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Constitutional Change and Referendums in Chile and Ireland: Faraway, So Close

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Abstract

Chile and Ireland have held constitutional referendums in recent years. While Ireland has successfully passed several controversial constitutional amendments over the last decade, Chile has struggled with its proposed constitutional reform, with two unsuccessful national referendums in September 2022 and December 2023, leaving the constitutional debate unresolved. Both countries have shared challenges, such as constitutional blockage and political polarisation, and both have attempted to involve citizens in pre-referendum processes in various ways. Ireland has consolidated public participation and deliberation mechanisms despite recent setbacks, unlike Chile, which has relied on electoral innovations. So, how can these diverging outcomes be explained? This article proposes an explanation by comparing these two cases, highlighting the importance, possibilities, and limitations of constitutional referendums based on three criteria: the extent and intensity of change, the model of democratic participation, and the role of elites and incumbent powers. These three criteria are crucial for addressing constitutional change's central challenges when linked to a referendum. Consequently, these criteria offer a focused analytical framework for understanding the explicit or implicit elements that can influence the success or failure of a constitutional referendum and must be considered in its design and organisation.

Keywords

Chile; constitutional change; democratic innovations; Ireland; mini-publics; referendums

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1. Introduction

Referendums have been proffered as essential tools for addressing constitutional change, driven by their potential to engage the public directly in decision-making processes (LeDuc, 2003, p. 30). However, despite their popularity (Qvortrup, 2018), referendums remain complex instruments, often critiqued for inadequate deliberation and irreversible outcomes (Offe, 2017, p. 22). This article explores the interplay between institutional and extra-institutional factors that shape constitutional change and how those factors influence constitutional referendums, i.e., those linked to constitutional reform, within the context of two countries: Chile and Ireland. Both countries have become frequent users of referendums to discuss constitutional reforms. Since 1988, Chile has held five constitutional referendums, while Ireland has held thirty-three. In the case of Chile, we include as our primary data sources the three constitutional referendums held within the constitution-making processes triggered by the social unrest of October 2019. In the Irish case, we consider recent constitutional referendums, starting with the salient 34th amendment, which on 22 May 2015 amended the Constitution of Ireland to provide that marriage is recognised irrespective of the sex of the partners and ending with the 40th amendment on the provision of care. The comparison is valid since both countries have faced similar challenges, including constitutional deadlock and political polarisation, and both have tried to involve citizens in constitutional change as a solution. Ireland has successfully established public participation mechanisms for constitutional proposals before referendums, often unlocking and settling those debates. On the contrary, Chile has seen two entire constitutional drafts rejected in referendums, suffering high rates of polarisation. The key question is why their outcomes differ so conspicuously.

To analyse this, we propose three criteria: the extent and intensity of change, the model of democratic participation (Chambers, 2001), and the role of elites and incumbent powers. These criteria address essential decisions that must be made during constitutional change processes. In simpler terms, they answer three essential questions: how much change is necessary, who should draft the proposal, and the broader context of the discussion. We argue that these factors are crucial in determining the outcomes of constitutional referendums.

By addressing these two case studies, we attempt to contribute to a widespread interdisciplinary literature focusing on the factors explaining constitutional change. Recently, several works have attempted to answer the question of what determines constitutional change with quantitative social research methods. Here, we can highlight the works of scholars such as Ginsburg and Melton (2015, p. 69), who attempt to predict the rates of amendments through what they call "constitutional amendment culture," which is the "set of shared attitudes about the desirability of an amendment, independent of the substantive issue under consideration and the degree of pressure for change." Other works, such as Tarabar and Young's (2021) recent analysis of 128 constitutional episodes from 54 countries, conclude that cultures that are more individualistic and less prone to uncertainty avoidance are associated with higher amendment rates.

We propose an explanation that attempts to complement these studies through the qualitative analysis of recent constitutional episodes in two countries—Chile and Ireland—in order to understand how institutional design and extra-institutional factors (such as political polarisation or broader constitutional history) interplay in processes of constitutional change. This comparison can help us understand the significance of a constitutional referendum, extract insights for future constitution-making processes, and draw lessons about constitutional referendums' significance, opportunities, and limitations.

2. Background Information

To understand the implications of the Chilean case, it is essential to consider the referendums of 2020, 2022, and 2023 within their historical context. The third wave of democratisation in Latin America saw numerous countries drafting new constitutions or making significant reforms. Chile was an exception, as the 1980 Constitution—enacted during the dictatorship—remained largely intact. Although controversial aspects were gradually reformed after democracy was restored, the core structure was preserved (Godoy, 2003). For years, political crises were resolved in closed-door negotiations between the ruling leftist coalition and the right-wing defenders of the dictatorship's legacy, mainly excluding public input. This approach led to the 2005 constitutional reforms, enacted without significant public discussion or media attention (Fuentes, 2012). As a result, a disconnect grew between the political system and public sentiment regarding crisis resolution.

Although there were significant constitutional amendments in 2005, scholars noted that these reforms failed to fully address Chile's main constitutional problems, mainly the ability of the political system to provide adequate measures to address citizens' concerns. Key "constitutional locks" (Atria, 2013), such as a powerful Constitutional Court, an electoral system favouring right-wing parties, and a rigid amendment process, remained in place. The reforms also risked lending legitimacy to a constitution that lacked public support. In 2015, amid mounting public pressure, President Bachelet initiated a constituent process with a civic education phase and a Citizens' Observers Council to ensure transparency and public involvement (Henríquez & García, 2023). The process included citizen participation, congressional deliberation, and a final referendum, but only the first phase was completed. When President Piñera won the 2017 election, he halted the process, instead opting for minor updates. As Henríquez and García (2023) note, while the demand for a new constitution seemed to dissipate, the 2019 protests revealed that it had merely been delayed.

In October 2019, widespread protests triggered by a metro fare increase highlighted public discontent with Chile's "negotiated transition" approach. Initially, these protests brought together diverse demands for social rights, gender equality, public services, and relief from the rising cost of living. A broad political agreement emerged, proposing a new constitution as a solution. However, as the pandemic persisted, the coherence of these demands weakened (Olavarría, 2023). Some analysts see the October protests as a "populist moment," marked by discontent with Chile's liberal deliberative model, which some felt neutralised conflict and masked hegemony as rationality (Bellolio, 2022).

The first constituent process began with a 2020 entry referendum (i.e., to trigger the process) where 78% voted to draft a new constitution and 79% supported an elected constitutional convention (instead of a convention composed by both directly elected delegates and members of Congress). The Convention's electoral framework promoted gender parity, indigenous representation, and independent candidates, which were allowed to form electoral coalitions. The electoral results ended up with a Convention that was notably left-wing, youthful, feminist, and relatively inexperienced. However, in the exit referendum of September 2022 (i.e., the ratifying referendum), the draft constitution was rejected, with 61.86% voting "reject" and only 38.14% voting "approve."

A second attempt to draft a new constitution followed, shaped by lessons from the first. In this round, Congress established principles that could not be breached and added safeguards to encourage consensus.

Political parties closely managed this process, and independent candidates were excluded, with input from constitutional law experts. Three specialised bodies were formed: an Expert Commission appointed by Congress to draft the constitutional text, a publicly elected Constitutional Council to revise it, and a Technical Admissibility Committee to resolve conflicts between proposed norms and guiding principles.

The Constitutional Council election took place in May 2023, with 50 gender-parity seats and an Indigenous quota through a national list. Mandatory voting was reinstated by a 2022 constitutional reform a decade after its elimination in 2012. The far-right Republican Party and the centre-right coalition won a majority, allowing them to pass norms without centre-left support, which held only 16 of the 51 seats. The final referendum in December 2023 saw a resounding "reject" vote, again marking Chile's second failed attempt at constitutional reform and positioning it as a unique case in comparative terms.

Ireland has become one of the world's most frequent users of referendums, which play a significant role in its governance system (Gallagher, 2021) with 40 referendums held to May 2024, with 7 of those held since 2015. Irish referendums take place exclusively at the national level and are always, to date, concerned with amendments to the constitution (Barrett, 2017), focusing on moral issues and EU treaty ratifications. While the government initiates and formulates referendum proposals, civil society plays a substantial role in campaigning and deliberation (Kenny & Kavanagh, 2022). Despite concerns about majoritarianism and potential elite dominance, Ireland's referendum experience has generally enhanced representative government (Gallagher, 2021). Research has found that referendums in Ireland have fostered high levels of popular participation and engagement, contributing to a national conversation about constitutional meaning (Barrett, 2017; Kenny & Kavanagh, 2022).

As in Chile, democratic innovation, in the form of citizen deliberation, was introduced in Ireland in response to a crisis. It was introduced as means to enhance democratic outcomes and address political challenges following the Great Recession of 2008, which had resulted in burgeoning public debt, mass unemployment, and citizen unrest. The arrival of the Troika (the International Monetary Fund, the European Commission, and the European Central Bank) added impetus and a widespread diagnosis that existing constitutional and political structures had contributed to the economic crisis in which Ireland was embroiled from 2008 onwards (Barrett, 2017; Farrell & Suiter, 2019). The first nationwide pilot citizens' assembly, "We the Citizens," demonstrated the potential of deliberative democracy in addressing economic and political reform issues (Farrell et al., 2012). This approach has been seen as way to reinvigorate democracy and address challenges such as the EU's democratic deficit and the rise of populist illiberalism by fostering trust in political processes and offering alternative forms of citizen participation (De Búrca, 2020). In 2011 a Constitutional Convention was established by resolutions of both Houses of the Oireachtas (parliament). In its manifesto, the Labour Party had proposed that of the 90 members of this body, 30 would come from the Oireachtas, 30 from ordinary citizens chosen at random, and 30 from "members of civil society organisations and other people with relevant legal or academic expertise" (Irish Labour Party, 2011, p. 46). In coalition negotiations with Fine Gael, this became the Constitutional Convention, which was asked to consider several separate topics as well as one of its own choosing. It was, as Barrett (2017) argued, relatively conservative with a large number (33%) of its membership comprised of politicians. The remaining 66% (as one of the chairs had casting vote) were randomly selected Irish citizens deliberating in facilitating small groups.

The Taoiseach (prime minister's) vision was for a Constitution Day, allowing multiple amendments to the 1937 constitution (Farrell & Suiter, 2019). Nevertheless, the initial set of issues they were tasked with deliberating on was relatively narrow: (a) reduction of the presidential term of office to five years; (b) reduction of voting age to 17; (c) review of the system of election to the Dáil; (d) the giving of voting rights in presidential elections to residents outside the state; (e) the making of provision for same-sex marriage; (f) amendment of the constitutional clause regarding the role of women in the home; (g) increasing female participation in politics; and (h) removal of the offence of blasphemy from the constitution. Other issues could be considered if time permitted: the convention ultimately considered two more issues (Dáil reform and economic, social, and cultural rights). It sat from December 2012 to March 2014. This Constitutional Convention recommended that several referendums be held, including on marriage equality, presidential age, blasphemy, voting age, abortion rights, and the removal of a gendered clause in the Constitution. These had mixed success. Marriage equality, blasphemy, and abortion rights all passed. The gender referendum did not. The government has yet to act on the voting age. Nonetheless, Ireland has since become a pioneer in this field. The success of the marriage equality and abortion referendum and the positive international headlines they garnered helped persuade later Irish governments to proceed with further deliberative assemblies (Farrell et al., 2019).

3. Analytical Framework and Method

There has been great debate about constitutional referendums. On the one hand, referendums have been considered valuable tools in addressing complex constitutional reforms, arguing that, if well-designed, they could bring closure to deeply contested questions (Thompson, 2022, p. 34). Constitutional referendums are expected to tackle crises through three primary virtues: simplicity, legitimacy, and completion. Simplicity means that referendums translate complex issues into, typically, one binary question that can be answered: Yes or No. Democratic legitimacy refers to maximising the people's engagement in democratic decision-making. Completion is related to the fact that referendums can settle a matter, at least for a reasonable time (Tierney, 2012). Nevertheless, constitutional referendums have been considered flawed vehicles of democratic expression (LeDuc, 2003, p. 14) because of the risk of manipulation by elites, deliberative shortcomings, and the possibility of favouring populism. This view is shared with the mainstream theory of constitutionalism, which emphasises that referendums boost constitutional entrenchment as they are frequently seen as one of the hurdles that constitutional change must check (Elster, 2000, p. 101), heightening constitutional entrenchment (Albert, 2010, p. 10).

Constitutional referendums may involve a delicate balance between evolution and inertia: they can either act as a constraint on constitutional change (decision-controlling) or catalyse constitutional change (decision-promoting; Carolan, 2020, p. 185). In order to understand how institutional design and extra-institutional factors interplay in processes of constitutional change, we propose three criteria to assess recent constitutional episodes in both Chile and Ireland: the extent and intensity of change, the model of democratic participation, and the role of elites and incumbent powers.

The selection of these three criteria stems from their relevance in addressing core challenges that typically emerge in constitutional referendums. Constitutional referendums are particularly complex because they usually involve changes that can reshape a country's political and legal structure. The first criterion captures whether the referendum entails amendments or replacements and their impacts. The second criterion

tackles how the public is involved in constitutional change—through representative, direct, or deliberative democratic practices. Understanding the model of democratic participation is key to assessing how referendums operate in the political landscape and why certain models may lead to more successful outcomes than others. Lastly, the third criterion focuses on elite cooperation and the overall political climate, which are vital for the stability and legitimacy of constitutional referendums. Since elite dynamics directly influence the process and acceptance of constitution-making, it is vital to consider how elites participate in the process.

3.1. The Extent and Intensity of Change

Here we are assuming as valid the distinction between constitutional amendment and replacement (Bernal, 2013; Elkins & Hudson, 2019), even if we are aware that this difference can be blurred because a constitutional amendment may involve a wide range of changes or detailed provisions. Over the last decades, Latin American countries typically have taken a maximalist approach to constitutional change, choosing constitutional replacements, while European countries follow a minimalist approach, choosing constitutional reforms.

One explanation is the influence of the constituent power theory Colon-Rios (2019, p. 204). This theory, developed by thinkers such as Sieyès and Schmitt, attributes constituent power to the extraordinary capacity of constitution-making to reshape the political order in a revolutionary manner. While abandoned in Europe and practically absent from Anglo-American constitutionalism, the theory of constituent power has played a vital role in recent Latin American constitutionalism (Colón-Ríos, 2015, p. 166). A complementary explanation has also been found in the failure of constitutional arrangements "to work as governance structures" or the lack of space for "competing political interests from accommodating to changing environments" (Negretto, 2012, pp. 749–750).

The choice between replacement or reform is relevant for constitutional referendums because it is challenging to transform a wide range of decisions involving a constitution into a straightforward yes-or-no vote (Gargarella, 2022, p. 240). If the draft assumes characteristics of a political program, it could be perceived as undesirable by various interest groups. Consequently, a referendum in such conditions can unintentionally foster a propensity towards extreme outcomes and oversimplification of discussion. In the latter case, referendums may be deviated into mere tools for punishing the political enemy of the day (Gargarella, 2023).

3.2. The Model of Democratic Participation

Classical European constitutionalism usually entrusts constitutional reform to the parliament, following a model of representative democracy that mirrors the legislative process but heightens the threshold required to pass the reform. In this model, political parties play the most prominent role. Only six EU countries have a constitutional clause introducing referendums in constitutional reforms (Estonia, France, Ireland, Latvia, Lithuania, and Slovenia). In contrast, in Latin America, myriad direct democracy mechanisms have flourished and referendums are extensively used (Verdugo, in press). These referendums can determine whether to initiate the process, be held at the end to ratify the draft, or, as in Chile, fulfil both roles. Traditional models of constitution-making such as appointed commissions or assemblies, historically important in the region, have disappeared since 1990 (Landau, 2019).

There is also a third model of democratic participation at stake: deliberative democracy. Deliberation has been highlighted as a cornerstone of democratic processes. Much evidence suggests that deliberation can influence preferences, mediate differences, and potentially lead to consensus (Chambers, 2001, p. 231). Recent developments in democratic theory have introduced specialised mechanisms, such as deliberative polls (Fishkin, 2015) and deliberative mini-publics (Curato et al., 2021). These mechanisms enhance deliberative capacity by promoting the formulation of proposals and the achievement of consensus prior to voting. Such mechanisms, when implemented before a referendum, enhance the capacity of referendums to bring about legitimately accepted constitutional changes (Doyle & Walsh, 2022).

In this light, Latin America has innovated through participatory mechanisms such as referendums, consultations, and constituent assemblies (Tschorne, 2023, p. 3); hence, it is considered "the world's richest laboratory of constitution-making under democratic considerations" (Landau, 2019, p. 567). However, those processes have been inspired by a form of democratic majoritarianism combined with an agonistic approach to politics, which reclaims the central role of conflict in democratic politics in the formation of identities that have been denied by liberal consensus (Mouffe, 1999, p. 752). Referendums may be limited in settling a matter in such a context, especially when dealing with contested questions since they tend to perform the last resort role for veto players (Hug & Tsebelis, 2002). Thus, the character and function of constitutional referendums vary qualitatively depending on how "they are structurally coupled with other elements of the political system" (Tschorne, 2023, p. 4).

3.3. The Role of Elites and Incumbent Powers

This criterion addresses the ways of cooperation among elites and existing institutions. The term "elite" generally refers to political, economic, and social leaders. Here, we narrow its definition to the political elite, as described by Mosca (1984, p. 106), including only those leaders holding positions within state institutions. In a representative democracy, political elites are closely associated with elections (Dahl, 1973). Elites compete for voters' preferences, who in turn have the power to elect, re-elect, or dismiss these elites based on their performance.

Our question is about the elite's role in constitutional referendums. Gherghina and Silagadze (2021) show that elite cooperation and accommodation are crucial for the success of constitution-making referendums. Conversely, the literature on political referendums has highlighted the dangers of elite manipulation or abuse in the hands of the executive power (Landau, 2013). Similarly, Negretto and Sánchez-Talanquer (2021) highlight the pivotal role of political elites in constitution-making processes during the foundational moments of democratic regimes. This fact unveils that a procedural compromise between elites is an indispensable prerequisite for a democratic opening. For this reason, when there is rivalry between elites and the exclusion of some of them, the constitutional-making process transforms into polarisation.

In this respect, Landau has claimed that an essential goal of democratic constitution-making should be to control unilateral exercises of power by particular groups or individuals. Evidence shows that both strongmen and individual parties, unchecked by either institutions or other movements, will often take steps to consolidate their power by weakening nascent democratic institutions, and durable constitution provisions require constituent assemblies sufficiently plural and diverse (Landau, 2013, pp. 937–938).

4. Comparing the Cases of Chile and Ireland

4.1. The Extent and Intensity of Constitutional Change

Historically, Chile has favoured reforms over replacements. Even during the transition to democracy, a minimalistic approach to the constitution was seen as a strategic response to the set of constitutional arrangements inherited from the dictatorship that prevented structural changes (García, 2014). According to Jorge Correa Sutil (a former Constitutional Court judge instrumental in the significant constitutional amendments of 2005), the constitutional debate required "entering with an eraser rather than a pencil" (Vega, 2020). However, once the constituent processes began in 2019, the constitutional debate shifted its focus, adopting a quite maximalist approach, something unheard of in Chilean constitutional contemporary history.

The October 2019 social uprising challenged the whole constitutional framework, expressing a clear demand for constitutional replacement. The October 2020 referendum confirmed this goal, and the election results for the Constitutional Convention turned the call for replacement into a drive to create a new political order. As Luna (2024) put it, these results generated the expectation that the prevailing social consensus was not only for constitutional replacement but for a radical transformation of the political order. The Constitutional Convention adopted a foundational approach from the start, envisioning the creation of a new social pact.

However, things did not go according to plan. The proposal writing process was turbulent since the Convention exhaustively tackled the myriad divisions in Chilean society. In addition, the incapacity of political parties to fulfil their traditional role, political fragmentation, inexperience, and time constraints (six months) deadlocked the situation, pushing to include numerous topics that do not necessarily qualify as constitutional issues (Palanza & Sotomayor, 2024). To secure the two-thirds needed to approve norms in the Convention, each group or sector, from Indigenous to environmentalists or animal rights activists, intended to see their demands reflected in the final proposal. Since no group could exert veto power except for specific alliances to block radical ideas, the result was a lengthy and complex text. Predictably, by incorporating previously excluded sectors in the constitutional debate, the proposal would not be "substantively minimalist": the more people and groups involved in the constitutional debate, the more topics are likely to be included in constitutional texts (King, 2013). Ultimately, the draft was filled with appeals to principles but lacked appropriate institutional designs for implementation (Larrain et al., 2023), and the referendum campaign was loaded with great diversity and intensity of preferences, which were almost impossible to articulate into a straightforward narrative.

Although procedural and electoral modifications were made to facilitate agreements in the second process, the problems concerning the extent of constitutional change persisted for two reasons. Firstly, there was no constitutional consensus, except for the generic and ambiguous 12 constitutional bases that were agreed upon by Congress. The second process's most valuable contribution was the Expert Commission's first draft, mainly comprised of people with academic credentials or extensive political experience who worked without media pressure and with lower public scrutiny (Titelman & Leighton, 2022). This draft enjoyed cross-support, but this time, the defining reason for the maximalism was the outcome of the Constitutional Council elections, now dominated by the far-right. The Council's final text was packed with clauses that flirted with ideas like nationalism and conservatism, resulting in an equally extensive text filled with partisan demands, but this time leaning toward right-wing or far-right ideology.

In the Irish case, as Barrett (2017, p. 3) argues:

> [W]hether a referendum takes place is generally consequent on legal advice being offered by the attorney general to the government that this step is constitutionally necessary in order to give effect to a given policy choice or to enshrine a particular rule in the Constitution.

Most Irish referendums fall into one of two broad categories: those dealing with social-moral issues and those dealing with governance issues, including referendums on joining the European Community and subsequent EU treaties (O'Mahony, 2013; Sinnott, 2002, p. 812). The latter were necessary to give effect to required changes in EU lawmaking. However, on moral-social issues, politicians have been reluctant to call for a referendum on controversial issues due to fear of political repercussions (Farrell & Suiter, 2019, p. 29). If there is no certainty of public support, it is better not to engage with policies that require an explicit constitutional change. For example, the issue of abortion was so divisive that politicians avoided taking action over decades precisely because of the risk that a plebiscite could end up affecting their support base. For example, the defeat of two referendums on gender and care in 2024 was seen as a clear rebuke of the government. Generally, without a clear political consensus on an issue, calling a referendum without adequate safeguards can be risky and potentially destabilising (Girvin, 1986). Thus, there is a clear preference for constitutional amendment only where necessary.

The question of moving towards constitutional replacement, which would require holding more than one referendum on the same day, is a long-standing issue in Irish politics. In its 2011 manifesto, the Labour Party called for a Constitutional Convention with "an open mandate…to review the Constitution and draft a reformed one within a year" (Irish Labour Party, 2011, p. 46). However, in the agreed Programme for Government with its larger coalition partner Fine Gael, this was amended to the eight topics mentioned above, signalling a clear preference for amendment over replacement. Indeed, one of the topics of the 2016 Citizens' Assembly was the manner in which Referenda were held in January 2018 (Citizens' Assembly, 2023, pp. 60–68). Until then, two or more referendums were held on the same day on nine occasions, with mixed results as to turnout (Barrett, 2017). Some referendum topics may also be overshadowed by others in terms of (media) attention largely depending on topic salience. This was demonstrated in the 34th and 35th amendments in May 2015 on marriage equality and presidential age, where marriage equality took up the vast majority of media bandwidth during the campaign. The number of referendums in a day was the fourth topic considered in the 2016 citizens' assembly. The citizens' assembly voted to continue with the practice and 80% voted that having more than one referendum on unrelated issues was a good idea. Further, regarding multi-option voting in a constitutional referendum, 76% voted that having more than two options on a ballot paper should be permissible. However, there was little support for multiple referendums at the same time. Thus, the status quo of amendment rather than replacement was copper fastened.

In sum, Ireland has implemented specific and precise reforms, continuously engaging in a gradual approach to constitutional change and presenting concrete proposals for referendums. In contrast, Chile opted for a more radical and extensive constitutional overhaul, which introduced a degree of uncertainty into the process that plays an important role in explaining the results of constitutional referendums.

4.2. The Model of Democratic Participation

The two Chilean constituent processes formally included a set of deliberative mechanisms to purportedly enrich the constitutional debate. Although these instances promised to foster the quality of discussion among representatives and build bridges between representatives and the people, a series of factors eroded the contribution of these mechanisms.

During the first process, the Convention established a Popular Participation Commission and a technical secretariat to coordinate participation instances in two ways: self-convened and organised by the Convention. The first way included popular norm initiatives and self-convened citizen meetings. The second way was ambitiously designed, including binding intermediate referendums, mandatory public hearings, public accounts, deliberative forums, national deliberation days, communal councils and agreements, territorial constituent offices, and constituency weeks. Additionally, the Convention launched a website to disseminate information and interact with the public. All these mechanisms had to meet OECD criteria (OECD, 2020). Despite budget and planning limitations, significant efforts were made to implement those mechanisms, but the pandemic and time constraints hindered this agenda.

According to the UNDP, nearly 1,000,000 people supported at least one popular norm initiative. However, the Convention could only conduct 3% of the projected activities. The lack of time and budget contributed to the gap between designing and implementing participatory mechanisms (UNDP, 2022, p. 10). Unrealistic expectations and lack of flexibility, caused by the absence of a strategic vision for developing civic practices without prior experiences, also led to a failure that ultimately questioned the legitimacy of the Convention itself.

There was even less room for deliberation in the second process since the debate was dominated in the first stage by the Expert Commission's agreement and in the second by the partisan Constitutional Council's draft, controlled by the far right. Commentators and public opinion praised the Expert Commission's agreement, a cross-party deal that benefited from the first process's learnings. Consequently, the Constitutional Council's draft was harshly criticised for squandering the agreement (Leighton, 2024). As the surveys revealed strong rejection of the draft, the sectors controlling the Council turned the December 2023 exit referendum into a referendum on the government (Titelman, 2023). Under this framework, participation and deliberation mechanisms became irrelevant. The process of citizen participation was open for only one month (from June 7 to July 7, 2023), had a modest approach, and was entrusted to the Executive Secretariat of Citizen Participation, chaired by the University of Chile and the Pontifical Catholic University of Chile, in coordination with other universities to implement four mechanisms: popular norm initiatives, public hearings, citizen consultation, and citizen dialogues. Dominated by an agonistic logic that shaped the work of the Constitutional Council, the quality of deliberation fell short of the ideal standards developed by modern theories of deliberative democracy (Bellolio, 2022).

Beyond the differences, the two processes ignored or underestimated the complexities of building legitimacy through public involvement (Welp, 2024). In the first process, the problem was believing that representing the country's diversity in the Convention, combined with referendums, could re-legitimise the political system (Issacharoff & Verdugo, 2023). The first process underestimated the need to work not only on innovative participation mechanisms but also on developing representation channels and connecting the process with

formal and informal institutions. This naif understanding led to an expectation of legitimacy simply because of the participation of independents or ordinary citizens as "the people" (Welp, 2024). In the second process, the problem was ignoring the necessity for participation and deliberation. In fact, the Chilean path to constitutional change started in 2019 with the resurgence of "cabildos," a sort of town meeting which played a pivotal role in the country's political culture, particularly during its independence from Spain in the early 19th century.

In fact, during Michelle Bachelet's second term, cabildos were part of its constitutional reform effort. However, these cabildos were criticised for their lack of representativeness and limited impact on the final constitutional proposal. The voluntary participation inherent in the cabildos led to selection biases, favouring areas with more substantial electoral support for Bachelet's government or urban and affluent populations (Raveau et al., 2023). Ultimately, cabildos had little influence over the final draft, written by presidential advisors, with minimal transparency (Muñoz, 2018). The entire process was further undermined by the incoming right-wing administration of Sebastián Piñera, who immediately dismissed the draft. Amid the 2019 political crisis, cabildos reemerged as a key platform for public deliberation. These gatherings allowed citizens to voice concerns and propose solutions to the political crisis. Hundreds of cabildos took place across the country, many with the active role of local municipalities, playing a crucial role in initiating the constitutional process that followed (Ureta et al., 2021). However, once the Constitutional Convention was established, the influence of these citizen-led meetings waned, and the Convention became the primary body responsible for shaping the new constitution. Ultimately, both experiences highlight the failure of cabildos to translate public participation into substantive political influence, underscoring the limitations of these forums in fostering real deliberation and shaping constitutional outcomes.

As noted in Section 2, several deliberative assemblies have been significant sources of constitutional amendment proposals and, hence, referendums in Ireland over the past decade. In our set of seven referendums since 2015, marriage equality (2015); the age of president (2015); termination of pregnancy (2018); uttering of blasphemous matter (2018); the family bill (2024); and the care bill (2024) were all matters considered by previous deliberative assemblies. The 2024 referendums were both defeated as was the referendum on the age of the president. At that time, only the dissolution of marriage (2019) had not formed part of a deliberative assembly's agenda. These are not officially referendum-triggering events. Instead, in the Act, a specific assembly is set up, and the government commits to review the recommendations within a particular time frame (often nine months) and decide whether to act. Thus, while the assembly may have called for a referendum, the government must decide whether to act and in what timeframe. Thus, while the above seven referendums were triggered by the government, others proposed by a citizens' assembly were not acted upon, including voting age, voting for citizens abroad, a Dublin lord mayor, and rights of nature.

Ideally, direct democratic mechanisms promise enhanced participation and informed decision-making. However, in practice, many fall short with second-order effects, with low knowledge and low trust being perennial problems (LeDuc, 2015). Referendums can even run contrary to the expressed preferences of the voters at that referendum (Suiter & Reidy, 2015). Some scholarship suggests that there is potential to combine these elements of citizen participation (El-Wakil, 2017; Saward, 2001, p. 363) and that they may help to build the agreement between the various actors whose approval is necessary for a constitutional amendment. Indeed, Ireland has been cited as a paradigm case for such experimentation (Doyle & Walsh, 2022). Testing this, Suiter and Reidy (2020) utilised data from three Irish referendums and found that there

was greater alignment between the core values held by voters and their vote decision when a deliberative phase was introduced into the referendum process and that this alignment grew as deliberation became more systemised and normalised. However, one factor here is that these referendums were highly salient, the deliberative events preceding them attracted a good deal of media attention, and the issue at stake was relatively simple to understand. Nonetheless, it would seem that a greater understanding of referendum issues can be achieved by mini-publics extending the time allocated to discussing issues, producing rigorous and informed materials, and delivering decisions which stem from citizens who are more likely to approximate the general public and, therefore, be more trusted by ordinary voters. Further, the deliberative assembly played an important role in terms of public will formation, generating political and public support for policy, enabling political actors to avoid the pitfalls of electoral politics to formulate a referendum amendment text that was able to attract widespread support despite being deeply divisive (Doyle & Walsh, 2022). It is worth noting that attention must be paid to their representativeness and the control of such assemblies to ensure they are tools of will formation.

To conclude, it is clear that Chile chose a majoritarian form of participation rather than a deliberative approach developed in Ireland, where deliberative mechanisms have contributed to building consensus. In the same vein, it is also remarkable that in the Chilean majoritarian approach, elected bodies took advantage of electoral triumphs, excluding entirely contingent electoral losers from negotiations and agreements.

4.3. The Role of Elites and Incumbent Powers

After the 2020 entry referendum, conditions seemed ideal to establish an adequate "social pact." Opinion polls studies showed that rejection was driven mainly by far-right groups, and the widespread preference for a fully elected Constitutional Convention brought together a broad and heterogeneous range of ideological preferences, "encompassing people from the moderate right to those positioned more to the left" (Meléndez et al., 2021, p. 277). These analyses indicated that the constitutional articulation of the diverse demands made visible by the social uprising of October 2019 seemed the right path. However, the other question posed in the ballot at the entry referendum was about the body to make a constitutional proposal. As put by García-Huidobro (2024, p. 169), through this decision, "political elites delegated to the voters a highly conflictive aspect of the process design that prevented cooperation between them at critical stages when consensus-building was most needed."

The political right, faced with the opening of a new constituent process in 2019, reacted ambivalently: while some leaders decisively supported this process as a way to address the social crisis expressed in the streets, others resisted and faced the electoral processes of the first referendum and the election of the convention members with an evident obstructionist attitude (Alenda, 2020). In the referendum of October 2020, a significant part of the traditional right-wing political parties gave the minutes allotted to them in the public electoral broadcast to independent movements that never wanted to join the consensus to start a new process. The political right-wing elites' lack of identification with constitutional change resulted in an electoral debacle that led to the coalition even below the necessary one-third required to exert veto power in the Convention. Thus, the ideal conditions were now set for a significant group of convention members to enter the constituent body without any willingness to collaborate in the deliberations. Therefore, once the disastrous electoral results of the Convention were known, the right wing's strategy from the outset was to bet everything on a polarising campaign aimed at the exit referendum.

As explained in Section 2, the second process became even more polarised than the previous when the Republican party took the overwhelming majority of seats in the Constitutional Council. As Bellolio (2024, p. 24), put it "[w]hen in power, the Republican Party deliberately chose to draft a partisan constitution, meaning a constitution that unmistakably reflects the ideological DNA of one political faction while excluding the other." Although this mindset was somehow expected during the first failed process, with a prevalence of social movements activated around the social unrest of 2019, the Republican Party had the previous failure in sight during the second process. Their delegates dismantled the cross-supported agreement reached by the expert commission and pushed boundaries towards a draft that embodied backlash politics. If they failed in their strategy, the worst-case scenario for them would be maintaining the status quo.

In this scenario, Chile's recent failed processes are likely a textbook case for a substantial body of scholarly literature highlighting the determining role of cooperation and dialogue among political elites in the success of a constitution-making process (Negretto, 2020). Beyond the various academic and political analyses regarding the popular rejection of the two constitutional proposals prepared by constituent assemblies composed of radically opposing political forces (Suiter et al., 2022), a predominant factor emerges: the institutional design of these processes granted an exclusive role to the assemblies, relegating the elected representatives of incumbent powers to secondary and tertiary roles (García-Huidobro, 2024). Faced with an electoral contingency unforeseen by those who designed the rules and allocated the costs and benefits of both processes, there was no adequate response. The conditions for cooperation and dialogue among political elites vanished with the electoral results of the constituent assemblies.

On the one hand, the Constitutional Convention was dominated by far-left sectors and other independent movements advocating for particular or factional causes (Larrain et al., 2023, p. 242), while the Constitutional Council; on the other, was controlled by a recently formed far-right party with limited technical personnel prepared to address the magnitude of the constitutional task. In both cases, traditional politicians were punished at the polls and excluded from having a significant role in the decision-making assemblies. Additionally, the electoral results prevented the centre-right in the first process and the centre-left in the second from exercising veto power or fully participating in normative agreements. This turned the Chilean case into a "perfect storm" for constitutional change processes.

Deliberative processes promote a collaborative approach to interactions, which can appear fundamentally at odds with the partisanship that drives political party success (Gherghina & Jacquet, 2023). The elements of partisan politics that aid candidates during election campaigns, such as highlighting differences and avoiding consensus, can ultimately overshadow governance institutions and weaken the deliberative practices vital for fostering positive change (Parkinson, 2012). Increased polarisation and declining civility in political discourse (Massaro & Stryker, 2012) within the broader information environment can deter citizens from engaging deeply in political debates. Consequently, citizens increasingly rely on partisan cues or disengage from participation altogether (Dryzek et al., 2019). Nonetheless, political parties can incorporate more deliberative practices within a broader deliberative system (Parkinson, 2012) to rectify specific deficiencies in their internal operations (intra-party), relationships with other parties (inter-party), and interactions with the public (Gherghina & Jacquet, 2023). Focusing on the immediate benefits and addressing the issues targeted by these processes can provide more practical insights into the motivations of those commissioning them (Lacelle-Webster & Warren, 2023).

In Ireland, the government always decides to hold a referendum, which must then gain approval from the parliament. This procedure also applies to citizens' assemblies. Irish citizens' assemblies are commissioned by newly-formed coalition governments and defined by their Terms of Reference from the Oireachtas (Parliament). Politicians and parties play significant roles in proposing topics, defining the consultation framework, and responding to recommendations for both. Although factors beyond governmental control, such as EU Treaty expansions, sometimes necessitate referendums.

In terms of bridging differences, both referendums and deliberative processes fulfil several overlapping political functions. Barrett (2017) argues that referendums have functioned as institutionalised safety valves for political pressure—mechanisms for releasing political steam or removing unpopular issues from the political agenda, thereby absolving politicians from blame for controversial decisions. The same is true of citizens' assemblies. Citizens' assemblies provide political cover for politicians otherwise hesitant to endorse specific issues. McGraw (2015) suggests that both the larger parties are "ideologically flexible vote-seekers" (see also Mainwaring & McGraw, 2019), competing mainly on salience and emphasising the issues which they believe will be electorally useful. Therefore, they are more likely to have disparate internal opinions and potentially see citizens' assemblies as a way to navigate intra-party disagreements. Given their wide social basis for support and competitiveness in every constituency, they have removed controversial topics (e.g., Northern Ireland and abortion) from the realm of party politics through the use of referendums and, arguably, with citizens' assemblies.

In this way, citizens' assemblies can bridge intra-party issues in large parties to gain internal momentum for policy change while allowing more minor parties to garner cross-party support and advance policy priorities. Thus, citizens' assemblies have been used to bridge inter and intra-party differences, enabling smaller parties to push for policy change and larger parties to bridge differences across their more ideologically diverse base. Assemblies also allow winning parties to overcome their differences during coalition negotiations to form a government (Saintraint & Suiter, 2024). Some policy agreements are made during the course of this process, but these assemblies also allow some to be deferred concerning particular matters that cannot be resolved during negotiations or for which their mandate for action is limited. For example, in the setting up of the first Constitutional Convention in 2011, a compromise between Fine Gael's and Labour's competing proposals for political reform resulted in the hybrid membership (66 citizen members and 33 politicians) and its relatively long list of constitutional issues.

To sum up, in Ireland, assemblies operate as a collaborative delegation, with the government and parliament offering crucial support and cooperation to develop constitutional proposals. In contrast, in Chile, both the Constitutional Convention and the Constitutional Council carried out their functions in isolation from the institutional context and in ongoing conflict with political elites and incumbent powers.

5. Some Reflections on Constitutional Referendums: Possibilities and Limitations

The Chilean case is puzzling because the process started with strong support in October 2020, but the two proposals submitted to the referendum were rejected. Some scholars have suggested that the design of these referendums may explain the outcomes (Larrain et al., 2023; Zepeda, 2023). Nevertheless, comparing the Irish case provides reasons to consider how legal regulations and political institutions interplay with other factors and conditions that make constitutional change possible. As Courant (2021, pp. 1–2) puts it:

> Ireland stands out as a truly unique case because, on the one hand, it held four consecutive randomly selected citizens' assemblies, and on the other hand, some of those processes produced major political outcomes through three successful referendums; no other country shows such a record.

Chile's path to constitution-making diverged from other Latin American cases, particularly from the "Bolivarian" approach seen in countries like Bolivia and Venezuela. Unlike these cases, where populist presidents drove constitutional reforms to expand executive powers, Chile's process was essentially a response to a "crisis of representation" that culminated in massive social unrest in 2019 (Piscopo & Siavelis, 2021). Under public pressure and in a context of declining trust in institutions, the Chilean political elite turned to a citizen-driven constitutional process as a compromise solution. The process mandated an entry referendum, giving voters control over whether to proceed with constitutional reform and how to structure the convention responsible for drafting a new constitution. The decision-making mechanism was carefully designed to distance Chile from executive-centric models, emphasising broad representation and legal continuity over populist approaches. Thus, referendums played a distinctive role in Chile's constitutional journey, not as tools for consolidating executive authority but as means to facilitate democratic legitimacy and prevent elite control (Tschorne, 2023).

In Ireland, there is an awareness of the adverse effects of designing referendums that encompass too many issues, which in Chile was not taken into consideration. Consequently, referendums in Ireland have traditionally been held on specific matters, with sufficient time intervals between them. While this approach may attract criticism for the perceived slow pace of constitutional change, it has resulted in a high approval rate and legitimacy for the referendums. The Irish constitution was drawn up in 1937 and thus requires updating. There has been occasional pressure for more wide-ranging reform, yet the clear preference seems to be for more iterative constitutional amendments rather than replacement.

Chile has taken bold steps beyond its previous focus on specific reforms in the period studied. This change is primarily due to constitutional rules that hindered democratic consolidation until a major crisis arose. This entire constitutional framework was questioned during the "constitutional moment" triggered by the social uprising of October 2019, when the demand for a replacement of the 1980 Constitution became evident. If the referendum of October 2020 confirmed this goal, the results of the election to the Constitutional Convention transformed the will for constitutional replacement into a foundational drive to create a new political order. The theory of constituent power did the rest of the work: the mistaken reading of the electoral results from the Constitutional Convention claimed that its legitimacy did not depend on the established order but directly on the people. All of this resulted in a constitutional proposal that more closely resembled the Bolivarian tradition of the new Latin American constitutionalism a long and detailed constitutional text full of particular ambitions and aspirations for substantive transformation. In the second process, the issue repeated itself, this time not as tragedy but as comedy. In a Constitutional Council dominated by the far right and without veto power for centre-left forces, there was no incentive to achieve the electoral or social consensus required for a constituent process. Again, the proposal resulted in a lengthy text filled with messages directed at the support bases of the predominant right-wing electoral forces within the second constituent assembly.

Regarding the model of democratic participation, Chile opted for an elected body. In the case of the first process, corrections were introduced to bolster descriptive representation (quotas, reserved seats, etc.). This model dismissed the importance of deliberation and the shortcomings of the traditional conception of

representative democracy even reframed in its descriptive dimension in the first process. On both occasions, the elected Chilean constitutional bodies were unable to build a broader consensus in terms of public opinion. Although the Chilean constituent processes included various participatory tools, the efforts were overshadowed by electoral results discouraging the building-consensus process. In this light, Morales and Pérez (2025) identify four pivotal socio-political cleavages that were activated by the process' design—clerical versus anticlerical, urban versus rural mindset, social class belonging, and democratic versus authoritarian mindset. According to them, these factors significantly influenced voter behaviour, the overall result, and how contentious some of the debates are in Chilean society.

As discussed earlier, the electoral results of both constituent assemblies were decisive in shaping a majoritarian or competitive conception of democracy (Lijphart, 2012). If, due to electoral contingencies, a constituent assembly is formed in a way that makes it unnecessary to reach agreements with significant opposing political forces, there is a risk that constitution-making processes may end up co-opted by competitive or agonistic electoral logics. As the results of the two Chilean exit referendums show, without tools or incentives to generate prior consensus or to form a truly informed public opinion, exit referendums are highly likely to fail. Perhaps, as Verdugo (in press) suggests, it is necessary to reconsider whether constituent assemblies are a regulative ideal for replacing a constitution. However, as we argue here, the regulative ideal of a constituent assembly is better situated within a conception of deliberative democracy that enables a more thorough assessment of consensus, cleavages and particularities of the constitutional discussion in each society, whether they manifest as reforms or replacements.

On the contrary, there is already significant evidence that the Irish citizen assemblies model offers an adequate deliberative environment by strengthening the communication channels between citizens and institutions. The Irish case has allowed a renewed appreciation of the democratic value of constitutional change processes (Doyle & Walsh, 2022). The justification for constitutional change rules based on a consensual conception of democracy has found a new ally in citizens' assemblies, allowing for public opinion formation before a referendum. While citizens' assemblies are not a panacea and have seen some recent failures, they provide valuable lessons on how demands for constitutional change interact with the scope of necessary reforms. As shown by the Irish case, the political motivation behind constitutional change rules lies not only in pressing legal needs or in sure bets in electoral victories but primarily in the ability to generate consensus, which requires significant political leadership and will to engage a diverse and plural political community.

Regarding the role of elites and incumbent powers, the Chilean model suffered from levels of polarisation, which is surprising given that the constituent cycle began in 2019 with high approval rates. However, this consensus broke down once the Constitutional Convention began to work. The main reason for this polarisation is the behaviour of the political elites both inside and outside the Constitutional Convention and the Constitutional Council. In the first draft, the right-wing obstructed the process, while the left tried to overpower those who lost the election (right-wing and centrist parties). In the second draft, right-wing sectors took over the process with a similar partisan spirit but the other way around.

This antagonistic environment starkly contrasts the Irish constitutional processes of 2012, 2015, and 2018, which started with higher levels of polarisation but saw a decrease during the deliberation and approval of those amendments. Research strongly suggests that this outcome can be explained to a large degree by the crucial role that deliberative assemblies play in generating high-quality materials that reflect the authentic

views of citizens representing the general public. These assemblies enrich debate and help prevent partisan politics. Furthermore, they are vital in shaping public opinion ahead of a referendum, enabling political leaders to advocate for amendments that receive broad support, even on contentious issues.

While Ireland's experience suggests that deliberative or citizen assemblies can contribute to constitutional consensus, their relative success may not be easily replicated in contexts or cases marked by elite polarisation and political distrust, such as Chile. The Chilean process was constrained by a majoritarian democratic framework, where contingent electoral triumphs provided incentives for dominant factions to exclude opposition groups rather than seek compromise. This raises the question of whether a more incremental approach to constitutional change—gradually addressing constitutional demands rather than attempting a full replacement—could have led to better outcomes. Ultimately, the Chilean case highlights the structural and political challenges that shape constitution-making, underscoring that citizen participation alone is insufficient without elite cooperation and sustained institutional support.

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Conflict of Interests

The authors declare no conflict of interest.

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