


RESEARCH ARTICLE

Social rights scapegoating

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Abstract

In Chile, many commentators, academics and political leaders have spent years arguing that the limited nature of the social rights in the national constitution is partially responsible for the country's economic and social inequality. It is thus unsurprising that changing the scope of the country's social rights was a major focus of the recently failed constitutional reform effort. However, we argue that the long-running claim that Chile's social problems were due to the limited nature of social rights can be thought of as *social rights scapegoating*, by which we mean that commentators blamed outcomes on constitutional rights, even though there is little evidence that countries' socio-economic outcomes are a product of their social rights.

Keywords: Chile; constitutional law; constitutional rights; economic inequality; social inequality; social rights; social rights scapegoating

I. Introduction

In 2019, a raise in Santiago's metro fares ignited protests across Chile. These protests were about more than just higher fares; they were also about Chile's socio-economic inequality.¹ To stop the unrest, Chile's president and leading political parties reached an agreement to initiate a process to draft a new constitution.²

As constitution-making commenced, much of the progressive energy aimed at reducing inequality was channelled into drafting a progressive bill of rights with far-reaching social rights. This was likely partially because many Chilean commentators, academics and political leaders had spent years arguing that the limited nature of the social rights in the country's 1980 Constitution contributed to Chile's economic and social inequality.³ In

¹Alisha Holland, 'Chile's Streets are Filled with Protests: How did a 4 Percent Fare Hike set off Such Rage?', *The Washington Post*, 1 November 2019, available at <<https://www.washingtonpost.com/politics/2019/11/01/chiles-streets-are-fire-with-protests-how-did-percent-fare-hike-set-off-such-rage/>>.

²See the various articles in this issue.

³See T Moulian, *Chile Actual: Anatomía de un Mito* (LOM Ediciones, Santiago, 1997); J Ahumada et al., 'La Gente tiene la Razón (1998)', quoted in C Ominami, *El Debate Silenciado: Un Testimonio 1995–2009* (LOM Ediciones, Santiago, 2009) 39–66; G Marín, *Proyecto de la Izquierda* (1999); see also Part II of this article.

this light, it is only natural that political movements would prioritize changing those parts of the constitution.⁴

But were the constitution's social rights provisions really to blame? In our view, the long-running argument that Chile's social problems were due to the limited nature of social rights can be thought of as *social rights scapegoating*, by which we simply mean that commentators blamed outcomes on constitutional social rights, even though there is little evidence that countries' socio-economic outcomes are a product of the constitutional social rights. Instead, the existing cross-national empirical research largely finds no link between a country's constitutional social rights and social outcomes. But this is not necessarily bad news. The corollary to this point is that constitutional change is not a prerequisite to making progress on social problems. Put differently, equality gains can be made even though the 2022 constitution failed.

In this article, we first provide a brief history of how the Chilean political discourse has identified social rights as an impediment to greater social inequality. We then review existing research on the relationship between constitutional social rights and socio-economic outcomes. We conclude by arguing that, contrary to what has been suggested by many prominent Chilean commentators, strong social rights are neither a necessary nor sufficient condition for achieving greater social and economic equality.

II. Social rights in the Chilean political discourse

Although there were earlier debates about constitutional reform, in 2006 the argument that the constitution's social rights were to blame for deep inequality arguably entered mainstream political discourse in Chile. At this time, massive student protests called out problems in education, and this movement quickly transformed into a broader call for economic equality and social rights. Students argued that a 'neoliberal' conception of social rights, and specifically of the right to education, produced a segregated educational system and society.⁵ The movement called for the constitutionalization of a right to *quality* education, as opposed to just access to education, and demanded that the state assume a primary role in its provision.⁶ More broadly, it raised awareness of the fact that economic growth had gone hand in hand with persistent inequality.⁷

In 2009, these ideas from the student movement found their way into the policy positions of mainstream political parties. Notably, the campaign platform of Eduardo Frei, a presidential candidate for the Christian Democratic Party – a centre-left political party that was part of the Concertación coalition – proposed drafting a new constitution that, among other things, would establish a new understanding of

⁴It is pertinent to note that the criticisms against the 1980 Constitution were not limited to its lack of social rights, but also focused on its authoritarian origin and its establishment of a democratically deficient system. See T Busch Venthur, 'El Concepto de Constitución y la Incomodidad Constitucional en Chile' (2012) 12 *Global Jurist* 2, 1.

⁵S Donoso, 'Dynamics of Change in Chile: Explaining the Emergence of the Pingüino Movement' (2013) 45 *Journal of Latin American Studies* 1, 17–18.

⁶María Jesús Sanhueza, 'Chile: "seguiremos luchando"', *BBC Mundo*, 5 June 2006, available at <http://news.bbc.co.uk/1/hi/spanish/latin_america/newsid_5047000/5047920.stm>.

⁷MI Picazo and C Pierre, 'La Educación como Derecho Social: la Construcción del Referencial de Acción Pública del Movimiento Estudiantil Chileno' (2016) 25 *Revista Uruguaya de Ciencia Política* 2, 107.

fundamental rights, with a focus on strengthening economic and social rights.⁸ This proposal was important because it was demanded, embraced and shared by the candidate of the coalition that had governed the country for the previous 20 years and held a majority in the Chamber of Deputies⁹ and in the Senate.¹⁰ The idea also caught on in academic circles, with prominent voices calling to insert true equality into Chile's 'neoliberal Republic'.¹¹

In the following years, the belief that the 1980 Constitution was in large measure responsible for economic inequality continued to gain momentum. Student protests in 2011 continued the message from the 2006 protests: they argued that a 'commodified' and 'neoliberal' approach to education, characterized by a minimal and subsidiary role of the state, was responsible for inequality and segregation between social groups.¹² Civil society organizations and political leaders also extended the critique to other social rights. They criticized Chilean healthcare, and contended that constitutional reforms were essential to reframe health as a fundamental right and to increase access.¹³ Other objects of criticism were the pension system¹⁴ and the limited access to housing.¹⁵

The confluence of these factors helps to explain why, during the 2013 elections, presidential candidate Michelle Bachelet proposed the drafting of a constitution that would consecrate 'a Democratic Welfare State, which assumes economic, social and cultural rights as true obligations of state activity, to ensure minimum levels of social equality for the effective enjoyment of all rights'.¹⁶ Although the process ultimately failed, as noted by Dixon and Verdugo, 'the participatory nature of the process likely contributed to the consolidation of a constituent narrative within the public opinion, which, as evidenced by polls, consistently expressed support for a constitutional change'.¹⁷

⁸E Frei Ruiz-Tagle, *Frei Presidente 2010: Una Propuesta Progresista Para Chile* (2009) 7.

⁹Biblioteca del Congreso Nacional, 'Quincuagésimo Segundo Período Legislativo: Cámara de Diputadas y Diputados', available at <https://www.bcn.cl/historiapolitica/corporaciones/periodo_detalle?inicio=2006-03-11&fin=2010-03-10&periodo=1990-2026&cam=Diputados>.

¹⁰Biblioteca del Congreso Nacional, 'Quincuagésimo Segundo Período Legislativo: Senado', available at <https://www.bcn.cl/historiapolitica/corporaciones/periodo_detalle?inicio=2006-03-11&fin=2010-03-10&periodo=1990-2026&cam=Senado>.

¹¹R Cristi and P Ruiz-Tagle, *La República en Chile: Teoría y Práctica del Constitucionalismo Republicano* (LOM Ediciones, Santiago, 2006) 130.

¹²O Avendaño, 'Fracturas y Representación Política en el Movimiento Estudiantil: Chile 2011' (2014) 22 *Última Década* 41, 56.

¹³C Aranda, A Román, R Ruiz and C Jarpa, 'Financiamiento de la Salud en Chile: en Busca de la Solidaridad Perdida' in *La salud en Chile: Sentando las Bases para un Nuevo Sistema para Todas y Todos*, edited by VC Bachelet (Comisión Nacional de Salud de la Nueva Mayoría, 2014) 24. See also T Herrera Martínez and S Sánchez, 'La Función de Rectoría como Ejercicio de la Política Pública de Salud' in *La salud en Chile: Sentando las Bases para un Nuevo Sistema para Todas y Todos*, edited by VC Bachelet (Comisión Nacional de Salud de la Nueva Mayoría, 2014) 21.

¹⁴R Dixon and S Verdugo, 'Los Derechos Sociales y la Reforma Constitucional en Chile: Hacia una Implementación Híbrida, Legislativa y Judicial' (2021) *Estudios Públicos* 162, 37.

¹⁵L del Romero, 'Cartografías de la Desigualdad: una Década de Conflictos de Vivienda y Nuevas Resistencias en Santiago de Chile. Análisis del Conflicto de la Maestranza de San Eugenio' (2018) 44 *EURE* 132, 53–54.

¹⁶M Bachelet, *Chile de Todos: Programa de Gobierno Michelle Bachelet 2014–2018* (2013) 32.

¹⁷See Dixon and Verdugo (n 14) 38.

Following the 2019 protests, scholars advocated for the incorporation of extensive social rights provisions in a new constitution.¹⁸ For instance, Domingo Lovera argued that the Chilean constitution operates within what he terms the ‘laissez-faire constitutional model’, which seeks to preserve existing structures of inequality by letting the market be the principal provider of social rights-related services to the wealthy, while assigning the state a subsidiary role as a provider of subpar quality services to the poor.¹⁹ Instead, Lovera proposed a ‘transformative constitutionalism’, which assigns the state a central role in ensuring equal access to social rights for all.²⁰ Similarly, Fernando Atria, Constanza Salgado and Javier Wilenmann argued for a transition from the current subsidiary state, which has the duty of ‘ensuring market conditions’,²¹ to a solidary state, which ‘has the fundamental duty of realizing social rights’.²² Likewise, Jaime Bassa claimed that the current constitution has resulted in the state ceasing ‘to be the primary provider of social services and instead becoming merely a regulator of private enterprises’.²³ In the same vein, Claudia Heiss alleged that the subsidiary model has channeled ‘public resources to companies that offer public services understood more as market goods than as social rights’,²⁴ creating ‘private services for those who can pay and public services for those who cannot’.²⁵

These calls for the inclusion of greater social rights in a new Chilean constitution were not confined to the academy. At the time of the Constitutional Convention elections, several political factions prioritized the inclusion of far-reaching provisions for social rights in their platforms. Among the parties of the center-left the Partido por la Democracia aspired to establish a ‘Democratic Welfare State’,²⁶ where ‘the state actively guarantees the fundamental economic and social rights, allowing equal opportunities for all regardless of their socio-economic background, ethnicity, belief, or gender’;²⁷ and the Socialist Party sought to enshrine the concept of ‘social rights and mechanisms to guarantee their full effectiveness and progressiveness’.²⁸

¹⁸It must be said that, by 2019 and in the years to come, several Chilean academics voiced their reservations concerning the practical efficacy of constitutionalizing social rights as a means of tackling social problems. See S Soto V., ‘Derechos Sociales y la Eficacia de su Constitucionalización: un Análisis Aplicado’ in *¿Nueva Constitución o Reforma? Nuestra Propuesta: Evolución Constitucional*, edited by JF García (Thomson Reuters, Santiago, 2014) 269; S Verdugo, ‘The Chilean Political Crisis and Constitutions as Magic Bullets’, *Verfassungsblog*, 4 November 2019, available at <<https://verfassungsblog.de/the-chilean-political-crisis-and-constitutions-as-magic-bullets>>. JI Martínez Estay, MI Peredo Rojas and RA Poyanco Bugueño, ‘¿Se pueden Garantizar los Derechos Sociales? Una Nueva Propuesta para la Nueva Constitución Chilena’ (2022) *Revista de Derecho Político* 114, 340.

¹⁹DA Lovera Parmo, ‘Derechos Sociales en una Nueva Constitución: el Constitucionalismo Transformador’ in *La Constitución que Queremos*, edited by J Bassa M, JC Ferrada B and CA Viera (LOM Ediciones, Santiago, 2019) 121–22.

²⁰Ibid 122–24.

²¹F Atria, C Salgado and J Wilenmann, *El Proceso Constituyente en 138 Preguntas y Respuestas* (LOM Ediciones, Santiago, 2020) 192.

²²Ibid.

²³J Bassa, *Chile Decide: Por una Nueva Constitución* (Editorial Planeta, Santiago, 2020) 78.

²⁴C Heiss, *¿Por qué Necesitamos una Nueva Constitución?* (AGUILAR, Santiago, 2020) 82.

²⁵Ibid 83.

²⁶Partido por la Democracia, *Hacia una Nueva Constitución: Nuestra Alternativa Democrática* (2020) 6.

²⁷Ibid.

²⁸Partido Socialista, *Manifiesto Constituyente del Socialismo Chileno* (2021) 7–8.

At the far left of the spectrum the Federación Regionalista Verde Social advocated for the constitutional enshrinement of ‘a social security system for all citizens’.²⁹ The Lista del Pueblo emphasized that it was ‘imperative that the state actively and directly deals with the pension system, education, health, housing, disability, and old age’.³⁰ Partido Igualdad called for ‘a quality public health system, with universal, inclusive, free access, guaranteed funding and a single insurance, so that there is no health for the poor and another for the rich’.³¹ Revolución Democrática advocated for the enshrinement of ‘education as a right and not a commodity’,³² where public education is prioritized over private education,³³ and where the state takes a new and more active role in the provision of health services.³⁴ Finally, the Communist Party stated that the new constitution must ‘recognize the importance of economic, social, and cultural rights’³⁵ as recognizing these rights would ‘significantly improve the well-being of the people’.³⁶

III. Constitutional social rights and socio-economic outcomes

As this brief history illustrates, by 2019 over a decade of political activism had been focused on arguing that Chile’s constitution contributed to the country’s social problems. It is thus no surprise that social rights became a centrepiece of the 2022 proposed constitution. In fact, the final draft constitution contained over 100 rights, including a wide range of social rights.³⁷ But what does the empirical record tell us about the ability of social rights to impact material equality?

In general, empirical research suggests that there is typically not a positive correlation between countries constitutionalizing a right and those countries actually respecting it.³⁸ For instance, research has found that constitutional prohibitions against torture are not associated with lower rates of torture,³⁹ constitutional gender equality clauses are not

²⁹Federación Regionalista Verde Social, *Programa candidatos y candidatas constituyentes FREVS: Por una Constitución Eco-Social, Fraternal, Solidaria y Descentralizada* (2021) 4.

³⁰La Lista del Pueblo, *Por un Estado Constitucional Ambiental, Igualitario y Participativo* (2021) 6.

³¹Partido Igualdad, *La Lucha por una Nueva Constitución para Chile* (2021) 4.

³²Revolución Democrática, *Programa Convencionales Constituyentes* (2021) 22.

³³Ibid.

³⁴Ibid.

³⁵Partido Comunista, *Programa Constituyente: Decálogo de una Constitución para el Chile del Siglo XXI* (2021) 3.

³⁶Ibid.

³⁷To address long-standing structural inequalities and foster profound systemic transformations, the draft constitution did not just encompass a wide array of social rights, but also included provisions that provided additional protections for indigenous peoples and the LGBTQ+ community. Likewise, it established gender-parity electoral systems. See United Nations High Commissioner for Human Rights, ‘Chile’s Constitutional Process: A Historic Opportunity to Enshrine Human Rights’, 8 June 2022, available at <<https://www.ohchr.org/en/stories/2022/06/chiles-constitutional-process-historic-opportunity-enshrine-human-rights>>; see also Julieta Suárez-Cao, ‘Chile’s Draft Constitution is for Women, Too’, *The Loop*, 31 August 2022, available at <<https://theloop.ecpr.eu/chiles-draft-constitution-is-for-women-too>>.

³⁸See DS Law and M Versteeg, ‘Sham Constitutions’ (2013) 101 *California Law Review* 863–952; K Metelska-Szaniawska and J Lewkowicz, ‘Post-Socialist “Illiberal Democracies”: Do de jure Constitutional Rights Matter?’ (2021) 32 *Constitutional Political Economy* 233–265; A Chilton and M Versteeg, *How Constitutional Rights Matter* (Oxford University Press, Oxford, 2022).

³⁹A Chilton and M Versteeg, ‘The Failure of Constitutional Torture Prohibitions’ (2015) 44 *The Journal of Legal Studies* 417–452.

associated with more respect for women's rights,⁴⁰ constitutional restrictions on the use of eminent domain are not associated with expropriation risk⁴¹ and constitutional guarantees of the rights to freedom of speech are not associated with greater speech protections.⁴² Moreover, the evidence suggests that these patterns exist regardless of whether countries are democratic⁴³ or have judicial review.⁴⁴

Consistent with this general pattern, the balance of research on the effect of constitutional social rights suggests that there is no association between de jure social protections and improvements in socio-economic outcomes. For instance, a study by Chilton and Versteeg used data on all 194 widely recognized countries' constitutional rights during the post-war period to study the relationship between constitutional social rights and social outcomes.⁴⁵ The study focused specifically on the effect of constitutional rights to education, healthcare, housing and social security, and found no relationship between the adoption of these constitutional rights and changes in government spending in these areas. Moreover, this research suggests that governments do not just spend any more money on these social issues after constitutionalizing these rights, but they also do not appear to have any better social outcomes. For instance, the specific rights to education included in countries' constitutions are not only not associated with higher education spending, but are also not associated with higher literacy or school enrolment. Others who have undertaken similar exercises have reached the same conclusion.⁴⁶ The cross-national data therefore suggest that social rights do not correlate with increased spending on social-rights-related goods and services.

Beyond this cross-national evidence, country studies suggest that constitutionalizing social rights may not directly translate to an improvement in the living conditions of a country's poorer citizens. For instance, after Colombia adopted a new constitution in 1991, the courts took up an active social rights agenda. But research on the effect of those decisions suggests that they may have done more to benefit the country's middle class than marginalized groups.⁴⁷ In part, this is because enforcing rights against a reluctant government often requires knowledge and resources that middle-class people are more

⁴⁰A Chilton and M Versteeg, 'The Effect of Constitutional Gender Equality Clauses' (2022) 51 *The Journal of Legal Studies* 329–370.

⁴¹M Versteeg, 'The Politics of Takings Clauses' (2015) 109 *Northwestern University Law Review* 695–737.

⁴²A Chilton and M Versteeg, 'Do Constitutional Rights Make a Difference?' (2016) 60 *American Journal of Political Science* 575–589.

⁴³Chilton and Versteeg (n 38).

⁴⁴See C Crabtree and M Nelson, 'New Evidence for a Positive Relationship Between De Facto Judicial Independence and State Respect for Empowerment Rights' (2017) 61 *International Studies Quarterly* 210–224; A Chilton and M Versteeg, 'Courts' Limited Ability to Protect Constitutional Rights' (2018) 85 *The University of Chicago Law Review* 293–335. Some qualitative studies also confirm these findings. See G Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (University of Chicago Press, Chicago, 1991); SA Scheingold, *The Politics of Rights: Lawyers, Public Policy and Social Change* (University of Michigan Press, Ann Arbor, 1974). We should note, however, that studies reveal that democracy and judicial independence are both correlated with better de facto rights, but that constitutional rights' effectiveness does not depend on these factors.

⁴⁵A Chilton and M Versteeg, 'Rights Without Resources: The Impact of Constitutional Social Rights on Social Spending' (2018) 60 *Journal of Law and Economics* 713–748.

⁴⁶See A Ben-Bassat and M Dahan, 'Social Rights in the Constitution and in Practice' (2008) 36 *Journal of Comparative Economics* 103–119; C Bjørnskov and J McHangama, 'Do Social Rights Affect Social Outcomes?' (2019) 63 *American Journal of Political Science* 452–466.

⁴⁷D Landau, 'The Reality of Social Rights Enforcement' (2012) 53 *Harvard International Law Journal* 189–247. See also Chilton and Versteeg (n 38).

likely to poses than their poorer fellow citizens. This same basic pattern – that is, that social rights enforcement typically results in poorer citizens cross-subsidizing the middle class – has also been documented in other countries.⁴⁸ These findings are consistent with a long-standing argument in law and economics about how efforts to redistribute will occur, known as director’s law: public expenditures will be made for the primary benefit of the middle classes, and largely financed by the poor and rich.⁴⁹

However, it is important to note that this brief review of some of the empirical evidence should not be read to suggest that constitutional rights never make a difference. For instance, there is evidence that some constitutional rights that are organizational in nature – like the right to form political parties and the freedom of association – are associated with better de facto protections of those rights.⁵⁰ Moreover, the evidence discussed thus consists of cross-national investigations of whether constitutional rights provisions are associated with improvements in the protection of rights *on average*. In the absence of improvements on average, it is still possible that constitutional rights have an effect in some circumstances, and the literature has certainly documented some success stories.⁵¹ As a result, the balance of the evidence may be consistent with an observation made by Melkinsburg over a decade ago: ‘the extent to which rights provisions are implemented in practice varies dramatically across countries, with some countries promising more than they deliver and others delivering more than they promise’.⁵²

IV. Beyond constitutional rights

As this discussion should make clear, the argument that inequality and other social problems can be attributed to constitutional rights is at best uninformed, and at worst intentionally misleading. Instead, constitutional social rights are neither a necessary nor a sufficient condition to improve social and economic equality.

The reason why they are not a necessary condition is that social and political movements pushing for change can base their strategy on other parts of the constitution. Importantly, these kinds of movements do not always rely on the constitution and courts to accomplish social change; calls for change can also be channelled through the political process. But when these movements do rely on legal mobilization, many parts of the constitution can serve as vehicles for change. Indeed, Versteeg has previously documented that courts that take up an economic justice agenda often rely on parts other than the social rights provisions, such as the equality clause or even property rights.⁵³ Thus, when calls for economic justice are channelled through law, specific social rights provisions are unlikely to be necessary.

As one example, consider school finance litigation in the United States,⁵⁴ where public schools are funded partly through local property taxes. The result is that schools in

⁴⁸See Landau (n 47) 189.

⁴⁹GJ Stigler, ‘Director’s Law of Public Income Redistribution’ (1970) 13 *The Journal of Law and Economics* 1–10.

⁵⁰See Chilton and Versteeg (n 38); Metelska-Szaniawska and Lewkowicz (n 38).

⁵¹DM Brinks and V Gauri, ‘The Law’s Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights’ (2014) 12 *Perspectives on Politics* 375–393.

⁵²Z Elkins, T Ginsburg and J Melton, *The Endurance of National Constitutions* (Cambridge University Press, Cambridge, 2009) 54.

⁵³M Versteeg, ‘Can Rights Combat Economic Inequality’ (2020) 133 *Harvard Law Review* 2017–2060.

⁵⁴Ibid.

wealthier areas have more to spend on education than schools in poorer areas. Even though the US Constitution does not mention a right to education, advocates for reform of this system have relied on other legal sources – such as the constitutional right to equal protection and rights found in sub-national constitutions – to argue for more equitable education funding. Research has suggested that these efforts have helped to reduce inequality in school finance. For instance, research has suggested that increased spending in poorer districts has reduced inequality by as much as a third,⁵⁵ and the equalization of spending has been in turn linked to higher SAT results among students from lower socio-economic backgrounds.⁵⁶ In other words, it is possible to use legal channels to promote greater equality in the provision of social rights, even if the constitution does not include strong provisions on the topic.

The reason why strong social rights may not be a sufficient condition is that, even if a country tries to make a sincere commitment to the greater promotion of socio-economic equality, it may not be possible to achieve this without sufficient economic wealth. Notably, research suggests that nearly all the cross-country variation in countries' social progress can be explained by the countries' level of wealth, state capacity and democratization.⁵⁷ This evidence suggests that countries' constitutional texts are likely far less important a factor in how well they do at addressing socio-economic problems than these structural forces. Put another way, there are no shortcuts to improving social rights-related goods and services, including rewriting constitutional rights.⁵⁸

That said, perhaps the silver lining for Chile is that, even though the constitutional reform efforts have thus far not produced a new set of social rights, that does not mean that the country cannot improve the lives of the country's poorer citizens. Social movements can sometimes be successful at changing spending priorities either through political or legal mobilization. The revolutionary energy in Chile can thus be redirected towards other vehicles for change.

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⁵⁵SE Murray, WN Evans and RM Schwab, 'Education-Finance Reform and the Distribution of Education Resources' (1998) 88 *The American Economic Review* 789–812. See also J Lafortune, J Rothstein and D Whitmore Schanzenbach, 'School Finance Reform and the Distribution of Student Achievement' (2018) 10 *American Economic Journal: Applied Economics* 1–26.

⁵⁶D Card and AA Payne, 'School Finance Reform, the Distribution of School Spending, and the Distribution of Student Test Scores' (2002) 83 *Journal of Public Economics* 49–82.

⁵⁷See L Pritchett, 'National Development Delivers: And How! And How?' (2022) 107 *Economic Modeling* 1–19.

⁵⁸It is also worth noting that the limited effectiveness of constitutional social rights provisions may have influenced Chile's failed process in a number of indirect ways. For instance, many members of the convention hoped the new constitution could produce profound societal changes. Thus, it is possible that, recognizing that constitutional social rights alone were unlikely to bring about those kinds of deep structural transformations, some members may have advocated for other forms of constitutional change, such as for gender parity or indigenous rights provisions; in turn, those constitutional changes could have led marginal voters to reject the draft constitution. See Rocío Montes, 'El debate sobre el reconocimiento del "Estado plurinacional" divide a los chilenos', *El País*, 31 August 2022, available at <<https://elpais.com/chile/2022-08-31/la-plurinacionalidad-de-la-nueva-constitucion-no-genera-consenso-entre-los-chilenos.html>>.