

Why Elites Sometimes Undo Their Own Constitutional Privileges

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Abstract: Most new democracies begin operating under an authoritarian constitution from the past that favors elites connected to the previous era. While these constitutions are designed to be difficult to change, important changes nonetheless sometimes occur, occasionally at the behest of the very elites that these constitutions were meant to protect and favor. Why do elites support these changes? We develop a dynamic imperfect information bandwagoning model of reform to explain shifts in elite-biased constitution. Unanticipated shocks can make constitutional changes overwhelmingly popular, encouraging moderate constitutional opponents and supporters to join a radical opposition in voting for reform. This encourages a president who supports the status quo to join the bandwagon (refrain from vetoing the reform), attempting to gain concessions by doing so. We demonstrate the utility of the model in the context of reforms to the Chilean pension system in 2021.

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INTRODUCTION

Most new democracies are inaugurated through imposed or negotiated transitions and operate under constitutions that favor elites tied to the authoritarian past. These regimes inherit important institutional rules from the preceding autocracy. Their charters often grant outgoing elites and officials immunity from prosecution and they embed electoral rules and practices that amplify the electoral voice of favored political allies. They also protect outgoing elites' property rights and economic interests, usually by reinforcing barriers to entry and creating rent-seeking opportunities (See Albertus & Menaldo 2014, Albertus & Menaldo 2018, Albertus & Menaldo 2020, Slater and Wong 2022, Riedl et al. 2020).

Elite-biased constitutions tend to endure because if succeeding democratic governments selectively enforce constitutional strictures they oppose—such as proscriptions against punishing former elites for crimes or corruption—they risk undermining their own authority and legitimacy or risking backlash. Consequently, actors begin to invest in assets and strategies such as party platforms, coalition-building, and messages specific to the institution (Albertus & Menaldo, 2020).

These peculiar charters are quite common. While there were 122 democratic transitions between 1800 and 2006, 80 of these (66%) inherited a constitution from authoritarian predecessors. Since World War II, over two-thirds of transitions to democracy have been guided by authoritarian constitutions. Important examples include Turkey, Sweden, South Africa, Indonesia, and Chile.

The fact that the overwhelming majority of democracies inherit constitutions from their autocratic predecessors is rooted in power disparities during democratic transition. Political change requires political, economic, cultural, and human capital. In dictatorships, the elites hoard this capital. If there is a democratic transition, it is usually on terms dictated by an elite faction. That includes whether to transition in the first place, the timing and pacing of transition, the content of the constitution and its institutions and key laws, and control of elections (who is allowed to run and how votes are translated into seats). Consequently, elite-biased constitutions have a high threshold for reform. As these charters' purpose is to enshrine privileges into law and policy after a regime's insiders exit power, their founding fathers make it exceedingly hard to amend these charters.

What is somewhat surprising, therefore, is that there have been numerous episodes in which elite-biased constitutions have been amended, if not scrapped altogether. While since 1950, 31% of democracies that inherited elite-biased constitutions replaced them, including countries such as Brazil, Madagascar, Poland, and Thailand, 15.4% of all democracy years from 1950 to 2006 are democracies with autocratic constitutions that were amended.

Several reasons have been put forth to explain these reforms. They include economic crises, shifts in the balance of power associated with globalization, and the death of former dictators (See Albertus & Menaldo 2018, and Albertus & Menaldo 2020). All of these events can catch elites off balance and give the opposition a window of opportunity to topple the status quo.

More surprising, however, is that major reforms to elite-biased constitutions are sometimes ushered in *by the very political parties and leaders tied to the privileged actors from the authoritarian past*. There are notable cases in which members of conservative parties, be they legislators, presidents, or both, cosigned, if not co-wrote, constitutional reforms that fundamentally liberalized their country's elite-biased constitutions. Several examples include France, Mexico, Nigeria, and Thailand.

Perhaps the most illustrative case, and the one we focus on here, is Chile. The country's young democracy has undergone a series of major reforms to an elite-biased constitution imposed by the Pinochet dictatorship, many of them supported by the center right. This is in spite of the fact that constitutional reforms in Chile are quite difficult to enact due to supermajority thresholds for change and the lack of a joint commission to resolve constitutional reform inconsistencies between the two houses of congress.

If elite-biased constitutions over-represent outgoing elites and former dictators, then why is it that there are prominent cases where founding fathers (and sons) later disown their own constitutions? This is all the more puzzling in light of the fact that these constitutions are designed to be very hard to change by the same forces that end up giving these changes the green light. They tend to activate a host of crisscrossing checks and balances that steeply raise the transaction and collective action costs required to cobble together a broad coalition for change. Furthermore, they often incorporate provisions that call for supermajority vote thresholds for constitutional change, such as requiring two-thirds of both houses of Congress to support amending the Constitution.

While researchers have theorized about the structural or general conditions under which elite-biased constitutions may change (Albertus & Menaldo 2018, and Albertus & Menaldo 2020), there is little work exploring the micro-foundations of how these constitutions are challenged, and how amendments to them are formulated and the changes ratified. There are also few accounts that explore the incentives and motivations driving conservative forces to paradoxically orchestrate these reforms.

This paper aims to fill in those gaps. It attempts to make sense of why conservative parties may condone constitutional changes to charters that were designed to favor them. To do so, we develop a game-theoretic model of constitutional change. We explore constitutional changes to elite-biased constitutions initiated by a radical fringe, but where a group of more moderate leftists and right-of-center legislators, including a right-of-center executive, may join the constitutional reform coalition to push it over the finish line. While we demonstrate that these more moderate political actors use their leverage (modeled as the executive's veto power) to gain essential concessions, they are still critical to ensuring that constitutional amendments they would normally oppose will instead pass. In other words, while a far-left party may consistently push to make a fundamental change to the elite-biased constitution, it takes a critical mass of legislators to the right of that party to see those changes through because they require a supermajority to pass. Furthermore, in a

presidential system, it ultimately takes an executive who may be to the right of most legislators to refrain from vetoing those constitutional amendments.

Indeed, as we will see in the case of Chile, a center-right president, Sebastián Piñera, went ahead with constitutional-level changes to the pension system that hurt the interests of key players favored by the elite-biased constitution. While he had previously opposed populist changes to the economy, including the pension system, between July 2020 and February 2021, Piñera approved three separate withdrawals of assets that totaled 19 percent of GDP by early May 2021 after they passed with supermajorities in both chambers of the Chilean Congress. The first two withdrawals saw nearly 30 percent of individuals fully deplete their pension accounts, putting the system's future at risk (Evans & Pienknagura, 2021). This also hurt pension funds, which are the country's largest institutional investors. The price of Chilean stocks and bonds plummeted in the wake of the mass selloff of portfolios associated with the withdrawals, and an ensuing consumption boom stoked inflation and exchange rate volatility.⁴ Moreover, the government was forced to supplement shortfalls in pensions associated with these withdrawals in a fiscally progressive manner. This amounted to a net present value of about 6 percent of GDP in 2020 alone, with additional fiscal burdens down the road perhaps far exceeding this amount (Evans & Pienknagura, 2021).

While Piñera was not in favor of these reforms and was able to moderate the initially quite radical demands from the Communist Party and their allies, such as Frente Amplio, to completely dismantle the privatized pension system inherited from the Pinochet era and underwritten by the 1980 Constitution. Nonetheless, his position was crucial in sending a message to conservative legislators that they could vote for these constitutional-level changes. Moreover, he himself did not veto the changes.

Drawing on the literature on the reform of constitutions, we argue and demonstrate through our model that changes to elite-biased constitutions may be bandwagon-type phenomena. Under proportional representation (PR), as enough time elapses, it is more likely that there may be greater opportunities for the consolidation of a winning coalition around changes to the Constitution that strip the power and privileges away from the elites who benefited under dictatorship. However, for several reasons, including that they may profoundly benefit from the current system, most legislators – especially those on the right – will be opposed to changing the elite-biased constitution. Therefore, constitutional reform remains an exceedingly rare event.

However, an exogenous shock may signal to legislators with sincere policy preferences located to the right of the reform that a change to the elite-biased constitution is more popular than they had previously believed it to be. They may, therefore, conclude that passing what was once thought to be a fringe constitutional reform is in their best political interest by helping them get reelected, even if it hurts important constituents who benefit from the elite-biased constitution. The same is true of the executive as he updates his beliefs about the popularity of the amendment in light of

⁴ This reduction in the value of outstanding bonds particularly hurt older workers who were closer to retirement and existing retirees, who tend to have lower income than younger individuals.

conservative legislators who join the bandwagon. However, the president may use a credible veto threat to wring concessions that dilute the constitutional change, making it more moderate. Therefore, even under PR, a presidential system may produce moderate constitutional reforms that a majority of citizens support and that two-thirds of legislators can get behind despite their ideological reservations.

Specifically, in this paper, we construct and flesh out a dynamic imperfect information bandwagoning model of reform to elite-biased constitutions. After a shock, we prove that the Markov Perfect Equilibrium that depends solely on the current state of the game, not the history of the play, is for a more moderate faction of leftist and center-right legislators to join a radical constitutional reform bandwagon. We also show that a right-of-center president's best response is to join the bandwagon (refrain from vetoing the reform). In a sequential version of the game, she often joins because of the constitutional change's overwhelming popularity. In a non-sequential version, she joins (refrains from veto) as long as she is able to gain concessions that make the amendment less radical. While these two outcomes may hold for any situation where there are potential changes to an elite-biased constitution in a presidential system where the legislature is elected via PR, we apply the model to constitutional-level reforms to Chile's 1980 Constitution.

The model is particularly helpful in making sense of reforms to the Chilean pension system that occurred in 2021. Sebastián Piñera, a right-of-center president, was crucial to getting constitutional reforms to the system over the finish line even though the changes began as a once-radical proposal floated by the Frente Amplio and the Communist Party. While he was instrumental in helping the reforms achieve the two-thirds vote they needed to pass, he was simultaneously able to use his credible threat of veto to water down the initial desires of the radical left to eliminate the private pension system altogether. While in this paper we focus on constitutional-level reforms to the private pension system, our argument also holds for other reforms that were long advocated for in both the public sphere and legislature by radical left parties before Piñera called for a constitutional convention in 2019, including the nationalization of important mineral sectors, a clamping down on private education, and the elimination of the Senate.

This paper proceeds as follows. First, we introduce and solve the model. Second, we provide the historical background behind Chile's elite-biased constitution. Third, we review the political dynamics of Chile's recent political history to contextualize what happened on the way to constitutional change. Fourth, we use qualitative evidence to highlight how constitutional-level reforms to the Chilean pension system embody our model. We conclude with a discussion of other potential applications of our model to reforms to elite-biased constitutions beyond the Chilean case and to more general reforms where, after a shock, once marginalized ideas quickly gain ground and win the critical support of once vociferous opponents.

MODEL FORMALIZATION

Contextualizing the Institutional Background

Before we formalize the mechanics of the bandwagoning model of the reform of an elite-biased constitution, we explain the decision to assume that the parliamentary branch is elected via proportional representation (PR). This is important because it favors a more kurtotic ideological distribution in the legislature. By extension, this will make it more likely that legislators will propose potential constitutional reforms that, if enough time goes by, may accumulate supermajority support to pass.

Besides Chile, there are several historical examples of democracies that inherit elite-biased constitutions and eventually adopt PR to elect legislators. In fact, there is rich evidence that the elite politically benefit from PR. Indeed, they are often the instigators of electoral reforms that replace plurality rules with PR (See Rokkan 1970, Boix 1999, Andrews & Jackman 2005, Calvo 2009, Albertus & Menaldo 2018).

First, consider three important examples from Europe. Denmark's 1901 Constitution enshrined malapportionment and restrictions on the franchise to exclude groups such as impoverished adults and those that declared bankruptcy from voting. In 1915, it adopted PR to elect representatives to parliament. Meanwhile, Belgium's 1894 Constitution called for indirect elections for the Senate, required a supermajority to amend the Constitution, and ushered in restrictions on the franchise. It adopted PR in 1899 and was the first country in the world to do so. Finally, Sweden's 1911 Constitution introduced restrictions on the franchise, an indirectly elected upper chamber, and proportional representation that allowed conservative parties to survive despite the fact that their support base had become a minority portion of the overall electorate.

Also, consider South Africa, a more recent example of an elite-biased constitution. Its 1993 charter introduced a transitional power-sharing agreement (1994 to 1999) with strong federalism to protect Apartheid-era elites: white-run provinces adopted their own constitutions and were awarded veto power in local governments. It also introduced PR to elect both national and provincial governments.

Finally, there is Chile. Under the first set of electoral rules, the country's two main political blocks, Concertación (center left) and Alianza por Chile (center right)⁵, jointly dominated congressional representation after the country's return to democracy in 1990 under a binomial system that strongly favored two dominant parties. Yet, they both spearheaded changes that weakened their political duopoly. Among other changes, they replaced the binomial electoral system in 2015, which over-represented rightwing parties, with a D'Hondt proportional one, which ushered in a plethora of new parties, with several located on both fringes of the ideological spectrum. Basically, the number of votes obtained by each party translated, roughly, into their number of legislative seats, with the proviso that, after a congressional election, a party must satisfy at least one of these two conditions: (i) obtain 5% of the popular vote or (ii) seat four members of Congress (Lower House or Senate) in at least two different regions to continue to legally exist.

The Model

We set a dynamic model of the lawmaking process that considers a body of Legislators $i \in \{1, \dots, N\}$ in the National Legislature and the President, v , at the Executive Branch. We assume

⁵ Alianza por Chile changed its name to Chile Vamos in 2015.

that Congress has only one chamber,⁶ and the President is the only player with *veto power*. Hence, whoever coalition is joined by the President will be the winning coalition.

We further assume that a bill proposal is presented by a radical fringe of legislators of size $n \ll N$ at time 0. The presentation of this proposal is exogenously given.⁷ There is also a fraction of the legislators related to the President's coalition $m \in (n, N]$.

Let M denote the number of votes required to approve a bill proposal by the National Legislature. We will refer to M as the decision rule. If the proposal achieves support greater than or equal to M , then it goes to the President, who can decide whether to veto the bill. After the President makes her decision, the game ends.⁸ If the number of supporters is smaller than M , then the bill is rejected at the legislature level. In that case, the National Legislature must wait a period ΔT that is sufficiently long to restart the game with initial support of the size of the radical fringe.⁹

A lawmaking system is defined as a triplet of integers (N, M, v) . Legislators and the President interact over time as in a bargaining game. Legislators can cast ballots sequentially, and others including the President can observe how they voted.¹⁰ Time is continuous, starting at 0 and running forever.

Legislator $i \in \{n + 1, \dots, N\}$ chooses an action at time $t \in [0, \infty)$ only if she receives an opportunity to support the bill at that time. Denote an action $a_{it} = 1$ as approving the bill proposal (supporting coalition) at time t , and $a_{it} = 0$ if rejecting the bill (opposing coalition). Opportunities to announce the vote are drawn randomly at a constant Poisson rate, λ , independently across legislators outside the radical fringe.¹¹ In an opportunity at time t , legislator i must choose between “approving” or “rejecting” the bill proposal. Once a legislator votes in favor of the proposal, her

⁶ In the case of Chile, there are two chambers: (i) the Lower House of Representative, and (ii) the Senate. However, in the current case being studied, the Senate mimicked the Lower House. This could be explained because of the shock received by the political system and the changes in beliefs that this shock created. Given that politicians may have similar incentives and shared beliefs in times of significant political shocks, we may conjecture that the two bodies will behave similarly. Additionally, this makes the problem more tractable.

⁷ This assumption is not crucial to explain the evolution of a specific bill since proposals are presented constantly over time. How and when proposals are discussed depends mainly on political forces in Congress as well as the President. Nonetheless, Congress has autonomy on some types of bills and can always negotiate with the executive branch the timing for all bills.

⁸ This assumption is made because we want to understand crucial reforms to the economy, namely the pension system. All this is studied through the lens of the instrumental incoherence concept developed by Faguet & Shami (2022).

⁹ In the Chilean Congress, if a bill proposal is rejected, legislators must wait for one year before they could present a bill with a similar core idea.

¹⁰ In reality, legislators vote simultaneously, and their votes are public. However, in the case of important reforms, we observe public announcements by legislators on how they intend to vote. Further, once a legislator has announced to approve or reject the bill proposal, they do not change their preference. Hence, we may assume that voting is sequential.

¹¹ Once a legislator decides about her vote, she wishes to achieve a media impact. If there is another news event that could overshadow her announcement, such as an earthquake, a flood, or the death of a former president, the legislator will postpone informing how she will vote.

support stays on record until the end of the process. We also assume that there is no discounting of the future.¹²

The vote share of choice “approve” ($a_i = 1 = A$) after $k < N$ votes have been cast is given by,

$$S_k(A) = \frac{1}{k} \sum_{i=1}^k 1_{\{a_i=1\}}$$

Definition 1. We may formally define the decision rule as,

$$\begin{aligned} \vartheta &= A(\text{approve}) \text{ if } S_k(A) > \frac{M}{N} \\ \vartheta &= R(\text{reject}) \text{ if } S_k(A) < \frac{M}{N} \end{aligned}$$

ϑ is the outcome of the proposal, either approved or rejected.

Further, we assume that the lawmaking process stops in the legislature at the first arrival of a non-homogeneous Poisson process (NHPP). If t denotes the current time and \underline{t} denotes the time at which the last player joined, then the stopping arrival rate at time t is given by $\varphi(t - \underline{t})$, where $\varphi(\tau): R_+ \rightarrow R_+$.

Assumption 1. $\varphi(\tau)$ is continuous, strictly increasing, and $\lim_{\tau \rightarrow \infty} \varphi(\tau) = \infty$.

Let us now describe the payoffs for the legislators and the President. Denote a typical profile of actions in a given time by $a_t = (a_1, \dots, a_N) \in \{0, 1\}^N$. The corresponding payoff that player i experiences if she approves (i.e. $\bar{a}_i = 1$) and others behave according to \underline{a}_{-i} at the end of the lawmaking process in the Legislature is given by,

$$u_i(1, \bar{a}_{-i}, x) = \begin{cases} \beta_i - \mathcal{L}(x - x_i) & \text{if } \sum_{j \neq i} \bar{a}_j \geq (M - 1) \\ -c & \text{if } \sum_{j \neq i} \bar{a}_j \leq (M - 2) \end{cases}$$

where x_i denotes legislator i 's preferred policy, x is the policy proposed to the President, and $\mathcal{L}(\cdot)$ is a loss function that measures the degree of dislike between the preferred policy and the “outcome” policy. The policy preference is bounded in the interval $[0, 1]$. β_i is the ego rent related to legislator i , and we may assume that it is a random draw from a continuous, log-concave

¹² Legislators in the radical fringe and the rest of them are assumed to have a discount rate equals to 1. This is a reasonable assumption for structural reforms. Radicals are willing to wait long periods of time to observe that their ideas can be implemented politically into the societal system, while conservatives prefer maintaining the status quo. Both groups are patient for opposite reasons.

probability distribution F with support $[0, 1]$. c is the cost of supporting the losing side of the decision.¹³

Similarly, if legislator i votes to reject the proposal ($\bar{a}_i = 0$), the corresponding payoff is,

$$u_i(0, \bar{a}_{-i}, x) = \begin{cases} -c - \mathcal{L}(x - x_i) & \text{if } \sum_{j \neq i} \bar{a}_j \geq M \\ \beta_i & \text{if } \sum_{j \neq i} \bar{a}_j \leq (M - 1) \end{cases}$$

Likewise, if the legislator votes to reject and this choice is the winning decision, then the loss function is the same as before. The legislative process started because the status quo was unchanged, say.

Next, there are two possible states of the world: A (approve) and R (reject). In state A, the bill proposal is approved, and in state R, the bill is rejected. Legislators have policy preferences and experience a reward for voting for the winning choice and a cost for supporting the losing decision. Each legislator receives an independent, private signal, s_i , about the true state of the world. The signal is either α or ρ and is sent accurately with probability $p > 1/2$. That is, $P(\alpha|A) = P(\rho|R) = p$. The state of the world can be interpreted as specifying which choice is better for legislators considering citizens' public support.¹⁴ Legislators share a common prior, π , that the true state is A.¹⁵

As legislators vote sequentially, a publicly observed history of votes develops. Let us denote this history as $h_i = (a_1, a_2, \dots, a_{i-1})$ that is the vector of votes cast when it is legislator i turn to decide.¹⁶ A strategy for legislator i is then defined by a map $\sigma_i: (h_i, s_i) \rightarrow [0, 1]$ describing the probability i votes to approve as a function of her information: the expressions $\sigma_i(A|h_i, s_i)$ and $\sigma_i(R|h_i, s_i)$ denote the probability of voting for choices A and R, respectively, given i 's information.

A voting profile is written by $\sigma = (\sigma_{n+1}, \sigma_{n+2}, \dots, \sigma_i, \dots, \sigma_N)$. Let σ_{-i} represent the voting profile for all legislators other than i .¹⁷ After any history, h_i , define legislator j 's conditional probability that legislator q 's signal is s_q to be $\mu_j^q(s_q|h_i, s_j)$. Denote the belief profile by μ . Expected utility for legislator i , U_i , can now be defined formally as a map $U_i: (\sigma, \mu, h_i, s_i) \rightarrow R$. The solution concept applied is that of sequential symmetric Markov equilibrium. For the history h_i denote the

¹³ Notice that we could add the loss associated with the policy preference, but this would not change the outcome since this loss is already existing given the status quo policy.

¹⁴ This public support can be in the form of protest in the streets, in social media, public collection of signatures, and so on.

¹⁵ The common prior that the true state is B corresponds to $1 - \pi$.

¹⁶ The history of the radical fringe is completed with ones since they support their own initial proposal.

¹⁷ Excluding the radical fringe that supports the bill as long as it reduces their loss compared to the status quo.

belief of legislator i that A is the best decision by $\pi(h_i|\mu)$ and by $\pi(h_i, s_i|\mu)$ when combined with her private signal.

The president's payoff function is defined as,

$$u_v(x) = \begin{cases} \beta_v - \mathcal{L}(x - x_v) & \text{if } x \neq x_{sq} \text{ and no veto} \\ -c & \text{if } x \neq x_{sq} \text{ and veto} \\ \beta_v & \text{if } x = x_{sq} \end{cases}$$

The signaling about the policy preference by the veto player may occur through some legislators that are part of the president's coalition. Thus, the distribution of power, i.e. conceptually the policy that they are bargaining for, is what matters the most.¹⁸

Following Callander (2007) and Agastya & Rojas-Vallejos (2023), we may show that there will be more than one equilibrium in x , and the probability of realizing x will depend on the likelihood of whether the veto player joins the bandwagon. If the signal to support the change in x is strong enough, then this change will be realized even if the true preferences of the veto player are against the policy definition. That is, the bandwagon dynamics or desire to conform dominates over the true policy preference.

HISTORICAL BACKGROUND BEHIND CHILE'S 1980 CONSTITUTION

Protected domestic manufacturers and organized labor dominated Chilean politics between the Great Depression (1929) and the Pinochet dictatorship (1973-1989). Presidents Frei Montalva and Allende also mobilized peasants to be part of their populist coalitions.¹⁹ While upon first taking power after unseating Allende in 1973 the military Junta, headed by Augusto Pinochet, flirted with fascist ideology and valorized Franco's dictatorship, including dirigisme, it abandoned that approach in favor of a more neoliberal approach with crony capitalist characteristics. Pinochet privatized the economy to benefit a few handpicked insiders that included bankers and key domestic industries, large landowners, and commodity exporters that included copper mining, timber, fishing, fruits and vegetables.

For example, the Pinochet regime cobbled together several conglomerates (the so-called Grupos Económicos) that housed both banks and firms. The regime handpicked and groomed the individuals who headed and ran these conglomerates. They included insiders of the Pinochet administration and former government officials, including high-ranking military officers, who had recently exited the regime. These insiders purchased the majority of shares in these banks and

¹⁸ Although time could also be relevant, and this could be modeled with discount factors, we abstract from it within the bargaining stage of the game for the above-mentioned reasons.

¹⁹ Frei Montalva was elected supported by the Democracia Cristiana and the Frente Democrático conformed by Conservatives, Liberals, and Partido Radical. Allende was elected supported by the Unidad Popular conformed by the Communist Party, Socialist Party and multiple left-wing movements.

firms with subsidized loans made by the government or the banks themselves that were backed with their shares as collateral. The conglomerates then further borrowed from banks to make purchases of other firms that were folded into the conglomerates. Indeed, during the Pinochet regime, commercial banks lent one-fourth or more of their deposit base to their own affiliates.

This system generated sizable rents for economic elites. By 1982, the two largest business groups in Chile controlled principal insurance companies, mutual funds, brokerage houses, the largest private company pension funds, and the two largest private commercial banks. The Grupos Económicos were not only large and few but were endowed with considerable market power. For example, Chile's two largest banks controlled 42% of credit.

The 1980 Constitution

During the dictatorship from 1973 to 1989, Pinochet's 1980 Constitution was marked by two distinct stages. At first, it was used to announce, reinforce, and legitimize the military Junta's political power and to restore and consolidate its allies' economic position. Later, with several revisions, it shepherded Chile's democratic transition by devising an institutional architecture that protected outgoing regime officials and empowered their economic allies.

One of the fundamental goals of the new constitution was to inoculate Chilean institutions against Marxism and the dangers it posed to political order and economic stability. It also eschewed social rights because these were deemed impractical and polarizing and banned extremist parties, especially those that championed class warfare. Moreover, it prescribed that the regime's privatizations had to be accepted at face value, banned collective bargaining by workers at any level above firm, and empowered the military and police to restore public order in the face of strikes and work stoppages. In general, it significantly curtailed Congress's power over social policies.

Indeed, when it was first created, the Constitution ensured that the president's powers were formidable. The executive was endowed with an eight-year term and had the ability to initiate and shape policy across several domains. Besides the exclusive right to propose legislation of various sorts, the president could propose new items up for congressional debate, set congressional priorities and deadlines, and make comments on legislative proposals as well as veto them. The executive could also call "extraordinary" sessions of Congress, make changes to constitutional amendments proposed by the legislature, and call national plebiscites regarding amendments in which it had disagreement with the Congress. The president also had the power to dissolve parliament.

In 1988, Pinochet conducted a plebiscite to evaluate whether he should continue in office for another 8 years. To his surprise, Pinochet lost the plebiscite (56 percent voted against him) and he acquiesced to the results. This set the stage for presidential and legislative elections in December 1989 in which Pinochet did not run. The plebiscite helped convince the regime that the opposition front would win the 1989 elections and continue to enjoy electoral success in the future. At that point, the regime turned to controlling the terms and pace of democratization through a constitutional reform process that was put before a plebiscite held in July 1989 and that passed.

The broad brushstrokes of the reforms were that outgoing regime officials were inoculated against prosecution, the president's power was curtailed, conservative parties were over-represented, and the 1980 Constitution was made difficult to change.

The armed forces were politically empowered under this arrangement. While amnesty was extended for political crimes committed between 1973 and 1978, a National Security Council was created to provide institutional stability and outfitted with members from the armed forces, the President, the president of the Senate, and the president of the Supreme Court and was endowed with the ability to make decisions about whether to suspend the Constitution. It was allocated four unelected senators and could handpick Constitutional Tribunal members. The military was given sovereignty over defense policies and power over a parallel judiciary system.

In addition, the Senate was rigged to favor outgoing regime officials and their allies. Unelected senators were around 20% of the upper chamber and were key players in many policies.²⁰ While the Supreme Court was allocated three senators, the executive was granted two senators, who could be selected from former ministers and former provosts of state universities. Ex-presidents, including Pinochet, were awarded seats in the Senate for life. The number of elected seats in the Senate was expanded from 26 to 38 in a bid to over-represent conservative parties tied to the military regime.

The presidency was also weakened. The first presidential term under democracy was reduced from 8 to 6 years, and a president was barred from seeking consecutive terms. The president's legislative powers were strongly curtailed, including the executive's ability to dissolve the lower chamber.

Perhaps the crown jewel of these pre-democratization, pro-regime reforms, however, was the electoral system. It was constructed following the 1988 plebiscite, as it supplied electoral engineers with valuable information concerning voting behavior and electoral competition. The right's support generally hovered between one-third and one-half in most districts. A majoritarian electoral system, therefore, threatened the right. A typical proportional representation system would, similar to a majoritarian electoral rule, risk the possibility that the right would fail to garner enough seats to block constitutional reform, even with supermajority thresholds for change.

The binomial electoral system introduced two-member districts in which the political alliance with the highest number of votes received the first seat. That same alliance could only win the second seat if its votes were more than double those of the second most popular alliance. Otherwise, the second alliance won the seat. This allowed rightwing parties to obtain parity with the left: Alianza por Chile could win seats even against the alliance of leftist and centrist parties (Concertación) if it simply won more than one-third of the votes in each district. In 1989, the rightwing alliance received only 34.2 percent of the votes but 40 percent of the (120) seats; in 1993, it received only 36.7 percent of the votes but 41.6 percent of the seats; in 1997, it received only 36.3 percent of the votes but 39.1 percent of the seats; in 2001, it received only 39.1 percent of the votes but 47.5 percent of the seats. Meanwhile, consider that in 1997, the Communists received 6.9 percent of the votes but no seats.

²⁰ Before the abolition of the unelected senators in the constitutional reforms of 2005, there were 9 unelected senators out of 49 senators.

Finally, Pinochet's midnight reforms made the Constitution and its contents extremely hard to change. For constitutional changes and laws related to the executive branch, Constitutional Tribunal, the armed forces, and the National Security Council, supermajorities across both chambers were needed. Moreover, no joint commission was established between both legislative chambers to reconcile differences vis-à-vis constitutional issues.

2005 Constitutional Reforms

Despite the barriers to constitutional change, change nonetheless occurred. Before the constitutional level reforms to the pension system in 2021, there were several changes adopted by center-left executives who had center-left majorities in Congress and mustered support from enough legislators on the right to make changes to the 1980 charter. This includes, in 2005, the elimination of designated senators and lifetime senate seats for former presidents, enhanced powers granted to Congress, including the ability of legislators to create investigative commissions, a weakening of the military's political role, including its role in amending the Constitution, and the reduction of the president's term from six to four years, again without consecutive reelection. These changes also included granting the president the ability to remove the commander in chief of the armed forces and the chief of police after informing both chambers of Congress.

We chose not to model these constitutional changes because they are far less puzzling and strategically interesting – and in some regards reflected the desires of the very forces that benefitted from the initial constitution. Center-right legislators had good reasons to support many of these constitutional reforms without bandwagoning-type political pressure. Consider the removal of designated senators and lifetime senate seats for former presidents. After democratization in 1990, Chile's first three presidents were drawn from the center-left Concertación. As these governments began to appoint designated senators, the balance of power in the senate began to tilt away from former authoritarian elites and promised to flip in the future under continued Concertación rule.

A similar scenario played out regarding reforms to the legislative branch, the executive branch, and the Constitutional Tribunal. The Right had good reasons for further diminishing the powers of the presidency and enhancing those of the legislature, where they were overrepresented. In particular, they gained minority powers to request ministerial accountability, enhanced powers to establish investigative commissions, and a stronger legislative veto role for the Constitutional Tribunal.

2015 Constitutional Reforms

As outlined above, the 2015 reforms to the Constitution switched the binomial system for PR using the D'Hondt method. The 2015 reforms additionally increased the number of members of the Lower House from 120 to 155; similarly, the Senate grew from 38 to 50. The electoral jurisdictions associated with Congressional elections were also modified for both the Lower House and the Senate. The number of districts in the Lower House was reduced from 60 to 28, while the Senate

shrunk from 19 to 16 regions, with each region electing from 3 to 5 senators, depending on its population.

This bias towards smaller parties introduced by PR was magnified by an important change to campaign finance laws. In 2016, Laws No. 20,900 and No. 20,915 were promulgated to change how political parties obtained financial support. Previously, parties usually obtained private funding from people or companies. However, these financial resources did not need to be declared, so political parties did not do so.

There were three prominent corruption scandals around private financing for campaigns that moved the needle on public opinion around this issue: the Corpesca scandal in 2013, the Penta scandal in 2014, and the SQM scandal in 2015. Corpesca is a large fishing firm controlled by the Angelini Group, and Penta is a financial corporation funded by the Délano and Lavín families. The mining company SQM was directed by Julio Ponce Lerou, the son-in-law of former dictator General Augusto Pinochet.

Although the people managing these companies were historically more connected to Chile's right-wing parties, they financially supported almost all the political parties with legal existence. The more complicated situation was associated with SQM because of the relationship between its CEO, Ponce Lerou, and former dictator General Augusto Pinochet. This put high political pressure on the traditional parties that the small and marginalized parties smartly exploited, resulting in these significant reforms. For instance, Law No. 20,900 established a mechanism that allowed political parties legally recognized by the Electoral Service (SERVEL) to receive public funds.

These electoral reforms are more politically complex than the 2005 constitutional changes, and they are beyond the scope of this paper. Although eliminating this patently unfair way of translating votes to seats may have weakened former authoritarian elites' political positions in the short term, however, in some regards it helped legitimize the authoritarian legacies not excised from the Constitution. Moreover, left-leaning parties had already spent decades moderating their platforms to be more competitive as coalitions during the tenure of the binomial system. What the conservative legislators who helped push these reforms through may not have thoroughly planned for, however, is a shock that would favor more radical policies that they themselves would end up supporting for purposes of electoral expedience.

POLITICAL ECOSYSTEM LEADING UP TO PENSION REFORMS

The 2015 reforms came into effect for the 2017 elections and changed the distribution of forces in Congress. The D'Hondt proportional inclusive electoral system and the public funding of political parties significantly lowered the political entry barriers to small but well-organized groups. First, the number of political parties more than doubled. This makes the negotiating process in Congress more challenging because it increases the time needed to reach an agreement and may reduce the likelihood of bills becoming law. Second, generous public financial support for political parties has incentivized groups to establish populist parties with the sole goal of obtaining public money. Third, political parties have become vehicles for charismatic politicians or political dynasties to run for office and, in some ways, made parties less ideological and more opportunistic.

These reforms empowered political parties with fewer representatives in Congress or without any at all. That opened the door to strengthening far-left parties that had previously been forced to moderate their positions under the 1980 Constitution. Some parties increased their representation, as was the case with the Communist Party. Other radical left-oriented but smaller parties could now get into the legislature. Meanwhile, traditional parties with membership in Chile Vamos and Concertación reduced their share of representatives and votes.

This reduction in the political power of the incumbent parties was significant because, to approve bills, these political blocks were now compelled to negotiate with parties at the ideological extremes. As a result, the political coalitions changed, but more importantly, on the left side of the political spectrum, parties became more militant and radical and called Chile's entire political economy into question. In the last general election in 2021, there were four coalitions: Apruebo Dignidad (left), Socialismo Democrático (center left), Chile Vamos (center right), and Republicano-Social Cristiano (right).

Even though before these reforms some new political parties were born, they did not have access to power in Congress without negotiating with the traditional parties. A case to highlight is the Communist Party (CP). In the 2013 Congressional Elections, the CP signed an Omission Agreement with the Concertación that was a mechanism for the CP to compete with a high probability of electing their candidates. As a result, in this election, the CP obtained 6 members of the Lower House out of 120, while in 2009, they got only 3 members elected. Thus, the CP doubled its political representation in Congress.

CHILEAN PENSION SYSTEM REFORMS

Chile's current defined contribution pension system was established during Augusto Pinochet's dictatorship.²¹ It is centered on individual retirement accounts managed by private institutions known as Pension Fund Administrators (Administradoras de Fondos de Pensiones, or AFPs). The system requires workers to contribute a portion of their earnings to tax sheltered accounts that invest the contributions and their accrued interest in securities that include stocks and bonds.²² The introduction of the capitalized pension system marked a shift from the public, pay-as-you-go defined benefit pension system that preceded. Indeed, in giving workers several choices over investment portfolios, this fully privatized pension system was the first of its kind and inspired other countries to follow Chile's lead.

In terms of the details, workers are obligated to contribute 10 percent of their monthly earnings, with a maximum of 60 Unidades de Fomento (UF), an earnings index adjusted for inflation, per month. AFPs collect contributions from workers and invest them within government restrictions. AFPs also hire insurance companies to provide coverage to survivors and dispense disability

²¹ Several different reasons have been put forward to explain the change. These include a desire to have a more efficient system; concerns over the public system's cost; and wanting to reduce the government's role in the economy (Evans and Pienknagura 2021, OECD 1998).

²² While the portion of income allocated to the pension account is tax deductible and the capital gains accrued by the assets are not taxed, the income generated by the pensions during retirement is taxed at normal income tax rates.

insurance. AFPs levy a monthly administrative fee, a premium for survivors, and disability insurance. Workers may choose any AFP and may switch AFPs; they may also fund a separate class of voluntary savings accounts. Employers do not have to fund their workers' accounts; self-employed workers' participation was voluntary, at first, but became compulsory in 2020.

Changes to the Chilean pension system in 2020-2021 through constitutional reform represent fruitful terrain for exploring and illustrating the dynamics of our model. First, these changes were divisible, allowing for negotiation and compromise. They also took place through negotiation between the executive and the legislature. There are also limitations to this application: the constitutional changes were temporary in nature, and the reluctant support of the president and his closest allies was eventually reversed. Nonetheless, the changes had important long-term consequences, not only for allies of the president and the authoritarian past but also for the stability of the Chilean constitution. We also extend our discussion to dynamics around the decision to hold a constitutional referendum, which also captures underlying logics and dynamics of the model even though it does not lend itself as readily to divisible bargaining.

Origin of the Pension System

An executive order made by Pinochet on November 4, 1980, Decree Law No. 3,500, introduced the pension system. It established the AFPs to manage workers' retirement accounts. However, this framework is woven into the 1980 Constitution and, therefore, major reforms to the system require a qualified majority to pass.

Consequently, major changes to the Chilean pension system require a supermajority vote across both chambers of Congress. This is laid out in the 1980 Constitution's Article 67, which mandates that changes to some types of legislation (*Leyes Orgánicas*) require a qualified majority. Among other types of laws, this includes those pertaining to social security. Therefore, while the Chilean Constitution does not explicitly say that pension reforms require a "supermajority" vote, Article 67 sets the stage for a higher voting threshold for social security legislation. This effectively requires a supermajority to pass significant changes to the pension system.

Pre-2020 Pension Reforms

In spite of the barriers, several reforms have been made to the pension system through ordinary legislation over the years, addressing issues such as pension adequacy and coverage. While mandatory contribution rates were initially set at relatively low levels, there were concerns voiced by some government officials, political parties, labor unions, and civil society organizations that high levels of labor force informality, self-employment, and high turnover resulted in low contribution densities and inadequate coverage (Evans & Pienknagura, 2021). Critiques about the pension system in the 1980s, 1990s, and early 2000s included the fact that the system was unable to keep up with higher life expectancy, rates of return on savings were too low, as were replacement rates, and the system was much less generous for women and the poor (Evans & Pienknagura, 2021).²³

²³ The replacement rate represents the percentage of a person's pre-retirement income paid out by the pension system after their retirement.

Some pre-2020 reforms attempted to address these problems by liberalizing investment rules and increasing the type and number of pension funds that a pension fund management company (AFP) must offer its account holders (Kritzer, 2008).

At first, AFPs could only invest employees' contributions in Chilean fixed income instruments that were low risk: government bonds, financial institution bonds, and some corporate bonds without any provisions for compulsory diversification. In 1985, only 50 percent of the money had to be invested in government bonds, and AFPs were allowed to invest between 10 percent and 30 percent of contributions in pre-approved stocks (Kritzer, 2008) citing (Chumacero & Berstein, 2003)). In 2002, the AFPs were allowed to invest more in stocks (Kritzer, 2008).

But considerable problems and gaps remained. Between people working in the informal sector, the rise of fixed-term contracts, the rise of temporary and part-time jobs in the place of jobs with indefinite contracts, and the trend toward pursuing higher education, delaying entrance into the job market, more people began to fall through the cracks and workers contributing to pension funds spent fewer years in the accumulation phases.

The center-left Concertación, during President Michelle Bachelet's first term, began to address some of these issues with significant pension reforms in 2008 through Law No. 20,255. This reform introduced the Solidarity Pension System (Sistema de Pensiones Solidarias). It aimed to provide a basic "solidarity" pension to those without sufficient savings in their AFP accounts and improve benefits for women and low-income workers with low self-financed pensions to reduce poverty among retirees.²⁴ Therefore, it set a pension floor for those in the bottom 60 percent of the income distribution. This law also encourages greater competition in the pension fund industry; seeks to lower costs and increase the return on workers' contributions; changed the rules for financing survivors and disability insurance; established more opportunities for voluntary savings; and made pension capitalization compulsory for independent workers.

Unlike the reforms that would follow in 2019 and beyond, the 2008 reforms were the byproduct of several years of academic studies and policy papers, discussions, and consensus-building among various groups who sought to improve the system's sustainability and fairness. The pension debate was not yet heavily politicized, and a 2009 survey on pension awareness and understanding indicated a widespread lack of knowledge.²⁵ They were based primarily on the President's Pension Advisory Commission Report (Marcel Commission), which was released in 2006 and was based on objective data and technocratic analyses.

The Radical Fringe Attempt to Destroy Private Pensions

Immediately after Chile returned to democracy in 1990 and leading up to the 2020 and 2021 pension withdrawals, Chile's Communist Party (Partido Comunista de Chile, PCCh) repeatedly denounced the privatized pension system. They alleged that the system does not provide sufficient retirement benefits for the elderly, worsens inequality, generates unfair profits for the AFPs at the

²⁴ Specifically, it established a minimum pension for those without self-funded pensions (Pensión Básica Solidaria, PBS) and a government supplement for those with low self-funded pensions (Aporte Previsional Solidario, APS).

²⁵ This was the Encuesta de Protección Social 2009.

expense of workers' benefits, and exposes workers' savings to undue risk. They therefore advocated replacing it with a public, universal, and "solidaristic" (or progressive) pension system that equalizes benefits across all retirees while placing a greater fiscal burden on wealthier Chileans.

This led the PCCh to participate in social movements and protests that aim to replace the private pension system and replace it with one that conforms to their preferred model. They became major participants in the No Más AFP movement, which organized and participated in public demonstrations, rallies, and marches. Between 2016 and 2019, the No Más AFP movement launched several mass protests against the pension system.

Despite their early advocacy for pension reform, it was only during the 2009 legislative elections that three PCCh legislators were elected to Congress, all to the Lower House.²⁶ Since then, Communist Party legislators have proposed and supported bills intended to reform the pension system. Starting in 2012, the Communist Party and their legislative allies used Article 19 of the 1980 Constitution to raise the idea that the elderly in general and retirees in particular should enjoy a "dignified" life.²⁷ That required, they argued, reforming or outright jettisoning the private pension system. While the presence of PCCh legislators began to pull the center-left Concertación coalition to the left in these years, the shift became definitive in 2013 as the Communists won six representatives. The center-left brought the Communists into their refashioned New Majority (Nueva Mayoría) coalition for the first time. That same year, with greater influence, the Communists and their legislative allies put forth a bill in the Chamber of Deputies to create a public pension fund (AFP Estatal).²⁸

This tendency accelerated with the proportional representation electoral system change that took effect in 2017 and that empowered smaller parties. A new coalition, the Frente Amplio, which includes several leftist and progressive parties, made pension reform a central part of its platform. Similar to the PCCh, it called for replacing the privatized pension system with a public, solidarity-based one.²⁹

There were also several bills proposed by the Communist legislators in the Chamber of Deputies and their legislative allies to overhaul the Chilean Constitution in ways that would imply changes to the pension system or open the door to further changes that implicated the pension system. These

²⁶ These include Hugo Gutiérrez Gálvez, Lautaro Carmona Soto, Guillermo Teillier del Valle.

²⁷ Article 19 states that "The State must respect, promote, protect, and guarantee the full exercise and satisfaction of fundamental rights, without discrimination, as well as adopt the necessary measures to eliminate all obstacles that hinder their realization. For their protection, individuals enjoy effective, timely, relevant and universal guarantees." The representatives also introduced a bill to incorporate this specifically into the constitution. The proposal is available at:

<https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=8724&prmBOLETIN=8323-07>

²⁸ The proposal is available at:

<https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=9210&prmBOLETIN=8804-13>

²⁹ The proposal is available at:

<https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=12742&prmBOLETIN=122-16-07>

include bills to hold a constitutional convention, eliminate the Senate, and nationalize major minerals.

These legislative efforts were coupled with, and in part spurred by, social movements to replace the pension system. The No Más AFP movement formally launched in early 2016. As it organized its first national protest against the AFP system, it sought to demonstrate its broad social appeal by marching without political parties, unmasked so that everyone could see their faces, and with families and children. The turnout and impact was massive, at an estimated 750,000 people. These protests drew attention to the problems many people saw with the privatized pension system, including low pension payouts and high fees. Several more large protests took place in 2016 and 2017, signaling the widespread public support for pension reform, and organizing and protests continued into 2019.

The New Majority government of Michelle Bachelet in 2017 was moved to address the demands. It called for a constitutional reform to again bolster the social component of Chile's private pension system while also adding a new public component, the Consejo del Ahorro Colectivo. The Communists, as part of her governing coalition, supported the public component. At the same time, both the Communists and other groups in society wanted it to go farther, and to dismantle AFPs. But when the right won under Chile Vamos in the March 2018 elections, the new government withdrew the New Majority's proposal within the Chamber of Deputies.

The protests and activities of the No Más AFP movement before October 2019 played a critical role in highlighting the issues with Chile's pension system and mobilizing public support for reform. These earlier protests laid the groundwork for the broader social uprising that began in October 2019, which included demands for pension reform among a wider array of social and economic grievances. The movement's efforts have significantly contributed to the ongoing national debate on how to overhaul Chile's pension system to ensure fair and adequate pensions for all citizens.

The Shock

Chilean society exploded in mid-October 2019. An increase in subway fares sparked violent street protests. There was widespread looting of supermarkets and other businesses. The unrest rapidly grew into a nationwide movement. Protesters' demands included not only a reversal of the metro fare increase but also deeper structural reforms to address inequality and foster greater social inclusion.

Beginning in October of 2019, immediately after the first episodes of unrest, there were several very large No Más AFP-sponsored protests that called for the elimination of the pension system. Protests then quickly metastasized in late October and early November. Massive demonstrations took place across the country, calling for a wide range of social reforms and a new constitution. Among the central demands were decentralizing the political system and introducing formal mechanisms for citizen consultation and referendums, enshrining greater rights for labor unions, establishing health care and education as fundamental rights, guarantees of equality for women, greater autonomy for Indigenous groups, and a total overhaul of the pension system.

The No Más AFP movement became part of the so-called Social Unity block, a loose organization including labor unions, teachers' unions, and other groups that sought to declare itself as the collective representative of the broader protest movement. The block conducted meetings across the country to discuss major social problems, including the pension system.

On November 15th, a national agreement was reached to hold a referendum on drafting a new constitution. In early 2020, social movements, which include No Más AFP, focused their attention on mobilizing for the constitutional referendum, which was initially scheduled for April 2020 but was postponed until October 2020 due to the Covid-19 pandemic. During the middle of 2020, despite the pandemic and its restrictions on movement and free association, there were sporadic protests and online campaigns against the AFP system. When elections were eventually held to fill the 155-seat Constituent Assembly, 17 candidates came from organizations linked to No Más AFP, including the movement's national spokesperson, Luis Mesina (Miranda 2021, 306). The movement's spokesperson from Valdivia, Aurora Delgado, won a seat and used it to advance pension reform, among other issues.

The social unrest in 2018-2019 highlighted widespread dissatisfaction with the pension system's inability to provide adequate retirement security and acted as a catalyst for ongoing pension reform debates in the country. Leftist legislators supported demands for change and played a crucial role in pushing for discussions and proposals aimed at reforming the pension system within the broader refashioning of the Constitution. But the social unrest also began to lead legislators to the right of the reform proposals to begin to update their beliefs. This was necessary groundwork for them to subsequently join the reform bandwagon.

The shift among the right was encouraged by increased public attention to pensions and reform salience in the aftermath of the shock. Activists and political entrepreneurs spread effective messages about the shortcomings of the pension system through Twitter, newspapers, TV and radio. Stories of impoverished retirees circulated, along with slogans linking pensions to dignity for the elderly.³⁰ No Más AFP's spokesperson, Luis Mesina, was repeatedly interviewed in the media about the movement and pensions, emphasizing the problems and unfairness of the system. Content highlighting the false promises and shortcomings of the system circulated virally in the news and social media.³¹ The government's announcement in December 2019 that it would increase the minimum pension by 50% signaled a growing recognition of the need to do more.

Bandwagoning Dynamics During the Post-Shock Reforms

The Covid-19 pandemic presented an opening for groups that had long sought to change Chile's pension system. At the time the pandemic broke out, Chile was already nearly a year and a half into its episode of social unrest and President Piñera and his governing coalition were both extremely politically unpopular.

³⁰ Slogans like “Por pensiones dignas” and “Jubilación digna para todos” circulated widely.

³¹ One example was a story from February 4, 2000 in the newspaper *El Mercurio*, titled “Chileans will retire with 100% of their salary by 2020,” which underscored how poorly AFPs had lived up to promises. Cited in Miranda (2021, 208).

In January 2020, Piñera proposed a modest pension reform bill that relied mainly on increasing employer contributions and assigned the management of these funds in part to the public Superintendancy of Pensions and in part to AFPs. But the debate over pensions soon turned elsewhere. The discussion heated up when in April 2020 Peru's Congress authorized people to withdraw up to 25% of their holdings in private pension funds in order to deal with the negative financial consequences of the pandemic. Slightly over a week later, a group of representatives from the small and progressive Social Green Regionalist Federation introduced a bill to allow people to withdraw funds from the private pension system.³² The second proposal was introduced by President Piñera through the Senate in an attempt to better control the content of a bill that allowed withdrawal from the pension funds. This proposal levied taxes on the withdrawal aiming to disincentivize people to exercise this option. Nonetheless, people exercised this option anyways. The third proposal was presented by legislators from the Communist Party and the Frente Amplio and was strongly supported in Congress and people again overwhelmingly exercised this option.³³

The withdrawal proposals required a constitutional amendment since the Constitution only allows the President to introduce statutory bills on social security. That meant that the opposition would have to gain super-majoritarian approval for their amendment. Even so, pressure began to build on the government. In May 2020, the Piñera government passed legislation for a conditional cash transfer program aimed at protecting poor Chileans from the worst disruptions of the pandemic. But the opposition latched onto this as insufficient when millions of Chileans, including the middle class, suffered from pandemic hardships. Their solution was to allow people to withdraw money from their pension accounts.

Despite linking the reform to the pandemic, the circumstances themselves were insufficient to generate political change. The backdrop of Chile's ongoing social turmoil and the revelations of public dissatisfaction with the pension system were critical in encouraging bandwagoning among centrist and right-leaning legislators. Opposition senators introduced a constitutional amendment in June 2020 to authorize pension withdrawal. It would permit citizens to withdraw up to 10% of their funds from the private pension system, including workers, survivors, and non-workers with disabilities. Some of Piñera's allies started to defect. Eventually, five Senate members of the government coalition supported the first withdrawal and it passed. One of the supporters was prominent right-wing Senator Iván Moriera from the Independent Democratic Union party (UDI), which is closely ideologically linked with the Pinochet era. "I am from the right," he said, "and this is a bad idea... But I also said that I would support it if there wasn't another alternative... They can kick me out of the UDI, but they can't take the UDI out of my heart." Despite Piñera's opposition to the bill, he did not veto it and also did not challenge it before the Constitutional Tribunal. It became law by the end of July 2020. Notice that Piñera's government opposition to the proposal was subtle in the sense that tried to use legal reasons to prevent this bill becoming a law. Once the bill passed in the Lower House, Piñera's administration argued for a quorum of 2/3

³² The proposal is available at:

<https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=14043&prmBOLETIN=13501-07>

³³ The percentage of people who exercised these withdrawal options for the first, second, and third proposals were 98.4%, 83.3%, and 78.1%, respectively. Report is available at:

https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/34153/1/BCN_Retiro_de_Fondos_AF_P_ACTUALIZADO.pdf

in the Senate, while the left-wing coalition argued for a 3/5 quorum. To resolve the issue, the Senate had a vote and the opposition had a new victory greater even than the 2/3. This was a clear signal to the Executive about the popularity of the bill even within its supporting coalition.

Although the opposition proposed the initial withdrawal as a one-time measure, they soon changed their tune. This first proposal was approved with the support of 116 members out of 155 of the Lower House; this was well above the 3/5 quorum for the Constitutional Reform. In the Senate the situation was similar. The bill was approved with the support of 29 members out of 43. Thus, reaching an approval rate even above 2/3, although the quorum was set at 3/5. Additional provisions, undergirded by constitutional amendments, were passed that allowed further withdrawals: a second, 10% withdrawal was approved later in 2020 with even larger support (131 supporters in the Lower House), and a third withdrawal was authorized in 2021 (119 supporters in the Lower House).³⁴ As the second withdrawal sailed through the Chamber of Deputies in November 2020, the government tried to recapture the initiative by introducing its own 10% withdrawal bill. Its version was more moderate than the opposition's proposal and included other components important to the ideological right. In the end, it managed to eliminate tax relief on withdrawals among high-income earners and to prevent parliamentarians and some senior political advisors from taking withdrawals in an effort to blunt momentum for more change. The second withdrawal became law in December 2020.

The government also attempted to prevent further pension withdrawals by challenging the amendments before the Constitutional Tribunal. The Court supported the government's position and held the amendments unconstitutional in their substance. Undeterred, Congress went ahead several months later with a third withdrawal in April 2021. Again the government challenged it at the Constitutional Tribunal, but this time the Tribunal changed course and called it a political rather than constitutional dispute, enabling the third withdrawal to take place (Jiménez et al. 2022). This third withdrawal like the previous ones was very popular among the people, and 2021 was an electoral year to choose the President and members of Congress. Hence, this made it extremely complicated for Piñera to veto the bill without threatening electoral alliances within his supporting coalition.

Consequences of the Withdrawals

By early May of 2021, total withdrawals from the pension system were \$48 billion dollars (about 19 percent of GDP).³⁵ It was a major blow to the AFPs in particular that had long benefited from and been protected by the Pinochet-era constitution. By the start of February 2021, approximately 10.5 million Chileans out of about 13 million working age people, or almost 95 percent of individuals with positive pension balances in June 2020, made a withdrawal from their account either once or twice. The average Chilean withdrew 40 percent of their account balance during the first round and slightly more than 30 percent the second time. Out of those who made one or two withdrawals, about 30 percent depleted their accounts.

Pension funds were forced to liquidate stocks and bonds on unfavorable terms in order to accommodate the massive withdrawals. Companies exposed to pension funds also suffered a larger

³⁴ Pensioners with life annuities were excluded from both the first and second pension withdrawal episodes.

³⁵ The figures here draw from Evans and Pienknagura (2021).

decrease in their stock prices in reaction to the move. Given the close connection between the private pension industry and the President's center-right Chile Vamos party, the reforms represented a deep wound to some of the biggest beneficiaries of Chile's elite-biased constitution. The Pension Fund Managers (AFPs), financial intermediaries, and the Real Estate sector were effectively adversely affected by these withdraws.³⁶ It also forced more progressive fiscal policy on the government in a way that these beneficiaries opposed. The projected reductions in self-funded pensions should substantially increase the pension system's fiscal burden since the government will be obligated to cover many of the retirement shortfalls.

CONCLUSION

The remarkable shift against Chile's authoritarian-era constitution hit a major roadblock when the public voted down a new constitution in a national referendum in September 2022. By this time, however, major changes had already been set in motion on the country's pension system that could not be so easily reversed. And additional changes are currently being debated. Further research might fruitfully apply the bandwagoning model we develop here to the constitutional convention itself.

Chile is only one of a number of democracies that have reformed and liberalized elite-biased constitutions that favor interests and actors linked to the authoritarian era. Dozens of other democracies have also revised their constitutions. In some of these cases, like in Chile, important revisions occurred with origins as fringe projects among opponents to inheritors of the old order and eventually garnered support even among those who benefited from the prior arrangements.

Consider Sweden's constitutional reforms in 1918-1919 and 1921. A decade after Sweden's transition to democracy in 1909, there remained tax requirements for voting and other suffrage restrictions as well as weighting for votes in the senate in favor of wealthy landowners. Radical reformists called for universal suffrage and the abolition of the Senate. Conservatives blocked these calls repeatedly until the disruptions of World War I. Major political revolts in Germany in November 1918 at the end of World War I and the fleeing of the Kaiser in Berlin buttressed demands for change. More centrist and right-wing legislators began to tilt in favor of reform in order to stave off revolution and save their careers. Conservatives worked for compromise. Reforms at the national level dropped tax requirements for voting, enfranchised women, eliminated wealth-weighted voting for the Senate, and introduced direct senate elections. It changed the political landscape but did not wipe out Conservatives, who won more moderate reforms to local elections.

Brazil's adoption of its current constitution in 1988 is another example of a constitutional change, this time the wholesale annulment and replacement of a holdover authoritarian constitution, which followed a similar, bandwagon-type dynamic. Brazil had been ruled by the military, at first directly and then indirectly, between 1964 and 1985. It transitioned to democracy under a constitution imposed by the military in 1967 as the armed forces negotiated a gradual, controlled

³⁶ A document presented by the Central Bank of Chile explains the mechanisms of this. The document is available at: <https://www.bcentral.cl/documents/33528/133214/rcc-09052023.pdf/87bfc882-f274-249e-edf0-61ffd56c6846?t=1683668473213>

democratization process. A civilian politician won the presidency in 1985 and convened a constituent assembly in 1987 with the blessing of the military, which gained ample representation in the assembly by ensuring that several of its allies and supporters had a seat at the table. However, the process quickly got away from the military and its allies as ordinary citizens and civil society groups took control of the assembly and enshrined several measures related to human rights and social justice that were widely supported by Brazilians. This gave birth to a much more progressive document than initially favored by the military and its conservative supporters. In 1988, an overwhelming majority of delegates approved the new charter, and forces on the right acquiesced after gaining some concessions, including securing amnesty for human rights abuses and a degree of autonomy for the armed forces.

As in Chile, Sweden, and Brazil, bandwagoning dynamics often begin when those who are sincerely opposed to change begin to realize that it would be political suicide if they do not reverse their positions. By supporting change, longstanding holdouts gain the chance to politically survive to another day in exchange for sacrificing some of their longer-term goals and ideological beliefs.

Similar dynamics are also on display in more general reforms beyond those tied to authoritarian-era constitutions. An important example from the US is landmark civil rights legislation passed under the presidency of Lyndon Baynes Johnson (LBJ): the 1964 Civil Rights Act and the 1965 Voting Rights Act. Despite staunch opposition to these bills by some Democratic legislators who were avowed segregationists, they both passed with surprisingly strong majorities and gained the unexpected support of key Southern legislators, despite a filibuster threat in the Senate. Importantly, LBJ transitioned from opposing civil rights to strongly advocating on its behalf. While this occurred in the wake of the growing popularity of the civil rights movement and expansive media attention and was galvanized by violence against peaceful protests in Birmingham, Alabama, the catalyst was an unexpected shock: the assassination of President John F. Kennedy, which launched LBJ into office and gave the new president the political and moral cover to embrace civil rights. As with the prior examples, this again shows how bandwagoning can rapidly shift policies that have been stagnant for generations as events dramatically shift public opinion or reveal underlying shifts that cannot be ignored.

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MATHEMATICAL APPENDIX

Poisson distribution. The Poisson distribution expresses the probability of a given number of events occurring in a fixed interval of time if these events occur with a known constant mean rate and independently of the time since the last event. The mathematical definition is given by,

$$P(X = k) = \frac{\lambda^k e^{-\lambda}}{k!}$$

where $P(X = k)$ is the probability of observing k events in the interval, λ is the average rate at which events occur, and k is the number of occurrences of the event.

Non-Homogeneous Poisson Process (NHPP). The NHPP is a generalization of the Poisson process where the intensity rate $\lambda(t)$ is a function of time, rather than a constant. This allows the rate of events to vary over time. The probability of observing exactly k events in the time interval $[0, t]$ for a NHPP is characterized by,

$$P(X = k) = \frac{(\Phi(t))^k e^{-\Phi(t)}}{k!}$$

where $P(X = k)$ is the probability of observing k events in the interval $[0, t]$, $\Phi(t) = \int_0^t \varphi(s)ds$ is the cumulative intensity function representing the expected number of events in the interval $[0, t]$, and $\varphi(t)$ is the intensity rate function which varies over time.