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TEXTE

Introduction

1 Since 1787, more than 500 constitutions have been drafted around the world.[1] Currently, the vast majority of the 193 UN member States are governed by a written constitution. These texts have been part of the legal environment for more than 200 years, to the point where they are considered to be a prerequisite for any sovereign State and one of the key elements of the modernity's "genetic code".[2] We should therefore know everything about these texts, from their birth to their death. However, more than 200 years later, constituent processes still hold many mysteries.

2 Between 2019 and 2023, Chile, a country located on the southern edge of South America, attempted to learn from all its past experiences with the aim of producing a democratic constitution that reflected the will of the people. As a result, this process has often been described as exemplary and even innovative. At first glance, it appeared as the culmination of a new approach in drafting constitutions, which emerged at the end of the 20th century and sought to involve the people (or at least civil society) as far as possible in the drafting process.

3 This shift towards deliberation has been presented as necessary to ensure that the text is truly democratic [3] and to give it full legitimacy. [4] Moreover, this participation was said to increase citizens' acceptance of and attachment to the text, and even strengthen mutual trust between them and political actors. [5] Although modern constitutionalism, born at the end of the 18th century in the United States and France, had placed the people at the heart of the theory of constituent power, the people were not actively involved in the drafting of texts. They participated only through representatives who were ultimately unrepresentative (at least in terms of gender or socio-professional profile). The process of decolonization, the fall of the Berlin Wall, and the end of dictatorships and civil wars have led to the emergence of new participatory mechanisms, such as public hearings, consultations, and popular initiatives of a constitutional nature.

4 Chile wanted to build on this collective intelligence and tried to draft its own Constitution in the most democratic way possible. However, despite its apparent qualities, the result was particularly disappointing, since after four years of work, none of the texts drafted (two in total: one in 2022 and another in 2023) were ratified. How can we understand this outcome? What does it teach us about constitution-making processes? Beyond the failure, should the Chilean case be considered the paragon of constituent processes in the 21st century?

5 These questions were at the heart of a research project called CASA, which aimed to organize a series of symposiums and conferences to monitor and understand the Chilean process. The project concluded with a final symposium in Bordeaux on October 9 and 10, 2025. The following dossier aims to present the discussions that took place during these two days. But before inviting readers to discover the stimulating reflections of the contributors on constituent power in the 21st century, it is important to provide a little more context for these reflections and, above all, to explain the philosophy that guided this symposium.

6 To do so, it is necessary to briefly return to the event that gave rise to the research project, namely the Chilean constituent process (1). Once this reminder is made, the CASA project and the contributions

of the scientific events that preceded the 2025 symposium in Bordeaux will be presented in more detail (2). Since the Chilean experience was a failure, we also felt it necessary to explain the extent to which it can be instructive (3). Finally, in order to best reflect the proceedings of the symposium, we wanted to explain the choices that guided its structure (4) and working language (5).

1. A Return to Chile's Constituent Process

7 In Chile, it all began in an innocuous way, one day in October 2019, when Chilean high school students decided to block the capital's metro system to protest yet another increase in ticket prices. Very quickly, these high school students, or "*pingüinos*" as they are affectionately known in Chile (because of their uniforms), were joined by other segments of the Chilean population.

8 The demands grew (pensions, access to healthcare, access to water, etc.) and converged on one point: the need to change the Constitution. With one condition: the people must take the lead and participate in drafting it.

> "Esta vez la historia la escribimos nosotros" [6] (This time, we are writing history)

9 The fact that people wish to voluntarily change their Constitution is in itself quite extraordinary. But when you know Chile, you can appreciate even more the surprise generated by this "*estallido social*" (social upheaval). Chile was then living in a kind of torpor, under the rule of the Constitution bequeathed by Augusto Pinochet. Of course, since the dictator left power in the late 1980s, the Constitution drafted in 1980 was amended and refined several times to meet the standards of democratic States. [7] However, the text remained marked by the context in which it was born and, above all, it still reflected the neoliberal and conservative ideology that characterized Pinochet's dictatorship. [8] While for many years this revised and amended Constitution had not posed any major problems, in 2019 it became the focus of all demands.

> "Chile se despertó y quiere una nueva constitución" [9] (Chile woke up and wants a new constitution)

10 This is how Chile's popular constitutional process began, initially through *cabildos ciudadanos* (i.e., meetings organized spontaneously by citizens to discuss common interests). During these meetings, constitutional proposals emerged, allowing the slogans chanted by protesters to be translated into words. The process then became more institutionally structured. A first referendum was held on October 25, 2020. 78 % of voters confirmed their desire for constitutional change, and 79 % expressed their wish to entrust the task of drafting the Constitution to a brand-new constituent assembly, elected solely for this task. This assembly known as the "*Convención constitucional*" was elected in May 2021. Of the 155 seats, 17 were reserved for representatives of indigenous peoples (a first for the country) and, above all, it was gender-balanced. In doing so, Chile made world history, with the first constituent assembly composed of equal numbers of men and women.

> "*Nunca más sin nosotras*" [10] (Never again without us [the women])

11 This assembly innovated in its deliberation processes. [11] It also drew on mechanisms already used in other constitutional processes abroad, such as public hearings and popular legislative initiatives. From a procedural perspective, it appeared that the Chilean process had learned from past experiences by combining all the best practices in this area. In one year, and under difficult conditions, a draft Constitution was drawn up. A draft that was too *avant-garde* for some, even "woke" for others. [12] It was ultimately rejected by a large majority in the referendum of September 4, 2022 (62 % of voters rejected the text). [13]

12 Despite this setback, the process continued, but with a different format and philosophy. This time, the people were less involved. The idea was to move faster, and a committee of 24 experts was appointed by the Chilean Parliament to draft a preliminary text. This was extensively amended by a new elected body: the "*Consejo constitucional*" (Constitutional Council). At the end of 2023, a second draft Constitution was produced, which was much

more conservative than the previous one,[14] but which was also rejected by referendum on December 17, 2023 (by 55 % of voters).

13 Thus, contrary to expectations, the Chilean constitutional process ended in failure. A failure that, from the outside, astonishes, raises questions, surprises, and demands that we take a closer look.

2. The Scientific Journey of the CASA Project

14 The events unfolding in Chile since 2019 are anything but static. What was at work was a process, a dynamic, which, as we know, has not been without surprises. Given what was happening at the time, the context, the originality and innovation, the mechanisms and phenomena at work, all synonymous with disruption, could not remain without consequences. Regardless of the outcome, the traces would be lasting and profound. It was impossible to assess this situation without designing a research program around this process. That is why the CASA project was launched. While this project had a clearly identifiable beginning, it could not, strictly speaking, have a precise end. It was bound to spread beyond the completion date of the research project that supports it. Indeed, a first symposium was organized in Bordeaux in May 2023, in order to study the content of the first draft Constitution of 2022 and identify the reasons behind the rejection. After the results of the 2023 referendum concerning the second draft Constitution, another symposium[15] was organized in Pau in February 2024[16]. During this event, the entire Chilean constitutional process was examined. However, many questions remained unanswered. Above all, there was a desire to understand to what extent this process—despite its imperfections—could serve as a model for future constitutional processes in the 21st century.

15 That is why a third symposium was organized at the University of Bordeaux. This meeting does not mark an end but, on the contrary—and that's how it was designed—a beginning. An opening towards even broader horizons since it considers the revision of the constitution as such. From this perspective, there are currently considerable questions and a need for clarification. Indeed, any constitutional process essentially represents a moment of truth in

which accumulated tensions must be expressed, confronted, and then resolved within a common framework. By its very nature, it requires a shift from confrontation to compromise. This observation has been severely tested by the Chilean experience. There is a real risk that this situation will ultimately disqualify all the efforts and innovations, all the renewed, original approaches imagined at the beginning of the process. In other words, are the innovations observed, their modernity, likely to prevail over polarization, which is synonymous with simplification in the face of a reality and a society that are becoming increasingly complex?

16 But the scope of reflection and research also had to be temporal and geographical, since beyond the period in question, it embraces the 21st century and extends far beyond the borders of Chile alone. Even though it failed, the Chilean constitutional process deserves to be studied from both a temporal and geographical perspective, because it functions as a "full-scale laboratory" for contemporary conditions for the creation (and non-creation) of constitutional compromise. From this point of view, failure is not a mere parenthesis, but an event that permanently reshapes political life. The temporal opening requires us to think of the process as a sequence and therefore to study the management of expectations, constitutional pedagogy, the temporality of deliberation, and the ratchet effects produced by initial procedural choices. This is even more important given that most democracies today face similar tensions: mistrust of representation, partisan fragmentation, polarization, competing legitimacies, and the impact of digital ecosystems on opinion formation. Opening the debate thus allows us to identify exportable patterns but also to consider universal questions: how to reconcile maximum inclusion with the ability to reach conclusions, how to integrate the need for recognition without making the text rigid. In other words: how to build a constitutional "center of gravity" in pluralistic societies.

3. Can Chile's constituent processes be considered a success?

17 Based on these considerations, it seems reasonable to ask whether or not the Chilean constitutional processes can be considered a success. Indeed, these attempts to adopt a new constitutional text deserve to be taken seriously, because they provide a number of legal lessons. In reality, everything depends on how the effectiveness of a process is understood, which can be viewed either narrowly, from the perspective of the formal success of the process, or more broadly, from the perspective of the interest that the process generates.

18 If constituent processes are viewed from the perspective of their formal success, they are undoubtedly a failure. The two proposals aimed at turning the page on the Chilean Constitution, adopted under the dictatorship of Augusto Pinochet, were rejected for very different reasons, the first being deemed too progressive and the second too conservative. The first draft Constitution proved to be particularly innovative, which logically led to this process being associated with the "world's first attempt at popular constitutionalism".[17] However, it has not always been welcomed by legal scholars, who remain fairly critical not only of the constitutional process,[18] but also of the draft Constitution.[19]

19 Furthermore, if the potential "success" of the process is considered from the perspective of its concrete repercussions around the world, it must be acknowledged that it has indeed been a failure. In practice, no other constitutional process in the world has yet been inspired by the Chilean constitutional process. Nevertheless, these elusive "legal borrowings" can undoubtedly be explained by the recent nature of the process, the numerous criticisms it has been subjected to, and its eminently contextual dimension, as it is linked to the country's dictatorial past, thereby preventing other countries from drawing inspiration from it.

20 Conversely, if a process is viewed from the perspective of the interest it generates, the two constituent processes are far from being

considered a failure. A number of press articles, [20] institutional opinions, [21] and academic works [22] have mentionned the Chilean constitutional experience, not only to analyze it, but also to draw a number of lessons from it in normative and institutional terms. The success of the process lies in the fact that the Chilean case has become the starting point for constitutional reflection, as evidenced by the symposium organized on October 9 and 10, 2025 at the University of Bordeaux to open a debate on future developments in the making of constitutions in this century. In this context, the Chilean experience is not necessarily seen as a normative model to be replicated through imitation, but rather as a legal model, i.e., as an object of theoretical and practical analysis.

21 The various studies of the Chilean constitutional process go so far as to open up reflection on comparative law itself, which has long been dominated by a Western view of law. This is particularly true of René David's book, *Les grands systèmes de droit contemporains* (The Great Contemporary Legal Systems), which, while seeking to classify laws into four legal families, establishes a form of implicit hierarchy between them [23]. Western systems, namely Roman-Germanic Law and Common Law, are considered rational systems, unlike non-Western systems (socialist and religious laws). As a result of this biased approach, countries in the "North" have often been seen as models for countries in the "South" to follow. [24]

22 One of the major strengths of the constitutional discussions surrounding the Chilean case is that it reverses this usual analytical framework. The publication of the proceedings of the symposium "Drafting a Constitution in the 21st century" appears to be an example of dialogue between the North and the South, rather than unilateralism in the circulation of legal norms and concepts. It thus fits into the perspective of "reverse legal transplants", i.e., the circulation or borrowing from a country in the global South to a country in the global North. [25] The contributions in this dossier demonstrate that a "small country" of 19 million inhabitants such as Chile can be not only a pioneer, but also an inspiration for the good and bad ways of writing a constitution in the 21st century. [26] In the words of Professor Boaventura de Sousa Santos, the contributions gathered here make visible the "knowledge of the South" that has long been rendered invisible by colonialism and capitalism. [27]

4. Organization and Structure of the Symposium

23 It was with the logic of reverse legal transplant and with the aim of understanding the potential lessons that can be learned from Chile's experience with constitutional processes that the CASA project organized the symposium on October 9 and 10, 2025 in Bordeaux. In order to analyze each of the elements, the symposium was structured around four sessions. [28] We chose to adopt an interdisciplinary perspective in order to avoid remaining confined to a strictly legal approach. By integrating insights from political scientists, economists, practitioners, and international actors, we aim to develop a broader and more nuanced understanding of the Chilean constituent process. Ultimately, an interdisciplinary framework allows for a more comprehensive analysis of how constitutional change unfolds in practice and how it is shaped by forces that extend beyond the legal sphere alone.

24 The first session focused on the Chilean experience, to determine whether it can serve as a model for future constitution-making processes or, on the contrary, whether it should instead serve as a warning about the limits of popular constitution-making. As mentioned previously, much has been written about the Chilean constitutional process. With more than 2 years' hindsight since the last referendum, we can now attempt to draw new conclusions from this rejection and identify any shortcomings. Do these lie in the process itself, [29] in the role played by political parties, [30] or are the reasons to be found elsewhere?

25 The second session turned to the modalities of constitution writing: who writes, through which procedures, and with what degree of citizen involvement? Since the 18th century, particularly following the American and French Revolutions, constitutions have been conceived as the product of human will. Emmanuel Sieyès attributed original constituent power to the nation, laying the foundations of modern democratic constitutional theory. Within this framework, constitutions are typically drafted by an elected assembly and subsequently approved by the people. Other procedures emerged in the late 19th and 20th centuries, such as national conferences in

several African countries, which sought to include broad segments of society, as illustrated by the example of Benin. [31]

26 The Chilean experience belongs to this democratic tradition of constitution writing while also introducing other mechanisms such as the *Iniciativas Populares de Norma*. This example raises broader questions about the renewal of constitution-making procedures in the 21st century, suggesting that citizen participation may extend beyond the election of representatives or final approval by referendum. The early 21st century has witnessed experiments with digital participation, or e-participation. Although it ultimately did not succeed, the Icelandic constitutional process of 2011 remains a landmark example: a draft Constitution was developed on the basis of ideas proposed by randomly selected citizens, published online to allow public comments and revisions, and widely disseminated through social media platforms such as YouTube and Facebook. Similar dynamics of e-participation can be observed in the Egyptian (2012) and Tunisian (2011–2014) constitutional processes. This form of participation may represent a defining feature of contemporary constitution-making processes. [32]

27 The third session addressed the style of constitutions in the 21st century. Constitutional style is not merely a formal matter; it expresses a specific vision of the world and reflects the identity of the society from which a constitution emerges. In this sense, the study of style is necessary to understand the constitution. It can be observed in the language employed, the structure, the level of detail, and even the length of the text. All these elements shape the constitution's symbolic and identificatory function, influencing how people perceive the text. On the one hand, some constitutions adopt a restrained and strictly normative style, focusing primarily on the organization of power and the distribution of competences among constitutional institutions. On the other hand, certain constitutions incorporate symbolic references intended to foster adherence and reinforce constitutional identity, such as references to God, religion, shared values, national history, the flag, or the national anthem. [33] Legal culture plays a significant role in shaping these stylistic differences. The different constitutional traditions, particularly between Civil Law and Common Law systems have led to various drafting approaches whether in terms of precision, generality, or the

role left to judicial interpretation. Moreover, style evolves over time in response to social transformations: the constitutional scope is expanding to include new constitutional subjects and concerns. Another significant innovation of 21st century constitutionalism lies in the expansion of constitutional subjects. In this regard, the Chilean draft Constitution of 2022 was particularly noteworthy for recognizing nature as a subject of law. It is not only an enhancement of constitutional content but also a transformation of constitutional language, integrating environmental concerns into the grammar of constitutionalism.

28 The fourth, and final session, focused on constitutional content, that is, the substantive matters addressed by constitutions themselves. Is the 21st century reshaping not only how constitutions are written, but also what they are fundamentally about? Discussions explored emerging themes as well as the renewal of classic principles, such as the separation of powers. Under these new developments, constitution-making increasingly incorporates digital constitutionalism. This raises questions about the adaptation of rights and freedoms to digital environments, as well as the regulation of private actors. It thus invites a rethinking of the protection of fundamental rights in a context where threats to those rights no longer originate solely from the State.

5. Working Language and the Comparative Method

29 Finally, the decision to hold an international symposium in Bordeaux in English requires explanation—perhaps more so in France than elsewhere. This reaction is attributable neither to a mere “French touch” nor trivial. Rather, it reflects a structural tension within an academic space that remains deeply attached to its own language while being fully embedded in channels of knowledge production largely organized around English. This choice therefore had to be assumed without being neutralized, and explained without being celebrated. It would have been easy to turn linguistic justification into a rhetorical ritual, at the risk of producing a detour that was more ceremonial than analytical. We sought to avoid this double pitfall: that of contrition—as though speaking English in France amounted to

a form of renunciation—and that of naïve celebration, as though English mechanically guaranteed the universality of scholarly discourse. The use of English was thus conceived as a deliberate methodological decision, fully consistent with the very object of the symposium.

30 A first justification is pragmatic. English has become the shared language of communication in the international academic setting. This situation does not result from a normative hierarchy among languages, but from the current configuration of the field. In an academic space shaped by researcher mobility, the multiplication of transnational networks, and the internationalization of doctrinal debates, English functions as the most immediately accessible common medium for effective interactions among participants from diverse linguistic traditions. In this respect, it helps to reduce asymmetries of comprehension and to prevent discussions from fragmenting into parallel linguistic spheres. [34] Yet this pragmatic consideration would remain insufficient if it were not complemented by a more substantive one relating to the structure of comparative constitutional law as a field. The analytical categories mobilized to think about contemporary constitutional drafting—whether concerning the exercise of constituent power, forms of citizen participation, or mechanisms of procedural legitimacy—have largely been developed and stabilized within a predominantly English-language literature. Working in English does not entail granting this literature any epistemic privilege. Rather, it allows engagement with it without the distortions produced by improvised translations that, drafted in the course of writing, would introduce conceptual shifts incompatible with requirements of rigorous comparison. [35] In this sense, the choice of language directly contributes to the discipline of argumentation.

31 Moreover, the central object of the symposium calls by its very nature for a transnational approach. The Chilean case cannot be understood as a strictly internal phenomenon. It is embedded within a broader space of normative, institutional, and discursive circulations that extends well beyond the national framework. The cross-references to African, Latin American, and European experiences that structured the programme presuppose the existence of a shared argumentative framework capable of rendering situated objects comparable. In this

context, English operates less as a language of unification than as an instrument of connection. [36] The aim is not to flatten the singularities of constitutional experiences, nor to achieve a homogeneous understanding of them, but to make their reasoned confrontation possible within a common discursive space. The use of English was therefore conceived not as a language of unification, but as a mediating instrument enabling such confrontation, in line with the observation formulated by Hannah Arendt when she observed that "Greeks learned to understand—not to understand one another as individual persons, but to look upon the same world from one another's standpoint, to see the same in very different and frequently opposing aspects". [37]

32 A further justification lies in the vocation of an international symposium itself, and even more so in the publication of the proceedings that extend its work. A symposium is not merely a moment of discussion bounded in time; it forms part of a broader economy of scholarly production oriented toward dissemination, discussion, and critique. The use of English in oral exchanges was intended to situate the Bordeaux debates immediately within the international space of discussions on contemporary constitutional drafting, and to avoid confining the resulting contributions—by default of language—to a narrow circle of reception. In this sense, English also functions as a strategy of circulation: not to displace French as a language of scholarship, but to ensure that francophone contributions to a global debate do not remain, by linguistic default, peripheral.

33 These reasons, however, are not sufficient on their own. English is not a neutral instrument. Every language carries with it a history of categories, an economy of self-evidence, and an implicit hierarchy of objects deemed worthy of thought. Choosing a language therefore also means choosing—at least in part—the conditions under which discourse becomes possible. [38] As a *lingua franca*, English tends to generate expectations of readability, standardized argumentative formats, and, at times, effects of symbolic domination. Certain notions appear almost "natural" within its grammar, while others become difficult to articulate without loss. [39] Acknowledging this non-neutrality does not imply abandoning English; rather, it requires heightened methodological vigilance. English was thus adopted only

on the condition that it be compensated for by increased rigor. This discipline, familiar to comparative scholarship attentive to method, seeks less to protect original languages than to render traceable—and therefore criticizable—the paths by which concepts move from one intellectual space to another.

34 This linguistic unity was nonetheless strictly limited to the time of the symposium itself. The publication of the proceedings follows a different, deliberately more open logic. Recognizing that the language of oral discussion should not mechanically determine the language of written scholarship, we opted for complete freedom regarding the language of publication. The proceedings therefore include contributions written in English or French, without hierarchy or implicit preference. This editorial pluralism aims to preserve the conceptual precision specific to each doctrinal tradition, to allow authors to develop their analyses in the language most appropriate to their reasoning, and to avoid any artificial reduction of thought to a single language. The dissociation between the language of oral discussion and that of written publication reflects a deeper methodological commitment: the recognition that language is never a neutral vehicle of knowledge, but actively structures categories, orients reasoning, and shapes the very forms of demonstration. The resulting position is deliberately intermediate, rejecting both the neutralization of English as a supposedly universal language of knowledge and the opposite temptation of linguistic withdrawal. The balance struck seeks to ensure, for the duration of debate, the conditions of effective international exchange, while preserving, over the longer term of writing and publication, the linguistic plurality that remains constitutive of comparative inquiry.

35 Ultimately, the use of English fully participates in the methodological reflection that runs through the proceedings as a whole. Thinking about constitutional drafting in the 21st century requires attention not only to procedures, forms, and substantive content, but also to the languages in which these objects are conceptualized, debated, and transmitted. Only on this condition does comparativism cease to be an exercise in projection and become a genuine tool of understanding. [40] If the language of Shakespeare prevailed at this Bordeaux symposium, it was neither out of worldly convenience nor out of indifference to the language of Molière. It was because the

ambition was to create a genuinely international space of exchange around a transnational object, while fully acknowledging that a *lingua franca* is never innocent. The justification for choosing English thus functions not merely as an organizational preamble, but as an integral component of the comparative method itself—which always begins with a foundational, too often implicit question: in which language, and therefore within which categories, do we claim to understand the other?

36 Although the modern constitutional tradition has produced a remarkable number of constitutional texts over the past two centuries, the processes through which constitutions are imagined, negotiated, and sometimes ultimately rejected continue to generate as many questions as they resolve. Constitution-making thus remains marked by a persistent element of uncertainty. It is precisely this open and unresolved dimension that has guided both the international symposium held in Bordeaux and the broader research programme of which it forms part.

37 The pages that follow should therefore be read not so much as the exhaustive record of a symposium than as one moment within a collective and ongoing inquiry whose ambition necessarily exceeds the temporal limits of both the conference and the research programme that made it possible. In order to reflect the structure of the symposium itself, the proceedings have been divided into two successive issues. The present volume brings together the contributions corresponding to the first day of discussions, while the papers presented during the second day will be published in a subsequent issue. Taken together, these two volumes aim to offer a comprehensive account of the debates opened during the Bordeaux symposium.

38 If the Chilean experience reminds us that constitution-making remains an uncertain and contested undertaking, it also invites a broader reflection on the forms, methods, and languages through which constitutional agreements are imagined and negotiated in the 21st century. In this sense, the Chilean process appears less as a closed chapter than as an invitation to continue thinking about constitution-making in our time. It is in this spirit—attentive both to constitutional practices and to the analytical frameworks through

which they become intelligible—that we invite the reader to engage with the contributions that follow.

NOTES

1 Horst Dippel counted 511 in 2003. In their research project, and using a different definition of constitution, Zachary Elkins, Tom Ginsburg, and James Melton counted 935 in 2009. See H. Dippel, "Constitutions of the World: 1776 to the present. Presentation of two publication projects", *Historia Constitucional*, nº 4, 2023, p. 437; Z. Elkins, T. Ginsburg and J. Melton, *The Endurance of National Constitutions*, Cambridge, Cambridge University Press, 2009, p. 6.

2 L. E. G Manrique, "Las constituciones, el código genético de la modernidad", *Política exterior*, 1 October 2021, online: < https://www.politicaexterior.com/articulo/las-constituciones-el-codigo-genetico-de-la-modernidad/ > accessed on April 2, 2026.

3 L. Beckman, "Democratic Legitimacy Does Not Require Constitutional Referendum. On 'the Constitution' in Theories of Constituent Power", *European Constitutional Law Review*, nº 14, 2018, p. 568.

4 A. C Hutchinson and J. Colón-Ríos, "Democracy and Constitutional Change", *Theoria*, nº 58, 2011, p. 51.

5 A. Aydin-Cakir, "Duration of the Constitution-Making Process as an Indicator of Post-Constitutional Political Uncertainty: The Insurance Theory Revisited", *Global Constitutionalism*, nº 12, 2023, p. 300-307.

6 Example of slogan written on the protesters' signs during the 2019 social upheaval.

7 The most significant reform was implemented under the government of Ricardo Lagos. See C. Heiss and P. Navia, "You Win Some, You Lose Some: Constitutional Reforms in Chile's Transition to Democracy", *Latin American Politics and Society*, nº 49, 2007, p. 163; C. A Fuentes, "A matter of the Few: Dynamics of Constitutional Change in Chile, 1990–2010", *Texas Law Review*, nº 89, 2011, p. 1741.

8 B. Alemparte, "Towards a theory of neoliberal constitutionalism: Adressing Chile's first constitution-making laboratory", *Global Constitutionalism*, nº 11, 2022, p. 83.

9 Example of slogan written on the protesters' signs during the 2019 social upheaval.

10 Example of slogan written on the protesters' signs during the 2019 social upheaval.

11 C. Cerda-Guzman, "'Nunca más sin nosotras' ou l'écriture d'une Constitution au prisme du genre. Etude des projets de Constitution chilienne de 2022 et 2023", *Intersections. Revue semestrielle genre et droit*, nº 2, 2024, DOI: < https://doi.org/10.64977/intersections.vi2.65 > accessed on April 2, 2026.

12 See "Chile writes a woke constitution. Are chileans ready for it?", *Washington Post* (July 5, 2022), online: < https://www.washingtonpost.com/world/2022/07/05/chile-constitution-draft-boric/ > accessed on April 2, 2026; "Voters should reject Chile's new draft constitution. It is a fiscally irresponsible left-wing wish list", *The Economist* (July 6, 2022), online: < https://www.economist.com/leaders/2022/07/06/voters-should-reject-chiles-new-draft-constitution > accessed on April 2, 2026.

13 C. Cerda-Guzman, "Autopsie d'un échec. Retour sur le rejet du projet de Constitution pour le Chili", *Jus Politicum*, nº 29, 2023, p. 111.

14 C. Cerda-Guzman, "D'un projet de Constitution trop 'avant-gardiste' à un projet 'rétrograde'", *MSH Hypothèses*, 2023, online: < https://hal.science/hal-04314020v1 > accessed on April 2, 2026.

15 In addition to this symposium, a conference-debate open to the public and supported by the Southwest branch of the *Institut des Amériques* also took place in Pau on May 30, 2023.

16 H. Alcaraz and C. Cerda-Guzman (eds), *Le pari constituant chilien ou la Constitution impossible* ?, Aix-en-Provence, DICE Editions, coll. "Confluence des droits", 2025, DOI: < https://books.openedition.org/dice/18758 > accessed on April 2, 2026.

17 C. Cerda-Guzman, "Le processus constituant au Chili : l'échec d'un projet de constitutionnalisme populaire ?", *Revue de droit public*, nº 4, 2023, p. 1075.

18 R. Gargarella, "Rejection of the New Chilean Constitution: Some Reflections", *Oxford Human Rights Hub*, September 14, 2022; R. Gargarella, "From 'democratic erosion' to 'a conversation among equals'", *Revus*, nº 47, 2022.

19 R. Gargarella, "El Proyecto de dejar atrás la 'Constitución de Pinochet'", *La Nación*, July 16, 2022.

20 See for instance "'The constitution of the dictatorship has died': Chile agrees deal on reform vote", *The Guardian*, November 15, 2019.

21 European Commission for Democracy Through Law (Venice Commission), *Chile, Opinion on the drafting and adoption of a new constitution*, Opinion nº 1075/2022, March 18, 2022.

22 See for example J. Couso, "Chile's 'Procedurally Regulated' Constitution-Making Process", *Hague Journal on the Rule of Law*, nº 13, 2021, p. 235; T. Ginsburg and I. Alvarez, "It's the procedures, stupid: The success and failures of Chile's Constitutional Convention", *Global Constitutionalism*, nº 13, 2024, p. 182; R. P. Acevedo, "Toward a Constitution of Care: Lessons from the Chilean Constitutional Process of 2021-2022", *Latin American Legal Studies*, nº 12, 2024, p. 279; E. Alemán and S. Soto Velasco (eds), *The Law and Politics of Constitution Making: Lessons from Chile*, London, Routledge, 1st ed., 2026.

23 R. David, M. Goré and C. Jauffret-Spinosi, *Les grands systèmes de droit contemporains*, Paris, Dalloz, 12nd ed., 2016.

24 Here, "North" and "South" refer less to geographical locations than to the differences between states with great economic power and those without. See S. Kalantry, "Reverse Legal Transplants", *North Carolina Law Review*, nº 99, 2021, p. 49.

25 *Ibid.* The author distinguishes between reverse legal transplants and traditional legal transplants, also known as "horizontal transplants" from a country in the global North to another country in the global North or from a country in the global South to another country in the global South. According to the author, the latter are more numerous than the former for economic reasons.

26 This is obviously not the first time that Chile has served as a reference point, as demonstrated in particular by the Truth and Reconciliation Commission created in 1990 to shed light on the numerous human rights violations during the Pinochet dictatorship, which inspired the Truth and Reconciliation Commission in Canada.

27 B. de Sousa Santos, *Epistemologies of the South: Citizen Movements and the Controversy over Science*, preface and translation by J-L Laville, Paris, Desclée de Brouwer, 2016.

28 On this note, we would like to take the opportunity presented by the publication of these proceedings to thank and recognize the colleagues who

agreed to chair the various sessions, namely: Marthe Fatin-Rouge Stefanini, Thomas Acar, Marie Padilla, and Sébastien Platon.

29 T. Ginsburg and I. Alvarez, "It's the procedures, stupid: The success and failures of Chile's Constitutional Convention", *Global Constitutionalism*, nº 13, 2024, p. 182.

30 C. Cerda-Guzman, "Le processus constituant au Chili : l'échec d'un projet de constitutionnalisme populaire ?", *Revue du droit public*, nº 4, 2023, p. 1075.

31 F. Eboussi Boulaga, *Les conférences nationales en Afrique noire : une affaire à suivre*, Paris, Karthala, 1993; M. Kamto, "Les conférences nationales africaines ou la création révolutionnaire des constitutions" in D. Darbon and J. Du Bois De Gaudusson (eds), *La création du droit en Afrique*, Paris, Karthala, 1997, p. 177.

32 A. Dziedzic, "Consultation, Deliberation and Decision-Making", Stockholm, International IDEA, 2020, online: < https://constitutionnet.org/sites/default/files/2020-10/consultation-deliberation-and-decision-making.pdf >, accessed on April 2, 2026.

33 E. Smith, "Les fonctions symboliques des constitutions" in M. Troper and D. Chagnollaud (eds), *Traité international de droit constitutionnel*, Paris, Dalloz, vol. 1, 2012.

34 On the role of the English language in the asymmetric structuring of transnational academic communities, and on the ways in which certain national approaches tend to present themselves as 'international' by virtue of their linguistic dominance, see A. E. Roberts, *Is International Law International?*, PhD thesis, Acton, The Australian National University, 2017, p. 544-559.

35 Comparative law is here confronted with what Marie-Claire Ponthoreau describes as the "language trap", namely the illusion of equivalence produced by the translation of legal concepts. See M.-C. Ponthoreau, *Droit(s) Constitutionnel(s) Comparé(s)*, Paris, Economica, 1st ed., 2010, p. 90-94. This difficulty is classically captured by the Italian adage *traduttore, traditore*, analysed in particular by Umberto Eco. Cf. U. Eco, *Dire Quasi La Stessa Cosa. Esperienze Di Traduzione*, Milan, Bompiani, 2003.

36 On the linguistic fragmentation of comparative constitutional law and the exclusionary effects generated by the centrality of English in structuring the field, see M. De Visser, "Towards a More Inclusive Constitutional Discourse: Overcoming Linguistic Barriers", I•CON*nect*,

clusive-constitutional-discourse-overcoming-linguistic-barriers/ > accessed on January 27, 2026.

37 H. Arendt, *Between Past and Future*, New York, Viking Press, 1968, p. 51.

38 On the epistemic and institutional biases generated by the dominance of English in the production of international legal knowledge, see O. Ammann, "Language Bias in International Legal Scholarship: Symptoms, Explanations, Implications and Remedies", *European Journal of International Law*, nº 33, 2022, p. 821.

39 On the epistemic effects of the dominance of English as a lingua franca, see G. M. Lentner, "Law, Language, and Power: English and the Production of Ignorance in International Law", *International Journal of Language & Law*, nº 8, 2020, p. 50.

40 On the place of language as an epistemological, conceptual, and methodological object in comparative constitutional law, see E. Arban, M. De Visser and J.-I. Yun (eds), *The Language of Comparative Constitutional Law*, Oxford, Hart Publishing, 2025.

RÉSUMÉS

English

This article examines the Chilean constitution-making process (2019–2023) as a key case study for understanding contemporary constituent power. Following the 2019 social uprising, Chile launched an ambitious and highly participatory effort to replace the Constitution inherited from the Pinochet era. Despite innovative mechanisms of citizen participation and institutional deliberation, the two successive draft constitutions adopted in 2022 and 2023 were both rejected by referendum. Rather than treating this outcome solely as a failure, the article analyzes the Chilean case as a laboratory for contemporary constitutional theory and comparative constitutional law. It highlights the tensions between democratic legitimacy, popular participation, procedural innovation, and the search for durable constitutional compromise in pluralistic societies. The Chilean experience is thus approached less as a model to be replicated than as a critical analytical framework for reflecting on constitution-making in the 21st century.

Français

Cet article analyse le processus constituant chilien (2019–2023) comme un cas d'étude majeur pour comprendre les transformations contemporaines du pouvoir constituant. À la suite du soulèvement social de 2019, le Chili a engagé une démarche ambitieuse et fortement participative visant à

remplacer la Constitution héritée de l'ère Pinochet. Malgré des mécanismes innovants de participation citoyenne et de délibération institutionnelle, les deux projets constitutionnels successifs adoptés en 2022 et 2023 ont été rejetés par référendum. Plutôt que d'appréhender ce résultat uniquement comme un échec, l'article examine le cas chilien comme un laboratoire pour la théorie constitutionnelle contemporaine et le droit constitutionnel comparé. Il met en lumière les tensions entre légitimité démocratique, participation populaire, innovation procédurale et recherche d'un compromis constitutionnel durable dans les sociétés pluralistes. L'expérience chilienne apparaît ainsi moins comme un modèle à reproduire que comme un cadre analytique critique pour penser l'écriture constitutionnelle au XXIe siècle.

INDEX

Mots-clés
Chili, processus constituant, pouvoir constituant, légitimité démocratique, droit constitutionnel comparé

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