

In October 2019, Chile erupted into a series of mass protests that shook the very core of the political system, eventually leading to the drafting of a new Constitution. In this wide-ranging discussion, Camila Vergara—a Chilean critical legal theorist and author of *Systemic Corruption* (2019)—maps the origins of this political crisis, beginning with the violent overthrow of Salvador Allende’s Socialist Government in 1973 and the devastating brutality and neoliberal economic reforms of the Augusto Pinochet dictatorship that followed. Pinochet introduced a new Constitution that codified neoliberalism at the heart of the Chilean political system. This Constitution placed severe limits on democracy in the post-Pinochet era, and during the 2019 protests, demonstrators demanded constitutional transformation. Vergara outlines her work with *cabildos* (local councils) pushing for the inclusion of a variety of social and economic rights in the new constitution, how wealthy and powerful right-wing elites used the prospect of Indigenous rights to undermine constitutional reform, and the consequences of the defeat of the proposed constitution in the 2022 referendum.

Constitutional Transformation in Chile: Mapping the Horizon of Struggle

CAMILA VERGARA

interview by NEIL VALLELLY

NEIL: This year marks 50 years since the violent overthrow of Salvador Allende and his socialist government, and the beginning of Augusto Pinochet's brutal dictatorship. Could you tell us a little bit about that history, and the social and economic transformations that occurred in Chile as a result?

CAMILA: In the early 20th century, Chile, the same as every other Latin American country, was very unequal, with a small oligarchy and an excluded majority. The 1925 Constitution was a social democratic document that would allow for the enfranchisement of the working classes, the illiterate, and women, changing the landscape of Chilean society. In the 1940s and 1950s, political parties became mass parties that catered to the demands of the formerly excluded groups. Consequently, the Radical Party, the Socialist Party, and even the Christian Democrats, were much more oriented towards the needs of the many than they are today.

Eduardo Frei (1964–1970), a Christian Democrat, who was President before Salvador Allende, introduced land redistribution as part of the policies sponsored within the Alliance for Progress —the 10-year economic program established by the US Kennedy government to prevent another Cuba. Even if it achieved a small degree of

redistribution (such that it was known as the ‘flowerpot’ programme), Frei’s agrarian reform set the stage for the working classes and the peasantry to start mobilising and demanding further social transformations.

Allende was a medical doctor, who grew up in the north of Chile and then became Deputy for the coastal city of Valparaíso. He was a member of the Socialist Party and ran for the Presidency two times before winning in 1970. His aim was to achieve a socialist revolution through the ballot box, within the existing institutions. He thought that, if he did everything through Congress and according to the Constitution, the political system would allow for a bloodless revolution. He was mistaken.

At that time, Chile was beholden to international capital. Copper mines, which contributed 60 percent of GDP, were mostly controlled by US corporations. Allende nationalised copper. He passed a constitutional reform, that was unanimously approved in Congress, to expropriate foreign corporations. However, the Constitution did not allow for expropriation without compensation, so Allende figured out how to work around this: the state would compensate corporations according to the law, but only after they had paid back for years of over-exploitation of resources. The case went to court and US corporations were found liable to pay millions of dollars back to Chile. It was very clever. In addition to the nationalisation of copper, Allende increased land redistribution, which accelerated the empowerment of the peasantry.

From the beginning of Allende’s Presidency, the US engaged in boycotts and destabilisation. The CIA had been funding the newspaper of record, *El Mercurio*, since the 1960s, running fake news and propaganda against Allende and the Socialist and Communist Parties. These attacks became part of an orchestrated campaign by President Nixon to ‘make the economy scream’ to undermine the Chilean government. By 1972, the Chilean economy was entering a hyperinflationary stage and the coup against Allende, funded by the US and directed by the national oligarchy, was already brewing. The so-called ‘Chicago Boys’—who were a group of right-wing economists who had studied at the University of Chicago

with figures such as Milton Friedman and James Buchanan¹ —drafted an economic manual that became the blueprint for imposing a radical utopia (or dystopia) of individual competitive markets, what we call today, neoliberalism.

Allende died during the military coup on 11 September 1973, at which point Augusto Pinochet took over as leader of a military dictatorship. He immediately called the Chicago Boys to guide him in creating a new state and his first decree mandated the drafting of a new constitution. Pinochet called a committee of experts, who unveiled in 1980 a new constitutional order that codified the basic tenets of neoliberal policy. In the first years of military rule, most of the state's assets were sold-off, shrinking the state to its minimal condition. The Constitution effectively blocked the state from engaging in any productive activity, requiring a supermajority in both houses of Congress, which was practically impossible to achieve. Basically, the 1980 Constitution tied up the hands of future governments, forcing them to reproduce the neoliberal system.

The protection of private property was the most important principle of the Pinochet Constitution. If one tried to redistribute property, the Constitutional Tribunal would shut it down. And the economic reforms were so brutal that the country went into a deep recession, and poverty became pervasive. Today, we have a concentration of power that is even worse than what we had in 1973. Nevertheless, Chile became the model of how to *neoliberalise* a country. And after this 'successful' experiment, neoliberal reforms were imposed in countries all over the world through the IMF and the Washington Consensus.

NEIL: The Chilean experiment had a direct impact on Aotearoa New Zealand and its neoliberal transformation in the mid-1980s, which was as economically and socially radical as Chile but without the military dictatorship. In fact, *The Economist* described Aotearoa New Zealand as

1 For more on the Chicago Boys in Chile, see Juan Gabriel Valdés, *Pinochet's Economists: The Chicago School of Economics in Chile* (Cambridge: Cambridge University Press, 1995); Sebastian Edwards, *The Chile Project: The Story of the Chicago Boys and the Downfall of Neoliberalism* (Princeton: Princeton University Press, 2023).

‘Chile without the gun’. The 1980 Chilean Constitution also makes me think of Quinn Slobodian’s work on neoliberalism and what he calls the ‘market encasement thesis’—the goal of neoliberalism is to encase the market from democratic participation.² The constitutional order in Chile seems to be the ultimate model of that encasement. In your book *Systemic Corruption* and elsewhere, you discuss ‘the oligarchisation of power’—is this a similar idea that you’re working with here?³

CAMILA: Systemic corruption as ‘oligarchisation of power’ tries to describe what happens to the rule of law when the market is encased from democracy. When you have this kind of system, where elites are insulated from democratic practices, they start making decisions and passing laws that benefit the few, not the many. So, the rule of law that is supposed to serve everyone, or at least the majority, starts serving disproportionately the richest in society. This insulation of political elites from democratic pressure allows them to reproduce an oligarchic system in which they suffer no pressure from below and have no accountability. The oligarchisation of power is the result of market encasement, because when you have a functioning democratic process, you can vote these elites out, or you can put demands on them. The more democratic pressure you have, the less degradation of the system. My thesis is that Chile, because of its specific constitutional order that lacked mechanisms for democratic counter-power, experienced an accelerated version of systemic corruption.

NEIL: How, then, did Chile get from the military dictatorship to a democratic political model? And how has the 1980 Constitution constrained the development of democracy?

CAMILA: In the mid-1980s, news about violent repression was coming out of Chile, especially human rights violations and the extermination of

2 Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Cambridge, MA: Harvard University Press, 2018).

3 Camila Vergara, *Systemic Corruption: Constitutional Ideas for an Anti-Oligarchic Republic* (Princeton: Princeton University Press, 2020).

left-wing activists. The US put pressure on Pinochet, and the pressure from below also increased. In 1986, protests re-started. Women took the lead in street mobilisations (mainly because the men were being heavily repressed and taken prisoner), marching dressed in white for democracy. Of course, they were met with suppression as well, but this also made international news. Also, Chilean exiles in Europe were becoming more and more vocal. The Pinochet regime was thus doomed—the US withdrew its support in 1987—and it was clear that they needed to give power back to the people.

Pinochet called a plebiscite on his Presidency in 1988, and he lost it, although 43 percent of the population voted for him. When he lost, he immediately called the opposition leaders, who had been forced underground since the coup, to his office. He told them that he would only step down if they complied with his list of demands. One of these demands was that he was going to remain as Commander in Chief of the armed forces for eight years. And then, after that, he would become appointed senator for life, with total immunity against prosecution. He also asked the opposition leaders to betray the radical activists in their own groups, who had been trying to kill him and gain power by force. Socialists, Christian Democrats and the others on the Left betrayed their comrades, and when they came into office hunted them down, killing them or putting them away in high security prisons. This is part of the history people tend to forget, but it helps explain the current conjuncture and the role the Left has played after the 2019 popular uprising.

The 1989 General Election was won by Patricio Aylwin, a Christian Democrat, who led the coalition of pro-democracy parties and became a hinge figure between the Pinochet and post-Pinochet eras. He claimed that reform and justice would be achieved only ‘as far as possible’; the new government, while hunting down those who had fought to end the dictatorship, legitimised and stabilised the existing system. Not much happened during the first decade of democracy in terms of political reform, justice for human rights violations, or devolving power to the popular sectors.

After Pinochet left his post as Commander in Chief of the armed

forces, he entered the Senate, where he joined the rest of the senators for life, who he had appointed to block progressive legislation. The Senate had veto power over law, and one third of the Senate was appointed. In addition to foreclosing progressive legislation, the 1980 Constitution had several rules and institutions designed to undermine attempts at radical reform, from a 'binominal' electoral rule designed to produce a two-party coalition system that overrepresented the right-wing minority, to a reactionary constitutional tribunal with *ex ante* judicial review powers to enforce the boundaries of the neoliberal legal system. Essentially, the Constitution was a legal and institutional infrastructure aimed at preventing democratic change. And elected officials played their role in normalising it. The following governments, instead of dismantling neoliberalism, deepened it.

By the late 1990s, it was clear that political elites needed to get rid of the 'authoritarian enclaves'⁴ if the system was to remain in place. In 1999, Chile elected Ricardo Lagos, the first Socialist president after Allende. In 1988, Lagos had famously gone on national television and accused Pinochet of being power hungry, wanting to stay for another eight years in power if he won the plebiscite. Lagos looked directly into the camera, and after saying that Pinochet would continue to torture and kill, he pointed at the camera to interpellate the dictator, and said: 'you will have to answer'. The 'finger of Lagos' became a symbol of defiance against the dictatorship. However, after a decade of electoral politics, his defiance turned into rationalisation. When elected to the Presidency, Lagos pushed for constitutional reform to get rid of the last authoritarian enclaves, but then signed his name to what he said was a 'new' constitution. He proclaimed that the transition to democracy was finally over, and that he was inaugurating the new 2005 Constitution, free from dictatorial remnants. However, this was essentially the same constitution—except for the most egregious authoritarian rules. Even if this political narrative didn't stick, I call the current document the 'Pinochet-Lagos Constitution', just to remember the attempt by the Socialist Party to whitewash the neoliberal order. Lagos not only gave constitutional

4 Robert Barros, *Constitutionalism and Dictatorship: Pinochet, the Junta, and the 1980 Constitution* (Cambridge: Cambridge University Press, 2002).

rules new ‘democratic’ credentials, but also deepened the neoliberal system through public policy, solidifying a *de facto* ‘socioeconomic apartheid’. There is a life experience for the rich that involves premium health care, education, pensions, and even commuting (Lagos sponsored expensive urban highways in Santiago as a ‘solution’ to traffic and long commutes), and another one for the poor, who are stuck with the worst of everything, if they get anything at all.

NEIL: That history sets the stage well for understanding the huge October 2019 protests. You’ve argued in your work that while many political commentators were surprised by the eruption of protests, they had long been incubated in Chilean society. Could you give us an overview of how the protests initially developed and how the government initially responded?

CAMILA: The 90s were a very quiet period in the sense that people didn’t want to protest because they were afraid that democracy was too fragile, with a military coup always looming. When Pinochet was arrested in London in 1998 for human rights violations, there was still no justice for tortures, killings, and disappearances during the dictatorship. Instead of allowing Spanish Judge Baltazar Garzón to put Pinochet in prison, Chile’s Foreign Minister at that time, the Socialist Jose Miguel Insulza, came to the ex-dictator’s rescue. In 2000, Pinochet was allowed to return to Chile, and he was put under house arrest. He died of old age, without standing trial for his crimes.

After Pinochet’s arrest, things opened up with a new generation who felt free to protest. In 2006, secondary school students took to the streets, due to the underfunding of public education. Because the government could not change educational policy, as it was constitutionalised in what is called an ‘organic law’ protected by supermajority rules in Congress, the students came to understand that they could not just pressure the government, they needed to protest the system itself. The same happened with other social movements at that time around issues such as pensions, health care, and the environment. From 2006 onwards, there were waves of protests, all met

with state repression.

Not much changed for the popular sectors during the two decades of consecutive centre-left governments, nor during the first Government of right-wing businessman, Sebastián Piñera (2010-2014), one of the top five richest people in Chile, and the second term of the socialist Michelle Bachelet (2014-2018). Precarity, indebtedness, and anger increased. For the 2017 Presidential elections, there was massive disaffection, which made turnout drop for the first time below 50 percent. Former President Piñera, depicting himself as a successful manager that could bring growth back to a lethargic economy, was elected to a second term. However, growth remained sluggish, and precarity and indebtedness among the working classes became more pervasive.

In early October 2019, a scheduled increase to the metro fare in Santiago ignited a rebellion. Because the metro system in Santiago is hybrid, partly subsidised by the state, any increase to the fare needs to be approved by the government. This time the fare was raised by 30 Pesos, the equivalent to a few pennies. However, it was a big increase for working-class families. People started voicing their discontent. The response from the government was to tell workers to wake up earlier to take advantage of the off-peak fare. The popular response to this dismissal was swift. Secondary school students from the Instituto Nacional, which is the most emblematic public high school in Chile since the majority of Chilean Presidents studied there, organised an impromptu protest using social media. Even though the fare increase didn't apply to them because students have a discounted metro pass, it did apply to their parents.

On Monday 7 October, they called a civil disobedience campaign to jump the turnstiles at the metro station after school. Without any formal organisation, cohorts of students stormed the nearest metro station and called on others to evade the fare. They repeated their action on Wednesday and Friday of that week, joined by students from other schools. The students started posting on social media, and it went viral, especially as police were trying to get the students out of the metro, often violently. The parents of these students went out to protest as well, and then they started calling

for the adults to jump the turnstiles. By this point, they were effectively storming into every metro station in the city.

The Government decided to close some of the stations to avoid evasion of the fare. They put chains across the entrances, but the students broke them. The government was trying to stop a snowball. On Friday 18 October, the government closed the major stations that served the working classes, who were coming home from work in the evening. This created a situation in which there were students outside stations trying to storm them and there were workers on the streets having to walk home. It was chaos. Then around 8pm, some of the metro stations were set ablaze—25 of them in the end. Immediately it was suspicious, and even today we don't know who burned the metro stations. The stations are not built with flammable materials that are easy to burn, so setting them on fire requires expertise and resources. There are videos of police coming out of the metro stations before they were set ablaze, but this has not been investigated.

After the fires started, Piñera went on national television and said that the country was 'at war' against a vicious and 'powerful enemy that does not respect anything or anyone'. He imposed a curfew and called on the military to suppress the people for the first time since the return to democracy. It was quite traumatic to see the military policing the streets again. And the same as Pinochet had done in 1988, Piñera called the leadership of the opposition parties to negotiate a way out. On 15 November, they reached an agreement, which put an end to the unrest by allowing for a constitutional convention to write a new constitution; the main common demand from protestors was to call a constituent assembly.

At this point, Piñera had less than five percent approval. He was in the statistical 'margin of error'. Despite the lack of support, the political elite co-opted the energy from the people and created a custom-made constitutional process that would allow for the political parties to monopolise the drafting. A two-thirds supermajority was required to pass every article of the new constitution, which was of course very difficult to achieve. They also imposed a rule that the new constitution could not overturn international trade agreements. Given that Chile is one of the

most open countries in the world, with low tariffs and all kinds of bi-lateral agreements, the new constitution would maintain the status quo in terms of trade, and thus remain unable to challenge the power of transnational capital.

These stipulations to the constitutional process were put in place to protect the existing neoliberal system from democratic demands. And therefore, it was not really a ‘constituent’ process—an unbound refounding of the constitution involving the people—but a constrained ‘constitutional’ process. Political elites effectively wanted to create a new constitution that looked exactly like the old constitution, but without Pinochet’s legacy. After this agreement was reached, and this is an important point, every party signed it, except for the Communist Party and *Convergencia Social*, which is the party of Gabriel Boric, the current President. Boric was the only person that signed without a party. In that moment, the new leftist parties agreed to keep reproducing the system and to save Piñera from being impeached and ousted, in exchange for a shot at the Presidency.

NEIL: The limitations placed on the constituent process at this point are significant in shaping what follows. What impact did these limitations have on the drafting of the new constitution?

CAMILA: All constituent processes have limitations. If you think about the people constituting their own order, the process needs to be democratic and there must be equality. It cannot go against human rights, for instance, because this would mean exclusion. Thus, you have limits that are implicit. The Nazi jurist Carl Schmitt’s idea that there are no limits to constituent power, and that you can have a totalising regime if the people so will it, is not democratic.⁵ The democratic constituent process is bound by basic rules.

The rules set in the unpopular 15 November (2019) agreement were not aimed at enabling democracy but at controlling the process from

5 Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer (Durham, NC: Duke University Press, 2008)

above. More than 400 political scientists and lawyers published a letter saying that the two-thirds threshold, which allowed conservatives to block transformative change, was actually not a bad idea because it would yield a 'minimalist constitution'. Only the big things that we all agree on would go in the draft. I was one of the few dissenting voices, right from the beginning, because the textbook example of a minimalist charter is the US Constitution, which allowed for a hundred years of slavery and then legal segregation. If we have a very unequal country paired with a minimalist constitution, the country is likely to remain the same because the constitution will not provide the tools to counteract inequality. A minimalist constitution is a great way to keep everything as it is.

People across Chile were demanding to participate in the constituent process, and social movements emerged around it. The problem was the pandemic. The curfew and the state of emergency imposed by Piñera due to the metro station protests seamlessly became the pandemic curfew. Chileans were isolated and stayed at home for many months. It is also important to understand that the media in Chile is one-hundred-percent oligarchic and one-hundred-percent right-wing. There's no TV channel or newspaper that is not conservative. During the uprising, people were increasingly turning to social media and seeing police repression that was not shown on the news. People started going out into the streets and meeting in the squares in their neighbourhoods. For the first time people came together, because during the dictatorship, and in the decades after, people were afraid of telling their neighbours anything about their politics because they might be persecuted. But now people were going into the public squares everywhere in Chile, and for the first time they became political. It was spontaneous organisation. In that moment, the motto of the rebellion was: 'Chile has awakened'. People would say 'I am awake now', after seeing that it was not their personal failure that they didn't have a job or that they were poor, in debt, with bad education, healthcare, and all these things. Through their shared experiences, they realised that the system was at fault. And in that moment, people that had never been politically active, who had never supported a political party or a union, became radically political.

NEIL: And this was the start of *cabildos*, the local council assemblies?

CAMILA: Yes. People went to meeting points in their local neighbourhood and talked with their neighbours. They created *cabildos*, assemblies, circles, and collectives, and then they started organising from there. Their first task was to pitch proposals for the new constitution. But then the pandemic hit, and people had to stay at home. Thanks to the use of Zoom and other meeting platforms, people found that they could branch out beyond their neighbourhoods. The small local councils started to connect and coordinate. It was beautiful. In Santiago, there were 17 different assemblies in only one neighbourhood, and a coordinating structure was set up to enable common goals and strategies. This coordination was in tune with another form of organisation that emerged during Allende's time: the *cordones industriales*, small unions that came together to build more power.

NEIL: The emergence of these *cabildos*, especially their spontaneous character, is one of the most exciting things that emerged out of this process. You've worked closely with some of these councils. What kind of work did you do with them?

CAMILA: My intellectual work, from the very beginning, has been focused on putting forth a truly democratic, council-based way of changing the Pinochet-Lagos Constitution—or any other constitution. I went to the US with a Fulbright Scholarship to study constituent processes in theory and practice, and I wrote *Systemic Corruption: Constitutional Ideas for an Anti-Oligarchic Republic*. The stars were aligned because I finished the manuscript in 2019 and the book came out in September 2020, during the constituent process. When the uprising happened, I wrote a brief manifesto—*República Plebeya*, based on *Systemic Corruption*—to organise the popular sectors and help guide the councils into achieving power, so they could participate in the constituent process. *República Plebeya* was downloadable for free, and it was sold at cost in activist bookstores and the like. It was cheap, so people

bought it and read it. My email was in there, so people started contacting me to organise meetings. The militant strongholds, where *cabildos* were most organised, were in Santiago and Valparaíso.

There were different types of councils, focusing on issues such as indigenous and women's rights, education, and environmental issues. I was called to help them build their power and to incorporate rules and procedures to avoid reproducing the same hierarchies as other political organisations. When a small window for popular participation was opened during the constituent process, *cabildos* rushed to draft their own articles, based not so much on abstract principles but on the reality that needed to be changed. The Constitutional Convention, after a lot of pressure from below for popular participation, eventually allowed for what they called 'popular constituent initiatives'. The process was doomed to fail, because 15,000 signatures were needed for an initiative to be considered. This threshold was extremely difficult to achieve during the pandemic, but people got together anyway.

I brought my knowledge on comparative constitutionalism to these councils to help them channel their ideas on health, pensions, education, and so on. I was there to help them develop mechanisms to write articles for the constitution. It's very difficult for, say, one hundred people to agree on an article of the constitution that needs to be both simple and minimal enough to pass the supermajority. I devised a mechanism based on the model of the Marquis of Condorcet, who drafted the 1793 Constitutional Project during the French Revolution.⁶ He put forward the idea that the common people can legislate, but they need to do it in their local assemblies and through simple propositions; each proposition could only be one sentence, something everyone could understand. Every council could then vote yes or no, and if a majority of councils were in agreement, this would constitute the expressed will of the people. Following this method, *cabildos* were able to pitch ideas, rank them, discuss those with the highest preferences and draft proposals. Several of the proposed articles got the

6 For more on Condorcet's constitutional theory, see Vergara, *Systemic Corruption*, chapter 5.

required 15,000 signatures, and people had their five minutes of glory at the Constitutional Convention presenting them. The problem, of course, was that the Convention could just dismiss them, so most of the proposals did not make it into the final text.

One popular article that did make it to the draft was the right to housing, and I helped coordinate its elaboration remotely from the UK. During the 80s in Chile, there were many encampments, with people living in occupied land, with no sewage or electricity. When Pinochet gave up power in 1990, there were around 900 encampments. Today, we still have several hundred camps. Housing prices are soaring, so it's very difficult to find a place to live. There are thousands of housing committees with homeless members who are occupying land or living with relatives. These housing committees began to coordinate efforts under a national organisation—*Movimiento de Pobladores en Lucha (MPL)*—which coordinated a deliberation day to draft an article on the right to housing. Delegates came together in Santiago—they met in an underpass—splitting into random groups, so they weren't with their neighbours, and after a few hours of deliberation, came up with ideas for what a right to decent housing should look like. It was not simply the home that mattered in these discussions; the 'right to the city' was also incorporated. Their demand was that one must have a home that not only is decent and has adequate space for privacy and communal gatherings, but also that is close to basic services such as schools, hospitals, and supermarkets, as well as green areas. Basically, the right to housing had to be connected to how people organise themselves and their daily lives.

Together with activists from the councils in Valparaíso and Santiago, I co-founded *Cabildos Constituyentes*, a grassroots collective committed to fostering deliberative democracy. It consisted of people from all walks of life that were not necessarily in agreement in substantive policies, but who agreed in the deliberative method to empower people from below so they can decide for themselves. Delegates of the collective spoke at the Convention on issues of community rights and mechanisms of direct democracy. Alongside this collective, I became one of the advisors for the

Coordinadora Plurinacional y Popular, which was a coalition of community-based representatives in the Convention. Even though there were reserved seats for Indigenous peoples, and at the beginning they acted as a block, half of the people elected through the Indigenous quotas were party members. Consequently, a few months into the process, the Indigenous representatives split, and a coalition of community-based representatives was set up that included grassroots-based Indigenous representatives. The *Coordinadora* had around 15 percent of the vote, which allowed them to put more radical proposals on the agenda.

NEIL: Your work directly with *cabildos* and the attempts to establish deliberative democracy from the ground up overlaps with your insistence that a constitution is a political document, which radicalises its transformative potential. Why is it important to make this point?

CAMILA: If we think about a constitution through constitutional law and constitutional theory, its political aspect is obscured, and its interpretation is monopolised by legal experts. But a constitution is what gives order to society—it is our chosen mainframe; everything is derivative from it. All law must be in accordance with a constitution, which in Chile is a neoliberal straitjacket. Legal experts often say that a constitution is too important for the common people to have a say in it, and so their idea is to have a committee of lawyers make any changes to it. But a constitution is an artificial system that we create. In a way, a constitution is the only law that is not derivative but is *sui generis*. While you can write whatever you want into a constitution, you cannot write any ordinary law because it must be in accordance with the existing constitution. A constitution, therefore, is not a legal document but a political document that conditions legality.

In Chile, and elsewhere, some things are not deemed ‘constitutional material’. And of course, everything that has to do with basic services or the economy is deemed not constitutional by experts indoctrinated into neoliberal legality. Constitutional experts in Chile, but elsewhere too, are educated within a specific constitution, which informs their interpretation

of law and jurisprudence. For example, because the US has a minimal constitution and a highly adversarial judicial system, in American jurisprudence things are open to interpretation, which makes for a more flexible order. Chile's constitutional jurisprudence, on the other hand, is extremely rigid: if it's not written down explicitly in the constitution, they are not authorised to do anything. The constitution has therefore always been considered a document monopolised by conservative constitutional experts. During the constituent process I pushed against this, arguing that it is the other way around: the constitution is a *political* document. There are no rules of the game here because the constitution *is* the rule of the game. Popular sovereignty demands the people to be involved in the process because constitutional law is about our life in common and the basic rules for the future. The legal expertise comes after the drafting of the constitution, when you need to interpret that body of constitutional law.

The best way to de-sacralise constitutions is by reading other constitutional articles and drafting your own. Therefore, I brought examples of rights in other constitutions in the world to the *cabildos* to show the variety of ways in which societies have codified their rights, and then asked them: 'what do you want in your constitution?' As a first step in the deliberation process, I used a free association method in which people just say the concepts that they would like to see in the article, without any filter. If we take the right to education as an example, people proposed education to be 'inclusive', 'holistic', 'humane', 'ecological', 'feminist' and so on, and they would put it up on the board. Then they would work out what was meant by those concepts and decide whether they wanted them in the article. People felt empowered and understood that the new constitutional mainframe must not be the monopoly of those who have been indoctrinated into the previous one, but instead needed to be designed by the creative power of common people like them, deliberating together at the local level, aimed at structural transformation. The deliberation and drafting process showed them that it was possible.

NEIL: The proposed new Chilean constitution was widely perceived to

be potentially the most progressive constitution in the world, especially in terms of environmental protection and Indigenous and gender rights. Was this the case?

CAMILA: In constitutional studies there was a new wave that was called ‘transformative constitutionalism’, which started in the 90s. Its main premise was to incorporate social rights into constitutions. It was called ‘transformative’ because the idea was that through the rights to housing, healthcare, and the like, one could transform the matrix of the system, promoting more egalitarian societies. But its impact was disappointing because even if these rights were included in the constitutions in Colombia, Brazil, and South Africa, they were not adequately materialised. These social rights were too minimal; they had no instructions for guaranteeing them. It thus came down to the interpretation of judges, who were mostly conservative. Progressive representatives in Chile wanted to avoid these pitfalls in the new constitution. That’s why articles that referred to social, economic, and environmental rights were extensive, including provisions for their enforcement. There was a whole system to be dismantled, so it was necessary to give precise instructions in the constitution to push back against entrenched neoliberalism.

In terms of Indigenous rights, the proposed constitution was mildly progressive. In 2009, Chile had approved the Convention for Indigenous Peoples (ILO Convention 169), which gives Indigenous peoples the rights to self-determination, education, and the conservation of their languages, and to previous consultation for development projects in their ancestral lands, among others. However, these rights have not been respected. In the draft constitution, the rights of Indigenous peoples only incorporated what was already in international law, which is very weak in relation to the sovereignty of states. For example, while procedurally the state needs to consult Indigenous Peoples if it wants to extract resources from their lands, it does not need to follow the outcome of that consultation. So, even if Indigenous peoples say no to a mining project, the state can still go ahead with it because it complied with the required procedure. Taken

in this way, Indigenous rights are ineffective tools to protect Indigenous cultures, as well as the environment. Indigenous representatives knew this was a problem, so they wanted to address that in the new constitution. However, none of the articles attempting to make consultations binding on the state passed the two-thirds threshold needed at the Convention.

The few Indigenous rights that went into the draft granted recognition and protection of Indigenous customs, and only relative autonomy within their own territories. To this day, Indigenous peoples in Chile do not have control even over their own education, a right that was recognised by the UN General Assembly more than 15 years ago. Indigenous peoples in Chile are way behind compared to other Indigenous peoples in Latin America and around the world, who at least have forms of autonomy within their own territories. Representatives from the *Coordinadora* were critical of the watered-down rights that ended up in the draft constitution. They argued they didn't give them any power, and that they would perpetuate their current condition.

The topic of Indigenous rights was also used by the right-wing coalition to demonise the draft constitution and to spread fake news. Christian Democrat senator Ximena Rincón went on national television and said that she would reject the draft constitution because it gave Indigenous peoples, who comprise nine percent of the population, veto power over virtually anything in the constitution (it would be great to have that kind of popular power, at the very least to stop extractivism and save the environment). She was corrected live, with the journalist saying that this veto power was nowhere in the constitutional draft. But this chunk of the interview with the fake information went viral. At that point, it didn't matter if it was true or false; it was something that went into people's imaginations. Suddenly, lots of people from the popular sectors believed that the constitution would give more rights to Indigenous peoples than to hard-working non-indigenous Chileans. Right-wing parties were very clever, using racists troupes and misinformation to pit the working classes against Indigenous peoples. It worked so well that people were convinced by reactionary elites to vote against their own interests and reject the most

progressive constitution ever written.

NEIL: That's a very common tactic on the Right, including in Aotearoa New Zealand, where anti-Māori populism is often deployed to undermine working-class solidarity. You mentioned that the autonomy of Chilean Indigenous peoples was relatively inferior to other Indigenous groups around the world. Prior to the Pinochet dictatorship, what was the political status of Indigenous peoples in Chile?

CAMILA: They've had a terrible relationship of conflict and neglect with the state. Chile has different ethnic groups scattered around a territory that is more than 4,000 kilometres long, encompassing several types of climates and cultures. The largest Indigenous group are Mapuche in the south. Mapuche translates as 'people of the earth', and their cosmology is tied to nature and the land. They conceive of themselves as the guardians of mother earth, the stewards of nature, which I imagine is similar to Māori. Before the Spanish invasion, Mapuche were divided in three different groups depending on where they lived: the coast, the valley, or the mountains. They sometimes warred against each other. Given this dispersion and changing terrain, Mapuche tribes excelled at guerrilla tactics, which made conquest by the Spanish empire impossible. The Wallmapu—today, the Araucanía region—remained under Mapuche control, with a mix of hostilities and commercial exchange at the borders.

When independence came in the early 1800s, the new Chilean state couldn't defeat Mapuche. In 1850, an agreement was made with Germany and Poland to help colonise Chile's internal frontier. Waves of poor peasants arrived in the south, where they were given land that they were supposed to till and protect. Because the land belonged to Indigenous peoples and not the state, the settlers were essential in 'pacifying' the zone. This immigration programme was part of the campaign for the 'Pacification of Araucanía' aimed at imposing peace through war and settlements. The state encroached more and more, until in the 20th century, Mapuche communities were formally granted reserve lands. However, the recognition

of ancestral territories didn't come with autonomy and self-determination, as the state could enter these territories at will and impose its law and policy. Many Mapuche say that they have never been conquered, that they live in a permanent state of resistance against the Chilean state that raids their territories periodically to look for weapons and to arrest their leaders.

During the dictatorship, Pinochet gave vast tracts of Mapuche land to the timber industry. These monocrop plantations of pine and eucalyptus trees consume lots of water and damage the soil. So, companies not only took Indigenous land but also deprived Indigenous communities of water. Mapuche have been resisting this by sabotaging the timber industry. They go in at night and raid the timber sites, destroying the machinery. This struggle is ongoing today. To put down this resistance, in 2018, President Piñera created the 'jungle squad', an elite group of police, trained by the Colombian military who fight against the FARC. These anti-terrorist personnel were put in charge of policing Mapuche territory, and a few months later, they murdered Camilo Catrillanca, a youth leader, who was on his tractor, ploughing, when they shot him in the back. After they killed him, they fabricated a video, and said that he was involved in a robbery and was running away. He was murdered in cold blood. After that plot was discovered, Piñera had a lot of trouble militarising the zone, because to declare a state of exception he needed approval from Congress. Since left-wing parties were in the opposition, they blocked it. But the current government has no opposition in this regard. Since Boric came into office, the Mapuche zone has been militarised. This is unprecedented.

NEIL: When you were working with the local council groups during the drafting of the constitution, amongst the non-Indigenous people in those groups, what were their general views on Indigenous rights? Was there a groundswell of support?

CAMILA: There's a famous picture of the uprising at *Plaza Italia* (renamed *Plaza Dignidad* by the protestors) in Santiago, a square that was also an epicentre for protests during the dictatorship. Every Friday, for 18 months

after the October 2019 protests, the square was occupied by protestors. It became a ritual that kept the movement alive. The first pictures that emerged from the October protests showed people gathered in *Plaza Dignidad* with many flags. Some of them were the Chilean flag, but the Mapuche flag was the one on top of the military sculpture, in the middle of the square. From the very beginning, people understood that Mapuche were the underdog and thus the vanguard. The situation of Mapuche is sometimes compared to the one of Palestinians, because their communities live in places with precarious or no basic services, suffer frequent raids and harassment by militarised police, and are treated as second-class citizens by a settler state. The Mapuche flag, as a symbol of their emancipation from oppression, and the idea of Indigenous rights, were constitutive to the uprising—I think one cannot understand the plebeian identity and solidarity of the movement without them. This was later evidenced in the *Coordinadora* and its fruitful combination of ‘the popular’ and ‘the indigenous’.

In terms of the more general views on Indigenous peoples, the southern regions around the Mapuche reservations are the most reactionary ones because this is where the divide-and-conquer strategy works the best. The right-wing coalition has its stronghold in the South, where Mapuche are seen as ‘criminals’ or ‘terrorists’. But it was Bachelet and her Socialist government who used the anti-terrorist law, decreed by Pinochet, to repress Mapuche. There was an Indigenous representative at the Constitutional Convention, Francisca Linconao, a Machi (Mapuche spiritual authority), who was charged under this law. About 10 years ago, there was a conflict with a landowner who shot a Mapuche religious leader. In retaliation, the house was burned down with the landowner and his wife inside. The police couldn’t find out who did it, so they just threw the most prominent leaders in jail. Machi Lonconao, an older woman, risked a 10-year sentence as an accomplice. She was jailed three times, went on trial three times, and was acquitted. Then, she was elected as a representative to the Constitutional Convention.

Indigenous representatives addressed the Convention in their own languages, they pushed for translations, they dressed in their traditional

clothing. But instead of celebrating multiculturalism, the media used the Indigenous language, clothing, and so on to de-legitimise the process, saying that the Convention was a 'circus' that was not part of the Republican tradition.

NEIL: The draft constitution was rejected in a referendum in September 2022. You have told us that the right-wing coalition used Indigenous rights as one means to undermine the proposed constitution. What other tactics did they use?

CAMILA: If there is a constituent process and a mandatory plebiscite that the whole country must vote on, then you would expect at least a letter or leaflet sent to your home explaining the process, right? Well, there was no official communication coming from the government to people's homes informing them of what was happening. This lack of official information made the spread of misinformation easier.

Another tactic to undermine the constituent process was to impose a very tight timeline. There were seven sub-commissions working in parallel to create articles on different topics for the new constitution, so it was impossible to follow them all at the same time. Even if the sessions were live-streamed, there were not enough hours in the day to watch them all. Representatives were working 12 hours a day, often until midnight. There was no time for deliberation. The draft constitution was finished at the end of May 2022, then a special committee edited the text, and finally another committee drafted transitory laws giving instructions for the implementation of the new document. After the draft was finalised, there was only 28 days to inform the population.

The only 'official' information was 30-minutes of TV advertising twice a day to educate the public about what they were voting on. Those 30 minutes were divided into 50 percent for the reject campaign and 50 percent for the approval campaign. The reject campaign was led by the right-wing coalition with a lot of money behind them. There was no regulation of the advertising, so they could say whatever they wanted. As a

result, the reject campaign put out a lot of disinformation on national TV. On the other hand, the approval campaign was made up of multiple civil society organisations, and their times were split up across the scheduled fifteen minutes, so most of them only got seconds on the air. For instance, our collective was part of the Coalition for Direct Democracy. We got a grand total of four seconds. You cannot do anything with that, so we allied with the larger Coalition for Water, and got a total of 37 seconds. We had to put together daily videos, relying only on voluntary work from activists, to educate the public on the new constitution. Most people didn't even watch these adverts, so they went out to vote with little information and lots of misinformation.

The vote was mandatory. This was due to a pernicious change in the legislation. In the 1988 plebiscite on Pinochet's Presidency, 97 percent of the people registered to vote. The vote was made mandatory after registration. Young people quickly became disillusioned with the system, and most didn't register to vote. The only ones voting were older people who were already registered; and that chunk of voters, compared to the non-registered citizens, started shrinking. In the mid-2000s, the amount of people that were not registered to vote was greater than the people who were. At this point, the government made registration automatic and voting voluntary. For each subsequent election, turnout was below 50 percent.

During the constituent process, pseudo-leftists and centrists argued that voluntary voting was discriminatory, because the poor tended not to vote voluntarily and therefore their voice was not counted. They decided then to force them to vote and if they didn't vote, they'd fine them one-third of the minimum wage. Thus, 50 percent of the population who did not vote for initiating the constituent process, who had no idea what was happening, and who were instinctively against the government, were forced to vote in the plebiscite on the draft constitution. And of course, they voted to reject it, because few people would approve something that they haven't read, especially something that is sponsored by a government that they do not like. Moreover, the plebiscite was on a Sunday, their day off, and they were forced to stand in line for hours to vote. Most of the people that voted

to reject the draft constitution were from sectors that had traditionally voted for left-wing parties. It was an anti-establishment vote to reject the government, to reject everything, including being mandated to vote.

NEIL: What happens next?

CAMILA: We've hit a brick wall. Part of the problem is President Boric. He is the youngest President ever in Chile, and he was one of the leaders of the student movement in the early 2000s. In the 2021 election, he ran against José Antonio Kast, the son of a Nazi soldier that came to Chile with fake documents from the Red Cross. His brother, Miguel, was a Chicago Boy and worked as Minister of State during the Pinochet dictatorship. The 2021 election, therefore, was all about 'Boric against fascism', and many people voted for Boric because they were afraid of going back to a dictatorship-like scenario. Boric won, but the moment he took office, he started implementing the right-wing programme. For instance, when he was a deputy in the lower chamber of Congress, about five months before he became President, he wore a T-shirt that said: 'no to the TPP'—the Trans-Pacific Partnership that enables transnational corporations to demand compensation for regulatory changes. As President, he said he would not oppose the treaty, that he would let the Senate—controlled by right-wing parties—decide. After it was approved by Congress, he immediately ratified it. He has, so far, behaved like a covert right-wing centrist. When he took office, he incorporated members from the more conservative parties he had run against into his Cabinet. Today, they make up more than half of the Cabinet, and the most important ministries are held by the old leaders who are keen to keep administering neoliberalism in Chile.

The moment that the draft constitution was defeated, the right-wing coalition claimed the result as a victory. Boric, instead of contesting this faulty interpretation, immediately accepted defeat and caved to all the demands imposed by the Right. The new constituent process, integrally designed by the right-wing coalition, has twelve pre-commitments that the new constitution must respect, which are essentially the pillars of the

Pinochet-Lagos Constitution. After those pre-commitments were agreed upon, Congress appointed a committee of experts made up of lawyers and party officials, who were tasked with writing a draft constitution based on these twelve pre-commitments. That draft is then going to be edited by an elected constitutional council of 50 members. But the elected representatives will not be able to change anything significant. To prevent any changes, the ‘experts’ have the right to voice their opinions in the council; and, in case there is any progressive measure that made it through the process, there will be an ‘admissibility committee’ to cut it out. Currently the committee of experts has written a draft constitution, which has no Indigenous or socio-economic rights, or anything progressive like that. It’s essentially the same constitution that we currently have. We’ll have another compulsory plebiscite to vote on this draft constitution in December. We’re heading to a very bad place.

NEIL: During the protests Boric said that ‘if Chile was the cradle of neoliberalism, it will also be its grave’. What do you make of this statement now?

CAMILA: Neoliberalism is not going to be dismantled by Boric or any other politician; they are beholden to balanced budgets, economic growth, and the demands of transnational capital. The neoliberal model can only be truly opposed by the people themselves. Perhaps with the new plebiscite in December the protest movement will be re-energised and common people will rise up again to reject this constitutional farce. If this doesn’t happen and Chileans end up approving this constitution—which preserves the neoliberal character of the state, but without Pinochet’s legacy—then the horizon of struggle will be obliterated. We’ll have nothing left to fight for, other than for marginal reforms to an oppressive system. In my view, it’s better to maintain the old constitution and keep fighting for a truly democratic order able to devolve power to the people, than to have a new, minimal constitution that will further entrench the neoliberal model.