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# CONSTITUTION-MAKING PROCESS IN CHILE: THE CHILEAN PARADOX

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## **Abstract**

This article examines the political aspects of Chile's constitution-making process, which began in 2019 and ended in 2023. It names, analyses and interprets the causes, course and outcomes of the process. It also highlights the pendulum effect that occurred during the process and led to the “Chilean paradox” – the much-criticized constitution that the process was meant to replace eventually emerged victorious and, virtually unchanged, became more acceptable.

**Key words:** Chile, constitution, constitution-making process, Chilean paradox.

## **INTRODUCTION**

For several decades, Chile has been a source of valuable stimulus for investigation within political science. This was the case when the country was the first to elect a Marxist president, Salvador Allende, in free and democratic elections in 1970, thus starting the “Chilean road to socialism”. This was also the case when the military dictatorship of Augusto Pinochet was inspired by neoliberal economic principles. And in recent years, it has been mainly because of the constitution-making process, which both started and ended in a specific way.

Although reflections on a new constitution have been in the public discourse for a long time, the real accelerator of the process was the massive social unrest in 2019,

unprecedented in Chile. At that time, the eyes of the world were on Chile as an example of a country that would try to solve social problems by giving its citizens the opportunity to redefine the foundations of the common order. It was a democratic response to social tensions that could become a model for other countries struggling with similar problems.

The constitution-making process was also supposed to put an end to the authoritative legacy of the past, which Chile is still struggling with, even though the younger half of the population has not experienced the dictatorship. In the context of the points mentioned above, it is difficult to understand at first glance what actually happened: the citizens in the referendum unequivocally voted for the creation of a new constitution, twice elected their representatives to the constitutional body and, finally, twice rejected specific proposals for the new constitution.

The aim of this article is to analyze the political aspects of the constitution-making process in Chile and to interpret its results.

## **1. THE 1980 CONSTITUTION**

Augusto Pinochet's dictatorship in Chile ended in 1990, but one of its controversial legacies has endured to this day – the constitution. It was adopted in 1980 in a nationwide referendum, legitimizing the authoritarian regime and strengthening Pinochet's position as president of the republic. Although there are suspicions of manipulation of both the course and the results [Fuentes, 2020], this constitution is still valid today.

The key concepts underlying the constitution are anti-communism, technocracy and laissez-faire economics. [Couso, 2012, p. 411] Parties and organizations that rejected the family or were based on the idea of class struggle were outlawed. The separation of powers was redefined in favour of the executive branch and "technocratic" institutions with non-elected members such as the Armed Forces, the Constitutional Tribunal, the National Security Council or the Central Bank. These institutions could also appoint non-elected senators to the Senate and thus influence the legislative process.

From an economic point of view, although this was not explicitly mentioned in the text, a leaning towards the neoliberal model can be detected. [Aste Leiva, 2020, p. 11] The Constitution defined Chile as a subsidiary state. *“Subsidiarity is that the state should refrain from acting where private persons are adequately meeting their own needs, and should act only where they are unable or unwilling to do so”.*

[Faúndez-Sánchez, 2016, p. 214] Thus, the Constitution itself limited state intervention to areas that the private sector was unable to address effectively. It guaranteed the right to private property and significantly limited the creation of state-owned enterprises. The armed forces became the guarantor of institutional stability and compliance with the Constitution.

Since 1989, there have been several reforms that have democratized the constitution. The ban on Marxist parties was lifted, as well as the possibility to directly seat senators. The president lost some powers but gained the ability to dismiss the commanders of the armed forces. The process of constitutional reforms was simplified and some quorums were reduced. Despite these changes, the constitution still bears the stamp of dictatorship in many areas.

## **2. THE SOCIAL OUTBURST 2019**

At the end of October 2019, then-President Sebastián Piñera had to declare a state of emergency due to civil unrest. The trigger was an increase in the price of metro tickets in Santiago de Chile, but a few days later there were already spontaneous protests in the streets across the country against expensive education, healthcare, income inequality or low pensions. The protests did not have prominent leaders or clearly articulated demands. In the words of the current President, Gabriel Boric, *“this was no mere wave of riots. It was an expression of the pains and fissures in society that politics failed to interpret and provide answers to”* [Europa press, 2022]

According to Parra Coray [2021, pp. 193–194], this is the result of a series of unresolved problems since the return to democracy, including a development model based on exclusion, an elitist political system, and a long-term inability to integrate the socio-political demands of the population. These problems were covered over by the economic growth and political stability that characterized the country especially in the first decades of this century. Political actors were unable to understand the incompatibility between the changes in society and the continuation of neoliberal policies designed during the dictatorship. Market inequalities have led to the segregation of some segments of the population and also to the precarization of the middle class. Gradually, social movements and actors began to demand “change from below” and identified the 1980 Constitution as one of the main enemies.

A survey was conducted among the participants of the protests in November 2019, asking them to identify the three main demands that made them join the protests. The most inflected demands were “Pensions” (75 %), “Health” (57.7 %) and “Education” (56.9 %). In fifth place was the demand for a “New Constitution” (21.4 %),

which was supported by about one-fifth of the respondents. In total, up to 19 specific areas in which the protesters demanded improvement could be identified. Further demands were classified as “Other” (6.6 %) [NUDESOC, 2020, p. 10].

Table 1

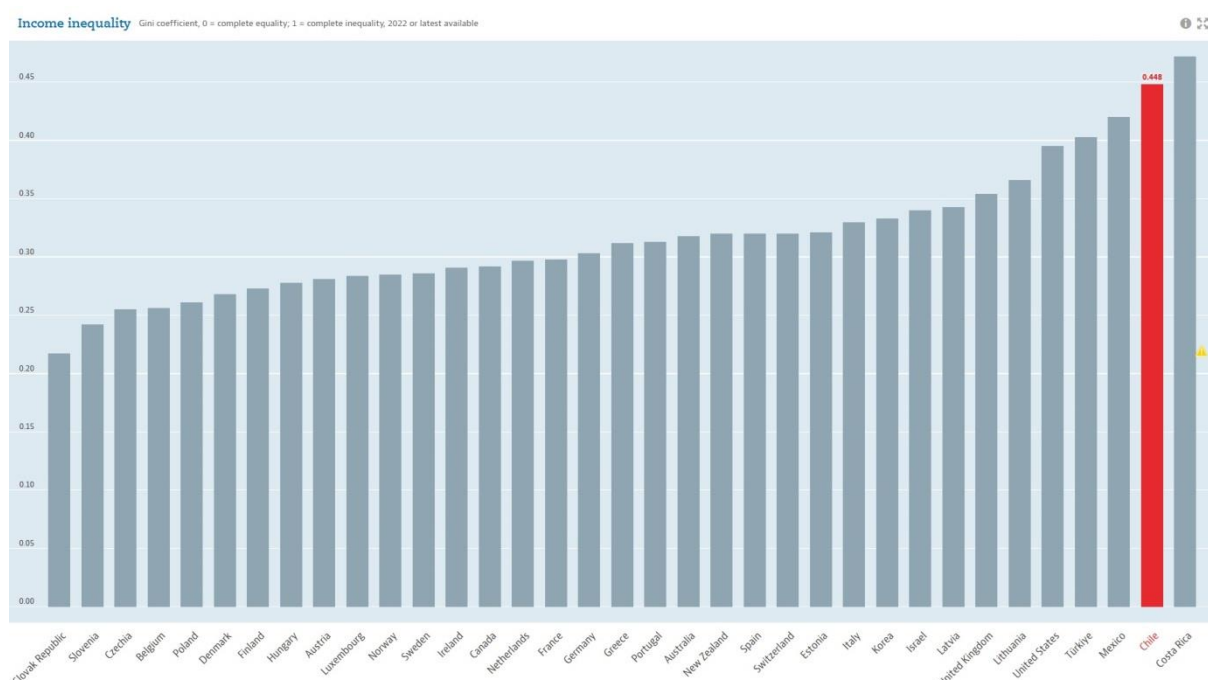
**Principal demands of the protesters**

<b>Position</b>	<b>Demands</b>	<b>%</b>
1.	Pensions	75,0
2.	Health	57,7
3.	Education	56,9
4.	Social justice	22,6
5.	New constitution	21,4
6.	Employment and fair wages	15,9
7.	Human rights and no to impunity	10,2
8.	Others	6,6
9.	Natural resources and the environment	6,2
10.	Rejection of the government and the political class	6,0
11.	Democracy, participation and organization	5,1
12.	Child protection and no more SENAME (child protection state agency)	4,9
13.	Corruption and exploitation	4,0
14.	Feminist, gender and dissident demands	3,7
15.	Against neoliberalism	2,6
16.	State transformation	2,0
17.	Housing and the city	2,0
18.	Quality of life	1,8
19.	Transport	1,8
20.	Indigenous people	1,5

**Source:** Author, based on NUDESOC, [2020].

The large number of different demands suggests that the increase in transport fares could not be the only reason for such massive protests. According to Garcés [2020, p. 12–13], thinking about the deeper causes moves on two levels: a) The structural inequalities of Chilean society have reached a point where they are no longer bearable; b) Similar cases of price increases accumulated (electricity, transport, medicines, basic foodstuffs,...) and society “exploded”. It is precisely in connection with the first point that the debate on the new constitution, which has featured with varying degrees of intensity in public speeches since the 2009 presidential campaign, has revived again.

Indeed, Chile as a country struggles with large social inequalities and regularly ranks at the top of the income inequality rankings within OECD countries. According to current data, only Costa Rica is worse off. In this context, changing the constitution could also represent one of the opportunities to change the structural composition of society and possibly reduce social inequalities.



**Graph 1.** *Income inequality within OECD countries – Gini coefficient*

**Source:** OECD Data, Income inequality, 06.05.2024.

The way out of the social crisis was eventually the initiative of some politicians and the signing of the Agreement for Social Peace and a New Constitution (*Acuerdo Por la Paz Social y la Nueva Constitución*), by which they undertook to organize a referendum and let the citizens decide whether the time had come to review the fundamental law of the state. Also due to the COVID-19 pandemic, the referendum did not take place until a year later, on 25 October 2020. The result was clear, with around four out of five Chileans in favour of the need for a new constitution.

### 3. DRAFT CONSTITUTION 2022

In 2020, 78 % of Chileans voted in favour of a new constitution. Such consensus can be described as broad and unequivocal. A Constitutional Convention with elected members (*Convención Constitucional*) has been designated as the political body in charge of drafting it. In a separate election, the citizens chose 155 representatives and, according to a special method, the seats were distributed so that the resulting order was 78 men and 77 women. Seventeen seats were allocated in advance to the indigenous population.

In 2022, almost three years after the outbreak of mass protests, the draft constitution was finally ready. However, it was quite clearly rejected in the subsequent referendum, when almost 62 % of citizens voted against it. The call for

a new constitution was thus quickly replaced by opposition to the final draft. Why? Here are a few reasons.

The composition of the Constitutional Convention was not representative and did not reflect the ideological distribution of society that can be observed, for example, in presidential elections. It is logical that in the attempt to replace the 1980 Constitution, it was its greatest opponents who were able to mobilize. The result, therefore, was that as many as two-thirds of all members could be ideologically classified as belonging to the left part of the political spectrum. [Fábrega, 2022] Their ideological opponents were thus left without the possibility of a veto.

On the points of contention, the very first article defines Chile as a multinational state. This means recognizing the autonomy of the eleven tribes of the indigenous population, whose languages become the official languages of the state, acquiring the right to self-government or even their own judicial system. The situation with the indigenous population has been tense for a long time, and in some regions the army often has to intervene. According to a survey by the University of Alberto Hurtado [UAH, 2022], it was precisely multinationality and security concerns that proved to be the factors that weighed most heavily in rejecting the proposal.

The second article argues that democracy in Chile is inclusive and parity-based. Women are to occupy at least half of the seats on the governing bodies of public enterprises. According to the same survey, there is a consensus among “Reject” voters against the demand for gender parity in public office.

In general, the state becomes the guarantor of a large number of civil and social rights. Free education, a state-funded health system or a solidarity-based social insurance system are complemented by free legal advice, the right to a nutritionally complete diet, the internet, energy, the security of digital space and many others. It is a challenge to imagine the complexity of the state apparatus and the mechanisms by which the state would fulfil these constitutional rights of its citizens. Concerns that the state would be in danger of collapse under the pressure of huge expenditures were therefore justified.

It is evident that this draft constitution, given the balance of power in the convention, was ideologically loaded. From a conservative constitution inspired by the laissez-faire economic doctrine, we have moved to the opposite side of the political spectrum. This time, a progressivist constitution inspired by feminism, support for minorities and a strong welfare state was on the table. It was too abrupt a shift that bypassed the political center and did not win the support of the majority of society.

Politicians refused to label the episode a failed experiment and the constitution-making process continued. The call for constitutional change remained strong. As many as 44 % of citizens at the time supported the start of a new constitution-making project, while 43 % preferred to reform the current constitution. Only 13 % were against any changes [UAH, 2022].

#### **4. DRAFT CONSTITUTION 2023**

Congress supported the idea of continuing the process and came up with the *Acuerdo por Chile* agreement, which set new rules. There were 12 basic points that any final proposal had to respect. These included, for example, that Chile was a social, democratic and rule of law state. Or that the indigenous population is part of the Chilean nation, which is one and indivisible. It also defined national symbols, the separation of powers and fundamental rights and freedoms.

Three bodies have been created for the purpose of the process. The first, the *Comisión Experta*, was composed of 24 experts (mostly with a legal background) elected by Congress. Their task was to produce a preliminary draft that would serve as a basis for the final version. The second, the *Consejo Constitucional*, included 50 members elected by the citizens themselves. This body was responsible for discussing and approving the final draft. The third, the *Comité Técnico de Admisibilidad*, ensured that all content proposals were in accordance with the predefined 12 basic points [Acuerdo por Chile, 2022].

However, a different approach produced the same result. The draft constitution was rejected in a referendum at the end of 2023, when 56 % of citizens voted against it.

Let us look again at the composition of respective constitutional bodies. Among the experts in *Comisión Experta*, the right-wing candidates won 12 seats, while the left-wing coalition won 10. The remaining two seats were taken by centrist candidates. In the *Consejo Constitucional*, the difference was more pronounced, as the right had two-thirds of the votes. The balance of power was thus reversed from the first process in favour of the right. The right did not hesitate to take advantage of its superior strength, as evidenced by the fact that only 22 % of the experts' preliminary draft was retained in the final version [Decide Chile, 2023b].

The final draft defines Chile as a welfare state, but at the same time maintains the important role of the private sector in areas such as health, education and pensions. It favours a mixed system in the provision of these services. An example is the creation of a universal health plan, which is provided by public and private institutions. This is similar to the case of pensions, where the state guarantees

certain basic benefits through public or private institutions. To a large extent, this also preserves the principle of the subsidiary state, although this is not explicitly named in the proposal.

The proposal also puts more emphasis on the protection of life. There was a threat that the right to abortion (currently only possible in three specifically defined cases), in force since 2017, would be extinguished as a result of non-compliance with the Constitution. The inclusion of conscientious objection in the constitutional proposal is also a novelty.

In terms of security, the state becomes the guarantor of effective protection against delinquency, with special emphasis on terrorism and organized forms of violence. Border police are established and deportation is required in the shortest possible time for those who have entered the country illegally.

As for equality between men and women in publicly elected positions, the proposal prescribes a parity approach to candidacy for these positions. Parity is therefore a criterion for entering the electoral process rather than exiting it. According to one of the transitional provisions, an adjustment in the allocation of seats will only take place if one of the sexes exceeds 60 % of the elected candidates in the next two congressional elections.

Less emphasis on feminist issues, restrictions on abortion policy or a different understanding of parity in public office probably contributed to the fact that this draft constitution was rejected more by women than men, especially in the under-34 age group. [Decide Chile, 2023a].

Compared to the previous draft, this one was contrasting. It significantly reduced constitutional guarantees from the state and promoted a vision of a society in which the private sector plays an important role in the provision of public services. It was less oriented towards minorities and indigenous population. It did not impose major changes in the functioning of state bodies and in many respects resembled more an attempt to update the still valid constitution.

## **5. THE CHILEAN PARADOX**

At the beginning of the 2019–2023 constitution-making process in Chile, the 1980 constitution was in force, against which there was demonstrable public opposition. The imaginary pendulum shifted in the first phase to a left-progressive proposal that did not represent the views of the majority of society and was rejected. Subsequently, the pendulum swung even more strongly back towards right-wing conservatism, but again this did not satisfy the majority of society. Thus, more than



four years after the outbreak of the protests, and with two drafts having been drawn up, the same constitution that was vigorously opposed at the outset remains in force.

The pendulum effect described above brings us to a paradoxical observation – the originally criticized legacy of the dictatorship in the form of the 1980 Constitution has become more acceptable virtually without any change. Two failed referendums have stabilized the status quo for a long time as far as the most basic principles of the functioning of the state are concerned. Paradoxically, the call for a change in the constitution has made it even stronger. Moreover, the protesting groups have largely lost the legitimacy to call for radical changes, as they have not seized their opportunities. We call such a result the Chilean paradox.

One possible explanation is the change of the voting system from voluntary to compulsory during the ongoing constitution-making process. While the referendum on the new constitution in October 2020 and the elections for the first constitutional convention in 2021 were conducted on the basis of voluntary participation, the ratification referendum on the first draft and all other votes in the process already required compulsory participation. This meant more than 3 million new voters who had not participated at all in previous votes. These voters are overwhelmingly from the lower socio-economic strata, do not identify with political parties or on the left-right axis, generally distrust institutions and are not interested in politics. [González, 2023] Naturally, uninformed voters with an aversion to politics are more likely to reject its outcomes and to succumb to the aggressive anti-campaigning that accompanied the votes on both drafts.

The second view is that the constitution-making process and its results are merely a reflection of the gap between the political elite and ordinary citizens. Based on data from the 2017 presidential election, 55 % of the population could be classified as being in the middle of the political spectrum. This figure rose to 66 % in the 2021 presidential election, i.e. two years after the protests broke out and during the first phase of the constitution-making process. The data suggest that the electorate has been converging towards the political center in recent years [LEAS, 2022]. However, the same cannot be said about their representatives, who have produced two overly ideologically laden draft constitutions, highlighting their mutual contradictions. While citizens held moderate positions, the political elite refused to leave their ideological trenches at the edges of the political spectrum. In this context, the rejection of both drafts is an expression of the discrepancies between the representatives and the represented.

## CONCLUSION

The constitutional process in Chile was supposed to heal the wounds caused by the wave of social unrest and calm society, but it has become just another arena for political struggle and ideological rivalry. Both draft constitutions went too far to the edges of the political spectrum and were rejected by the citizens, even though the new constitution was one of the demands of the protesters. It is important to emphasize that we focused primarily on the points that were problematic in both drafts, but this does not exclude the existence of points that people accepted and identified with.

The constitution is the fundamental law of the state on which there should be broad agreement. However, some passages in both drafts were more reminiscent of party political agendas. To a large extent, this was due to the unrepresentative composition of the constitutional bodies, in which comfortable majorities were able to impose their own visions of how society should function without taking into account the views of minorities. Attempts at dialogue and understanding were defeated by simple power mathematics.

The dynamics of the whole process were also affected by the introduction of compulsory voting, which brought more than 3 million new members into the system with minimal interest in politics and often with an inherent resentment of the political class. This has only accentuated the gap between ordinary citizens and the political elite, whose views on political outcomes in many cases diverge.

The original constitution, which is perhaps the biggest winner of the whole process, remains in force. The controversial nature of both proposals has meant that the constitution that was initially opposed has become more acceptable, virtually without any change. We have called this result the Chilean paradox.

In conclusion, the only broad consensus seems to be, at least for now, that the constitution-making process will not continue. However, the challenges facing the country remain the same as before the protests broke out.

## REFERENCES

- Aste Leiva, B., (2020), Estallido social en Chile: la persistencia de la Constitución neoliberal como problema. In: *Saggi – DPCE online*, 2020/ 1. ISSN 2037-6677.
- Acuerdo por Chile* (2022), 12.12.2022, available online at [https://www.senado.cl/senado/site/docs/20221212/20221212194743/acuerdo\\_constitucional\\_definitivo\\_2\\_0.pdf](https://www.senado.cl/senado/site/docs/20221212/20221212194743/acuerdo_constitucional_definitivo_2_0.pdf)
- Acuerdo Por la Paz Social y la Nueva Constitución* (2019), 15.11.2019, available online at [https://obtienearchivo.bcn.cl/obtienearchivo?id=documentos/10221.1/76280/1/Acuerdo\\_por\\_la\\_Paz.pdf](https://obtienearchivo.bcn.cl/obtienearchivo?id=documentos/10221.1/76280/1/Acuerdo_por_la_Paz.pdf)
- Bauer, C., (1998), Slippery Property Rights: Multiple Water Uses and the Neoliberal Model in Chile, 1981–1995. In: *Natural Resources Journal*. ISSN 0028-0739. Vol. 38, n. 1, p. 109–155.

*Constitución Política de la República de Chile* (2024), 22.01.2024, available online at [https://www.camara.cl/camara/doc/leyes\\_normas/constitucion.pdf](https://www.camara.cl/camara/doc/leyes_normas/constitucion.pdf)

Couso, J., (2012), Trying democracy in the shadow of an authoritarian legality: chile's transition to democracy and Pinochet's constitution of 1980. In: *Wisconsin International Law Journal*, 2012. ISSN 0743-7951. Vol. 29, n. 2, p. 393–415.

Decide Chile (2023a), *Informe: Plebiscito Constitucional 2023*, 2023, available online at [https://static1.squarespace.com/static/6078e332d6af970bb7b95e6f/t/662135ddbdb91401c765426b/1713452520291/Informe+Plebiscito+Constitucional+2023\\_DecideChile+.pdf](https://static1.squarespace.com/static/6078e332d6af970bb7b95e6f/t/662135ddbdb91401c765426b/1713452520291/Informe+Plebiscito+Constitucional+2023_DecideChile+.pdf)

Decide Chile (2023b), *#MásDataMenosGuata: Coincidencia entre texto de los Expertos y la propuesta del Consejo Constitucional*, 2023, available online at <https://www.decidechile.cl/articulos-blog/masdatamenosguata-coincidencia-del-texto-de-los-expertos-y-la-propuesta-del-consejo-constitucional>

Europa Press (2022), *Boric defiende que el estallido social no fue una "revolución anticapitalista" ni "una pura ola de delincuencia"*, 18.10.2022, available online at <https://www.europa-press.es/internacional/noticia-boric-defiende-estallido-social-no-fue-revolucion-anticapitalista-pura-ola-delincuencia-20221018154217.html>

Expansión (2024), *Chile – Pirámide de población, 2024*, available online at <https://datosmacro.expansion.com/demografia/estructura-poblacion/chile>

Fábrega, J., (2022), Ordenamiento Ideológico En La Convención Constitucional Chilena. In: *Revista de Ciencia Política*. ISSN 0718-090X. Vol. 42, n. 1, p. 127–151.

Faúndez-Sánchez, E., (2016), Propuesta de reinterpretación y extensión del principio de subsidiariedad económica hacia la cooperación público-privada en Chile. In: *Revista Digital de Derecho Administrativo*. ISSN-e 2145-2946. Vol. 15, n. 1, p. 207–231.

Fuentes, C., (2020), A 40 años del plebiscito de Pinochet, 08.08.2020, available online at <https://www.ciperchile.cl/2020/08/08/a-40-anos-del-plebiscito-de-pinochet/>

Garcés, M., (2020), *Estallido social y una nueva Constitución para Chile*. Santiago : LOM ediciones, ISBN 978-956-00-1245-6.

González, R., (2023), *Proceso constitucional: Expectativas defraudadas*, 27.12.2023, available online at <https://www.ciperchile.cl/2023/12/27/expectativas-defraudadas/>

Gómez Bernaldes, G., (2022), Revisión y crítica al proceso constitucional chileno. In: *Cuadernos Manuel Giménez Abad*. ISSN 2254-4445. N. 23, p. 106–136.

Jiménez-Yañez, C., (2020), #Chiledespertó: causas del estallido social en Chile. In: *Revista mexicana de sociología*. ISSN 2594-0651. Vol. 82, n. 4, p. 949–957.

LEAS (2022), *Encuesta de opinión pública: comparative national elections project (CNEP)*, 2022, available online at <https://leas.ua.cl/web/wp-content/uploads/2022/01/Informe-Encuesta-CNEP-Enero-2022-FINAL.pdf>

Memoria chilena (2024), *Constitución política*, 2024, available online at <https://www.memoriachilena.gob.cl/602/w3-article-92403.html>

Navarrete, B., Tricot, V. (eds.), (2021), *The Social Outburst and Political Representation in Chile*. Cham : Springer, ISBN 9783030703202.

Parra Coray, G., (2021), Conclusion: „We Didn't See It Coming“: Chile's 2019 Social Outburst. In: *The Social Outburst and Political Representation in Chile*. Cham : Springer, ISBN 9783030703202, p. 193–199.

Sasse, L., (2021), Chile despertó - The reasons for the mass protests in Chile 2019/2020. In: *IPE Working Papers 166/2021*. ISSN 1869-6406.

NUDESOC (2020), *Informe resultados oficial: Encuesta Zona Cero*, 2020, available online at <https://nudesoc.cl/wp-content/uploads/2020/03/Informe-Resultados-OFICIAL.pdf>

OECD (2024), *Income inequality*, 2024, available online at <https://data.oecd.org/inequality/income-inequality.htm>

*Propuesta Constitución Política de la República de Chile* (2022), 04.07.2022, available online at <https://www.chileconvencion.cl/wp-content/uploads/2022/07/Texto-Definitivo-CPR-2022-Tapas.pdf>

*Propuesta Constitución Política de la República de Chile* (2023), 07.11.2023, available online at <https://www.procesoconstitucional.cl/docs/Propuesta-Nueva-Constitucion.pdf>

Scherman, A., (2023), *Triunfo del “En contra”: El abismo insalvable entre la clase política y electorado*, 18.12.2023, available online at <https://www.ciperchile.cl/2023/12/18/triunfo-del-en-contra-el-abismo/>

UAH (2022), *Chile dice: una radiografía de la sociedad chilena de cara a un nuevo proceso constitucional*, 2022, available online at [https://www.uahurtado.cl/wp-images/uploads/2022/10/Informe\\_ejecutivo\\_Chile\\_Dice\\_2022.pdf](https://www.uahurtado.cl/wp-images/uploads/2022/10/Informe_ejecutivo_Chile_Dice_2022.pdf)

Viera, Ch., García-Campo, G., (2024), El largo camino hacia la democracia: El neoliberalismo autoritario en la Constitución Económica chilena. In: *Revista Derecho del Estado*. ISSN 2346-2051. N. 58, p. 389–422.