



**THE IMPACT ON THE REGULATION OF DEMOCRACY OF
THE CONSTITUENT PROCESSES IN BOLIVIA, COLOMBIA,
AND ECUADOR. LESSONS FOR THE CHILEAN
CONSTITUENT PROCESS**

by

Adolfo Ocaña Aguilar

Submitted to

School of Public Policy

Central European University

In partial fulfillment for the degree of Master of Arts in Public Policy

Supervisor: Evelyne Hübscher, Ph.D.

Vienna, Austria

2021

Author's declaration

I, the undersigned, Adolfo Ocaña, candidate for the MA degree in Public Policy, declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 10th of June 2021



Signature

Abstract

The social crisis that began in Chile in October 2019 overwhelmed the political system. Massive demonstrations forced Congress to approve a constitutional reform to initiate a constituent process, which is currently underway.

This thesis analyzes the potential of the constituent process for strengthening the Chilean democracy. Therefore, this research consists of a comparative study of the constituent processes carried out in Bolivia, Colombia, and Ecuador, countries with a socio-political and cultural context similar to that of Chile. The focus of this thesis is the regulation of democracy, with a special emphasis on the mechanisms of direct democracy- one of the attributes used to assess the quality of democracy which Chile currently lacks.

In this analysis I examine similarities between the Chilean process and the processes in Bolivia, Colombia, and Ecuador, both in origin and structure. My research results show that in all cases democracy was strengthened by incorporating direct democracy mechanisms in the constitution. Likewise, among other changes, fundamental rights were strengthened, particularly with regard to gender equality and education. These aspects in particular played a key role in promoting the values of democracy.

I argue that although this comparative analysis indicates the positive impact of a constituent process on the regulation of democracy in Chile, this necessary process alone, is an insufficient condition to guarantee the stability of a democratic system over time.

Acknowledgements

This thesis would not be possible without the guidance, support, and reassurance of my supervisor, Evelyne Hübscher, thank you.

To my family, especially my mother, for her support. Thank you for always being present despite the distance and impossibility of visiting me.

To my classmates, for their solidarity, friendship, and joy. They have made an incredibly difficult year better and made our master's program an unforgettable experience.

To my friends for encouraging me to pursue my dreams, especially Carlos and Mauricio, for helping and guiding me during this long process.

To Johanna, for pushing me to make my dreams and your own come true. You exemplify perseverance, thank you.

I dedicate this thesis to all my compatriots who have raised the flags of social justice, especially to those who were seen as dreamers and fighters of lost causes for many years. Time proved that our hopes, dreams, and our vision for a better democracy is worth fighting for.

And to my father, I know that wherever you are you are proud of me.

Table of Contents

Introduction.....	1
Structure of the dissertation	3
Chapter 1. Methodology	4
1.1 The research aim	4
1.2 Research questions	4
1.3 Research process	5
1.4 Researcher positionality.....	6
Chapter 2. Literature Review: Relationship between democracy and political constitutions ...	7
2.1 Democracy	7
2.2 Constitutions.....	10
Chapter 3: Constitutional regulation of democracy in Bolivia, Colombia, and Ecuador	15
3.1 The Bolivian constitutional process.....	15
3.1.1 Context.....	15
3.1.2 Composition, selection method, participatory mechanisms and deadlines	16
3.1.3 Changes experienced with the process	18
3.2 The Colombian constitutional process	20
3.2.1 Context.....	20
3.2.2 Composition, selection method, participatory mechanisms and deadlines	21
3.2.3 Changes experienced with the process	22
3.3 The Ecuadorian constitutional process.....	25
3.3.1 Context.....	25
3.3.2 Composition, selection method, participatory mechanisms and deadlines	26
3.3.3 Changes experienced with the process	27
Chapter 4: The Chilean constitutional process	31
Chapter 5: Conclusions	36
Bibliography	40

List of Tables

Table 1. Changes in the regulation of democracy in Bolivia.....	18
Table 2. Changes in the regulation of democracy in Colombia.....	22
Table 3. Changes in the regulation of democracy in Ecuador	27

Introduction

In October 2019 the Chilean government implemented an adjustment in the price of public transportation in Santiago, causing an increase in the price of public transportation fare. What seemed to be another standard bureaucratic procedure, ended up provoking a wave of protests. On October 18th Santiago experienced its most violent day with serious damage to public and private property and grave injuries to many people. From that day on, there was no turning back. The demonstrations became massive and their magnitude indicated that this was about more than the price of public transport. Inequalities, abuses, pensions, education, and health quickly became the focus of the protests. The government was completely overwhelmed and unable to provide satisfactory solutions to each of them.

On October 25th, the most massive demonstration in Chile's history took place, bringing more than 1.2 million people to the center of Santiago. While the government tried to control the public order through the use of the police and the army, arguing that the country was at war, Congress began to analyze alternatives to provide an institutional way out of the crisis. This was the most obvious sign that the country was experiencing a crisis that undoubtedly had the characteristics of what Ackerman (1999) defines as “constitutional moment”, an occasion in which people try to intervene more directly, going beyond the choice of the government in power.

A month later, on November 25th an agreement to initiate a constitutional process was finally reached by parliamentarians, which materialized through a constitutional reform enacted by the President of the Republic on December 23rd (LCC 2019). This process is, from a symbolic point of view, a historic opportunity to build a new political constitution democratically, taking into account that Chile is the only country in Latin America that

currently uses a constitution created under a non-democratic regime (UNDP 2015). At the same time, it is also an opportunity to strengthen democracy, opening spaces for new participatory mechanisms that allow complementing the representative democracy system in the country.

Considering that in the recent history of the region other constitutional processes have been carried out similarly in terms of culture, socio-political context, and the mechanism chosen to draft the new constitution, this thesis seeks to explore to what extent the constitutions (reformed or renewed) arising from the processes that have taken place in Bolivia, Colombia, and Ecuador, have altered democratic processes. Through this analysis I seek to highlight what lessons can be learned in order to strengthen the Chilean constituent process.

Literature within the fields of social science discuss the difficulty in defining precisely what democracy is. Nevertheless, it is broadly associated with concepts such as political equality, popular sovereignty, and rule by majorities (Dahl 1956). Collier and Levitsky (1997) provide a more precise definition: democratic procedures, including elements such as fully contested elections, full suffrage, the absence of massive fraud, effective guarantees of civil law, and freedoms (including freedom of expression, assembly, and association).

At the same time, democracy is strongly linked to the constitution. Atria (2020) argues that a constitution is “a fundamental decision on the configuration of power, which defines its origin (God, tradition, the people, etc.), the organs through which it is exercised (Congress, President of the Republic, etc.), and how political power is accessed, exercised and lost”, therefore, a reform to the constitution, or a new constitution, may imply a radical change in the way democracy is exercised in a country. This thesis reviews the impact that the Bolivian, Colombian and Ecuadorian constitutional processes have had particularly on what the International Institute for Democracy and Electoral Assistance defines as "participatory engagement." Participatory engagement is one of the attributes to evaluate democracy, which

includes political participation and societal engagement. In this thesis I focus on mechanisms of direct democracy, as a complementary element to representative democracy (International IDEA 2019).

Structure of the thesis

This thesis seeks to analyze the link between the political constitution and the functioning of democracy, providing valuable information about the experience on constitutional processes in the region, and highlighting the insufficiency of the regulation as an exclusive element for strengthening democracy. This thesis can be used to inform the debates on, and construction of, the constitutional process in Chile.

This thesis is divided into five chapters: the first chapter explains my research methodology which is based on documentary analysis of literature and comparative regulations. In addition, I address the research questions, process, and positionality.

The second chapter offers a review of the literature on the concepts of democracy, constitutions, and the relationship between them. This analysis allows obtaining a definition of the central elements on which the analyses are based.

In the third chapter, I analyze the constitutions of Bolivia, Colombia, and Ecuador, before and after the constitutional processes, to identify how they have contributed to strengthening democracy; I focus specifically on the participation mechanisms that have been incorporated into them.

The fourth chapter focuses on Chile. I analyze the recent experience of a constitutional process promoted by the government of former President Michelle Bachelet (2014-2018), and the current Chilean constituent process, focusing on its causes and structure.

Considering the recent experience of the processes of Bolivia, Colombia, and Ecuador, in the last chapter, I identify the main lessons that Chile can learn from these processes and make a projection of the possible outcomes in Chile in terms of the regulation of democracy.

Chapter 1. Methodology

1.1 The research aim

This seeks to identify to what extent the reformed or renewed constitutions arising from the processes that have taken place in Bolivia, Colombia, and Ecuador, have altered democratic processes and what lessons could be learned by Chile from them.

1.2 Research questions

What are the impacts of the Bolivian, Colombian, and Ecuadorian constitutional processes on the regulation of democracy, particularly in participatory mechanisms?

How do these earlier processes reverberate in the current Chilean process?

What kind of frames, slogans, or justifications can be linked back to processes in Bolivia, Colombia, and Ecuador?

This is a qualitative thesis, based on a comparative analysis of primary sources, specifically the constitutions of Bolivia, Colombia, Ecuador, and Chile. The research design was informed by Hernández, Fernández, and Baptista (2010) who assert that during the research process, additional objectives may arise, and that the initial objectives may be

modified, including the reformulation of the research question (Hogan, Dolan and Donnelly 2009). In this thesis, I argue that the constitutional regulation is essential to democracy, but it is not enough to guarantee its proper functioning, and that common factors can be found in constitutional processes carried out in countries with similar characteristics.

1.3 Research process

In order to answer these research questions, I designed the following process:

- 1) I reviewed relevant literature to identify the main elements on which democratic regimes should be based, to establish a framework regarding the ideal constitutional regulation.
- 2) I conducted research based on documentary analysis of comparative legislation. I reviewed the constitutions of Bolivia, Colombia, and Ecuador, before and after the constitutional processes, to identify whether the modifications contribute to meet the previously defined standards and procedures for a democratic regime. The specific function of documentary material is to provide a means of tracking change and development (Bowen 2009), in this particular case, the changes in the regulation of democracy in the constitutions. The analytic procedure entails finding, selecting, appraising, and synthesizing data contained in documents which are then organized into major themes and categories (Labuschagne 2003) which are linked to the research questions.

The cases of Bolivia, Colombia, and Ecuador were selected based on the following criteria:

- a) Mechanism for elaborating the constitution: these three countries elaborated their constitutions through Constitutional Assemblies, the same mechanism that Chile will use.
- b) Socio-political context: The constitutional processes emerged due to deep political crises and protests, which have similar characteristics to the Chilean case.

c) Cultural similarities: Bolivia, Colombia, Ecuador, and Chile, are part of South America and share a common history of European colonization, independence from Spain, and more recently, an influence of the neoliberal model.

Ecuadorian and Bolivian processes are part of what has been called third-generation constituent processes. These are characterized by a rejection of neoliberal and privatization policies, the delegitimization of the political elites that had promoted them and, and the emergence of popular and political movements that demanded a constituent process (Pisarello 2014). These similarities suggest that the Chilean constitutional process should achieve similar results to the processes of Bolivia, Colombia, and Ecuador. Therefore, a comparative analysis allows for the identification of relevant processes to be considered.

- 3) I analyze the current constitutional process of Chile to identify limitations and potential, based on the experiences of Bolivia, Colombia, and Ecuador.
- 4) I analyze to what extent the democracy is operationalized, defined, and observed in the constitutions to identify how the constitutional processes have impacted the regulation of democracy.

1.4 Researcher positionality

As Rowe (2014) clearly defines, positionality refers to the stance of the researcher about the social and political context of the study, which affects every phase of the research process. I chose this thesis topic due to my interest in the Chilean constitutional process and in the strengthening of democracy in the country, particularly in the incorporation of participatory mechanisms complementary to the representative democracy mechanisms that are currently in place.

Between 2014 and 2018, I worked as an advisor to the Minister Secretary-General of the President. In that period, I contributed to the development of a participatory constitutional process that involved more than 200,000 people, which shaped a constitutional reform bill. Between 2019 and 2020, I worked as a Program Officer at International Institute for Democracy and Electoral Assistance (International IDEA), which allowed me to be part of working groups with the Senate and the Electoral Management Body on the constitutional process, particularly advising on the constitutional referendum carried out during the COVID-19 pandemic. In all these instances, I have argued that Chile requires a new constitution and I have maintained my conviction that this is an essential condition to strengthen democracy in the country, but it is not enough on its own.

Chapter 2. Literature Review: Relationship between democracy and political constitutions

The main objectives of this chapter are to define democracy and review the most important elements that a political constitution should consider in a democratic regime.

2.1 Democracy

The roots of the word democracy come from the combination of the Greek words *demos* (people) and *kratos* (rule), to create a concept that refers to a form of government in which the people rule, nevertheless, Jent (1967) argue that in ancient Athens, women, slaves, and immigrants, despite being the majority of the population, were not included as part of the group who made the decisions. This shows that from the origin of the concept, democracy has produced inequalities and has been formulated by exclusionary tactics.

For Aristotle, one of the main principles of democracy was "ruling and being ruled in turn", on the basis that a city must involve the participation of all its citizens in government, arguing that decisions taken collectively in an assembly are based on a greater amount of wisdom than that of a group of experts (Lintott 1992). This idea of more inclusive democracy is close to what we commonly understand when talking about democracy.

Throughout history, democratic theories identify "democracy" with political equality, popular sovereignty, and rule by majorities (Dahl 1956), however, the diversity of realities makes it difficult to establish an absolute definition of democracy. Currently, there are various types of democracy including: representative democracy, direct democracy, participatory democracy, liberal democracy, and parliamentary democracy. Similarly, there is a great diversity of non-democratic regimes; leaders from Russia, the United States, China, Hungary, Turkey, Philippines, El Salvador, Brazil, and more affirm that democracy prevails in their countries. Who decides which of these are a democracy and which are not?

Lisa Storm (2008), argues that a model is not necessary for the categorization of definitions and conceptions of democracy, but rather a definition of democracy, which in principle can be applied to all countries in the world. She emphasizes that the definitions created to categorize regimes that do not meet the requirements of existing categories, it is not a viable long-term strategy to frame democracy. This difficulty in obtaining worldwide applicability was previously addressed by Sartori (1970), who argues that the expansion of the extension of the concepts has obfuscated their connotation, which has caused the loss of "control", the main objective of the comparison, which has led us to what he qualifies as a sea of empirical and theoretical disorder.

As a way to address this difficulty, an alternative proposed by Collier and Levitsky (1997) emerges, which suggests focusing on what they call democratic procedures, rather than

substantive policies or other outcomes that could be seen as democratic. Among those procedures, fully contested elections with full suffrage and the absence of massive fraud as a minimum, combined with effective guarantees of civil law, freedoms, including freedom of expression, assembly, and association, are considered.

The wide range of types of democracy has also been addressed by Bühlmann, Merkel, and Wessels (2008), who in the face of countless definitions have established a differentiation between three types of democracy: elitist democracy, (considered minimalist); participatory democracy, (considered medium range); and the social democracy, (considered maximalist). For the authors, elitist democracy is based mainly on the protection of people from arbitrary rules, and the election of skilled representative elites who are in charge of making decisions and protecting individual freedom, while the medium-range democracy considers representative democracy plus participatory democracy, a regime in which citizens have opportunities to deal more profoundly with political issues in deliberative ways.

The maximalist democracy considers that the legal guarantee of civil and political rights does not suffice to make democracy work, so the main focus of social democracy is the reduction of socio-economic inequalities, which implies that government must guarantee the resources that are necessary for the use of these rights. These authors demonstrate that the deepening of democracy does not have to do only with a matter of rules, but with additional conditions to the regulation that affect the functioning of democracy. They affirm that democracy relies on three fundamental principles: equality, freedom, and control.

In line with the idea proposed by Collier and Levitsky on democratic procedures the International Institute for Democracy and Electoral Assistance, states that democracy is considered as a political system that is based on popular control and political equality. This definition and the attributes considered to assess the quality of democracy in the world used to

elaborate the report Global State of Democracy 2019 (International IDEA 2019), including representative government (clean elections, inclusive suffrage, free political parties, and elected government); fundamental rights (freedom of expression, freedom of association and assembly, freedom of religion, freedom of movement, personal integrity and security, basic welfare, social group equality, and gender equality); checks on government (effective parliament, judicial independence, and media integrity); impartial administration (absence of corruption and predictable enforcement) and participatory engagement, which measures people's political participation and societal engagement at different levels. It considers civil society participation, electoral participation, direct democracy, and local democracy.

All these elements are assumed to have a positive impact on the performance of the democratic system. Just as a higher level of participation in electoral processes is desirable over low participation, it is also desirable for there be greater freedom of expression, gender equality, a higher level of independence of the judiciary, a higher level of participation through direct democracy mechanisms, etc. All of these components complement each other to create a democratic system.

In this thesis, I focus on participatory engagement, particularly on direct democracy as a complementary element to representative democracy, which considers different types of popular votes, such as popular initiatives, referendums, plebiscites, and obligatory referendums.

2.2 Constitutions

The complexities associated with defining what constitutes democracy, are also found when defining what a constitution is. Generally, the word constitution is associated with positive principles such as freedom, justice, or democracy. The word constitution has positive

connotations, even when this association of concepts with the constitution does not have a justification (G. Sartori 1962).

If we seek to analyze the importance of a constitution in a political system, it is not possible to do so without first defining what a constitution is. If we assume that the constitution is defined as "any way of giving form to any State whatever", then the question about the role of the constitution is only possible to address country by country (G. Sartori 1962). In this sense, the author suggests that a more fruitful way of approaching this discussion is by evaluating the impact or role that the constitution plays in enforcing the desired performance of people who hold office.

Faced with this, Sartori identifies three categories of constitutions: real constitutions, normative constitutions, and *façade* constitutions. The nominal ones are organizational constitutions, that is, they are a collection of rules that organize but do not restrict the exercise of political power in a given polity but rather describe a system of unlimited and uncontrolled power. *Façade* constitutions differ from nominal constitutions because they appear to be "true constitutions", are considered "trap-constitutions" because are a dead letter regarding the techniques of liberty and the rights of the power (G. Sartori 1962).

It can be concluded from the work of Sartori that a constitution should be assessed in terms of its ability to regulate the exercise of power. In the same direction, Atria (2020a, 151) argues that a constitution is "a fundamental decision on the configuration of power, which defines its origin (God, tradition, the people, etc.), the organs through which it is exercised (Congress, President of the Republic, etc.), and how political power is accessed, exercised and lost." This shapes the constitution that the author defines as a decision that constitutes politics.

In relation to the content of the constitutions, we can see that they are a clear expression of values, some of which reflect the core, the constitutive commitment and the identity of a

nation. These are not, however, statements of values. In terms of democracy, behind the constitution is the political idea of it, which means that the people are sovereign and self-governing (Galligan and Versteeg 2013). When reviewing which are the main elements that a constitution should consider, we find that the separation of the powers of the State emerges as a fundamental aspect. Article 16 of the French Declaration of the Rights of Man and the Citizen of 1789 set that "A society where rights are not secured, or the separation of powers established has no constitution at all" (Bellamy 1996, 436). This considers three components of the "pure" doctrine of the separation of powers: firstly, there must be a functional separation between legislative, executive, and judicial acts; second, the government must be divided into three agencies, according to the three components mentioned above; finally, there must be no overlap between the people who work in the different agencies (Bill 1998).

Considering this and that a series of controversies may arise in the policy process, emerged the Constitutional Courts, defined by Stone (2012, 817) as a "constitutionally established, independent organ of the state whose central purpose is to defend the normative superiority of the constitutional law within the juridical order." This institution was originally designed by Hans Kelsen, drafter of the constitution of the Second Republic of Austria (1920-1934), who later designed what is known as the centralized or European revision model, which served as a model for countries like Germany and Italy and that later expanded to southern, central and eastern Europe, to the detriment of US-style judicial review.

It can also be observed that as relevant as the content of the constitution is, how it is drafted, since that an important part of its legitimacy depends on it. The constitutional change depends exclusively on the people, based on the pre-legal power called "constituent power", which refers to the original power of the people that does not derive from any prior. This implies that citizens are free to give themselves a new legal order through the Constitution

based on respect for fundamental rights (UNDP 2015). Thus, the decision to create a new constitution rests exclusively with the people but there is no single way to exercise the original power, the ways of carrying out a constitution building process are as diverse as they are legitimate.

Another relevant question before addressing the mechanisms of change is: when does it become necessary to carry out a process of reform or the development of a new constitution? Negretto (2012) affirms that Constitutions are replaced when they fail to function as governance structures or when their design prevents competing social interests from adapting to changing environments, which marks the beginning of what is known as the constituent process, defined by Pisarello (2014) as the set of acts that lead to the creation of a new Constitution.

On the one hand, Tushnet (1996) identifies four stages in a constitutional change, stating that the higher law-making process begins with a "signaling phase", which occurs when a revisionist movement earns the constitutional authority to set the agenda of reforms; secondly, the movement offers a proposal, which is tested within the higher lawmaking system; and finally, a stage of "legal codification" comes, when the courts integrate the proposals into the general body of constitutional law. This process can be considered an explanation of how constitutional reforms are carried out through Congress, driven by the government or by parliamentarians.

On the other hand, Ackerman (1999) affirms that there are great occasions in political life when people intervene more directly and authoritatively. During these episodes, a mass citizenry insists on doing more than electing their rulers; something that is better interpreted as giving their rulers mobilization orders. These are the "constitutional moments", episodes "in

which the people speak with an accent different from that which characterizes them during normal politics.

This description of Ackerman's constitutional moment, as Joignant (2019) explains, coincides with the situation that Chile is facing, with a political system overwhelmed by social demands, which has made it necessary to initiate a re-foundational process.

About the mechanisms for drafting a constitution, the United Nations Development Program identifies the legislative power, the constituent assembly, the constituent congress or constituent parliament, the constituent commission or commission of experts, and international treaties as the mechanisms that have been used to elaborate constitutions in the world, which have been used based on the political circumstances, the political-institutional traditions of each country, and the mechanisms established in the current constitutions (UNDP 2015). These mechanisms are defined as follows:

- 1) Legislative power: This mechanism considers that the elaboration and the approval of the constitutional reforms are made by the parliamentarians. This mechanism can be implemented with all parliamentarians or a specific group of them.
- 2) Constituent Assembly: This mechanism implies the formation of a group of democratically elected citizens to dedicate themselves exclusively to elaborating a new text, without intervening in the legislative power, which is dissolved once the constitution has been drafted.
- 3) Constituent Congress or Constituent Parliament: This mechanism implies the formation of a congress or parliament elected by popular vote with the special mandate to exercise the original constituent power. This congress exercises in the first place and exclusively its function of drafting a new Constitution, and once it is finalized, it begins to exercise legislative power, or it exercises both functions simultaneously.

- 4) **Constituent Commission or Commission of Experts:** This type of mechanism implies that the writing of the constitution is left in the hands of a group of experts and people considered notable, which generally include lawyers. Then, once the proposal is concluded, it is approved by the authority or bodies that appointed the group of experts, by the legislative power, by the citizens through a plebiscite or referendum, or by more than one of them.
- 5) **International Treaties:** This mechanism considers a strong intervention of the international community or certain foreign governments in the constitutional process, restricting or eliminating the participation of the national political community in the elaboration of the constitution. This mechanism has been used in exceptional cases after the end of war conflicts.

In the case of Chile, the mechanism established to elaborate the constitution is the constitutional convention. A constituent assembly has the exclusive mandate to draft a constitution proposal which will later be approved or rejected in a referendum with compulsory voting (LCC 2019).

Chapter 3: Constitutional regulation of democracy in Bolivia, Colombia, and Ecuador

3.1 The Bolivian constitutional process

3.1.1 Context

The Bolivian economic crisis of 1998 undermined the economic foundations of the political stability on which neoliberalism had been established since 1986. The crisis, which

mainly affected the popular sectors, triggered the "rebel cycle", a sequence of social movements that prevented the transnational privatization of water in 2000, defended the coca plantations during the first decade of the century, and recovered the gas service for the State in 2003 (Restrepo 2016).

Before the formal start of the constituent assembly, Bolivia experienced what has been previously described as a “constituent moment” (Ackerman 1999), as a result of a political crisis that had caused the resignation of two presidents in 4 years and the advancement of the general elections. As Mayorga (2006) describes, as of the year 2000, the institutional policy had to coexist with the action of social movements, unions, business unions, and civic-regional entities through roadblocks, marches, and strikes, which led to the resignation of the president Sánchez de Lozada (2002-2003). In February 2004 congress approved a partial reform to the constitution to establish institutions of semi-direct democracy, such as the referendum, the citizen legislative initiative and the constituent assembly, among others, promoted by social movements and opposition parties, particularly the Movement for Socialism (MAS).

Although Evo Morales assumed the presidency in December 2005 with a campaign promise to convene a Constituent Assembly, the political forces supporting President Morales had to make a pact with the opposition, since he did not have a sufficient majority for its approval in Congress (Pisarello 2014).

3.1.2 Composition, selection method, participatory mechanisms and deadlines

Formally, the Constituent Assembly was convened through Law 3364 of the 6th of March 2006, following the provisions of the Political Constitution and Special Law Number 3091 of the 6th of July 2005. It states that the members of the assembly are natural persons who must be elected by universal, direct, and secret vote, and whose mission is to draft the new

constitutional norm. In addition, it indicates that the assembly will have as its sole purpose the total reform of the Political Constitution and that it will not be subject to or may interfere with other powers of the State (Salazar 2006).

Bolivia represents a case of a particularly large Constituent Assembly, with 225 participants for about 10 million inhabitants (UNDP 2015). For the election of the members of the Assembly, which was held in July 2006, a proportional representation system was used, which maintained the electoral rules of the country: 70 territorial constituencies, which corresponded to those used to elect members of the House of Representatives, and 9 national constituencies, which corresponded to those of the Senate (UNDP 2015). In each of the 70 constituencies, the three most voted representatives were elected, but if all of them belonged to the same political party, the third seat should be occupied by the representative of another party that followed in number (UNDP 2015). A similar formula was used in the other larger constituencies that elected 5 representatives. In this way, it was sought to ensure the presence of minorities and to form a representative Assembly.

The constitutional process in Bolivia involved citizen participation through commissions of the Constituent Assembly. It allowed the reception of around 3,000 proposals (UNDP 2015), thanks to the establishment of 21 thematic commissions, in which citizens were able to participate through public hearings as well as territorial meetings that also included the presence of the commissions (Gamboa 2009).

The new Political Constitution was finally approved on the 26th of December 2007, in the city of Oruro, by 164 of the 255 constituent assembly members. The referendum to ratify the new Constitution was held on the 25th of January 2009, which had 90.26% participation from the citizens registered to vote, the highest of all the electoral consultations held in the country. The proposal was approved with 61.43% of the votes.

3.1.3 Changes experienced with the process

The following table shows how the main components of democracy are addressed in the Bolivian constitutions before and after the constitutional process:

Table 1. Changes in the regulation of democracy in Bolivia

Theme	Constitution before the Constitutional Process	Constitution after the Constitutional Process
Type of State	Bolivia is defined as a unitary Republic with a representative democratic system (Art. 1)	Bolivia is defined as a plurinational, free, independent, sovereign, democratic, intercultural, decentralized, and autonomous Unitary Social State of Community Law (Art. 1).
Fundamental Rights	Everyone has the right to freely express their ideas and opinions, to meet and associate (Art. 7).	Everyone has the right to freely express their ideas and opinions, to meet and associate (Art. 21)
Powers of the State	The exercise of sovereignty is delegated to the Legislative, Executive, and Judicial powers, which are independent of each other (Art. 2)	The organization of the State is based on the independence, separation, coordination, and cooperation of Legislative, Executive, Judicial, and Electoral bodies (Art. 12)
Role of Religion	The State, while guaranteeing the public exercise of any other religion, recognizes and supports the Catholic religion (Art. 3)	The State is independent of religion and respects and guarantees freedom of religion and spiritual beliefs (Art. 4)
Type of Democracy	The people govern exclusively through their representatives (Art. 4). Popular representation is exercised through political parties or coalitions formed by them (Art. 223) and all citizens have the right to organize themselves in them (Art. 222). The Chamber of Deputies is composed of 130 members, who are elected in a process in which participate candidates nominated by the political parties (Art. 60); the Senate is composed of 3 Senators for each Department (Art. 63); the	Bolivia adopts a participatory, representative, and communitarian democratic form of government, with equal conditions for men and women: participatory through the referendum, citizen legislative initiative, recall of mandate, assembly, town council, and prior consultation; representative through the election of representatives; and communitarian using election, designation or nomination of authorities and representatives according to the rules and procedures of the native indigenous nations and peoples, peasants, among others (Art.11). The Plurinational Legislative Assembly is composed of two

Theme	Constitution before the Constitutional Process	Constitution after the Constitutional Process
	President and Vice President of the Republic are elected by direct suffrage (Art. 86).	chambers, the Chamber of Deputies and the Chamber of Senators (Art. 145); the Chamber of Deputies is composed of 130 members and the equal participation of men and women, and the proportional participation of indigenous and aboriginal peasant nations and peoples shall be guaranteed (Art. 147); the Senate is composed of 4 Senators for each Department (Art. 148); the President and Vice President of the Republic are elected by direct suffrage (Art. 166).
Participation in Elections	The constitution recognizes universal, direct and equal, individual and secret, free and compulsory suffrage as the basis of the representative democratic regime which must be exercised by all Bolivians over 18 years of age (Art. 220).	The constitution recognizes suffrage, through equal, universal, direct, individual, secret, free, publicly scrutinized, and obligatory vote from the age of 18 years of age (Art. 26)
Education		The constitution establishes that education will foster civic-mindedness, intercultural dialogue, and ethical and moral values. Gender equity, non-differentiation of roles, non-violence, and the full exercise of human rights will be values considered in it.

Among the changes that can be observed between the 1964 constitution (with modifications) and the constitution that emanates from the constituent assembly, are the strengthening of the multicultural identity of the state, although it maintains its unitary essence. In terms of the type of democracy, a change can be seen from a system based exclusively on representative democracy to a system that combines participatory democracy with representative democracy and community democracy, in which gender equality is a central element. Another relevant change is the elimination of State support for the Catholic religion, by declaring the State's independence of religion and guaranteeing freedom of belief.

Compulsory voting is maintained, and education began to play a role in promoting the democratic values established in the new constitution.

3.2 The Colombian constitutional process

3.2.1 Context

In 1990 Colombia experienced a series of institutional crises accompanied by political violence that was condemned by a citizen movement led by university students and professors who advocated for constitutional change (UNDP 2015). They sought to take charge of the critical moment the country was going through: a bloody war against drug cartels with frequent attacks against the civilian population, and six guerrillas seeking to overthrow the government (Pardo 2020). The level of violence was such that in August 1989 the favorite candidate for the presidency, Luis Carlos Galán, was assassinated.

Since the institutions did not allow constitutional change with democratic mechanisms, through the "Seventh Ballot" campaign, more than two million citizens included an extra ballot in the March 1990 municipal and legislative elections demanding a Constituent Assembly. Due to the overwhelming number of affirmative votes and to restore public order, as well as strengthening the country's democratic institutions (Fox, Gallón-Giraldo, and Stetson 1991), President Virgilio Barco signed a decree calling for a plebiscite.

Thus, along with the presidential elections of May 1990, a referendum was held on the approval of a National Constituent Assembly. Although the constitutionality of the decree was questioned, since it did not stipulate a mechanism for change through a Constituent Assembly, the Supreme Court, in its role as guarantor of the Constitution, supported the plebiscite. The

result of the plebiscite showed 88% of approval for the formation of a National Constituent Assembly.

3.2.2 Composition, selection method, participatory mechanisms and deadlines

Elections for the Constituent Assembly were held in December 1990, seven months after the plebiscite. It consisted of 74 members, 70 of them popularly elected and 4 appointed. The 70 assembly members were elected in a national district and through lists with no electoral threshold (UNDP 2015). The electoral formula was the Hare Quotient. The Colombian case is highlighted in the literature as a case that achieved a representative Constituent Assembly that included members from diverse sectors of society. Affirmative action mechanisms were used to ensure that certain groups with less electoral competitiveness were present. Specifically, two seats were reserved for guerrilla members (UNDP 2015).

With the 74 members, 5 thematic subcommittees were formed, which developed the initial text based on the discussions of the 1580 working groups formed throughout the country three months before the formation of the Assembly, in addition to thousands of written recommendations from civil and governmental groups. The Colombian Constituent Assembly exercised its functions for 5 months and was adopted in July 1991. During the drafting period, Congress functioned independently.

In the constituent process, regional working groups were established which allowed 110,339 proposals to be generated. These initiatives, which were systematized by preparatory commissions to the assembly, later served as inputs for the work of the National Constituent Assembly (Rojas, et al. 2019). This process was important in bringing citizens' concerns closer to the relevant political actors. For the UNDP, one of the reasons that allowed the assembly to reach a high level of consensus was that it was able to build a “common diagnosis between the

elites and the citizens about where the roots of the institutional crisis were” (UNDP 2015). This process allowed the replacement of the constitution that, although with many modifications made over the years, remained in force since 1886.

3.2.3 Changes experienced with the process

The following table shows how the main components of democracy are addressed in the Colombian constitutions before and after the constitutional process:

Table 2. Changes in the regulation of democracy in Colombia

Theme	Constitution before the Constitutional Process	Constitution after the Constitutional Process
Type of State	The Colombian Nation is reconstituted in the form of a unitary Republic. (Art. 1)	Colombia is a social state of law, organized in the form of a unitary, decentralized Republic, with autonomy from its territorial entities, democratic, participatory, and pluralist (Art. 1)
Fundamental Rights	Everyone has the right to freely express their ideas and opinions, to meet and associate (Art. 7). The media is free in a time of peace, but responsible under the law when it offends the honor of persons, social order, or public tranquility (Art. 42). Any part of the people may peacefully assemble or gather together (Art. 46).	Everyone is guaranteed the freedom to express and disseminate their thoughts and opinions, to report and receive truthful and impartial information, and to found mass media (Art. 20). Every citizen has the right to participate in the formation, exercise, and control of political power (Art. 40). Women and men have equal rights and opportunities. Women shall not be subjected to any kind of discrimination (Art. 43)
Powers of the State	Public power is divided into legislative, executive, and judicial branches. The Congress, the Government, and the Judges have separate functions, but they collaborate harmoniously (Art. 55).	Public power is divided into legislative, executive, and judicial branches. The different powers of the State have separate functions but collaborate harmoniously to achieve their goals (Art. 113).

Theme	Constitution before the Constitutional Process	Constitution after the Constitutional Process
Role of Religion	Freedom of worship is guaranteed for all religions that are not contrary to Christian morality or the law. The Government may enter into agreements with the Holy See, subject to subsequent approval by Congress, to regulate, based on reciprocal deference and mutual respect, the relations between the State and the Catholic Church (Art. 53)	All religious denominations and churches are equally free before the law (Art. 19)
Type of Democracy	<p>Representative democracy:</p> <p>The Senate of the Republic will be composed of two Senators for each Department, and one more for each two hundred thousand or fraction thereof greater than one hundred thousand inhabitants over the first two hundred thousand (Art. 93). The House of Representatives will be composed of two Representatives for each Department and one more for each one hundred thousand or fraction greater than fifty thousand inhabitants over the first one hundred thousand. (Art. 99). The President of the Republic will be elected on the same day by direct vote of the citizens for a term of four years (Art. 114). When voting for two or more individuals in a popular election or a Public Corporation, the electoral quotient system shall be used (Art. 172)</p>	<p>The individual and the citizen must participate in the political, civic, and community life of the country (Art. 95).</p> <p>Sovereignty resides exclusively in the people, from whom public power emanates. It is exercised directly by the people or through their representatives (Art. 3). The mechanisms of participation are the vote, the plebiscite, the referendum, the popular consultation, the open town council, the legislative initiative, and the recall of the mandate (Art. 103). All nationals are guaranteed the right to found, organize and develop political parties and movements, and the freedom to join or withdraw from them (Art. 107). The State will contribute to the financing of the operation and electoral campaigns of the political parties and movements (Art. 109). Senators and representatives will be elected for a four-year term (Art. 132). The Senate of the Republic will be composed of one hundred members elected in a national constituency (Art. 171) and there will be two representatives for each territorial constituency and one more for each two hundred and fifty thousand inhabitants or fraction greater than one hundred and twenty-five thousand over the first two hundred and fifty thousand (Art. 176). The President of the Republic will be elected for a term of four years, by half</p>

Theme	Constitution before the Constitutional Process	Constitution after the Constitutional Process
		plus one of the votes cast, if no candidate obtains such a majority, a second ballot will be held between the two most voted candidates (Art. 190). The Vice President of the Republic shall be elected by popular vote on the same day and in the same formula as the President of the Republic (Art. 202)
Participation in Elections	All citizens directly elect the President of the Republic, Senators, Representatives, Deputies, Intendential and Comisarial Councilors, Mayors and Municipal and Special District Councilors (Art. 171)	Voting is a citizen's right and duty. In all elections, citizens will vote secretly (Art. 258). The National Electoral Council is the body in charge of organizing the electoral processes (Art. 264)
Education		In all educational institutions, official or private, the study of the Constitution and Civic Instruction will be mandatory. Likewise, democratic practices will be encouraged to learn the principles and values of citizen participation (Art. 41)

The main changes that can be seen between the 1886 constitution (with modifications) and the 1991 constitution, resulting from the constituent assembly, are in the participation mechanisms. The constitution before the constituent process enshrined a system of representative democracy, while the new constitution incorporated direct participation mechanisms such as the plebiscite, the referendum, the popular consultation, the legislative initiative, among others. Like Bolivia, education began to play a role in promoting the principles and values of participation. It is also observed that the privileged position of the Catholic Church was eliminated.

3.3 The Ecuadorian constitutional process

3.3.1 Context

Ecuador's constitutional process is the result of a long process of deterioration of trust in institutions as a result of the application of neoliberal economic policies implemented since the 1990s, such as structural adjustment, in a context in which the State remained subordinated to the market, which in turn led to a deterioration in the quality of life of the people and therefore damaged trust in the political class (Paltán 2005). This was followed by a political crisis that worsened in the years before the assumption of President Rafael Correa, which involved the third dismissal of a president since the country returned to a democratic regime in 1978 and the people were asking for "everyone to leave" (El Universo 2005).

The former minister and president of the constituent assembly, Alberto Acosta (2020), explained that the country experienced:

A process of massive social, economic and political deterioration that demanded changes. An attempt to adjust with a Constituent Assembly and that demanded a new constituent process, which took shape as a citizen demand in 2005. This was the starting point for the government of Rafael Correa, who offered that his second decree would be a call for a Constituent Assembly.

Rafael Correa thus assumed the presidency in 2007, with the promise to lead a political reform that would include a Constituent Assembly. The 1998 Constitution did not contemplate a mechanism for democratic change, which led Congress to refuse to approve the referendum proposed by Correa. With the support of the Supreme Electoral Tribunal, however, 57 deputies who were against the citizen consultation were dismissed (UNDP 2015). This mitigated congressional opposition and allowed the citizen consultation to be held in April 2007 in which the Constituent Assembly was approved with 81% of the vote. In both Bolivia and Ecuador, social crises crystallized the demand for inclusion, the expansion of citizenship, and the recognition of self-government structures (Fernández and Puente 2012).

3.3.2 Composition, selection method, participatory mechanisms and deadlines

Five months after the referendum, elections were held to elect the 130 members of the assembly. 100 of them were elected based on a provincial constituency, 24 based on lists of political parties, and 6 representing Ecuadorians living abroad. A proportional election system was used for the election of all members except for nationals abroad, where a majority system was used (UNDP 2015). The election results were favorable to the President's political movement. The Patria Altiva y Soberana (PAIS) coalition obtained a total of 80 of the 130 assembly members (The Carter Center 2008). Given that the regulations established that decisions had to be adopted by an absolute majority of the assembly, the electoral result gave a position of total advantage to President Correa's alliance.

The Constituent Assembly exercised its functions for 8 months. During this period, since the Congress had been declared in recess, the members of the assembly had legislative powers while they were drafting the new Constitution, one of the most relevant differences with the Bolivian, Colombian, and Chilean processes. This decision caused the minority political forces to argue, that the statute approved in the consultation did not allow the Assembly to close the Congress and remove other officials before the referendum, and that therefore the Assembly had exceeded its functions. The same actors also rejected several of the mechanisms of the Assembly's rules of procedure because the minority parties that were running, were at risk of not being heard (The Carter Center 2008).

Regarding the participatory mechanisms, the constitutional process included citizen participation through 10 thematic tables. The assembly members, along with discussing their proposals, also had to discuss the proposals made by citizens and organizations. This allowed more than 1,600 initiatives from civil society to be received (Belser, 2018).

Finally, the project elaborated by the constituent assembly was submitted to a ratifying plebiscite, in which the text was approved with 63.9% of the vote.

3.3.3 Changes experienced with the process

Table 3. Changes in the regulation of democracy in Ecuador

Theme	Constitution before the Constitutional Process	Constitution after the Constitutional Process
Type of State	Ecuador is a social state under the rule of law, sovereign, unitary, independent, democratic, multicultural, and multiethnic. Its government is republican, presidential, elective, representative, responsible, alternative, participative, and decentralized administration. (Art. 1)	Ecuador is a constitutional state of rights and justice, social, democratic, sovereign, independent, unitary, intercultural, plurinational, and secular. It is organized as a republic and is governed in a decentralized manner. (Art. 1) Decentralized autonomous governments shall enjoy political, administrative, and financial autonomy and shall be governed by the principles of solidarity, subsidiarity, inter-territorial equality, integration, and citizen participation. (Art. 238)
Fundamental Rights	The State will guarantee the right to freedom of opinion and expression of thought in all its forms, through any means of communication, without prejudice to the responsibilities provided by law; the right to communicate and to found social communication media and to have access, under equal conditions, to radio and television frequencies; the right to freedom of association and assembly for peaceful purposes (Art. 23).	All persons have the right to the creation of social communication media, and equal access to the use of radio spectrum frequencies for the management of public, private, and community radio and television stations, and to free bands for the operation of wireless networks (Art. 16). People have the right to access and participate in the public space as an arena for deliberation, cultural exchange, social cohesion, and the promotion of equality in diversity (Art. 23). The State will formulate and implement policies to achieve equality between women and men (Art.70)
Powers of the State	State institutions are the agencies and dependencies of the Legislative, Executive and Judicial Functions, electoral agencies, control and regulation agencies, the entities that make	The legislative function is exercised by the National Assembly, which is composed of members elected for a four-year term (Art. 118). The President of the Republic exercises the Executive Function, is the Head of State and

Theme	Constitution before the Constitutional Process	Constitution after the Constitutional Process
	up the autonomous sectional regime, and the agencies and entities created by the Constitution or the law for the exercise of state power (Art. 118).	Government, and is responsible for public administration (Art. 141). The power to administer justice emanates from the people and is exercised by the organs of the Judiciary and by the other organs and functions established in the Constitution (Art. 167).
Role of Religion	The State will guarantee freedom of conscience; freedom of religion, expressed individually or collectively, in public or in private. Persons shall freely practice the religion they profess, with the only limitations prescribed by law to protect and respect diversity, plurality, security, and the rights of others. (Art. 23). Public education will be secular at all levels (Art. 67).	The State will protect the voluntary religious practice, as well as the expression of those who do not profess any religion and will favor an environment of plurality and tolerance (Art. 66).
Type of Democracy	<p>Ecuadorian citizens will have the right to elect and be elected, to submit bills to the National Congress, to be consulted in the cases provided for in the Constitution, to oversee the acts of the organs of public power, to revoke the mandate conferred on popularly elected dignitaries (Art. 26).</p> <p>Popular consultation (Art. 103): The President of the Republic, in cases of urgency, previously qualified by the National Congress with the vote of the majority of its members, may submit the approval of constitutional reforms to popular consultation (Art. 283). Citizens representing eight percent of the national electoral roll may request the Supreme Electoral Tribunal to call a referendum on matters of</p>	<p>Citizen participation in all matters of public interest is a right to be exercised through the mechanisms of representative, direct, and community democracy. Citizens, individually and collectively, shall participate in a leading role in decision-making, planning, and management of public affairs, and the popular control of state institutions and society, and their representatives, in a permanent process of building citizen power. Participation shall be guided by the principles of equality, autonomy, public deliberation, respect for differences, popular control, solidarity, and interculturality (Art. 95). The Council for Citizen Participation and Social Control is created (Art. 207), to promote citizen participation, stimulate public deliberation processes, and foster training in citizenship, values, transparency, and the fight against corruption (Art. 208).</p> <p>Ecuadorians have the right to elect and be elected, participate in matters of public</p>

Theme	Constitution before the Constitutional Process	Constitution after the Constitutional Process
	<p>transcendental importance for the country, other than constitutional reforms (Art. 105).</p> <p>Citizens will have the right to resolve the revocation of the mandate granted to the mayors, prefects, and deputies of their election, for acts of corruption or unjustified non-compliance with their work plan (Art. 109), which must be requested by at least thirty percent of those registered in the respective territorial constituency (Art. 110).</p> <p>The National Congress will be composed of deputies who shall be elected by each province in the number of two, and one more for each two hundred thousand inhabitants or fraction thereof exceeding one hundred and fifty thousand (Art. 126).</p> <p>The President and the Vice President of the Republic will be elected by an absolute majority of votes, in a universal, equal, direct, and secret manner (Art. 165).</p>	<p>interest, present projects of popular initiative, be consulted, supervise the acts of public power, revoke the mandate they have conferred on popularly elected authorities, form political parties and movements, freely affiliate or disaffiliate from them and participate in all decisions adopted by them. (Art. 61)</p> <p>The people may revoke the mandate of their elected authorities. The revocation request must be supported by not less than ten percent of the persons registered in the corresponding electoral registry. In the case of the President of the Republic, the support of not less than fifteen percent of those registered in the electoral registry shall be required (Art.105)</p> <p>The popularly elected authorities may be reelected only once, consecutively or not, for the same office. The popularly elected authorities running for a different office will resign from the office they hold (Art. 114)</p> <p>The Legislative Function is exercised by the National Assembly, which will be composed of 15 members elected in the national constituency, 2 assemblymen elected by each province, and one more for each two hundred thousand inhabitants or fraction exceeding one hundred and fifty thousand, according to the last national population census (Art. 188).</p> <p>The President and Vice President shall be elected by an absolute majority of valid votes cast (Art. 143).</p>
Participation in Elections	The popular vote will be universal, equal, direct, and secret; compulsory for those who can read and write, optional for those who are	People have the right to vote universally, equally, directly, secretly, and publicly scrutinized, and it will compulsory for those over 18 years of age (Art. 62).

Theme	Constitution before the Constitutional Process	Constitution after the Constitutional Process
	illiterate and for those over 65 years of age (Art. 27).	
Education	Education, inspired by ethical, pluralistic, democratic, humanist, and scientific principles, will promote respect for human rights, develop critical thinking, foster civic-mindedness (Art. 66).	Education will focus on the human being and will guarantee their holistic development, within the framework of respect for human rights, a sustainable environment, and democracy; It will be participatory, mandatory, intercultural, democratic, inclusive, and diverse, of quality and warmth; will promote gender equality, justice, solidarity, and peace; will stimulate the critical sense, art, and physical culture, individual and community initiative, and the development of competencies and capacities to create and work (Art. 27)

In the case of Ecuador, it can be seen that although the 1998 constitution (with modifications) had already incorporated direct democracy mechanisms, they were strengthened in this process. The new constitution states that the democratic system will have representative, direct, and community democracy mechanisms, highlighting the creation of the Council for Citizen Participation and Social Control as the institution in charge of promoting participation in the country. Education, which had previously been used to promote the respect of human rights, became explicitly democratic and a promoter of gender equality.

I argue that this thematic analysis demonstrates how constitutional change has altered democracy in some of the main attributes used for its evaluation, such as fundamental rights (freedom of expression, freedom of association, freedom of religion, gender equality, etc.); checks on government (judicial independence, media integrity, etc.); and political participation and societal engagement (society participation, electoral participation, direct democracy, and

local democracy). In all cases, the constitutional processes resulted in a new regulation that enhanced, albeit to varying degrees, the attributes of a democratic regime.

Chapter 4: The Chilean constitutional process

In 2013, during the presidential campaign, the candidate Michelle Bachelet included a constitutional process in her government program, as one of the key elements of her future government, along with reforms in the areas of education and taxation (Bachelet 2013, 28-35), which was implemented during her presidential term (2014-2018). It considered four levels of direct participation of citizens: the first stage of individual consultation through the internet and then three stages of face-to-face participation through self-convened local meetings, provincial-level dialogues, and regional-level dialogues. In total, the process involved 218,689 people, which resulted in the Citizens' Bases for a New Constitution (A Constitution for Chile 2017), which served as the basis for a constitutional reform bill that was sent to Congress but did not have the support of the government that took office in 2018.

This process emerged due to the model of subsidiary State established in the Constitution. This model had already created large fractures, expressed in massive student mobilizations carried out in 2006 and then in 2011, a strong movement against the pension system, large protests against mega energy projects, and a strong feminist movement. Nevertheless, the lack of participation mechanisms did not allow these demands to be fully channeled, explaining that the Chilean social crisis responds to an accumulation of unaddressed issues. This impossibility of making changes is explained by the Constitution, which was designed in such a way that it was almost impossible to modify the core of the neoliberal model. Jaime Guzmán, its main author, explained its objective saying that:

The Constitution must ensure that if the adversaries come to govern, they are constrained to follow an action not so different from the one we would wish for, because -if the metaphor is valid- the margin of alternatives that the court imposes on those who play on it is sufficiently reduced to make it extremely difficult to do the opposite (Guzmán 1979, 19).

The Organisation for Economic Co-operation and Development elaborated a report on the state of citizen participation in Chile and the participatory stage of the constitutional process open to citizens. One of the key findings regarding the state of citizen participation was that:

Chile has a limited tradition of public participation. The country has a consistent legal framework, in keeping with OECD standards, that aims to bring policies closer to citizens through consultation and coordination mechanisms. While this is a growing Government priority, there is still space for improvement to ensure that consultation mechanisms are efficiently used and embedded in the Government culture (OECD 2017, 9).

This shows that Chile in 2017 already had the right conditions to deepen citizen participation.

Regarding the participatory stage, the OECD concluded that:

the participative process initiated by the Government of Chile has shown numerous citizens' commitment to expressing their opinions and interest in the future through the development of a new constitution. The Government of Chile should use the example of this consultation to deepen and strengthen its engagement policy at both the national and local levels (2017, 25).

In 2017, despite the fact that it was a non-binding participatory process, there was a high level of citizen interest in participating in the process. The present constitutional process will allow the replacement of the current constitution by a new text, therefore incorporating direct participation mechanisms would allow the involvement of a large number of citizens and could legitimize the process. International evidence shows that given the complexity of these processes, mechanisms of direct participation have not traditionally been used due to the high level of distrust and doubts about the capacity of the people; nevertheless, in contemporary processes it has been incorporated (Ghai 2006).

The social unrest that began in October 2019, has led to the current constitutional process and has been analyzed all over the world, including by the prominent French economist Thomas Piketty. He stated that:

In Chile, those responsible for the post-Pinochet transition never questioned even the constitutional basis for large inequalities in terms of wealth, the education system, and in particular the prevalence of private education. There was an ideology of inequality – you know, some famous economists and philosophers like Friedrich Hayek contributed to this legacy. But I think this has to change and I think this political mobilization will contribute to this kind of change taking place (Piketty 2020).

Thomas Piketty's analysis are indeed supported by the data. According to World Inequality Database, Chile is among the countries with the highest levels of inequality in the world: The richest 10% of the country's people concentrate 60.2% of the national income, being exceeded only by Zambia (61.5%), Namibia (64%), Mozambique (64.2%), Central African Republic (64.6%) and South Africa (65.1%). By reducing the observation to 1% of the richest people, the figure is even more profound, they concentrate 27.8% of the national income, being exceeded only by the Central African Republic and Mozambique, both with 30.9% (WID 2020).

During the 1980s, a series of reforms were implemented in Chile. These reforms were strongly influenced by a group popularly known as "Chicago Boys", a faction of postgraduate neoliberal economists trained by Milton Friedman at the University of Chicago. They led the implementation of policies aimed at reducing the power of the Chilean state and strengthening the free market, privatizing state enterprises, including private actors in the health and education sector, and the privatization of the pension system. The latter was the most important structural reform that the country inherited from the dictatorship: the replacement of a solidarity-based pension system to a system of individual capitalization, administered by private companies called Pensions Funds Administrators.

The return to democracy in 1990 coincided with what economist John Williamson called the "Washington Consensus", a set of 10 basic economic measures for developing countries, which were promoted and implemented by the Bretton Woods institutions (International Monetary Fund and the World Bank) in conjunction with the U.S. Treasury Department. These policies included fiscal discipline; targeting public spending on subsidies to the poorest people; expanding the value-added tax; establishing competitive exchange rates; strengthening international trade; opening up to foreign direct investment; privatizing public companies; deregulating markets; liberalizing interest rates; and strengthening property rights (Morandé 2016).

The consecutive governments of the center-left alliance opted to maintain the model based on economic growth, strengthening free trade agreements, and at the same time promoting social policies mainly focused on the poorest people. This resulted in an increase in per capita income, a reduction in poverty, an increase in inequality and concentration of wealth. The trickle-down economic model was established in the country as a framework from which no President or political party with considerable parliamentary representation abandoned, except for President Michelle Bachelet, who during her second presidential term between 2014 and 2018, carried out reforms aimed at reducing inequality and overcoming the constitution drafted during the dictatorship. Nevertheless, a wave of corruption cases shook Chilean politics and strong resistance to reforms by the opposition and members of the governing parties prevented the changes from being successfully implemented and paved the way for a second term of the right-wing Sebastián Piñera, who began his term by expressing his rejection of the constitutional process initiated by his predecessor.

In this scenario, the massive mobilizations and the growing demand for direct participation mechanisms, expressed in a large number of self-convened dialogues, quickly

emerged as of October 18th, 2019. One of the main lessons learned is that people want to be heard and want to build the new constitution and not for it to be built by traditional political actors, who are indicated as responsible for the crisis. This implies that the constitutional process should consider a participatory mechanism giving the people the opportunity to define not only the new constitution but also the opportunity to reflect on how power is exercised in the country.

The entry referendum, which was moved from April to October 2020 due to the COVID-19 (LCC 2020) was finally held and the option for a new constitution won a resounding victory with 78.28% of the vote. Likewise, with 79% of votes, people approved that the mechanism for drafting a new constitution by a constitutional convention composed of 100% of elected citizens, instead of the alternative that proposed that half of the members be current parliamentarians and the remaining half be elected citizens (SERVEL 2020). The future constitutional convention, whose members were already elected in May 2021, will have to draft a proposal in a year at the most, which will be submitted to a plebiscite for approval (LCC 2019).

The convention will have to draft a constitution to replace the constitution in force, which enshrines a democratic system based exclusively on representative democracy, excluding any type of direct participation or consultation mechanism, except the plebiscite, which can only be used in case of a disagreement between the congress and the president of the republic on constitutional reform (Art. 128) that has been approved in the congress by 2/3 of the members of both chambers, a mechanism that has never been used.

The constitutional reform that allowed the establishment of the constitutional convention establishes that the agreements of the convention must be made by at least 2/3 of its members. In addition, the convention must respect that the State is a Republic, that it has a democratic

regime, the final and enforceable judicial sentences, and the international treaties ratified by Chile. The convention cannot interfere with other powers of the State, thus limiting their function exclusively to drafting a proposed constitution.

The first main challenge for the constitutional convention will be to draft regulations for its operation and to see how, despite the restrictions, mechanisms for citizen participation can be incorporated to provide greater legitimacy to the process, given the ratification plebiscite that the proposal will face.

Given the characteristics of the process, it is possible to project results similar to those observed in the cases of Bolivia, Colombia and Ecuador, where social demands had a great impact on the drafting of the constitution. I predict that, in terms of democracy, Chile will see the attribute of participatory democracy strengthened with the incorporation of participatory mechanisms that do not exist in the constitution in force, as well as an expansion of fundamental rights, addressing issues such as gender equality and the environment. I argue the text should reflect a unitary State but with a more decentralized power, with a special focus on the autonomy of indigenous peoples.

Chapter 5: Conclusions

The constitutional processes carried out in Bolivia and Ecuador, and presently in Chile, all arose as a result of social and political crises associated with the implementation of neoliberal policies promoted by the United States during the 1980s and deepened in the 1990s through the Washington Consensus. Although some of these policies had a positive impact in terms of economic growth and poverty reduction, I argue that the inequality caused by them is

a common factor which triggered the crises. In this sense, the Colombian case differs from the rest of the countries, since the main motivation for carrying out the constituent assembly was to recompose a democratic system that had failed, in the context of a war that the State was waging against drug traffickers.

An important similarity between all the countries analyzed is that the processes were preceded by a series of social movements that presented specific demands, which were later addressed in the drafting of the constitutional texts. In them, the demand for more participation was transversal and it can be observed that all the processes resulted in a strengthening of the attributes of democracy. Greater distribution of power, greater recognition of diversity within the States, and an increase in direct participatory mechanisms, as a complementary element to mechanisms of representative democracy. These reforms were carried out in a context of States with independent legislative, executive, and judicial powers.

Regarding the processes, similarities can also be observed. One of the common factors is that the constituent assembly was not considered as a mechanism for constitutional reform or change in any constitution in force, so all the processes began with a popular consultation or plebiscite for the citizens to rule on whether to accept the constitutional process.

Another similarity is that the delegates were selected using some form of proportional representation, which is considered the best method to achieve the representative pluralism needed for the process. However, proportional representation formulas vary significantly from case to case. Perhaps the most inclusive process is that of Colombia, which chose 70 assembly members through the Hare Quotient, which used the entire country as a single national district (Negretto, *Constitution-Building Processes in Latin America* 2018). In this sense, the D'Hont method chosen by Chile to be used for the election of delegates provides sufficient guarantees regarding the representativeness of the constitutional convention. Likewise, the deadlines and

quorum established for decision-making also coincide with the Chilean case. The processes carried out in the region have been brief and all have ended with a plebiscite to ratify the assembly's proposal. The Chilean constitutional convention will operate for a maximum period of one year and it will be mandatory to vote in the ratifying plebiscite.

Substantive differences can be observed with regards to the amount of time the constitutions were in place. While Colombia kept the constitution, albeit with many modifications, for more than 100 years, Bolivia changed it after 45 and Ecuador after only 10. International evidence shows that most constitutions die young and only a few last more than fifty years. The island of the Dominican Republic and Haiti has experienced almost 7% of the world's constitutions, nevertheless, the life expectancy of a national constitution is 19 years (Elkins, Ginsburg, and Melton 2009). In the case of Chile, the constitutional process arises after the current constitution has been in force for 40 years.

From this comparative analysis I assert that the Chilean constitutional process meets all the conditions to be completed successfully; the convention manages to develop a proposal within the established period and that this proposal is representative enough to be approved in the ratifying plebiscite.

Regarding the content, it is expected that the proposal addresses the main demands of the social movements that in recent years have been relevant actors in the national debate and that have been protagonists of the demonstrations during the social crisis, as it happened in Bolivia, Colombia, and Ecuador. Among these issues are the pension system, essential services such as health and education, the protection of the environment, the demands of the feminist movement, and the demand for mechanisms of direct democracy. The demand for mechanisms of direct democracy is the most relevant consideration for the Chilean process, given that the current system is exclusively representative, which would allow the country to improve an

essential attribute of a democratic regime such as participatory democracy. In addition, it is also expected that representative democracy will be strengthened by making voting compulsory, and that the role of education as a promoter of democratic values will be strengthened.

Although I argue that the changes that can be observed in the new constitution, in terms of strengthening democracy are valuable, they are a desirable consequence of the constitutional process. Nevertheless, that does not guarantee that the country will avoid a crisis in the coming years. Both Bolivia and Ecuador, and more recently Colombia, have faced political and social crises, which have not necessarily been linked to a demand for constitutional modification, but it can be affirmed that constitutional regulation and participation mechanisms were not enough to prevent them.

The constitution is then a general regulatory framework that can enhance or restrict the democratic system, and that can contribute to developing better policies to the extent that greater participation strengthens them and makes them more legitimate, but in no case guarantee its success. The challenge for democracy is therefore permanent and in this regard the role that an educational system designed to promote the values of democracy can play is key.

Bibliography

- Ackerman, Bruce. 1999. *The Politics of Liberal Dialogue*. Barcelona: GEDISA.
- Acosta, Alberto, interview by Cristina Cifuentes. 2020. *Alberto Acosta, president of Ecuador's Constituent Assembly in 2008: "It was key that the Assembly assumed full powers"* (March 17).
- Atria, Fernando. 2020a. "Is the Constitution a house? How is its architecture? The deceitful Constitution, its crisis and the crisis solution." *ARQ* 104 150-155.
- Atria, Fernando. 2020b. About the Constitutional Court in the traditional doctrine (I): Conceptualism Constitutional. *Law and Social Criticism*.
- Bachelet, Michelle. 2013. "Government Program of Michelle Bachelet 2014-2018."
- Baur, Nina. 2019. "Linearity vs. Circularity? On Some Common Misconceptions on the Differences in the Research Process in Qualitative and Quantitative Research." *Frontiers in Education* 4, no. 53.
- Belser, Analía. 2018. "Citizen participation in the Ecuadorian public sphere during the Constituent Assembly (2007-2008)." *FLACSO Andes*.
- Bellamy, Richard. 1996. "The Political Form of the Constitution: The Separation of Powers, Rights and Representative Democracy." *Political Studies* 44 436-456.
- Bill, M. J. C. 1998. *Constitutionalism and the Separation of Powers*. Indianapolis: Liberty Fund.
- Bowen, Glenn. 2009. "Document Analysis as a Qualitative Research Method." *Qualitative Research Journal* 9, no. 2 27-44.
- Bühlmann, Marc, Wolfgang Merkel, and Bernhard Wessels. 2008. "The Quality of Democracy: Democracy Barometer for Established Democracies." *Hertie School of Governance - working paper* 22.
- Collier, David, and Steven Levitsky. 1997. "Democracy with Adjectives: Conceptual Innovation in Comparative Research." *World Politics* 49, no. 3 430-451.
- Dahl, Robert A. 1956. *A Preface to Democratic Theory*. Chicago and London: The University of Chicago Press.
- El Universo. 2005. "Ecuador is going through a political crisis." *El Universo*, April 24.
- Elkins, Zachary, Tom Ginsburg, and James Melton. 2009. *The Endurance of National Constitutions*. New York: Cambridge University Press.

Fernández, Blanca, and Florencia Puente. 2012. "Social Movements and their Demands toward the Constituent Assembly in Bolivia and Ecuador." *Íconos: Revista de Ciencias Sociales. Movimientos sociales, estado y democracia en Bolivia y Ecuador*, no. 44 49-65.

Fox, Donald, Gustavo Gallón-Giraldo, and Anne Stetson. 1991. "Lessons of the Colombian Constitutional Reform of 1991. Toward the Securing of Peace and Reconciliation?" In *Framing the State in Times of Transitions. Case Studies in Constitution Making*, by Laurel E. Miller and Louis Aucoin, 467-482. Washington, D.C.: United States Institute of Peace Press.

Galligan, Denis J., and Mila Versteeg. 2013. *Social and Political Foundations of Constitutions*. New York: Cambridge University Press.

Gamboa, Franco. 2009. "The Constituent Assembly in Bolivia: An Evaluation of its Dynamics." *Frónesis* 16, no. 3 487-512.

Ghai, Yash. 2006. "The Role of Constituent Assemblies in Constitution Making." *International IDEA*.

Guzmán, Jaime. 1979. *El camino político*. <https://archivojaimeguzman.cl/index.php/revista-realidad-ano-1-n-7>.

Hernández, Roberto, Carlos Fernández, and Pilar Baptista. 2010. *Research Methodology*. México D.F.: McGraw-Hill.

Hogan, John, Paddy Dolan, and Paul Donnelly. 2009. *Approaches to Qualitative Research: Theory and Its Practical Application*. Cork: Oak Tree Press.

International IDEA. 2019. *Global State of Democracy 2019. Addressing the Ills, Reviving the Promise*. Stockholm: International Institute for Democracy and Electoral Assistance.

Jent, H. Clay. 1967. "Demos Kratos." *The Social Studies* 58, no. 6 242-245.

Joignant, Alfredo. 2019. "The Constitutional Moment of Chile." *La Tercera*, November 01.

Labuschagne, Adri. 2003. "Qualitative Research - Airy Fairy or Fundamental?" *he Qualitative Report* 8, no. 1 100-103.

LCC. 2019. "Law 20,200: Modifies chapter XV of the political constitution of the republic." *Library of the Chilean Congress*. December 24.

LCC. 2020. "Law 21,221: Constitutional reform establishing a new electoral itinerary for the constituent plebiscite and other electoral events that it indicates." *Library of the Chilean Congress*. March 26.

Lintott, Andrew. 1992. "Aristotle and Democracy." *The Classical Quarterly* 42, no. 1 114-128.

Mayorga, Fernando. 2006. "Referendum and Constituent Assembly: departmental autonomies in Bolivia." *Colombia Internacional*, no. 64 50-67.

Morandé, Felipe. 2016. "Nearly three decades of Washington Consensus, what is his legacy in Latin America?" *Scielo*. Accessed March 22, 2021.

Negretto, Gabriel. 2012. "Replacing and Amending Constitutions: The Logic of Constitutional Change in Latin America." *Law & Society Review* 46, no. 4 749-779.

Negretto, Gabriel. 2018. *Constitution-Building Processes in Latin America*. Discussion Paper, Stockholm: International IDEA.

OECD. 2017. "OECD Public Governance Review. Chile, Scan Report on the citizen participation in the constitutional process, 2017." *Organization for Economic Co-operation and Development*.

Paltán, Julio. 2005. "The crisis of the Ecuadorian political system and the fall of Gutiérrez (Dossier)." *Iconos: Revista de Ciencias Sociales*, No. 23 45-52.

Pardo, Daniela. 2020. "What was the Seventh Ballot, the movement that changed Colombia 30 years ago (and why its demands are still unmet)?" *BBC*, March 11.

Picketty, Thomas, interview by London School of Economics. 2020. *Thomas Picketty: "The current economic system is not working when it comes to solving inequality"* (February 21).

Pisarello, Gerardo. 2014. *Constituent processes, paths for democratic breakdown*. Madrid: Trotta.

Restrepo, Darío. 2016. "Bolivia: from the economic crisis to the rebel cycle, 2000-2005." *Anuario Colombiano de Historia Social y de la Cultura* 43, No. 1 295-322.

Rojas, Milton, Mauricio Bocanument, Olga Restrepo, and Carlos Molina. 2019. "Citizen's Participation in Colombia's Constitutional Process of 1991. Right to Education." *Revista de Historia Constitucional*, n. 20 1043-1073.

Rowe, Wendy. 2014. "Positionality." In *The SAGE Encyclopedia of Action Research*, by David Coghlan and Mary Brydon-Miller, 628. SAGE Publications Ltd.

Salazar, Oscar Hassenteufel. 2006. "The Constituent Assembly in Bolivia." *Fides et Ratio - Revista de Difusión cultural y científica de la Universidad La Salle en Bolivia* 1, no. 1 70-80.

Sartori, Giovanni. 1962. "Constitutionalism: A Preliminary Discussion." *The American Political Science Review* 56, no. 4 853-864.

Sartori, Giovanni. 1970. *Concept Misformation in Comparative Politics*.

SERVEL. 2020. *Chilean Electoral Management Body*. October. <https://pv.servelecciones.cl/>.

Stone, Alec. 2012. "Constitutional Courts." In *The Oxford Handbook of Comparative Constitutional Law*, by Michel Rosenfeld and András Sajó. Oxford: Oxford University Press.

Storm, Lise. 2008. "An Elemental Definition of Democracy and its Advantages for Comparing Political Regime Types." *Democratisation* 15, no. 2 215-229.

The Carter Center. 2008. *Report on the Constituent Assembly of the Republic of Ecuador*. Quito: The Carter Center.

Tushnet, Mark. 1996. "Living in a Constitutional Moment: Lopez and Constitutional Theory ?" *Case Western Reserve Law Review* 46 845-875.

UNDP. 2015. *Mechanism of Constitutional Change in the World: Analysis from Comparative Experience*. Santiago: United Nations Development Programme.

WID. 2020. *World Inequality Database*. <https://wid.world/>.