



RESEARCH ARTICLE

Chile's failed constitutional intent: Polarization, fragmentation, haste and delegitimization

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Abstract

This article suggests that the conditions under which the Chilean constitutional process of 2021–22 undertook its task held the seeds of its doom. Constitutional conventions are always tasked with reaching agreements on the controversial allocation of decision rights, and doing so is no simple feat. The Chilean process combined (1) very dispersed preferences regarding the problems the new constitution should solve and the institutions to best enable solutions, with (2) a brief timeframe to allow for agreements to emerge, aggravated by (3) a composition of the Convention that was dominated by independents lacking experience in legislative bargaining, and (4) a severe disenchantment of the population with parties and politics as the backdrop. Together, these hurdles proved impossible to overcome. Despite the notorious political achievements of the Committee we study here, the proposal that came out of Chile's Constitutional Convention in 2021 was plagued by controversy and a negative perception of the Convention's work, and was ultimately rejected by the people.

Keywords: Chile; constitutional process; Constitutional Convention; polarization; political disenchantment; delegitimization

I. Introduction

Democratic regimes rest on several pillars that make their proper functioning plausible, constitutions being key among them, as they outline the fundamental rights of the political system. Countries around the globe vary in the circumstances and mechanisms through which they adopt constitutions.¹ Nonetheless, in all cases it is a democratic requisite – and a condition for constitutional stability – that they emerge from agreements between the different forces behind the architecture embodied by constitutions.²

“Valeria Palanza gratefully acknowledges funding by Fondecyt Regular No. 1211663”.

¹G Negretto, *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America* (Cambridge University Press, Cambridge, 2013).

²S Mittal and BR Weingast, ‘Self-Enforcing Constitutions: With an Application to Democratic Stability in America's First Century’ (2013) 29(2) *Journal of Law, Economics, & Organization* 278–302; G Negretto and

Whenever such agreements are weak, or constitutions are imposed unilaterally, we may expect them to be shorter lived.³

Latin America has witnessed several constitutional processes at different times, thus lending clear examples of different processes and the difficulties these can entail. The first processes took place at the beginning of the twentieth century as a result of pacts between liberal and conservative elites.⁴ Another set emerged from democratic transitions at the end of the 1970s, such as Brazil in 1988 and Ecuador 1979. Still another appeared in the early twenty-first century, such as Venezuela in 1999, Ecuador in 2008, Bolivia in 2009 and the Dominican Republic in 2015. These cases have a common element: they all concluded by adopting the proposed constitutional draft, which became the new constitution. In contrast, the Chilean process, triggered in 2019 by mass mobilization, concluded with the rejection of the proposal in a plebiscite in September 2022.⁵

In Latin America, Chile stands apart from other cases for at least two reasons. The first is the country's decades-long difficulty in significantly reforming the constitution approved in 1980 by the authoritarian regime that ruled for seventeen years. In comparison, Brazil took five years, Ecuador just one and Uruguay five years to carry out a major reform. The second is the rejection of the text proposed by the Constitutional Convention when a significant reform process finally did take place. Providing an explanation of such failure constitutes the central point of this article.

We argue that four factors came together in Chile's 2021–22 constitutional reform exercise, which together doomed the process: (1) the absence of a consensus regarding the problems the new constitution should solve and the institutions that would enable such solutions; (2) the brevity of the time granted to the Convention to reach a final text; (3) the majoritarian presence of independent convention members lacking experience in legislative bargaining, which hindered the work of the Convention's political system commission; and (4) the severe disenchantment of the population with parties and politics.

The literature on constitution-making posits explanations of constitutional failure beyond the lack of consensus. Dixon and Ginsburg⁶ argue that, in the absence of consensus, political actors adopt constitutional design strategies, both by using vague constitutional language and through specific language that explicitly delegates issues to future legislators (i.e. 'by law' clauses). On the other hand, Sunstein⁷ posits what he calls 'incomplete agreements' to refer to the fact that, even when new constitutional norms are implemented, there may be dissent about the reasons for doing so. Chile seems to be closer to the theory of incomplete agreement, as there was no procrastination in decision-making, but rather a lack of consensus on the causes for reform.

M Sánchez-Talanquer, 'Constitutional Origins and Liberal Democracy in Comparative Perspective' (2021) 115(2) *American Political Science Review* 522–536.

³G Negretto, *Redrafting Constitutions in Democratic Regimes: Theoretical and Comparative Perspectives* (Cambridge University Press, Cambridge, 2020); J Higley and M Burton, *Elite Foundations of Liberal Democracy* (Rowman & Littlefield, Lanham, MD, 2006); J Fishkin, 'Deliberative Democracy and Constitutions', in *What Should Constitutions Do?*, edited by E Frankel, F Miller and J Paul, Cambridge: Cambridge University Press 2011) 242–60.

⁴R Gargarella, 'Apuntes sobre el constitucionalismo latinoamericano del siglo XIX. Una mirada histórica. IUS' (2010) 25 *Revista del Instituto de Ciencias Jurídicas de Puebla AC* 30–48.

⁵See (n 1).

⁶R Dixon and T Ginsburg, 'Deciding Not to Decide: Deferral in Constitutional Design' (2011) 9(3) *International Journal of Constitutional Law* 636–672.

⁷C Sunstein, *Designing Democracy: What Constitutions Do* (Oxford University Press, Oxford, 2002).

The Chilean constitutional process leading to the rejection of 2022 was plagued by a disabling polarization regarding the root causes of the uprisings of 2019 that led to it. Recall that the Communist Party did not sign the initial agreement, doubtful of the very essence of the pact, and that the Unión Demócrata Independiente entered the agreement at the last minute, following strenuous internal debate. Soon afterwards, parties signing that agreement accepted, to their own peril, citizens not affiliated with parties – independents – to be eligible to the Convention (Laws 21.216 and 21.296 of 24 March and 10 December 2020). Members of the Constitutional Convention represented such varying understandings of the problem that reasonable, well-argued discussions were difficult to come by.

This article focuses on the work of the Committee on the Political System⁸ and public perception of its work. We selected this committee for at least two reasons: first, because it sought to establish a new political system, the cornerstone of any constitution; and second, because the committee was one of the most sober and efficient within the Convention, so it represents a hard case for our argument. The strategies it carried out in an effort to reach consensus, nonetheless, illustrate a mechanism that led to the delegitimization of the work of the Convention, ultimately favouring the rejection of the proposal.

In Part II, we analyse characteristics of the 2021–22 Chilean constituent process – that is, structural problems of the political system affecting consensus-building, and the Convention's brief timeframe to provide a proposal. In Part III, we analyze the work of the Committee on Political System, reviewing its work and the problems it generated in public opinion. We suggest that, together, these elements upended the approval of the new constitutional text. We then conclude and pose questions for future research.

II. A convoluted reform process and a strict deadline

The 2019 uprisings in Chile highlighted an array of policy demands that had been on the table for over a decade: public education, public health and pension reforms were perhaps the most widespread demands, although many others were present. While this led analysts to conclude that the causes of the uprisings were socioeconomic – structural inequality chief among them⁹ – institutions contributed to the stagnation of public policy, and the discontent that followed, in several ways.

Two arrangements played a central role in affecting consensus-building. The first was the binomial electoral system, reformed as late as 2015, which forced partisan coalitions into two disagreement-structuring blocks. The second was the supermajoritarian requirement to pass legislation on central policies regarding which super-majoritarian consensus was difficult to reach. Both institutions were put in place to guarantee political stability, over-representation of minorities and, ultimately, that certain policies would remain unchanged. Yet when policy choices and majoritarian political preferences drift apart, democracies should adjust to better represent public preferences, or stability will turn into rigidity.¹⁰

That a constitutional reform was necessary to face policy problems evidenced that, despite the reforms that occurred since 1990, institutions were not channelling public

⁸Its full name was Committee on Political System, Government, Legislative Power and Electoral System. We use Committee on the Political System in this article as an abbreviation.

⁹M Garcés, 'October 2019: Social Uprising in Neoliberal Chile' (2019) 28(3) *Journal of Latin American Cultural Studies* 483–91.

¹⁰R Weaver et al. (eds), *Do Institutions Matter? Government Capabilities in the United States and Abroad* (Brookings Institution Press, Washington, DC, 2010).

demands appropriately. Facing discontent on the streets, the same elites that had shied away from institutional reforms in the past accepted the need to reform the Constitution, and to do so using a blank slate. This article focuses on the Committee on Political System, which was tasked with proposing a design that could overcome the gridlock in government and appropriately channel demands, undertaking the very core of the constitutional problem.

The system put in place by the Chilean Constitution of 1980 places extraordinary prerogatives in presidential hands, while limiting the legislature's scope of action.¹¹ This is so when compared with other Latin American cases, and especially when compared with the archetypal American separation of powers system.¹² Additionally, the system arguably hinders consensus by elevating its standards, as it requires supermajoritarian support for a broad set of decisions. Designed to ensure that only broad consensus within Congress would be able to reform key policies, the status quo prevailed in many policy areas where there was a need for change.

Therefore, along with common challenges facing constitutional reform processes, the Chilean Constitutional Convention, plagued by fragmentation, confronted an additional difficulty. It was charged with reaching consensus and promoting consensus-building institutions in a bargaining environment scarred by decades of supermajoritarian impositions.

In addition to these problems, the Convention was constrained by tight deadlines. Note that legislatures take years, and often several rounds of bargaining,¹³ to come together and agree to new policy solutions. The 2020–22 Convention in Chile was granted just nine months (with the possibility of a three-month extension) to carry out public and expert consultations, receive initial proposals from members, reach agreements within committees, vote Committee proposals on the Convention floor and pass the final text through drafting and transition committees. This period may have been enough, but is still comparatively short when compared, for example, with Bolivia, where the Constituent Assembly lasted sixteen months, while benefiting from having a clear partisan majority (137 of the 255 members belonged to MAS). On the contrary, in the Chilean case, most of the seats in the Convention were occupied by independents.¹⁴

III. The work of the Committee on Political System and Public Perception

The precedents above lend context to the challenges facing the Committee. Convention members were not of one mind regarding the debate presented above. The solutions that they proposed walking into the Committee went from maintaining the system practically intact

¹¹J Carey, 'Parties, Coalitions, and the Chilean Congress in the 1990s', in *Legislative Politics in Latin America*, edited by S Morgenstern, B Nacif, and P Lange (Cambridge University Press, Cambridge, 2002) 222–53.

¹²See (n 1).

¹³K Krehbiel, *Pivotal Politics: A Theory of US Lawmaking* (University of Chicago Press, Chicago, 1998); C Cameron, *Veto Bargaining: Presidents and the Politics of Negative Power* (Cambridge University Press, Cambridge, 2000).

¹⁴Independents made up 104 of 154 members. Within the Convention, members coalesced into seventeen collectives (C Le Foulon and V Palanza, "Elecciones a la Convención Constituyente: innovación y renovación" (2021) 580 *Punto de Referencia Centro de Estudios Públicos*, available at <https://www.cepchi.cl/wp-content/uploads/2022/09/pder580_clefoulon_vpaliza.pdf>. Colombia's 1991 Convention, which was in sessions for only a few months, had seven parties represented in the Convention, three of which made up 74 per cent of the seats, making consensus-building much easier.

(favoured by right-leaning members of the Committee) to overturning the entire system and shifting to the parliamentary alternative (favoured by some members left of center).

It is beyond the scope of this article to analyse the specific institutional content of proposals or assess their value. Instead, our purpose is to examine how such broad dispersion of opinions hindered work within the Committee and added a layer of difficulty to negotiations. Ultimately, this had a negative impact on public perceptions of the work carried out within the Convention and in generating the required degree of consensus-building. Given the conditions facing the Convention, one could argue that an approach favouring work on the current system to improve known shortcomings would have led to a contained bargaining process and less mayhem. That was not a viable option back in late 2019, and in what follows we show it is far from what happened.

Right-wing members of the Convention held that the current political system did not merit significant reform. Therefore, convention members representing the right in the Committee on the Political System favoured the status quo with few variations in their article proposals. Some members on the left within the Committee proposed a radical turn to parliamentary government, a proposal they later abandoned. However, due to an underlying concern with power fragmentation and the inability of governments to command support in congress, this sector proposed including a chief of cabinet who would share responsibilities with the president and ultimately ensure congressional approval of government Bills. Much like in semi-presidential systems, it was a figure congress would have to confirm, or risk dissolution at presidential hands. This group of Convention members also favoured eliminating the Senate and turning to a unicameral congress.

To meet the proposal to end the Senate halfway, a group of moderate Convention members in the Committee proposed to reform Chile's bicameral system to get rid of an unpopular Senate while maintaining, in its place, a chamber that could lend territorial representation in the more decentralized system that was to emerge. They proposed an incongruent and asymmetrical bicameral congress, lending the chambers different prerogatives and representation criteria.

Moderates within the Committee and the Convention made short-lived alliances to advance their views. Within the Committee on Political System, securing indigenous representation in Congress was another key proposal. As the Convention had seventeen members elected based on Indigenous ancestry, this collective used its voice to advance a pluri-national design of the state. Moderates and the more radical left supported their proposal, which was the key to obtaining the support of these seventeen members on other issues in exchange. Minority right-wing convention members carried negative agenda-setting power and became key in several circumstances. Their rejection of most proposals suited moderates who, on occasions, joined them against more extreme proposals.

The Committee clearly faced a daunting task to find common ground to produce a text that would prosper. We highlight that this situation forced the Committee to several rounds of resolute bargaining, some of which included undermining Committee agreements on the Convention floor. While this strategy seemed necessary, it proved successful at a high cost, as it ignited media condemnation and public disenchantment. In the end, calculated moves to achieve the approval of the constitutional norms were read by the citizenry as haphazard and chaotic work, which ended up determining the result of the exit plebiscite of September 2022.

The first Committee report was discarded almost entirely on the floor of the Convention, which exemplifies the strategy. Although this collapse was foreseeable, because the original Committee agreement had diluted over the weeks, the fact that 93 of the 95 articles in the report were rejected was shattering. The two articles that did gain two-

thirds support were those establishing a pluri-national state and the right to self-determination of native peoples.¹⁵

As mentioned above, a fundamental characteristic of the Convention was its high level of fragmentation, and this was a fundamental trait of how voting would play out. A few convention members, usually drawing from partisan expertise, took on the task of articulating agreements. Ideological preferences are intransitive, and savvy Convention members were wise to consider eliminating options that deviated from median preferences to simplify decision-making.¹⁶ Unfortunately, what led to progress within the Convention was objected to by the media and public opinion.

How the elimination of fringe proposals took place, through several rounds of bargaining, is precisely the problem under analysis. Moderate reformers were able to make spot alliances alternately with the right and the left to advance more moderate positions. Agreements were forged within the Committee to produce reports, but key players would later withdraw support from specific clauses so that these would not thrive on the Convention floor.

Articles passed on the floor could not be revised further, so each round of floor approval returned a smaller set of articles to the Committee level. In different rounds of negotiation, arrangements such as a vice-presidency, a chief of cabinet, a unicameral congress and enabling independent candidates, among others, were abandoned. However complicated, given the range of preferences represented within the Committee, the prevalence of maverick independents on the floor, and the constraint of time, this was an effective strategy to meet the final deadline. Its cost in terms of public disenchantment with the work of the Convention was high.

The strategy angered radical elements on the left, who felt betrayed, and did not satisfy right-wing convention members, whose preferences were far from the median. Members from both extremes of the political spectrum and moderates acted out before the cameras dutifully provided by the media, perhaps unaware of the damage their fits would do before the public eye.¹⁷

In short, the strategy used by the members of the political system committee, approving norms within the commission and then rejecting them in the plenary, took a heavy toll. The public perceived the work of this committee as unorganized. Thus, we suggest that levels of public frustration with how the Convention carried itself played an important role in determining the fate of the proposal. Sajuria and Saffirio argue along these lines after analyzing trends in surveys implemented by Espacio Público in collaboration with IPSOS Chile. Their work shows that, while the public increasingly valued a collaborative attitude in convention members, the public also perceived an increasingly intransigent attitude on their part.¹⁸

¹⁵Marcos Barraza, of the Communist Party, declared that, 'The results are negative. The explanation, here, is political. There was an agreement subscribed to by forces from the left that was later torpedoed in favour of other norms.' Available at <<https://www.pauta.cl/politica/comision-sistema-politico-votacion-general-rechazo-informe-en-el-pleno>>.

¹⁶P Fishburn, 'Nontransitive Preferences in Decision Theory' (1991) 4(2) *Journal of Risk and Uncertainty* 113–34.

¹⁷See <<https://www.emol.com/noticias/Nacional/2022/03/18/1055390/comision-sistema-politico-pleno-convencion.html>>.

¹⁸J Sajuria and E Saffirio, 'Se rompió el amor: cambios en la opinión pública durante el proceso constituyente', in *El proceso fallido. La dinámica constituyente en Chile 2020–2022*, edited by C Fuentes (Catalonia, Barcelona, 2023).

Opinion surveys kept track of the public mood over the course of the Convention. As the Convention got to work and advanced reports and floor votes, the public became increasingly alienated. This negative perception increased over time. For example, according to the August 2021 survey of the Centro de Estudios Públicos (CEP), the Constitutional Convention generated 24 per cent of confidence, ranking it as the seventh best valued institution. By May 2022, according to CEP's Survey No. 86, the Convention was in ninth place with 22 per cent, and 27 per cent of respondents thought of voting rejection, the main declared reason being 'the characteristics of the Convention members and their work'. Finally, in CEP Survey No. 88, respondents who voted for rejection attributed the main reason for their vote to 'the way in which the Constituents worked'. In April 2022, CADEM results showed that 46 per cent of respondents would reject the new Constitution (a ten-point increase in one week), surpassing those in favour of approving, at 40 per cent. The same study shows an increase in distrust towards the Convention at 55 per cent, the highest level since November 2021.

Table 1 illustrates the mechanisms we see underlying the process. It presents synthetic information on the work done within the committee and on the floor, and media reactions and their concatenation.

Table 1. Summary of Committee reports, floor votes and media reaction

Committee session date	Committee session number	Constitutional proposals		Convention floor		
		Presented	Passed	Session date/no.	Session result	Media portrayal
27 Jan 2022	34*	59	16	18 March 2022, Session 71	<u>Proposal</u> : ¹⁹ Containing 95 articles	Embarrassment Harsh setback ²²
10 Feb 2022	39	67	8			
16 Feb 2022	40	10	1		93 articles are rejected ²⁰	Majority of the report rejected ²³
28 Feb 2022	41	149	28		<u>Approval</u> : ²¹	Lapidary day for the CC ²⁴
1 Mar 2022	42	38	15			
2 Mar 2022	43	49	19			
3 Mar 2022	44	50	19			

(Continued)

¹⁹See <https://www.cconstituyente.cl/comisiones/verDoc.aspx?prmID=3266&prmTipo=DOCUMENTO_COMISION>.

²⁰See <<https://www.emol.com/noticias/Nacional/2022/03/18/1055412/sistema-politico-rechazo-informe-convencion.html>>; <<https://www.pauta.cl/politica/comision-sistema-politico-votacion-general-rechazo-informe-en-el-pleno>>.

²¹See <<https://sala.cconstituyente.cl/#!/documento/4128/75/-1/Default/0.6491842008848252>>.

²²See <<https://www.chileconvencion.cl/wp-content/uploads/2022/03/Oficio-647-que-informa-las-normas-aprobadas-en-particular-del-primer-informe-de-la-Comision-sobre-Sistema-Politico.pdf>>.

²³See <<https://www.latercera.com/politica/noticia/convencion-rechaza-mayoria-de-informe-de-sistema-politico-para-forzar-nuevo-acuerdo/ILCNYGW4U5AQ5LYYAR24HY6XYY>>.

²⁴See <<https://votamostodos.org/pleno-17-en-una-lapidaria-jornada-se-rechaza-casi-la-totalidad-del-primer-informe-de-la-comision-de-sistema-politico>>.

Table 1. (Continued)

Committee session date	Committee session number	Constitutional proposals		Convention floor		
		Presented	Passed	Session date/no.	Session result	Media portrayal
5 Mar 2022	45	96	37	23 March 2022 Session 74	Articles 4 and 5 establishing a plurinational state and self-determination.	
7 Mar 2022	46	146	70			
8 Mar 2022	47	61	32			
9 Mar 2022	48	48	21			
30 Mar 2022	54	36	8	13 Apr 2022 Session 82	<u>Proposal:</u> ²⁵ Replacement report on the executive, the legislative, and the electoral system.	Rejection of key item for regions ²⁸
1 Apr 2022	55	8	4			
5 Apr 2022	56	12	6		<u>Approval:</u> ²⁶ Articles: 3, 3 bis, 8, 9, 12, 14, 15–18, 20, 23–25, 33–48, 50–54, 57–59, 61.	
6 Apr 2022	56	61	10			
12 Apr 2022	58	27	16			
15 Apr 2022	59	77	28			
18 Apr 2022	60	2	0	22 Apr 2022 Session 88	<u>Approval:</u> ²⁷ Articles: 1–10, 15–17, 20, 24, 26 subsection 3, 27, 29.	Ultimatum threats ²⁹
28 Apr 2022	61	40	24	6 May 2022 Session 97	Standards approved ³⁰ Approval articles: 2, 5 bis, 7, 11–13, 19, 21, 22, 26–32, 45, 49, 55, 56, 60, 64.	
30 Apr 2022	62	188	75	9 May 2022 Session 99	Standards approved ³¹ Approval: 5 subsection 2, 11–14, 18, 19, 21–26, 28.	

(Continued)

²⁵See <https://www.constituyente.cl/comisiones/verDoc.aspx?prmID=3268&prmTipo=DOCUMENTO_COMISION>.

²⁶See <<https://www.chileconvencion.cl/wp-content/uploads/2022/04/Oficio-703-normas-aprobadas-del-informe-de-reemplazo-Com.-Sistema-Politico.pdf>>.

²⁷See <<https://www.chileconvencion.cl/wp-content/uploads/2022/04/Oficio-724-con-normas-aprobadas-en-particular-Sesion-88-del-Pleno-votacion-1-2-FA.pdf>>.

²⁸See <<https://www.emol.com/noticias/Nacional/2022/04/13/1057946/pleno-convencion-camara-regiones-votacion.html>>.

²⁹See <<https://www.elmostrador.cl/nueva-constitucion/2022/04/25/convencion-con-el-tiempo-en-contra-sistema-politico-intenta-acordar-atribuciones-para-su-propuesta-bicameral>>.

³⁰See <<https://www.chileconvencion.cl/wp-content/uploads/2022/05/Oficio-755-con-normas-aprobadas-en-particular-Sesion-97-del-Pleno-1-1-2da-pro.-IR.pdf>>.

³¹See <<https://www.chileconvencion.cl/wp-content/uploads/2022/05/Oficio-758-con-normas-aprobadas-en-particular-Sesion-99-del-Pleno-votacion-1-2-nueva-2da-propuesta.pdf>>.

Table 1. (Continued)

Committee session date	Committee session number	Constitutional proposals		Convention floor		
		Presented	Passed	Session date/no.	Session result	Media portrayal
10 May 2022		14	8	No floor session		Red alert for new constitution ³² Draft constitution more unpopular than ever ³³

Source: Own elaboration based on a review of the archives of the Constitutional Convention of Chile and journalistic notes.

The information in the table has some elements that need to be highlighted. First, the number of proposals to be analysed was immense. Second, there is a significant gap between proposals approved in the Committee and those approved on the plenary floor, a situation that can be explained both by the dissimilar composition of these two bodies and by the bargaining strategy described above. However, what the public perceived about the work of the Committee in particular, and of the Convention in general, was a lack of coordination. The public perceived each Convention member trying to shape their own agenda, without taking collective interests into account. Faced with this scenario, the rejection of the proposal was difficult to avoid.

IV. Concluding remarks

The main objective of constitutional processes is to provide new agreements that bring citizens together and provide a framework for the proper functioning of a political system, which allocates decision rights. Along the way, many agreements must materialize to reduce the risk of failure. In this article, we have revised the scope of the challenge facing one specific Constitutional Convention, that of Chile between July 2021 and July 2022.

The challenge, we suggest, was not writing a new constitution, but rather doing so with a blank slate when the consensus on which to base the design was scarce. The slender agreement regarding the underlying problems the institutional design was intended to solve gave way to irreconcilable proposals that made negotiations difficult. This was particularly so given the composition of the Committee on Political System facing that of the Convention floor, where independents were majoritarian and carried weight.

The successive rounds of negotiations back and forth between the Committee and the floor gave the false impression of incapacity in the public eye. This, along with a few scandals and the overall polarized political climate, added to mayhem within the Convention and a decrease in public support. Ultimately, this low appreciation would transfer to the proposal itself.

In this article we provide evidence that the rejection of the constitutional text proposed in 2022 was the result of public disenchantment with a political process and the way it was

³²See <<https://www.elmostrador.cl/nueva-constitucion/2022/05/23/amarillos-por-chile-emite-alerta-roja-por-borrador-de-la-nueva-constitucion-creemos-que-este-texto-dividira-al-pais-en-vez-de-unirlo>>.

³³See <<https://www.semana.com/mundo/articulo/por-que-esta-fracasando-la-nueva-constitucion-de-chile/202241>>.

conducted. We suggest that the dispersion of positions regarding the diagnosis and institutional design to put an entirely novel constitution together in a brief timeframe was a difficult task to begin with. The difficulty was intensified by time constraints and by the adverse bargaining environment, where independents held the majority. With a population severely disenchanted with parties and politics as the backdrop, these hurdles, combined, were impossible to overcome.

Underlying our analysis is a question about the perils facing a political system institutionally incapable of building sufficient consensus. Given the decades-long inability of the political system to generate majorities large enough to meet the restrictive rules of the Constitution, and the context of political and social chaos in which the agreement for a new constitution emerged, creating consensus – and institutions that could favour consensus-building – became, and remains, a top priority.

Is it feasible to achieve a constitution that emerges from a blank slate in twelve months, when parties are discredited and negotiating environments are under pressure? When preferences are dispersed, it is difficult to reach agreements. Allowing for iterative rounds of negotiation, and time itself, are key elements in bringing positions closer together.³⁴

Every constitutional text represents the agreement possible at a given place and time. The text proposed by the Chilean Constitutional Convention in 2022, with its merits and shortcomings, provides an example of this. We have lessons to learn from the constitutional process in Chile, the second round of which is underway as we write. Would any other text have been accepted by the people of Chile given similarly confrontational dynamics? Chilean politicians seem to believe not, as they have designed an entirely different process for the second round, getting rid of independents and choosing to work based on the current text. The new Convention itself will work on a draft provided by a Committee of Experts – after everything that has occurred, a pre-established agreement. The existence of this basic consensus will ease its job and we have only to hope that it will also satisfy public expectations, for the benefit of Chilean democratic stability.

³⁴See (n 19).