



Specialized Agency

Chilean Constitutional Convention

Preston Huyard and Jackson DeHaven
Co-Chairs



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Chilean Constitutional Convention

Letter from the Chairs

Dear Delegates and Sponsors,

Welcome to GSMUN XXVI's Chilean Constitutional Convention Committee! In this committee, you will address the political and social conflicts within Chile by drafting a framework for a new constitution. Your positions, the central issues, and the reforms available to you are modeled after Chile's 2021 Constitutional Convention, which held its first session on July 4, 2021, the date our committee will take place. As delegates, it is your responsibility to present creative, thoughtful solutions to ensure a stronger government for Chile.

Jackson DeHaven is a senior at Maggie Walker, and is excited to serve as a chair for the Chilean Constitutional Convention for his third year in Model UN and second year at GSMUN. Outside of Model UN, Jackson competes on Maggie Walker's We the People Team, works as an intern at the Central Virginia Legal Aid Society, and works as a tutor. He enjoys playing piano, traveling, and sleeping. He is looking forward to a great committee at GSMUN this year!

Preston, a senior at Maggie Walker, is looking forward to meeting everyone and can't wait to get started with this committee. He has attended Model UN conferences since eighth grade and has since served as a vice chair and co-chair. Besides Model UN, Preston enjoys participating in Spanish Club, the International Language Fair, and the volleyball and swim teams at Maggie Walker. Some of his favorite out-of-school activities are playing volleyball, hanging out with friends, and spending time with his dog. He is really excited to co-chair for this conference and knows all the delegates will be amazing!

This committee requires thorough research and attention to detail. We will be evaluating delegates not just based on rhetorical ability and active participation, but on well-written position papers and thoughtful contributions to the discussion that align with your assigned roles. Because delegates in this committee will work towards establishing a long-lasting framework for Chilean governance, you must have a scholarly understanding of the issues plaguing Chile, the foundational causes of those issues, and the competing theories about how they should be addressed. This background guide is meant as an introduction to your research, and in your position paper we expect to see a multitude of sources with formatting according to the rules of the Chicago Manual of Style (CMS), including footnotes and a works cited page. At GSMUN, position papers are graded objectively and will be checked for any instances of plagiarism, including the use of artificial intelligence, so make sure you are adhering to the Honor Code when constructing your papers.

Finally, a major goal of GSMUN is the money we raise to support charity. This year, GSMUN XXVI is proud to support the Leukemia & Lymphoma Society, and we encourage you to join us in our efforts to make a difference through purchasing items from the merch cart, which will be circulating throughout GSMUN, so please remember to bring money. If you have any questions or concerns, or would like preemptive feedback on your position papers, please feel free to contact your chairs at gsmunxxvi.chile@gmail.com. We are looking forward to meeting everyone in committee. See you at GSMUN XXVI, and good luck!

Your Chairs,

Jackson DeHaven
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Preston Huyard

Chilean Constitutional Convention

Committee Overview

Background

In 2020, 78% of Chileans voted to rewrite the Constitution. After months of unrest, primarily resulting from economic and social inequality, Chileans blamed structural issues within their government and decided that their constitution no longer met the country's evolving political needs. In 1980, General Pinochet's military dictatorship drafted the existing constitution largely to preserve Pinochet's authoritarian grip on the country as it began to transition toward democracy. These authoritarian origins and their manifestation in government policy bolstered calls for reform, and the constitutional referendum's overwhelming success provided a clear mandate for the Convention.

Chileans elected delegates to the Constitutional Convention in May, who were set to begin their term in July. Delegates ranged from career politicians to school teachers, with varying levels of experience and political involvement. Each represented a fairly small district, but the Convention also reserved seats for Chile's indigenous groups. The indigenous representatives combined with widespread criticism of Sebastian Piñera's right-wing government resulted in a convention a bit farther to the left than the Chilean population.

This Committee begins on July 4, 2021, the date that the delegates to the Convention took office. Delegates will be tasked with creating resolutions about what language will be included in the Constitution itself, and have the freedom to construct whatever sort of constitution they wish. However, whatever the delegates decide must be ratified by the Chilean people, so proposals which fall outside the mainstream of Chilean politics are likely to fail, even if the

Convention votes to adopt them. The desire for a Constitution is clear, but it remains to be determined whether the Convention can create a working government that the people will accept.

Topic I: Economic and Social Inequality **History of the Issue**

In 1970, Salvador Allende initiated an amendment to the Chilean Constitution that would expropriate the mining industry of the South American nation. Seemingly inconsequential, this marked the beginning of the president's long list of governmental and societal reformations aimed at increasing national profits and nationalization of many industries that were once citizen-owned such as businesses and agriculture.¹ As the first openly Marxist leader in the Western Hemisphere, his leadership and policies concerned anti-communist diplomats on an international scale, specifically members of the Nixon Administration. However, the most direct impacts of his radical presidency were for those living in Chile. After Allende's rule placed pressure on the nation, he lost support of the government and military. Subsequently, the military, backed by the United States government, staged a coup led by Augusto Pinochet Ugarte in 1973, which successfully overthrew the Allende administration and implemented a new regime with Pinochet as leader.²

The immediate effects of the Pinochet dictatorship focused on increased government ownership of private industries and aggressive suppression of any oppositionist movements that could threaten the regime. The economy grew to increasingly depend on international activity as opposed to internal industry, rapidly declining the quality of life of many of

Chile's citizens.³ In September of 1980, the Chilean government drafted a new constitution focused heavily on government dominance over citizen involvement.

Notably, Pinochet included that he would stay in power until 1988, when a referendum would be held to decide whether he would stay in power. He was subsequently voted out of the presidency, but remained the Commander in Chief of the military until 1998. After this, he would become a Senator for life as stated in the 1980 Constitution.⁴ The end of his presidency did not mean the end of his rule. Due to the highly militaristic nature of the government immediately following the ratification, Pinochet would extend his heavy influence for decades.

The 1980 Constitution itself placed a heavy emphasis on government control and included many ambiguities and exceptions in order to ensure the promotion of its influence. Article 39 of the Constitution identifies and acknowledges the existence of fundamental rights and liberties that the citizens of Chile held, however, it includes that these rights can be limited in specific circumstances including war, "internal commotion, [and] public emergency and [public] calamity."⁵ These terms are left purposefully broad in order to assure their enforcement in a variety of situations. The following articles outline that the state of catastrophe and state of emergency are to be determined and assessed by the President of the Republic. Article 43 states that through either of these declarations, the President holds the power to suspend the rights of movement and assembly, as well as the power to establish additional limitations until the state of catastrophe is lifted.⁶

The military also gained extreme influence over the governmental system, increasing executive power. Consequently, the President of the Republic could dissolve the chambers of Congress or pass legislation without congressional approval.⁷ This increased influence of the military, under Pinochet's command, meant increased force

used against the public and citizen organizations. Later investigations determined that 3,197 people had either been killed or disappeared under state force in the time period between September 1973 and March 1990.⁸

Current Status of the Issue

Due to the hyperfocus on not only bolstering the economy, but also international economic stimuli as opposed to internal strengthening, a large amount of economic and social inequality persists in Chile today. This monetary disparity exists mostly between the upper class and lower class. However, there are many specific groups along this scale that face other forms of discrimination and unequal opportunities.

In 2018, the World Bank stated that the gross domestic product (GDP) per capita in Chile was \$25,000, or about half of the overall population earned less than \$523 per month, signaling a large monetary imbalance throughout the country.⁹ In 2021, the top 10% of Chilean citizens owned over 80% of the overall wealth and nearly half of that wealth was within the top 1% of the population. The average personal wealth of the top 1% was nearly \$2.86 million. The bottom 50% of the population actually held a negative percentage of the wealth at -0.6% due to extreme liabilities and debt.¹⁰

The government recognized this and attempted to address it through the enactment of poverty reduction programs along with the implementation of the free market economy over the last several years. Due to this increased involvement in economic stability, the poverty rate dropped from 7.4% in 2006 to 1.8% in 2017. Chile received much praise for its apparent economic innovation and development. However, the Chilean government's focus on poverty reduction usually leads to decreased attention to the overall inequality, an imbalance that many of these citizens who have recently escaped poverty now experience firsthand.¹¹

Economic inequality is not the only disparity that Chilean society faces. Women and girls still suffer from many disadvantages throughout the nation. Women born to poor families in impoverished areas have an average life expectancy 18 years shorter than those who live in more affluent regions.¹² Additionally, while sexual harassment and violence are illegal, and there are some criminal implications for perpetrators (specifically in public), the number of reports of these crimes against women reached well over 17,000 in the first half of 2020.¹³ Equal pay for women is also not systematically required or encouraged widely, causing even more inequality economically and socially for many women.¹⁴

In addition to gender equality, the indigenous communities of Chile are often overlooked or discriminated against. Despite constituting over 10% of the overall Chilean population, many of the citizens who identify as indigenous are living in poverty. There are also many struggles over property rights within the communities, the largest of them being the Mapuche people. Many of these struggles are due to the lack of inclusion of the indigenous population in the constitution or the governmental system.¹⁵

There are many other marginalized groups including those with disabilities, the LGBTQ community, immigrants, and many more, all stemming from an elitist form of government under Pinochet's highly exclusive and dictatorial reign and constitution. Continued issues of inequality in Chile caused the country's younger population, especially students, to speak out against nationwide inequity. Specifically, in 2011, university and high school students protested over the large difference in price of private vs public universities and the lack of accessibility to education.¹⁶

Following this in 2019, widespread protests broke out opposing governmental abuse of power, social and economic inequality, and overall difficulties that the Chilean people have endured for decades.

This *Estallido Social* (Social Explosion), as it was called, led to thousands of injuries and many deaths, as well. Additionally, tensions were only risen with suspected human rights violations (torture, sexual violence, widespread arrests, etc.) committed by law enforcement.¹⁷ Quickly after these protests, the Chilean government promised to hold a referendum on whether to hold a new constitutional convention or not. In October 2020, the government approved the formation of a convention to draft a new constitution.¹⁸

Although a huge step for societal and governmental reformation, many issues directly linked to inequality in Chile continue. The national privatization of water that started under Pinochet's rule remains a prominent complaint among the Chilean population, especially those living in rural areas with even more difficulty in accessing consistent drinking water. Increased pressure from climate change worsens the issue as lakes dry up and agriculture, tourism, and health become threatened.¹⁹ Over the past several years, more than 200,000 citizens lack access to consistent clean drinking water.²⁰ While this constitutes a smaller proportion than some other developed countries including the United States, this scarcity presents a substantial risk to public health for a large sum of people. There are discussions among the convention representatives involving this issue, but much can be done to ensure clean water access for more Chileans.

The recent COVID-19 impacted Chile gravely, causing an increase in poverty from about 9.8% to 15.5%. While not incredibly high compared to other nations around the world, the existing inequality was only exacerbated by the pandemic. With lockdowns and restrictions, impoverished Chileans' situations worsened.²¹ While the nation's economy has mostly recovered, this catastrophe indicates the fragility that economic inequality creates, something that could be addressed in the convention.

Analysis and Solutions

The new constitutional convention is composed of 155 representatives from various parts of Chile and varying demographics, and there are many aspects of the makeup of the new constitutional convention that break tradition. One substantial note is the gender representation in the convention. Of the 155 representatives, 78 are men and 77 are women with 6 members identifying with the LGBTQ community. Additionally, the convention aimed to include representatives of various political ideologies: 37 identify as right-leaning, 25 as left-leaning, 28 identify as part of the left, and the other 65 seats are occupied by independents. The body also consists of representatives from a wide range of occupations spanning from politicians to teachers to journalists.²²

A crucial part of the makeup of the convention is the 17 reserved seats for the indigenous community with the Mapuche people obtaining 7 of those spots.²³ Elisa Loncon, a member of the Mapuche indigenous community, was elected president of the assembly. All of this inclusion opens the possibility for more representation for the indigenous population of Chile.²⁴

On the other hand, the large amount of diversity within the convention could lead to even more issues. Some traditionalist and conservative groups have reservations regarding a supposed surplus of power for some groups represented, specifically the indigenous population. Additionally, the large number of independent representatives could lack sufficient influence compared to larger and more powerful political parties, allowing both conservative and left-wing representatives to overpower smaller groups.²⁵ The wide range of political ideologies represented in the convention makes clear that compromises will be necessary in order to create a more equal Chile.

With committees on discussion of indigenous territorial rights, gender and sexuality rights, disability rights, and many more progressive issues, many believe the new

constitution will provide a framework for a more diverse, inclusive, and safe Chile.²⁶ The constitution will include other proceedings, as well, but the increased diversity of opinion and experience in the representative body as well as increased discussion of a wider array of topics seems to oppose the more stringent ideologies of Pinochet's rule and constitution, an opposition that the people of Chile have been calling for. With fair discussion and wider representation, it is possible that the new constitutional convention can decrease the economic and social inequality throughout the nation.

Questions to Consider

1. Do the original 1980 Constitution and the rule of Pinochet have more influence over modern social and economic inequality issues or is it more related to modern politics?
2. Is it possible that the makeup and ideological distribution of the constitutional assembly will actually cause more issues and divisiveness? What other tensions might arise? How can these be resolved?
3. How will modernization and globalization affect the indigenous communities of Chile? How can the government reconcile societal change with traditional/historical values?
4. What steps can Chile take to prevent another dictatorship or oppressive government? Likewise, how can the government prevent a one-party monopoly on the Chilean government?
5. In what ways can Chile's constitutional process be supported on an international scale? Can it take influence from other nations' governing documents? How else can global interaction benefit Chile and could this cause more issues?

Further Research

1. <https://www.hrw.org/world-report/2021/country-chapters/chile>: This article outlines some of the major events that occurred in Chile including human rights violations as well as societal changes.
2. <https://online.ucpress.edu/currenthistory/article/120/823/43/115914/Chile-s-Constitutional-Moment>: This article discusses some historical information leading up to the Constitutional Convention and includes some possible tensions.
3. <https://data.oecd.org/chile.htm>: This website provides various sets of data on many aspects of Chilean society

Topic II: Limiting the Power of Government

History of the Issue

“Long live Chile! Long live the people! Long live the workers!” were the final cries of Chilean president Salvador Allende, who on September 11, 1973 found himself surrounded by his own military.²⁷ Hours later, Allende committed suicide, and two days later Augusto Pinochet, who led the military coup d’etat, was named president of Chile.²⁸ While U.S. involvement is unclear, a declassified Department of Defense document characterizes September 11 as a “D-Day” for U.S. interests, following a three-year gap from 1970-1973 which remains classified, leading many to speculate that the United States played a substantial role in Pinochet’s rise to power and the demise of a left-wing president who often sided against U.S. foreign policy interests.²⁹ Pinochet ruled Chile for seven years, using martial law to give legitimacy to his military dictatorship. Once he had fully consolidated power, Pinochet wrote his regime into law, and assembled a group of loyal, right-wing intellectuals to formulate a constitution.³⁰

The 1980 Chilean Constitution included protections for individual rights and imposed limitations on the government, but

most of these were subject to alteration from the state, rather than fundamental law. For example, the Constitution provides that “No one may be deprived of his personal freedom nor may such be restricted except in the cases and the manner established by the Constitution and the laws,” a guarantee of freedom rendered meaningless by granting the state the right to infringe upon it.³¹

The defects in the language of the Constitution were realized by structural elements and political conditions that supported single-party authoritarian rule. The 1980 Constitution granted the president of Chile sweeping powers, with the intention that they would be exercised by Pinochet and his chosen successors. The President is given the right to control Chile’s natural resources,³² to control sessions of Congress,³³ oversee taxation and raise additional revenue,³⁴ and suspend the constitution and personal freedoms when necessary.³⁵ Additionally, Presidents are limited to single six-year presidential terms, and though it was popular in elite circles for their deemphasis on reelection, primarily serves to limit the influence of the electorate.³⁶ Upon the end of their term, presidents receive a lifetime position in the Senate, ensuring their lasting influence while insulating from any form of democratic accountability.³⁷ These limitations on popular sovereignty make the powers vested in the executive threatening, because the president may exceed even the broad authority imagined by the constitution without any fear of electoral repercussions.

The 1980 Constitution also instituted a binomial system of representation, a process employed only by Chile and Poland that has been subject to much scholarly critique and criticism. The binomial electoral systems granted seats in the legislature to the top two finishers in each district, effectively ensuring that the two dominant coalitions would hold nearly all of the seats. In practice, this meant that Pinochet’s dominant party, while representing a minority of citizens, nearly always retained about 50% of legislative seats,

facing a fractured opposition.³⁸ Constitutional scholars have suggested that this electoral system prevented Chile from transitioning away from authoritarianism towards democracy after the downfall of Pinochet's regime, the legacy of binomialism making it nearly impossible for democracy to flourish.³

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Pinochet used his constitutional appointment power and his party's control of the legislature to stack the courts with loyal judges who would continue protecting his interests long after the end of his presidency. The 1980 Constitution granted the Chilean Supreme Court the power of *amparo*, a form of judicial review, but the court repeatedly refused to wield it, instead deferring to military tribunals and government entities in a tacit endorsement of authoritarianism.⁴⁰ With hierarchical authority over all national courts, the Pinochet-era Supreme Court accepted bribes and perverted justice through restructuring the queue of cases, preventing many from ever being heard.⁴¹

With extensive executive powers, a legislative system that ensured Pinochet's party remained dominant in the legislature, and a corrupt and loyal judiciary, Pinochet's power in Chile was near-absolute.⁴² Emboldened by the authoritarian constitution,

Pinochet's government engaged in widespread abuses of human rights. The government arrested individuals without charging them, censored the press, banned public meetings, deported political opponents, broke into homes, and murdered leftist journalists.⁴³ By the time Pinochet left office, the Chilean people had developed a healthy fear of excessive government power, but remained hopeful that the end of the dictatorship could mean a more limited government with respect for the rights of the Chilean people.

Current Status of the Issue

Because the 1980 Constitution was drafted to enshrine the power of Pinochet's right-wing party and grant the dictatorship the latitude to enact whatever policies it saw fit, Chile has been plagued with an unrepresentative government that consistently fails to honor human rights. During *Estadillo Social* (Social Explosion), a wave of protests erupting from a slight rise in Santiago bus fares exposed these deep-rooted problems in the Chilean government. Issues of social and economic inequality formed the impetus for these protests, but it was also driven in part by a resurgence of left-wing political parties. The 1980 Constitution bans political parties which are "contrary to morals, public order, and the security of the state," a policy which Pinochet's regime used to ban Marxist and socialist parties.⁴⁴ After the end of the dictatorship, subsequent governments slowly became more permissive of left-wing parties, allowing leftist thought to flourish in the public consciousness. In 2019, with newly legitimate leftist voices critiquing the neoliberal economic policies of Pinochet's successors which failed to prioritize the needs of workers and indigenous people, decades of pent-up rage found voice in the "social explosion."⁴⁴

As the festering authoritarianism of the 1980 Constitution boiled over during *Estadillo Social*, President Sebastian Piñera's policy response to the protests illuminated the ways that a government founded on authoritarian principles poses a constant threat to individual rights. Piñera's government deployed the Carabineros, a military police agency, into the streets of Santiago, resulting in a litany of human rights violations. The Carabineros arbitrarily imprisoned Chilean citizens, beat them, suffocated them, threatened them with electrocution, subjected them to simulated execution as an interrogation tactic, raped them, and killed them.⁴⁶ Officials within the Carabineros and Piñera's regime itself were aware of these human rights abuses, but viewed inflicting harm on the Chilean people as a "necessary evil" to protect public order.⁴⁷ This institutional position on human rights is widely reflective of authoritarian regimes, which place security and stability above individual rights and are willing to accept extreme brutality to achieve their ends. Chileans may have moved past the authoritarianism of the Pinochet era, but the police violence during *Estadillo Social* reveals that its legacy, enshrined in the 1980 Constitution, remains integral to Chilean government.

Estadillo Social shook Chilean politics to its core. Piñera, a lifelong conservative, apologized for his "lack of vision" and crafted a new policy agenda which attempted to meet many of the protestor's original demands, with expansions in pensions, healthcare, minimum wage, and wealth taxes.⁴⁹ The Minister of the Interior and Public Security and director of the Carabineros, Andrés Chadwick, was found guilty by the Chilean Senate of human rights violations, and barred from public office.⁵⁰ But these concessions failed to satiate an outraged public thirsting for justice, and on November 7 the Association of Municipalities, a nongovernmental organization representing 330 Chilean municipalities and the entire political

spectrum, called for a constitutional referendum, forcing the government to acquiesce to citizen demands for a constitution.⁵¹ Tasked with rectifying the issues which both caused and emanated from the protests and the government's response, representatives from across Chile convened on July 4, 2021.

Analysis and Solutions

In both Augusto Pinochet's 1973 coup d'état and Sebastian Piñera's 2019 response to *Estadillo Social*, the military and the police were the means by which the government abused its power. The 1980 Constitution establishes the Armed Forces and Armed Police, but neglects any disciplinary or oversight process,⁵² and in some cases authorizes the leaders of the Armed Police to suspend individual rights at their discretion.⁵³ As a result, constitutionally required warrant procedures and other criminal rights are routinely disregarded through backdating and fabricating paperwork to legitimize arbitrary arrests.⁵⁴ The Chilean public increasingly views the police as an unjust force threatening democracy and individual rights, and generally supports reforms to increase accountability within the Carabineros and other police agencies.⁵⁵

There are a number of competing theories regarding the most effective strategies for increasing police accountability. One popular solution is a "tabula rasa" approach in which a policing system is completely eliminated and a new agency is built to take its place, often with differences in personnel, structure, or leadership. This approach has had mixed results, but has generally been positively received for its ability to eradicate problematic agency cultures.⁵⁶ Constitutionally, this could be achieved by separating the national military from the domestic police, which are integrated and given similar powers in the 1980 Constitution.⁵⁷

The violation of constitutional rights demonstrates another potential defect in

Chile's current constitution, which is that even when the individual rights it protects are violated, courts have largely been ineffective at checking government agencies and asserting the will of the people.⁵⁸ The 1980 Constitution establishes a constitutional court with the power of preventative judicial review, meaning that it may review laws before their passage to ensure compliance with the Constitution and the rights it guarantees.⁵⁹ However, because the justices hold their positions for life, many of the court's members were appointed during the Pinochet Era, and have consistently ignored their responsibilities by refusing to hear cases and deliberately countering the will of the people with decisions that are clearly intended to promote the legacy of Pinochet's policies.⁶⁰ While this issue may resolve itself as justices resign or die over time, it has prompted criticism of lifetime judicial appointments and calls for judicial term limits.⁶¹

Questions to Consider

1. What are the primary issues relating to the power of the Chilean government? What checks and balances, if any, should be implemented?
2. What constitutional elements should be changed or implemented to protect the rights of the Chilean people? Which rights are most important?
3. What foundational values should Chile prioritize when rewriting its constitution? How can the Convention guarantee that the government will reflect these values long-term?
4. Are substantive structural changes to the Constitution necessary? Is it tenable to alter the constitution within its existing framework?
5. How should the relationship between domestic police and the Chilean public be improved? Are constitutional reforms needed, or will other forms of oversight resolve this issue?

Further Reading

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2. <http://hrlibrary.umn.edu/research/chile-constitution.pdf>: This is a PDF of the full text of the 1980 Chilean Constitution, useful for referencing major clauses and structures.
3. https://www.ohchr.org/sites/default/files/Documents/Countries/CL/Report_Chile_2019_EN.pdf: This UN report provides a thorough account of the human rights violations and gives recommendations for reform.
4. <https://theconversation.com/chile-puts-its-constitution-on-the-ballot-after-year-of-civil-unrest-147832>: This article discusses the conditions leading to *Estadillo Social* and the driving concerns behind calls for a new constitution.

Endnotes

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6. Chile Const. chap IV, art. 43. <http://hrlibrary.umn.edu/research/chile-constitution.pdf>.
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8. "Pinochet's Chile," World, 1.
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16. Sanders, "Chile's Constitutional," Wilson Center.
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