A Constitution Borne Out of Actual Bullets

A Reply to Sergio Verdugo

Jorge Contesse

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When Sergio Verdugo published his post, *The Chilean Political Crisis and Constitutions as Magic Bullets: How to Replace the Chilean Constitution?*, Chile's President Sebastián Piñera's approval rate was at 14%. Less than a week later, polls suggest a worrying and unprecedented 9% support. Although President Piñera has adopted significant measures, people are still protesting. It is not likely that this will change until the people have had the opportunity to participate in constitutional deliberations – and it is now upon the President to act.

The situation in the country has rapidly and radically escalated. Massive demonstrations continue, the government is still unable to restore order, small businesses are in serious hardship and political parties seem lost. Lawsuits for police mistreatment, sexual assault and torture have skyrocketed. The number of individuals with ocular injuries due to armed forces shooting to repress peaceful protests is higher than in any other part of the world, including war zones. For a nation that four decades ago experienced a coup followed by a bloody 17-year dictatorship, the images of tanks patrolling the streets, police shooting at demonstrators, looting, barricades and a president convening the National Security Council to address a situation of civil unrest are deeply concerning.

As Sergio correctly notes, the Chilean government has adopted several measures in response to the demonstrations. More than USD 1,200 million will be used to increase pensions, salaries and health. The government froze electric bills and stopped the infamous USD 4-cent (30 Chilean pesos) Metro fare increase. President Piñera reshuffled his cabinet. Yet, protestors do not placate.

Why are the people still protesting if the government is carrying out a seemingly aggressive "social agenda"? In my opinion, the answer is simple (although the solution is not): Chileans want to get rid of the Constitution that Augusto Pinochet imposed in 1980 and that the democratic governments that followed have failed to replace. Importantly, the claim is not that a new Constitution will magically solve all current problems – as far as I know, no one has seriously argued that a new Constitution is a magic bullet. Put in its best light, the people's claim is to have *the possibility to engage* in a constituent dialogue. That is why President Piñera's "social agenda" has so far landed on deaf ears. That is why the First Lady candidly acknowledged in a leaked audio message sent to a friend that the government is perplexed and overwhelmed – that the protests seem like an "alien invasion".

Sergio makes two problematic assertions. First, he argues that when current President Piñera was elected, "the demand for a new Constitution was not the priority for most Chileans". To support this claim, he focuses on the fact that Piñera won the second round of the 2017 election "by a wide margin." This last assertion is correct but misleading – and it has in fact misled Piñera's government. In the 2017 presidential first round, candidates who ran on platforms that expressly included constitutional replacement obtained a total 56% of the general vote. Piñera, who rejected constitutional replacement, obtained 36.6%. One can hardly claim that because Piñera defeated a weak candidate in the ballotage (in an election where less than 49% of the people voted), Chileans' demand for a new Constitution suddenly became unimportant. And, as I note, President Piñera himself has governed under that wrong assumption.

Second, Sergio argues that "the current constitutional system does not reflect the plan of [Pinochet's]

authoritarian regime but was changed both in *formal* and *material* ways." I disagree. To be sure, *formally* the Constitution is not the same as in 1980. As Sergio observes, in 2005 Pinochet's signature was replaced with President Ricardo Lagos's and many of the so-called "authoritarian enclaves" have been dismantled.

Materially, however, Pinochet's Constitution is largely intact. To demonstrate that "the political community is organized in a different way," Sergio mentions *one* example: the 2015 electoral reform, which allowed smaller political parties to have congressional representation. But the new electoral system has been in force for … less than two years! For *three decades*, Chile has lived under the political and constitutional architecture that Pinochet set up. We cannot ignore that fact. The protests are not a reaction to two years of an unresponsive and gridlocked political process – nor are they a response, as he rightly mentions, to a 30-pesos Metro fare increase. As protestors claim: "It's about 30 years!"

The Chilean people have never truly had the chance to deliberate on their constitutional claims and to shape the country's political design. The 1980 Constitution crystallized a neoliberal model that Pinochet and the so-called Chicago Boys implemented in the 1970s, precisely because there was a dictatorial regime in place. Margaret Thatcher's 1982 letter to Friedrich von Hayek is a fine statement to this: the former UK Prime Minister candidly acknowledged that the measures adopted by Pinochet would be "quite unacceptable" in a country with democratic institutions. What were those measures? Let me just mention a few: the privatization of health, social security (for every Chilean except for those in the Armed Forces!), the defunding of public education, and the privatization of water which, coupled with unprecedented drought, has caused dramatic water shortages. (All of this happened, we shall not forget, while the regime carried out massive and systematic human rights violations.) Those are the measures people are challenging today – the constitutional architecture of an authoritarian regime.

Sergio ends his post with a call to "politicians", in plural. But Chile is a hyper-presidential system. The urgent call today should be, in my view, directed to the president himself. *He* has the power to change the course of events. Sadly, his response has so far been directed towards the criminalization of social protest and the adoption of measures that do not placate protestors. In the meantime, people are holding informal town hall meetings ("*cabildos*") in public squares, schools, universities to discuss constitutional matters. A constituent process is already happening, albeit informally.

Will President Piñera's government react to it?

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