

**CONSTELLATING IDEAS AND BELIEFS IN
PINOCHET'S CONSTITUTION**

**Or how knowledge was put together in Chile's
antidemocratic constitution-making process**

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Statement of originality

This is to certify that to the best of my knowledge, the content of this thesis is my own work.

This thesis has not been submitted for any degree or other purposes.

I certify that the intellectual content of this thesis is the product of my own work and that all the assistance received in preparing this thesis and sources have been acknowledged.

Mauricio Quilpatay

January 2022

Abstract

This thesis addresses the problem of how ideas and beliefs, or knowledge, is selected, articulated, and put together in constitution-making contexts. It does this by analysing the organising principles of the ideas and beliefs discussed and elaborated to make Chile's 1980 Constitution, written under Pinochet's civic-military dictatorship. This constitution, still in effect, built a 'protected' democracy through its authoritarian and anti-democratic laws and institutions.

The research draws on Legitimation Code Theory (LCT) to enact a qualitative case study of the Proceedings of the Ortúzar Commission (1973–1978). Over 417 sessions, the commissioners utilised a vast array of ideas and beliefs, ranging from the specialised knowledge of the law to political, spiritual and moral notions, religious doctrine, literary references, common sense opinions, and more, to discuss the new constitution they were making. The study shows how these variegated ideas and beliefs were grouped together using LCT's Constellations, and their organising principles are explored using LCT's dimension of Specialization to reveal their underlying legitimation bases.

The thesis analysed the organising principles of the Commission's justifications for writing of a new Constitution, of the Commission's main sources and inspirations that structured their knowledge-building, and of how they put together all these variegated ideas and beliefs to construct their Constitution. The findings in this thesis represent steps towards deeper understanding of how constitution-makers select and articulate knowledge. It also points to the social and political effects of these knowledge choices, as the analysis shows that the authoritarian aspects of the 1980 Constitution cannot be reduced to its explicitly anti-democratic laws and institutions. Rather, the findings suggest that its anti-democratic and anti-political character underpins the entire constellation of ideas and beliefs to write the 1980 Constitution. Thus, the thesis evidences the complex intertwining of various kinds of knowledge in constitutions, opening the potential for future research on their social, moral, and political effects.

In memory of all those individuals
who perhaps would have done a doctoral thesis
but had their dreams and hopes ravaged
by the Chilean dictatorship

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there is no passion without you

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CHAPTER ONE – INTRODUCTION

This is a thesis about how ideas and beliefs were constellated in a constitution-making process.

The thesis focuses on how ideas and beliefs were selected and put together in the elaboration of the Chilean 1980 Constitution. Ideas and beliefs, or the knowledge used in making in constitutions has been considered either *as* idiosyncratic expressions of those who made them, or *as* a reflection of class, religious, gender, power differences, or other social determinants. In both cases knowledge is seen *as* a vessel for something other than itself. Analyses of the Chilean 1980 Constitution have explained its anti-democratic credentials by means of highlighting its authoritarian origins, tracing the ideas and beliefs of its makers, or by criticising its anti-democratic institutions and its links to neoliberal ideas. Yet this reveals a problem in need of addressing: that knowledge needs to be ‘seen’ without engaging in social reductionism and without acquiescing to a history of ideas of which little can be explained. Thus, this study uses an approach that allows ideas and beliefs to be seen, analysed, and their organising principles revealed. Using this approach, the thesis analyses how knowledge was selected and articulated in the constitution-making process of Chile’s 1980 Constitution and provides a starting point to address how knowledge is used in making constitutions.

1.1 On ideas and beliefs in the making of constitutions

Constitutions have been characterised as key components of contemporary democracy and are becoming a usual outcome of social conflict. Although constitutions as the ‘basic law’ of

a State have a millenary history (Thornhill, 2011), their current use can be roughly dated to the last five decades. In practice, they constitute boundaries to State powers, they establish individual and social rights, and articulate the exercise of democracy. Often the result of social and political crisis, they bridge the past, present and future of a society. Hence, constitutions and especially constitution-making processes exist at the crossroads between the specialised knowledge of the law and politics.

There is a robust literature on what constitutions are, the reasons they are made and how the constitution-making process occurs. Researchers have also focused on thoroughly describing constitutional ideas used in constitution-making events (Lutz, 2008; Tushnet, Fleiner & Saunders, 2013) and how they structure the country's political institutions (Sunstein, 2001; Landau & Lerner, 2019). They have analysed how the form, or 'design' of the process shapes its outcome (Negretto, 2017b), among other substantive questions addressed by the literature. Yet our understanding of how ideas and beliefs, or knowledge, are used and transformed in constitution-making processes remains limited. This complicates the chances of democratic deliberation and agreement, as constitution-making events are becoming increasingly more public and transparent in a quest for legitimacy (Bernal, 2019; Ginsburg, Bount & Elkins, 2008; Hudson, 2021).

Specifically, how knowledge is selected, articulated, and elaborated when making a constitution remains largely unexplored by the literature. Several reasons both of theory and practice explain this. First, due to theoretical standpoints that have prevented researchers from 'seeing' knowledge, instead observing it as a container for something else such as power relations or as something incommensurable and sui generis. Second, due to a tendency in the literature to conflate constitution 'writing' and 'drafting' with constitution 'making' which further obfuscates the problem. For example, 'constitution writing' has been defined as 'a bundle of procedures' covering several stages of what the overall constitution-making process is, such as the establishment of ground rules, preparation of documents, deliberation, adoption of a final draft and even ratification and promulgation (Widner, 2005, p. 505). 'Writing' within a constitution-making process is often confused with 'the evolving field of constitutional design' (Lerner, 2010, p. 84). This understanding also serves as an example of

the theoretical stance whereby the design of a process determines the shape of its product that is common in the literature. Thus, these conceptual imprecisions reflect the status of knowledge as a second-class citizen in the constitution-making literature. Knowledge has been regarded as an idiosyncratic component of the immanent logic of constitutional law and its ideas, shielded from social determination of any kind. Knowledge has also been regarded as a reflection of the design choices for the constitution-making process and other social determinants such as class or religion to name but two. This results in a constitution-making field that handles highly specialised knowledge yet is haunted by a ‘knowledge blindness’ (Maton, 2014a).

Third, the study of how constitutional articles are discussed and then written has also suffered from a data availability issue. Traditionally a closed doors process, the way knowledge has been handled in constitution-making contexts has been hard to reach simply because of a lack of access to deliberations and discussions. Though newer processes are much more transparent, researchers have yet to capitalise on these resources. For example, Chile’s 2020-21 constitution-making process is livestreamed and available to watch on YouTube. Nevertheless, the absence of frameworks that enable researchers to observe and discuss how knowledge is worked over without engaging in reductionisms or conflation has limited the capacity of researchers to analyse the discussion and writing of articles.

In short, the actual discussion, selection of ideas and beliefs, and writing of constitutions is an overlooked subject. Neither a legal document nor a purely political act, constitution-making and the writing processes involved represent the intersection of variegated ‘kinds’ of knowledge, intentions and interests. Thus, the overall problem in writing constitutions is about the use of ideas and beliefs, or *knowledge* to accomplish the tasks expected out of a constitution, be that the articulation of State power (Thornhill, 2011), the peaceful resolution to social conflict (Samuels, 2006), the result of revolution (Ackerman, 2019), the creation of a theory of society (Skapska, 2011), among others. Constitutions ‘reflect the ways of thinking’ of the society that makes them (Skapska, 2011, p. 5), but during the constitution-writing process what these ways of thinking are and how they are put together to make a single product remain problematic. Therefore, the problem is that writing a constitution has

not been observed as relatively autonomous field of practice of its own, with its specific powers and mechanisms.

This thesis addresses the question of how ideas and beliefs are selected and used in constitution-making contexts to produce a constitution. To answer this, the research analysed how knowledge was selected, articulated, and constructed by the Ortúzar Commission (1973-1978) in the constitution-making process of the Chilean 1980 Constitution. It contributes insights and a theoretical approach that enables the researcher to ‘see’ knowledge by utilising Legitimation Code Theory, a framework that allows the underlying principles of knowledge to be observed and analysed. In turn, this provides a path between externally deterministic frameworks that see knowledge as a mirror reflection of power struggles, and those that focus on the internal logic of constitutional law and the intellectual biographies of a constitution’s writers.

The following section introduces the historic and contextual background of the making of the 1980 Constitution of Chile, written under the civic-military dictatorship headed by dictator Pinochet.

1.2 On the Chilean Dictatorship

On September 11th, 1973, at 11:55 AM, a barrage of eighteen rockets were fired from airplanes at the command of a military ‘Junta’. Their target was La Moneda, the seat of Chile’s President and of the Executive power (see Figure 1.1 below). A building rich with Chilean history, built and rebuilt over the past two centuries, by 12:15 PM it had been completely covered in flames and black smoke. The choice made by the Chilean military had been put in effect, destroying the symbol of the Chilean civilian constitutional government. As Garretón characterised, ‘September 11, 1973, brought down a political system, the Chilean democratic regime’ (2003, p. 103). ‘History will judge them’ (cited in Whelan, 1989, p. 477) President Allende said in the morning from La Moneda.



Figure 1.1 Impact of airborne rockets on La Moneda, September 11th, 1973. (Source: El Desconcierto, 2018)

After a protracted siege, soldiers broke into the building. Allende, instead of surrendering, chose to commit suicide. Six hours later, the corpse of Allende and of Chilean democracy was removed from La Moneda. The military took over and would not relinquish power until 1990.

The coup d'état of September 11th was contrived and executed by what came to be the military Junta, the head of the four branches of the military and police: Armed Forces (Pinochet), Navy (Merino), Air Forces (Leigh) and the head of the Carabineros, the Chilean police (Mendoza) (see Figure 1.2). From the onset they proclaimed to be representing the State, and that they were tasked with defending the nation's physical and moral integrity as well as its historical and cultural identity. Thus, they justified the coup as a move to prevent Chile's "systematic and integral destruction of these elements constitutive of its being, due

to the effect of the meddling of a dogmatic and excluding ideology, inspired in foreign principles of Marxism-Leninism.” (DL-1, 1973).



Figure 1.2 The Junta Militar in 1973. From left to right, Mendoza (Police), Merino (Navy), Pinochet (Army) and Leigh (Air Force)

The military Junta imposed Pinochet as President of the country and declared that it would work to reinstate the rule of law. In its first public message the Junta argued it would restore respect for the Constitution “to the extent that the country’s current situation would allow”. Additionally, they expressed they would reinstate “Chileanness” (Chilenidad), justice and repair what they characterised as a “broken institutionality” (DL-1, 1973) that had been responsible for the conflict to which they posed themselves as its solution.

At 10 PM on the day of the coup the four members of the Junta chose to appear on television. There, they announced that they would take control of the government. Air Force commander Leigh expressed they had been compelled to break the military’s neutrality toward politics

because three years of ‘the Marxist cancer ... have brought us to a situation of economic, moral, and social disaster. We are certain that the great majority of the Chilean people are determined to struggle against Marxism and to extirpate it [to the last consequences]’ (cited in Sigmund, 1977, p. 248). Police General Mendoza declared that the coup was ‘not a question of destroying ideological tendencies or currents nor of personal vengeance, but of re-establishing public order and restoring the country to the path of fidelity to the Constitution and laws of the Republic’ (cited in Sigmund, 1977, p. 249). This sentiment was maintained by the Junta, as years later in a message regarding the newly imposed 1980 Constitution, Pinochet expressed that

“From the beginnings of the current Government we have held that the Military Pronouncement of the 11th was not only an answer to the breaking of the institutionality that had definitely run out, but also that it was destined to stop the disintegration of the country, which was threatened from the root of the national being.” (From the companion text to the 1980 Constitution titled “Message to the country” by Pinochet. 10th August 1980)

Altogether, these claims characterise the Chilean civic-military dictatorship. Their desire for political and legal legitimation could be seen in their constant need to justify their actions both to the Chilean population and to international opinion. The concern for legitimacy continued throughout the 17 years of military rule (1973-1989). Yet, by November 1973 the Junta declared that it had assumed the ‘constituent, legislative and executive authority’ of the country (Arriagada Herrera, 1988, p. 9). This meant that they took over all branches of state power save for the Judicial, which remained superficially independent. The Junta justified its existence and that of the permanent restriction of civil rights based on the legitimacy of its goals and the illegitimacy of the Marxist-Leninist ideology that according to them had poisoned Chile.

Immediately after the coup the Junta contacted a group of lawyers and intellectuals and tasked them with drafting a new constitution. This group, known as the Ortúzar Commission,

would work continuously from 1973 to 1978 (See Figure 1.3), which culminated with their presentation of a constitutional draft to the Junta. In parallel, they also served as legal advisors to the Junta. In 1976, the national intelligence agency (DINA) assassinated coup refugee Orlando Letelier and his aide Ronni Moffitt in Washington, D. C. To placate international pressure towards democratisation, the Junta accelerated the plans for the new constitution. Pinochet's 1977 Chacarillas Speech established that the new constitution would come into effect by 1980. Until then the Commission had been slowly discussing the new Charter, as well as aiding the Junta in writing Decree-Laws. After the speech, the Commission redoubled their efforts.



Figure 1.3 Ortúzar Commission, ca. 1978. Source: Fundación Jaime Guzmán.

This new constitution draft was presented in 1978 to the Junta, which handed it to the Council of State. This body analysed and proposed changes to it before passing the document to Pinochet in 1980, who then reviewed it with a select but unknown group. Nevertheless, most of the text corresponded to the first draft presented by the Ortúzar Commission, save for

some changes in numbers and other minor aspects (see Carrasco Delgado, 1981). This text was presented as the new Constitution to be voted in 1980 in what has been characterised as a highly questionable and bogus plebiscite (Fuentes, 2013). No electoral records existed, voters could vote anywhere, and several other dubious voting practices have been pointed out alongside an almost non-existent opposition campaign. Under these circumstances the Constitution was approved and put in effect in late 1980.

1.3 The relevance of the 1980 Constitution

The law, and more specifically the rule of law, influences the way in which individuals behave, having a ‘profound civilizing impact on society’ (Přibáň, 2020, p. 111). The constitution of a country constitutes its political field, which includes configuring the basic law of the State and the delimitation of its powers. However, it also implicates the constitution of the citizen as a political actor. Hence, the 1980 Constitution as the basic law of the State influences the people’s ‘perceived presence in everyday life’ (Heiss, 2017, p. 471) of the law. However, the analysis and critique of what these effects are have resulted in two main criticisms.

First, that the 1980 Constitution created a ‘protected democracy’ in the country (Vergara Estevez, 2007). This ‘protected democracy’ has been understood as constituted by the binominal electoral system, the political role of the Armed Forces, appointed Senate seats¹, the attributions and composition of the Constitutional Tribunal, public administration staff that could not be removed by the democratically elected Presidents, ‘mooring laws’ (leyes de amarre) among many others (Huneus, 1997). These deeply entrenched ‘authoritarian enclaves’ gave right-aligned parties political power even if they were a minority in congress (Atria Lemaitre, 2013; Heiss, 2017), creating a minority veto with antidemocratic credentials. Second, that the 1980 Constitution promotes the neoliberalisation of the social spheres, mainly the economy but also Chilean society in general (Aste Leiva, 2020; Ramírez, 2020;

¹ Until the constitutional reform of 2005 there were 9 Senate seats which were appointed by the National Security Council, the Supreme Court, and the President. This was created by the 1980 Constitution to foster a minority veto that would protect the interests of those politically aligned with the dictatorship (Moulian, 1994).

Viera Álvarez, Castro Hernández & Vera Abarzúa, 2021). In sum, the literature has focused on institutional ‘locks’ and authoritarian enclaves to analyse the 1980 Constitution and levy criticisms against it on the basis that it prevented democracy from developing in the country. This has led a significant portion of the literature to argue that the ‘most important legacy of the dictatorship was, therefore, an institutional framework that limited democratic political action long after Pinochet left power’ (Charney & Marshall, 2021, p. 16).

Yet this is a reductionist comprehension of the 1980 Constitution and of constitutions in general. Constitutions as fundamental laws of the polity are the product of law and politics and thereby shape several spheres of human action. Citizens and their political ways of being are ‘made and unmade by way of law and politics’ (Bosniak, 2010, p. 11), simply because constitutions as the regulation of the ‘exercise of political power’ (Thornhill, 2011, p. 10) imply political actors that create them but that do not exist in a vacuum. For this reason, the socio-political impacts of constitutions and specifically of the 1980 Constitution have yet to be explored. The literature has so far analysed the interaction between law and politics and the manifold institutional frameworks provided by constitutions. However, the role constitutions play in shaping the boundaries for political actors’ attitudes and dispositions has been neglected.

This thesis represents a first step to bridge this gap. It observes the knowledge construction of the 1980 Constitution, the ideas and beliefs discussed in its making, and analyses the legitimation claims and bases of these concepts. Thus, the thesis has two purposes. Namely, to explore how knowledge is utilised and threaded together in constitution-making contexts. The second purpose is to broaden the understanding of the knowledge enacted in the making of constitutions beyond the legal and institutional, toward the moral and dispositional.

1.4 Research questions

To achieve the purposes of this thesis, the study is structured around a main research question and three specific ones. The main question asked is:

How did the Ortúzar Commission select and articulate ideas and beliefs in making the Chilean 1980 Constitution?

And the three specific research questions to answer it are:

1. How did the commission argue for the construction of a new Constitution?
2. What were the underlying ideas and beliefs that structured their writing?
3. How did they set out to achieve their goal for the new Constitution?

To answer these questions, the thesis draws on the toolkit provided by Legitimation Code Theory, specifically its dimension of Specialization and its constellations and cosmologies tools. The framework allows researchers to observe knowledge practices and provides a way to translate between data and theory, increasing the capacity for engaging in cumulative disciplinary knowledge-building.

1.5 Structure of the thesis

This thesis is presented across eight Chapters. Chapter Two provides a review of the literature on writing constitutions, itself a subset of constitution-making and of studies of constitutions. The chapter argues that the theoretical frameworks utilised by researchers have precluded an analysis of how ideas and beliefs are selected and put together in constitution-making events. Chapter Three introduces Legitimation Code Theory (LCT) as a framework that allows knowledge and its characteristics to be observed, analysed and its underlying principles explored. Chapter Four describes the methods used to answer the research questions of the thesis, the data set and how LCT was deployed in the analysis. Chapter Five elaborates on the reasons given to justify the creation of a new Constitution after the military coup of September 11th, 1973, showing that these can be understood as five ‘rationales’. Chapter Six analyses the ideas and values that structure the making of the new Constitution. These are presented as three ‘pillars’ from which the makers drew to craft their constitutional draft. Chapter Seven studies how the constitution-makers articulated together these variegated and potentially contradictory ideas, values, justifications, and expectations into their concept of the ‘common good’. Chapter Eight ties together the research findings and draws conclusions

for the Chilean process and for constitution-making literature in general. It also explores limitations to the study and signals future research.

CHAPTER TWO – LITERATURE REVIEW

2.1 Introduction

Chapter one introduced the problem of how the Chilean Constitution of 1980 was made. It argued that, although its production context has been thoroughly analysed by a wealth of sources, there are important questions still unanswered regarding how its ideas were selected and put together to construct the constitution.

This chapter reviews the literature on how constitutions are made and asks the questions introduced in Chapter One to the approaches currently used to analyse constitution-making. Section 2.2 describes the general panorama of scholarship that has taken constitutions as its object of study. It summarises the literature as stemming from three disciplinary approaches corresponding to three different kinds of questions asked. The disciplines are law, political science, and sociology, and the main questions asked are: what are the ideas used in constitutions; what are the social factors that determine the shape constitutions take and their effect; and what is their role in the social legitimation of the moral and legal order. These are briefly introduced to provide a perspective on how have constitutions been conceptualised in the literature. Section 2.2.1 then delves into constitution-making as a subset of these studies and organises the literature on the basis of either internalist or externalist approaches to the object of study. The Sections 2.2.2 and 3 describe these in turn, and evidence that there is a gap in the literature on how ideas are selected and constructed in writing constitutions. Section 2.3 focuses on the case of the Chilean Constitution of 1980, and further specifies the literature gap. Finally, Section 2.4 turns to critically review the literature on sociological approaches to knowledge to bridge the gap. It concludes that to answer to the research

question requires a theoretical framework that allows knowledge to be ‘seen’. Thus, the current Chapter finishes by arguing that Legitimation Code Theory provides such a framework.

2.2 Research approaches to constitutions

The study of constitutions dates to Aristotle, but contemporary scholarship on constitutions rose as a response to the last 50 years of constitution-making processes. Especially after the 1970s an increasing number of constitutions have been made, which some have described as a third ‘democratisation wave’ after the Second World War (Huntington, 1993) and a fourth one after 1990. Specifically, between 1974 and 2012 about 192 constitutional referenda have occurred, whereas in the previous two centuries the number barely reached 117 (Eisenstadt, LeVan & Maboudi, 2017). This signals that the process of making constitutions is becoming more common in time. Chile, for example, a country known for constitutional stability, has seen at least 3 major constitutions since its 1810 independence (1833, 1925 and 1980), and at the time of writing is in the middle point of its 2021–2022 constitution-making process. Instead of attempting a summary of the world’s history of constitutions (Ackerman, 1997; Michele Rosenfeld & Sajo, 2012; Tushnet et al., 2013), this section turns to briefly summarise the scholarship on constitutions, and then on the process of making constitutions.

If an outside scholar were to look at the panorama of the literature on constitutions, they would see that it is dominated by three main ways of approaching the object of study. These three areas roughly correspond to disciplinary boundaries between the fields of law, political science, and sociology. These roughly correspond to concerns with constitutional ideas, with the effects and causes of constitutions in the political sphere, and with the question of the social legitimation of the political order. Looking at the literature, this outside scholar would see that a large portion of the landscape correlates with ‘constitutional studies’ or ‘constitutional’, named by scholars from the field of law. The second important area, mostly populated by political science scholars stands next to the first and tries to explain the way the first territory operates, although the borders between the two have recently started to blur. A much smaller area, almost indistinguishable from afar, falls under the realm of sociology. Each area of the scholarship on constitutions is characterised in turn.

Constitutionalism as a field of legal research tends to conceptualise constitutions as legal documents that act as the basic law of a country. Law scholars characterise constitutions as ‘a set of rules and principles’ that govern the State (Galligan, 2014, p. 7), a ‘code of rules’ (Finer, 1979, p. 15). To them, ‘[a]rguably, the most important role of constitutions’ is to limit the behaviour of the State and government in their use of powers (Elkins, Ginsburg & Melton, 2009, p. 38). This has been the traditional way of thinking about constitutions during the past century. It comprises the analysis of the kinds of ideas put in constitutions, how the rules and codes are written in a legal language, what these choices mean for judicial practice, and how they have been utilised in ruling. Usually, this literature is characterised by case study analyses or comparative studies of constitutions (Ginsburg & Dixon, 2011; Hirschl, 2014). These studies suggest that constitution-makers take ideas from various legal sources or traditions, such as religion (Arjomand, 1989; Catá Backer, 2009), geography (e.g., Davis, 2003), other constitutions and from constitutional ideas in general (e.g., Chang, 2016; Law, 2016), or even entire other intellectual disciplines altogether (e.g., Tribe, 1991). Moreover, the literature has seen some shift towards the relation between constitutions and social legitimacy (see for example Arato, 2017; Colon-Rios, 2012; Elgie & Zielonka, 2001), such as in cases of imposed constitutions (Albert, Kontiades & Fotiadou, 2019; Chesterman, 2005) or in contexts of regime change (Benomar, 2004; Chambers, 2004). Nevertheless, this scholarship tends to emphasise the breadth of constitutional ideas available in past and present Constitutions (e.g., Depaigne, 2017) or in the philosophy of law (Barnett, 2003) as its main form of research.

However, political scientists have remarked that research on constitutions had to ‘go beyond constitutional case law and the operations of a high court’ (Scheppelle, 2003, p. 15). Thus, this discipline conceptualises constitutions as the product of social and political processes, usually in contexts of crisis. This approach therefore emphasises looking outside constitutions themselves for answers about them, an approach which has slowly gained traction among law scholarship, fostering interdisciplinarity. The questions posited are not necessarily about the rules and procedures themselves, but in how choices made and put in the constitutions can be explained by social or contextual factors. Their questions also seek to link constitutions as determinants of, for example, democratic stability (Negretto, 1999).

Thus, research from this standpoint has provided insights into how the design (Negretto, 2017a), socio-political context (Arafat, 2017), national history and symbols (Collins & Hanafin, 2001), and international pressures may affect the contents and shape of constitutions.

Finally, sociology scholars acknowledge that their discipline has overall paid little attention to constitutions until recently (see Thornhill, 2011 for a deeper recount). This is despite the case that early, classic sociologists did write some considerations about the role constitutions played in the legitimation of nation-states, law, and politics in general. Nevertheless, the past decade has seen a surge of sociological approaches to constitutions, leading to the rise of a sociology of constitutions (Febbrajo & Corsi, 2016; Thornhill, 2011), constitutional sociology (Teubner, 2013) and other projects (Avbelj, 2018; Skapska, 2011). Sociological approaches put constitutions into even wider contexts such as those of transnationalism (Teubner, 2018), and global democracy (Sajó, 2019; Avbelj, 2018). Besides widening the scope of what constitutions *do* for nation-states or democracy, however, the novelty of these sociological approaches is the addition of social and political layers of meaning in what constitutions *are*. These approaches have one aspect in common, in this sense.

While law and political science focus on the legal and the institutional orders constructed by constitutions, sociological approaches hint that these aspects may be rather secondary. Thus, with marked irreverence wrote that

“Though lawyers may not like to admit it, law does not play the primary role in state constitutions and other sub-constitutions. (...) Law, in such processes, plays an indispensable yet merely supporting role” (Teubner, 2012, p. 103).

To this approach, the law and the organisation of the State play a supporting role to the construction of values, beliefs, and even moral orders within countries. Constitutions are understood as existing in the interstice between law and politics (Schwartz & Meinero, 2019). Questions of social cohesion and the political identity of the constituted national societies are

helped by constitutions (Skapska, 2011). Other authors characterise this as a quest to explain ‘the normative structure of modern society’ (Thornhill, 2011, p. 8). Thus, the sociological approach to constitutions highlights providing “descriptive interpretations of the normative political foundations of modern society” (Přibáň, 2012, p. 458). This approach therefore asks about the role of constitutions in stabilising social relations in an increasingly complex world society (Chernilo, 2014) where social and moral cohesion become increasingly rare. It also posits questions about what the taken for granted legal concepts are for, such as the legal concept of the rule of law (Krygier, 2009). Importantly, this marks a shift from other disciplinary approaches to constitutions. From this standpoint, the law and the political organisation of a nation-state, for example, become means, choices conscious or structural, or functions that contemporary democratic society utilises. These have been linked by researchers to social goals, be these teleological or merely systemic (see Avbelj, 2018; King & Thornhill, 2003).

In sum, the literature on constitutions is wide in scope and ample, mostly analysing constitutions already put in place. However, the research question specifically points to the process of how constitutions are made. For this, the next section delves deeper into the corresponding literature.

2.2.1 How are constitutions made?

The constitution-making literature consolidated itself within constitutional studies in the late 1980s and early 1990s. Due to the fall of the Soviet Union, geopolitical events in the Middle East including international war and invasion, and regime changes in South America, the number of constitutions being made grew, allowing a surge of constitution-making studies. However, the question of how constitutions are made escapes simple answers as it is a complex phenomenon that involves multiple social strata, such as international relations, national socio-political context, and several social and individual factors (Ginsburg, 2016; Ginsburg, Elkins & Blount, 2009). Nevertheless, constitution-making has been characterised as the process whereby ‘a group of political actors engage in drafting, discussion and approval’ of a Constitution (Negretto, 1999, p. 196). To make sense of the literature, this

section organises and reviews the literature on constitution-making according to internalist and externalist positions to explain the phenomenon (Barber, 1962; Maton, 2005).

Internalist literature seeks to explain the outcome of a constitution-making process by using an immanent logic of constitutional ideas. In other words, internalist literature observes constitutions as an autonomous, uncontaminated by the ‘workings of social factors’ (Barber, 1962, p. 55). Externalist literature, on the other hand, seeks to explain constitution-making by social factors or determinants that influence its design and outcome.

2.2.2 *Internalist explanations*

Since constitution-making processes are done by specific, individual actors, done in specific countries, the internalist literature tends to focus on the distinct characteristics that set them apart from other processes. Hence, a first kind of internalist literature to constitution-making is symbolised by the US ‘founding fathers’ analogy. This approach seeks to explain a country’s constitution by analysing the subjective characteristics of the actors involved in the process (Beeman, 2010; Klarman, 2016; Rakove, 1997; Stewart, 2007). Among these, researchers often emphasise passion and rationality as the main factors that determine the resulting constitution (Brown, 2008; Elster, 1997). There is an abundant literature that analyses the case of the US constitution as a special, almost ‘miraculous’ case (Bowen, 1986) of extreme longevity (Jillson & Eubanks, 1984).

Other internalist literature eschews analysis of individuals and focuses instead on the nation’s values and its history as the main explanatory factor (Jacobsohn, 2010). For example, by arguing that constitutional choices can be explained through the local intellectual history (Hilbink, 2009; Martínez-Lara, 1996; Rakove, 1997) or social, ethnic, or cultural tradition as crucial determinants to the constitution-making process (Přibáň, 2004; Zubrzycki, 2001) even if these come from imposed or borrowed influences (Schauer, 2005). Arguments that declare the incompatibility of alien ideas to local contexts, such as the doctrine of the rule of law, also attempt to explain constitutions by characterising the specific history of a country (Lutz, 2008; Rosen, 1999).

2.2.3 *Externalist explanations*

From the externalist position, constitution-making is constructed as an object of study that is explained mainly by factors external to it. This approach argues that how ‘the constitution is made, as well as what it says, matters’ (Hart, 2003, p. 4), and that the analysis of these factors reveals the true scope and impact of constitutions” (Eisenstadt et al., 2017, p. 3). Among these the literature highlights a nation’s government regime and electoral system, the social and political structure, religious, class or gender struggles, as well as international pressures. These correspond to ‘the contexts in which constitution making takes place, its motivations, the theories and processes that guide it, and its effect’ (Landau & Lerner, 2019, p. 1). This approach therefore conceptualises constitution-making as a time and place where socio-political interests meet, and where the design of the process directly determines its outcome (Elster, 1995; Ginsburg, 2012).

Perhaps the most salient example is research that explains constitutions by class or groups’ interests and ideas (Bayar, 2016; Zubrzycki, 2001). This type of explanation is invoked to explain differences between processes that appear to be similar, such as Egypt and Tunisia’s in early 2010s, but which produce vastly different outcomes (Brown, 2018; Landau, 2013). Gargarella’s (2013) masterful oeuvre on Latin American constitutionalism links three overall types of constitutions in the region to two centuries of socio-political conflict.

In terms of politics and institutional arrangements internal to the countries, the main factors analysed have mainly been political party dynamics (Bruneau, 1990; Reich, 2007); national, political and economic interests (Bhandari, 2014; Ginsburg, 2012; Paixão, 2015; Ríos-Figueroa & Pozas-Loyo, 2010); the interests of the political elites (R. Dixon & Ginsburg, 2017); autocrats’ ‘choices’ in dictatorships (Ginsburg & Simpser, 2013; Michalak & Pech, 2013), or even the status of post-war or post-dictatorship contexts (Jackson, 2008; Martínez-Lara, 1996; Soltan, 2008).

Other scholars have utilised econometric and rational choice methods to analyse the choices made in constitution-making contexts, a subset discipline named constitutional economics (Buchanan, 1990, 1991; Voigt, 1997; Voigt, 2017). This approach seeks ‘optimals’ for the

design of a constitution (Auriol & Gary-Bobo, 2006; Bell, 2017; Faria, 1999). However, the approach also has also analysed the socio-economic effects of these choices (Persson & Tabellini, 2003; Boamah, 2018; Vanberg, 2018).

Additionally, externalist research has also focused on the design of the constitution-making process as a factor in its resulting outcomes or even its failure (Petersen & Yanaşmayan, 2019). For example, the degree and form of public participation (Abdelgabar, 2013; Hudson, 2021; Landemore, 2015; Moehler, 2006), the inclusion of ethnicities and nations' histories and interests (Magnet, 2015), the democratic supervision of the process (Landau, 2017) and limitations to the process by other State powers (Stacey, 2011).

In sum, externalist literature explains the outcome of a constitution-making process by analysing the social and contextual factors as its main determinants. This literature introduced social and political elements to the traditionally law-based viewpoint on how constitutions are made. This context explains Eisenstadt's idea that:

Unlike legal scholars who may presume that writing a constitution is somehow “above politics,” we as political scientists see the process as a rare event that concentrates the attention and political energies of a nation.”
(Eisenstadt et al., 2017, p. 3)

The findings resulting from this approach have been acknowledged in constitutional studies and have fostered interdisciplinarity as law scholars have integrated some of these ideas back into their own viewpoints (Ginsburg & Dixon, 2011; Klein & Sajó, 2012). The result is a growing discipline of constitution-making that sees the process in relation to questions of social order (Lerner, 2010) and internal peace (Friedl, 2010; Samuels, 2006) and legitimation (Albert et al., 2019; Figueroa García-Herreros, 2019).

However, for a growing literature on how constitutions are made, research on how constitutions are written remains scarce. The literature tends to use 'writing' and 'drafting' and even 'making' interchangeably, though they may mean different aspects of the process.

Writing refers specifically to the process of discussing and selecting knowledge, and then placing it in the constitutional draft in the form of articles. Drafting and making are often used interchangeably with the entire constitution-making process. The small group of literature that analyses the writing process of a constitution exhibits two main characteristics. First, that it is largely externalist literature that focuses on the design of the process of writing (for example Hudson, 2017; Widner, 2005; Ludsin, 2011; Devereux, 2015; Bannon, 2007). Some studies do employ an internalist approach to writing, but their focus tend to criticise the form of constitutional writing than focus on content (for example, Dixon, 2015; Pulido, 2020). Second, that it rarely analyses the actual process of discussing, selecting, and constructing knowledge, focusing instead on providing evidence that influence A or B was written as X or Y in constitutional drafts.

Nevertheless, a small number of works have analysed the specifics of writing a constitution. Coffey (2018) analysed over 50 draft versions of the 1937 by employing process tracing to clarify conflicting influences over the final text. Thus, Coffey's work sequentially highlights intellectual and ideological influences on the drafts and drafters of the Irish Constitution. On a smaller scale, Mujuzi (2019) analysed religious influences on the proceedings of the Constituent Assembly of Uganda's 1994–1995 constitution-making process. Mujuzi linked versions of constitutional provisions such as State religion and children's right to healthcare with ideas from Uganda's religious groups and individuals. In both cases, however, the analysis stops short from providing a way of looking at ideas and beliefs beyond the specific empirical cases. This precludes drawing general conclusions on how knowledge is selected and articulated in constitution-making.

2.3 The case of the 1980 Constitution

There is abundant scholarship on the Chilean Constitution of 1980 that comprises a wide range of disciplinary standpoints, from law, political science, to sociology (Garretón, 1982; Ramírez, 2020) and even to the humanities (Timmermann, 2011). There is a large body of scholarship that studies the Constitution as it exists in the context of the Chilean legal framework, both from internalist and externalist standpoints. The 'history' of the Constitution itself once promulgated is also well known and has been thoroughly detailed

(Ensalaco, 1994; see Nogueira Alcalá, 2008). It is a constitution that has been characterised as one that ‘has served its purpose, however defined’ (Ginsburg, 2014, p. 24), this purpose being a ‘strategic decision to control the future’ (Zaiden Benvindo, 2019, p. 171). As such, it has been characterised as providing stability, both political and economic, especially when compared to neighbouring countries (Larroulet Vignau, 2000; Navarro Beltran, 2001; Raineri Bernain, 2001). However, it has also been the subject of severe criticisms as an anti-democratic constitution, due to the presence of a series of ‘authoritarian enclaves’ (Garretón, 1990) or ‘locks’ (Atria Lemaitre, 2013) in it, or due to its ‘cheating’ (Zúñiga Urbina, 2014) or by being a ‘straitjacket’ constitution (Suárez, 2009).

Most of the literature however tends to focus on how specific constitutional articles may be interpreted given its context, a body of literature too numerous to summarise. However, scholars have also argued about its negative or restricting effects on the economy (Vallejo Garretón, 2016; Viera Álvarez, Bassa Mercado & Ferrada Bórquez, 2016), individual rights (Bassa, 2008), democracy (Atria, Salgado & Wilenmann, 2017; Fuentes, 2011; Heiss & Szmulewicz, 2018; Tsebelis, 2018) and the interaction between State institutions (Loveman, 1994). A thorough, systematic review of the literature analysing or commenting on the 1980 Constitution lies beyond the scope of this review.²

Nevertheless, the Chilean case constitutes a particular conundrum and an understudied category (Ginsburg, 2014) for the global context of constitutionalism. The 1980 Constitution is a self-limiting document produced by a military dictatorship, which constitutionalist theories suggest would be contradictory (Hart, 2001; Widner, 2008). Furthermore, it provoked the question as for why a democracy would accept a constitution with such undemocratic origins, thereby sparking numerous discussions regarding its legitimacy (Cea

² The literature discussing the contents of the 1980 Constitution, especially those made from the viewpoint of the law are innumerable. It dates from the moment the Constitution was promulgated. As this Chapter is not intended as a mapping of the literature on the 1980 Constitution as an object of study, this literature has been skipped. However, some works represent significant milestones in the study, analysis, defence or criticism of the 1980 Constitution, its reforms and its relation to democracy. See for example Cristi (1998); Bassa & Viera (2008); Fernandois Vöhringer (2011); J. Couso, Coddou, Lovera & Guilof (2013); Díez (1999); Cea (1988); Silva Bascuñán (1997); Ginsburg (2014); Verdugo Marinkovic, Pfeffer Urquiaga & Nogueira Alcalá (1999); Garcia & Verdugo (2015).

Egaña, 2018; Fernández González, 2001; Navia, 2018) or the absence of it (Fuentes, 2013; Heiss, 2017); and regarding its democratic quality or attributes (Suárez, 2009). Some of the literature leverages these criticisms to call for a new Constitution, a project that gained traction during the past decade (Ríos Álvarez, 2013; Ríos Álvarez, 2017; Zapata Larraín, 2020) and which, for reasons yet to be further analysed and explored, resulted in the 2021 Constitutional Convention.

However, the research on the making of the Constitution is scarce, and of its writing even more so. Barros' work on the relation between the Constitution and the Dictatorship's political project (2002) offers a thorough and complete analysis of the social context, but surprisingly, merely glosses over the constitution-making event. It dedicates only a handful of pages to the Ortúzar Commission, mostly describing political links of its members (Barros, 2002, pp. 88–96). To date, there exists only a handful of research that analyses the data from the constitution-making process itself (Cristi, 1998; Montes & Vidal, 2005; Paz Caro, 2014; Ramírez, 2020). A unique conceptual analysis can be found in Cordero (2019). Their work analysed the concept of society that was being discussed in the Commission and showed that the constitution-making moment was a time where social ideas were re-defined, and the entirety of society as a concept as upturned and configured anew. Another important work by Viera Álvarez (2011) explicitly analyses the 'genesis' of the Constitution yet it scarcely mentions the Ortúzar Commission or the constitution-making process itself. Excluded from this categorisation are the numerous analyses of specific constitutional articles that seek an 'originalist' reading of the Commission sessions (Muñoz León, 2007) as these seek clues on how to interpret the law and not explain the constitution-making process.

Rather, these examples as well as the review of the literature shows that the constitution-making event of 1973–1980, the work of the Ortúzar Commission (1973–1978) and their writing process is understudied. Two main reasons can be extrapolated from the literature. First, a methodological reason. Approaching the data of the Commission sessions is a large undertaking, as it amounts to over 4 million words in almost eleven thousand pages worth of data. The second reason is theoretical. So far, the disciplinary approaches and standpoints that have been used to analyse the Chilean constitution-making process have been incapable

to grasp knowledge as an object of study. In this sense, the literature on how ideas and beliefs are selected, articulated, and written into constitutions presents a theoretical gap. This thesis provides a step to overcome the gap.

This gap is conceptualised as a ‘blindness towards knowledge’ (Maton, 2014a) in the next section. It is expressed in how the international literature on constitutions and constitution-making counts Chile among the countries that have made ‘substantial amendments to their written constitutions’ (Bâli & Lerner, 2017, p. 1). The blindness is such that, from a quantitative viewpoint, the number of constitutional reforms and especially the 2005 reform may support the idea that the 1980 Constitution is no more. The changes made so far have been mainly the removal of Pinochet’s signature, the removal of non-democratically designated and lifetime senators, changes to the electoral system for Congress, and the removal of the role of the military as ‘wardens’ of the institutional order. These have been acknowledged as important steps in designing a more democratic constitutional order. President Lagos in 2005 declared that ‘today we have finally a democratic Constitution’ (CNN Chile, 2020). The 2021 constitution-making process for a new Chilean Constitution may indicate it may not be the case, otherwise Chileans would have hardly demanded a new constitution. The ‘blindness’ highlights an oversight in the literature, in that despite these substantial amendments and changes to the institutional and political design in the Constitution, it remains Pinochet’s Constitution.

Evidence of this oversight in the literature can be found in the first ‘chapter’ of the 1980 Constitution titled ‘bases of the institutional order’ (bases de la institucionalidad; See Appendix for an English translation). It remains practically unchanged to date. Article 1 itself is intact, save for changing the word ‘men’ to ‘persons’, for a more gender-neutral writing. The 1980 Constitution’s concepts and beliefs responsible for the ‘extralegal effects of a legal object’ (Grimm, 2005, p. 193) remain untouched. In other words, the ‘underlayer’ of the Constitution remains ‘in good health’ (Soto Barrientos, 2011, p. 20). This signals the existence of a gap in the literature in the form of the knowledge utilised and threaded into the Constitution. Rightfully so, analysts and critics have focused more on the political institutions embedded in the Constitution than on these extralegal, moral and ‘political’ aspects. This

calls for a turn toward knowledge as an object of study in search of ways of looking and analysing knowledge that may shed light on the issue.

The next section critically reviews the sociology of knowledge literature for a framework that would enable the thesis to answer the research question.

2.4 A note on ‘knowledge’

The previous sections showed that the literature on how ideas and beliefs are selected and constructed writing constitutions is scarce. Furthermore, due to both methodological and theoretical gaps, the selection and construction of knowledge in the Chilean constitution making process of 1973–1978 remains largely unexplored.

This section critically reviews the literature on the sociology that has knowledge as its object of study. First, it reviews approaches within the discipline that would allow the research questions to be answered: how ideas and beliefs were selected and articulated in making the Chilean 1980 Constitution. Then, it describes the standpoint of the research and provides links to the next Chapter.

Importantly, this section neither reviews the entire discipline of the sociology of knowledge, nor the sociology of the social conditions of possibility for knowledge. These have been long-standing concerns for the discipline (Mazzotti, 2008a; Stark, 1998; Stehr & Meja, 1990), but it escapes the scope of this thesis. This study is also not concerned with ‘true’ or ‘objective’ scientific knowledge (Barnes, Bloor & Henry, 1996; Mazzotti, 2008b; Meja & Stehr, 2020), nor with whether the ideas or beliefs discussed during the constitution-making process may be evaluated as ‘ideology’ (see Meja & Stehr, 2015). The reason for this is that the knowledge construction in the Ortúzar Commission is analysed relative to the ‘realm of human affairs’ (Arendt, 1998, p. 25), and as the site of struggles for legitimation. This view is characterised later in the section. Instead, this is a brief overview of the potential ways in which major frameworks or theoretical standpoints within the discipline could allow the researcher to answer the research question. These are described regarding how they allow the researcher

to take knowledge, as communicated by individuals or within a group, as the object of study and analyse it in a way that avoids ‘knowledge blindness’ (Maton, 2014a).

What knowledge ‘is’ is highly controversial and contested within the literature of the sociology of knowledge such that a definition of knowledge tends to be elusive. A well written account of the history of the concept within the discipline can be found elsewhere (e.g., Adolf & Stehr, 2017; Keller, 2011). Nevertheless, a recent proposal to characterise it as ‘the capacity for action’ and ‘a model for reality’ (Adolf & Stehr, 2017, p. 18) could function as a working definition. This appears to be an updated conceptualisation to Mannheim’s proposal to analyse ‘the relationship between knowledge and existence’ (1998, p. 237), itself a perhaps more nuanced version of the idea that social existence determines individual consciousness (Marx, 1913, p. 11). However, this working definition does not truly characterise what knowledge ‘is’. It accounts for what knowledge can *do*, or what can be done with it, and emphasises the social origins of knowledge (Stark, 1998). This tendency toward externalist explanations of knowledge runs strongly in the discipline:

‘research in this vein has linked social thinkers’ abstract ideas to the material and cultural circumstances of the societies in which they live, while also identifying the connections between the social positions occupied by producers of social knowledge and the shape and content of their intellectual productions’ (Camic, Gross, & Lamont, 2011, p. 6)

This is a tendency within the discipline that found perhaps one of its most extreme proponents in the form of Foucault’s analyses and of those that followed. There, knowledge, though not identical to power (Foucault, 1990), is inevitably related to it. The ‘knowledge-power’ form means that, from this viewpoint, knowledge becomes a kind or an adjective to power such as ‘psychiatric’, ‘anatomo-pathological’ knowledge, and so on. Just as power is about the capacity to get things done, knowledge is therefore reduced to a force that does things, especially when backed by institutions: the ‘capacity for action’. This begets two problems to the researcher of this thesis. First, that frameworks such as this do not provide ways to

differentiate between what are relations of or to power, and ‘knowledge’ in a clear-cut and systematic way. Second, they make the research question of this thesis superfluous.

The reason for this is that the answers are already available. They make the need to approach the discussions of the Ortúzar Commission, as data, unnecessary, so to speak. The social and cultural context of the constitution-makers has been thoroughly explored and analysed. Thus, Barros called the 1980 Constitution “the product of a compromise” (2002, p. 167), between the traditional old right and the ‘new right’ (Pollack, 1999). Furthermore, the history of ideas and intellectual connections that inspired one of the most important writers of the Constitution have been thoroughly dissected and traced (Castro, 2016; Cristi, 2014), their context characterised (Donoso Fritz, 2019; Loveman, 1994; Sznajder, 2018; Whelan, 1989 and many others), and the impacts of the ideas themselves criticised (Cristi, 2008; Cristi & Ruiz, 1990). If a sociology of knowledge approach to how the Chilean Constitution was made followed the ‘implicit input/output model with societal macrofactors serving as inputs and finished ideas as outputs’ (Camic et al., 2011, p. 6), then the answers are accounted for. In other words, the detective work searching for the origins of the ideas and beliefs that appear in the Constitution has yielded a by now well-known map of the actors, ideas, beliefs, and interests involved.

Given this, if the question is how the constitution-makers selected ideas and beliefs for the Constitution, then the answer would point to their relative positions in the social structure or indicate that the knowledge was constructed to position themselves (Baert & Morgan, 2017) along with the military Junta. Thus, the 1980 Constitution may be understood as a power-knowledge ‘dispositif’, functional to the forms of government exerted by the Junta or the civic-military dictatorship. Alternatively, it could also be explained as the result of the intertwining of Catholic, nationalistic, but also neoliberal ideas or beliefs that inspired the members of the Commission or as an imported product (Fischer, 2009; Huneus, 2000). Case closed, it would seem.

The problem is that it is hardly solved. The clues have been gathered and explained, but there is no explanation as for how the crime was executed. There is a circularity yet to be broken

in the literature. Basically, it is similar to arguing that the 1980 Constitution is anticommunist because the military Junta and the members of the Ortúzar Commission were expressly anticommunist. This recalls Bourdieu: ‘why does someone make petty-bourgeois choices? Because he has a petty bourgeois habitus!’ (1992, p. 129). The unresolved issue is that describing the origin, the social determinants, positions, and interests is not the same as explaining *how* social actors navigate through them and engage in elaborating knowledge such as in making a constitution.

To overcome the gap and the issues, the present study adopts a more ‘agnostic’ approach to knowledge, similar to how the sociology of religion does not presuppose or require the ‘existence’ or a definition of deities. Likewise, this knowledge agnosticism allows an approach to its subject matter irrespective of the real, artificial, constructed or any other quality of the knowledge involved. Simply put, it is not the concern of this thesis to evaluate what the knowledge used by the Ortúzar Commission ‘is’, or whether it is related to ‘truth’. This agnosticism on ‘what’ knowledge is does not mean abstaining from the ‘epistemological, sociological and ethical perspectives’ (Stehr & Meja, 1990, p. 295) about how ideas and beliefs were used and their purpose. The focus of this research is *how* the Ortúzar Commission discuss the making of the Constitution. Hence, the social determinants and contexts are not ignored, as the thesis asks the research question *because* of them and builds on them. That is, this thesis presupposes the ‘context’ and the ‘social determinants’ that the brutal launch of rockets on La Moneda, symbol of national democracy, can give to those who decided to bomb it.

What is required to answer the research question of this thesis is an approach that affords the researcher a methodological and theoretical framework that enables knowledge to be ‘seen’ while maintaining this ‘agnostic’ approach. A framework that provides a method with which to observe how knowledge is arranged and constructed by social agents. As glossed over by Bloor, ‘[o]rganising principles are necessary if the data is to be marshalled’ (Bloor, 1991, p. 52). Chapter Three argues that Legitimation Code Theory is a framework that enables researchers to observe knowledge through various organising principles at play. This framework also fosters an *ethical* commitment to pluralism and social justice.

2.5 Conclusion

In sum, the current Chapter reviewed the literature on constitution-making to argue that it has stopped short of analysing how ideas and beliefs are selected, articulated, and put together when drafting constitutions. This absence is explained on the basis of methodological and theoretical issues present in the literature. Thus, the sociology of knowledge was invoked to aid in overcoming the gap toward answering the research questions. From within this discipline, the Chapter showed that the emphasis on externalist approaches to knowledge have also impeded a fine-grained analysis of how knowledge is selected and put together within social practices such as a constitution-making event. This is because past sociological approaches to knowledge tend to reduce it to a by-product of positions in the social structure of those engaged in the communicative acts, or as congealed ‘action’. In sum, knowledge has been presumed to be a container for something other than itself. The next Chapter explains in what ways Legitimation Code Theory as the framework for this thesis allows the research to bridge the gaps and issues presented in this chapter, and how it does so by making explicit the organising principles of knowledge.

CHAPTER THREE - THEORETICAL FRAMEWORK

3.1 Introduction

Chapter Two reviewed the existing literature on constitution-making to contextualise the current study, draw the landscape on the field and observe the gaps that remain unaddressed. The literature review identified that the literature on making constitutions is still surging, but there is already wealth of research on social conditions and interests involved in the process of designing a constitution-making event, the social actors involved and how they affect the outcome. However, the review also identified that there is a gap on the literature on writing constitutions. This gap calls for an approach that allows knowledge to be seen, that is to say, that provided tools to observe, describe and analyse knowledge without reducing it as an epiphenomenon of power or social positions. In sum, the previous chapter identified that there is a need to observe

- knowledge as knowledge, not reducing it to power relations, or to the expression of social positions (e.g., habitus, material or ideal interests, social conflict);
- knowledge not simply as the arbitrary expressions of actors' needs or understandings;
- how different choices in concepts, ideas and expressions are the result of actors making choices within the social context of those ideas

In other words, the literature review pointed out that there is a need for a framework that allows the researcher to 'see' how ideas and beliefs were selected and put together by social actors, how they emphasised certain aspects over others, how they made specific conceptual decisions. Importantly, such a framework must allow the researcher to do that without reducing knowledge selection and articulation to a description or the chronology of choices.

To address these issues, Legitimation Code Theory (LCT) is proposed as the framework for this thesis. It allows the researcher to observe the structure of knowledge and its structuring principles. LCT provides a ‘toolkit’ of analytical tools to make sense of actors’ knowledge choices. In sum, the approach needed requires a framework to observe the organising principles of the knowledge practices within the Ortúzar Commission. LCT affords the researcher a focus on knowledge, such as in discussions, claims, or even other kinds of practices, rather than on specific characteristics of the social actors that produce these knowledge practices.

The remainder of the chapter is structured as follows. First, it introduces a general overview of LCT as the framework that underpins this research, providing an outlook on what the toolkit does for research and how it does it. Then, it describes the tools utilised in the study, specifically, the LCT dimension of *Specialization* and the tools of *constellations and cosmologies*.

3.2 Legitimation Code Theory

LCT is a framework that offers a toolkit for ‘analysing actors’ dispositions, practices and contexts, within a variegated range of fields’ (Maton, 2014a, p. 17). It does so by observing the way knowledge is structured without reducing it as a relay for power relations. It provides a language to explore the various organising principles of knowledge, without falling into either a positivist approach to the subject, or a relativist position whereby knowledge exists only as a reflection of power or social capital. Instead, underpinned by a *social realist* approach it looks to ‘generate explanations’ (Maton, 2014a, p. 16) of the struggles within social fields of practice. It does so by making relations within knowledge visible, and by acknowledging the social, historical and contextual character of knowledge practices.

LCT is itself not a social ontology, as it builds on social realism and critical realism as its foundations. Instead, it is a bridge to cross the gap between substantive research and the elaboration of explanatory frameworks. This analytical distinction of sociological theory and practice is depicted in Figure 3.1. Simply, LCT provides specific tools to analyse data in

substantive research studies. For this reason, LCT itself is not a ‘theory’, in the sense that it provides no explanation for specific social phenomena, such as how constitutions are written, or even how knowledge is selected in such a context. As a theoretical framework LCT says nothing about constitution-making or law. However, it allows this research to approach knowledge-building as a substantive study to explore and explain how knowledge was constructed by the constitution-making process of the Ortúzar Commission.

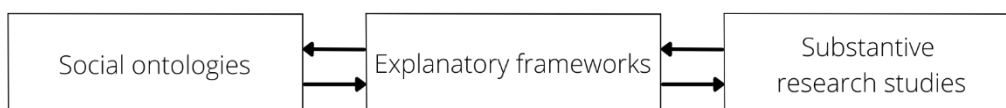


Figure 3.1 ‘Meta-theories, theories and substantive theories’ (Source: Maton, 2014b)

Initially, LCT was developed to analyse knowledge in education by allowing knowledge and knowledge practices to be ‘seen’, ‘their organising principles conceptualized and their effects explored’ (Maton, 2014a, p. 3). The approach evolved from Bourdieu’s Field theory and Bernstein’s analysis of knowledge structures in pedagogic settings. LCT takes the notion of fields from Field theory as relatively autonomous social spaces that are nor reducible nor completely separated from other fields (see Bourdieu, 2005; 1988). Field theory conceptualises fields as characterised by organising principles or rules of the game (Bourdieu, 1984). These arrange how hierarchical positions, resources and the possibility to mobilise them are distributed among the participants of the field (see Grenfell, 2008). These rules thus determine what the ‘basis’ for the achievement of elevated hierarchical positions within them. Thus, for Bourdieu actors play the ‘game’ of each field striving for control of positions, of the field’s resources and for the capacity to modify the rate at which resources from other fields are exchanged in it. LCT expands on this by emphasising that within knowledge practices of all kinds there is a struggle for legitimacy. Specifically, control of what constitutes legitimacy within a field of practice has the capacity ‘to set the structure and grammar of the field in their own favour’ (Maton, 2004, p. 220). This grammar, or ‘ordering principles’, builds on Bernstein’s work on pedagogic codes and ideas of strong/weak grammar (see for example Bernstein, 2003b) to provide a clear, analytical language through which to observe and explore knowledge within these social fields of practice.

Additionally, LCT is in continuous evolution and has expanded to allow research of knowledge practices present in a variety of areas. For example, it has been used to analyse curriculum practices at all levels of education and even across the disciplinary range from engineering (Wolff, 2018) to chemistry (Blackie, 2014), jazz (Richardson, 2019), ballet (Lambrinos, 2019), doctoral writing (Wilmot, 2020) and even legal document analysis (Fisilla & Gunawan, 2021), among many others. Importantly, LCT as a framework is committed to developing by reintegrating the problems that arise from substantive research back into the theory, allowing data to ‘speak back’, ‘demanding clarifications, refinements and new developments’ (Maton, 2014b, p. 15). Ultimately, the toolkit is ‘primarily driven by problem-solving’ (Maton, 2014b, p. 14).

The framework provides different ways, or ‘dimensions’ of looking at how knowledge is utilised in the various social fields of practice. So far, the dimensions of Specialization, Semantics and Autonomy are the most developed, but the toolkit has also identified Temporality and Density as further dimensions to explore and develop in the future. These are indicated in Table 3.1 below. Each dimension is comprised by two concepts which always occur in pairs and two code modalities which represent the concepts as a shorthand. Thus, for example, the dimension of ‘Specialization’ observes knowledge practices as simultaneously comprised of *epistemic relations* (ER) and *social relations* (SR), each of which can vary independent of one another in degrees from stronger (+) to weaker (–). Importantly, LCT eschews the use of binominal, two by two tables. Instead, LCT utilises a cartesian plane, and each concept within the dimension corresponds to an axis on a plane. The granularity of the analysis is dependent on the research and the research questions. Some studies simply utilise the combination of +/-, whereas other, requiring more precise detail, have utilised +++, ++, + and so on.

Dimension	Concepts	Code modalities
Specialization	epistemic relations, social relations	ER+/-, SR+/-
Semantics	semantic gravity, semantic density	SG+/-, SD+/-

Dimension	Concepts	Code modalities
Autonomy	positional autonomy, relational autonomy	PA+/-, RA+/-
Temporality	temporal position, temporal orientation	TP+/-, TO+/-
Density	material density, moral density	MaD+/-, MoD+/-

Table 3.1 Dimensions of the Legitimation Code Theory

Each dimension simply means that knowledge practices may be analysed from different perspectives, but all dimensions are at play at the same time. Continuing with the cartesian plane, each dimension is orthogonal to each other. In other words, a researcher may analyse a knowledge practice using the ‘Specialization’ dimension, but this does not preclude further or parallel analysis using Semantics, or Autonomy. On the contrary, several analyses have utilised a combination of Specialization and Semantics, for example. All knowledge practices exhibit all dimensions of the organising principles, in the same way as all objects in three-dimensional space always exhibit length, height and width, though sometimes measuring one or two is enough for the task at hand. Which one is relevant to the research depends on the research questions and the kind of answers sought, as the research ‘only need[s] as much theory as the problem-situation requires, no more and no less’ (Maton, 2014, p. 194).

The various dimensions allow the researcher to ‘see’ that knowledge claims made by social actors always carry with them ‘claims of legitimacy for those practices’ (Maton, 2014a, p. 24). These structure and are structured by the field in which the claims are made. Each dimension offers different ways to observe how legitimacy is claimed and disputed by social actors. LCT provides an analytical language with which to analyse what Field theory conceptualised as ‘position-takings’: the way in which actors within a field struggle to maintain or better their positions by attempting to control the distribution of legitimacy.

Summarily, Specialization observes knowledge practices as comprised of varying degrees of relations to ‘objects of study’ and relations to ‘social actors’ (Maton, 2014b). Semantics observes practices as meanings that comprise varying degrees of context-dependence and degrees of complexity (Maton, 2013). Autonomy observes practices as comprised of varying

degrees of insulation, and the degree to which constituents are related together (Maton & Howard, 2018; Maton & Howard, 2020). Temporality and Density are in development (Maton, 2014c).

In addition to these five dimensions, LCT also provides ‘constellations and cosmologies’ to analyse systems of ideas. Constellations provides tools to identify how groups of ideas are put together, form shapes and patterns. The analysis of their cosmologies makes visible a constellation’s organising principles.

This study employs Specialization and constellations to make sense of how ideas and beliefs in the Ortúzar Commission were selected, articulated, and put together. These two tools will now be described in detail.

3.3 Specialization

Specialization is a dimension of LCT that focuses on identifying the ways in which knowledge ‘makes someone or something different, special and worthy of distinction.’ (Maton & Moore, 2010, p. 44). Hence, it allows the analysis of legitimation claims by looking at the emphasis placed on possession of knowledge and-or on the exhibition of specific subjective characteristics. That is to say, the degree to which legitimacy is accrued in a field of practice by having the right knowledge and-or by being the right type of subject. Hence it remains ‘agnostic’ to knowledge or to specific subjective characteristics, as what passes for ‘knowledge’ is given by the context of the data such as the specific field of practice in which it exists. Simply, Specialization as enacted in this study enables the researcher to see the degree to which the Commission discussions emphasised the specialised knowledge of the law and/or subjective attributes.

To do so, it proposes to see knowledge as comprised of both epistemic and social relations (Maton & Moore, 2010, p. 37), meaning that all knowledge is ‘about something’ and ‘by someone’ (Maton, 2014a, p. 29). Specialization conceptualises this as an analytical distinction between *epistemic relations* (ER), or relations between practices and their object of focus, such as a part of the world; and *social relations* (SR), or relations between practices

and their author, subject or the actor who is enacting the practices. This is illustrated in Figure 3.2. Taken together, Specialization is concerned with *what* is legitimate knowledge (ER), and *who* participates from being a legitimate knower (SR). Different knowledge practices, such as claims and affirmations, may emphasise these two as their source of legitimation and they may vary indistinctly from each other. Simply, ‘does exhibiting specific ‘knowledge’ he degree to which epistemic relations (ER)

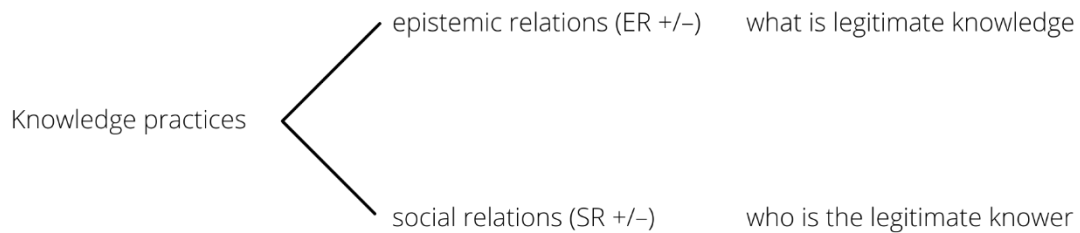


Figure 3.2 Knowledge practices in LCT's Specialization

Specialization was first introduced in LCT as an extension and development of Bernstein’s horizontal and hierarchical knowledge structures, which he utilised to analyse how ‘knowledge itself specializes identity, consciousness and relations’ (Maton, 2007, p. 87). These structures helped to differentiate the structure of knowledge within hierarchical or ‘vertical’ discourse, which features coherently organised principles at play, opposite ‘horizontal’ discourse, which appear to top-down hierarchy. Bernstein differentiated horizontal knowledge structures from vertical hierarchical knowledge structures to account for the apparent differences between knowledge in the nature sciences and those in the humanities. In hierarchical structures, disciplinary theories and propositions appeared to progressively build ‘up’ to explain empirical phenomena, such as by explaining more with more precision, or by paradigm shifts that add more explanatory power. This usually characterises nature and life sciences. In horizontal structures, disciplines tend to be characterised by specialistic languages that allow for differing ways of interpreting the world. These often appear incommensurable to each other and seem not to facilitate building ‘up’ knowledge. Usually, this characterises knowledge in the humanities (e.g., Bernstein, 2003a).

Bernstein's conceptualisation tended towards an 'either/or' understanding of knowledge: either what is present is the hierarchical knowledge structure, strongly bounded and controlled (+) or there is an absence of boundaries and controls for knowledge (-). Although Bernstein's theory and practice is much more complex, suffice to say that the outcome was that knowledge was categorised as *either* vertically *or* horizontally structured. However, empirical data was sometimes at odds with what the theory could account for. By introducing the analytical distinction between *epistemic relations* and *social relations* LCT expands the framework to account for more complexity in the ways knowledge practices occur in reality.

Thus, LCT's Specialization dimension added another axis to the way in which knowledge is structured. Instead of observing whether knowledge is strongly or weakly bounded and controlled (+/-), two different strengths of relations of knowledge are introduced. These are represented as orthogonal axes in a cartesian plane, instead of a binomial difference of (+/-). Thus, Specialization makes *epistemic relations* (ER) and *social relations* (SR) of knowledge practices visible. Instead of characterising knowledge practices as corresponding to either of two ends of a single binomial (+/-), *epistemic relations* and *social relations* can have varying degrees of strengths (+/-). Additionally, these may vary independently of each other, resulting in various code modalities summarised in the form of (ER +/-, SR +/-). The combinations of code modalities are called 'Specialization codes'.

3.3.1 Specialization codes

All knowledge practices exhibit both *epistemic relations* and *social relations* at all times. The question then becomes the combination of the varying degrees of emphases these exhibit within a knowledge practice. This allows a more complete characterisation of the organising principles that underpin the claims to legitimacy of knowledge practices. For example, knowledge practices where a stronger relation to objective empirical referents or to explanatory theory *and* a stronger relation to the social characteristics of the social actor of the practices conform, together, the legitimation basis of the practice. In other words, the underlying legitimation principle of a social field may emphasise *epistemic relations*, it may emphasise *social relations*, both or neither.

Thus, four principal code modalities can be observed as a shorthand, which are represented in the Specialization plane in Figure 3.3.

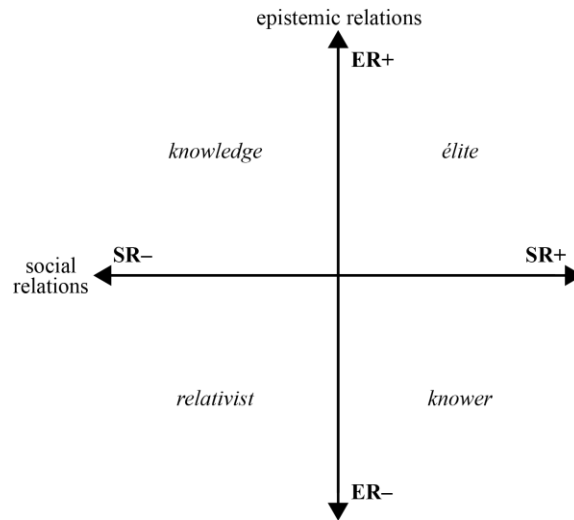


Figure 3.3: Specialization plane

The four main codes are:

- *knowledge code* (ER+, SR–), where knowledge practices emphasise the possession of specialist knowledge while minimising actors’ attributes or dispositions as the basis of legitimacy.
- *knower code* (ER–, SR+) play down specialist knowledge while emphasising actors’ attributes or dispositions as the basis of legitimacy.
- *elite code* (ER+, SR+) in which legitimacy is based on both the enacting of correct knowledge and embodying or being the correct subject.
- *relativist or no code* (ER–, SR–) in which legitimacy is not determined by the possession of specific knowledge or by embodying specific attributes as an individual.

For example, in the context of this study when a commissioner expresses that

there will be a constitutional precept that provides that totalitarian parties and, consequently, Marxist parties, which are contrary to the rule of law and the democratic regime, will be left out of the Constitution and the law (ORTÚZAR, S189)

This phrase emphasises specialist knowledge of the law as the basis for the legitimacy of the claim, thus it can be characterised by stronger *epistemic relations* (ER+). Specifically, its claim for legitimacy is based on rules, procedures and clear-cut definition of ‘objects’ (the rule of law, the democratic regime). Another example:

The new Constitution will also indicate a set of duties, based on values such as patriotism, solidarity, responsibility, honesty and mutual respect and fraternal coexistence. (S18)

This phrase highlights actors’ attributes or dispositions as its legitimation basis, thus it can be characterised by stronger *social relations* (SR+). What it argues (for example, the ‘set of duties’) is grounded on the basis of specific ways of being, ways of interacting and subjective dispositions being the source of legitimation. If the researcher were only to look at these two example phrases, they may code them as (ER+, SR-) and (ER-, SR+) respectively. This is because *epistemic relations* and *social relations* are both present in all knowledge practices, though their degree of emphasis varies independently of each other. For this research however the analysis is not done on a phrase-by-phrase case, but rather as groups, or *constellations* of concepts (see Section 3.4 below).

3.3.2 *Focus and basis*

Additionally, Specialization provides an important conceptual difference between the *focus* and the *basis* of knowledge practices. Due to the complexity of the knowledge and the discussions of the Ortúzar Commission, it is a key concept for this research. The *focus* alludes to what the knowledge claim is about, whereas the second highlights the Specialization code

modality which the claim is based on. For example, commissioner EVANS stated that

‘The national tradition is part of the fundamental values of the Chilean tradition, and respect is due to it’ (S187)

The *focus* of this claim is an external object, which is to say the ‘national tradition’, not an actor or its characteristics. If one were to look at the focus, it could be argued that this phrase emphasises the definition of an object (‘national tradition is P’). However, the legitimation *basis*, or the legitimation claim underpinning this knowledge practice and reason why it was expressed this way, is made clear by looking at its *epistemic relations* and *social relations* separately. First, the claim does not highlight rules, definitions or procedural construction as the claim to legitimate what tradition is, beyond pointing that it belongs to the group of fundamental values. Thereby, *epistemic relations* as the *basis* of legitimation are downplayed (ER–). Second, the claim establishes the relation between national tradition with values and emphasises a specific way that actors must relate to it, which takes the form of ‘respect’. Hence, the legitimation *basis* emphasises moral dispositions and subjective ways of being and interacting of social actors. In other words, this phrase emphasises *social relations* (SR+) as its legitimation basis. Even though on the surface the claim focuses on defining national tradition, its code modality is that of a *knower* code (ER–, SR+) *basis* in the context of this research. Likewise, just because a phrase or a concept refers to the law, thereby apparently emphasising *epistemic relations* (ER+) in the context of this thesis, it does not mean that the legitimation basis of the claim emphasises stronger *epistemic relations*. For this reason, the analysis requires a deeper dive into the data so as to probe into the actual legitimation claims of the *basis* rather than the focus of sentences, concepts and discussions.

In sum, Specialization provides a way to look at knowledge as a set of practices involving both *epistemic relations* and *social relations*. It also provides the distinction between *focus* and *basis* of legitimation which further aids the research in identifying the actual organising principles of knowledge claims, instead of merely pointing to what claims refer to. The next step involves describing constellations and cosmologies as the tool used to describe the

knowledge constructed by the Commission and to analyse the underlying principles of their fundamental ideas.

3.4 Constellations and cosmologies

LCT assumes that ‘[a]ll systems of ideas and practices comprise a semantic structure of stances chosen from a potential array, arranged into patterns, condensed with meanings, and charged with valuations’ (Maton, 2014a, p. 40). This means that ideas and valuations are not randomly put together nor are they independent of each other. Rather, they are arranged in specific ways from the perspective of specific individuals or groups, in specific contexts of practice. These arrangements, or *constellations*, refer to the shape ideas take when put together, and their *cosmology* refers to the underlying principles that govern these constellations. Thus, a constellation of ideas is a specific group of ideas, for example about climate change (see for example Glenn, 2015), and the underlying cosmology may be a *knowledge* or *knower* code, if Specialization was used to analyse such a constellation. This section reviews these concepts in turn.

Constellations are groups of ‘ideas, practices, beliefs and attributes’ (Maton, 2014a, p. 152) clustered together through association and contrast with other ideas and clusters. Importantly, particular arrangements of ideas are always relative to the overall context where they are situated, and at the same time always point out to the contingent character of these arrangements. Ideas may always be arranged in different shapes and can always be potentially rearranged over time. Various elements of ideas are sometimes put, or constellated, together at different points of time and space. This way, Constellations draws attention to the space of possibles, meaning that it points to ‘the range and combinations of stances viewed by actors as possible within a field’ (Maton, 2014a, p. 152). This is because ideas are put together by actors in specific ways against other potential arrangements. Like astronomical constellations, the arrangement of stars and the line patterns drawn in the imaginary pictures are arbitrary, and often vary with social or cultural contexts. Whatever the ‘actual’ position of the specific stars is in the sky, it is the perspective of the actors and the arrangement they make, or that was imposed on them, that matters.

In other words, to social actors, the constellation may appear to be a necessary, non-contingent arrangement of ideas. Hence, all systems of ideas such as ideologies ‘identify and name particular stars (for example, concepts) and draw relations among them (causal, sequential, associational, compositional, etc.) to create a semantic structure of constellations’ (Maton (2014a), p. 154). An in-depth analysis of the way meanings are built upon and condensed by actors to structure constellations is outside the scope of this thesis, however there are many studies using a mixture of LCT and linguistics that take on this approach (see Doran, 2020; Martin, Maton, & Doran, 2020; Maton, Hood, & Shay, 2016; Siebörger & Adendorff, 2017 among others).

Typically, a constellation operates around a central idea or signifier, to which other ideas revolve around. The central signifier acts as a shorthand for the entire constellation. These help to make sense of how ideas are grouped together and hint at the way arguments are constructed, corresponding to why these specific ideas and not others are part of the constellation. Nevertheless, for the purposes of this study the name or title of a constellation is not important. Rather, what is highlighted here is how constellations help to make sense of how actors arrange and re-arrange ideas and put them to use.

Moreover, ideas within constellations can be *charged* along a continuum of positive, neutral, or negative value in relation to other meanings. Thus, constellations can often be comprised of positively and negatively charged elements, producing a ‘binary’. Importantly, this means that even negatively charged ideas can be included within a constellation. Ideas may be grouped together by opposing them and building off the contrast, explicitly affirming ideas against other possible ones which may be negatively charged (Doran, 2020).

A constellation’s *cosmology* refers to the organising principle that governs the selection and arrangement of its stances. This is done by drawing upon one or more LCT dimensions to observe the ruling principles of the constellation or its stances. Following the astronomical analogy, constellations help draw the pattern in the sky, while its cosmology explains what is the force that binds the pattern together and makes actors choose and group certain ideas

and not others. Thus, the constellation represents the system of ideas, and its cosmology represents the ‘logic of the belief system’ (Maton, 2014a, p. 152) that shapes actors’ constellations and thus their actions. In other words, cosmology looks at the ‘the basis of’sex appeal’ that is always subject to ‘ongoing struggles’ (Maton, 2014a, p. 154) for a given social field of practice.

In sum, constellations provide a way to analyse systems of ideas, positions, or concepts. Usually, these systems are formed around a central signifier as a stand-in for the constellation. These ideas may be charged with positive, neutral, or negative value, but, importantly, constellations are always constructed from the viewpoint of specific social actors situated in specific spatio-temporal contexts. A constellation’s cosmology allows the analysis of its underlying principles through one or more LCT dimensions.

3.5 Conclusion

This chapter covered Legitimation Code Theory as the framework underpinning this study. It briefly described the framework, established how it provides tools to answer this research’s key issues, and mentioned some of its main concepts. Then, the chapter described Specialization, constellations and cosmologies as the tools utilised in this research. The chapter highlighted the potential of these tools to approach the specific problems of understanding and explaining knowledge choices in the making of the Chilean Constitution of 1980.

This study looks into the Ortúzar Commission’s constellations of ideas to answer the research questions and analyses its cosmologies using the LCT dimension of Specialization. The next chapter, Methods, explains how the tools were utilised and enacted in the research.

CHAPTER FOUR – METHODS

4.1 Introduction

The previous chapters showed that Legitimation Code Theory enables research into the knowledge-construction processes, such as those enacted in constitution-making contexts like the Ortúzar Commission. This allows the thesis to address a gap in the literature on how knowledge is selected, articulated, and put together when constitutions are being made. This chapter explains the methods used in the research to put LCT in action. It presents the data utilised in the thesis and it shows how the research questions structured the sampling and analysis. It also explains how LCT's dimension of Specialization was enacted to analyse its organising principles and answer these questions.

Chapter Four of this thesis is organised as follows. Section 4.2 presents the research design and questions. It also introduces a brief history of the Ortúzar Commission to provide the specific context for the data. Section 4.3 characterises the official Proceedings of the Commission as the data corpus used by the research. Section 4.4 details how the data was sampled and then analysed, and it explains how LCT's dimension of Specialization was employed. It also shows how the Commission was constructed as the object of study. Section 4.5. describes two external impacts on the development of the thesis: the COVID-19 global pandemic, and the 2021 Chilean Constitutional Convention. Finally, Section 4.6 concludes the chapter and outlines the remaining four chapters of the thesis.

4.2 Research design

This research aims to identify and explore how the Ortúzar Commission selected, articulated, and put together ideas and beliefs in writing the 1980 Constitution. Specifically, the study poses three research questions:

1. How did the commission argue for the construction of a new Constitution?
2. What were the underlying ideas and beliefs that structured their writing?
3. How did they set out to achieve their goal for the new Constitution?

To answer these questions, the study utilised the ‘Actas oficiales de la Comisión Constituyente’ (Official Proceedings of the Constituent Commission), a series of publicly available records of the work of the Ortúzar Commission. It employed a qualitative method of thematic analysis first to generate data samples relative to each research question. Then, it employed the constellation, cosmology, and Specialization tools of Legitimation Code Theory (Maton, 2014a) to analyse the knowledge-construction process relative to the research questions.

Given the nature of the knowledge practices and the state of the literature, this thesis adopts a qualitative case study design to analyse the discussion, knowledge selection and construction of the writing process for the 1980 Constitution. Chapter Two showed that the literature exhibits a lack of studies on the actual process of how knowledge is elaborated within the context of constitution-making, which calls for research that explores the how or why, prompting the design of a qualitative research design (see Yin, 2002). This gap in the literature was at least in part due to the secretive or non-public nature of the discussions that occur within a constitution-making process. In recent years the push for accountability and transparency has made newer processes more public, but the relative absence of such data made the availability of the Ortúzar Commission proceedings a valuable dataset to be explored in depth.

Chapter One provided a summary of the Chilean social context in which the work of the Ortúzar Commission began. However, it is necessary to characterise the history of the

Commission itself to make sense of the available data. The next section describes what is known about the work of the Commission.

4.2.1 A brief history of the Ortúzar Commission and the Constitution

The Ortúzar Commission initiated its operations mere days after the coup d'état of September 11th, 1973. As soon as Pinochet and the Junta took over the government by force, they declared themselves representative of the nation's 'constituent power' (Cristi, 1998). Following some constitutional theories, this 'allowed' them to remake the Constitution as they saw fit (for example, see L. Ríos Álvarez, 2017). On September 13th, a secret reunion established that a new constitution was 'being studied', led by 'University Professor Mr. Jaime Guzmán' (Junta de Gobierno 1973). By September 21st a secret meeting established the Commission for the Study of the New Constitution, with law professors Enrique Ortúzar, Sergio Diez, Jaime Guzmán and Jorge Ovalle as their members. Guzmán being named earlier led scholars to argue that organising a commission and selecting its members was his idea (Cristi, 1998). Nonetheless, after pressures from the Christian Democrat party, which had played an important role in aligning itself with the Junta and supporting the coup, the Commission incorporated Gustavo Lorca and two Christian Democrats: Enrique Evans and Alejandro Silva Bascuñán (Barros, 2002, p. 89). Together they set out to remake Chile's institutional order, which the Junta argued had 'ran out' and was to blame for Allende's socialist government. At the beginning, no substantive directive nor deadline was forced on to the Commission or asked from them, which afforded them considerable autonomy (Barros, 2002, p. 90).

The day-to-day work of the Commission shown by the Proceedings was filled with various thematic discussions, arguments over substantive issues as well as debates over form of writing. At times, the Commission would invite one or more guests to share their expertise or experience. From local politicians and intellectuals to international law professors, guests were supportive or at most agnostic to the coup and to the military dictatorship of the Junta. Additionally, the Commission set up several subcommissions tasked with studying matters too specific or that required in-depth knowledge of some subjects, such as Intellectual Property or State decentralisation. These were established within the first few weeks of the

Commission's beginning and reported back from time to time via reports and memos, but no proceedings of their meetings exist or are available to the public.

The initial work of the Commission for Studies for the New Constitution had two parallel tasks, which caused arguments inside the group. They were explicitly called to study, discuss, and prepare the draft for what would eventually be the new Constitution for Chile. However, as the Junta paralysed the national Congress and took over the legislative power, the Commission as a group as well as some of its members acted as a legal advisor body for the civic-military government. Those who had reservations against doing so argued that it interfered with the long-term thinking that constitution-writing required. Barros (2002) emphasised that this tension revealed a structural problem within the Commission, as the dilemma of passing laws within a dictatorship was contrary to an eventual return to democracy and to a constitutional order beyond the dictates of the military government in place. Thus, as the civic-military dictatorship passed more and more legislation, it took a stronger hold on the State and extended its stay past its initial promises to quickly return its control to the civilian population. The dictatorship lasted 17 years, from 1973 to 1990.

On September 11th, 1975, Pinochet announced that the Junta would dictate several 'Constitutional Acts' ('Actas Constitucionales'). From that moment on, the Junta stopped using the previous 1925 Constitution as the basis of its Law Decrees. The new Acts would start to create a new legal framework for the country, and these were based on the discussions of the Commission at the time. The Acts in fact can be seen as prototypes for what would be the final text of the 1980 Constitution (Cuevas Farren, 1979). This meant that the work of the Commission had indeed deviated at times from the future into the present, which caused discussions about the meaning and direction of the Commission between its members.

This political and legal tension led to the resignation of Alejandro Silva Bascuñán by letter on March 2nd, 1977. Silva had continuously argued that the same group of people should not rule the country and prepare its new institutional order. He argued in his resignation letter that the present would often take precedence over the future (S274). His exit was also prompted by the outlawing of the Christian Democracy party. This event cascaded into the

resignation of Enrique Evans on March 17th, 1977, and, two months later, of Jorge Ovalle on May 24th, 1977. On June 9th, 1977, three new members came to replace them: Luz Bulnes Aldunate, Raúl Bertelsen and Juan de Dios Carmona. Out of all the Commission members, only Bertelsen and Romo are alive at the time of writing.

After 417 sessions, by October 5th, 1978, the commissioners finalised their constitutional draft. By official letter 792 dated October 18th, 1978, their constitutional draft was sent to the military Junta (see Figure 4.1). This marked the end of the Commission.



Figure 4.1 Commission President Ortúzar presents their final draft to Pinochet.

The draft was then discussed by the Council of State, an organism created by Law Decree 1319 on December 31st, 1975, as ‘supreme consulting body of the President of the Republic in matters of government and civil administration’ (DL N° 1319, 1975). The constitutional text was delivered to the Council by October 31st, 1978. Comprised among others by former president Arturo Alessandri, this Council spent the following two years, 57 sessions and some secret meetings later producing a text that has been called the Alessandri Constitution, as it proposed to return some dispositions back to his father’s 1925 Constitution (Alessandri

Rodriguez & Valdivieso Ariztía, 1981). Though some authors have argued that the proposed changes were not substantive (Fernández González, 2001) this proposal introduced 176 changes to the Commission's draft (Carrasco Delgado, 1985). Among these changes were a six-year presidential term instead of eight, a five-year transition plan toward democracy instead of the planned eight-year process, a Chamber of Deputies that would be designated in its entirety by the Junta, and a Senate that would also be designated by Pinochet. The proposal produced by this Council was rejected, however, and Alessandri renounced days before the national plebiscite of September 1980.

Nevertheless, another committee comprised by the Junta, State ministers and other advisors reviewed this version for a month, at which point the text was also reviewed by Pinochet himself and a select number of advisors (Carrasco Delgado, 1981).

The changes made by the Junta were small, some of which was later qualified as largely inconsequential. Among these were Admiral Merino's insistence on proclaiming the absence of slavery in Chile; others included tightening restrictions on political parties, and some numbers relative to penalties and schedules were altered (see Barros, 2002, pp. 219–220). Despite these differences, the work of the Ortúzar Commission 'stands as a major, relevant source for understanding the institutional logic inscribed in the new constitution' (Barros, 2002, p. 220). To date, no scholar has ever questioned this affirmation.

Next, on August 11th, 1980, by Law-decree DL N° 3464, the new Constitution was approved by the Junta and subject to ratification by a plebiscite that was set for September 11th, 1980. The plebiscite has been described as an extremely irregular voting situation (Carrasco Delgado, 1981; Fuentes, 2013). Chief among these irregularities was the lack of electoral records, as they had been burned by the military years prior, and that blank votes would be added toward approval of the new Constitution (Campos Harriet, 1984). Some authors have therefore characterised this plebiscite as a 'fraud' (Fuentes, 2013).

The Junta gave the following results for the plebiscite: 67% in favour and 30% against, signifying that the new Constitution would be put in effect, although not immediately. The

'plan' had already been laid out in Pinochet's 1977 Chacarillas speech (Barros, 2001). Pinochet would remain as 'President' and dictator until 1988. Then, another plebiscite would take place in which people would vote 'Yes', if they wanted Pinochet and the dictatorship to continue, or 'No' if they did not and wanted free presidential elections. Although space precludes digressing into the socio-political history of the events, it is relevant to note that the opposition to the military dictatorship acknowledged that they were presented with a choice. They had to choose between following Pinochet's rules, or to continue what little armed resistance they had managed to mount. The first would risk a plebiscite, with the expectation that the Junta would respect the outcome whether for or against them in 8 years' time.

In the decades since the return to democracy in 1990, the choice to follow the rules self-imposed by the dictatorship has been used to argue that the Constitution holds *de facto* or 'institutional functioning' legitimacy, since citizens supposedly agreed to play by its rules (Fernández González, 2001; Ginsburg, 2014). This is not without controversy, however. The presence of Pinochet and his control of the Armed Forces during the 1990s, and later his appointment as designated senator was a constant reminder that the threat to democracy was quite real. This may put in question whether such democratic agreement was legitimate or not.

Nevertheless, with the victory of the 'No', the first democratic presidential elections since 1970 took place in 1989. Early in 1990, President Aylwin ascended to the presidency. However, in the immediate days before handing over the Presidential band, the military Junta quickly enacted a series of controversial 'leyes de amarre' ('mooring laws'). These were several constitutional-organic laws that had not been written by the Ortúzar Commission but were alluded to by the Constitution. These ruled the specifics of areas as important as education, police and military, and work laws. Between October 1989 and March 10th, 1990—a mere day before the Executive power was returned to a democratically-elected president—16 sets of regulations and constitutional-organic laws were simply passed by the Junta. These included the law that defined and delimited the institutions and practice of education, the

Electoral Tribunal (Tribunal Calificador de Elecciones), the Central Bank, the Armed Forces and Police, and Congress among others.

However, the opposition alliance managed to also install a few changes to the constitutional text by 1989 after a landslide vote of 91% approval for reforms in the July 30, 1989, plebiscite. Article 8 (see Appendix), which proscribed left aligned and anti-family ideologies, was eliminated; the potential interventions of the military in politics were diminished though not removed; the term of office for the first democratically-elected Executive was halved to four years; it increased the number of Senate members from 26 to 38, reducing the relative weight of the 9 non-elected Senate members. These included Pinochet, who would take a seat in the Senate after his retirement as Commander-in-Chief of the Chilean Army in the late 1990s.

Since 1990 several changes have been made to the constitution. Constitutional scholars have thoroughly described these changes (Carrasco Delgado, 2008; Nogueira Alcalá, 2008; Palma González, 2008; Zuñiga Urbina, 2005). The 2005 reform changed some of the ‘authoritarian enclaves’ (Nogueira Alcalá, 2008) still left in the Constitution, such as the ‘lifetime senators’ that provided Pinochet political and legal protection and impeded any successful trial against him. However, the controversies over other authoritarian aspects or ‘enclaves’ did not subside (Atria Lemaitre, 2013). The reason was that the Constitutional Tribunal saw some of its powers expanded, which enabled it to have a more profound judicial and political impact (Carrasco Delgado, 2008). Among Chilean constitutional lawyers, the question of whether the 1980 Constitution is the same after these 2005 reforms became a source of tension.

Finally, after the protests that began on 18 October 2019, the Chilean Congress agreed to hold a referendum asking whether Chileans wanted a new Constitution. 78% of Chileans including overseas voters approved the writing of a new Constitution. The resulting Constitutional Convention was to be comprised of 155 members, included reserved seats for indigenous people, and was the first in the world to include gender parity. At the time of writing, the Convention has been functioning, with a time limit of one year to provide Chile with a constitutional draft, to be approved by an exit plebiscite.

4.3 Data set: the Proceedings of the Ortúzar Commission

The Proceedings of the Ortúzar Commission are the official records of the meetings held in the constitution-making process of the 1980 Constitution. These Proceedings correspond to 417 sessions held over the 1973–1978 period. In total, they amount to over 4 million words. Access to the corpus has been made digitally available to the public by the Chilean National Congress Library, in the form of 11 PDF files. These sum a total of 10,915 unnumbered pages. Each of the 11 ‘volumes’ is comprised of a variable number of sessions, with no discernible logic for separations between the volumes beyond the physical folders’ size.

Regarding the session data itself, their textual length varies largely. Average session size from the public PDF files is 25 pages with a Standard Deviation of 13. The shortest sessions are one page long, when there is only a record of the session being adjourned or being secret. The longest is 134 pages long, mainly due to an attached report about property rights. Individually, each session follows the same format:

1. Session number
2. Full session date (day, number, month, and year)
3. A summary of the general actions undertaken during the session
4. Member attendance as well as guests
5. ORTÚZAR, Commission President, declares the session open in the name of God
6. Secretary EYZAGUIRRE gives a summary of any relevant happenings in between the sessions such as any messages or any other communications received
7. Reading of relevant memoranda or summary of the previous session
8. The report of the session itself
9. An annex with attached documents, if any

Data notation

Because the publicly available digital files show no pagination, a notation was created for this study. It focused on ease of reading: (NAME, S#), where NAME corresponds to the last name in caps of the individual who said the phrase, and # is the session number in which the cited text appears. Sometimes, the text represents not a single individual but communications or memoranda from the Commission itself as a unit. In those cases, the citation only includes the session number. Following APA rules, if the last name is mentioned in the written text of this study, it is omitted in the citation. Additionally, the commissioners’ names are written in

all caps in the official documents. This thesis maintains this notation, on the basis that the quotations correspond to what is presented in the proceedings, and not the individuals themselves nor any other data source. A quotation, then, would be presented in a paragraph as follows:

A commissioner ‘asked if the State could be allowed, for example, to ban the acupuncture system and punish individuals who resorted to it to heal’ (SILVA, S192).

On the validity of the Proceedings

While the Proceedings has not been questioned or doubted at any point in time, it is important to consider a few aspects regarding their validity as a data source. First and foremost, the Proceedings were created as a resource for the commissioners themselves, printed and distributed to them for their perusal. Secretary (and lawyer) Rafael Eyzaguirre Echeverría was assigned to supervise the transcriptions and to have them readily available for the Commission. Second, sociological, political, historical, and constitutional law studies on the Constitution or its makers have referenced the sessions (Bassa & Viera, 2008; Couso, 2011; Cristi, 1998, 2014). Third, even if they were altered to some extent by the Commission or at the behest of the Junta, what was made publicly available corresponds to what the civic-military dictatorship was comfortable with recording, transcribing, and printing, further lending credibility to the importance of the documents themselves.

However, since the Proceedings are indirect transcriptions and are written in reported speech, it is important to remark their production context. Whether audio tapes existed at some point is not known, as the Commission appeared to employ stenographers. This makes these reported speech ‘transcriptions’ the only record of the sessions. Reported speech is traditionally used ‘to report something that was said in the past’ (Pöchhacker & Shlesinger, 2007, p. 79), with one of the main relevant implications being that it is ‘not capable of providing a verbatim reproduction’ (Johansen, 2011, p. 2848). A relevant example can be found in Session 10, where they discussed the need for more workers to support the Commission’s endeavour. The next quote is copied unedited from the Proceedings:

Mr. ORTÚZAR (President). - With the agreement of the members of the Commission, the draft regulation on the operation of the Commission, drawn up by the Secretary, on behalf of its members is approved. It is attached as an annex to this Act. Next, Mr. DÍEZ remarks the need to have, for the reliable history of the establishment of the Constitution, a version that records, as faithfully as possible, the interventions of the members of the Commission. Mr. EYZAGUIRRE (Secretary) said that he was making all the necessary efforts to correct the deficiencies that could be noticed in the work of the Commission. For this purpose, he added, the Chief of the Senate Drafting is arbitrating the measures leading to increasing the staff of that Service, since currently there are only six people among stenographers and copywriters to develop this work in the Commission and in the designated Subcommissions, and two Secretariat officials to prepare the proceedings of the Commission. (S10)

The voice in which the sessions are presented corresponds to that of the stenographers, who remain unknown. This example shown above highlights the practical and theoretical limitations of the corpus data. It would be remiss not to discuss these limitations since '[a]ll transcripts take sides, enabling certain interpretations, advancing particular interests, favouring specific speakers, and so on.' (Buchotlz, 2000, p. 1440). Transcribing is 'therefore, a political act' (Green, Franquiz, & Dixon, 1997, p. 172) that is based in the transcriber's conceptualisations, their own constellations of ideas, expectations, and so on, which are ultimately binding: 'there is no way not to make such decisions' (Mishler, 1991, p. 227).

Furthermore, a discussion among several individuals is a situation in which shifts and speaker alignment or 'footing' (Goffman, 1981, p. 128) vary, where 'talk may overlap, events may co-occur, and interactions may be nonlinear or contiguous' (Green et al., 1997, p. 174). These further increase the potential for confusion, and all which shape, in some way or another, the end product. These matters prompt questions of agency and responsibility of the process (i.e., see Johansen, 2011), which may also generate questions about the validity of the data.

Nonetheless, Barros indicates that he was told by Commission Secretary Eyzaguirre in 1992 that the debates are reproduced virtually verbatim in the proceedings (2002, p. 91).³

Therefore, it stands to reason that the data is sufficient to represent the ways of thinking of the ‘Ortúzar Commission’ portrayed by the Proceedings. Importantly, this thesis does not claim to discuss or explain the ideas of each of the individual members of the Commission. This has been done already in either seminal works such as those by Cristi (2014) or Moncada (2006), or by commissioners themselves such as Díez (1999) or Silva (1997). For this reason, the thesis adopted a naming scheme for quotations in the following chapters, whereby the words and ideas of the commissioners are attributed to the ‘characters’ contained in the dataset and are represented by the names in capitals: GUZMÁN, OVALLE, ORTÚZAR, and so on. Whenever there may be references to the individuals as persons or their works, these are written normally, such as the references earlier in this paragraph. This choice responds to the limitations of the Proceedings as well as the methodological choice to restrict the analysis to what was presented in the Commission without recurring to external, prior, or posterior data sources as explanans of the Commission’s ideas.

Ethics considerations

The primary data already exists in the public domain and are readily available and accessible. As mentioned, physical copies of the Proceedings of the Ortúzar Commission are housed at the National Congress Library in Chile and are made available digitally via its website (www.bcn.cl). No ‘human research’ was conducted as per the definitions of the NHRMC and the University of Sydney guidelines. No personal information or documents were utilised, nor individual data gathered by surveys, interviews, or observation. Similarly, no animals were harmed in conducting the research for this thesis.⁴

³ The irony of Barros also utilising indirect reported speech to affirm the validity and quality of the proceedings is not lost on this researcher.

⁴ On the contrary, the researcher’s cat Ulises was a source of love and support.

4.4 Data sampling and selection

To obtain an overall picture of the Proceedings' contents and structure, the researcher began by constructing a general database of the sessions. By pulling the session number, date, member attendance and summary, a database with 417 entries was elaborated on a spreadsheet. This allowed a glance at the general topics and matters discussed by the commissioners, which aided in the initial process of immersion. To achieve this, the author simply began reading from the beginning.

Quickly, it became clear that although each Commission session was typically centred around one or two main points, the commissioners often expressed a wide variety of ideas, dispersing them throughout and within each Session. Due to their nature and the complexity of building a constitution with a single Commission, one Session may be about discussing private property law, while the next would jump topic and instead be about the aims of the State or the right to unionise, and then return to the former topic many sessions later. This required the search and following of topics, or themes, rather than by the chronological reading of one Session after another. Simply put, the Commission's discussion of a single topic or theme could be scattered all along the 417 sessions.

In this step of the process the research questions were fundamental in guiding the data immersion, selection, and sampling. The research questions are:

1. How did the Commission argue for the construction of a new Constitution?
2. What were the underlying ideas that structured their constitution writing?
3. How did they set out to achieve their goal for the new Constitution?

Exploring these questions in reading through the sessions yielded three main topics. In turn, exploring each of these topics yielded concepts and words with which to search the sessions.

These three main topics are:

- Anti-Marxist sentiments and criticisms of Allende and Popular Unity, which helped to answer the question Q1 of how the Commission argued for a new Constitution;
- Christian-Humanism, sentiments of national unity and the country's liberal tradition. These helped to answer Q2 of what did the new Constitution would be founded on, and

- The idea of the ‘common good’, which helped to answer Q3 of how the Commission achieved their goals for the new Constitution

The next problem to solve was the way to search the corpus in a way that would maximise the selection of useful, rich data, and minimise the chances of missing it.

Data search and sample selection

Data was selected to answer each research question using search tools. These were a mixture of nVivo’s search, as well as Adobe Acrobat’s ‘Full Acrobat search’, in an iterative process of back and forth to find as much material as possible that could aid in answering the questions. For example, in searching and sampling data for Q1, the initial reading showed that the commissioners spent until Session 18 sharing their perceptions on the socio-political context that led to and justified, according to their viewpoint, the military coup. This reading yielded several keywords with which to search the entire dataset in a process of identifying what concepts used by the commissioners allowed the research access to their ideas and beliefs.

Utilising nVivo, the sessions were then searched for references to the following keywords. The parenthesis indicates the actual search in Spanish, with asterisks as wildcards to force the search engine to consider variants such as marxista, marxismo, marxistización, marxistizante (marxistisation, marxistisating), and so on:

- marxism (marx*)
- comunism (comunis*)
- ideology (ideolog*)
- foreign scheme (esquema foráneo*)
- totalitarian (totalit*)
- socialism (socialis*)

The search rendered over 864 individual mentions in the corpus, spread over 175 sessions. The nVivo search was set to output the search word plus a hundred surrounding words to enable comprehension of the context in which the word was situated. Its output was a document comprised of 155,000 words relating to Marxism, as the initial sample. This procedure was repeated with key concepts for Q2 and Q3. In total, this produced over a

thousand references to the keywords associated to Q2 spread over 273 sessions, and 399 references to Q3 over 154 sessions.

For each of these samples (Q1, Q2, Q3), further reading into these sessions produced a snowball effect for successive keyword searches. For example, commissioners used the word ‘politization’ (politización) to characterise what they argued Marxist ideology had done in the country. This specific concept search augmented the output to 1058 references in the corpus over 213 sessions, which further required reading, identifying potentially relevant concepts, extracting quotes, and making sense of them in relation to the research questions. The same occurred with notions of ‘class conflict’ and ‘threat to sovereignty’ (lucha de clases, amenaza a la soberanía). This way, meanings and key concepts were slowly and methodically identified, reintegrated into the search, and sampled to be read and analysed.

Additionally, given that the commissioners’ discussions were free and unstructured, the sample output for one research question sometimes provided cross-references and further context for the analysis of other questions. Therefore, reading and analysing the data was a holistic endeavour that considered all research questions in parallel.

The next step was to look and read into the gathered quotes and extracts. Due to the nature of the Commission’s discussions and the way they talked and discussed topics, often important arguments could be ‘hidden’ away at the beginning, middle or end of their speeches. This is in line with the notion that meanings can be found in ‘the abstract, conceptual meanings of words, sentences, sequences of sentences and whole discourses’ (Dijk, 1997, p. 8). For example, a commissioner may have given a long speech about property rights and finalise it by highlighting the important role of private property in curbing Marxist ideas. Thus, the search would point to a single keyword, but to immerse in the context of the conversation, to properly identify what each commissioner was talking about, it required a long reading of their discussions beyond the sampled quotes and extracts. This allowed the researcher to achieve a ‘feel for the data’ (Maton & Tsai-Hung Chen, 2016, p. 42), an important step in later constructing the research’s ‘translation device’ detailed later in this chapter.

This iterative process provided ideas for further searches to fully capture the Commission’s arguments and reasons. For example, sampling data to answer Q3 yielded quotes about the ‘common good’, in which concepts of ‘morality’, ‘public order’ and ‘good manners’ appeared. All of these were used to search over the entire corpus to maximise the capture of potential meanings that could enhance and provide more clarity for the analysis. This iterative process can be visually represented in Figure 4.2. The method utilised to sample, read, and analyse was a back and forth between reading, identifying concepts, searching, sampling, and analysing.

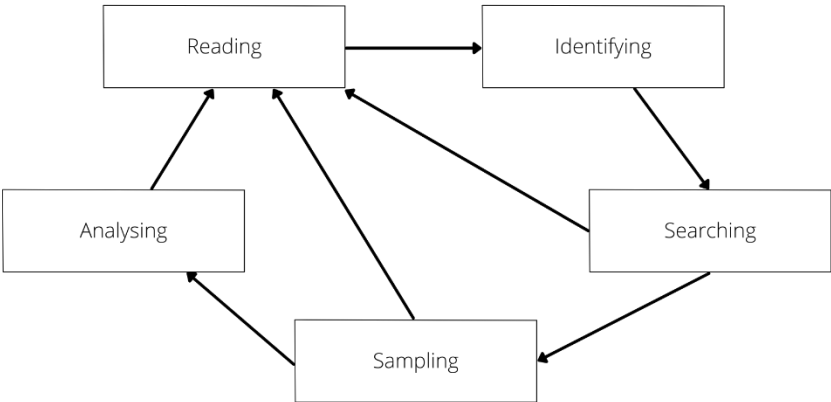


Figure 4.2 Iterative research process

A question of language

The author of this thesis is a native Spanish speaker, which allowed easy linguistic access to the Proceedings, available in Spanish. Evidently, however, this thesis is written in English. The translation of the quotes presented in this document is the author’s sole responsibility. It attempts to capture the spirit and sense of the conversations rather than be a word-for-word conversion into English, although whenever possible that was the preferred way of translating. Often, rather than present long quotes, citations are broken up into smaller phrases. This is done on the grounds that the oral discussions, plus the commissioners’ own style of speaking required a careful consideration to translate their meanings and to utilise them in writing the description and analysis in Chapters Five, Six and Seven. At the same time, the quotes are translated to be faithful to the specific way they spoke, which may

account for quaint phrasing or vocabulary. Finally, whenever the translation to English does not provide a good enough sense of a concept, the original in Spanish is presented in parenthesis.

4.4.1 Data analysis

The first stage in the research comprised a thematic analysis of the data collected. This thematic analysis was guided by each research question Q1, Q2 and Q3:

1. How did the commission argue for the construction of a new Constitution?
2. What were the underlying ideas and beliefs that structured their constitution writing?
3. How did they set out to achieve their goal for the new Constitution?

The process of analysing was done by writing and rewriting in several stages. For each research question, reading, taking notes, quotes and writing about them was done aided by visual representations, such as the one presented in Figure 4.3 below. This is an example of how meanings associated to Q1 were collected into large constellation of ideas. The links represented the ways in which the commissioners themselves established connections between their concepts. Still, this was merely a first step and a rough visual representation of the topics and themes discussed by the commissioners regarding the issue of why a new Constitution was needed.

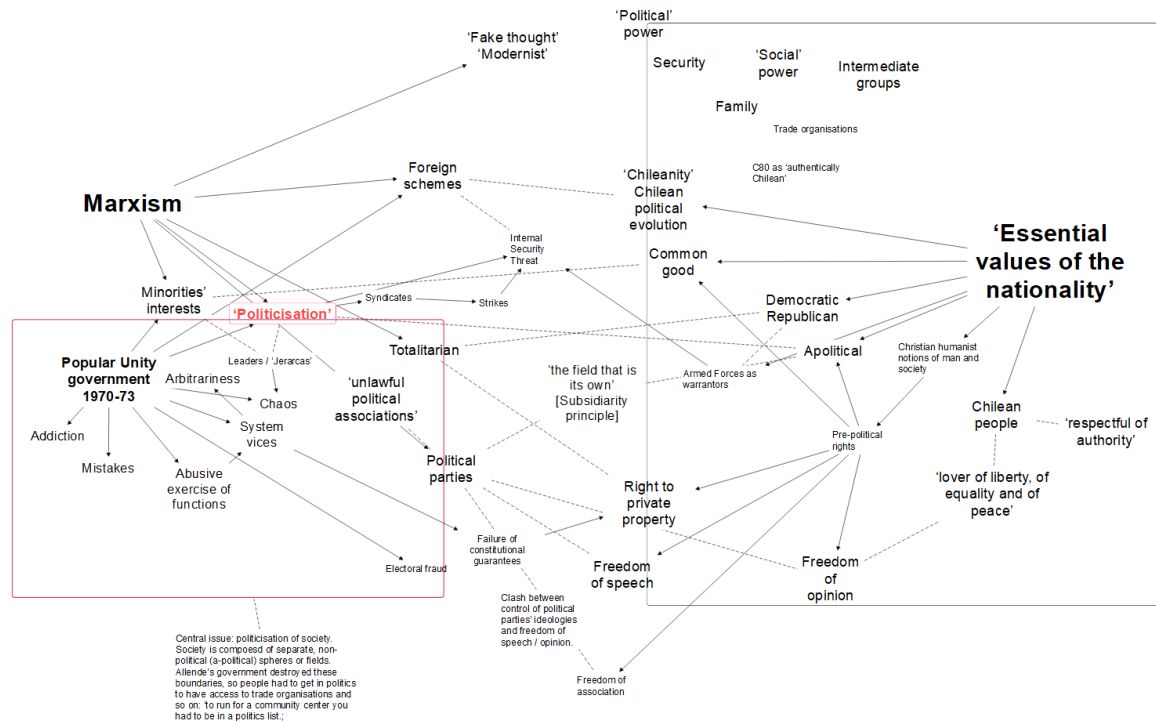


Figure 4.3 Example of an initial ‘constellation’ elaborated in the analysis of Q1

For each research question, successive iterations on the themes yielded a number of different ‘groups’ of arguments comprised of ideas and beliefs. Thus, to answer Q1: how did the commission argue for the construction of a new Constitution? five ‘rationales’ argued by the commissioners were identified. To answer Q2: what were the underlying ideas that structured their constitution writing? three structuring ‘pillars’ were identified. To answer Q3: how did they set out to achieve their goal for the new Constitution? the answer was an overarching concept that threaded together these variegated ideas and beliefs.

Importantly, this stage was approached without imposing the theoretical framework yet. This was decided as it would allow the data to speak for itself since ‘immersion in the data is essential’ (Maton & Tsai-Hung Chen, 2016, p. 33). Otherwise, if one were to approach the problem-situation, the research questions and the data already filtered by theory, the research runs the risk of mistaking the map for the territory or vice versa (Borges, 2002). The balance was achieved using LCT’s ‘translation device’. Then, again in an iterative process, the movement between data and theory was initiated. The next section specifies how LCT’s

translation device, Specialization and constellation analysis were utilised to engage with the data and analyse it.

4.4.2 *Translation device: the bridge between theory and data*

A research study's 'translation device' is simply the systematic relation between theoretical concepts and the data (Maton & Doran, 2017). Translation devices are 'external languages of description' (Bernstein, 2000) which bridge the gap between the internal language of the theory and the 'language' of the data. This is represented in Figure 4.4. LCT encourages the use of translation devices to help researchers in avoiding the common pitfall of theories. Often, they try to 'make sense in their own terms, but their enactment in empirical research is problematic' as they 'struggle to engage with data' (Maton & Tsai-Hung Chen, 2016, p. 27). Since the gap between these languages always exist, it is up to the researcher to make the implicit explicit, and to provide means for other researchers to review the analysis. LCT's concept of translation devices helps to reduce arbitrariness in the iterative movement between theory and data.

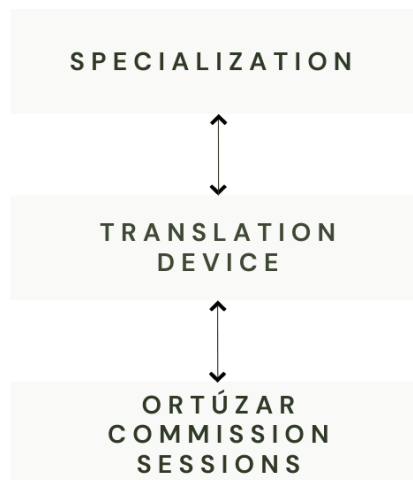


Figure 4.4 Bridging the gap between LCT's Specialization and the data

Although there are generic translation devices available to researchers (see for example Maton & Doran, 2017), each study ultimately constructs its own translation device via an iterative process between translation device, data, and the theoretical concepts, aided by the immersion of the researcher. Thus, the translation device is as much a product of ongoing

analysis as are other parts of research. Furthermore, it allows other researchers to bridge the gap between their own areas of study and the theoretical framework, enabling both knowledge-building and review of other studies between studies that use LCT but do not share objects of study. For example, this study has utilised developments and outcomes from research on ballet (Lambrinos, 2019) and jazz teaching (Richardson, 2019). These are made possible because explicit bridging of gaps between the framework, its concepts and data and allow for interdisciplinary learning.

Therefore, translation devices are the way studies enact the concepts they utilise, which in the case of this research corresponds to LCT's Specialization. In short, Specialization sees knowledge practices as comprised of varying degrees of *epistemic relations* and *social relations*, which together form *specialization codes* of legitimation (ER+/-, SR+/-). This, however, is still too abstract. Therefore, the translation device in Table 4.1 presents, from left to right, the concept, its theoretical definition, a description of how the concept manifests in the data, and an example from the data. Thus, from left to right it translates from theory to data, and from right to left it shows how data transits toward the theory.

It is necessary to highlight that the translation device is constructed in relation to the problem-situation of the research question. It is not an absolute, and as a decision of method it must also be explained. Here, the aim is to explore the specialised language utilised by the commissioners as the basis for their knowledge selection and construction. At the most basic level, the concepts yielded two overall bases on which ideas and arguments were grounded: arguments may emphasise the law, that is legality as rules and procedures from which to elaborate institutions and distribute power. This also includes emphasis on definitions of concepts and objects. By appealing to the law, the commissioners emphasise relations to the constructed nature of its specialised language. Additionally, arguments may emphasise subjective characteristics of the citizenry as well as politics, understood as attributes of the citizenry and their way of interacting or being. These arguments draw from moral judgments, ideology, faith, all attributes that emphasise relations to or among social actors as the basis of legitimacy. These two legitimation bases represent two possibilities that may appear

separately (in the form of ER+, SR– or ER–, SR+), together (ER+, SR+) or may be absent (ER–, SR–) in an argument or characterisation.

In the case of *epistemic relations*, in this study it refers to relations to the specialised knowledge of the law and therefore rules, procedures, as well as explicit definitions of social actors and institutions. As such, when commissioners emphasise the law and its rules, procedures, protocols, and institutions as the basis for the argument or idea at hand, this is characterised as strengthening *epistemic relations* (ER+). This emphasises ‘knowledge’ as the legitimisation basis. The quote in Table 4.1 for example explicitly emphasises that the rule of law requires independent and autonomous institutions with well-defined boundaries and clear rules and procedures. In other words, the commissioners argue that it is the law as an object of study and field of practice that grounds the rule of law. More simply, what underpins the rule of law is the existence of rules and procedures with clear boundaries for institutions. At the other side of the spectrum, that is when *epistemic relations* are de-emphasised or downplayed, the legitimisation basis is not grounded on the law, rules, or procedures. In Table 4.1 this is expressed by the affirmation that the Constituent Power may be exercised by the Junta without limits, boundaries or controls that could be grounded on the law as discipline or practice. Simply, this means that the argument is not based on the law, rules, or procedures to legitimate the claim.

In the case of *social relations*, in this study it refers to relations to subjective attributes, ways of being and interacting. That is, when analysing commissioners’ claims, it refers to qualities exhibited by social actors, comprising the range from behaviours to characteristics they ought to possess *qua* actors. More clearly, whenever commissioners emphasise moral arguments, political arguments, feelings or spirituality, as the basis on which to support their claims, this is characterised as strengthening *social relations* (SR+). This emphasises ‘knowers’ as the legitimisation basis of a knowledge practice. The quote in Table 4.1 for example explicitly emphasises that the citizen of should behave in a certain way in relation to the country. It characterises this as ‘respect’, highlighting a way of subjective interaction. It specifies that the legitimate way of being is to behave in a specific form as social actors in the public or even private sphere of human affairs. In other words, the ‘basis of achievement’ to be a

legitimate citizen is strongly bounded and controlled in the phrase, it is highly specified by the commissioner’s claim. At the other side of the spectrum, that is when *social relations* are de-emphasised or downplayed, the legitimation basis is not grounded on subjective attributes, ways of being or interacting.

Concept	Description of the concept	How the concept manifests in study	Example
ER+	Emphasises specialised knowledge or construction of procedures within the law, institutions, or objects	When commissioners foreground the law or legally grounded institutions	‘In accordance with the idea of creating a modern Rule of Law, it is necessary that an independent Judiciary Power guarantees at all times the full validity of fundamental rights, establishing the resources or procedures that allow their protection’
ER–	Downplays specialised knowledge or construction of procedures	When commissioners downplay or are indifferent to the law or institutions	‘Obviously, the Junta can exercise the fullness of its Constituent Power at any time and without any limit that comes from the positive legal order in force’
SR+	Emphasises subjective attributes (feelings, faith, morality, political ideologies) or ways of interacting (respect, dignity) of knowers	When commissioners foreground subjective characteristics of social actors such as morality, religion, or ideology, or establish ways in which these should interact	‘every inhabitant of the Republic owes respect to Chile’
SR–	Downplays subjective attributes or ways of interacting of knowers	When commissioners downplay characteristics or ways of interacting of social actors	‘the Constitution is absolutely depersonalised, cold and dehumanised in the legal apparatus born after the French Revolution, which corresponds to a liberal thinking’

Table 4.1 Translation device for this research

To provide an example of how the translation device worked for the analysis, consider the following quote. Its context is a discussion of criticisms of Allende’s Popular Unity

government, and how he supposedly achieved his political purposes according to the Commission:

‘through the “legal loopholes” [Allende’s] government profoundly altered the constitutional life of the country’ (OVALLE, S208)

Here, the argument focuses on the transformation of the legal order carried out by Allende’s government. The basis of this specific argument is a legal criticism. That is, Allende’s government is criticised *because* of legal reasons, namely, because of perceived legal abuses of constitutional ‘loopholes’. Thus, this claim emphasises *epistemic relations* (ER+) as its legitimation basis. On the other hand, the claim does not highlight subjective characteristics, ways of being or ways of interacting of citizens as its legitimation basis. Hence, it de-emphasises *social relations* (SR-). Looking at the Specialization plane, this puts the phrase as exhibiting a *knowledge code* (ER+, SR-) as its underlying basis. In simple words, it is a legal criticism of what was perceived to be a legal issue.

Nonetheless, it is important to note two considerations. First, that neither Specialization nor any other LCT codes are something to be ‘found’ in knowledge practices or claims. In other words, the researcher is not discovering or uncovering the underlying organising principle as if it was already there. What stronger or weaker *epistemic relations* mean is dependent on the research questions of the study. In the case of this thesis, stronger *epistemic relations* are identified as a legitimation basis in claims that highlight the specialised knowledge of the law, such as constitutional law as well as rules, procedures, or the (legal) definition of an ‘object’ as the grounds on which such claims are made. Second, that the analysis in this research was not reduced to adding up phrases, coding them, and then averaging their legitimation bases to arrive at an overarching one. Rather, the object of this qualitative analysis were the various constellations relative to each of the research questions as part of the Commission’s overall set of ideas and beliefs. This required analysing multiple phrases and arguments spread over the sessions to construct these constellations. Moreover, the analysis is qualitative because it explored connections of meanings and was a constant conversation with the data and the theory. Thus, the analysis itself is not reduced to coding

the data set. Instead, coding the data set was a step toward the analysis done with the coded data.

4.4.3 Constructing the object of study: the Commission

The previous sections have detailed how the samples were selected from the main corpus in relation to the three research questions. They also characterised the role of the LCT concepts of constellations and Specialization were utilised to approach the data. In tandem with this, the process of analysis, which included elements of reading, identifying key concepts, and data searching, also included an iterative writing process.

The way the analysis of each chapter is presented also corresponds to a methodological choice. This choice was itself linked to the nature of the research questions and the expected answers, as well as to the nature of the constellations of ideas of the Commission. In seven years of work over the 417 sessions, with three members exiting the Commission in 1976 and three other individuals replacing them, it is to be expected that the concepts and notions discussed in the Commission shifted. Each commissioner is an agent that possesses autonomy and free will, who may learn, change ideas and dispositions over time. A group of up to 11 individuals engaging in knowledge-building over a long period posits the methodological problem of how to represent such knowledge construction endeavour. Thus, two possibilities appear: a diachronic analysis and a synchronic analysis. The first would mean a chronological account of the changes as they happened over the course of the Commission's work. The second would mean a synoptic view of all ideas and values discussed, no matter their position in the timeline of the Commission. For this study, a third, semi-synchronic analysis was chosen.

This semi-synchronic analysis simply means that the Commission's discussions are presented relative to the concepts they discussed, without concerns for their chronology. The 'semi' aspect has two implications. First, that their concepts are represented in such a way as to reconstruct connections between meanings, usually of logic. For example, Chapter Six shows that the Commission utilised Christian-Humanist ideas to criticise what they characterised as the value-free notion of liberalism. To present this, the Chapter first

introduces their characterisation of liberalism relative to their criticism. Then, it shows how they turned these ideas around and chose a new pathway different from this liberalism. This example is a reconstruction that did not occur chronologically, but rather shows how the discussions produced a specific way of thinking. The study then attributes it to the Commission as an emergent property of the commissioners' discussions.

Importantly, relative to the data analysed for the research questions, it is the case that the Commission had only a few, specific disagreements in their discussions. These have been noted, highlighted, and discussed in the relevant Chapters. That only a few discussions engendered polarised arguments between the commissioners shows the general agreement among them and highlights the importance of their disagreements. In relation to the Commission as an entity, it provides evidence that the commissioners did in general tend to agree with each other, and that their differences were not based on viewpoints that could not be reconciled somehow. A more comprehensive, if never complete set of reasons why, were explored earlier in the Chapter in Section 4.2.3. However, the main reason was evidently the ideological alignment of the commissioners to the military Junta. Nevertheless, this poses the problem of how to construct the Ortúzar Commission as an object of study.

To approach this problem, this thesis characterises the Ortúzar Commission as an emergent property of the discussions between its members. As such, it is understood as an organisation 'irreducible to either agents' actions, or discourse' (Fleetwood, 2014, p. 214), although dependent on them. The powers of the Commission are nevertheless "emergent" with respect to their components', in the same way that cells are comprised but irreducible to molecules, and society is comprised but not reducible to individual people (Collier, 1998). This was another methodological choice to structure the analysis in a way that depends on the individual members of the Commission talking and discussing ideas and beliefs, but at the same time is not reducible to each empirical instance of talking. Simply put, the whole of the Commission is more than the sum of its parts, but it is through an analysis of its empirical aspects, the Proceedings, that the thesis can even attempt to answer each research question.

This way, the study acknowledges that the material conditions and political context of the

Commission had a part in shaping its members' activities as well as the constitutional draft produced by the end. Among these conditions were the availability of each member to assist the sessions twice a week, as all members had day jobs; the physical and institutional constraints of the space where they met, a place that is now being re-signified by the current Constitutional Convention; the seemingly scarce availability of resources such as stenographers to produce transcriptions of the Commission and its subcommissions, which may have an impact on the length and depth of their discussions through time. Other conditions may yet be highlighted by future historians. The political context did affect the members and therefore the ideological composition of the Commission, as noted in the resignation and dismissal of commissioners SILVA, EVANS and OVALLE (see Section 4.2.1). These saw their parties outlawed or were collateral damage to the internal politics of the Junta (Carrasco Delgado, 1981; Cavallo, 2008).

Consequently, I argue that this favours a comprehension of the Commission as a social group that exists beyond the individual members, beyond their specific discussions, but that depended on them and may be analysed through the empirical data available.

4.5 Impact of COVID-19 and the 2021 Chilean Constitutional Convention

Halfway through the development of this thesis and its research, the COVID-19 global pandemic began. The research and writing began in 2018 and ended in late 2021, coinciding with the virus outbreak during early 2020. The researcher was geographically located in Sydney, Australia during the writing of the thesis, which meant that international travel was taken out of the possibilities for the research. A trip to Santiago, Chile had been planned for early 2020 to gather archival material from the members of the Commission, such as appearances in magazines, newspapers, and other forms of communication of both their ideas and the general status of the Commission's work. This trip could not take place due to COVID travel restrictions and the closing of Australian international borders. However, two measures helped gain access to some of these materials. External help to reach them aided in procuring some material, and the increased availability of digital copies of archives allowed access to an important set of archival records.

Nevertheless, the core of the research itself was never impacted in a meaningful way. The researcher is grateful for this, and this thesis acknowledges this as a privilege. Many other PhD students and researchers, especially those from the nature sciences whose experiments had to be abandoned, suffered a tremendous negative impact. This was also the case for those who required traveling for fieldwork and were impacted by the bans or restrictions on international travel. The effects on the doctoral community will surely be analysed, hopefully by those in the future and enjoying calmer conditions.

A second major event that impacted on the research was the Chilean social protests that sparked on October 18th, 2019. The protests resulted in the Chilean Congress looking for institutional ‘exits’ to placate social demands, and one of the major outcomes was the agreement to call for a new Constitution to be made (Heiss, 2020). After a brief period of questioning whether the research had been transformed into a ‘moot point’, the researcher reinvigorated their disciplinary viewpoint that the research was not contingent on whether the Chilean constitution changed. Although it does have social and political effects on contingent matters, ultimately this thesis is about the knowledge-construction in the constitution-making process leading to the 1980 Constitution.

The Constitutional Convention began its work on July 4th, 2021. On September 14th, it established its regulations, and by early November its seven commissions opened the possibility for individuals and organisations to request public audiences. The researcher presented some of the conclusions of this thesis to the ‘Constitutional Principles’ commission on December 2nd, 2021. This instance had a profound impact on the final stages of writing the thesis, as it provided feedback to the me as the researcher on both *epistemic relations* and *social relations* of the research. That is, on both the subject matter, and of the ethical and social commitment that the work involved. In the words of the Commission secretary, they characterised that this research and thesis

‘Has, as its sole purpose, to contribute to the community, which is *your* community, that is living this historical process’ (Quilpatay, 2021)

In sum, the research has been impacted by COVID-19, but even more so by the socio-political context of the Chilean social protests, and especially by the ensuing constitution-making process. The importance of a democratic constitutional process cannot be understated for a country that still struggles with its recent authoritarian past and particularly with a constitution written under an anti-democratic regime.

4.6 Conclusions

This chapter provided a thorough description of the methodological procedure for the process of data gathering and analysis for this thesis. It outlined the methodological approach afforded using LCT as a framework. Then, it described the process by which data was selected and then analysed. Afterwards, it characterised the process by which the conceptual tools for the analysis of the data were developed. It also described the impact of COVID-19 and of the 2019 Chilean social protest and the 2021 constitution-making process.

Chapter Five analyses the rationales discussed by the Commission to argue for the construction of a new Constitution. Chapter Six presents and analyses three ‘pillars’ that structured the Commission’s ideas and beliefs. Chapter Seven argues the overall concepts used by the Commission can be summarised under the concept of the ‘common good’, through which they put together the variegated ideas and beliefs discussed in the previous two chapters. Chapter Eight summarises the main findings and discusses contributions to the literature on the Chilean Constitution and to the constitution-making literature and discusses limitations and future research.

CHAPTER FIVE – WHY DID CHILE NEED A NEW CONSTITUTION?

5.1 Introduction

Constitution-making processes bridge the past and the future of a society in contexts of crisis. From the viewpoint of the military Junta, Allende's Popular Unity government precipitated the crisis of Chilean democracy. However, they considered that this was only the expression of a crisis building through the past decades. Politics, and especially left-inclined political movements and parties, had been eroding social and political life, at least according to the Commission's viewpoint. Thus, the military Junta's coup d'état on the morning of September 11th, 1973, was to them a justified reaction against what they considered a troubled past and present.

In the days immediately after the military coup d'état, the Junta created the Commission of Studies of the New Political Constitution of the Republic of Chile (Comisión de Estudios de la Nueva Constitución Política de la República de Chile), also called the Ortúzar Commission after its president, Enrique Ortúzar. The Commission was tasked to provide a new institutional framework for the country, although no initial schedule or hard deadlines were set. This gave the eight commissioners room to discuss at large their ideas and to plan what future they wanted for Chile. However, as a constitution-making effort is a time where past, present and future are reconsidered and recontextualised, their discussions were varied, especially about the political context and their task at hand. They discussed their ideas and viewpoints of what had transpired in Chile, what were their criticisms of the prior situation

leading up to the coup. To write a new Constitution they needed a clear picture of what is it that they wanted to avoid with it.

The current chapter explores in detail how the Commission answered the question of why Chile needed a new Constitution. It describes and analyses their criticisms about the past and present. It summarises them down to five rationales that explain why and how the Commission argued for a new Constitution. Each of these five rationales are presented as a group of ideas, stances or positions connected in different ways. Some of the rationales exhibit a simple logic sequence of causes and effects, while others are more complex. Nevertheless, the current chapter summarises and analyses each rationale utilising the least amount possible of stances, while still representing the depth and complexity of the Commission's criticisms and ideas. Within this complexity, however, the commissioners pinpointed and discussed two overarching 'culprits, as they called them, which were the main target of their criticisms.

These two interrelated 'culprits' were, first, Allende and his Popular Unity government, and second, the menace of international communism and Marxism. Deeply entrenched in the Cold War and its ideological war, the Commission took the position that the military coup ousted an illegitimate government from the country that had abused its State and its citizenry. They also expressed the need to drive out all ideologies they characterised as a threat. Any that signified a menace to what they called 'Christian, Western society'. The five rationales therefore articulate the Commission's ideas on why a new Constitution was necessary, and what it needed to avoid and prevent to secure a country safe from these two threats.

Thus, Section 5.2 characterises the Commission's answer to the question about a new Constitution. Each rationale is then described and analysed in turn in Sections 5.3 to 5.7. Section 5.8 provides a summary, and Section 5.9 draws two main conclusions from the analysis.

5.2 The five rationales

The five rationales presented in the following sections summarise the Commission's answers to why Chile needed a new Constitution. These characterise and criticise the ways in which the Commission observed the two threats to Chilean society and its democracy. The five rationales are that

- (1) the previous Constitution failed to prevent **Allende's ascension**;
- (2) **Allende abused the law**;
- (3) **Allende's transformations** of society infringed basic liberties and rights;
- (4) **class struggle** was a political and ideological threat to the relations between the individual and the State;
- (5) international communism represented a **threat to sovereignty** of both the individual and of Chile as a nation-State.

These five rationales are described in turn, as comprising arranged groups of meanings, and are analysed using LCT's dimension of Specialization (see Chapter 4).

5.3 Rationale 1: Allende's ascension

To the Commission, the 1925 Constitution represented a chronological first 'culprit' in allowing Allende's ascension to the presidency. They characterised the Constitution as a **defective legal framework**, whose legal flaws allowed Allende, a **minority to power**. To them, Allende's government was a 'minority' candidate and one that was inspired by Marxism. Thus, they argued, Allende heralded the Chilean **destruction of democracy**. These legal issues resulted in a social, political, and moral **chaos**. These four elements constituting rationale 1 are visually represented in Figure 5.1, where the arrows indicate a logical causality between the notions. Though the first three steps were grounded on legal and institutional criticisms of the 1925 Constitution and Allende, the commissioners' criticism ultimately turned to political and moral condemnation of both Allende's government and the previous constitution. These will be detailed and explained in turn.

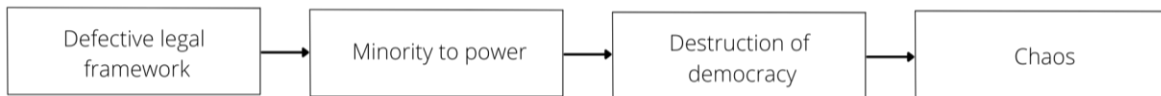


Figure 5.1 'Allende's ascension' rationale

According to the commissioners, the 1925 Constitution was a **defective legal framework** because it allowed Allende to ascend to the Presidency and, once in power, to infringe the law. These were signs of the total 'organic failure of the warranties, fences and mechanisms' that made up the then existing institutional order (SILVA, S17). That is, the 1925 Constitution allowed a non-democratic President to reach office. Here it is important to highlight the fact that Allende was ratified President following the procedure established by the 1925 Constitution, in the same way as previous candidates with similar voting results had done before.⁵ Nevertheless, the commissioners argued that Allende and his administration committed several 'abusive encroachments' (S18) against the Legislative and Judiciary powers of the State. Specifically, they discussed that Allende immediately violated the Constitutional Warranties Pact that had been imposed on to him to 'to anoint him President' (GUZMÁN, S14).⁶

This Pact had been an alternative recourse to the Constitution, as, according to the commissioners' way of thinking, it lacked rules and procedures to control Chilean politics and political parties. Allende was forced to sign this Pact because Popular Unity, according to the Commission, 'raised so much distrust' (GUZMÁN, S14) among right and conservative-aligned political parties that they required insurance. It was a way for these parties to exercise some control over Allende's program that neither the Constitution nor the law afforded them. By signing it, Allende agreed to respect a series of rights such as freedom of the press, of education, of movement, the right for political parties to exist, among other requirements (see

⁵ The Congress ratified first non-majority candidates in the past elections of 1946, 1952 and 1958, in what has been characterised as a 'democratic and republican tradition' of the country (Zeballos Fernández, 2021).

⁶ The Constitutional Warranties Pact was a political move by Christian Democracy and kin parties to suppress or control Allende's political program. The pact required Allende 'not to touch the Armed Forces, education or mass media' (Harnecker, 1998, p. 34)

Loveman (1994), p. 284). The commissioners stated however that as soon as Allende became President, he infringed on these rights and therefore violated the Pact (S12, S18). They considered that neither the 1925 Constitution nor the Pact could have protected democracy.

The reason was that 1925 Constitution was characterised by the commissioners as a document filled with ‘merely theoretical declarations’ (OVALLE, S48). With this they meant that it did not provide substantive definitions of its underlying values or beliefs, nor ways to control the political ways of being of the citizens. Rather, it was ideologically neutral, making it impossible to have a Marxist government be declared ‘contrary to the constitutional order’ (ORTÚZAR, S37). But according to them, there were too many ‘defects that under the rule of the 1925 text allowed or would have allowed the implantation of Marxism’ (LORCA, S11) anyways.

Thus, what allowed a **minority to power** was the way the 1925 Constitution was constructed. Both Allende and his Popular Unity alliance were deemed minority groups that were ‘inflamed by a dogmatic spirit that intended to destroy the democratic game’ (SILVA, S12). This stood in stark contrast to the ‘true national majorities’ (SILVA, S11). By ‘intention’ they meant that Allende, inspired by Marxist ideas, would infringe rights, and radically transform Chile. These intentions are analysed in section 5.3 below. Nevertheless, the Commission’s position was that the defective legal framework and the rise of Allende’s minority political group resulted in the most unstoppable ‘crisis that the country has lived’ (SILVA, S17).

This crisis that led to the **destruction of democracy** had therefore been ‘greatly due to the breakdown of the legal system’ (S18) forced by Allende’s government. The Commission argued that the respect for the law was ‘fundamental for the maintenance of democracy’ (S18), but Allende installed a ‘regime that intended to destroy the democracy and the Rule of Law that our country enjoyed’ (S18). To them, without one the other would be impossible, and Allende threatened both as part of his ‘intentions’.

Hence, a common thread on these criticisms is that they were grounded on a legal viewpoint. The commissioners highlighted legal rules and procedures as the basis on which to criticise

the Constitution and Allende's actions. The Constitution allowed an allegedly unlawful or illegitimate president come to power and abuse the law. These criticisms can thereby be represented as emphasising *epistemic relations* (ER+) as their legitimation basis. As the commissioners were lawyers and law professors, writing a legal document, it stands to reason that their criticisms would be elaborated from the perspective of the law. That is, of what elements from the Constitution or laws Allende transgressed, and especially from viewpoint that emphasised respect for a procedural approach to Allende.

Additionally, the characterisation of these criticisms was not grounded on politics or moral beliefs. The origin of the issues raised by a defective legal framework, the ascent of a minority to power or the destruction of democracy were not at all political or moral. Hence, *social relations* were not emphasised (SR-) by them in these claims. However, the legal criticism appeared to be insufficient to the commissioners, as they did not limit their criticism of Allende's government to it. Rather, the commissioners began their criticisms by invoking the legal aspects, but then the argument turned toward something else entirely.

This was the **chaos** that reigned during Allende's presidency. The commissioners discussed that the 1925 Constitution allowed the 'rise to power of a minority group whose politics led the country to the biggest moral, political, social and economic chaos of its history' (GUZMÁN, S18). The Popular Unity government created an 'unreality', which was 'totally alien to our way of being' (ORTÚZAR, S18). That is, the point in question was the transformation of the political way of being of the citizens. This chaos was the result of Allende exercising his political ideas, thereby affecting 'the good and proper coexistence between citizens (*convivencia*)' (SILVA, S188). His government was destructive to the point of jeopardising the 'essence of the national soul, called "tradition"' (GUZMÁN, S243), in turn leading Chile to 'the brim of civil war and its disintegration as a nation' (GUZMÁN, S405). The meanings around the ideas of nation and tradition will be developed in detail in Chapter Six. Nonetheless, both the concepts and the underlying principle exhibit a significant shift from legal procedure toward a concern with ways of being expressed in political ideologies.

Whereas the first three nodes of Figure 5.1 are characterised by an emphasis of *epistemic*

relations and an absence of emphasis of *social relations* (ER+, SR-), the fourth node shifts to the opposite. This **chaos** as characterised by the commissioners exhibits a lack of emphasis of *epistemic relations* and an emphasis of *social relations* (ER-, SR+). This shows that what was ultimately important for them in denouncing Allende was the moral and political chaos he allegedly brought to the country. Importantly, the **chaos** was criticised by the Commission not because it broke specific laws or transgressed the Constitution. Rather, it was criticised because Allende's actions led to what they considered to be a disruption of the Chilean 'way of being', the 'convivencia', to the point of creating a parallel, negative 'unreality'. These two kinds of criticisms, that is the legal aspect and the moral and political denunciation appear to show no correspondence between one another. These are the first hints that there was much more at play in making a new Constitution than the elaboration of a legal framework for a new regime.

In sum, the first rationale that answered the question of why Chile needed a new Constitution was that the 1925 Constitution led Chile to social, political, and moral chaos. Importantly, the analysis of the rationale reveals that the criticism of the prior legal framework was made from the viewpoint of the law on the surface, but then became moral and political. The 1925 Constitution was defective, according to the commissioners, fundamentally because it did not impede the ascension of a politically undesired presidential candidate who imposed an undesired morality on Chilean society.

5.4 Rationale 2: Allende as 'abusive'

In rationale 1, the Commission argued that the 'destruction of democracy' was a consequence of the legal framework allowing a minority candidate to ascend to power. Rationale 2 further unpacks what this meant for the Commission. The key concept here was the characterisation of Allende and of his government as 'abusive' (OVALLE, S49) and that Allende engaged in the 'deviation of power' (GUZMÁN, S50). That President Allende committed legal and political 'excess' was a common way in which practically the entire Commission referred to

him (EVANS, S9, S212; LORCA, S22, S338; GUZMÁN, S50, S338; OVALLE, S51; DÍEZ, S51; ORTÚZAR, S347).⁷

Specifically, these ‘abuses’ committed by Allende may be summarised into three kinds. To the Commission, Allende **violated the constitution, usurped State powers** and **politicised institutions**. Here, the commissioners inferred that these were part of a scheme elaborated by Allende, which is summarised under the notion of **Allende’s intentions**. The way in which these criticisms and ideas are structured as a circular argument with the inference at the core are visually represented in Figure 5.2. The arrows indicate the causal inference as elaborated by the Commission’s arguments.

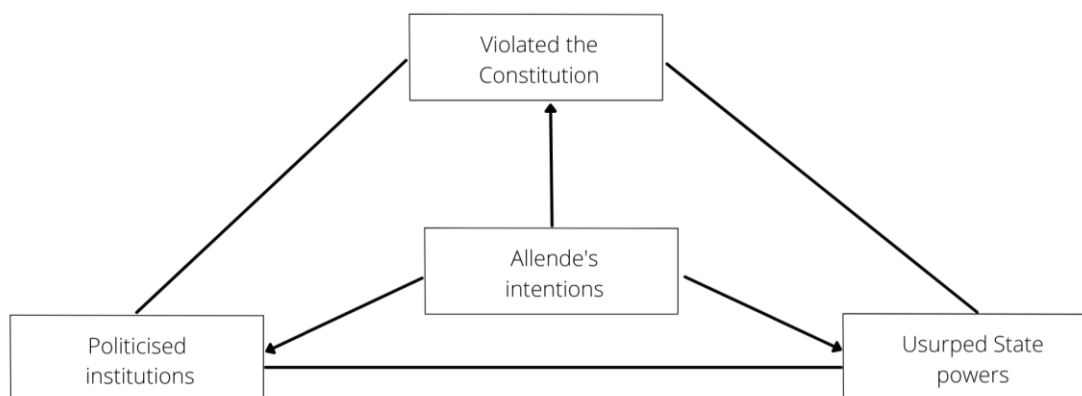


Figure 5.2 The ‘Allende as abusive’ rationale

The Commission did not shy away from inferring what transpired in **Allende’s intentions**, or by extension, his government. They commented that ‘from the first day [Allende] intended to apply a Marxist scheme within a republican, democratic and representative regime and system’ (ORTÚZAR, S42) and that his government ‘intended to destroy the democratic game’ (SILVA, S12). Similar references to Allende’s intentions can be found scattered over the Commission’s work (see S11, S136, S221, S332, S407, among many others). Succinctly put,

⁷ According to historian Moncada, part of Allende’s program included a ‘nationalised sector of the economy’ which would include the raw mining of copper, saltpeter, iodine, iron and coal among others, as well as the finance system, foreign trade, ‘strategic industrial monopolies’ and other large economic activities linked to the development of the nation, as well as a private and a mixed economic sector (2006, p. 52).

the commissioners presumed without any doubt that Allende's overall intention was to 'assume the totality of power' (ORTÚZAR, S42). With this assumption they explained to themselves and to others why Allende and his government, allegedly, exploited 'legal loopholes' (OVALLE, S208) and 'systematically violate[d] the Constitution and the Law' (ORTÚZAR, S42).

That Allende **violated the constitution** expressed over several actions. For example, the commissioners accused him of using expropriation of private property as a tool to acquire private companies and incorporate them into the State (ORTÚZAR, S42), even though this was ruled and allowed by the Constitution. Another example was that he abused constitutional reform and presidential priority to pass legislations. In bypassing or deviating the law and the Constitution from its purpose, Allende caused 'confusion of the Chilean legal system' (GUZMÁN, S184). Hence, through legal 'artifice and loopholes, the organs [of the State] acted outside their functions, their competence, their formalities, their attributions' (SILVA, S202).

Another way in which Allende committed transgressions was by creating 'a parallel series of political bodies' that did not answer to the Constitution (ORTÚZAR, S22). Among these were the *cordones industriales* (industrial belts), peasant councils and '*comandos populares*' (ORTÚZAR, S42), all forms of grass-root power afforded to workers. These organisations 'threatened the legal order of the Nation' (GUZMÁN, S128) according to the commissioners, because they had been created to give works voice in political and economic decisions. This way of disseminating power to the people was not present in the Constitution, sparking controversy within the commissioners. Thus, to the Commission Allende **usurped State powers**, another expression of his intentions. Through these popular institutions, the Commission argued that Allende further ignored or usurped 'the faculties of the other powers of the State: Legislative, Judicial and the Comptroller General of the Republic' (ORTÚZAR, S57) and even of the Executive itself (OVALLE, S49).

Furthermore, the Commission criticised Allende because he **politicised institutions**. In other words, that 'technical' roles within institutions or even institutions themselves were transformed into politically or ideologically determined roles. For example, that the Supreme

Court was forcefully shifted from a technical, legislative institution into a ‘political chamber’ (ORTÚZAR, S283). The commissioners called out against this politicisation of the powers or institutions of the State (GUZMÁN, S252). Besides State institutions, Allende also intervened the economic sphere. He introduced ‘partisan activities within trade unions’ (GUZMÁN, S9). Likewise, Allende brought ‘partisan education’ into schools (DÍEZ, S146). To the Commission this ‘excessive politicisation of national activities’ led to the ‘institutional breakdown of the country’ (ORTÚZAR, S9). From their viewpoint, it resulted in the impossibility to have ‘an authentic participation of the people’ in national politics or in the exercise of their rights. These various social institutions ought to be bereft of politics, from the commissioners’ viewpoint. Allende, they claimed, did the exact opposite.

Rationale 2 shows that there is a series of criticisms elaborated by the Commission from a legal standpoint, and that they inferred their origin by attributing the cause to Allende’s intentions. This cause, in a similar way to rationale 1, also exhibits a shift from the legal standpoint to the political and moral. In this case, the abuses committed by Allende and by his government were criticised as transgressing boundaries and functions established by the law. These share a strong grounding on the law, thereby showing strong *epistemic relations* (ER+). Importantly, political consequences are mentioned by the commissioners in these arguments. However, the basis from which the criticisms are raised was not grounded on politics or on a moral criticism. The Commission did not emphasise *social relations* (SR–) in characterising the reasons why Allende’s abuses were deviations of power. However, the commissioners went beyond the legal criticism.

In this case, the criticism went into the realm of the conscience of Allende and his government. In other words, the strong *epistemic relations* (ER+) highlighted by the legal criticisms gave way to an argument that downplayed *epistemic relations* (ER–) and strongly emphasised *social relations* (SR+). To the commissioners, it was Allende’s nefarious intentions to take over the country that resulted in legal abuses. Legality, procedures, rules, and the institutions that arise from a constitutional framework were, therefore, a means to an end, at least from the viewpoint of the Commission. As in rationale 1, rationale 2 indicates that the Commission’s underlying problem was strictly moral and political. Unlike it

however, the political inference of Allende’s intention acts as a cause within this rationale, not an outcome of a series of legal criticisms.

5.5 Rationale 3: Allende’s transformations

The previous two rationales showed that two strictly political and moral criticisms braced the commissioners’ legal criticisms of Allende’s government. One, that an insufficient constitutional framework inevitably led to social and moral chaos. Two, that Allende’s alleged legal abuses and excesses was interpreted by the Commission simply as a means for his foul intentions to take over the country and to impose a series of transformations to Chilean society. Rationale 3 summarises the Commission’s argument that Allende’s transformations on society involved the conversion of relations to private property, freedoms and even the entire political regime.

This rationale consists of two main parts, visually represented in Figure 5.3. To the left, Allende’s intention is represented as an attempt to **transform Chilean’s way of living**. This transformation took the form of **changing relations to property**. The arrow represents the link of causal inference made by the commissioners, whereby the transformation entails changing individuals’ relations to private property. In turn, this second part of Figure 5.3 unpacks this notion into two further ideas: that this change to private property relations implies a change to the basis of **freedom and liberties** and a **redefinition of the political regime**.



Figure 5.3 The ‘Allende’s transformations’ rationale

In the opinion of the Commission, one of Allende's main intentions was to 'change Chileans' way of living, the whole institutional system, economics and politics' (GUZMÁN, S202). According to DíEZ, 'Allende declared that his government had as a goal the transformation of Chile into a socialist country' (S46). Hence, the commissioners assumed that this goal entailed the destruction of Chileans' 'peaceful coexistence' (GUZMÁN, S18). This was argued on the basis that Allende, as a Marxist, necessarily threatened the 'nationality's deepest sentiments' and its traditions (GUZMÁN, S12). For example, the commissioners expressed that he created an 'environment of permanent violence, insults, slander, terrorism, political assassinations' (ORTÚZAR, S42). According to the commissioners, the large majority, if not all of Chileans lived in uncertainty and did not feel safe even within their own homes (S98). In other words, Chile existed in a 'state of internal war' (ORTÚZAR, S57), as Allende attempted to **transform Chilean's way of living**.

That Allende imposed this transformation was a problem to the commissioners. It meant a moral change, in the way that individuals live their lives, how they relate to each other in society. It impacted on their idea of what 'national unity' was. This idea will be explored in detail in Chapter Six. Nevertheless, the alteration of Chileans' way of living was heavily criticised by the Commission. Maintaining traditional values was one of the reasons given by the military Junta to legitimate their coup d'état (Junta Militar de Gobierno, 1974). For these reasons, *epistemic relations* were not emphasised (ER-) in this criticism, as neither rules nor procedures grounded these concepts. On the other hand, the shared values and subjectivity among the citizens as the grounds on which to criticise these transformations can be characterised as stronger *social relations* (SR+). Rationale 3 exhibits an inverted switch of grounding than rationales 1 and 2.

In rationale 3, the argument switches from a concern about the subjective way of living to a concern about legal rights and regime procedures. Figure 5.3 shows that the commissioners' concern was their understanding that Allende was intent on **changing relations to property**. To the commissioners the protection of the right to private property was 'the foundation of all public liberties' (S1). For them, it was the foundation of politics, the economy, and the

entire 'social regime' (S202) of the country. Its importance was such because 'goods were created by God to satisfy the needs of men' (ORTÚZAR, S150). This criticism is further explained by the two ideas that comprise it: that it impacted on **freedom and liberties**, and that it meant a **redefinition of the political regime**.

According to the Commission, if no right to private property exists and is protected by the State, then the livelihood and material subsistence of citizens 'is left at the discretion of public authorities' (S18). In such a situation, all **freedom and liberties** are taken away from the individual, resulting in a **redefinition of the political regime**. From their viewpoint, without strict legal protections of the right to private property, 'public freedoms constitute an illusion' (S18). To them, private property was the primordial 'natural right', and had the purpose of providing boundaries and limitations to State intervention on individuals' activities (S18), economic and otherwise. Since Allende held 'a doctrine that violates property regime' (ORTÚZAR, S365), he caused 'loss of political liberty' (LORCA, S249) to society. The link between private property and political liberty was called the 'social function' by the commissioners, which they argued was under direct attack by Allende's government.

The threat to private property meant a **redefinition of the political regime**. The commissioners argued this on the grounds that the laws on private property were 'fundamental to identify the kind of political, economic and social organisation that reigns in that community' (GUZMÁN, S197). That is, they were of the opinion that 'the statute of property always, ultimately, defines the political regime' (BULNES, S24) of a nation-state. The political regime meant to them the definition of the electoral system, the functions of the various powers of the State, and the creation of institutions to manage these, as well as the legal definition of the procedures that sanction their operation. In sum, the commissioners argued that Allende redefined 'democracy, the political regime that lives and underlies the State of Chile' (OVALLE, S47) and that control of Chile's 'economic regime' also meant control of the 'social regime' (GUZMÁN, S202). Because of this they argued that Allende was able to 'exert political control' (ORTÚZAR, S3) over Chilean society and that had he not been stopped by the military coup, his government 'would have achieved total political control of the citizenship' (ORTÚZAR, S17).

These three interrelated ideas, that **changing the relations to property** implied a loss of **freedom and liberties** as well as a **redefinition of the political regime**, were posited from a legalistic standpoint, and were grounded on rights, rules and legal definitions of what the political regime was. Although the commissioners mentioned some political outcomes, the criticisms themselves were not political or moral. They were not about beliefs, shared values or citizens' political ways of being. Instead, they were elaborated from the viewpoint of rules, procedures, and the organisation and administration of the country's political system. Thus, these ideas can be characterised as strengthening *epistemic relations* (ER+), highlighting a preoccupation with the specialised legal knowledge as their basis of legitimacy. At the same time, in this context their arguments on private property, freedoms and the political regime was not grounded on a moral or political criticism by themselves. Their description did mention some negative political outcomes, but the basis from which these criticisms were argued was not political. Thereby, these three ideas do not emphasise *social relations* (SR-) in their legitimisation claims.

The analysis of rationale 3 shows that, from the viewpoint of the Commission, Allende's politically motivated intentions targeted the law and right of private property as the basis of legal liberty and the structure of the political regime. Importantly, they did mention both legal and political aspects, but the analysis shows that the Commission's core concern was the law. Specifically, the main issue was the political transformation of social life via the law. In other words, to the commissioners the main way that Allende altered society was by the use of the law. Hence to them it was the law and constitutional law more so that could enable them to forestall the coming of Marxism and of a different way of life.

Rationales 1 to 3 explored the first 'culprit' accused by the Commissions as reasons for making a new Constitution: Allende and his Popular Unity government. But there was a second 'culprit', which is explored in Rationales 4 and 5. These explores and analyse how the Commission understood Allende's ideas as a representation of Marxism (Rationale 4) and the Commission's perception of international communism as a menace (Rationale 5).

5.6 Rationale 4: Class conflict

Rationale 4 explores how the Commission understood ‘Marxist ideas or doctrines’. Right from their first Session, they acknowledged the need to police Marxist ideas in the country. They stated that the new Constitution needed

The establishment of a constitutional precept, similar to that contemplated in the Federal German Charter, that declares parties or movements that support Marxist ideas or doctrines contrary to the Constitution (ORTÚZAR, S1)

To the commissioners, the political struggle against Marxism was ‘the most significant historical-political event’ of 20th century (GUZMÁN, S243), the dominating ‘social and political problem of the world’ (GUZMÁN, S243). Specifically, GUZMÁN argued that it was ‘bad, a mistaken doctrine and contrary to the Chilean legal order and national tradition’ (GUZMÁN, S146). Thus, the Commission agreed that Marxism was ‘cause of the Chilean drama’ [GUZMÁN, S405). It posed a threat, first and foremost, through the political notion of class conflict, according to the commissioners. They characterised class conflict as comprised by two political actions: that it **divides society** and that it **inverts society**. That is, that it fosters social conflict and division, hampering a perceived social unity. Second, that it inverts the normal relations of social actors within the State. This was characterised by the commissioners as a situation in which **man serves the State** and where the **collective absorbs the individual**, both producing a **totalitarian State**. Figure 5.4 visually represents the ideas and their relation within this rationale.

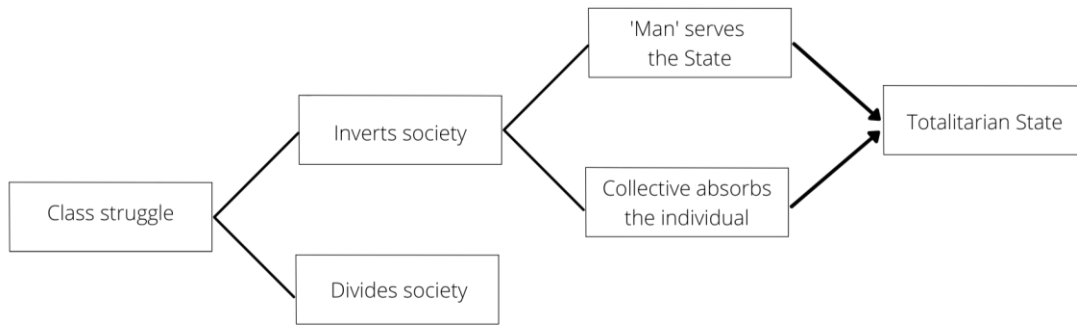


Figure 5.4 The 'class struggle' rationale

Class conflict was characterised as a political action (CARMONA, S366) and as a doctrine aimed at promoting collectivism and dividing society. It was understood by the Commission as fundamental to Marxist ideology, and as essentially incompatible with the goal of national unity (S2). Collectivism, according to the commissioners, was the idea that Marxism inverted the normal position that social actors occupied in society. This meant that the 'collective' such as the State, social groups or even society existed only to serve the individual. Hence, they argued that collectivist ideology **inverts society** to the point where '**man serves the State**' (ORTÚZAR, S40) instead of the other way around. This 'ends up drowning the human being and subjecting it' (EVANS, S38), to the whims of the State and its leaders. From their viewpoint, collectivist regimes 'sacrifice the freedom or dignity of specific groups of people' (ROMO, S42), liberties and rights which are the result of the 'nature of man' in the interest of the collective (S167). In sum, the **collective absorbs the individual** and the human being ends up 'dissolved' (GUZMÁN, S40) under Marxism.

In fostering the collective, the State was made to serve only 'a part of [the national community], as important as that part was, even if it was the majority' (GUZMÁN, S40). A Marxist regime would, according to the commissioners, aid one social group over others, thereby fostering social 'rivalries' and 'antagonisms' (BERTELSEN, S366, S402). This led to a 'hatred between the citizens' (ORTÚZAR, S210). This was a contradiction of terms to them, as the 'mandate imposed on the State' was to aid the sum of all individuals, 'never of any specific [social] group' (GUZMÁN, S40). Allende, viewed by the Commission as a Marxist promoter of class conflict, was therefore 'not the President of all Chileans, but rather the

President of Popular Unity' (ORTÚZAR, S42). They argued this on the basis that Allende directly called 'to break Chilean society into two irreconcilable blocks' (GUZMÁN, S402). They reinforced the notion that the President had to represent and focus on the entire national community, making it so that 'a Marxist cannot be the President of all Chileans' (S187). Therefore, the Marxist ideology of class conflict **divides society**, and Allende was an illegitimate president to the commissioners.

The end goal of this was Allende's intention to build a '**totalitarian State**' (ORTÚZAR, S243). To do so, Marxism, through Allende, pit minorities against the entirety of society, breaching the presidential and State 'duty to procure the good of all' (GUZMÁN, S40). All these doctrinal reasons led the Commission to sentence that Marxism was contrary to 'institutional organisation of the Republic' (ORTÚZAR, S367) and lead Chile to its destruction. They were sure of it, 'for there is no doubt that the totalitarian virus will be introduced through class struggle' (ORTÚZAR, S243).

There is a singular binding thread among all these elements that comprise rationale 4, and that is a political and social grounding on all of these criticisms and viewpoints on class conflict. For this rationale, the commissioners put aside any legal, procedural, or even constitutional basis for their criticisms. They abandoned specialised legal knowledge as the ground on which to criticise Marxism. This way, they did not emphasise *epistemic relations* (ER-) for this rationale. Instead, they chose to observe and criticise Marxism and class conflict as a political ideology, rather than, for example, a sociological theory that described the operations of society. Therefore, this characterisation of Marxism can be understood as strengthening *social relations* (SR+). There is an important implication highlighted by this choice in legitimation basis.

The Commission had a choice on how to approach the subject. Their condemnation of class struggle and its various components were grounded on a political standpoint, and on the social and political effects the commissioners expressed to have. For example, the Commission focused on the encroachment of individuals' rights to self-determination and autonomy vis-à-vis the State. Here, they could have chosen to criticise these State intrusions

from their standpoint as lawyers and law professors by arguing that Marxism trespassed the legal rights of the individual. But the commissioners chose otherwise. Their criticisms were specifically about their perceived political and social effects, which to them were negative and nefarious. Their problem had not simply been that the individual was to be allegedly reconfigured by Allende's ideas. Rather, their issue was that it proposed a different way of being that did not align with what they believed to be the legitimate one. What they considered legitimate and what they proposed for their new society will be analysed in Chapter Six and Seven. However, the issue that is highlighted by the weaker emphasis on *epistemic relations* (ER-) and the stronger emphasis on *social relations* (SR+) was that they chose to denounce Marxism, which they characterised as political discourse or action, with political discourse. The questions raised by this point to what role could their constitution-making play in this, in what ways, and through what ideas they expected to fulfill their goals.

5.7 Rationale 5: Threat to sovereignty

The Commission's fifth rationale for why Chile needed a new Constitution focused on the concept of 'sovereignty' (*soberanía*). They expressed that Chile's sovereignty as a Nation-State and as a 'national community' was under threat by international communism. Commissioners described this idea of sovereignty as the power a Nation-State must exercise its self-determination, establish its own legal system, and politically organise itself, free from coercions both from within and without. To them, there were two limits in applying the state's power, one is 'the State's own purpose' (GUZMÁN, S402), the other are the rights that 'stem from human nature' (GUZMÁN, S402). The meanings of these will be explored in-depth in Chapter Six. Nevertheless, the Commission stated that 'the most serious thing about Marxism is that it violates sovereignty' (ORTÚZAR, S366).

Specifically, a country ruled by a Marxist ideology 'definitely loses its freedom and sovereignty' (ORTÚZAR, S366). According to the Commission, Marxism offered an internal **threat of politicisation**, and an external **threat of international communism** against sovereignty. Together, these lead to a **threat to autonomy**. These ideas configure the fifth rationale 'Threat to sovereignty', which is visually represented Figure 5.5.

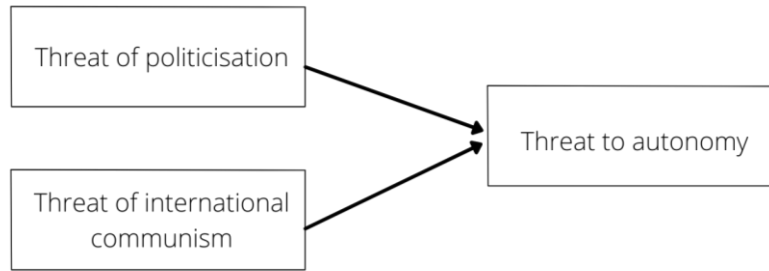


Figure 5.5 The ‘Threat to sovereignty’ rationale

Internally to the country, Marxism provided a **threat of politicisation** against sovereignty. The main reason argued for this was that the ‘Marxist scheme’ injected politics into public and private institutions and organisations. These, to the commissioners, ought to enjoy ‘legitimate autonomy’ from politics ‘to achieve their specific purpose’ (GUZMÁN, S18). For example, politicising education was achieved by Allende’s intervention of the national curriculum. ORTÚZAR accused students during Allende’s government of being more interested in political activities or striking rather than studying (S146). This led them to argue that forbidding partisan education ought to be a ‘basic norm of mental sanity and educational sanity’ (DÍEZ, S146). The problem, succinctly put, was about preventing ‘partisan struggle from projecting beyond its due nature’ (SILVA, 213). In other words, to the Commission, political activity was to be strictly and tightly regulated to stay within the frame of partisan politics, and nothing else. Education, labour, and other areas were not areas into which politics should be allowed. This created the situation whereby ‘the subordination of education to the interests of contingent politics’ was characterised ‘illegitimate’ (GUZMÁN, S146). It also led them to consider ways in the new Constitution to prevent such politicisation of social spheres. For example, by raising the voting age to 25 to avoid ‘prematurely politicising the university youth in an age that ought to be committed to their educational training’ (ORTÚZAR, S352).

Additionally, politicisation precluded the possibility of ‘authentic participation of the people’ in political matters (ORTÚZAR, S9). The Commission declared that political parties had been intervening in matters of ‘Public Administration, in the elections or conflicts in trade unions, or those that happen in Universities or educational institutions’ (S18). In consequence, ‘the

country was a victim of sectarianism and demagogy' (S18). This issue on the role of politics led the Commission to discuss who ought to have access to the 'power of decision' (DÍEZ, S22). Their issue was how to 'de-politicise' (*despolitizar*) political party and partisan-based politics. DÍEZ warned that giving out this power to 'a sphere other than politics would lead, inexorably, to a politicisation of the country even more intolerable' than the previous regime (S27).

Externally, the Commission argued that Marxism generated the **threat of international communism**. Simply, that international communism and especially the Soviet Union was a constant threat to Chilean sovereignty as a Nation-State due to the 'Brezhnev doctrine'. This doctrine, CARMONA argued, ended the 'sovereignty of the peoples by advocating the subjugation of any country by Russian troops under the pretext of defending socialism' (S366). Additionally, the Commission characterised Marxism as an international ideology that was bent on undermining each nation's autonomy and self-determination. For this reason, they called it a 'Marxist scheme', a 'foreign scheme' in their discussions (see S42, S57, S98, S189, among others), or even 'marxistisation' (*marxistización*, LORCA, S11). ORTÚZAR defended the Junta's dictatorship against the Inter-American Court of Human Rights by arguing that this scheme existed, and the military protected Chile against it. The reason, that 'international communism is using everything it can to overthrow the Government of Chile' (S98). The commissioners warned, furthermore, about a potential future in which the rise of 'eurocommunism', 'americommunism' or 'iberocommunism' (BERTELSEN, S366) could diminish sovereignty more and more. Against this however, ORTÚZAR stated that 'the best argument against communism will always be (...) the fear of losing the fatherland (*patria*)' (S366).

Thus, since the commissioners characterised sovereignty as the autonomous capacity to self-determination, Marxism represented a **threat to autonomy**. Internally and externally, the commissioners argued that its political presence tended to impose itself on individuals and on the State. Importantly, the three threats, as identified by the commissioners, tended to put aside legal and procedural issues, and were instead grounded on politics and morality. Their criticism did not base itself on arguing that, for example, Allende's Marxism sought to

dismantle the electoral system to diminish self-determination. Much like rationale 4, the Commission stepped away from engaging in a legal criticism of these threats, thereby exhibiting weaker *epistemic relations* (ER−). Their arguments tended to centre around the capacity of individuals and of the Nation-State to engage in self-determination. In other words, to the commissioners the threat posed by Marxism was a threat to an alleged Chilean way of living, or a specific conception of the Chilean social life.

As such, Marxism was negatively valued by the commissioners on the basis of being a foreign political scheme that purported a different political way of being than what the Commission perceived to be the local one. However, the ‘Chicago Boys’ imported another foreign ideology to Chile, namely neoliberalism, yet this was received with open arms and implemented into the country despite its origins (see Clark, 2017; Huneeus, 2000). This shows that the problem was not about Marxism being a foreign scheme by itself, but rather that it exceeded political and moral boundaries set out by the Commission against transformations of the citizen subjectivity or ways of interacting to some degree. These boundaries will be explored in Chapter Six. However, this choice can be characterised as strengthening *social relations* (SR+) of their claim as it is connected to the exclusion of specific morals, politics and in general, subjective ways of being that do not align with stances valued by the Commission. In turn, this provides more evidence that the new Constitution had a political and moral motivation toward the exclusion of ways of being deemed illegitimate by the Commission’s ideas and beliefs.

5.8 Summary

This chapter described and analysed the Commission’s arguments for why Chile needed a new Constitution. After a thematic analysis, five distinct rationales that answer this question were identified and arranged as a group of ideas and beliefs. The first three rationales characterise the Commissions’ criticisms of Allende and of the consequences of his presidency. The latter two rationales characterise their conceptualisation of Marxism and the ‘threat’ they perceived from it. The five rationales described in the chapter are:

1. **The failure of the 1925 Constitution**, whereby the commissioners argued that the prior 1925 Constitution provided no mechanisms to prevent the Allende's ascension to presidency. In turn, this allowed Allende's government to destroy democracy and bring about social and moral chaos. This led them to characterise
2. **Allende as 'abusive'**, whereby the commissioners characterised Allende's government as having committed a series of legal and institutional excesses and abuses, which they attributed to his intentions. The commissioners summarised them as
3. **Allende's transformations**, whereby the commissioners inferred that Allende intended to overturn Chilean's way of life via altering private property laws

Turning to Marxism, the Commission characterised

4. **Class conflict** as Marxism's core political ideology, which they argued inevitably led society to the formation of a totalitarian State. Mainly because to them class conflict divided society and 'dissolved' individuality, transforming the individual into a servant of the State;
5. Marxism as posing a **threat to sovereignty**, which they argued was a result of severe politicisation of the country's institutions and social spheres, as well as due to pressures from international communism.

5.9 Conclusion

The current chapter asked how the Commission answered the question of why Chile needed a new Constitution. Through the analysis of these five rationales, the chapter draws two main conclusions.

First, that the Commission argued that Chile needed a new Constitution to restrict politics and to protect democracy from it. Specifically, the Commission considered political ideas such as Marxism a significant threat to national politics. Marxism had found a vessel in Allende, but the Junta's coup put a temporary stop to a threat that still loomed over Chile. To the commissioners, the legitimate political way of being and the legitimate ways of thinking that Chileans ought to exhibit was in peril because Marxism threatened to transform them. Thus, the first conclusion drawn from this chapter is that the delimitation of State powers and the establishment of rules and procedures for the State and social institutions was not the reason why the Commission argued for a new Constitution.

The analysis showed that if the commissioners' criticisms of the 1925 Constitution was legal or about the delimitation of State powers, then a legal solution would have sufficed. But these were surface criticisms of what was an eminently political problem to them. Through the five

rationales the Commission expressed awareness that merely emphasising more strict rules and procedures for the new Constitution was necessary, but insufficient. To fight back against what was a moral threat to them and their way of thinking, they needed more than that.

The Junta behaved as if it could violate human rights of left-aligned individuals with impunity, because they posed a threat to society. They dehumanised them, treating them as less than human, as a virus and a cancer. The Commission, empowered by the Junta, set out to do the same with a group of ideas they deemed contrary to what was normal for society and to what they considered to be the correct and legitimate political ideology. This is the second conclusion drawn from this chapter. Just as taking out Allende from the presidency via a coup was the form selected by the military, the Commission legitimated the new Constitution as the way in which they, as constitutional scholars, could respond to the same phenomenon.

This chapter showed that the Commission expressed the notion that creating legal knowledge to be put in the new Constitution also required imprinting it with values, morality and beliefs underpinning it. Doing otherwise would mean leaving the country open to political ideologies unwanted by them and, ultimately, would lead to the social and moral destruction of Chilean society. Now the question left to ask is what these new values, new morality, new beliefs for society would be. The next chapter tackles this question.

CHAPTER SIX - THREE PILLARS OF THE CONSTITUTION

6.1 Introduction

Chapter Five concluded that the Commission would shield Chile from political and moral ideas they deemed illegitimate by means of a new Constitution. It showed that they would do this through elaborating a new set of State institutions, a new legal framework, that would prevent what they deemed to be the past mistakes of the previous Constitution. However, Chapter Five also showed that they were aware that the law would not be enough. From their viewpoint, the new Constitution would need to be infused with values, morality, and beliefs. This chapter tackles the question of what these were.

The current chapter asks what kind of fundamental or structuring ideas and beliefs the Commission brought to their discussions. Upon initial inspection, these appear to be variegated and potentially conflicting between each other. The commissioners cited Catholic documents, commended nationalism, the role of the military and the Junta, advocated for the individual as the creative force in society, emphasised private property, criticised positive law, and highlighted the values of Chilean democratic system, among many other ideas and beliefs. Additionally, the Commission declared themselves to represent the Chilean people and what they called the ‘essence’ of Chilean history, culture, and traditions. All of these

concepts were called upon by the Commission to defend against international communism as a political force, and Marxism as an ideology.

Section 6.2 arranges the multiple and variegated notions utilised by the commissioners in three ‘pillars’ of the new Constitution. Sections 6.3, 6.4 and 6.5 describe each ‘pillar’ and analyse their underlying principles in turn. Finally, Section 6.6 draws conclusions from their analysis.

6.2 The three pillars of the new Constitution

A thematic analysis of the Commission discussions about their ‘fundamental principles or norms’ (ORTÚZAR, S1) yielded three main, distinct, and separate ‘pillars’ of the commissioners’ ideas. Each ‘pillar’ corresponds to a different set of ideas, principles, beliefs, or feelings that the Commission drew from when discussing specific aspects pertaining to the new Constitution. Thus, in answering the question of what ideas and beliefs did the Commission bring to construct a new Constitution, the answer is these three:

1. **A reformed liberalism;**
2. **A Christian-Humanist conception of man;** and
3. **A sentiment of national unity**

The following three sections describe and analyse each of these ‘pillars’ in turn. From the viewpoint of the commissioners, their common thread was that they considered each to be part of what they called Chilean tradition, the ‘essence’ of Chilean ideas and beliefs or the ‘essential values of chileanness’ (EVANS, S9). Consequently, in the commissioners’ discussions these notions were contrasted against the negatively valued ideas and beliefs they characterised under the guise of Marxist ideas, such as the threat to national autonomy and of politicisation (see Chapter Five) among others. The commissioners expressed through their discussions that the notions contained in each of these ‘pillars’ were not, to them, ideological, or politically motivated. This was important to them, as from their standpoint, any idea or belief that could potentially lead to further ‘politicisation’ of society was contrary to their own set of values, and therefore, to their idea of democracy.

Each section characterises the main components that summarise each ‘pillar’ and analyses it using LCT’s dimension of Specialization. In each case, the ‘pillar’ is characterised by how the commissioners talked about it and utilised the notions in their discussions. This is intertwined with an analysis of its underlying principles. These show the basis on which each component as well as the overall pillar was grounded. The sections then summarise each pillar based on the insights provided by their overall organising principles.

6.3 A reformed liberalism

The Commission claimed that the previous political regime failed to stop the allegedly anti-democratic Marxist ideologies in the Chilean political sphere. From their viewpoint, the 1925 Constitution’s liberal way of thinking failed to construct a legal framework that could protect democracy. They characterised the previous political regime as a liberal democracy with a liberal core. This structured the way the State, the law and the 1925 Constitution had been constructed.⁸ Thus, according to them, the turning point was Allende’s government. The commissioners defended the military coup d’état as legitimated via the right to rebel, to put an end to social and moral chaos. The commissioners agreed that the new Constitution needed to draw from deeply embedded Chilean traditions and beliefs. A reformed idea of liberalism is the first one, and the first ‘pillar’.

This section describes this reformed liberalism. It shows why the commissioners chose both to fortify the rule of law, and to install culturally grounded limitations to the exercise of the law based on Chile’s liberal history. This reformed liberalism is visually represented by Figure 6.1. It begins by discussing how the commissioners constellated liberalism with notions of self-defeating pluralism, an individualistic worldview, and a laissez-faire State. Together these characteristics of liberalism were criticised for two key failures. First, the commissioners criticised liberalism for what can be conceptualised as *weaker epistemic relations*, that is, its associated characteristics of pluralism, individualism and laissez-faire

⁸ This is an unquestioned and commonly accepted interpretation. Even harsh critics of the Commission’s work have agreed with them in that ‘Chile was born into independent life’ under two liberal principles: ‘popular sovereignty and ideological pluralism’ (Soto Barrientos, 2011, p. 20).

lacked *principles* and *procedures* for defending democracy. Second, they additionally viewed liberalism as characterised by *weaker social relations*, meaning that those characteristics left a lack of institutions or beliefs which could provide a sense of belonging and so engage citizens with the political order as Chilean citizens. Third, these two proclaimed weaknesses help make sense of two responses through which the commissioners intended to modify liberalism to ensure order and social cohesion: a renewed emphasis on the rule of law, to *strengthen epistemic relations*; and the foregrounding of notions of distinctively Chilean history, culture and especially its legal tradition as central to how the constitutional framework should be shaped, to *strengthen social relations*. In short, the section argues that the Commission’s two-pronged approach to transforming liberalism in the new Constitution can be understood as attending to the two key weakness as they saw it, redefining the characteristics of liberalism.

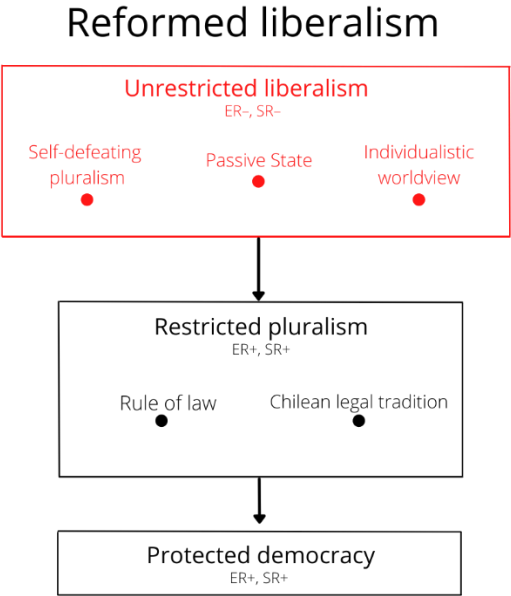


Figure 6.1 ‘Reformed liberalism’ pillar

To the commissioners it was clear that the 1925 Constitution failed to protect Chilean democracy, and that the main culprit was the lack of legal and political limitations to the sphere of politics. The Commission blamed liberalism, ‘the basic philosophy of the Chilean tradition’ (DÍEZ, S153), for the downfall of democracy. In turn, democracy to the

commissioners ‘by definition, presupposes a pluralist society’ (S11). This understanding of democracy forced the legal order of the 1925 Constitution to respect all manner of interests and ideologies, ‘as long as they abide by and respect the constitutional framework’ (S11). This had made political clash unavoidable, according to the commissioners. They reasoned that the liberal democracy elaborated by the previous Constitution was one in which public discussion of any and all ideas or beliefs ‘cannot constitute abuse or crime’ (DÍEZ, S153). They considered this to be a dangerous and self-destructive characteristic of liberal democracy.

Simply put, the previous political regime was based on the liberal pluralism of ideas and beliefs. The commissioners criticised this regime because it afforded no laws, procedures nor political boundaries to the State to restrain what they characterised as anti-liberal or anti-democratic political parties from reaching power. To them, liberal democracy was structurally resourceless against political ideologies that the Commission qualified as actively seeking to undermine and assume control of the country. Unbridled liberalism constructed a passive and inert State focused on providing minimal rights protection to individuals and little else.

These varied criticisms can be simplified into three main and distinct ones, represented by the **unrestricted liberalism** cluster in Figure 6.1. These are that liberalism enabled a **self-defeating pluralism**; proposed an **individualistic worldview**; and that it configured a **passive State**.

All three criticisms showcase a perceived absence of ways to protect democracy. Their absence was explained by the Commission as owing to a lack of legal principles and procedures for democracy to protect itself, and to a lack of moral boundaries for what were acceptable politics. Thus, liberalism was characterised by weaker *epistemic relations* (ER–), as they discussed it lacked legal principles and procedures to sustain its democratic system; and it was also characterised by weaker *social relations* (SR–), meaning that liberalism lacked a moral standpoint, and also lacked means to generate social cohesion based on a Chilean identity. In simple terms, this indicates that the Commission characterised liberalism

with an ‘anything goes’ underlying principle, marked by a generalised ‘lack’, with no way to assert neither legal nor moral or cultural boundaries for political action.

Hence, on one hand the **unrestricted liberality** was characterised by weaker *epistemic relations* (ER–), meaning that the commissioners criticised liberalism and liberal democracy as lacking legal principles and procedures to defend democracy. Specifically, the **self-defeating pluralism** signals the problem that the liberal commitment to pluralism prevented liberal democracy from utilising the law to protect itself. The commissioners blamed this and ‘social communication media’⁹ for allowing what they considered foreign, anti-democratic, and anti-liberal thoughts to burst ‘onto the Chilean political map’ (DÍEZ, S153). This absence was compounded by the liberal **individualistic worldview**. The emphasis on the protection of individual rights above all prevented liberal democracy from stopping individuals who engaged in anti-liberal politics. The Commission considered that for this worldview, nothing was as important as the protection of individuals’ freedom of speech and the defence of pluralism. Finally, they characterised the Chilean State as a **passive State**, also marked by an absence. To them, it was ‘nothing more than a simple proclamation of rights’ (SILVA, S187), concerned with not infringing on individuals’ rights. It was focused more on offering ‘a mere protection’ (OVALLE, S40) to rights, lacking what the commissioners called more proactive ways of securing of democracy.

To summarise, the Commission criticised liberalism as a lax principle on which to base a democracy. To them it was too lax with its citizens, too laissez-faire in the direction of the State. It was, according to them, an ‘inert, naive’ (EVANS, S153) political philosophy more marked by absences and lacks. Hence, weaker *epistemic relations* (ER–) characterise the way in which the Commission conceptualises liberalism. A Constitution built on liberalism could never, according to the commissioners, restrict its democracy by means of the law, due to its commitment to a **self-defeating pluralism**, its **individualistic worldview**, and its **passive**

⁹ Early on, in Session 6, ORTÚZAR expressed that in the future, mass media would aid in strengthening their new democratic regime through forming ‘a new national consciousness and a mentality in our youth, instilling in the new generations the great principles that should inform their personality, such as love for the country, a sense of honor, duty, work, sacrifice, honesty, solidarity, etc., to make Chile a great and prosperous country.’ The commissioners spent an important number of sessions discussing the role of communication media, including the possibility of severely regulating its ownership and use.

State. Against this, the Commission declared that ‘the pluralism that a democracy must recognise’ (GUZMÁN, S187). Additionally, that ‘nobody in the world’ supported any more the idea that the State should not regulate private economic activity (GUZMÁN, S29).

On the other hand, the **unrestricted liberality** was also characterised by weaker *social relations* (SR–). To the commissioners, liberalism outlined society as comprised of individuals without any sense of belonging to the nation, community or to society itself. This ‘liberal thinking’ was characterised as a depersonalised, cold and dehumanised principle as a consequence of its lack of social and cultural ways of being (DÍEZ, S45). Its **individualistic worldview** proposed that society was the sum of individuals and their interest, existing ‘independent to that of others’ (GUZMÁN, S45). It was also blind to ‘the role of intermediate groups’ (GUZMÁN, S18) and to their ‘economic problems’ (DÍEZ, S40). To the commissioners, this meant that individuals lacked a commonly shared identity or loyalty to the country. A problem they saw exacerbated by the **self-defeating pluralism**. To them, this pluralism created an ‘anything goes’ attitude in politics, with no boundaries for political ideologies. This worldview was also blind to ‘the role of intermediate groups’ (GUZMÁN, S18) and to their ‘economic problems’ (DÍEZ, S40). Finally, the Commission criticised the **passive State** as further evidence of a hands-off attitude toward shaping society or culture to promote cohesion.

Hence, **unrestricted liberality** was characterised by the commissioners as an absence of beliefs and morality toward social and cultural cohesion. These three notions that comprise the **unrestricted liberality** are characterised by weaker *social relations* (SR–). Liberalism, to the commissioners, meant the lack of regulation of individuals’ behaviours. The only thing liberal democracy ought to do is to provide minimal protections, but had to refrain from social, cultural, or moral matters.

The concepts of *epistemic relations* and *social relations* highlight the core issue the commissioners discussed about liberalism, which was its lack of limits, the absence of control and boundaries expressed legally or politically. The weaker *epistemic relations* (ER–) of the way in which the Commission characterised liberalism shows that the basis of their criticism

highlighted an incapability for a democracy founded on liberalism to provide legal protections. Simply put, a liberal State could not protect Chilean democracy through constitutional law. A liberal democracy had a legal basis that did not allow it to protect itself. The weaker *social relations* (SR-) show that the commissioners also based their criticism of liberalism on a perceived absence of morality and political boundaries. A liberal democracy had a basis that did not allow it to protect itself through morality or politics, fostering an ‘anything goes’ disposition. The problem, bringing both *epistemic relations* and *social relations* together, was that liberal ‘democracy had to allow it all’ (ORTÚZAR, S365) precisely because it was characterised by the absence of principles and beliefs with exert control by means of the law and politics.

Hence, on these bases, the commissioners constructed the idea that liberalism was responsible for allowing what were these allegedly anti-liberal and anti-democratic ideas and political parties to operate in the Chilean public sphere. In other words, liberalism was insufficient because it enabled political ideologies and political ways of being that they did not agree with to exist in the public arena. These, in turn, produced social and moral disintegration. From this, they turned their attention toward the limitation of politics via **restricting pluralism**.

Democracy to the commissioners could only work if politics were limited not just by the law and its principles, but also by a group identity and belief. In other words, the commissioners opted to construct the new democracy by reforming liberalism in two main ways. First, they discussed that their new democracy needed the rule of law to specifically serve the purpose of protecting itself. Thus, their new democracy needed to strengthen *epistemic relations* (ER+) by renewing the emphasis on rules and procedure. To them, these were ‘the essential pillars on which fundamental rights are sustained on the human person, and that allow the normal evolution of the country’ (S18) (the importance of the concept of the person will be explored in Section 6.4). Second, the new democracy needed to strengthen *social relations* (SR+) by restricting pluralism based on respect for the ‘historical, traditional bases, [and] customs’ (DÍEZ, S153). Political beliefs and concepts that they did not agree with, such as notions of class struggle and those that, from their viewpoint, led to violence or threatened

their concept of family were excluded from such tradition (DÍEZ, S243). All of these political beliefs would be consequently excluded from the public sphere of politics, because they were deemed by the Commission as not Chilean, not belonging to the nation and its customs.

In the context of renewing a constitutional emphasis on rules and procedures, the Commission declared that ‘Chile has always characterised itself in being a [State with] rule of law, and for attributing special importance to fundamental rights of man [sic]’ (ORTÚZAR, S42)¹⁰. The commissioners often remarked that the preservation and protection of the **rule of law** ‘mattered so much to the Commission’ (BULNES; ORTÚZAR, S417). With it they meant principles such as the division of State powers (GUZMÁN, S402), the centralisation of juridical powers and the curtailing of popular exercise of powers (BERTELSEN, S366), and procedures such as constitutional review by the Constitutional Tribunal for passing legislation (BERTELSEN, S353), fiscal controls for State powers (ORTÚZAR, S318) among others. In highlighting clear-cut boundaries between political institutions, a precise division of powers, and other constitutional procedures put to the purpose of bounding and controlling the democratic regime, the commissioners shaped a liberalism that emphasised stronger *epistemic relations* (ER+). These aspects were validated as good elements of liberalism that would be maintained and reinforced in their new, reformed liberalism.

However, SILVA declared that for there to be a proper rule of law, the law must link ‘to the general interest of society, to the good of the people that comprise it’ (S11). That is, the rule of law as a principle by itself was not enough. Their reformed liberalism required stronger *social relations* (SR+). This would be done by applying a shared identity among the citizens that, the commissioners argued, existed beyond the law, close to this ‘good of the people’. This social and moral aspect of their reformed liberalism would be able to provide limits that the old liberalism could not. Thus, through their discussions they elaborated the notion that the **Chilean legal tradition** could serve this purpose. Whatever fell inside the boundaries of this legal tradition was to be qualified as acceptable, legitimate discourse. Through this the

¹⁰ The commissioners utilised the expression *men* (*el hombre*) to refer the entirety of humanity. Although it is important to remark this wording choice, for ease of reading further [sic] will not be included.

commissioners could rid the new democracy of political ideas they considered alien to Chilean identity and dangerous to social and moral cohesion.

Therefore, in the way they were discussing it, their new system was characterised by stronger *epistemic relations* (ER+), due to the reinforcement of the rule of law; and it was also characterised by stronger *social relations* (SR+), because it was connected to a sense of belonging based on a shared social and cultural identity. They called this new system their **protected democracy**. According to them, this would be a ‘modern and vigorous democracy’, ‘capable to defend [itself] efficaciously of the powerful adversaries that stalk it, ready to destroy it’ (GUZMÁN, S406). This was constructed in contrast to the ‘naive’ liberal democracy (EVANS, S153) characterised by absence and passivity.

Strengthening the rule of law was simply a case of constructing and reinforcing rules and procedures. But to truly protect democracy and to have democracy protect itself, the commissioners discussed guiding society ‘along the paths that do not contribute to destroying collective coexistence’ (DÍEZ, S233). Rather, these paths, or beliefs, had to strengthen *social relations* by fortifying the sense of belonging provided by ‘the basic principles of Chilean institutions’ (GUZMÁN, S242). In other words, they saw the need to erect moral and political boundaries that restricted the diversity in ways of being. This meant that to threaten “‘the rule of law” or the “republican democratic regime”’, that is to say, to oppose the rules and principles of the **protected democracy** had to also signify ‘to threaten against principles like those of the family, the autonomy of intermediate bodies and others that may be derived from that Chapter 1 of the Commission’s draft’ (GUZMÁN, S242), meaning that it was equivalent to oppose the Chilean identity and ideology it cultivated.

In sum, the reformed liberalism cluster of ideas and beliefs showed two problems the Commission identified with the previous ‘liberal democracy’, and one solution. First, they criticised that it did not cultivate a common, Chilean way of being. Second, they pinned down politics as an important source of moral and social disturbance. To the commissioners, liberalism was self-destructive, and required a reformation. They opted to curb the sphere of politics by setting boundaries to pluralism. They kept the liberal emphasis on the legal

protection of individual rights and the rule of law, but renounced the liberal emphasis of diversity of ideas, beliefs, ways of being, and ways of thinking. This reformed liberalism was conceptualised by the commissioners in their notion of a ‘protected democracy’ as a response to their perceived failures of liberal democracy.

Importantly, this diagnosis and reformation of liberal ideas was a first step in elaborating pillars for their new Constitution. But they would need more than to simply overhaul liberalism. They discussed the need for other fundamental ideas and values. The next section how their idea of Christian-Humanism was the second step.

6.4 Christian-humanism

The Commission set out to give the new Constitution fundamental ideas and values. Christian-Humanism was declared to be ‘the inspiration, the philosophy of the new Charter’ (ORTÚZAR, S78). The previous section showed how the Commission’s overview and criticism of liberalism led them to devise a democracy with a strong emphasis on the rule of law and a pluralism limited by their idea of the Chilean legal tradition. These acted in similar ways to negative freedoms, as they established what could not and should not be done by the citizenry or the State.

This section shows the main ideas and values of what the Commission called Christian-Humanism and argues that this is the second pillar of the new Constitution. This pillar follows a similar logic structure as the previous one of reformed liberalism, however several ‘steps’ can be identified in the process of their argument. As a pillar for the new Constitution, it began to take form when the commissioners criticised the past legal order created by the 1925 Constitution. In this context, the legal order had been based entirely on the idea of the law itself without any moral or political values embedded into it. Thus, the commissioners elected to drop this as a basis for their new democracy, instead opting for a spiritual and moral one. This corresponds to the pillar’s first ‘step’. Then, the commissioners characterised the ‘Christian conception of man’ as the actual foundation of this new regime. This corresponds to the second ‘step’. However, this posed a problem to them, as this foundation was explicitly religious in nature and inspiration. The Commission was aware this could

infringe on the well-established Chilean legal tradition of freedom of thought and religion. To solve it, they secularised this into the concept of ‘human dignity’. This corresponds to the third step. The overall group of ideas and beliefs involved in these three stages are visually represented in Figure 6.2. The three steps: a new basis for democracy, the ‘Christian concept of man’, and the ‘human dignity’ are described and analysed in turn, showing how the commissioners switched the pillar’s legitimation basis through these three steps.

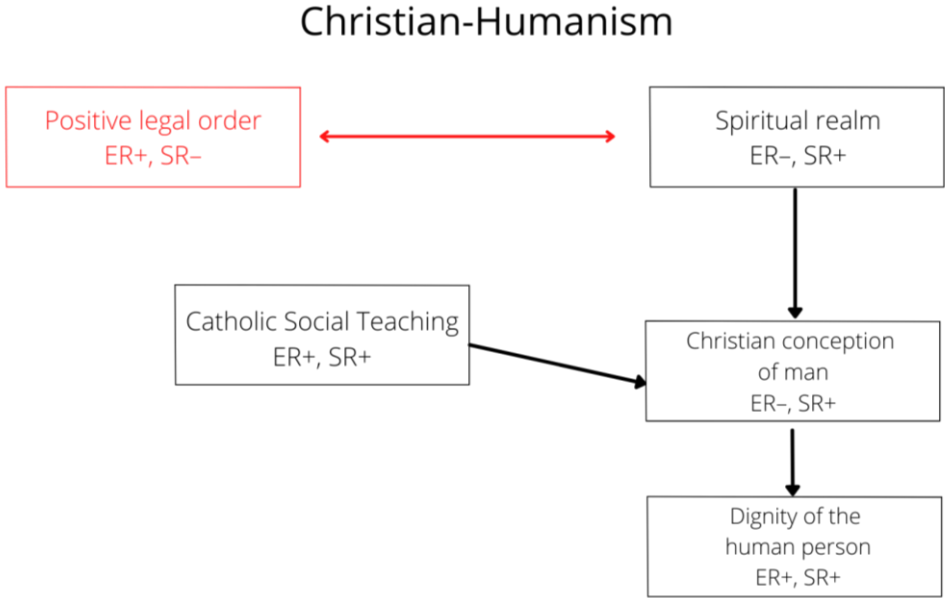


Figure 6.2 ‘Christian-Humanism’ pillar

In the first step of the argument, the commissioners characterised the previous democracy as based on a principle ‘completely divorced from all appreciation of social, philosophical values, of goals, of content, that related to the conduct of social life’ (SILVA, S45). They recognised that the system of positive law, which underpinned the previous legal order, had achieved ‘technical perfection’ (SILVA, S45). They named this a ‘**positive legal order**’ (GUZMÁN, S10), and they argued that the previous Chilean democracy was grounded on it. Simply put, a legal system based on a positive legal order functioned like a closed circuit. It was a framework that needed no references to outside principles or underlying beliefs to provide the legal order with hierarchy or organisation. No value or idea was hierarchical by itself, for example. Only what procedural rules of the previous Constitution and legislation

determined the importance of laws and legal principles, irrespective of their political or ideological content or origin. This is characterised by stronger *epistemic relations* (ER+). Section 6.3 showed that this absence of hierarchy, order, and priorities with regards to values posed a serious problem for the Commission.

Their reason, that democracy had an apparently strong, well-functioning system of law based on this **positive legal order** but offered no way to protect itself from politics. The previous democracy was ‘insufficient to direct the political reality’ (SILVA, S45) through a system of law with no underpinning values, the commissioners discussed. They mentioned that this was relevant to them, as they agreed that ‘there exists a moral conduct of the people that overflows the legal’ (S11). To them a society founded on positive law alone could never ensure ‘the correct operation of the fundamental institutions of the country’ (S11) simply because ‘the legal order is a derivation of the moral order’ (GUZMÁN, S128). The strengths of the previous legal order were in the construction of legal procedures and the enforcement of the law, that is, its stronger emphasis of *epistemic relations* (ER+). But to the Commission it was a significant weakness that it lacked values and beliefs to delimit and ruled acceptable political behaviour. Thus, this **positive legal order** may be conceptualised as evidencing weaker *social relations*. In this the Commission saw its most unforgivable error.

They discussed that this absence of beliefs and morality did not foster social cohesion. It also impeded the State from protecting the nation against what they deemed anti-democratic politics. They successfully invaded the Chilean public sphere and the previous liberal democracy did nothing, according to the commissioners. Moreover, they also criticised the previous regime’s over-valuation of the capacity of the laws and procedures in its role in maintaining democracy, calling it a ‘fetishism of the law’ (SILVA, S95). To them this meant the belief that ‘the legislator is the sole producer of norms within social life’ (SILVA, S95). What they were saying by this is that irrespective of the emphasis of *epistemic relations*, a political system characterised by weaker *social relations* (SR-) was bound to fail. Consequently, the commissioners simply abandoned the **positive legal order** as a pillar for the new Constitution. Now they needed to produce a new, different one.

Since the commissioners analysed that law limiting the law simply did not work, neither could, to them, politics limit politics. That would have led to another failure. Thus, their strategy was to produce a different basis for their pillar. Their answer was to base it on a spiritual and religious beliefs. They characterised the religious experience as a universal sentiment that transcended ‘the merely historic or temporal’ (GUZMÁN, S45) of the political or ideological. Therefore, they proposed to switch over and base their pillar on the **spiritual realm**.

Specifically, the commissioners chose this arguing that humans are spiritual beings (ORTÚZAR, S89) and, more precisely, that the ‘person is a composite of body and soul’ (ORTÚZAR, S89, S93; GUZMÁN, S89). The notion that each individual possesses a soul was ‘not a question of faith’ for them, rather, as GUZMÁN expressed, ‘one arrives to the spiritual soul by means of reason’ (S87). This way this spiritual component of the individual was then taken for granted as a legitimate basis for further constitutional ideas and even constitutional articles. This was considered to be a self-evident truth, as for them ‘everybody who talks about human dignity believes’ in the soul (GUZMÁN, S87), including all Chileans who they assumed shared this sentiment.

What the **spiritual realm** entailed or implied was yet unimportant. The current issue was simply to switch over to a basis for their constitutional ideas that emphasised other grounds. Hence, this notion is characterised by weaker *epistemic relations* (ER–), as the definitions or procedures of what the spiritual dimension was not yet discussed. What mattered to the commissioners at this step in their argument was that it constructed specific attributes the individual had as a subject, as a way of being. For these reasons, this notion is characterised by stronger *social relations* (SR+). For example, the Commission asserted that the new Constitution had to protect ‘values of the spiritual order’ like the individual’s ‘intimacy as person, its honour, the tranquillity of its family’ (OVALLE, S129), all of which point to either the individual’s attributes or ways of being and interacting. Now that they found their new basis, the next step was to argue for its use in their making of constitutional ideas.

The second step involved drawing from **Catholic Social Teaching** to bring ideas together ideas to the pillar that would structure the new Constitution, which was the **Christian conception of man**.¹¹ They reasoned that drawing from the Catholic Social Teaching doctrine was valid and important, since Christianity was ‘the faith of the Chilean people’, thereby representing ‘the feelings and idiosyncrasy of our people’ as a result of the country’s ‘Hispanic past’ (S18). Simply put, to them it was clear that Christian-Humanism represented an underlying belief present in the nation. From this perception they legitimated the use of Catholic legal-theological doctrine. They drew directly from it for ideas on sovereignty, the State, and especially about the ‘natural rights’ of the individual.

The commissioners drew from the ‘contributions of notable relevance’ that Catholic Social Teaching had made to the ‘development and perfection of the purely human and natural’ (SILVA, S17). In other words, to law and politics, and they took the form of the papal encyclicals. Their importance being such to some commissioners that, for example, DÍEZ suggested quoting the 1963 *Pacem in Terris* encyclical directly in the Constitution. This commissioner declared the 1963 encyclical an example of an ‘absolutely universal’ letter that ‘characterises our age’ by providing insights into human rights and ‘the duties of man toward society’ (DÍEZ, S17). While the Commission in general agreed with its ideas, DÍEZ’ proposal was dismissed. They reasoned that writing explicit religious references on the Constitution could violate the ‘deeply ingrained’ freedom of religion in the country (EVANS, S17), and conflict with the Chilean liberal tradition. This, however, does play an important part in the final step of the pillar’s argument.

Nevertheless, the doctrine of the Catholic Social Teaching was considered a legitimate source of legal ideas by the commissioners. These documents and their doctrine provided specific, concrete legal expressions ready for them to use. Here it is important to remark that although they did not necessarily cite their uses and concepts as originating in the doctrine, at least a

¹¹ Catholic Social Teaching refers to the of encyclicals, or letters, written by the Catholic Popes which have addressed issues of common good, dignity of the person, the importance of private property, the principle of subsidiarity, and social justice in general. Through it, the Vatican proposes its doctrine on ‘*its ideal conception* of democracy, the State, the economy, and the like’ (Rhonheimer, 2013, p. 394).

few of them are drawn directly from the encyclicals. For example, the resulting Constitution extracts almost word by word definitions about the State and the common good from the ‘Mater et Magistra’ encyclical of 1961.¹² Because of this, **Catholic Social Teaching** is characterised by stronger *epistemic relations* (ER+). Its legitimacy as a source for rules, legislation, and procedures that the State and individuals should follow was unquestioned by the Commission. An example of this is the claim that private property is a natural right ‘inseparable, by the way, from the principle of the subsidiarity of the State’ and from the ‘private initiative within the economic field’ (GUZMÁN, S161; S388), which was drawn from the ‘Mater et Magistra’ encyclical of 1961.

At the same time, they viewed the Christian faith as a widely spread, shared belief from which they commissioners could draw for social cohesion. Hence, their use of the **Catholic Social Teaching** doctrine both drew from this perception and reinforced it. Through it, the commissioners emphasised specific attributes of the citizenry as necessary, or foundational for developing a shared sense of identity among them, as well as social goals. Hence, the notion exhibits stronger *social relations* (SR+), in that the Catholic doctrine was grounded and predicated upon a specific social category, of a particular subjectivity. Furthermore, the commissioners argued that this religious experience, and therefore the legal side of the doctrine that came with it, was a belief deeply ingrained in Chilean culture. This helps to explain why they characterised the right to private property as a natural right, because it was founded ‘on a very deep concept, which is that of the ontological priority or pre-eminence and of purpose that human beings have in respect to society’ (GUZMÁN, S161). This ‘deep concept’ and the consequent ‘ontological priority’ of the individual over society is drawn directly, but not always explicitly, from the **Catholic Social Teaching** doctrine (cf. Mater et Magistra, 1961, paragraph 109). Ultimately, the legal aspect of this doctrine is predicated on the commissioners’ belief on the existence of the (Christian, Catholic) soul. Because the

¹² Namely, Article 1 of the current Constitution says that the State ‘is at the service of the individual and its goal is to promote the common good’. To this effect, it must contribute to the creation of the social conditions which permit each and every one of the members of the national community to achieve the greatest possible spiritual and material fulfillment’ (see Appendix for the 1980 version, in English, which is practically the same). Contrast with Mater et Magistra, paragraph 65: ‘a sane view of the common good must be present and operative in men invested with public authority. They must take account of all those social conditions which favor the full development of human personality.’

individual had a soul, it was the holder of special, natural rights, and particularly of the right to private property. Now there was but a single problem for the commissioners to decipher.

The commissioners were wary of infringing on the freedom of religion and especially of doing so in the Constitution. The **Christian conception of man** was fundamental to this second pillar for their Constitution, but it was also a potential transgression. Rather than dropping the principle, they simply found a way to transform the concept while retaining its meanings intact.

In the third step, the commissioners removed the religious references of this pillar by calling this mixture of legal ideas and moral values the **dignity of the human person**. By looking at how it strengthened *epistemic relations*, on one hand, and how it strengthened *social relations*, on the other, its main characteristics are made clearer. First, the notion of dignity emphasised *epistemic relations* (ER+) in grounding itself on a legal definition of the ‘person’ as a holder of ‘natural rights’ (GUZMÁN, S46). These ‘natural rights’ in the Christian conception of man were derived from its conceptualisation as a possessor of a soul. However, the concept of ‘dignity’ works as a way to secularise the concept, and instead emphasise its legal definition. As such, in this third step the argument is that because the human person possesses a special attribute, this ‘dignity’, then its rights must be defended. The Commission’s task was therefore to select, articulate and put these rights into the constitutional text.

Second, the **dignity of the human person** can be characterised by stronger *social relations* (SR+). Here, instead of the possession of a soul, the human by itself possesses a dignity that norms the relations and behaviours between the citizens, and between them and the State. These will be developed in more detail in Chapter Seven. Suffice to say for now that this notion of the **dignity** was predicated on the soul as the basis of a specific kind of subjectivity. The State and society in general were now compelled to respect the dignity of the person. ‘Dignity’ here signals and produces not an attribute but a relation, a specific way of social being and interacting.

In sum, Christian-Humanism is the second pillar of founding ideas and beliefs for the new Constitution. After identifying the problems with the previous socio-political order, the Commission declared that their new Constitution also required a new basis. This pillar represents the switch from one based exclusively on legal grounds, to one that intertwined this legitimation by rules and procedures with one that also found its legitimation in emphasising social and individual characteristics of the individuals. Namely, the possession of a soul, but more precisely, a specific way of being and interacting given the name of ‘dignity of the human person’. This was a secularised version of a notion that was imported from Christian beliefs and Catholic sources. To the Commission this was a legitimate way of grounding their new Constitution since, from their viewpoint, these were universal, eternal moral stances, far removed from politics. The analysis shows that although they may have expressed this belief, the legitimation basis is eminently a political and moral one. Through this second pillar and through the ‘dignity of the person’, the commissioners emphasised a particular way of being and interacting as the legitimate one for the citizenry.

For the commissioners, it would be unthinkable to build a new Constitution and a new socio-political order without a pillar such as the Christian-Humanism one. However, sentiments of ‘national unity’ also provided them with a wealth of ideas and values to draw from. This third pillar will be described and analysed in the following section.

6.5 Sentiment of national unity

The third pillar of the Commission’s ideas for the Constitution is titled ‘sentiment of national unity’. This is related to nationalist ideas and values, which were explicitly called upon by the Commission as inspiration to their work. Motivated by this, they declared that the new Constitution ‘must be nationalist and inspired in the authentic values and characteristics of our nation’ (ORTÚZAR, S2). Its purpose, to protect the country from foreign ideologies that, they argued, had destroyed morality and social cohesion. To the commissioners, fostering feelings of national unity on individuals was their third way to repair what they conceptualised as the disintegration of social cohesion and cultural values that the country suffered for decades, and to prevent further attacks from foreign ideologies.

This section describes the Commission's idea of the sentiment of national unity. Importantly, this is characterised as such and not as a 'nationalism', as the way these ideas were constructed emphasised the individual and an individualistic relation to society. This is different to how the literature has characterised nationalism, which among other aspects focuses on the subordination of some aspects of the individual to the collective entity called the nation.¹³ Thus, the constellation of these ideas is represented by Figure 6.3. It begins by discussing how the commissioners constellated nationalism with notions of the **soul and body of the nation**, a **feeling of national unity** and the **national community**. Together, these aspects constructed a sentiment of national unity that can be conceptualised, firstly, as weaker *epistemic relations* (ER-), that is, their characterisation was based on the absence of a clear-cut definition of the nation or of national unity. Secondly, they viewed this sentiment as characterised by a specific set of feelings, behaviours, and an inner spiritual sense of the individual to enforce a homogeneous cultural identity, which can be conceptualised as stronger *social relations* (SR+). In short, the section argues that the Commission's approach on this pillar was to forgo providing definitions of what is and is not the nation or national unity, opting instead to reinforce the feelings and behaviours of the ideal nationalist citizen as the way to construct an ideological shield.

¹³ For example, Malesevic characterised nationalism as an ideology 'which attempts to transcend the public/private dichotomy by casting social organizations in the image of kinship and friendship networks' (2013, p. 14).

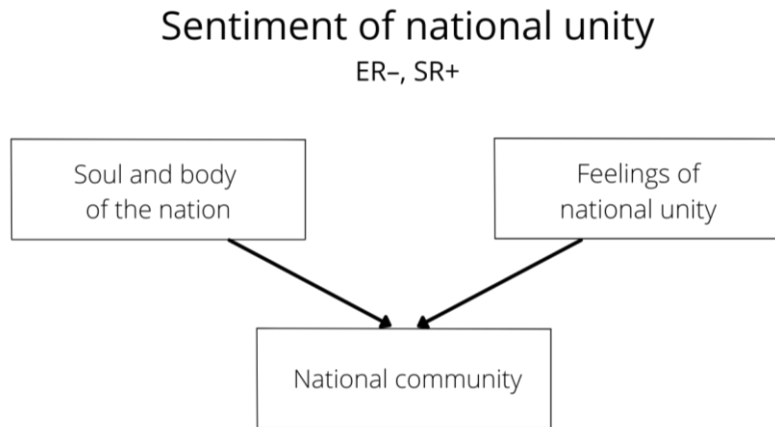


Figure 6.3 'Sentiments of national unity' pillar

The commissioners had definite ideas on what the nation and nationality were, but they did not define it explicitly. They stated that influences from nationalisms like those of Nazi Germany or the Soviet Union were to be avoided, which they criticised as too authoritarian (GUZMÁN, S37; S367) or 'totalitarian, fascist or nazist' (CARMONA, S405). They attributed these and Marxist-inspired ideologies with a tendency to create or reinforce the nation as a collective, real entity with properties of its own. On the contrary, they expressed the intention to build a concept of 'nation' that did not acknowledge it as an entity. To the commissioners, only the individual was real, therefore only it had agency to act, especially in regard to economic development.

Thus, the problem they faced was to construct a concept that would foster nationalistic tendencies in the citizens, but without recurring to an imagined nation that had powers or agency of its own. Some commissioners suggested alternative terms to nation such as the notion of 'chileanness' (chilenidad) This 'chileanness' was posited as being 'antithetical to any nationalistic or authoritarian formula foreign to the way of being of the Chileans' (SILVA, S11). Other expressions mentioned were 'national expression' or the 'national spirit' (CARMONA, S405). Discussions abounded where the possibility of including one of these concepts was talked about, but ultimately only indirect references to this made it to the final constitutional draft. Nevertheless, their issue was first, that the nation needed redefinition, and second, that rather than agency of its own, it had to refer to specific values, ways of being

and of interacting. These would, according to the commissioners, foster social cohesion and secure the country against politicisation.

To take on the first issue of redefinitions, they chose rather opaque, indirect references and analogies to characterise the nation and to national unity instead of clear-cut definitions. In simple terms, the definition of what was the nation seemed not to be as relevant to the Commission as conceptualising what it meant and did for the citizens' ways of being and acting.

The **soul and body of the nation** characterises these opaque and circular definitions the Commission utilised. To them, the nation had 'essentially, a body and a soul' (GUZMÁN, S188), meaning the land and tradition. In turn, national tradition, as the 'soul of the nation' (GUZMÁN, S188) was characterised as 'part of the fundamental values of Chilean tradition' (EVANS, S187). Some commissioners remarked that the coat of arms, the flag and the national hymn were all 'symbols' of 'national unity' (S406). They discussed them as part of the soul of the nation, or tradition, since they argued these symbols 'reinforce national values' (CARMONA, S406). However, even these emblems were questioned by some commissioners (DÍEZ, S243), on the basis that the country may decide to change them in the future. This illustrates that even well-discussed components of tradition were at times questioned by the commissioners themselves. This evidences that definitions, rules, or procedures were not as relevant as signalling legitimate ways of being.

However, the case is not that the commissioners themselves had no idea what the nation was, or what objects belonged to the concept of tradition. Given their self-identification with nationalism and nationalist notions of the fatherland, it is a safe assumption that they did have notions of what was and was not part of the nation. After all, it was important to them, and they wanted to protect it. They may have not been explicit, but its effects are apparent. For example, indigenous people and the Chilean State's complicated relation to them was ignored. While crucial in the shaping of the country's history, indigenous people were afforded practically no mention at all in the sessions or in the resulting Constitution and were

denied participation as guests to the Commission.¹⁴ Similarly, historical events of the country and their significance were selectively chosen. The commissioners' distrust of trade unions and the legal right to strike contrasts with the strong tradition of worker social movements especially in early 20th century (see for example long discussions in S382, S407, S412). These examples illustrate that the commissioners did have clear notions of what belonged to the nation or to 'Chilean tradition', but what was relevant to the discussions was something else.

What was relevant was finding notions to enforce unity and social cohesion (S18), but these were also vague and open-ended. 'National unity' was obliquely described as 'that which maintains the unity of the social body named Nation' (GUZMÁN, S187). To them, what 'threatens [social] unity' is 'that which disintegrates it' (GUZMÁN, S187). And what disintegrates social unity was equated to class struggle, or the 'affirmation or supposition that [social] unity is impossible' (GUZMÁN, S187). Turning the notions around, to the commissioners what provokes and produces social unity is the idea that social unity is possible. What casts doubt on the possibility of unity is seen as threatening the nation. Thus, this **sentiment of national unity** was simply referred to as a shared sense of 'unity of the country through history' which generated 'a sense of nationality' (GUZMÁN, S187).

Another way in which the commissioners focused less on clear-cut definitions than on a moral sense of nation can be found in the question of sovereignty. The commissioners discussed whether political sovereignty resided in 'the people' or 'the Nation' (S361). The locus of sovereignty and who represents it has been deemed fundamental for the legitimate constitution of nation-states (Chambers, 2004). To commissioners, 'the people' meant the 'set of citizens with the right to vote or "electorate body" [pueblo elector]' (GUZMÁN, S361) at any given point in time. The 'Nation', on the other hand, encompassed past and future generations, and different kinds of social entities. For example, ORTÚZAR proposed that the nation was 'the set of natural and legal persons that form a nation and live or carry out

¹⁴ See for example the works of Montecino that show the complex social and cultural results of the process of *mestizaje* (Montecino, 1996). Compare with the 2021 Constitutional Convention, which had reserved seats for indigenous people.

activities in the same territory' (ORTÚZAR, S223). What fuzzy borders and overlap between the two concepts of 'people' and 'Nation' was not important to the commissioners. They forwent both concepts, instead proposing the notion of **national community**. With it they meant 'each and every one of the individuals and institutions or entities that comprise the social body' (OVALLE, S223). Again, here in their concepts referring to the nation there is an aspect of obliqueness and unclear boundaries, in this case represented by the notion of 'social body'. For instance, to them this 'expression tends to express what society is' (OVALLE, S223), a definition as circular as they can get.

These elements evidence that clear-cut definitions, explicit boundaries for the nation, national unity, and the national community were not as relevant to them and was not in question in terms of the legitimation basis for their notions. Their concept of membership to a community, according to them, avoided both the collectivist idea of 'the people' and the 'abstract' idea of the 'Nation' as a 'holder of rights' (OVALLE, S223). Thus, the three main concepts that comprise the Commission's pillar of nationalism are characterised by weaker *epistemic relations* (ER-). Neither of the three emphasise rules, procedures, or definitions of its objects. Their legitimation basis lies elsewhere, in the subjective way of being and interacting of the citizens among them. Hence, through this pillar the Commission established a specific set of feelings, behaviours, and a spiritual sense of identity for the individual as the basis for establishing their idea of nation. All three main ideas that represent the sentiment of national unity in the discussions, the **soul and body of the nation**, the **sentiment of national unity** and the **national community** emphasise the behaviours and feelings of social actors. This pillar is thereby characterised by stronger *social relations* (SR+). This clarifies why the commissioners paid much more attention to ways of being and ways of interacting of the citizens. Individuals had to show respect toward the 'Nation', toward its traditions and toward the land, and these comprised the main ways in which the sentiment of national unity expressed itself in their discussions. Specifically, the commissioners tied tradition to the **soul and body of the nation**. For this reason, they argued that 'respect is owed to [tradition] EVANS, S187). GUZMÁN provided a concrete example of how this works in practice for the citizen:

Someone could perfectly, from the point of view of military tactics, maintain that the [1879] War of the Pacific was badly conducted, and for that reason they would not be attacking the national tradition. But if you say that the War of the Pacific was *motivated* by purely commercial concerns, with the aim of benefiting a small imperialist group, *obviously* that is violating the respect for national tradition. (GUZMÁN, S188; emphases added)

The example illustrates that questioning the motivations of historical figures violated the ‘respect for authority’ (EVANS, S188) that the ideal citizen should exhibit. The legitimate citizen instead ‘respected and honoured of History and of national values’ (GUZMÁN, S188). This meant an ‘obligation to honour history and national traditions’ (EVANS, S188), an obligation that had been ignored in Allende’s government, where ‘foreigners and Chileans outraged (...) national heroes [próceres]’ to diminish the country’s history ‘with a Marxist interpretation’ (EVANS, S188). Similarly, being born within the national limits came paired with a ‘need to respect the ordering that rules it’ (OVALLE, S188) such as institutional authorities, for example.

That commissions’ final draft of the Constitution stated that ‘all inhabitants of the Republic must respect Chile and its national emblems’, that ‘Chileans have the fundamental duty to honour the fatherland’ and to ‘contribute to the preservation of national security and the essential values of Chilean tradition’ (Annex, S412) illustrates the importance they placed on these matters. According to them, these feelings shaped citizens’ behaviours such as by upturning an individual’s ‘philosophical conceptions’ (OVALLE, S188) out of loyalty to the nation. The Commission imagined that if the nation was threatened, the citizenry would behave like a pacifist ‘who, due to his devotion to the concept of homeland, feels the obligation to abandon a behaviour consistent with his ideas’ (OVALLE, S188). Here it is important to remark that the commissioners expressed that although Allende and his government had been deposed, the nation was still under ideological threat. These behaviours and feelings of the individual were important to the commissioners in producing ‘national unity’ (S18), a ‘national sentiment’ they expressed interest in fostering.

They discussed it would produce ‘spiritual integration’ among the ‘vital forces of the nation’ (S3; S57) and would create an ideological shield with two purposes. According to them, this **sentiment of national unity** would overcome what they characterised as ‘grudges, interests and petty divisions’ to ‘contribute to the development and progress of the community’ (S18).

¹⁵ Additionally, the sentiment would protect the nation against ‘a gale that is produced illegitimately and immorally from outside’ (ORTÚZAR, S187). This gale referred to Marxism and all other political and social ideologies the commissioners deemed contrary, foreign, and therefore nefarious toward the nation. The problem here was that ultimately, ‘the advent of Marxism’ to the country had been the responsibility of ‘an entire collective behaviour’, meaning the behaviour of the citizenry, that followed ‘a modernist trend imbued with false thinking’ (DÍEZ, S27). From their viewpoint, only by characterising the nation this way they could realise the belief that ‘first is the nation and then is society’ (SILVA, GUZMÁN, EVANS, S184) and therefore shield the country from ideologies the Commission deemed ‘false thinking’. Their argument was that through setting the boundaries of legitimate citizenship through defining feelings and behaviours the individual should exhibit, the country could protect itself.

Their idea of the **national community** provided them with a way to refer to the nation without acknowledging the existence of a separate collective entity called ‘society’ or ‘the people’. The commissioners were wary of collectivist ideas of society or the nation because, to them, collective identities erased the individual. The collective was not ‘a being that has a spiritual dimension that had to be respected because it transcended the merely historical or temporal’ (GUZMÁN, S45). The commissioners expressed that this was a mistake that totalitarian governments had fallen prey to (GUZMÁN, S24), because these ideologies created a collective entity of the nation or the people. Instead, the Commission argued that the central role that the individual played in their discussions shielded them and the Junta’s regime from criticisms that the Chilean regime was a dictatorship or a proto-totalitarianism (GUZMÁN, S27). Nationality, for example, was not just ‘a legal bond, but something more than that’,

¹⁵ Among the most significant ‘petty divisions’ were all ideologies critical of the social status quo in varying degrees of radicalism: from anarchists, to communist, socialist and other ‘totalitarian’ political ideologies, all were classified by the Commission as for whether they generated social unity or division.

which ‘rests on something spiritual and inner’ (GUZMÁN, S61). To the commission, the only social entity that possesses something ‘spiritual and inner’ is the individual, not the collective, not the State or any other form of group. From their viewpoint only the individual exhibits spirituality and therefore an ‘inner’ life (ORTÚZAR, S89, S93; GUZMÁN, S89) capable of sentiments and behaviours (see Section 6.2). Thus, the stronger *social relations* (SR+) exhibited by the emphasis on the individual’s feelings, behaviours and this ‘spiritual’ aspect is what, according to the commissioners, was alone capable of producing ‘national integration’ (GUZMÁN, S406).

An individual who respected the nation would feel like a ‘member of a community that has a historical destiny to fulfill’ (EVANS, S187). GUZMÁN called this the ‘universal suffrage of the centuries’ (GUZMÁN, S188), a notion he took from ‘a Spanish author’, meaning a supposed ‘culture’ and values of the nation.¹⁶ This highlighted the national community as a spiritual sentiment that transcends everyday politics and its vicissitudes, and that therefore provided a source of political and cultural stability. However, constructing cultural and political stability this way was not without potential issues. EVANS warned against the tendency to ‘look for unanimity that is only truly produced in the mind of the totalitarian or the satrap [a despot]’ (S187). The spirit of nationalism, for example, could be misused by the State to quell ‘legitimate dissidences’ such as one ‘between capital and labour’ (EVANS, S187). EVANS argued for this legitimate display of ‘workers’ aspirations’, which the State could file under threat to ‘national unity’ (S187). This problem was downplayed, as the ‘being itself of the nation’ was at stake, and the defence of national unity had to be achieved ‘through all means possible’ (S187). Moreover, the strict boundaries set on what feelings and behaviours were acceptable as a citizen clash with GUZMÁN’s defence of the privacy of thought, as he argued that it ‘can never be legitimate to force a person to say or to adhere with his manifestation of will to something other than what the interior of his will or his conscience is dictating to him’ (GUZMÁN, S89). In other words, the force of nationalism is such that it may allow the penetration of the individual’s mind to the purposes of the nation,

¹⁶ This author was Juan Vázquez de Mella, whose concept of the ‘universal suffrage of the centuries’ meant tradition, ‘the historical baggage that had shaped the national body and soul’. This soul was ‘the Chilean equivalent of the Spenglerian term *Kultur*: an accumulation of historical traditions framed by values and ideals central to a society’ (Sznajder, 2018, p. 269)

because of the strong controls placed on feelings and spirituality of the individual.

In sum, the sentiment of national unity is the third pillar that structured the Commission's ideas and values for the new Constitution. This pillar was explicitly declared by the commissioners from the beginning of their work. Mainly, it provided them with a way to emphasise social cohesion as a basis to judge the legitimacy of other political and social ideas. Thus, any idea or belief that was deemed a 'threat' to the stability, unity, or identity of the imagined 'national community' could be rooted out from it. Thousands of Chileans were subjected to illegal detentions, torture or forced disappearances (Rojas Corral, 2011) on such basis. Importantly, this basis was grounded on sentiments and feelings to foster a shared sense of identity among the individuals that populate the country. In this sense, the commissioners sought to emphasise social cohesion, but never at the expense of an individualist relation to the country and each other. In other words, this sentiment of national unity, unlike nationalisms, never emphasised 'the people' as a collective identity in itself. Instead, it was the externally shared feeling of a 'Chileanness' that was called upon to build their idea of the 'national community'.

6.6 Conclusion

This chapter answered the question of what were the ideas and beliefs that the Commission brought to construct the new Constitution. It proposed that the manifold ideas and beliefs that the commissioners drew from when discussing could be understood as three 'pillars'. These three 'pillars' structured their ideas and beliefs and were shown to be separate and distinct from each other. These pillars were identified to be a reformed liberalism, Christian-Humanism, and the sentiment of national unity. The section presents a note regarding the 'pillars' constructed using LCT's Constellations, and then three main conclusions are drawn from their analysis.

Before reaching for these three conclusions, a note must be remarked on the concept of the pillars. Following LCT's Constellations, the stances that comprise each 'pillar' and even the name and concept underlying the pillars themselves are not absolutes. The pillars do not correspond to concepts out in the world, abstracted from their social context, discovered, and

put together without transforming them. On the contrary, each pillar is the specific construction of the Commission. While they drew from various sources, each pillar was the by-product of their discussions and their choice to agree or disagree on the legitimacy of the knowledge brought to the table. For example, the ‘Christian-Humanism’ pillar, while constructed by drawing from Christian-Humanist ideas and beliefs, does not represent a one-to-one import of an ahistorical or platonic ideal of what Christian-Humanism is. This is important to remark as it acknowledges the agency in knowledge-building that the commissioners had as social actors. Hence, this also acknowledges the ‘space of possibles’, of contingency, and therefore the possibility of criticism, for example by showing that the commissioners chose to take certain elements of Catholic doctrine, but not others. This is a key concept of LCT’s Constellations. Actors chose and picked in knowledge-building from the possibilities available to them or even create new ones. It is this active choice that an analysis of knowledge was selected, articulated, and put together must respect and consider. Otherwise, the risk is to fall yet again in the trap of externalism or of reductionism.

As mentioned, three main conclusions were drawn from the analysis. First, that the commissioners showed keen awareness that the Constitution they were constructing was a response to the socio-political conditions of the time. As such, they explicitly acknowledged that the new Constitution needed to provide answers, ways, or solutions to these conditions. Chapter Five showed that they perceived the past decades and the immediate events prior to the coup d’état of 1973 as the result of a lack of values, beliefs, and even a morality, underpinning the 1925 Constitution. Hence their response was to foreground what they considered to be atemporal values and beliefs of the country.

Second, that upon inspection all three pillars have in common an emphasis on *social relations* (SR+), though each for different reasons and highlighting different aspects. Each pillar called attention to different ways the commissioners discussed could foster social cohesion and unity. For example, the Chapter showed that through their reformed liberalism, the commissioners emphasised Chilean legal tradition to bound acceptable political ideologies; through Christian-Humanism, the notion of human dignity which highlighted legitimate behaviours for social actors; and through the sentiment of national unity, which legitimated

a specific way of being and interacting for the citizens. Each one corresponds to an abstracted tradition, an ideal or a sentiment that the commissioners would draw from toward fostering cohesion and eradicating adversaries to their preferred social order.

Third, that although the commissioners considered the three pillars to be apolitical and ideologically neutral, the analysis showed that not to be the case. Chapter Five concluded that the commissioners were looking to avoid and fight back against a wave of ‘politicisation’ that had affected Chilean society in the past decades. This chapter adds that this issue of ‘politicisation’ was identified by the commissioners as a problem of social division. The Commission’s three pillars allegedly complied with their requirement to provide safeguards against ‘politicisation’ as these notions, from their viewpoint, escaped political debate and therefore also escaped social and political conflict. They did so by virtue of the Commission considering them a part of something larger, alien to everyday political discourse or ideological debates.

However, the sentiment of national unity and its relation to nationalism provides an interesting example that defies the Commission’s characterisation. Nationalistic political discourse claims that ‘the nation’s core is clearly identifiable’ yet it tends to avoid ‘making explicit what that core actually is’ (Chernilo, 2020, p. 1080). The analysis of this third pillar corresponds to this claim, in that neither the nation nor national unity were made explicit by the Commission, instead opting to reinforce the way citizens ought to relate to it as the basis for legitimate citizenship. Importantly, despite the conceptualisation given by the commissioners, nationalistic claims are political because they are legitimisation claims for the formation of a political community of some sort, be it the nation itself or the nation-state.

Nonetheless, to the commissioners the three pillars were grounded on values and feelings existing beyond the realm of political conflict and dissent. Since they were traditional, spiritual, or personal, they could not be questioned because these lived beyond the grasp of political ideology. The question now became how to take these differently coloured and perhaps conflicting threads together. This is represented in Figure 6.4.

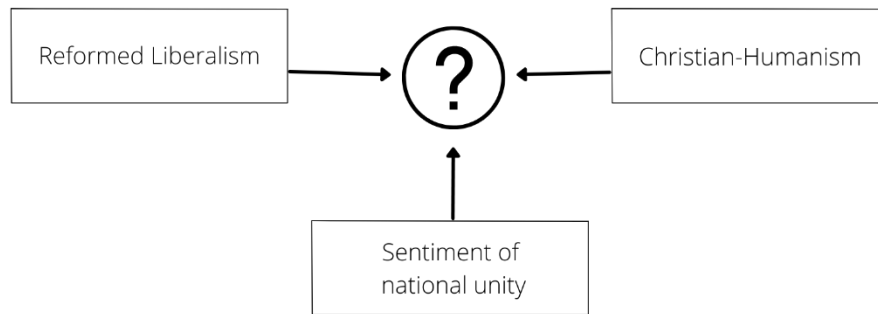


Figure 6.4 The Commission's pillars for the new Constitution

The question mark at the centre of Figure 6.4 is the focus of the next chapter. Chapter Seven tackles the question of how the Commission put all these ideas and beliefs together. How they arranged these variegated notions which may be conflicting or incompatible, how they worked them to combat 'politicisation' and how they utilised these to foster order and produce a desired 'social peace'.

CHAPTER SEVEN – THE COMMON GOOD

7.1 Introduction

Chapters Five and Six asked how the Commission argued for a new Constitution, and what ideas and beliefs they drew from to structure the knowledge used in its construction. Respectively, they showed that the Commission sought to avoid and restrict unwanted political ideas through the new Charter. They also showed that three ‘pillars’ structured the Commission’s ideas and beliefs they drew from to construct their Constitution.

Specifically, Chapter Five identified and analysed five rationales provided by the Commission that supported the idea of making a new Constitution. These rationales showed that, as expected from a group of law professors, the Commission raised legal criticisms of the prior 1925 Constitution. However, the analysis of the commissioners’ criticisms showed that there were moral and political criticisms underpinning the legal. Specifically, that the previous legal order lacked moral beliefs to act as its supporting foundation. Their criticisms revealed a distrust of politics, political ideas, and a moral disapproval of those that did not align with their own. Thus, Chapter Five concluded that, from the viewpoint of the Commission, Chile needed a new Constitution to restrict and protect the country from politics in general, and specifically from Marxist ideas. The question then became from what ideas and beliefs they would draw to create this new Constitution, looking to provide Chile with a new, protected democracy.

The commissioners expressed that a self-protecting democracy required explicit, strong, and clear ideas and beliefs to underpin it. It was clear to them that to do otherwise, failure would

follow. Chapter Six argued that their ideas, beliefs, and discussions about the new democracy could be summarised and explained by three ‘pillars’ which emphasised different moral aspects of the citizenship and of the nation-State, namely a reformed liberalism, Christian-Humanism and the sentiment of national unity. Notably, they considered these pillars to be apolitical beliefs, far removed from any political ideology. To them, using them as inspiration for the new Constitution allowed them to construct a social and political order capable of overcoming and preventing past mistakes. However, these pillars are diverse, and even contradictory between one another. Hence, Chapter Six raised questions of how the Commission articulated these variegated and potentially conflicting ideas and beliefs together into the resulting Constitution. They needed a concept to glue them all together.

The current chapter argues that the Commission’s idea of the ‘common good’ represents their answer to this problem and is visually represented in Figure 7.1. Through it, the commissioners articulated the three pillars and their criticisms of the previous Constitution’s defects’ into the new Constitution. The chapter does not argue that the ‘common good’ was necessarily a cohesive or coherent doctrine that unified these ideas and beliefs, nor did the Commission ever express the intent to construct one. Rather, the current chapter shows that it was the practical answer to a practical problem, of how to bring together, integrate and ultimately articulate into a single text the many different legal issues, moral problems, and political concerns of the Commission. Hence, the chapter explores how the Commission articulated these ideas and beliefs through the ‘common good’ to limit politics and, from their viewpoint, shield democracy from political ideas they considered illegitimate.

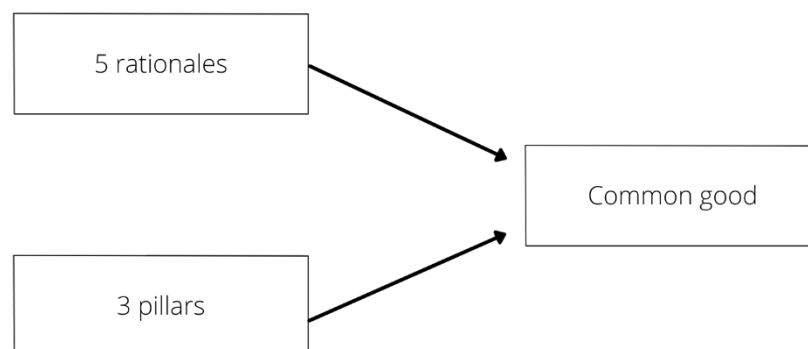


Figure 7.1 Articulation of the rationales and pillars into the common good

The following sections explore the concept. First, Section 7.2 characterises the concept of ‘common good’ from the viewpoint of the Commission and argues for its relevance as a structuring concept of their project. Section 7.3 shows that the first step toward creating a protected democracy meant the construction of explicit rules to strongly bound and control the State, and to protect individuals and organisation’s rules and autonomy. Afterwards, Section 7.4 analyses the Commission’s most important disagreement: whether the common good was simply an overarching concept implicit to their work, or whether it had to be explicitly integrated into the Constitution. Doing the latter meant committing the Constitution and therefore the new democracy to a specific ideology, which some commissioners resisted. Section 7.5 develops how the commissioners committed the Constitution to restricting politics and morality in the new democracy by emphasising the notion of the ‘good manners’ as part of the common good. Section 7.5 concludes how this shaped the Commission’s new protected democracy.

7.2 The ‘superior concept of the common good’

The commissioners considered that Chile had been stopped short of the total and complete destruction of its society thanks to the military coup d’état. To the commissioners, Allende, Marxism, and the ‘politicization’ of society provoked a social and moral chaos, abused the State and destroyed Chilean democracy. The problem they set out to solve was how to restore a sense of social belonging and institutional stability to the country by means of a new, ‘protected’ democracy. They called this the need to ‘reestablish the national democratic coexistence (convivencia)’ (SILVA, S153). This way, the Constitution was a means to reshape Chileans’ way of living to a more appropriate one, from the commissioners’ standpoint.

They argued that this required a ‘better structured and more purified democracy’ (SILVA, S153). That is to say, it required a constitution with a purpose, a single overarching thread that made for a stronger framework than the one Chile previously had. They needed the Constitution to take a clear stance on some social and political issues, instead of being ideologically neutral. But paradoxically, they also needed for it to be non-ideological. From

their viewpoint, they solved this paradox through the concept of the ‘common good’. Thus, early on, they declared that

‘The Constitution will contemplate as a fundamental principle that all acts of authority must be presided over and determined by *the superior concept of the common good*, because this constitutes the true reason for being of the ruler, called to achieve the spiritual and material well-being of the people.’ (S18)

Hence, for the commissioners, the ‘common good’ was a ‘superior concept’, ‘a kind of sociological summary of the political society’ (SILVA, S45). However, in actuality it was much more than what they expressed when discussing it. Their common good fulfilled many roles in the new Constitution, which will be developed in this Chapter. Importantly, however, through the concept of ‘common good’ they integrated and articulated disparate ideas and beliefs into the Constitution. Taking notions from ideologies as vastly different and potentially conflicting as Christian-Humanism and liberalism, for example, offered no guarantee of compatibility or cohesion. The invocation of the pursuit of the common good was the commissioners’ solution.

They considered it to be a ‘political type of concept’ (ORTÚZAR, S162) of an ‘ideal social perfection’ (S402), that was to them the ‘key element of society’ (GUZMÁN, S45).¹⁷ To them, an ideal society that strived for the common good was one where ‘the people may give their opinion as long as they respect the bases upon which Chilean society is built, historical bases, traditional, customs’ (SILVA, S153). It is these ‘bases’ that are represented by this concept of common good, and that draw from the ideas and beliefs shown in Chapters Five and Six. Through the common good they established limits to the circulation of ideas, beliefs, morals and, above all, political ideologies that they deemed illegitimate, in their new, protected

¹⁷ In a book that explains the 1980 Constitution, Díez wrote that ‘the content of the concept of the common good is extremely important and fundamental for the model of society and consequently for the political model that a country chooses.’ (1999, p. 77)

democracy. Their purpose, to ward against ‘the adversaries that pretend to destroy it’ (GUZMÁN, S242). SILVA summarised the issue with these adversaries:

‘if what is wanted is a democracy that is truly efficacious, efficient and foreign to *both the exaggerations of the Marxist collectivism*, as well as to *the deplorable footprints of an exaggerated liberalism*, it is indispensable that the Constitution affirms, with the vigour and decisiveness that it currently does, the truly imaginative, creative, active and dynamic task which corresponds to the State in the pursuit of the common good, and that it must carry it to permanently act this way’ (SILVA, 213; emphasis added)

This concept of ‘common good’ was mostly discussed early on their work, and at the end. At the beginning, they spent several continuous sessions discussing what they meant with it and what was its relevance to their Constitution. This was a rarity since they often jumped topics from session to session, and highlights the importance given to the concept. The result of these discussions was its addition as an explicit mention to the early draft of Article 1. This inclusion remained untouched for most of their work. By the end, the common good was brought back to the discussions and was used to limit the exercise of rights afforded by the new Constitution. However, by Session 402, it was decided that its mention offered some problems, despite prior discussions defending its importance. The Commission removed its mention from Article 1, and as a consequence, the final sessions that transcribe the completed draft do not include it. However, for some unknown reason and by some unknown hand it was added back to the text that was officially sent to the Junta in 1978.¹⁸ To date, the concept of the common good remains untouched in Chile’s Constitution, proving its significance to the Commission (See Appendix for an English translation of the first chapter).

¹⁸ The person or persons who prompted the return of the concept to the final draft of the Constitution is not clear. The Commission delivered their draft without it in 1978, and the version from the State Council they delivered in 1980 did not contain a mention to the common good (Alessandri Rodríguez & Valdivieso Ariztía, 1981). It is therefore a change made by Pinochet and the select group of individuals whose identity is unknown. Commissioner Guzmán was potentially included in it, as he was very close to the dictator and had written many of his speeches and decrees, including the famous Chacarillas speech of 1977 (Alvarado-Leyton, 2018).

Having demonstrated the importance of the concept of common good to the work of the Commission, the next section analyses the ways in which the common good was used to ‘define’ social actors and institutions.

7.3 The nebulous definitions of the common good

The Commission used the concept of the common good to articulate the manifold ideas and beliefs that inspired them to write the new Constitution, and to integrate the ways in which they would overcome the failures they saw in the previous constitutional order. It was used in a two-pronged manner. First, it was used to set legal boundaries between social actors in a way that protected their corresponding activities, which the commissioners argued were distinct and proper to each one; and second, it was used to shape the behaviours and functions afforded to these actors. This section analyses the boundary setting of the concept by clarifying what the commissioners meant with it. It will argue that despite their quest for precise definitions, the common good is characterised by the absence of a clear-cut description of *what* it is. In this sense, the concept was used to represent restrictions that would enable the Constitution to shield the country against politics. Political ‘excesses’, the commissioners argued, had transgressed ‘the sacred and inviolable character that the respect for the person must have’ (SILVA, S121). In other words, political ideologies had eroded the dignity of the person, made the State violate individual rights and even threatened national unity, all elements that structured the Commission’s work (see Chapter Six).

Thus, the commissioners argued for the need to limit potential misuses, excesses, or any other kind of encroachment of one social actor over another, especially the State over the individual. Individuals and ‘intermediate bodies’ activities, as long as they fell within the realm of what the Commission deemed legitimate, should never be interfered or replaced by State action. This scope of what was legitimate for all these social actors to do was the focus of the common good. Hence, their concept of common good provided them with **limits to the State**, it ensured the **autonomy of the intermediate bodies** and, above all, it foregrounded and protected **individual’s rights**. These are represented in Figure 7.2. Society had to be organised and ‘properly hierarchised’ (GUZMÁN, S45) for these boundaries to work,

and the common good acted as the Commission's principle of hierarchisation that defined the structure of Chilean society.

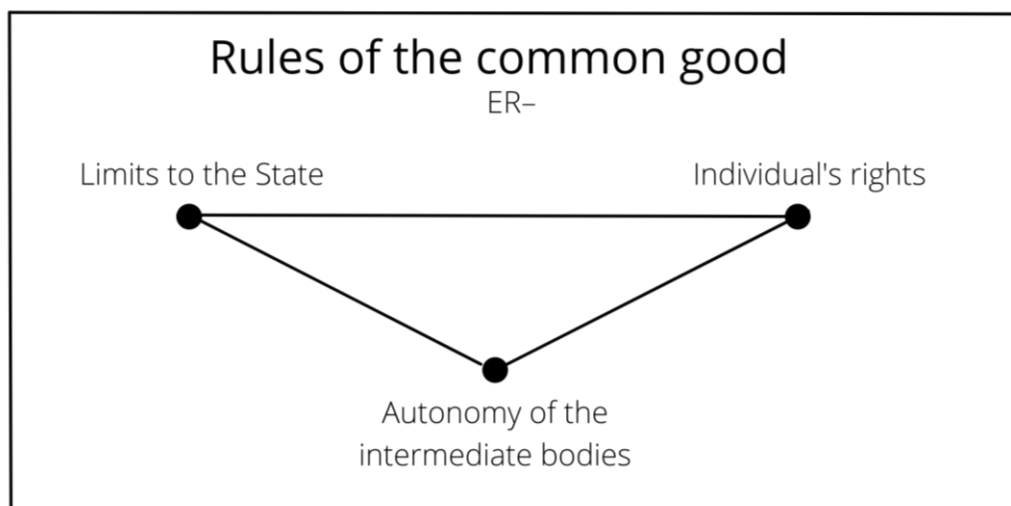


Figure 7.2 The 'rules' of the common good

However, though they discussed the need to define and structure society, the Commission did not produce a clear-cut definition of *what* their concept of the common good was. This issue is made clearer by turning to Specialization's distinction between a knowledge practice's *focus*, what it is about, and *basis*, the grounds for its legitimation basis. The *focus* of the common good, represented by these three notions of **limits to the State**, **autonomy of the intermediate bodies** and **individual's rights**, is the construction of rules, procedures and overall, a legal emphasis on boundaries for these social actors. Yet the *basis* of all three exhibits weaker *epistemic relations* (ER-) because the concept they are grounded on the absence of a definition, of a clear-cut set of rules or of legal procedures of the common good. This does not mean that the laws in the Constitution have this basis, or that laws were created ignoring the specialised knowledge of the law. Rather, this is an explanation of how this structuring concept of the common good, from the viewpoint of the commissioners, did not highlight the law, clear-cut rules or procedures as its legitimation basis.

In other words, the common good is obliquely referenced to bound and control the State, to protect intermediate bodies and to both limit and foster individual's rights, but the concept *itself* remains unspecified. At most, the common good is referred to as this ideal of society, or as the set of conditions that enable individuals to achieve material and spiritual development, but it is ambiguous what these are or mean.

For example, the Commission declared that the State had been created only to 'service man' (GUZMÁN, S406) and 'to promote the common good' (GUZMÁN, S40). These were the common good's **limits to the State**, which implied the legal protection of the 'essential and fundamental, inalienable and natural rights of man' (S40, EVANS). The oblique, unclear language is represented by references to what needed to be done without making explicit what the common good as a limit was. Thus, they argued for the need to 'establish effective guarantees that protect individuals from the excesses that the public power may commit' (DÍEZ, S9). That the Constitution was to 'set a limit, a margin, a stop' to the State preventing it from invading that 'which individuals are in the condition to execute by themselves' (GUZMÁN, S143), that is to say, economic activities. Simply put, the discussion centred around binding the State to act in accordance with the common good, as then everything it will do will 'flow as a consequence or as a directive to promote it' (GUZMÁN, S40). Only this way could the State 'procure the full development of the human personality and to secure its liberty and the respect to its dignity' (DÍEZ, S40). But in what concrete, specific terms did they mean, was not pointed, defined, or made clear.

The second example is the case of the **autonomy of the intermediate bodies**, a medieval Catholic concept used by the Commission that refers to a diverse set of social groups such as the family, institutional educations, municipalities, sports clubs and recreational organisations, neighbourhood councils, trade unions, churches and other similar associations (Sánchez Hidalgo, 2010). The Commission expressed the goal to 'provide solid legal bases for the legal principle of the autonomy of intermediate bodies' (BERTELSEN, S381), so as to avoid 'a concept of the common good that may be interpreted in an interventionist or statist way' (BERTELSEN, S373). This autonomy meant that the Constitution needed to protect

‘intermediate bodies’ freedom from the State so that each one could ‘fulfill the purposes that are their own (fines propios)’ (BERTELSEN, S373).

Yet what were those purposes and what their limits were was not something expressly defined by the Commission. Often times these were only alluded to in negative ways. In this sense, the project to depoliticise individuals and intermediate bodies is central to understand the Commission’s focus on the bodies’ autonomy from the State. For example, by stating that an ‘association that does not have the quality of political party could not interfere in the generation of political power’ (ORTÚZAR, S372). These negative definitions had the goal of restricting ‘political struggle’ from entering ‘all intermediate bodies such as syndicates, unions (gremios), professional colleges’ (ORTÚZAR, S372). This way, intermediate bodies would ‘not be allowed to deviate from their own activities or purposes’, while at the same time they would ‘not be interfered by political activities’ (ORTÚZAR, S370). In other words, the limits to the State and the autonomy of the intermediate bodies were more characterised by what must not be done, by absence, than by a positive description. Constitutional law was created from this, but the basis on which it is grounded does not highlight law, rule, or procedure.

Finally, the enforcement of the **individual’s rights** had a double meaning. On the one hand, the State had to secure the ‘respect for the human person’ (BULNES, S409) in that it found its limits in the dignity and respect of the person. That is, the common good could be called to ward against situations in which ‘the rights of any of the citizens are trampled’ (DÍEZ, S46). On the other hand, the common good also provided ways for the State to curtail or limit individual rights, if a deserving condition was brought up. Thus, the State could potentially ‘trample’ rights in the name of the common good. This was especially the case of rights that were related to speech and education. The commissioners discussed several situations in which these rights were to be limited even in the Constitution itself. For example, the Commission spared no criticism toward the public expression of left-aligned ideas and beliefs, as well as those that, from their viewpoint, threatened the nuclear family and the unity of the nation. This was of such importance to them that they wrote Article 8 into the

Constitution, which forbade these ways of thinking in public.¹⁹ Similarly, freedom of education was to have its ‘sole limitation’ in ‘morality, good manners, public order and the security of the State’ (OVALLE, S223). These references to ‘good manners’ signal a concern about ‘the correct and adequate exercise of public liberties’ (DÍEZ, S17) and are analysed in Section 7.5.

Summarising, these three notions of **limits to the State**, **autonomy of the intermediate bodies** and **individual’s rights** characterise the common good as a nebulous concept about control and boundaries that is itself scarcely defined. Specifically, this concept was used to establish limits between social actors. As a result, the common good is characterised by weaker *epistemic relations* (ER–). The reason is that while it was continuously invoked to construct legal rules and procedures, such as by using it to protect the exercise of individual’s rights or to elaborate a constitutional acknowledgment to the autonomy of intermediate bodies, its basis of legitimation did not emphasise a specific idea, legal object, or definition of procedure of what the common good was. Its focus was to establish rules, but its basis as elaborated by the commissioners was not grounded on the specialised knowledge of the law.

Rather, the common good’s lack of an explicit definition appears to run contrary to the Commission’s detailed and strenuous efforts to write an unambiguous Constitution. That this occurred and that it happened with such an important concept was not a casual outcome, but rather it was the cause of perhaps one of the most important disagreements within the Commission. It sparked the issue of how best to approach the Constitution and the writing of its articles, as form and content started to clash. The commissioners preferred legal, procedural, structured, and well-defined concepts and wording for their draft. Indeed, much care was given throughout their work on how best to represent their ideas and beliefs in the constitutional text. Yet the use of the common good appeared to betray this because of its unclear status. Their discussion thus turned to the meaning and purpose of the Constitution,

¹⁹ The first paragraph of Article 8 read: ‘Any action by an individual or group intended to propagate doctrines which are antagonistic to the family, or which advocate violence or a concept of society, the State or the juridical order, of a totalitarian character or based on class warfare, is illegal and contrary to the institutional code of the Republic.’ This article was derogated in 1990 as part of the transition to democracy. See Appendix for Chapter 1 of the Constitution which includes this article.

and the extent to which it could deviate from a purely legal text with clear-cut definitions. The next section discusses this controversy.

7.4 The role of the common good in the Constitution

The issue at the core of their discussion was whether the common good should be made explicit and written in directly to the constitutional draft, or whether to simply utilise it in their discussions as a guide but refrain from writing it in the text. This sparked two opposing groups within the Commission, in what is perhaps one of the few disagreements about such a fundamental aspect. One position argued that only legal rules and procedures belonged in a constitution. The other countered this by stating that their social and political context required them to emphasise morals, ideals, and beliefs in the constitutional draft. The two pathways can be characterised as a clash between what was considered to be the legitimate form the Constitution should take and what it should do. In turn, this highlighted the issue of what constitutions were and what kind of specific constitution the Commission was building.

Their disagreement is made clearer by observing the underlying legitimisation basis of the two positions. Both share the notion that explicit, clear rules and procedures were necessary for the new Constitution. Both positions therefore highlight stronger *epistemic relations* (ER+) as their legitimisation basis, as they emphasised the Constitution as a legal document that had to provide strong boundaries and controls by means of the law. The difference lies in the varying degrees of emphasis of *social relations*. The first position downplayed *social relations* (SR-), because it argued that the Constitution was not the place to establish ideology or morality for society. The second position on the other hand emphasised *social relations* (SR+), because it argued that, at least regarding their specific context, to avoid undesired outcomes the Constitution had to lay out a moral foundation with which to strengthen the law. Hence, the central issue was about what notions on the Constitution would be sufficient to achieve their goal of restricting politics and shaping social behaviours. In deciding this question, the meaning and purpose of the entire project of the new Constitution was at stake.

The position against the inclusion of the common good and ‘doctrinal’ values (SR-) argued

that constitutions needed to be as minimal as possible, meaning that they should only be the basic framework for the operation of the State and the law. Specifically, that the Constitution ‘has one precise purpose: to structure the organs of the State’ (OVALLE, S45) and that it was ‘not a teaching textbook’ (OVALLE, S46). This position posited that only legal norms and procedures should be part of the new Constitution (EVANS, S46), to prevent limiting ‘future generations that, impregnated with new philosophies, may feel constrained by a conservative Constitution which, of course, is not the criteria of the Commission members’ (OVALLE, S46). Thus, while this position strongly emphasised *epistemic relations* (ER+) as the legitimate basis for the new Constitution, it downplayed *social relations* (SR-) on the grounds that it would constrict Chilean society too much, narrowing the breadth of possibly legitimate ideological differences within the country. For example, this position expressed that making explicit an idea of the common good that was ‘strongly shaped by Catholic doctrine’ placed too much emphasis on ‘Catholic thought’. In turn, it could ‘give a false impression’ that the new Constitution was ‘imbued by a religious doctrine which, obviously, cannot be’ (OVALLE, S46)²⁰. Furthermore, because of the moral basis of ‘doctrinal’ concepts such as common good they could give way to ‘whimsical and malicious’ interpretations of the Commission’s intentions (OVALLE, S46), undermining the attempt at strengthening *social relations*.

The position in favour of including these doctrinal concepts defended the idea of a constitution underpinned by both strong rules and procedures as well as strong moral and behaviour boundaries, or both strong *epistemic relations* (ER+) and *social relations* (SR+). This position put forth two arguments for it, one logical and one practical. One, that including these ‘doctrinal’ concepts would give the Constitution ‘distinct judicial value’ (GUZMÁN, S46), meaning that although they were moral ideas put in the constitutional text, they would be given legal strength if placed in the Constitution. They argued that removing the common good would have meant, in theory, the need to remove many other similar ideas that were already accepted by the commissioners such as ‘sovereignty’. This was argued by GUZMÁN,

²⁰ This is a case in which the potentially contradictory aspects of Christian-Humanism and liberal ideas and beliefs clash. Here, the Catholic thought could be characterized as (ER-, SR+), whereas the liberal concept of freedom of thought and religion emphasizes the law and downplays subjective characteristics (ER+, SR-). If these two opposite concepts were characterized that way, the

who pushed the notion that the Constitution had to be, first and foremost, consistent, and had to ‘contain hierarchical and conceptually precise ideas’ (GUZMÁN, S45).²¹ Second, that not including these doctrinal concepts would most likely mean that the State would once again be co-opted, as Allende in their viewpoint had done. To them, this was ‘an idea that cannot be forgotten when making the new Constitution’ (ORTÚZAR, S45), as to do so would mean the eventual failure of this constitution-making event.

Regarding the issue of too much ‘Catholic thought’, those in favour of this position dismissed this as a criticism of origin. They argued that the origin of those who discover ‘the sociological laws of the universe’ was not relevant (DÍEZ, S46), as ‘many groups of religious or philosophical thought have made contributions and discoveries that have become universal heritage’ (DÍEZ, S46). Thus, the position defended the use of doctrinal ideas by arguing that whatever their origin, Catholic or otherwise, it did not mean that they would be rejected by a non-Christian population. This was based on the grounds that these ideas were universally accepted and as allegedly unproblematic as ‘physical laws’ (DÍEZ, S46).

As a result, they reinforced a distinction already present in their discussions. Specifically, that there were two sets of ideals, one that was politically motivated, partisan, and ideological, and another that was true, objective and eternal. To them, the first would easily cause political and social struggle, while the latter were viewed by them as ‘universally accepted principles’ (DÍEZ, S45) which they thought no citizen would oppose. The main difference between those two kinds of ideas and beliefs thus were deemed partisan, arbitrary and contingent on the one hand, while the others were universal discoveries they equated to physical laws. Hence, to them ‘just as man discovers physical laws, he also discovers social laws and, in that sense, one of the most important values that sociology has incorporated is the State’s aim to fight for the common good’ (DÍEZ, S46). This way, the problem the commissioners criticised about Allende’s State had been that he had used the State for

²¹ GUZMÁN, strongly in favour of the common good in the text, expressed ‘no opposition to its exclusion’ (S46) though he did argue that it was ‘advisable’ to keep the expression. His rhetoric here was that if the common good was excised from the draft, then other similar concepts such as ‘sovereignty, the dignity of man’ and ‘those related to rights that stem from human nature’ should also ‘be eliminated’ (GUZMÁN, S46), following suit. All these concepts ‘involve doctrine’ (GUZMÁN, S46), he argued, and to remove one for this reason would mean the need to remove them all.

partisan ideas, namely to ‘transform Chile into a socialist country’ (DÍEZ, S46), which directly contravened this universal idea of the common good that the Commission was implanting on the Constitution. Analytically however, both positions emphasised *social relations* (SR+) as their basis for legitimacy as they both implicate the establishment of subjective characteristics, ways of being and interacting among citizens. Both kinds of concepts were political in this sense. Whether the commissioners characterised them from their viewpoint as partisan or objective, all these ideas highlight morals and specify behaviours and therefore strengthen *social relations* (SR+).

The outcome of the discussion was that the new Constitution would be set up for failure if only legal rules and procedures were included to safeguard the new democracy. Their reasoning was based on the understanding that democracy was ‘more than a political regime’, it was ‘a way of life’ (OVALLE, S10). Hence, to modify and transform a way of life, the law was insufficient. From their viewpoint, it would mean repeating the mistakes they criticised about the previous Constitution. Their belief that the realisation of the individual could ‘only be achieved within the concept of the common good, within the concept of the good faith, within the concept of the defence of the family, within the concept of the defence of man against the State’ (DÍEZ, S242) weighted the decision towards imbuing the Constitution with doctrinal ideas. As a result, the commissioners chose to include them based on their express belief that they considered these ideas to be nonpartisan, ‘permanent’ and ‘perennial with respect to nature’ (GUZMÁN, S46).

To them, doctrinal ideas were acceptable as long as they were not politically partisan or ideological, rather they were considered non-political. The definition of what was regarded partisan or ideologically was given, by their own definition and understanding of the common good as a moral idea. The inclusion of these allegedly nonpartisan notions will be developed in the next section.

7.5 The behaviours of the common good

This section analyses elements the commissioners added to their concept of common good that made it transcend ‘the merely formal’ (DÍEZ, S155), that is, the setting of legal

boundaries for social actors. Simply, the Commission's notion of common good aimed to protect a specific way of being, a specific way of thinking, with a distinct set of values and beliefs, that applied to the various social actors within society. They saw this inclusion as a necessary addition as, to them, 'constitutions are the result of habits, customs and ideologies of a people' (DÍEZ, S153). In turn, this signified that since the common good was a structuring concept for the entire Constitution, it simply had to reach out beyond the law and help to morally shape the country. This was initially hinted at by DÍEZ, who argued that 'the crisis that affects the country is of habits more than [legal] dispositions' (DÍEZ, S1). Simply put to the Commission what 'the [new] Constitution wants is to protect a situation, a value' (SILVA, S197), a correct and legitimate way of being rather than to limit State powers as a priority.

For example, among these values they discussed to instil into Chilean society were 'the concept of good faith, the concept of good manners, and of the public order', ideas related to the maintenance of the 'social order and the reality that countries live' (LORCA, S156). These were of utmost importance to the Commission's plan to depoliticise Chilean society, as a means to 'protect a situation' (SILVA, S197). Section 7.3 showed that these notions lacked clear-cut, specific definitions. This section shows how these were utilised in a more abstract and implicit way to configure legitimate and apparently 'apolitical' ways of being. Their goal, more than to define rules via the common good, was to emphasise behaviours and intersubjective (or inter-actor, considering relations between State and intermediate bodies as well) interactions in a moral sense.

To regulate the moral and political way of being and acting of the citizens, they needed to do what can be characterised as strengthening *social relations* (SR+) of the common good as an underlying, structuring concept of the Commission's Constitution. This is the key to understand how they discussed their new democracy as being pluralist, but in a 'restricted' or 'protected' way. Their new democracy would 'allow' a variety of 'conceptions of [society] that tend toward the common good' to exist within the country but drew limits in the 'ideologies or doctrines that seek to destroy it' (SILVA, S10). Therefore, preventing the spread of 'class hatred and class struggle as a system' (GUZMÁN, S228) was a crucial function of the common good, to name perhaps the most evident and specific political ideology. To do so,

through the common good the Constitution would be **teaching new habits**, foster an **equilibrium between rights and obligations**, and **limit to the exercise of rights**, which are represented in Figure 7.3. Together, these are diverse aspects within the Commission's 'common good' that emphasise stronger *social relations* (SR+).

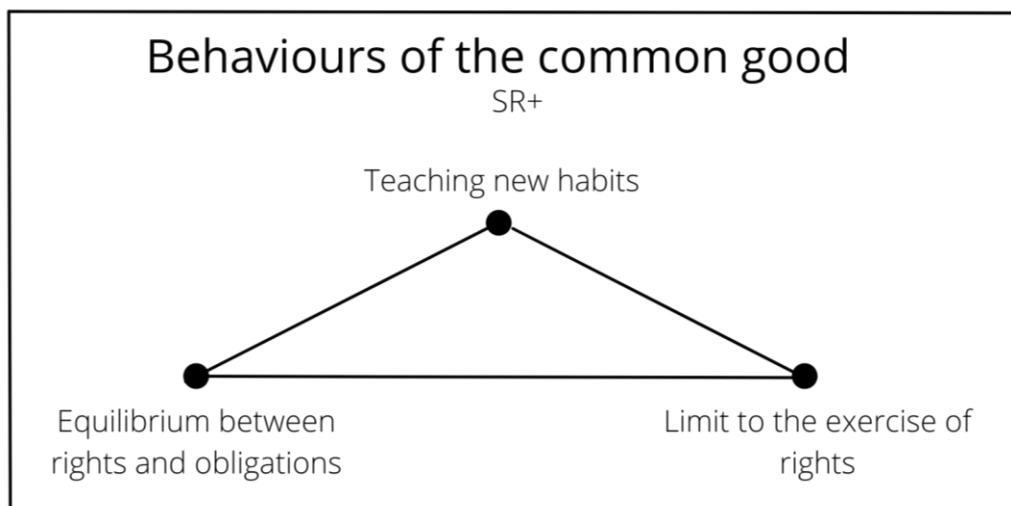


Figure 7.3 'Behaviours' of the common good

Teaching new habits to the population was a necessary part of the Commission's project to create a new, protected democracy with the Constitution. The creation of a new State and a new society required the creation of 'a new mentality' that 'must be incorporated into young people through the action of education' (OVALLE, S78). They reasoned that 'the formation of new generations' had to be 'the object of the fundamental concern of the State' (OVALLE, S78). While these may well refer exclusively to State control of education, the rules and procedures established in place prevented this. They simply did not at any point discuss giving a pedagogic role to the State itself, much less as an institution that could eventually be utilised by political opponents once in government. Thus, what this means is that while the State could not be a teacher in itself, the Constitution would play a part in reshaping political behaviour of the citizens in a more indirect way.

Hence, the commissioners understood the Constitution as a collection of laws, but 'also a pedagogic instrument for the common citizen' (GUZMÁN, S188). They argued that as such,

it had to be ‘employed with a didactic purpose for the civic education of the community in basic aspects’ (GUZMÁN, S123). This led them to conceive of the Constitution as a kind of manual for citizens’ political behaviour. Its first Chapter, where the Constitution’s main principles and values were to be expressed, had to exhibit ‘a pedagogic and didactic character’ (GUZMÁN, S188) so that the ‘citizen gains consciousness (forme conciencia) about their duty’ (GUZMÁN, S188). Again, what were those duties, beyond indirect references to loyalty to the fatherland or to tradition, are seldom specified and remain abstract. This is the basis for why the first few articles of the Constitution appear to have a different form, and a different purpose, than latter articles apparently more legal and less ‘pedagogic’ in nature. The purpose was to construct the legitimate attributes and ways of being of the social actors. This was a concern when discussing the writing and use of legal language, to the point that they would sometimes ‘sacrifice the purest legal technique a little for the sake of the greatest clarity for the lay person who reads the Constitution’ (GUZMÁN, S188). In a way, this shows that the commissioners had a precise idea on how to put the constitutional text to the purpose of strongly controlling subjective dispositions of the various social actors. The question now is what was to be cultivated in the citizens.

The new mentality to be taught to the citizens was, basically, about offsetting several ‘bad habits’ (malas costumbres) (ORTÚZAR, S123) with ‘good manners’ (buenas costumbres). The purpose, to reshape the way in which citizens related to political institutions or behaved in regard to legal rights. Thus, the Commission commented that it would be ‘interesting to be able to destroy [the bad habits] somehow’ (ORTÚZAR, S123), and a way they chose to do it was through concepts contained in the Constitution. Perhaps the worst habit of them all was the politicisation of social spheres such as work and education, so much that the Commission argued these were to remain distanced from politics. Among the more specific examples the commissioners expressed was the tendency to publicly declare someone guilty ‘by the sole fact that they are pointed as the author of a crime or infraction’ (ORTÚZAR, S123). To the Commission it was an unacceptable ‘civic and journalistic habit’ (OVALLE, S123) which they had to ‘fight with all possible means to proscribe’ (OVALLE, S123) as it compromised the legal presumption of innocence. Another such bad habit was their perception that people presented ‘their problems to the first authority they find in their way’ even if said authorities

were ‘incompetent to solve the matter’ (OVALLE, S125). In these cases, they observed a way of relating between individuals and the law, a State institution or an authority. Nevertheless, it is not the case that the commissioners were completely aware of all political behaviour or all kinds of relations between individuals and the law, and that they wanted to completely overhaul this. Teaching new habits refers to a more subtle reshaping of habits. It meant elaborating a series of legitimate behaviours within the public sphere, especially by erecting boundaries to politics and to political behaviour. In other words, **teaching new habits** strengthened *social relations* (SR+) of the common good. It was not a matter of inscribing in the Constitution what they wanted individuals to do, but rather establishing boundaries of acceptable and legitimate political and moral behaviour for the public sphere.

For example, the ‘good manners’ was one way to conceptualise the boundaries of the acceptable. To the commissioners this consisted of ‘a moral part and a habit part’ (DÍEZ, S146). With the moral part they meant a more universal, unchanging notion of morality, and with ‘habits’ they referred to contingent behaviours that changed over time in society. They conceptualised good manners as the ‘uses and conveniences of the community’ (SILVA, S146), meaning ‘a series of ways of acting that are convenient for peace, development and the good expedition of coexistence’ (SILVA, S146). Basically, good manners meant moral and political ways of being that if followed, produced social cohesion and even ‘social peace’. What produced social peace was politics that avoided the ‘creation’ or reinforcement or emphasis of social division, hence Marxism’s idea of ‘class struggle’ was its direct opposite (see Chapter Six). In practice, any political ideology or way of thinking that sparked potential clashes within society transgressed these ‘good manners’. It is unclear whether the commissioners intended to teach about morality, which they understood to be the ‘rational demand, indisputable, permanent and definitive of all time’ (SILVA, S146). What was clear was that they chose to regulate the ‘norms of healthy and regular coexistence’ (*convivencia*) (OVALLE, S146) which to them depended on the social and historical context.

In any case, both this idea of good manners and morality were ‘essential’ to the Commission’s project for the new Constitution, as otherwise they ‘would not “win” anything with having a bunch of criminals loving the Fatherland to say that they love it plenty and that

they are very jingoist' (OVALLE, S224). In other words, to them a nationalistic delinquent or immoral individual was not acceptable, even if they were loyal to the country as the Commission expected individuals to be. To them, the common good and the correct functioning of society required for the Constitution to 'effectively watch over morality and the honour of the citizens' (DÍEZ, S17).²² In this, they argued that the State did have a role to play.

They also acknowledged that this role had to be constructed in a different way than the previous Constitution had done with the State. This new State would also have to exhibit new behaviours and new ways of being..It would be 'dynamic' (OVALLE, S11), 'active' (DÍEZ, S46), 'creative' (SILVA, S188), with a 'calling' (vocación) (GUZMÁN, S40). They contrasted this new State with the 'passive, spectator role' (GUZMÁN, S45) they criticised of the previous one, which according to them had only protected rights in reaction to their violations. The 'dynamic' role of the State however did not mean that the State would be the vanguard of social or economic progress. Instead, to the commissioners it meant that the State would look for 'active' ways to provide conditions for individuals to exercise their rights and develop themselves, with two limitations. The first limitation was that this behaviour had to respect 'the essential values of the national soul' (GUZMÁN, S243), and the second, that it ought to avoid the notion that 'the State must procure everything' (S353). Only then could they prevent a situation in which 'citizens' stomachs depend[ed] on the absolute will of the state' (ORTÚZAR, S162, S189). In other words, the Commission set out to elaborate a constitutional definition of the State that would make it more proactive than the liberal State of old, but not so active to engulf all economic activity of the country.

Furthermore, in the new State 'all decisions of the rulers and authorities ought to be determined by the common good' (ORTÚZAR, S10), and it would 'exercise its function in good faith' (GUZMÁN, S162). Here, 'good faith' is another indirect notion that nevertheless bounded political ways of being. To act in 'good faith' meant acting with 'extremely subtle

²² The commissioners often used the remark 'buenas costumbres' which may be translated to good manners, conduct, moral or habits. The idea of the concept highlights assumed standards of appropriate behaviour whose definition is nevertheless seldom explicit or clear.

and complex' notions of 'intentionality, of subjectivity, of discretion' and was deeply seated in an 'eminently political and moral terrain' (SILVA, S51). Basically, the State had to also exhibit good manners, and this would have to be constitutionally enforced. In characterising State action this way, they emphasised the notion that the State should be able to explain its 'discretion' or its 'intentionality' in whether it acted in good faith, if questioned. The limits to its behaviour would, again, refer to the common good. An example would be a situation in which the State was to curtail individual rights, then the Congress could stop such behaviour by questioning the 'good faith' of the State action. Thus, the attributes the new State ought to be characterised by, as well as this good faith as a regulator, both are the result of strongly emphasised boundaries of social actors' behaviours and ways of being. These can be characterised as strengthening *social relations* (SR+) of the Commission's concept of the common good.

However, these new habits taught by the common good were to be complemented by a need for the legislation to secure 'the correct and adequate exercise of public liberties' (DÍEZ, S17). For example, freedom of speech, of education and conscience, the right to access culture, the presumption of innocence, the right to work, among others. This adequate exercise required the elaboration of an **equilibrium between rights and obligations**. This signals a balance in which, for every attempt of the State to 'impose an obligation', meaning a limit to an individual's right or its exercise, it would have to 'demonstrate that it favours the common good' (GUZMÁN, S162). Simply put, this was another way to control the behaviour and interactions of the State with other social actors, thereby strengthening *social relations* (SR+). It set a limit to the politically acceptable for the State to do. Its basis, not simply the law, but political and moral limits to what was legitimate State behaviour. Or else, the Commission agreed, there was always the 'right to rebellion in an extreme case' (GUZMÁN, S162).

This equilibrium would be cultivated in State behaviour by forcing it to provide explanations whenever a right was limited. It had to substantiate why the limitation of a right 'elevates the conditions of the life in common of the inhabitants or why it considers that it favours the general interests of the State'. This would, in turn, 'serve as the basis for the political debate'

(GUZMÁN, S162). Thus, the State had to justify and balance ‘the necessary equilibrium between liberty and the rights of the common good’ without exercising a ‘dictatorship over the spirits’ (EVANS, S138–139), a curious turn of the phrase given the Commission’s context. Nevertheless, the commissioners also agreed that this was a delicate balance because the entire dignity of the person, and the relation to the Chilean legal tradition, was at stake. Thus, for them, ‘to threaten the liberty of expression is to threaten the dignity of the human being’ (ORTÚZAR, S230). The concept of dignity, explored in Chapter Six, mandated the State to ‘respect the fundamental rights that stem from human nature’, predicated on the belief that ‘God made [the human being] comprised of matter and spirit’ (GUZMÁN, S45). Hence, the State had to explain why its actions would result in the restriction or transgression of ‘fundamental rights’ of the individual.

Finally, a third way in which behaviours and interactions were characterised within the common good was conceptualised as the need to **limit to the exercise of rights**, if occasionally. Perhaps the most salient example of this was the Commission’s discussions about the right to education. The issue was about finding ‘the right equation between freedom of education and the common good’ (GUZMÁN, S138–139). On this topic they discussed the delicate and complex nature of this right’s relationship to the ‘common good’. Thus, they argued about the role of public education and the State. On the one hand, in their view the State had to foster conditions so that individuals have priority in offering education. On the other hand, the Commission also discussed the importance of State-led education as a basis from which to educate most of the population. Thus, the freedom to education, or more precisely, the freedom to provide private educational curricula was in question. However, freedom, as a right, was tied to human dignity and to the Chilean legal tradition. The conflict was in how to mediate between protecting and fostering such freedom of education, and at the same time utilising the State as a tool to provide a national education or a national curriculum. Thus, the common good may also be the ‘sole limitation’ of otherwise unquestionable rights. The basis of such limits was ‘morality, good manners, public order and the security of the State’ (OVALLE, S223). This example highlights how the common good was conceptualised by the commissioners such that it could help to bound all social actors with the same notion.

In this example of the freedom of education, the common good acts in two ways. First, by setting limits to the functions of the State, namely the extent to which it could control education. Second, the common good also acts by setting limits to the way in which individuals could behave, that is to say, their limits to the exercise of this freedom of education. Importantly, it is not simply a matter of defining the common good as a boundary to respect rights. Rather, it implies legitimate and correct ways in which the ‘Political Power’ (GUZMÁN, S162), or the State, could function, and correct ways in which individuals could behave. The common good thus conceptualised by the Commission is a complex intertwining of legal, political, and moral controls that regulate both legitimate legality and political action. Thus, the State could limit some of the freedom of education on the moral basis that it fostered public order and social cohesion, but at the same time individuals could stop the encroachment of rights by arguing the very same reasons. Some examples may further clarify this.

The ‘right of access to culture’ (GUZMÁN, S138–139), the ‘honour of the person and their family’, freedom of speech and privacy laws, all could be ‘limited, like all human rights, by the common good’ and ‘good manners’ (GUZMÁN, S138–139). Perhaps one of the most famous examples of this was that Scorsese’s 1988 film ‘The Last Temptation of Christ’ was censored, and its exhibition forbidden on these bases.²³ Other potential cases would be where there is ‘a compromised public interest’ (BULNES, S409). In the case of freedom of speech, the commissioners believed that spreading ideas ‘contrary to the family, as the basic cell of society, or supportive of the exercise of violence’ (GUZMÁN, S365) was as treacherous and ‘as complete as it would be to stab someone with a dagger’ (GUZMÁN, S359). That would also be an important case, which was directly written into the Constitution in the form of Article 8 (see Appendix). Nevertheless, the Commission’s concern was that as long as the individual’s beliefs and actions ‘do not corrupt the morality or affect the stability of society’, they ‘must be respected by the collective’ and especially by the State (OVALLE, S106). As

²³ A decade later, the Inter-American Commission on Human Rights revoked this censorship on the basis of freedom of speech. The film saw its premiere in the country in 2003, fifteen years after it had been released to the public.

long as the State acts according to the common good the citizenry would have no need to invoke the right of rebellion and trump the political order of the country once again.

A relevant case to this situation was the Commission's perception of what occurred with intermediate bodies during the prior decades. According to them, they exhibited 'the will to access and reach power', which they qualified as 'the verification of a bad habit' (DÍEZ, S230). The Commission's goal was to reshape this political way of acting. They expressed their need to 'secure the independence and depoliticization of all intermediate societies' (LORCA, S187). The commissioners argued that in a politicised context and if left unregulated, intermediate bodies' uncontrolled actions 'may lead to good, just as they may lead to evil' (ORTÚZAR, S230). This was unacceptable to them, and the root of the cause had been identified with politicisation. Allowing intermediate bodies access to political power, such as by enabling partisan politics to intertwine with trade unions, resulted in an 'excess of politicisation' (DÍEZ, S230). In turn, this eroded their ideal 'quiet democratic life', where politics was bounded by 'a degree of education, of politeness'. (DÍEZ, S230). Again, the emphasis is placed on a specific political way of being that was deemed legitimate and correct, and others that were not.

Rather, by following the common good that placed a **limit to the exercise of rights**, each intermediate body would have one single purpose. They would distance their actions as much as possible from anything related to politics, according to the Commission's viewpoint. This meant that only when these bodies' actions sought inspiration 'in the superior principles of morality and the common good' (ORTÚZAR, S230) and had been subjected to a complete 'depoliticization', could they become 'the authentic vehicles of social participation' (LORCA, S187). When the Commission's requirement of depoliticization was fulfilled only then intermediate bodies would be suitable to engage in their activity and be rewarded with the recognition of their autonomy.

In sum, the three notions of **teaching new habits**, the **equilibrium between rights and obligations**, and the **limit the exercise of rights** strengthen the *social relations* (SR+) of the common good. Simply put, they are characterised this way because they regulate social

actors' behaviours, and even the exercise of rules and procedures. These notions and the emphasis placed on stronger *social relations* (SR+) helps to explain what the Commission meant with their oft-repeated dictum that 'the State is in service of man and not man in service of the State' (ORTÚZAR, S40; S38, S45, S46, S57, S152, S406). This dictum, understood within the context of this Section, unambiguously expresses what the Commission expected for political behaviours of the individual, intermediate bodies, and the State as actors. The State, in this mandate, had to serve and protect the rights of the individual and of intermediate bodies. But to do so, it had to behave like a 'father to a family' (ORTÚZAR, S239). It is not a unilateral relation of servitude from the State to these other social actors. They also had to be guided and restrained. Similarly, this notion of family became a model of how society ought to function, making society itself a family comprised of families. Moreover, understood this way the mandate also meant that the government acted only 'as accidental transitory manager of the common good' (SILVA, S142). Since the government could be taken over by the political opposition, the stronger *social relations* (SR+) of the common good had to be imprinted and expressed in the Constitution, to affect the State and governments irrespective of their political position.

7.6 Conclusion

This chapter addressed the question of how the Commission set out to achieve its goal for the Constitution. The chapter answered the question by arguing that the commissioners constellated together their ideas and beliefs into a concept of the 'common good'. It showed that this concept served functions of boundary-setting and control of social actors' behaviours. Using LCT's Specialization, the chapter analysed the common good as comprised by an absence of clear-cut definitions or a legal basis, and an emphasis on elaborating strong though implicit signals for what constituted legitimate social behaviour. Figure 7.4 represents the 'nebulous definitions' and 'behaviours' as two parts that constitute the Commission's concept of the common good. Two main conclusions are drawn from the analysis.

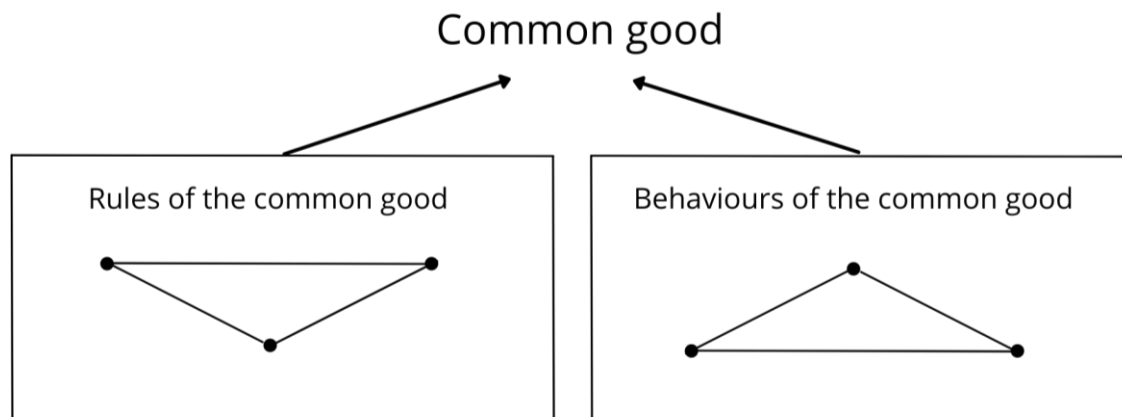


Figure 7.4 The 'rules' and 'behaviours' of the common good

First, that the purpose of the articulation of the variegated ideas and beliefs was to enforce controls and boundaries. The commissioners expressed the intention to shape the citizens and social actors' political ways of being. The common good was an opaque concept that nevertheless was suited to exercise control in the Constitution. It is an implicitly defined concept that was coupled with some indication of a correct or legitimate way of being and interacting. In other words, the common good lacked a defined *what*, but it served the purpose of indicating social actors *how* to behave. This is how the commissioners articulated their potentially conflicting ideas and beliefs. Or, rather, because they did not produce a consistent set of definitions that elaborated the organisation of society, they simply employed concepts that suited their purpose. Instead of an explicit doctrine, the common good characterised in an opaquer way how the citizen or the State ought to be, ought to feel or to behave. In short, the common good communicated in an indirect way that there was a legitimate way of interacting and of being as a social actor.

Second, that the common good and this legitimate way of being and interacting served an anti-political purpose. This purpose required the control of the politically charged behaviour of social actors. That is, individuals who exercised their rights 'according to the fundamental principles that inspire the Constitution' would not use the Constitution 'as a pretext to destroy the foundations of the State' (GUZMÁN, S138). They would be well-behaved and not use the law against itself, or against the country. They would not seek to politicise social spheres that, from the Commission's viewpoint, had nothing to do with politics. In other words, the

common good could not be used to undermine the common good. Instead, to them a working society was ‘formed in part by law, by habits, by morality, by the agreement of dispositions, by the consensus that things are this way’ (DÍEZ, S128). The common good provided them with a way to refer to all of these in a controlled way that used an implicit rather than explicit language: *this way* and not *another way* of doing politics, of being in society. Only then would all social actors within Chilean society behave with ‘respect toward the concepts of morality’ (GUZMÁN, S139), and only then would society be safe.

A summary of the findings of the thesis and implications for research are explored in the next chapter, Conclusions.

CHAPTER EIGHT – CONCLUSIONS

8.1 Introduction

This thesis aimed at examining how ideas and beliefs were selected, articulated and put together in the making of the Chilean Constitution of 1980. It focused on analysing the organising principles of the knowledge utilised by the Ortúzar Commission in making their Constitution. Drawing on literature from the field, the thesis identified a need for a framework that enabled knowledge to be seen, to capture how it is selected and articulated into constitutional law. Such an approach needed to be able to see knowledge, avoid reducing it as an epiphenomenon of power or of actors' positions in the social structure, and reveal its organising principles. This study has provided a starting point to develop such an approach by using Legitimation Code Theory to analyse the Proceedings of the Ortúzar Commission.

The research for this thesis enacted a qualitative case study of the constitution-making process of the Chilean 1980 Constitution. Working from a corpus comprising almost 5 million words divided in 417 sessions (1973–1978) of Commission work, the research addressed the main research question of 'how did the Ortúzar Commission select and articulate ideas and beliefs in making the Chilean 1980 Constitution?'. From this main question, three specific ones guided the research:

1. How did the Commission argue for the construction of a new Constitution?
2. What were the underlying ideas and beliefs that structured their writing?
3. How did they set out to achieve their goal for the new Constitution?

To answer these questions, the study used LCT's Constellations to observe and make sense of how ideas and beliefs were grouped together and drew on the dimension of Specialization to analyse their organising principles. This framework provided a way to see knowledge practices and analyse them according to their underlying legitimation bases.

The chapter will now present a summary of the main findings of the research. Section 8.2 provides an overview of the main findings of Chapters Five, Six and Seven. Section 8.3 discusses conclusions of the study in relation to the constitution-making process of the 1980 Constitution. Section 8.4 discusses the study's contribution to the constitution-making literature. Section 8.5 addresses limitations and suggestions for future research. Section 8.6 presents practical remarks to constitution-makers. Finally, section 8.7 concludes the thesis.

8.2 Overview of findings

8.2.1 Chapter Five: the need to restrict political expressions

Chapter Five asked how the Commission argued for the construction of a new Constitution. It identified five rationales. The first three were criticisms toward the previous 1925 Constitution and to Allende's government. The common thread among these was the criticism of the socio-political order constructed by the previous Constitution. To the Commission, it failed to prevent Allende's ascension to the presidency, it allowed his government to act in 'abusive' ways, and it allowed a catastrophic transformation of Chilean society. The remaining two rationales criticised Marxism as an antagonistic political ideology that divided society by emphasising class conflict, and that posed a threat to the internal and external sovereignty of the country.

The analysis suggests that the Commission's concern appeared to be legal on the surface, but that the justification for a new Constitution had a political and moral basis. In every rationale, the core criticisms were political: that Allende led to a social and moral chaos, that Allende had nefarious intentions to transform the Chilean way of being, and that communism divided the nation and threatened its sovereignty. Specifically, the commissioners identified politics

and the political life of the country with social conflict and moral chaos. In turn, this was characterised as having a direct and negative impact on social cohesion, which led them to express that the exercise of politics was to be restricted. They considered that the true and legitimate way of being for Chileans required the limitation of the human political dimension to participation in the electoral system. Simply, the commissioners argued that the new Constitution had to banish political expressions and politics to the realm of political parties and away from other areas of social life or risk endangering social cohesion. Thus, important and pressing issues in making their new Constitution was with containing politics and diminishing its capacity to transform society, with emphasising a national morality, and with elaborating and teaching the citizenry that the legitimate citizen was apolitical or even anti-political.

Hence, Chapter Five showed that the commissioners argued for a new Constitution by defending the idea that the new socio-political order needed to construct a democracy protected from politics. However, they needed strong underlying concepts to do so. These were analysed in the next chapter.

8.2.2 Chapter Six: structuring ideas and beliefs for the new Constitution

Chapter Six asked what were the underlying concepts that structured the Commission's constitution-writing process. Through a constellation analysis, it identified three main 'pillars' that characterise the manifold ideas and beliefs the Commission utilised in writing their Constitution. These pillars were: a reformed liberalism, Christian-Humanism, and the sentiment of national unity.

The chapter showed that these pillars, or constellations of ideas and beliefs, were elaborated by the commissioners in the process of using concepts, discussing them, and arranging them together in ways that served their purpose of writing the constitution. Since concepts do not exist with independence of the social contexts in which they are utilised, the chapter showed that the practice of expressing the various knowledge claims is an active practice of constructing and drawing from constellations of ideas and beliefs.

Moreover, the ideas and beliefs put together in these pillars shared an anti-political purpose. Through the ideas and beliefs grouped in these pillars, the Commission sought to instil values, beliefs, and even a morality in the new text that they considered absent in the previous Constitution. Their goal was to create institutions and laws that would restrict politics to political parties within the electoral system, but the analysis also shows how their ideas and beliefs aimed to de-politicise society. This was done by placing what they considered to be ‘apolitical’ boundaries to politics. Each pillar brought an ‘apolitical’ way to limit political action and expressions. Thus, from reformed liberalism they highlighted boundaries set by a Chilean legal tradition; from Christian-Humanism the boundaries were given by their specific concept of Christian ‘dignity’, and from the sentiment of national unity, the boundaries were given by respect and loyalty that individuals had to exhibit toward the country and its authorities.

In erecting these barriers to politics and to the exercise of the human political dimension, the commissioners delimited the legitimate political ways of being of the citizens and prescribed the ways in which they and social actors ought to interact with each other. How the Commission utilised these variegated and potentially clashing pillars and goals together was the subject of Chapter Seven.

8.2.3 Chapter Seven: how the ‘common good’ restricted political ways of being

Chapter Seven answered the question of how the commissioners set out to achieve their goal for the new Constitution. It identified the Commission’s use of the ‘common good’ as a central notion to their various constellations of ideas and beliefs. This concept acted as way to summarise and group together their project and goals (Chapter Five) and their structuring ideas and beliefs (Chapter Six). Simply put, through the concept of the common good the Commission sought to control and shape social actors’ behaviours. This allowed them to build a constitution around a concept that enabled them to overcome politics as a source of social chaos.

The Commission’s concept of the common good articulated limits to the behaviour of social

actors, while at the same time escaping direct and explicit definition of rules and procedures. In other words, it was a somewhat mutable concept in terms of its legal definition and procedures, but it was strict about its goal of regulating the social and political way of being of social actors. Hence, through this concept the commissioners emphasised that to be a 'good' citizen, there was a set of legitimate behaviours they should follow. This operated in a similar way regarding the State and to intermediate bodies. They demarcated the limits of what was politically possible. Besides stating that the boundaries favoured social unity and disavowed social division, they avoided being explicit or specific in characterising the contents of these sets of behaviours and functions. As such, this decision afforded the common good some flexibility in integrating the variety of influences from which they drew concepts without the need for them to construct, for example, a logically consistent concept.

Hence, Chapter Seven showed that the 'common good' was articulated and built to shape political behaviour of the citizens and other social actors. The intended shape was of an apolitical citizen that conformed to the values expressed by the Commission's ideas and beliefs, and that engaged in politics only to decide who is in charge of the State within the parameters set out by the Constitution. Politics had no place in any other area of this apolitical citizen, and especially not in educational institutions or in the workplace.

8.3 Implications for the making of the 1980 Constitution

The substantive problem of this thesis is how the constitution-makers selected, articulated, and put together knowledge when writing the 1980 Constitution. Chapters Five, Six and Seven showed that this constitution-making threaded political beliefs, moral values and spiritual conceptions together with constitutional law, rulemaking and the design of the State and its institutions. Through the use of LCT's Constellations and Specialization, the thesis showed the extent to which politics and the law were linked together by the Commission in the elaboration of their concepts. This section draws four main conclusions from the analysis.

First, this study provides evidence in favour of characterising the 1980 constitution-making process as first and foremost a political and moral operation that put together legal and

political knowledge together. The analysis suggests that the process was first and foremost shaped by the Commission's goal of an anti-political project that, to them, was key to produce social cohesion. This goal oriented their selection and articulation of ideas and beliefs, on the basis that politics bred social chaos, and that only heavily controlled anti-political stances could foster social cohesion. Substantively, knowledge was selected, articulated, and put together by the commissioners in a way that inextricably threaded together law and morality, spiritual beliefs and political ideology. However, despite the Commission's goal to elaborate an anti-political project on the grounds of what they considered to be apolitical stances, the analysis revealed the ways in which their ideas and beliefs were highly political and moral. It also showed that the specialised knowledge of the law supplemented and supported this main goal. Regarding reasons to write the new Constitution, sources of inspiration and structuring concepts, the Commission's political stances were most prevalent in shaping their selection of ideas and beliefs. They chose to structure their constitution with a concept that was primarily concerned with controlling how social actors ought to behave in society, rather than on the elaboration of rules to limit State powers.

Second, and following this argument, this thesis contributes to the literature on the 1980 Constitution by arguing that this interlocking of law and politics is pervasive through the Constitution. Chapter Two identified that the literature acknowledges or criticises the 1980 Constitution as comprised of authoritarian, anti-democratic enclaves. Specifically, the binominal voting system, the designated members of the Congress, the role of the Armed Forces as a political overseer, among other rules and procedures. Much like the body and soul of the nation metaphor used by the commissioners, the legal rules and procedures are its body: easily seen on the surface, apparent to the naked eye. The thesis builds on this idea, arguing that the anti-political stances underpin the entire constellation of ideas and beliefs that inspired the Constitution. These operate like its dark soul, guiding its operation from a position much more difficult to truly observe. In other words, the thesis suggests that the anti-political project of the Constitution should not be reduced to the explicit laws, institutions and systems constructed in the legislation. The absence of criticisms toward Article 1 of the Constitution, practically unchanged to date despite numerous and substantive constitutional reforms, is an example of how the literature and the legal practice has overlooked side of the

constitutional text. There, concepts such as the Christian ‘dignity’, the ‘national community’, the emphasis on opposing intermediate bodies and the individual against the State, the State’s mandate to service the individual are, among others, seemingly innocent concepts that appear to be void of political or moral grounding (see Appendix for an English translation of the first articles of the Constitution). Yet this thesis has shown that this is hardly the case. The Commission’s ‘protected democracy’ was comprised not only of rules and procedures, as the literature suggests, but also of a morality and a political ideology that sought to restrict pluralism and curtail citizens’ political ways of being. This was the result of a careful and delicate selection and articulation of ideas and beliefs enacted by the Commission.

Third, the thesis made explicit the constellation of ideas and beliefs constructed by the Commission’s knowledge practices in making the Constitution. The analysis showed that these constellations, namely the five rationales (Chapter Five), the three pillars (Chapter Six) and the common good (Chapter Seven) corresponded to what the Commission valued as axiologically good and socially legitimate. Importantly, they help to explain the space of possibles, that is to say, the universe of *politically and legally* legitimate ‘problems and of objects’, to paraphrase Bourdieu (1991, p. 10). The research evidenced how the use of apparently simple concepts such as ‘common good’, ‘dignity’, ‘national unity’, the ‘State in service of the human person’, the ‘harmonic integration of all sectors of the Nation’ must be understood within the constellational context in which they are situated. As they are not mere words randomly chosen, their implications or influence should not be understated.

Interestingly, the literature on the Constitution provides an example of this in the case of the subsidiarity principle. In short, it is the mandate that the State ought not to provide social services, opting instead to facilitate individuals and private enterprise to do so, such as in education, social security, health, among others. This has been identified as one of the core economic principles of the Constitution, yet the word subsidiarity is not mentioned in the Constitution (Fermendois Vöhringer, 2000; Schürmann, 2006). However, the principle does underpin and structure economic aspects of the Constitution. The history of constitutional interpretation has validated a sort of interpretive canon (Bassa & Viera, 2008) on this basis. In a way, the literature has agreed upon that the subsidiarity principle is one of the underlying

ideas of the 1980 Constitution, even though it does not appear explicitly. Similarly, this thesis builds on this discussion by suggesting that the Constitution is underpinned by principles and doctrines even if they are not explicitly mentioned in the constitutional text by name, and that the constellations of ideas and beliefs underpinning is more extensive than what the literature has analysed to date.

Fourth, that the 1980 Constitution is characterised by the establishment of legal rules and boundaries, but also by the regulation of behaviour. This regulation underpins its concepts, and its effects on social and political action of the citizenry cannot be ignored. Here it must be remarked that no constitution by itself has the agency to causally determine the political way of being of the citizens or the country it constitutes. Law acts in subtle ways, much like other spheres of social life. While a constitution may appear distant to individual actors in their everyday life, society's increasing dependence on the law for social coordination means that constitutional controls and boundaries may exert influence on social action. As an example, Chile's divorce law took a decade to approve from its initial motion until it was approved and passed in 2003. The reason for this delay was that the conservative opposition, kin to the dictatorship and to the Constitution's project used Article 1 to erect obstacles and slow the process down (Cox, 2011; See Appendix). Likewise, the Constitution has been signalled as an obstacle to the resolution of long-standing social conflicts over the use of water and other natural resources (Guerrero-Valdebenito, Fonseca-Prieto, Garrido-Castillo, & García-Ojeda, 2018; Larraín, 2006) as well as on abortion (Dides-Castillo & Fernández, 2018), to name but two concrete and recent examples. These evidence that the Constitution does play a part in elaborating the 'space of the possibles' of legally-bound social action.

Consequently, the thesis provides arguments for the criticism of the specific legal practices based on the Constitution and of the legal order it constitutes. For example, the Constitution constitutes 'all men' [sic] as 'equal in dignity and rights'. However, especially during the civic-military dictatorship (1970-1989) human dignity was reserved to some, but not all Chileans. Those who did not align to the idea of legitimate citizen were deemed a threat to the imposed status quo and were treated inhumanly by the State and had their human rights violated. With the slow or absent justice and reparations to victims or their families the

transition to democracy that began in 1990s has not been fully completed (Sepúlveda, 2014). To reiterate, the Constitution cannot be understood without its social context of practice nor of its origins. Though it is by no means unilaterally determined by it, the interplay between the articulation of ideas and beliefs, and the constitutional and legal practices both occur within historically situated social spaces.

8.4 Contributions to the constitution-making literature

Four main contributions to the literature on constitution-making can be derived from the analysis of this thesis.

The thesis shows that there is an unexplored territory in the study of how constitutions relate to the construction of the citizen. The literature acknowledges that the citizen may well be ‘the core unit of the constitutional order’ (Michel Rosenfeld, 2010, p. 211) as constitutions lay out the ‘social and political expectations that the state has of its citizens’ (Scott, 2021, p. 10). Classical studies of the law as well as contemporary research on the everyday use of law (i.e., Krygier, 2009; Weber, 1978) have highlighted its influence as an enabler and constrainer of ‘the possibilities of social interaction’ (Silbey, 2005, p. 337). However, this specific aspect of the constitution-citizen nexus remains understudied. The reason is that constitutional studies tend to consider the political ways of being of the citizenry, that is to say, how they express themselves politically in the public sphere, as a given. They characterise the citizen as a shaper of constitutions, but not as being shaped by them, or by the socio-political order constructed by constitutions. This rests on the simple sociological fact that the context conditions (but does not determine) individual agency (Archer, 2003), as conscious and unconscious as these may be. ‘Civics’ and ‘political culture’ have been mentioned as potential factors in everyday relation to a country’s constitution, but the relation between these and constitution-making processes needs to be further explored (Shinar, 2013). The literature has analysed the ways constitutions configure citizenship and nationality, for example, but more research is needed on the impact on the behaviours and attitudes of the citizen.

The thesis suggests that constitution-making studies would gain depth in analysing how

citizens' political ways of being are shaped by the boundaries, values and institutional arrangements laid out in constitutions, and how constitution-makers concern themselves with those in writing new charters. If scholars have argued that law has the capacity to channel 'our behaviours without fanfare, without contest, without notice' (Silbey, 2019, p. 3), then it may be fruitful to consider how constitutions may operate with their hidden curricula. Political constitutions have 'always been a question of "educating" or "configuring" the citizen, the carrier of political action' (Balibar, 2015, p. 12), thereby looking at constitutions as pedagogy may help clarify how the constitution-citizen nexus operates and shapes the 'internal politics' of the field of law and of politics (Bourdieu, 1987). The Ortúzar Commission's intention to use the 1980 Constitution to bring about a new social and political order with a new kind of citizen recalls d'Azeglio's dictum that 'We have created Italy, now we must create Italians' (Hobsbawm, 1992, p. 44). Thus, this thesis argues that constitutions, and therefore their study, also play an important role in uncovering the 'vexatious fact of society': that 'we humans form society through our activities, but that we ourselves are also shaped by it' (Archer, 2000, p. 307).

Furthermore, writing a constitution is a reflexive act done by citizens. Whether it is done by elites or through democratic or participatory processes, it involves a degree of reflexivity on the desired outcome. Constitution writers make the constitution looking at how it may help shape a new society. This thesis showed how the Commission participated in a years-long process of 'critical reflection upon their social context' where they engaged in 'creatively redesigning their social environment, its institutional or ideational configurations' (Archer, 2000, p. 308). In the case of Chile, the Commission sought to reduce and control the variety of political expression afforded to the citizens as part of a plan to stimulate social cohesion. This thesis points to constitution writing as an outcome of citizens reflecting on how the role of the citizen will be constructed in the future, what kind of 'efficacy and agency' may be expected from it (Haste, 2004). This relation between ideas, beliefs and expectations warrants consideration to grasp how constitutions bridge the past, present and future of a society.

Finally, the thesis is a step towards opening the 'black box' that is the actual constitution-writing process. In this case, the research focused on exploring the constellation of ideas and

beliefs underpinning the work of a constitution-making group. However, future research may consider looking at the actual process of how such a constellation shapes the use of language, word choice, drafting and writing of constitutional articles. Although such a socio-linguistic effort escaped the scope of this thesis, it represents a step to understand the agency social actors have in articulating and putting together the ideas and beliefs that structure or shape the writing of a constitution.

8.5 Limitations

Five main limitations were identified in the development of the thesis.

The first and main limitation of the study is related to its data. The analysis focused on what was available in the Proceedings of the Ortúzar Commission. This was a conscious choice that builds on the extensive literature on the influences and origins of their ideas, the social and contextual determinants of their work and of some of the commissioners' intellectual biographies, and even books on the 1980 Constitution written by some of them (see Chapter Two). However, additional triangulation from archival material could have been integrated to explain or describe some of the knowledge choices elaborated by the commissioners. Though some material was reviewed and included in a small number of footnotes in the thesis, the limitation was both internal and external. Internally, the researcher chose to wait until well advanced in the process of reading and immersing themselves in the data before consulting other writings from the commissioners or from other social actors of the time.

In addition, the Chilean social protests of 2019 and the Covid-19 pandemic provided a unique environment in which to observe the stability and presence of some of the ideas and beliefs analysed in this thesis. In November 2019 it was agreed that there would be a plebiscite to call for a new constitution, first scheduled for April 2020 and then moved to October 2020 due to the pandemic. In the meantime, Law faculties from Chile's top universities organised numerous conferences and seminars to discuss a range of topics to consider in making a new constitution. I attended seminars organised by the Law faculty of the Pontifical Catholic University of Chile, where many of the constitution-makers studied and taught, and which follows many of their teachings. There, jurists and lawyers discussed that concepts like

subsidiarity, the State in service of man, the ontological primacy and dignity of the person, and other similar concepts were important legacies of the 1980 Constitution which they would struggle to maintain in the new one. I asked about the common good, to which the presenter argued it was a ‘genius’ aspect of the Constitution and fundamental as a concept. These seminars showed that the overall concepts analysed in Chapters Five, Six and Seven were as important to the intellectual heirs of the Constitution and of its makers.

When this triangulation was done, it confirmed that the interpretation of the commissioners’ choices was on the right path. Externally, due to the Covid-19 pandemic access to archival material was made impossible. However, digital archives from the Fundación Jaime Guzmán, the Archivo Patricio Aylwin and the Chilean National Library Memoria Chilena allowed access to some of the material from the 1970s and 1980s. Nevertheless, the thesis provides a starting point on which to expand on the knowledge articulation of the 1980 Constitution by integrating data from latter decades.

A second limitation is that the analysis focused on the internal logic of the Ortúzar Commission’s ways of thinking as a unit. The thesis did not provide ways to substantially differentiate between the commissioners. This was the result of a methodological choice to consider the Commission as the unit of analysis on the basis that it was a social group with emergent properties of its own. Hence, though it depended on its members, it was not reduced to them, their cognition, or their intellectual biography. A similar argument could be raised on the choice of chronologic or synchronic representation of their ideas and beliefs and how they were put together over time. Nevertheless, the analysis highlighted differences in approach or opinion whenever they were relevant to each chapter. However, there may still be differences valuable to further specify the fundamental ideas and beliefs that were not captured because of the methodological choices. Change over time for individual commissioners was presumed to be minimal, but future research on more specific aspects such as this may be developed to analyse it and its impact on the creation of the Constitution.

Third, the analysis did not connect the commissioners’ position in the social structure to make sense of their choices in selecting and putting together ideas and beliefs. This may be

considered a peculiar choice given the tradition of the sociology of knowledge to do so. The thesis focused instead of the knowledge practices of the Commission without reducing it a priori to their social position. These were analysed from the viewpoint of the discussions themselves, which may exhibit further limitations: it is a known sociological dictum that the analyst ought not to blindly believe everything they are told by interviewees, for example. Special care was given to each chapter to provide necessary context and links to political circumstances, but the choice was made to favour the knowledge practices as they appeared in the data. Still, this was another methodological choice made possible because the literature has already described and analysed the social, intellectual and political context in which the constitution-making process occurred.

A fourth limitation is one of scope. This study is obviously tied to its data, the Chilean constitution-making of 1973-1978. While the Chilean dictatorship has been the subject of much research it may be argued that analysing the specific discussions may be too particularistic and specific. However, LCT as an analytical toolkit allows the overcoming of this limitation, as it provides a common language and tools to analyse other constitution-making events. Thus, for example, further research could analyse the underlying principles of the ways of thinking and ideas of other constitution-making events. This is made especially possible nowadays due to the increases in public transparency and accountability. LCT raises questions of what legitimation principles are enacted by knowledge practices, and what their socio-cultural and institutional effects may be in terms of the struggle(s) for legitimation. In other words, LCT allows the study of what is made possible and impossible, thinkable and unthinkable. It allows researchers to look into the orthodoxy, heterodoxy and also the doxa of a field. Additionally, the thesis suggests that constitutions veil social and political claims for legitimacy with legal rules and procedures. A toolkit such as LCT allows the researcher to pierce the veil and make explicit the rules of the game and the symbolic violence enacted by them.

A fifth limitation of the study is that it cannot provide any evidence for what Chilean society did with or against its Constitution after the period of the corpus (1978). It could be argued that despite any and all expressions of intent on the part of the Ortúzar Commission to

transform the Constitution into a pedagogic text, or to morally shape citizens, the Constitution remains a legal text that bears no relevance for the ordinary citizen. That is, for all its boundary-setting and its anti-political project, it could simply be a largely legal institution that does not influence social action, or that if it does its effects are too thin or too indirect to be of note. The thesis aimed at analysing the selection and articulation of knowledge of the 1980 Constitution and adds to the rich literature on the topic of constitution-making, and on the sociological consequences of the military dictatorship's many institutional and social transformations. Establishing post hoc causality escapes the boundaries of the thesis but opens a pathway for future research on the social effects of constitutions.

8.6 Practical remarks to constitution-makers

Lawmaking and politics are two particularly practical affairs, and making constitutions is no different. Each and every constitution-making process is uniquely tied to its social context of production, which is why scholars have at times struggled with attaining demonstrable conclusions about them. Nevertheless, four practical remarks are derived from the research in this thesis. Some of them were presented to the Chilean Constitutional Convention (Quilpatay, 2021) and may have already influenced the way some conventional constituents present their proposals.

First, on the basis of the constellational analysis, it is important to note that no article or concept is an island. All of them will depend on the network of words, concepts, ideas and beliefs put together in the entire Constitution. This is because law is a practice grounded on interpretation, and the basic law of a country provides the foundation on which to interpret legislation and its own articles. This may pose problems if a constitution is written in parts by different commissions and calls for the need to have a general overlook of how concepts interrelate with each other.

Second, that constitutions are increasingly becoming ways in which citizens may have a say in the configuration of their country's politics. Since constitutions bridge past, present and future of a society, they do so by means of social expectations, hope and utopia. Constitution-makers need to balance these elements by thinking ahead of how the articles may be read and

used in the future. Writers of a constitution need ask themselves how in the future will they argue that their choices of ideas and beliefs helped or hindered the achievement of social and human emancipation.

Third, that due to the same nature of language and of society constitutions will always remain open documents. Even after six years of efforts, the Ortúzar Commission was unable to write a perfect solution to their problems. They had to make decisions, such as choosing a more ‘pedagogic’ constitution that may have lacked legal precision because of their goals at the time. Knowledge can never be closed, and the constitution can never operate as a full enclosure to political or legal activity. Thus, it may very well serve democratic purposes better to plan for future changes and amendments rather than to attempt to arrive at the perfect constitution.

Fourth, following LCT’s Specialization, all knowledge practices, including constitutional articles, exhibit varying degrees of *epistemic relations* and *social relations*. What is written in a constitution will emphasise these two in various ways. Chile’s 1925 Constitution was the result of liberal, legalistic attempts at a smaller State that nonetheless had important interventions in the economy but was more hands-off with politics. The thesis showed how the Commission used the 1980 Constitution to respond to this by emphasising anti-political politics. The current Constitutional Convention of 2021–2022 seems to be also emphasising politics, but in a much more democratic, open, and social way than the individualism present in the current Constitution. All these elements should be taking into consideration when articulating and putting together ideas and beliefs in making constitutions.

8.7 Conclusion

This thesis addressed how ideas and beliefs were selected, articulated, and put together in the constitution-making process of the Chilean 1980 Constitution. By analysing the Ortúzar Commission Proceedings, it addressed how actors selected knowledge, what its underlying principles were, and how these actors put together the constellations of ideas and beliefs underpinning their constitution-writing efforts. It contributes to the literature by showing that constitution writing implies processes of selecting and articulating knowledge that cannot be

reduced to an epiphenomenon to external social conditions nor to a voluntaristic exercise of abstracted ideas. Furthermore, it contributes by showing why constitutions must be understood as comprised by more than just rules, but rather as threaded by political ways of thinking and by expectations on the legitimate ways of being to be displayed by social actors. Regarding the Chilean 1980 Constitution, the thesis contributes to the literature by building on the analysis of what is perhaps one of the most authoritarian legacies of Pinochet's dictatorship. The 'protected democracy', usually understood to mean the various institutional systems and laws that curtailed democratic expression of the country and its people, has been expanded to include anti-political ideas and beliefs underpinning the entire constellation that animates the Constitution.

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APPENDIX

The following is an English translation of the Chilean 1980 Constitution's first Chapter: 'bases of the institutional order' (bases de la institucionalidad):

ARTICLE 1

Men are born free and equal, in dignity and rights.

The family is the fundamental core of society.

The State recognizes and protects the intermediate groups through which society organizes and structures itself and guarantees them the necessary autonomy to fulfill with their own specific purposes.

The State is at the service of the human person and its goal is to promote the common good, for which it must contribute to create the social conditions which may allow each and every one of the members of the national community to achieve their greatest possible spiritual and material fulfillment, with full respect for the rights and guarantees established by this Constitutions.

It is the duty of the State to safeguard national security, to provide protection to the population and the family, foster the strengthening of the latter, to promote the harmonized integration of all the sectors of the Nation and to ensure everyone the right to participate in the national life with equal opportunities.

ARTICLE 2

The national flag, the coat of arms of the Republic and the national anthem are national emblems.

ARTICLE 3

The State of Chile is unitary. Its territory is divided into regions. The law will foster that its administration be functionally and territorially decentralized.

ARTICLE 4

Chile is a democratic republic.

ARTICLE 5

Sovereignty rests essentially with the Nation. It is exercised by the people through plebiscites and periodic elections, and, also, by the authorities established by this Constitution. No sector of the people or individual may claim its exercise.

The exercise of sovereignty recognizes as a limit the respect towards the essential rights that emanate from human nature.

ARTICLE 6

The bodies of the State must subject their action to the Constitution and the norms enacted in conformity therewith. Titulars of said organs and members thereof, as well as all persons, institutions or groups, are bound by the Constitutional precepts.

Breach of this principle will generate responsibilities and sanctions to be determined by the law.

ARTICLE 7

The organs of the State operate validly within their field of competence, and in the manner prescribed by law, after proper investiture of their members.

No magistracy, person or group of persons may assume, even on the pretext of extraordinary circumstances, any other authority or rights other than those expressly conferred thereupon by the Constitution or by law.

Any act contravening this Article is null and void and shall give rise to responsibilities and sanctions to be indicated by law.

ARTICLE 8

Any action by an individual or group intended to propagate doctrines which are antagonistic to the family, or which advocate violence or a concept of society, the State or the juridical order, of a totalitarian character or based on class warfare, is illegal and contrary to the institutional code of the Republic.

The organizations and political movements or parties which, due to their purposes or the nature of the activities of their members, tend toward such objectives, are unconstitutional.

The Constitutional Tribunal shall have cognizance of violations of the provisions set forth in the preceding paragraphs.

Without impairment of other sanctions established by the Constitution or the law, persons who incur or who have incurred in the aforementioned violations shall not, for a period of 10 years from the date of the Tribunal's decision, be eligible for public duties or positions, regardless as to whether they should or should not be obtained through popular vote. Likewise, they will not become rectors or directors of educational establishments or teach there at or employ any mass communication media, or become directors or administrators thereof, or hold positions related to the broadcast or dissemination of opinions or information. During the aforementioned period, neither will they be able to act as leaders of political organizations nor of organizations related to education, or occupy positions of a local, professional, entrepreneurial, labor union, student or trade union nature in general.

If at the time of the Tribunal's decision, the aforementioned persons hold a public job or position, whether or not it is the result of public election, they will lose same as a matter of law.

Persons penalized in accordance with this precept, will not be eligible for reinstatement during the period indicated in the preceding paragraph.

The duration of ineligibility contemplated in this Article will be doubled in case of recurrence of the offense.

ARTICLE 9

Terrorism in any of its forms is essentially contrary to human rights.

A law of qualified quorum shall define terrorist conduct and the penalty to be imposed. Those responsible for such crimes will, for a period of 15 years, be precluded from holding positions or exercising functions or activities referred to in paragraph four of the preceding Article, without impairment of other ineligibilities or of those for a longer period established by law.

Neither amnesty nor pardon, nor provisional freedom for those tried for such crimes will be warranted. For all legal effects, such crimes will be regarded as common offenses and not political.

‘Each time you write something and you send it out into the world and it becomes public, obviously everybody is free to do with it what he pleases, and this is as it should be. I do not have any quarrel with this. You should not try to hold your hand now on whatever may happen to what you have been thinking for yourself. You should rather try to learn from what other people do with it.’

Hannah Arendt,
Remarks to the American Society of Christian Ethics, 1973.
Library of Congress MSS Box 70, p. 011828.

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