



# Chile's Constitutional Convention: A Bumpy Start, Much Work Ahead

By Richard M. Sanders

Chile's constitutional convention is now over five months into its mandate to overhaul the country's fundamental document. Chileans decided by referendum to rewrite their constitution following extended massive protests in 2019; these belied the longstanding perception of a Latin American success story, slowly but steadily moving towards first world status in a consolidated democracy. The convention is dominated by representatives of relatively new leftist parties and civil society independents, with seats reserved for indigenous peoples. The center-right and center-left groupings which have governed Chile since its return to democracy are present but in a distinctly minority position.

Lengthy fights over procedures, including an effort from the left to eliminate provisions aimed at forcing consensus by requiring super-majorities on proposed elements of a new constitution, have cost the convention a significant measure of public support. As it moves from considering procedures to taking up issues of substance, it is challenged to rebuild confidence and draft a document with practical solutions for Chile's governance challenges. It is doing so at a time when the country, weary from the pandemic and its economic fall-out, is in the midst of a presidential election run-off marked by sharp divisions. A new constitution that commands support from a broad spectrum of Chilean society could provide

a real boost for the troubled country. But one that is perceived as narrow and ideological or simply ineffective could only add to Chile's current turbulence.

## A New Constitution is the Solution?

The decision to hold a constitutional convention arose from growing dissatisfaction with the political and economic elite in Chile — despite the country's undeniable success in creating a stable and export-oriented economy, which allowed for a quadrupling of gross domestic product from 1993 to 2020 and a significant drop in poverty since 1990. Nonetheless, over the last few years, despite tax reforms and additional social spending, discontent has grown, fueled by a persistent sense that the gains of economic growth have not been equally shared.

Like much of Latin America and the Caribbean, Chile has struggled to contend with its status in one of the most unequal regions in the world, and the contrast between different social and economic strata is significant. According to a recent article in *The Economist*, which cites an earlier study by *The Lancet* in 2019— “life expectancy at birth for a woman born in the poorest neighbourhood of Santiago is nearly 18 years lower than for a woman born in the richest neighbourhood, a much larger gap than in the other five Latin American cities surveyed, including Mexico City and Buenos Aires.” The dramatic nature of inequality in Chile is evident in the following comparison: although the World Bank in 2018 reported that per capita gross domestic product was over \$25,000, roughly half of the Chilean population earned less than \$523 per month.

New political and economic issues surrounding the environment, gender equality, and concern for indigenous rights have also come to the fore. Proponents of a convention had argued that the existing constitution, which dates from the country's dictatorship under General Augusto Pinochet (though modified on several occasions under democratically elected governments), is inadequate to today's social demands. The idea of a new constitution eventually acquired almost totemic status among those profoundly dissatisfied with the status quo, as previous calls for constitutional reform began in earnest during the presidency of Michelle Bachelet in 2015.

The idea of a constitutional convention gained traction even as the old political order seemed exhausted. Since Chile's return to democracy in 1990, both the presidency and legislature have been dominated by representatives of two large coalitions of parties, one center-left and the other center-right. There was remarkable consensus on maintaining Chile's free



market, export-oriented economic model, while at the same time increasing social spending and poverty reduction efforts.

Extensive protests in 2011 by high school and university students, who argued that Chile's public educational system was underfunded, that Chile's public universities were being supplanted by more expensive private ones, and that levels of student debt were intolerably high, showed the fragility of Chile's social and economic reality. A new generation of student leaders, both street and media smart, and more radical than the leaders of the 'No' campaign that ousted Pinochet in a national plebiscite in 1988, entered into politics and created new parties and coalitions. At the same time, Chile's Communist Party, long on the fringes of political life, experienced a revival, regaining a presence in the legislature and six municipalities, including downtown Santiago.

A second, much larger round of protests occurred in October 2019, triggered by an increase in Santiago public transit fares. The protests spread throughout Chile and were marked by instances of violence and destruction of public and private property (including \$300 million in damage to Santiago's metro). Most demonstrations were peaceful. At the same time, excessive use of force and other abuses by the police led to widespread international condemnation. (A combination of deliberate provocations from a determined minority among the protesters and a police force stretched thin and with only limited capabilities for non-violent crowd control was in evidence.)

After the initial "social explosion" or *estallido social* as it was termed in Chile, a mixed group of protestors from a wide-range of political movements maintained a long-term occupation and protest at a public space in downtown Santiago which became known as "Dignity Plaza." Amidst the highly unsettled atmosphere and a pervasive sense of crisis, support grew for a constitutional convention as a way out of an apparent political dead end. With polls indicating support by over 70 percent of the public, politicians—including President Sebastian Piñera, a consensus-minded center-right leader—gave it support. Congress passed legislation authorizing a referendum on whether to hold a convention. In October 2020, 78 percent of those voting approved holding a convention. Slightly more than 51 percent of eligible voters participated.

## **The Electorate Upends Traditional Political Parties**

In May 2021, Chile held a second vote to choose the membership of the convention. Participation was sharply lower, at 43.5 percent, while the results marked a distinct turn to the left, despite many candidates running as independents. Out of a total of 155 seats, a

grouping of center-right parties had hoped to gain at least a third of the seats (52), which under the convention's rules would have allowed it to block provisions with which it disagreed. In the end, however, the center-right won only 37 seats. A list representing the parties of the center-left Concertación coalition, which had governed for 24 of the last 31 years, only received 25 votes. However, 17 of its members later formed a separate "Socialist Collective" which sees affinities with parties further to the left.

And left parties were the big winners. A list combining parties which had arisen from the 2011 student movement (the so-called "Broad Front"), together with the Communist Party, received 28 seats. And the People's List (subsequently renamed People of the Constitutional Convention), a new grouping including activists from the 2019 street protests and subsequent occupation, gained 26. Twelve convention members form part of a group known as Social Movements of the Constitutional Convention, which also claims roots in the protests and has an ecological and feminist orientation. Eleven seats belong to Non-Neutral Independents, comprised of non-party figures, including distinguished journalist Patricia Politzer, who has referred to this group as "center-left." The remaining seats belong to a range of other independents, including small regional parties. It's important to note that membership in these various blocs can change as participants shift allegiances, thus altering the size of the various coalitions.

A subsequent constitutional change—that had not been mentioned in the referendum that established the convention—reserved 17 seats for members of indigenous communities whose representatives were elected separately. Ten different ethnic groups from Chile's northern deserts to Tierra del Fuego in the south and Easter Island to the west of Chile's mainland are represented. The largest grouping (seven seats) is that of the Mapuche people from southern Chile. It seems fair to say that the indigenous representatives, including convention chair Elisa Loncón, are close to the convention blocs that are on the left of Chile's political spectrum.

The convention began its work on July 4, 2021. Under its enabling legislation, the convention has nine months (extendable for an additional three) to present a text. The document is then to be submitted to a national referendum within 60 days. The convention spent an initial three months organizing its procedures, a process marked by contentious wrangling. These disagreements undoubtedly contributed to a decrease in public support, as previously noted. But many Chileans continue to support the process despite its imperfections.



## Making their Point: Stumbling Politics Cost Public Support

At its inaugural session, some convention members interrupted the singing of the national anthem, signaling a tendency towards performative behavior. Later, and in a move that was outside of its constitution-making responsibilities, the convention passed a resolution calling for a general amnesty for those convicted of crimes committed during the 2019 protests as they were “political prisoners.” And the convention approved a provision, which was included in the final rules, stating that anyone who denied, minimized, or glorified violations of human rights committed during the dictatorship, during the 2019 “social explosion,” or in connection with atrocities and “cultural genocide” suffered by Chile’s indigenous peoples could be censured.

The message sent to moderate and conservative Chileans, whether intentionally or not, was that the left was in charge and that those who were not in agreement would be shunted aside. It is possible that the prevalence of such ideological posturing at the beginning of the convention could be attributed to the relative absence of leadership with deep political (including electoral) experience.

Early on, the convention faced a major embarrassment, which Chile’s media covered extensively. One member from the People’s List had participated in the occupation of the downtown Santiago plaza. His particular cause was the inadequacy of government-provided health care; and he claimed to be a cancer patient who had gone massively into debt to pay for his treatment. He was known for protesting shirtless, with catheter tubes presumably used in his treatment hanging from his chest.

When a Santiago daily discovered that he, in fact, did not suffer from cancer, the story seized public attention for over a week. The delegate subsequently admitted his lie and withdrew from participating further in the convention. However, he has not formally resigned and continues to draw his salary, according to recent press reports.

The convention’s credibility with the Chilean public suffered as a result of these occurrences. Polling in May 2021 by the major Santiago daily *La Tercera* of over 1,000 Chileans from a range of economic strata showed that 77 percent felt optimistic about the convention’s work, while only 29 percent were pessimistic. By July, the numbers had begun to slip: 66 percent felt optimistic and 34 percent felt pessimistic. By the end of September, however, only 44 percent felt optimistic, while fully 56 percent felt pessimistic. It would seem natural that support would drop from the convention’s beginning, when it was still largely a blank

slate, to the period after it started its work, with the inevitable “sausage-making” of debates and deals. Nonetheless, the decline over a mere five months was precipitous.

In addition to declining rates of optimism, views of the convention have reflected the polarization of Chile’s electorate. The same polling indicates that the convention retains support among those identifying with the left and has lost it among those identifying with the center and right. Supporters of the convention, however, may take some comfort in the fact that it polls better than the president, congress, judicial system, media, business community, and police.

## **What is a Majority?**

The constitutional convention has managed, at least for the moment, to avoid breaking apart over a crucial procedural issue. Communist Party members had called for both the convention’s procedures and substantive elements of the new constitution to be decided by a simple majority instead of a two-thirds majority. The wider margin is stipulated in the current constitution and in the legislation which set in motion the initial referendum establishing the convention. The argument for a simple majority was based on the assertion that the convention was not merely a reform of the existing constitution but rather, an entirely new effort that had, in its proponents’ words, “original authority” derived from the people’s mandate.

The Communist Party’s proposal, had it been implemented, would have changed the dynamic of the convention dramatically: with the two-thirds mandate in force, the conservative and center-left members, together with some independents, would likely have been able to block provisions they found unacceptable. Those objecting to the Communist Party’s proposal argued that, in addition to its dubious legal basis, the prospect of a constitution pushed through without broad consensus within the convention would not bode well for its acceptance by Chile’s population.

Ultimately convention delegates reached a compromise. The convention passed procedures reaffirming the two-thirds requirements for procedural aspects and for elements of the constitution itself. However, it also called for a separate preliminary plebiscite to be placed before the public for any provisions that received a three-fifths but not two-thirds majority. Under this compromise, provisions approved in the preliminary plebiscite would be included in the final draft. Chile’s existing congress will need to approve (and fund) any intermediate plebiscite. The strong showing by conservative parties in Chile’s congressional elections make this an open question.



## And Now to Work

With the divisive arguments over process behind them, convention members have turned to discussing what a new document would look like. Several committees have been established. In addition to ones on rules, ethics, and budget which began functioning during the procedural debates, there are committees on (1) the political system, government, legislative branch, and electoral system; (2) constitutional principles and democracy, nationality, and citizenship; (3) state structure and territorial justice; (4) fundamental rights; (5) environment and economic model; (6) justice systems, autonomous control bodies, and constitutional reforms; and (7) science and technology, culture, art, and heritage.

The fact that the convention will now be working on substantive issues may give it a boost in public opinion. As the convention's work progresses, it will need to resolve potential overlapping responsibilities for different committees. In the meantime, the various political factions have taken seats on the committees of highest priority to them. In keeping with the overall political complexion of the convention, it is likely that no committee will be chaired by a conservative.

The scope of the issues to be decided is enormous. Will Chile keep a presidential system? Or move to a parliamentary system, as was recently suggested by the convention's vice chairman? A mixed presidential/prime ministerial system like that of France or Peru? What fundamental rights will be included and what ones will be left out? To what degree will economic and environmental rights supersede laws and policies that were previously under the purview of the congress and president? Would such provisions permanently change Chile's growth model? What will be the procedures for the transition to a new constitution? A particularly sensitive issue to be resolved is whether Chile's president and congress, elected in November and December 2021 under the existing constitution, will be able to serve out their terms.

The constitutional convention will conclude its work and Chileans will vote on a new constitution during the next president's first year in office. The new president's views and how much popularity he enjoys in the initial months of his term could have an enormous impact on the content of the final document as well as its level of public acceptance.

Perhaps the underlying question to be answered is whether the convention, with its aim of establishing a new foundation for Chile's national life, will reflect the kind of deep transformation sought by the public at the time of the referendum. Or have Chileans cooled

on such an endeavor with the passage of time and in the face of the convention's stumbles at the outset?

The outcome of Chile's presidential race could dramatically affect the work of the convention. Conservative José Antonio Kast and progressive Gabriel Boric head to a second round on December 19, 2021. A Kast victory is likely to produce confrontation between a hardline executive and the left-leaning members of the convention. If Boric wins, the more radical elements of the convention may press for faster and deeper change.

As the convention continues its work, one positive fact is the Chilean public's continued commitment to democracy. A recent Latinobarómetro poll found that 82 percent of Chileans agree that "democracy may have its problems but is the best system of government." What they understand democracy to mean may be clearer by the end of this process.

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