Symposium

Models of Democracy and Models of Constitutionalism: The Case of Chile’s Constitutional Court, 1970–2010

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I. Introduction

Models of democracy are hardly separable from models of constitutionalism. The model of democracy that a person embraces may determine to a great extent the model of constitutionalism that she will adhere to. Thus, for example, if someone is persuaded by the virtues of direct democracy, it is unlikely that she would favor a model of constitutionalism that includes review by nonelected judges of the constitutionality of the content of legislation approved by the people through a referendum—although she would presumably admit the legitimacy of judicial review of the constitutionality of the procedural aspects of such a referendum. The same goes for those who advocate strong versions of deliberative democracy: they would be likely to accept judicial review of the constitutionality of laws regulating the democratic process, but not the control of the constitutionality of the substantive outcomes adopted through well-conducted, deliberative-democratic procedures.1

Of course, the assertion that models of democracy have a profound impact on models of constitutionalism presupposes the adoption of an external point of view in relation to the latter—that is, one that regards different accounts of constitutionalism as equally plausible, which is problematic for those of us who think that there are some very specific core values associated with the concept of constitutionalism. Having said this, if we assume for a moment such an external approach to constitutionalism, it

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1. I take this to be a position compatible with what has been argued in the past by John Hart Ely, Democracy and Distrust: A Theory of Judicial Review (1980); Jürgen Habermas, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy (William Rehg trans., 1996); and Mark Tushnet, Taking the Constitution Away from the Courts (1999).

becomes immediately apparent that there are, at the present time, competing accounts of both democracy and constitutionalism in Latin America. In the 1990s, there was widespread consensus throughout the region as to the virtues of liberal democracy and the model of constitutionalism prevalent in Western Europe, the United States, and other former British colonies. In recent years, however, some Latin American countries have diverged from that consensus and embraced different models of democracy, which have led them to adopt different models of constitutionalism. For example, Venezuela, Bolivia, and Ecuador have, over the last few years, adopted radical forms of democratic rule—multiethnic democracy in Bolivia and Ecuador, and the so-called Bolivarian democracy in Venezuela—that have been shown to be incompatible with some core elements of the liberal-democratic model of constitutionalism, such as judicial independence and full freedom of expression.

Given this scenario, and bringing back the internal point of view regarding the concept of constitutionalism, it is important to unpack the latter in order to identify its essential and contingent elements. When one does so, one finds that, for all the celebration of judicial review of the constitution typical of the last decades, this institution is not a *sine qua non* of liberal-democratic constitutionalism. In fact, the United Kingdom and the Netherlands developed strong democracies without judicial control of the constitutionality of legislation. On the other hand, it is difficult to imagine

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3. See Mark Goodale, Dilemmas of Modernity: Bolivian Encounters with Law and Liberalism 171 (2009) (discussing a “broader shift in Bolivia’s modern trajectory, in which the nation’s historically disenfranchised and marginalized majorities appropriated dominant national discourses in order to claim their patrimony”); Rodrigo Uprimny, The Recent Transformations of Constitutional Law in Latin America: Trends and Challenges, 89 Texas L. Rev. 1587, 1601 (2011) (stating that the most recent Bolivian and Ecuadorian constitutions have “recognized and strengthened community forms of democracy—a trait closely linked to the autonomy of indigenous and other ethnic communities”); see also Paul H. Gelles, Indigenous Peoples and Their Conquests, 98 Am. Anthropologist 408, 408, 410 (1996) (reviewing Donna Lee Van Cott, Indigenous Peoples and Democracy in Latin America (1995)) (quoting Victor Hugo Cárdenas, an indigenous activist and at that time the incoming vice president of Bolivia, as identifying Bolivia as a “multiethnic democracy,” and claiming that indigenous groups have created a national “political space”).


5. See, e.g., Miguel Schor, The Strange Cases of Marbury and Lochner in the Constitutional Imagination, 87 Texas L. Rev. 1463, 1464, 1466 & n.27 (2009) (recognizing the adoption of judicial review practices in Latin America and noting the similarity between these practices and those in the United States).

6. See Tushnet, supra note 1, at 163 (highlighting that Great Britain, which does not have a written constitution, and the Netherlands, which has a written constitution that is unenforced by the courts, guarantee individual rights and have governments with limited powers).
that meaningful constitutionalism can coexist with effective executive branch controls of the judiciary and hostility to free speech, as in Venezuela.\footnote{See generally Alisha Holland et al., A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela, HUMAN RIGHTS WATCH (Sept. 22, 2008), available at http://www.hrw.org/es/reports/2008/09/22/decade-under-ch-vez (chronicling the impact of the Chávez regime, including its takeover of the supreme court and infringement on the freedom of expression).}

Of course, it is an open question whether radical democracy of the sort currently being tried in Venezuela, Ecuador, and Bolivia necessarily requires the sacrifice of basic aspects of liberal-democratic constitutionalism. The fact that political leaders such as Hugo Chávez, Rafael Correa, and Evo Morales have ended up controlling the judiciary of their respective countries\footnote{See Frank M. Walsh, The Legal Death of the Latin American Democracy: Bolivarian Populism’s Model for Centralizing Power, Eliminating Political Opposition, and Undermining the Rule of Law, 16 L. & BUS. REV. AMERICAS 241, 252, 253 & n.71 (2010) (recounting the efforts of Chávez and Morales to limit judicial independence, and speculating that such measures will be taken in Correa’s Ecuador).} does not mean that the sort of democratic regimes they embrace will always do so. Having said this, the kind of political leadership they have all displayed is strongly reminiscent of the very old practice of the region, caudillismo—that is, the assertion by charismatic leaders that their actions are necessary to “save” their countries, even at the cost of violating the law and the constitution. Thus, it cannot be denied that—together with truly new forms of radical democracy aimed at eliminating the quasi-elitist practices of technocratic control that characterize so many liberal-democratic regimes in Latin America\footnote{For good critiques of liberal-democratic experiences in the region, with historical and contemporary analysis, see Leonardo Avritzer, Democracy and the Public Space in Latin America (2002); Roberto Gargarella, The Legal Foundations of Inequality: Constitutionalism in the Americas, 1776–1860 (2010); and Tomas Moulian, Chile Actual: Anatomia de un mito [Present-Day Chile: Anatomy of a Myth] (1997).}—much of what is being heralded as new forms of democracy and constitutionalism represents nothing more than a replay of the old political practice of populism, which has damaged the development of sustainable democratic regimes in the past.\footnote{For an excellent historical analysis of this issue, see Jeremy Adelman & Miguel Angel Centeno, Between Liberalism and Neoliberalism: Law’s Dilemma in Latin America, in GLOBAL PRESCRIPTIONS: THE PRODUCTION, EXPORTATION, AND IMPORTATION OF A NEW LEGAL ORTHODOXY 139 (Yves Dezalay & Bryant G. Garth eds., 2002).} This rather pessimistic perspective comes from the awareness that, as Brian Loveman’s work suggests, Latin America has had many constitutions, but very little constitutionalism.\footnote{11. See generally Brian Loveman, The Constitution of Tyranny: Regimes of Exception in Spanish America (1993) (chronicling Latin American politics and constitutions in the nineteenth and early twentieth centuries).} Indeed, due to abuse of states of emergency and to the sheer disregard of constitutional provisions limiting executive powers, most states in the region have lacked for most of their independent history even the most basic type of
constitutionalism\textsuperscript{12}—one in which the government respects the rule of law and the constitutional provisions restricting government action, thereby allowing individuals and groups to enjoy a basic set of fundamental rights.\textsuperscript{13}

Despite this rather grim historical background, and the worrisome situation prevailing in the countries currently experimenting with radical versions of democracy, it is still true that the last “wave” of democratization that reached Latin America in the late 1970s was accompanied by an unprecedented concern for constitutionalism and the rule of law.\textsuperscript{14} This trend was the result of both regional and global factors. With regard to the former, the ferocity of the repression perpetrated by the military dictatorships of the 1960s and early 1970s made groups that had been skeptical of liberal-democratic constitutionalism (such as Marxist political parties and movements) start to appreciate the value of traditional legal institutions (such as the writ of habeas corpus).\textsuperscript{15} Regarding the second trend, over the last two to three decades, the world saw the emergence of an international human rights movement that promoted the ideals of constitutionalism as crucial elements of democratic politics.\textsuperscript{16} The combined effect of these two factors, highlighted by students of processes of democratic transition and consolidation and endorsed by multilateral organizations, contributed to the idea that, without liberal constitutionalism, democracy itself has little chance to endure.\textsuperscript{17}

As indicated above, the general state of affairs concerning democracy and constitutionalism in Latin America is mixed. On one hand, there are countries in which new forms of radical democracy have effectively put some core elements of the constitutional state at risk, while in the rest of the region there have been remarkable advances in the consolidation of the rule of law and constitutionalism. This mixed state of affairs makes the study of constitutionalism in the region all the more important. As pointed out above, however, to do so requires a clear understanding of what exactly

\textsuperscript{12} See Miguel Schor, Constitutionalism Through the Looking Glass of Latin America, 41 TEX. INT’L L.J. 1, 5 (2006) (characterizing the transition to democracy, and therefore constitutionalism, in Latin America as “recent”).

\textsuperscript{13} See Larry Alexander, Introduction to CONSTITUTIONALISM: PHILOSOPHICAL FOUNDATIONS 1, 4 (Larry Alexander ed., 1998) (recognizing the argument that constitutions “affect human conduct” and provide order to government).


\textsuperscript{16} See Huntington, supra note 14, at 85–100 (identifying a major shift in international policies toward the promotion of human rights).

\textsuperscript{17} See generally Marc F. Plattner, Response, Liberalism and Democracy: Can’t Have One Without the Other, FOREIGN AFFAIRS, Mar.–Apr. 1998, at 171 (exploring the intrinsic links between electoral democracy and a liberal order).
constitutionalism entails, which in turn makes the adoption of an internal point of view inescapable.

Thus—and to stress a point mentioned in passing above—it is crucial that we distinguish between what is essential and contingent about constitutionalism, an exercise that will necessarily include the old but persistent issue of whether judicial review of the constitutionality of legislation represents an indispensable element of liberal-democratic constitutionalism. The reason for returning to this much discussed issue is not merely academic, but comes from the fact that, due to the enormous amount of political power that judicial control of the constitutionality of legislation puts in the hands of the courts, in the last two decades, several Latin American countries have experienced the outright destruction of, or more or less subtle intervention into, their supreme or constitutional courts by the executive branches.18 This often happens when courts engage in an activist use of their powers of judicial review in the context of low social support for the judiciary. 19 Thus, courts that were encouraged by academia and civil society to exercise their constitutional-review powers in an activist manner lost the independence from the government that they had enjoyed before and that had allowed them to engage in the admittedly more modest (but still crucial) role of exerting judicial control over the legality of administrative action. 20 At this point it is perhaps useful to note that when the courts engage in the control of the legality of governmental action, they are “working” for legislatures. Thus, in

18. Indeed, starting with Carlos Menem’s “packing” of the Argentinian supreme court in 1990 and the closing of the Constitutional Court of Peru by Alberto Fujimori in 1993, there have been episodes of intervention or outright destruction of judicial independence every few years. See Schor, supra note 12, at 4 (noting President Fujimori’s firing of three court justices and his belief that the judiciary was corrupt); Irwin P. Stotzky & Carlos S. Nino, The Difficulties of the Transition Process, in TRANSITION TO DEMOCRACY IN LATIN AMERICA: THE ROLE OF THE JUDICIARY 3, 8 (Irwin P. Stotzky ed., 1993) (discussing President Menem’s intervention into the judiciary). Other examples include Venezuela in 1999 and Ecuador in 2007. See Schor, supra note 12, at 4 (noting Venezuelan President Chávez’s inauguration-day promise to do away with the existing constitution and implement a new one, and Ecuadorian President Gutiérrez’s decision to “sack a Supreme Court that sided with his political opponents”).

19. This problem is not peculiar to Latin America. Except for the transitional countries of Eastern Europe that aspired to enter the European Union, the record of constitutional or supreme court destruction in transitional countries in that region is as bad as in Latin America. Incidents started as early as 1993, when President Yeltsin suspended Russia’s Constitutional Court. See ALEXEI TROCHEV, JUDGING RUSSIA: CONSTITUTIONAL COURT IN RUSSIAN POLITICS, 1990–2006, at 73–79 (2008) (summarizing Yeltsin’s efforts to limit the role of the Constitutional Court and related constitutional debates); Rett R. Ludwikowski, Constitutionalization of Human Rights in Post-Soviet States and Latin America: A Comparative Analysis, 33 GA. J. INT’L & COMP. L. 1, 92–93 (2004) (observing that judicial decision making in post-Soviet republics was characterized by a lack of political safeguards, but recognizing that protections were afforded under certain legal systems, including Hungary’s).

20. Note that in a region such as Latin America, where executive branches are the main human rights violators, it is no small feat to have an independent judiciary exercising control over the legality of governmental action. See Schor, supra note 12, at 3–4 (giving recent examples of executive attacks on Latin American judiciaries); see also Ludwikowski, supra note 19, at 96–97 (noting the historical impediments to an independent, robust judiciary in Latin American countries).
these situations, the judiciary may rely on the support of the legislative branch against potential attacks by the executive branch. However, this is not the case when a constitutional court or a supreme court takes on legislation backed by the executive and legislative branches on the grounds of its presumed unconstitutionality. In this latter hypothesis, courts confront two powerful entities, a context that leaves them in rather desperate need of strong support from public opinion.

Another issue that the perceived relevance of constitutionalism for democratic sustainability raises is whether adherence to constitutional values can be engineered, or if sustainability is instead a type of cultural achievement that is heavily dependent on political and cultural traditions. This in turn presents the question of the possibility of instilling cultural change of the type needed to get the values associated with constitutionalism in societies that lacked it.

As suggested above, the relationship between democracy and constitutionalism in transitional societies poses a rather formidable normative and empirical research agenda. This Article aims to contribute to that agenda by providing an account of what has happened in Chile, a country that has long been considered one where legality and constitutionalism have reached relatively high degrees of consolidation. Specifically, I analyze the evolution of the different models of constitutionalism recognized by the Chilean Constitutional Court since its introduction in 1970. The relevance of the matter at hand cannot be underestimated. Indeed, though several studies are available on the constitutional politics of Chile, we lack an analysis of the evolution of the Chilean Constitutional Court’s understanding of constitutionalism. As we shall see below, this analysis suggests that although the model of constitutionalism followed by a specific judicial body can experience dramatic changes due to institutional, cultural, ideological, and political factors (both domestic and global), the practices normally associated with even the most basic understanding of constitutionalism are heavily dependent

21. See GIUSEPPE DI PALMA, TO CRAFT DEMOCRACIES: AN ESSAY ON DEMOCRATIC TRANSITIONS 44–46, 112–17 (1990) (arguing that careful crafting of democratic transitions is a means of securing loyalty to the new system); GIOVANNI SARTORI, COMPARATIVE CONSTITUTIONAL ENGINEERING: AN INQUIRY INTO STRUCTURES, INCENTIVES AND OUTCOMES 203 (1994) (concluding that “the crafting of constitutions is an engineering-like task” because it must create “a structure of rewards and punishments”).


on the degree of state formation achieved by a given country and on social and political patterns rooted in the historical trajectory of the state.

II. The Control of Constitutional Supremacy Before the Constitutional Court: 1818–1970

A. The Rule of Law and the Emergence of an Incipient Constitutionalism in the Era of Chile’s State-Formation Process: 1818–1925

From its beginning as an independent nation (1818) through 1925, Chile did not have any judicial checks on the constitutionality of legislation. Thus, the protection of fundamental rights and liberties recognized in the constitution of 1833 was largely confined to the political process itself. Indeed, the only body formally charged with protecting the constitution was the Comisión Conservadora, an ad hoc committee of senators. This committee, however, did little to protect fundamental rights.

Yet, the lack of any judicial mechanism aimed at ensuring the constitutionality of laws did not prevent the gradual development of an effective rule of judicial independence in the last quarter of the nineteenth century, a rare achievement in a region that for the most part lacked any form of rule of law at the time. The establishment in Chile of even a rudimentary form of rule of law at this early stage resulted from the political fragmentation that gradually developed when the country consolidated a competitive political-party system around 1860. Indeed, the materialization

24. Although Chile gained independence from Spain in 1818, it was not until 1833 that it got a constitutional charter that would endure and thus shape the country’s political system. See FAUNDEZ, supra note 23, at 17–18 (tracing the establishment of Chile’s constitution of 1833 and observing that it gave the president “sweeping administrative and legislative powers, including a broad legislative veto . . . [as well as] direct control over the judiciary”). The constitution of 1833 “mutated” throughout the nineteenth century and was then formally derogated by the constitution of 1925, which would last until the military coup of 1973. See HILBINK, supra note 23, at 46–48 (noting the effectiveness of the 1833 constitution until 1925); id. at 106–14 (summarizing Pinochet’s undermining of constitutional provisions under the guise of a state emergency).

25. See WILLIAM W. PIERSON & FEDERICO G. GIL, GOVERNMENTS OF LATIN AMERICA 180 (1957) (citing Chile’s Comisión Conservadora as an example of a “permanent committee,” an institution common to many Latin American countries that was charged with guarding the laws and the constitution against the executive).

26. See id. (lamenting the ineffectiveness of permanent committees such as Chile’s Comisión Conservadora).


29. See TIMOTHY R. SCULLY, RETHINKING THE CENTER: PARTY POLITICS IN NINETEENTH- AND TWENTIETH-CENTURY CHILE 47 (1992) (describing the competitive relationship between government and opposition parties and the resultant alliance between liberals and conservatives necessary to accomplish specific political ends); J. SAMUEL VALENZUELA, DEMOCRATIZACIÓN VÍA REFORMA: LA EXPANSIÓN DEL SUFRAGIO EN CHILE [DEMOCRATIZATION BY REFORM: THE
of opposition parties with strong representation in congress eventually made the formal separation of the executive and legislative branches, contemplated in the constitution of 1833, a reality. Thus, in much the same way as happened in other places and eras, political fragmentation cleared the way for the emergence of a rudimentary, yet tangible, rule of law. This accomplishment was marked by the approval of the Law of the Organization of the Judiciary in 1875, which established a truly independent judiciary for the first time in the nation’s history.  \(^{30}\)

To sum up this subpart, Chile’s constitutional state in the nineteenth century can be characterized as rudimentary, although it slowly became more sophisticated. The strong point was the consolidation of a separation-of-powers system in which the three traditional branches could be clearly distinguished and had enough autonomy to operate without the intervention of the others. The weak aspect was that it was utterly insufficient to protect fundamental rights.

**B. Constitutionalism Without Judicial Review: The Democratic and Constitutional Model of Mid-twentieth Century Chile**

After the demise during the first quarter of the twentieth century of the progressively republican—but still oligarchic—regime that had characterized the previous century, Chile inaugurated, with the constitution of 1925, a reasonably democratic regime under a model of constitutionalism similar to that of most consolidated democracies at the time (with the exception of the United States, which had judicial review of its Constitution). It was one in which the political branches were largely in charge of controlling the supremacy of the constitution. In fact, the consolidation of the 1925 charter, following turmoil between 1927 and 1932, marked a basic consensus within the population and the political elites on the basic features of a constitutional state, which included an independent judiciary, separation of powers, and a basic set of civil and political rights. This consensus, however, did not include the notion that it was the role of the courts to be the guardian of the constitution.  \(^{31}\) To the contrary, it was widely believed that congress should be fundamentally involved in ensuring that bills being discussed were not

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\(^{30}\) See Couso, *supra* note 27, at 216 (explaining that the judiciary would have jurisdiction over most of the country’s judicial disputes).

\(^{31}\) See *Faundez*, *supra* note 23, at 1 (observing that, between 1932 and 1973, Chile’s stable political and legal institutions maintained an independent judiciary, imposed constraints on the state bureaucracy, and respected civil and political rights); *Hilbink*, *supra* note 23, at 60 (“[T]he jurisprudential record of [1924–1932] overwhelmingly reveals judicial passivity and submissiveness to the executive.”). For a discussion of political ferment at this time, including judicial independence and workers’ demands for rights, see *id.* at 55–58.
contrary to the constitution. The task was performed by a special body within the legislative branch: the powerful Senate Committee on Constitution, Legislation, and Justice (Comisión de Constitución, Legislación y Justicia), which was the functional equivalent of a constitutional court, with abstract and a priori powers of review. This committee took its work very seriously (as can be seen by reviewing the records of its work), and enjoyed a great deal of prestige. The committee was comprised of the senate’s most respected members, most of whom were prestigious jurists who had later become elected politicians.

The widespread legitimacy of this type of internal control of the constitutionality of bills being discussed by the legislature may explain the lack of interest demonstrated by the Supreme Court of Chile in exercising the somewhat limited power of judicial review of the constitutionality of legislation that the 1925 charter had given it, the so-called recurso de inaplicabilidad por inconstitucionalidad. This injunction-style writ was a judicial mechanism at the disposal of any individual who wanted to challenge the application of a particular piece of legislation considered to be in violation of the constitution. The recurso de inaplicabilidad could be filed directly to the top of the judicial branch, the supreme court. Given that it could only affect the particular case at hand, even a ruling accepting that a given piece of legislation was in fact unconstitutional left the challenged law intact.

32. Cf. Faundez, supra note 23, at 145 (noting the judiciary’s willingness to defer to the legislature and “its refusal to play its role as guardian of the constitution”).


34. See generally id. (collecting and commenting on numerous reports produced by the committee).

35. Hilbink, supra note 23, at 57. But see id. at 60 (clarifying that the judiciary was passive and generally submissive to the executive). The intellectual roots of this rather moderate type of judicial review were French. Cf. John C. Reitz, Political Economy and Separation of Powers, 15 TRANSNAT’L L. & CONTEMP. PROBS. 579, 612 (2006) (characterizing French judicial review as “quite limited”). President Arturo Alessandri, the great political force behind the adoption of the constitution of 1925 and the recurso de inaplicabilidad, was heavily influenced by the constitutional thought of French scholars including Léon Duguit. See Joseph R. Thome, Expropriation in Chile Under the Frei Agrarian Reform, 19 AM. J. COMP. L. 489, 494 n.27 (1971) (explaining that Alessandri relied on the writings of Léon Duguit in support of his position on property rights).

Duguit and fellow French scholar Laurence Lambert maintained opposite stances regarding American-style judicial review, which at the time was associated with the socially conservative Lochner Court. Lochner v. New York, 198 U.S. 45 (1905); see Alec Stone Sweet, Why Europe Rejected American Judicial Review—And Why It May Not Matter, 101 MICH. L. REV. 2744, 2757–59 (2003) (positing that the French movement championing judicial review, to which Duguit contributed, was halted by Lambert’s book, which vilified judicial review and substantially weakened French political and doctrinal support of judicial review).

36. See Hilbink, supra note 23, at 57 (noting that the recurso de inaplicabilidad could be filed to the supreme court on appeal from a case before any lower court).
Even with its shortcomings, this mechanism of judicial review represented a relevant development in Chile’s constitutional history because, for the first time, there was a judicial remedy against unconstitutional legislation. This explains why at the time of its introduction there was much expectation concerning its potential. Such hopes, however, were soon abandoned when the supreme court signaled that it was not very interested in this writ; indeed, instead of actively using this important new power of review of the constitutionality of law, the court consistently construed its power concerning this writ narrowly.\(^37\)

As if unilaterally cutting down its own constitutional powers were not enough, the supreme court showed extreme deference to the political branches of government when dealing with \textit{recurso de inaplicabilidad}. In fact, its reluctance to actually do much with what was, in any case, a mild form of judicial review meant that constitutional justice was all but absent until the late twentieth century. In fact, both conservative and progressive analysts have expressed disappointment over the way in which the supreme court dealt with the \textit{inaplicabilidad} writ. For example, in his fine analysis of the supreme court’s jurisprudence in cases of \textit{inaplicabilidad} involving private property rights between 1925 and 1973, conservative scholar Jorge Brahm expressed his deep frustration toward the record of the court in such cases, arguing that the cases allowed property rights to be systematically curtailed by the legislative branch, leading to a situation he labeled as “property without freedom.”\(^38\) From a different side of the political spectrum, Julio Faundez has eloquently shown how the Chilean supreme court utterly failed to defend even the most fundamental civil and political rights, particularly in the case of legislation banning the civic and political participation of members of the Chilean Communist Party during the years of the Cold War.\(^39\) In another work, I have argued that the reluctance of the supreme court to do much with this procedural tool was a strategic move to

\(^{37}\) The problems began rather early when the court decided to construe its constitutional powers in a way that reduced its power, declaring that it would only review legislation if its material content violated the constitution (\textit{inconstitucionalidad de fondo}) and would refrain from analyzing whether a law had been adopted in violation of the procedures set out in the constitution (\textit{inconstitucionalidad de forma}). See id. at 59–61 (noting that, following the adoption of the 1925 constitution, some supreme court judges suffered expulsion from the bench and even deportation at the hands of the executive, and thereafter displayed “passivity and submissiveness” by disclaiming their power to review certain constitutional questions).


\(^{39}\) See, e.g., FAUNDEZ, supra note 23, at 133 (stating that the supreme court’s approval of the State Security Act of 1948, which disenfranchised members of the Communist Party, “made a travesty of the principle of constitutional supremacy as it transformed the constitution into little more than a voluntary code of conduct that the legislature was free to supplement, revise, or ignore”).
avoid entering into conflict with the political branches, hoping to develop its regular judicial functions without government intervention.\footnote{See Couso, supra note 27, at 217 (noting the “strong corporate identity” that the supreme court developed between 1932 and 1973, and asserting that the court’s nonconstitutional work “was adjudicated with professionalism and independence”).}

Beyond the reasons that the supreme court might have had to avoid exercising the inaplicabilidad writ, there was wide consensus in Chile’s legal academy that the writ had been largely a failure toward the late twentieth century.\footnote{See generally Gastón Gómez Bernales, La jurisdicción constitucional: Funcionamiento de la acción o recurso de inaplicabilidad, crónica de un fracaso [Constitutional Jurisdiction: The Performance of the Inaplicabilidad Writ, Chronicle of a Failure], FORO CONSTITUCIONAL IBEROAMERICANO [LATIN AM. CONST. F.], July–Sept. 2003, available at http://www.idpc.es/archivo/1212653789a3GGB.pdf (demonstrating the failure of the inaplicabilidad writ with statistics and case studies).}

As this subpart indicates, toward the mid-twentieth century, Chile progressed toward a meaningful constitutional state, but it still exhibited some deeply problematic features, particularly in the protection of the rights of minorities. Having said this, its judiciary was independent from its government, and even if it was reluctant to exercise its moderate powers of control over the constitutionality of legislation, it was nonetheless able to control the legality of administrative action. This control was an important achievement in a region where the government often poses serious threats to the fundamental rights of groups and individuals.

III. The Era of the Constitutional Court: 1970–Present

After a century and a half in which the country lacked effective mechanisms of judicial control over constitutional supremacy, in 1970, Chile introduced a Constitutional Court. This institution, an autonomous body lying outside the regular judiciary—though integrated in part by active members of the supreme court—maintained its name throughout the eventful years that followed its creation. It was so deeply affected by the changes experienced by the political regime—from democracy (1970–1973)\footnote{See Hilbink, supra note 23, at 1 (describing General Pinochet’s 1973 overthrow of Chile’s democratic regime).} to the authoritarianism of General Pinochet (1973–1990)\footnote{Id. at 1, 177 (describing Pinochet’s regime as authoritarian before transferring power to an elected candidate in 1990).} to the transition back to democracy (1990–2005)\footnote{See Claudia Heiss & Patricio Navia, You Win Some, You Lose Some: Constitutional Reforms in Chile’s Transition to Democracy, 49 LATIN AM. POL. & SOC’Y, Fall 2007, at 163, 172 (recounting that lingering undemocratic provisions in the constitution were removed in 2005); Alexandra Huneeus, Judging from a Guilty Conscience: The Chilean Judiciary’s Human Rights Turn, 35 LAW & SOC. INQUIRY 99, 100 (2010) (characterizing the post-1990 period as a “transition to democracy”).}—that it is more appropriate to say that Chile has had three different constitutional courts. Indeed, as we shall see below, over
the last forty years, this body experienced radical changes in its nature, con-
tection of its role, and impact on Chile’s political process.

The “first” Constitutional Court (1970–1973) was modeled after de
Gaulle’s Constitutional Council, and it conceived of itself as mediator
between the executive and legislative branches. The “second” Constitutional
Court (1981–2005) was originally introduced by the military dictator as an
insurance mechanism aimed at protecting the constitutional design intro-
duced by the authoritarian regime against the perceived danger posed by
what was seen as the inevitable return to democratic rule. 45 Finally, the
“third” Constitutional Court (2005–present) has been a more conventional
constitutional court in that it actively promotes and defends the fundamental
rights of individuals and groups. In the following subparts, I analyze the
three different eras of Chile’s Constitutional Court.

A. The First Constitutional Court: 1970–1973

The origins of the first Constitutional Court can be traced to the early
1960s, when conservative President Jorge Alessandri (1958–1964) called for
a constitutional amendment to introduce a specialized body in charge of
arbitrating “jurisdictional” conflicts between the legislative and executive
branches. 46 Alessandri was deeply frustrated by what he perceived as the
unconstitutional intrusion by congress (which he did not control) into the
regulatory powers of the president. In this context—and inspired by France’s
Constitutional Council of 1958 47—he proposed the creation of a special court
empowered to declare bills adopted by the legislature, but not yet promul-
gated by the executive, contrary to the constitution. Even though Alessandri
ultimately failed in getting this amendment approved, 48 his successor, centrist
President Eduardo Frei Montalva (1964–1970), experienced the same prob-
lems and continued to press for the creation of a constitutional court very
similar to that proposed by Alessandri. 49 Frei eventually succeeded and, in

constitutional drafters “may seek to entrench judicial review as a form of political insurance” if they
expect to lose power after the constitution is in place).

46. See Verónica Montecinos, Economic Policy Making and Parliamentary Accountability in
Chile 16 (U.N. Research Inst. for Soc. Dev. Programme on Democracy, Governance, & Human
Rights, Paper No. 11, 2003) (mentioning Alessandri’s proposal to reform the constitution in such a
way as to temper the legislature’s intrusion upon presidential budgetary powers).

Council in Comparative Perspective 8 (1992) (indicating that France’s 1958 constitution
created the Constitutional Council to rule on the constitutionality of bills that the legislature has
adopted but that the executive has not yet promulgated).


49. This is confirmed by the president of Chile’s first Constitutional Court, Enrique Silva
Cimma. Interview with Enrique Silva Cimma, in Santiago, Chile (Sept. 11, 2009).
the last months of his term in office, received congressional approval to create the Constitutional Court.\footnote{50. See Enrique Silva Cimma, El Tribunal Constitucional de Chile (1971–1973) [The Constitutional Court of Chile (1971–1973)], 34–35 (1977) (noting that the law establishing the court was promulgated on January 21, 1970, and published two days later).}

As can be seen from its origin, the model of constitutionalism behind the introduction of this new body was not different from the one that had prevailed in the previous half-century in Chile—that is, one based in the supremacy of legislation and the strict separation of powers. Given this context, all that the new Constitutional Court was expected to do was to serve as an arbiter in cases of jurisdictional conflicts between the two elected branches, a role that was thought to benefit the executive branch. Since the court was not considered a guarantor of the fundamental rights of the people, the constitutional paradigm that had characterized Chile during most of the twentieth century was hardly touched by the introduction of this special organ.

As a result, the first Constitutional Court was not predisposed, and did not consider its duty to be, to enforce the fundamental rights enshrined in the constitution. The intellectual environment that produced this court involved a model of constitutionalism lacking any sort of rights consciousness. Of course, the political parlance of the time included plenty of social-justice talk, but the very notion of human rights was lacking in most of the political spectrum.\footnote{51. See Hilbink, supra note 23, at 73–74 (stating that prior to the coup in 1973, “judges generally deferred to the executive in the area of civil and political rights,” and identifying the role of the courts as “quite illiberal and undemocratic”).}

As for the actual performance of this first Constitutional Court, the least that can be said is that it was rather poor. Indeed, amidst the worst constitutional crisis the country had experienced in a half-century, the Constitutional Court was not even able to fulfill its role of arbiter between the executive and legislative branches, which was precisely the function for which it had been created. It is true that the crisis was already unfolding with full force when the court started to operate, thus giving it few chances to get enough legitimacy to act with authority. Confronted with a rather dismal record, the court’s first president, Enrique Silva Cimma, attributes the court’s failure to arbitrate effectively between the political branches to the opposition’s perception that the Constitutional Court was the ally of socialist President Salvador Allende (1970–1973); the opposition considered three of the court’s five members to be close to Allende’s coalition.\footnote{52. Interview with Enrique Silva Cimma, supra note 49. Whether or not this was the case, the Constitutional Court could have done something to mediate in a conflict that ultimately led to a military coup, an extremely unusual event in Chile’s political trajectory.}\footnote{53. Whatever the reason, Chile’s first Constitutional Court was conspicuously absent from the story of the constitutional crisis and breakdown of democracy. See Edith Z. Friedler, Judicial
To sum up, the idea at the inception of Chile’s first Constitutional Court was to enhance the powers of the executive branch against the legislative branch by providing a neutral arbiter. As a result, the court could ensure that the legislature respected the regulatory powers of the president. Thus, the model of constitutionalism underlying Chile’s first Constitutional Court was aligned with the traditional model of democracy that the country enjoyed over most of the twentieth century. It was one centered on the supremacy of legislated law and one that regarded the constitution as a document setting the basic rules of the political game rather than as a charter of rights that could be directly applied by the courts. The model of constitutionalism inherent in this first court was also in line with the legal philosophy predominant at the time in Chile, that is, the strong legal positivism advocated by Hans Kelsen and Andrés Bello earlier in the nineteenth century.

In this approach, there were no high principles to be adjudicated by the courts—just plain, simple constitutional rules about who gets to decide what according to a textual reading of the constitution.


1. The Intellectual Origins and Initial Stage of the Second Constitutional Court.—To talk about the model of constitutionalism adopted by the military regime that took over power in Chile in 1973 and then imposed a new constitution in 1980 would strike jurists as oxymoronic. A dictatorial regime characterized by gross human rights violations and complete control of political power could not possibly have any model of constitutionalism; to the contrary, it should be regarded as the antithesis of even the most basic form of constitutionalism. Therefore, a constitutional court introduced by such a regime could only be a facade. For political scientists, however, it still makes sense to study the kind of weak rule of law and incipient constitutionalism set by Chile’s military regime under the constitution of 1980 and the reintroduction of the Constitutional Court in 1981. In fact, that is precisely the point made by Robert Barros, who, after a detailed analysis of the workings of Chile’s military regime, demonstrated that the constitution of 1980 introduced a meaningful separation of powers between the military junta, which was in charge of elaborating legislation,


54. Silva Cimma endorses this interpretation of the goal of the court, adding that President Eduardo Frei was convinced that his political group (the Christian Democratic Party) would prevail in the next presidential election, so Frei saw the Constitutional Court as a body that would make it easier for the next administration to govern rather than as a brake on presidential powers. Interview with Enrique Silva Cimma, supra note 49.

55. Bello was an assistant to Jeremy Bentham before moving to Chile, where he served as a senator and played a key part in drafting Chile’s civil code. IVÁN JAKSIĆ A., ANDRÉS BELLO: LA PASIÓN POR EL ORDEN [ANDRÉS BELLO: THE PASSION FOR ORDER] 190–203 (2001).
and the head of the executive branch, General Pinochet. Barros’s argument helps to explain why Pinochet was forced to accept the 1985 Constitutional Court’s decision declaring unconstitutional a bill proposed by him that would have ensured a fraudulent plebiscite in 1988 and thus guaranteed him eight more years as president. Indeed, in a stunning and unexpected decision, the court ruled that the referendum had to be governed by Chile’s traditional voting standards—with a National Electoral Register, an Electoral Tribunal, and representatives of all political parties at the polling places—to ensure a fair electoral process. Needless to say, without this decision by the Constitutional Court, the defeat of Pinochet in the 1988 plebiscite would have been impossible.

But let us take a step back and see the origins of the constitution of 1980 and the second Constitutional Court. As is well known, on September 11, 1973, Chile’s constitutional democracy was overthrown when a military coup ended Allende’s Unidad Popular government. Less than two weeks later, the new rulers set up a special commission of pro-coup jurists charged with drafting a new constitution. The commission worked for the next five years at a rather slow pace, but eventually framed a very detailed document that drew from the constitutions of Western European nations, in particular those of Spain, Germany, and France.

The model of constitutionalism held by Jaime Guzmán, the most influential drafter on the commission, was heavily conditioned by a conception of democracy as an inevitable, but rather dangerous, regime—one that any modern society should have but that was susceptible to manipulation by demagogues to the detriment of private property rights. Guzmán called his conception of democracy “protected democracy” (democracia

56. Compare ROBERT BARROS, CONSTITUTIONALISM AND DICTATORSHIP: PINOCHET, THE JUNTA, AND THE 1980 CONSTITUTION 274–88 (2002) (describing the formal separation of powers between the Junta and the executive under the 1980 constitution and citing several examples of the Junta opposing and defeating initiatives proposed by the executive), with id. at 49–51 (describing the governmental structure before the 1980 constitution, when the Junta exercised plenary executive and legislative powers).

57. See id. at 293–302 (recounting the Constitutional Court’s ruling and the Junta’s decision to abide by the court’s ruling).


59. BARROS, supra note 56, at 36, 123.

60. Id. at 47 & n.24.

61. See id. at 223–24 (explaining the impact of the French and German constitutions on the new Chilean constitution); Javier Couso & Lisa Hilbink, From Quietism to Incipient Activism: The Institutional and Ideological Roots of Rights Adjudication in Chile, in COURTS IN LATIN AMERICA 99, 107 (Gretchen Helmke & Julio Ríos-Figueroa eds., 2011) (noting that Spain, Germany, and France “have historically served as the models for Chile’s constitutional law scholarship”).

protegida) and thought that the only model of constitutionalism consistent with it would prevent contingent majorities from changing the fundamental aspects of the political regime designed during the authoritarian period (a moment of technical rationality in Guzmán’s view).63 Although this conception of democracy and constitutionalism has some Madisonian resonances, it came from a very different intellectual tradition, one that blended Spanish nineteenth-century traditionalism, which was highly skeptical of liberal democracy, with Catholic Thomist thought.64

A crucial aspect of the model that Guzmán had in mind was that the institutional architecture built by the military regime would persevere once democracy returned. Because he had seen how easily the political system of Spanish head of state Francisco Franco had been dismantled after Franco’s death in 1975, Guzmán wanted to make sure that the same would not happen in Chile.65 The best hope, he thought, was to introduce a powerful and constitutionally autonomous body (whose members could not be impeached) with the ability to strike down bills in violation of the constitution. Of course, the Constitutional Court was just one of an array of institutions designed to prevent the dismantling of the system under democratic rule. Other measures developed for these purposes included the designation of nonelected senators by a number of public institutions (including a National Security Council originally integrated by the commanders in chief of the armed forces), the introduction of a special type of legislation that could be reformed only by a supermajority of four-sevenths of the members of congress, and the creation of an electoral system geared to promote a tie in both houses of congress.66

63. See Renato Cristi, El pensamiento político de Jaime Guzmán: Autoridad y libertad [The Political Thinking of Jaime Guzmán: Authority and Liberty] 94 (2000) (identifying protection as one of the goals of Chile’s governmental transformation, as noted in the regime’s founding documents).

64. See Belen Moncada, Book Review, 28 Revista Chilena de Derecho [Chilean J. Rights] 201, 201–02 (2001) (reviewing Cristi, supra note 63) (recognizing the influence of Thomist thought in Guzmán’s intellectual development and his skepticism of deliberative democracy); cf. Cristi, supra note 63, at 63, 162 n.2 (distinguishing between Guzmán’s conception of private property, which is aligned with that of Hobbes and Locke, and Thomist philosophy, but recognizing the metaphysical value of Thomism to Guzmán and his adherence to traditionalism).


66. See Javier Couso & Alberto Coddou, Las asignaturas pendientes de la reforma constitucional chilena [The Pending Subjects of the Chilean Constitutional Reform], in En Nombre del pueblo: Debate sobre el cambio constitucional en Chile [In the Name of the People: Debate About Constitutional Change in Chile] 191, 198 (Claudio Fuentes ed., 2010) (describing the “Organic Laws,” which require a supermajority to be enacted, modified, or abrogated); Alejandro Foxley T. & Claudio Sapelli, Chile’s Political Economy in the 1990s: Some Governance Issues, in Chile: Recent Policy Lessons and Emerging Challenges 393, 418 (Guillermo Perry & Danny M. Leipziger eds., 1999) (observing the legislative indecisiveness that resulted from the 1980 constitution due to electoral systems and the imposition of divided government); Claudio Fuentes, Elites, opinion pública y cambio constitucional [Elites, Public Opinion and Constitutional Change], in En Nombre del pueblo: Debate sobre el cambio...
Given the model of constitutionalism that the second Constitutional Court was to serve, it was expected that the court would actively strike down bills violating either the structure of government left behind by the authoritarian regime or the fundamental rights—especially private property—of individuals. In other words, the second Constitutional Court was expected to be the watchdog of the authoritarian constitutional design when the inevitable return to democracy happened.

In terms of the legal philosophy consistent with the model of constitutionalism introduced by the protected-democratic model, Guzmán seemed to expect a sort of constitutional positivism, i.e., an approach to constitutional adjudication that regarded the document’s text and history as the only source of interpretation. In other words, Guzmán and the other framers of the constitution of 1980 did not expect a change in the legal culture of those who would be at the Constitutional Court during the democratic era. The mechanical application of the letter of the constitution was expected to be enough to discipline the interpreters.

2. The Second Constitutional Court in the Era of Democratic Recovery.—The second Constitutional Court’s role during the first fifteen years of the transition to democracy turned out to be quite different from what the former regime leaders had anticipated. Indeed, to the surprise of those who expected the Constitutional Court to be an activist one—striking down every piece of legislation that touched the legal architecture left by the authoritarian regime—the court showed a great degree of deference to the legislature.67 This unexpected result can be explained as follows: although General Pinochet and the Junta tried to ensure that the Constitutional Court was composed of people loyal to the regime, that three of its seven members were also justices of the more politically neutral supreme court meant that the Constitutional Court was not completely filled with judges loyal to the authoritarian regime.68

Aside from the moderating effect exercised by these members of the supreme court—who were deferential not merely due to their relative political neutrality but, more fundamentally, due to a deeply entrenched formalistic legal culture that was hostile to judicial interference with legislated law—the reason for the passivity exhibited by the second Constitutional

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67. See Hilbink, supra note 23, at 207 (“Judges demonstrated little proclivity to enforce—much less develop—constitutional limits on the exercise of public power.”); Couso, supra note 27, at 217–18 (describing the judiciary’s loss of autonomy and dependency on the executive during the Junta); Huneeus, supra note 44, at 100–01 (noting that the judiciary has been reluctant to review legislation and to limit governmental power).

Court in the first decade and a half of Chile’s democratic transition (1990–2005) was that its intervention was made unnecessary by the existence of a significant number of senators appointed by the military regime before leaving power. This effectively gave the political heirs of the regime control over the senate, which forced the new democratic government coalition (La Concertación de Partidos por la Democracia) to negotiate every piece of legislation it wanted to pass with the opposition. Of course, we have no way of knowing what would have happened with the second court during those years of transition if the coalition had been in control of both houses of congress.

A further explanation for the relative passivity of the Constitutional Court during this period is that the leaders of the Concertación coalition respected the rules set by the constitution in terms of the limits of administrative action and the domain of legislation, making the intervention of the Constitutional Court to police these matters unnecessary.

C. The Third Constitutional Court: 2005–Present

In 2005, after fifteen years of demands by democratic administrations, the political heirs of the authoritarian regime finally introduced a set of long-overdue amendments to the constitution of 1980.\textsuperscript{69} In particular, the political parties that had supported Pinochet’s regime agreed to end the institution of unelected senators\textsuperscript{70} and to eliminate the constitutional rule that prevented the president from asking for the resignation of the commanders in chief of the armed forces and the Carabineros of Chile’s national police force.\textsuperscript{71} While the political elite and public opinion were focused on the aforementioned reforms, a small group of constitutional scholars designated by the political parties was busy at work expanding the powers of the Constitutional Court in a dramatic way, by supplementing its already important powers with concrete and a posteriori control of the constitutionality of legislation. In addition to increasing the court’s formal powers, the reforms eliminated the justices of the supreme court from the Constitutional Court’s membership.\textsuperscript{72} Both the expansion of the Constitutional Court’s powers and the exclusion of supreme court judges went mostly unnoticed by the very members of congress who


\textsuperscript{70} For a discussion of the end of the system of appointed senators and political motivations related to this reform, see Fredrik Uggla, \textit{“For a Few Senators More”? Negotiating Constitutional Changes During Chile’s Transition to Democracy}, \textit{Latin Am. Pol. \\& Soc’y}, Summer 2005, at 51, 66–67. This institution had become very hard to defend in a country that had made enormous progress in its democratic transition. Besides, given that some of the unelected senators were actually appointed by the executive branch—which had been in the hands of the opponents of the military regime for fifteen years—the institution was rather neutral in its political impact.

\textsuperscript{71} Fuentes, \textit{supra} note 69, at 1756.

\textsuperscript{72} Couso & Hilbink, \textit{supra} note 61, at 110.
would later ratify an increase in the Constitutional Court’s powers that evidently meant a decrease in their own powers.

Underlying the drafters’ consensus over the expansion of the powers of the Constitutional Court, a crucial aspect of this process was the growing influence of a model of constitutionalism that is often referred to in Spain and Latin America as “neoconstitutionalism.”73 This concept of the constitutional state regards strong and activist adjudication of constitutional rules and principles, found in domestic constitutions as well as in international human rights law, as the sine qua non of constitutionalism. Furthermore, this model of constitutionalism advocates the direct application by the courts of an ever-expanding set of constitutional rights—not only civil and political, but also social, cultural, and economic.

As has been pointed out elsewhere,74 the combined effect of the new review powers granted to the Constitutional Court by the 2005 amendment, the removal of the supreme court justices from its membership, and the increased influence of the neoconstitutionalist ideology among its justices resulted in an unprecedented willingness by the Constitutional Court to actively strike down legislation deemed contrary to the constitution. These changes also increased the court’s willingness to identify fundamental rights implicit in the text of the constitutional charter or in international human rights law.75 Furthermore, in recent years, the Constitutional Court has started to cite nondomestic sources in its jurisprudence, including international treaties and judicial decisions by international and foreign courts.76

As a result of the dynamic just mentioned and some of the court’s rulings, the court has started to be at the center of public controversy. Whereas it was largely unknown to the bulk of the population only a few years ago, this controversy has increased awareness of the court to the point of it becoming a household name. This explains its increasing relevance in the policy-making process for matters as varied as health care, tax policy, and gay rights. Thus, in just a handful of years, the Constitutional Court has transformed itself from a rather insignificant institution into a central player in Chile’s political system. This represents a significant mutation from both the model of constitutionalism prevalent before the military coup of 1973 and the model of protected democracy advocated by Jaime Guzmán and other

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73. See id. at 100–01 & n.3 (defining “neoconstitutionalism” and describing its effect on judicial institutions in Chile).
74. See, e.g., id. at 117 (“Th[e] impressive shift from deference to activism in the constitutional court can be traced back to . . . the constitutional reform of 2005, which . . . effected a major change in the membership of the court as well as in its jurisdiction and caseload. . . . The new imprint of the constitutional court can be appreciated in its . . . disposition to engage in value-laden and rights-based interpretation of constitutional law . . . and its willingness to rule against the government’s preferred policies . . . “).
75. Id.
76. Id. at 118–20 & n.39.
jurists involved in the constitution-drafting process promoted by General Pinochet’s dictatorship.

IV. Conclusion

In this Article, I have argued that the different models of democracy present in Latin America—liberal democracy, direct democracy, radical democracy, multiethnic democracy, and deliberative democracy, among others—are affiliated with different models of constitutionalism. Furthermore, each model of constitutionalism promotes distinct institutional arrangements. Therefore, there are some institutions that are simply incompatible with some forms of democratic governance.

I have also argued that, although from an external point of view one can identify different forms of constitutionalism, from a normative perspective only some of the paradigms of constitutionalism competing for acceptance by Latin Americans deserve to be called “constitutionalism.” Thus, a system that accepts the total control of the judiciary by the executive branch, as happens in some of the radical-democratic processes underway in the region, is not “constitutional.” Of course, this does not mean that all radical-democratic governments are necessarily opposed to ideals such as separation of powers, judicial independence, and personal freedoms of association and expression. But if historians are right when they assert that the weight of the past looms large in Latin America, there should be a great deal of skepticism regarding charismatic leaders that promise to end all troubles if given full political power—and lengthy periods in government—to do so.

The experience of Chile’s recent constitutional history and, in particular, that of its Constitutional Court shows how, even in a country generally regarded as a model of orderly democratic transition and great economic expansion, there has been a great deal of disagreement among its elites and population about what counts as democracy or constitutionalism and about what should be the right balance between democratic self-government and the judicial protection of fundamental rights. Indeed, the tumultuous trajectory of Chile’s Constitutional Court throughout the periods of democratization, dictatorship, and democratic transition suggests that institutions such as these necessarily absorb ideologies and practices that profoundly impact their behavior from surrounding political, ideological, and juridical environments.

The experience of Chile’s Constitutional Court over the last forty years also shows the crucial role that political and legal ideologies play in constitutional drafting, mutation, and interpretation—tasks that are, of course, always combined with strategic behavior. Indeed, aside from the strictly political factors, ideas about democracy and constitutionalism were always in the background of the remarkable changes experienced by this institution in its nature, role, and impact on the country’s political process.