

افغانستان آزاد – آزاد افغانستان

AA-AA

چو کشور نباشد تن من مباد
بدین بوم و بر زنده یک تن مباد
همه سر به سر تن به کشتن دهیم
از آن به که کشور به دشمن دهیم

www.afgazad.com

afgazad@gmail.com

European Languages

زبانهای اروپایی

BY NICK LICATA

22.09.2022

How could Chile reject a perfectly progressive constitution?



Photograph Source: I, Cratón – [CC BY-SA 3.0](https://creativecommons.org/licenses/by-sa/3.0/)

This month, through a public vote, Chileans overwhelmingly rejected a new left-leaning constitution. Reuters described it as being one of the world's most progressive charters. The vote to approve it wasn't organized by some elite group managing a phony election under an authoritarian government. It was a fair election, with both the left- and right-wing parties accepting the results.

The vote was particularly perplexing for progressives because public opinion had adamantly supported replacing their current constitution. A 2020 referendum that a new

constitution be written passed with over 78% of the votes, with 13 million voting of its 15 million eligible voters.

The new constitution would replace one created by the previous 17-year authoritarian military junta headed by General Augusto Pinochet. The elected President Salvador Allende was violently overthrown by a military coup led by Pinochet in 1973, who remained Chile's dictator until 1990.

Despite being amended over the last two decades, Nancy MacLean, in *Democracy in Chains*, writes that it was formulated to “forever insulate the interests of the propertied class they represented from the reach of a classic democratic majority.”

Its emphasis on granting “freedom of choice to workers” by banning industry-wide unions and privatizing the social security system may explain why the Bicentennial Poll found that “since 2010, 77% of Chileans believe there is a “big conflict” between rich and poor.” That conflict spilled out into the streets in October 2019. Throughout the country, massive protests and riots forced the conservative President Sebastián Piñera to submit to a referendum on rewriting the constitution.

Even the conservative leaders recognized that they needed a valve to release the built-up anger over the existing income inequality. Research from the World Inequality Lab showed the top 10% of Chileans receiving 60% of the average national income. Trust in government by 2020 had plummeted to only 10% of Chileans.

The need for new and even radical changes was manifested in the election of the young leftist Gabriel Boric to the Presidency in December 2021. He received 56% of the vote. His right-wing opponent Jose Antonio Kast, not taking a cue from Donald Trump, congratulated Boric. Although Kast's platform shared the same elements as Republicans, like cutting taxes for companies, building barriers to prevent illegal immigration, and abolishing abortion, he tweeted, “From today he is the elected President of Chile and deserves all our respect and constructive collaboration.”

Chile's Attempt to Jump Start an Egalitarian Society

Although Boric inherited the results of the 2020 referendum, he wholeheartedly promoted its egalitarian theme and the diverse composition of a Constituent Assembly, which was to propose a new constitution to the public. As a result, a public vote in 2021 selected 155 members of a Constituent Assembly.

Since the Pinochet regime ended in 1990, two groups have ruled the government by sharing power, the center-left, and right-wing coalitions. However, in the elections to the Constituent Assembly, they only obtained 16% and 24% of the assembly seats,

respectively. Assembly members from left-wing political parties and social movements received 60% of the votes.

The assembly's membership averaged 44 years old, with equal gender representation and 10% of the seats designated for Indigenous representatives to reflect its population proportion. Boric and other progressives described it as the most representative elected body in Chile, if not South America.

Polling from the start of March 2022 showed public opinion moving against ratification. Jon Schwarz of the *Intercept* reported a “recent survey showed that 37 percent of Chileans approved of it and 46 percent did not.” It was overwhelmingly rejected by 62% of the voters on election day. John Bartlett, a journalist for New York Times, tweeted that “only 6 of Chile's 346 electoral districts voted in favor of the new constitution.”

What did the new constitution do?

Supportive media, like CNN, Guardian, and Reuters described the constitution as providing a more inclusive public health system, canceling student debt, raising taxes for the super-wealthy, revising the state's private pension system, recognizing the “rights of nature,” and making Chile' plurinational' by creating autonomous territories for indigenous groups.

Schwarz listed a few of the new constitution's amendments:

A requirement that membership of all “collegiate bodies of the State” be at least half women, as well as the boards of all companies owned or partially owned by the government.

A new, lower voting age of 16. Moreover, voting “constitutes a right and a civic duty,” and so voting would become compulsory for everyone 18 and over. (Voting was previously compulsory in Chile until 2012. Voting in regular elections is no longer compulsory, but the current constitutional referendum is a special case.) Also, foreigners can vote in all Chilean elections once they've lived there for five years.

Everyone has the right “to make free, autonomous and informed decisions about one's own body, [including] reproduction” — i.e., the right to abortion. Until 2017, abortion was illegal in Chile under all circumstances, and it is still only permitted in rare cases.

New power and representation for Chile's Indigenous population, who make up about 10 percent of the country's citizenry.

The conservative *Free Beacon* noted that the constitution also mandated socialized medicine and a right to free housing.

Too Many Amendments and topics

The American Constitution has had 27 amendments, including the 10 Bill of Rights made two years after the constitution was adopted. The new Chilean constitution had 388, presented in a document of roughly 54,000 words, including the preamble and transitory rules. The US Constitution has about 4,500 words. In other words, millions of Chilean citizens were asked to approve a 178-page document that would introduce revolutionary changes. Faced with that task, it's likely that Americans would have rejected it as well.

Many, if not most, Chileans may have agreed with all or most of the proposed amendments. However, by presenting such a sweeping and detailed plan for Chile's future, they failed to consider the natural human response of avoiding risk by not accepting uncertain dangers. As Andrea Peroni, a historian and public-policy researcher at the University of Chile in Santiago, noted: "Any of the 388 articles you didn't like were 388 opportunities to reject" the new constitution.

The long list of articles emerged after the Guardian described it as "an arduous year of negotiations" among the assembly members. However, the Guardian did not note that rightist members failed to secure one-third of the seats necessary to block articles. Consequently, the debate and subsequent compromising among the members were confined mainly to the left side of the political spectrum.

The new constitution addressed the inequalities under the prior constitution that disenfranchised women, the LGBT community, and Indigenous People. It also swept away past economic and social barriers that financially hurt many Chileans.

But critics said the proposals would cripple Chile's finances. Moreover, it abandoned a constitution that based the country's growth on unencumbered free-market principles. For instance, it dramatically restricted mining and exploiting other natural resources. Elated by the vote, the Chilean peso and stock market skyrocketed the next day.

The Guardian reported that many criticized the document's guarantees for Indigenous People, which they said would divide Chile. For instance, there would be a parallel justice system for indigenous communities. Although before the election, Boric pledged to modify some of the document's most contentious points like this one.

Elaborate plans to restructure government and society, fed disinformation campaigns

As the surveys showed support declining for the new constitution, advocates began to promise to alter them if the constitution was approved. That could have contributed to the public losing confidence that things would go smoothly. Pushing great leaps instead of steady steps enralls a minority but not most people, even those that want change.

That was true even within the assembly. Thirty-four members formed a group Voice of the People that refused to abide by the rules of the convention, which all parties of the political spectrum had agreed upon for the assembly's procedures. They demanded the release of political prisoners and other similar policies. While their membership grew, they never achieved a majority within the assembly.

There was enough confusion and discussion of policies coming out of the assembly to feed the spread of misinformation, which the *Guardian* reported abounded just before the vote on the new constitution. *The Intercept* attributed widespread disinformation helping to defeat the referendum.

CNN interviewed an Indigenous Mapuche assembly member who said that some members of her community believed disinformation that circulated online—such as the false claim that expanded housing rights meant the government would confiscate private property. Even the conservative *National Review* wrote widespread uncertainty about the constitution's implications being “fueled by misleading information, including claims that it would have banned homeownership.”

It's not evident how much disinformation was generated or who promoted it. However, it clearly contributed to the outcome by promoting doubt and opposition to adopting a new constitution.

Chile's Lesson for America – A constitution is not a policy manual

The character of Pinochet's constitution was shaped by the philosophy of prescribing a free-market economy with few government restraints. Economic freedom for an individual's use of their property replaced concern for the negative impact on a community's broader welfare from that use. As a result, property rights edged out civil rights.

Most importantly, that philosophy would not just sway justices to rule a certain way; embedded in the constitution were prescribed policies that could only be overturned by amending the constitution. Moreover, no constitutional amendment could be added without endorsement by supermajorities in two successive sessions of the National Congress, a skewed body to overrepresent the wealthy.

Pinochet's constitution could exile anyone deemed “antifamily” or “Marxist” without an appeal process. Pinochet brought his tightly crafted constitution to a vote a month after its release. Voting was held during a prolonged “state of emergency” when all political parties were outlawed. Election rules forbade any electioneering by activists opposing his constitution, consequently, it passed.

Aside from its political agenda, Chile's constitution was distinctly different from the American Constitution. It directed institutions on how they should operate to pursue that agenda. That converted the judiciary's role from interpreting broad civil rights to maintaining tightly defined economic and social activity.

For instance, in America, the "right to carry a gun" by an individual citizen is not explicitly guaranteed in the constitution's Article II. The Supreme Court has interpreted that Article differently over time, reflecting the makeup of the Court's justices.

Another example is abortion. There is no "right" to an abortion in the US Constitution. However, it has evolved in how the Supreme Court interprets the Articles affecting the individual's "right" to have an abortion.

In Chile, under the Pinochet constitution, all abortions were banned. In the proposed new progressive constitution, there was no ban. Both Chilean constitutions explicitly addressed the practice of abortion.

Enumerating explicit activities in a constitution leads to more articles and the need for more future amendments. The result is that a constitution becomes more of a legislative tool than an umpire deciding if the legislation conforms to the constitution's principles.

Civic classes in public schools referred to the US Constitution as a "living" document. This is because it was guided by how citizens wanted to live by the principles espoused in the constitution. In other words, the constitution evolves and adapts to new circumstances even if the document is not formally amended.

Both Pinochet's constitution and the progressives were prescriptive constitutions. They enumerated not principles so much as directives. Although the new constitution intended to allay fears, its unintended consequence was to fan them. It is easier to get a consensus around principles than programmatic policies. The former is a generalized understanding that allows for different interpretations, but institutionalized programs and policies are like brick and mortar. They are sturdy, long-lasting, and not easy to demolish.

The progressive journalist Schwarz reasoned that even with the new constitution being rejected, it illustrated how regular people "can generate an explosion of political imagination." However, that is not a sustainable basis for governing.

President Boric recognized the defeat graciously, saying that the Chilean people had spoken: "loudly and clearly." He promised to work harder to propose another constitution "with more dialogue, with more respect and care, until we arrive at a proposal that interprets us all, that is trustworthy, that unites us as a country." If the next version does not take that approach, any future effort will be far closer to Pinochet's constitution.

Nick Licata is author of [Becoming A Citizen Activist](#), and has served 5 terms on the Seattle City Council, named progressive municipal official of the year by The Nation, and is founding board chair of Local Progress, a national network of 1,000 progressive municipal officials.

CounterPunch 21.09.2022