the status quo bias that plagued Chilean politics in the aftermath of the Pinochet regime. When the younger generation's demands for economic and social justice exploded, the traditional political and economic elites were caught off guard.

## A CITIZENS CONVENTION?

In mid-November 2019, Piñera recognized the urgency of committing to a new constitution to quell the unrest, even though he believed that such a change was neither necessary nor wise. An initial proposal made by Interior Minister Gonzalo Blumel called for Congress to draft the new charter, but protesters immediately signaled that a replacement written by the same elites would have no popular legitimacy. They demanded a "constitutional assembly or nothing," insisting on a specially elected body that would allow citizen participation. Opposition parties and some political leaders agreed. The Association of Chilean Cities—representing the country's 340 mayors—said voters should decide how the new constitution would be written.

Governing and opposition parties reached a "12-Point Agreement for Social Peace and a New Constitution" on November 15, 2019. The pact called for an institutional solution to Chile's crisis, but one that placed decision-making power back in the people's hands. The process to "reestablish peace and public order in Chile" would begin with a popular referendum containing two questions. The first was, "Do you want a new constitution?"

Regardless of whether voters responded "yes" or "no," they would then be asked, "What type of body should carry out the elaboration of a new constitution?" There would be two options: a mixed constitutional convention, half of which would comprise members of Congress and the other half specially elected representatives; or

a convention consisting entirely of the latter. The agreement stipulated that any officeholders seeking election to the constitutional assembly would be required to first resign their positions.

The decision to call the referendum was a victory for the protesters: voters would choose, and if they wanted a new constitution, citizen participation was assured, either wholly or in part. Over the next month, Congress hammered out the details. The agreement stipulated that the electoral system adopted in the 2015–16 reforms and used for the first time in 2017—which included a 40 percent quota for women candidates—would also be used to select the convention's representatives. For feminists, though, a 40 percent quota for women candidates seemed woefully insufficient for electing a body designed to represent all Chileans. The quota did not even work especially well: in 2017, women won only 22 percent of seats in the Chamber of Deputies and 23 percent in the Senate.

Women in Congress, working with feminists in academia and civil society, pushed their colleagues to add a gender parity rule for the constitutional assembly elections and their outcomes. As early as 2007, the Quito Consensus—adopted by 33 Latin American and Caribbean governments—called for "consolidating gender parity as a policy of the State." Eight Latin American countries, including neighboring Argentina, elected their Congresses using gender parity among candidates. Feminists argued that Chile's 40 percent gender quota was not only numerically insufficient, but also practically outdated.

Even more important, gender parity constituted a democratic best practice. There were only two women among the 12 authors of Pinochet's constitution; until 2017, women had never comprised more than 20 percent of Congress. Now, Chilean women adopted the slogan, "Never again without us." Early in December 2019, congresswomen standing inside the Chamber of Deputies chanted, "We are more than half, and in the constitutional assembly, we want half." Their campaign echoed the refrain of feminists throughout Latin America and the world: "There is no democracy without women."

The next agreement in Congress, brokered in mid-December, met those demands. First, Congress established that candidate lists for the

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constitutional convention would be required to respect gender parity: parties would have to select candidates comprising 50 percent men and 50 percent women to run in each district. Second, the elected representatives themselves would have to reflect gender parity. Later, Congress would approve the exact mechanism: if a district did not elect an equal number of men and women, the men who won with the fewest votes (the worst winners) would be replaced by the women who lost with the most votes (the best losers). This latter requirement made history: Tunisia's 2011 constitutional assembly was elected with gender parity among the candidates, but women did not win 50 percent of the seats. By requiring parity among both candidates and winners, Chile became poised to deliver the world's first constitution authored equally by men and women.

## A PANDEMIC PLEBISCITE

When Congress recessed for the 2019 winter holidays, the referendum was scheduled for April 26, 2020, and the elections for the constitutional assembly were set for October 25. Then the coronavirus arrived in March 2020, making these dates infeasible. That month, Congress agreed to delay the process, pushing the referendum back to October 25 and the constitutional convention elections to April 2021.

As the pandemic continued, the government instituted rolling lockdowns throughout fall and winter (which last from April to August in the Southern Hemisphere). In August, it announced that the referendum would go ahead as planned, but with special safety protocols. Residents of locked-down districts would be granted an exemption to leave their homes to vote; more polling places were added, and voting hours were extended to allow for social distancing; certain hours were reserved for seniors, and face masks were required. In September, election authorities ordered further precautions, telling voters to bring their own blue pens to mark the ballots.

With in-person activities limited, much of the referendum campaign unfolded on social media. Some political parties that backed a new constitution focused entirely on digital campaigning. The assurance that women would participate in framing a new charter shaped some of the messaging. Since gender parity rules would apply only to representatives elected to the constitutional convention—not to any delegates selected by members of Congress—Chile would make history

only if voters chose the all-citizens assembly. Infographics and hashtags on social media, created and disseminated by feminist advocates, reminded voters that a constitutional convention with 50 percent of the seats held by women depended on selecting the all-citizens option.

Similarly, advocates hoped that an all-citizens assembly would reserve seats for Chile's nine First Nations. Although Congress had adjourned in December 2019 without reaching an agreement on Indigenous representation, reserved seats remained on the table. Supporters argued that Indigenous voices were necessary for building a more just and inclusive society.

The campaign did not unfold entirely in cyberspace. Protests resumed in the weeks before the referendum, and became especially volatile on September 11, the anniversary of Pinochet's 1973 military coup, and in response to fresh reports of police brutality. On October 18, the one-year anniversary of the *estallido*, thousands marched and destroyed symbols of power, torching churches and private businesses. Throughout the campaign, protesters made plain their preference in the upcoming referendum, waving banners saying, "Chile Decides"—an endorsement of a "yes" vote for a new constitution.

The coronavirus did not deter voters. On election day, turnout was the highest since Chile ended mandatory voting in 2012. Polls had indicated overwhelming support for change: in September 2020, a month before the vote, 67 percent of Chileans expressed support for a new constitution, and 53 percent preferred the all-citizens constitutional convention. Even larger majorities backed these options in the referendum itself: 78 percent approved of writing a new constitution, and 79 percent chose a constitutional convention composed wholly of specially elected representatives. As the final vote tallies emerged on the evening of October 25, 2020, thousands of people danced and cheered in Santiago's main avenues. Some unfolded a banner with a message for the deceased Pinochet: "Erasing your legacy will be our legacy." The people had spoken, and they wanted reform.

## PROMISE AND PITFALLS

In Chile today, optimism runs high that the country will finally throw off the yoke of the Pinochet constitution and adopt a new founding document—a revision of the social contract. Progressive-minded reformers want a framework

that transforms policy in every sector, from business to health. Yet the referendum is just the first step, and the road ahead contains many obstacles.

The first challenge comes from the traditional elites, who have the most to lose. Most Chileans voted for a new constitution written by citizen-delegates, but Santiago's three wealthiest districts voted "no" to a new constitution. Conservative resistance was further laid bare in November 2020 as Congress resumed debate over reserved seats for Indigenous peoples in the constitutional convention. With the number of delegates capped at 155, Piñera and his allies fear that reserved seats would give Indigenous representatives too much decision-making power. The president of one right-wing party suggested that if Indigenous peoples merited reserved seats, so did Christians and evangelicals.

The next challenges come from the constitutional process itself. The idea of an all-citizens assembly may conjure images of regular people coming together to draft a new constitution. But that is not quite how the delegate selection process will work.

Candidates for the constitutional convention must be selected and registered by political parties, or else collect enough signatures to run as independents. The patina of an independent candidacy could help attract voters, but that may not be enough to overcome the material and organizational resources that parties provide. In addition, officeholders can run if they resign their posts—and they only have to remain out of office for one year after the assembly disbands.

These rules give the traditional parties outsized influence over who becomes a candidate and ultimately a delegate, offering an advantage to political insiders even as Chileans express high levels of distrust in parties and legislators. Many of the usual suspects have thrown their hats in the ring. The economic and political elites may have voted "no" in the referendum, but they will still participate in the process and attempt to shape its results. At the same time, well-known figures from the feminist movement, the student movement, the nonprofit sector, and academia are also joining the contest. These outsiders are running both as independents and as party candidates.

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The constitutional process will overlap with regular elections, dragging party politics further into the fray. The elections for convention delegates are scheduled for April 2021. The convention will open the next month, and will have one year to write the new charter. By May 2022, either the convention will have produced a constitution to be ratified by a popular referendum, or it will have failed to do so, in which case it must either disband or ask Congress for a one-year extension. At that point, Chileans already will have gone to the polls six times, voting in primary and general elections for president, governors, mayors, senators, and deputies. Whatever debates and controversies occur at the constitutional convention will affect parties' positioning in the regular elections, and vice versa.

There is no guarantee that the convention will succeed. The rules require that two-thirds of the delegates approve all elements of the new constitution. The need for a supermajority is a daunting obstacle, given that every aspect of Chilean politics and society is on the table, from institutional design to citizens' rights. Delegates could decide,

for instance, to replace the presidential system with a parliamentary one, or to make Chile's state structure federal rather than unitary, giving provinces greater autonomy and more policy-making power. They could

include provisions recognizing that Chile is a multicultural and pluri-ethnic country, with autonomy and rights for Indigenous peoples, as Bolivia and Ecuador did when they rewrote their constitutions in the mid-2000s. They could also make gender parity an organizing principle of government, as Mexico did in 2019.

But a two-thirds supermajority requirement does more than make it harder to approve such dramatic changes. It raises the possibility of deadlock. Progressives could face a lose-lose scenario: either they accept the limitations demanded by right-wing delegates, or they walk away.

## WRITING THE FUTURE

Chile is in a tough spot. On the one hand, the 2019 protests and the referendum outcome reflect most Chileans' strong desire for an economic system that provides more equality of opportunity and a political system that is more accountable, representative, and responsive. Chileans have

sacrificed during months of protest and pandemic. Activists were injured and killed by the police. If the new constitution does not meet the social movements' demands, many Chileans will have paid a high price for little gain. So the privileged elite cannot use the specter of left-wing radicalism to stall or halt the process. If the assembly writes a new charter that merely repackages the status quo, restive voters will surely reject it. The 1980 Constitution would stay in force, appeasing conservatives, but this would do nothing to address Chile's deep economic and social divides, and it would raise the possibility of continued unrest.

On the other hand, Chile's conservatives as well as some moderates fear a constitutional assembly dominated by populist forces. They worry that reformers will pursue fairness and justice not just by writing a broader set of rights into the new charter, but by framing these rights as guarantees. For example, a right to health care offers policymakers a guiding principle, whereas

a guarantee of state-provided health care ties their hands. Constitutions usually do the former: they design institutions and enumerate rights, while leaving policy details—such as who pays for what—for lawmakers to determine down the road. Conservatives are apprehensive that a new constitution will promise more than the state can realistically deliver.

Of course, for a country that respected the status quo and curtailed the influence of leftists, women, Indigenous peoples, youth, and the poor for so long, any moment of change feels dramatic and uncertain. That Chile will now even attempt system-level reforms marks a victory for the social movements that seized the streets in 2019. Activists forced the economic and political elites to take their criticisms seriously. Next, Chileans will undertake a collective exercise in self-determination. They will have difficult conversations and tough negotiations, but they are poised to cast aside a past overshadowed by a dictatorship and write their own future. ■