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Constitutional Reflections of the People: Representation in the Constitutions of the United States (1789) and Chile (1833)

The consensus among historians – historians of constitutions, Latin American history, Chilean history, and revolutionary history – has been that Latin American constitutions have copied the institutions, language, ideas and republicanism embodied in the American Constitution of 1789. Renowned American historian of Chile, Simon Collier, once said, “When it came down to constitutional arrangements, the Chileans did not depart radically (or indeed at all) from the traditional framework laid down by the United States Constitution.”¹ Considering the scholarship surrounding Latin American constitution-making post-independence, this paper is a comparative analysis of the constitution-making processes regarding issues of representation in the American Constitution of 1789 and the Chilean Constitution of 1833.

In comparing the historical development and drafting of Constitutions in newly independent American nations, this paper seeks to understand the similarities between American and Chilean constitutional considerations of representation and underlying political theory from a historical perspective so as to explain each country’s unique experiences and Constitution as a reflection of national identity. Bearing the purpose in mind, the following research question will be discussed:

RQ: “In what ways do Chile and the United States’ respective Declarations of Independence, political thought surrounding representation in government, and constitutional documents discuss the rights of representation?”

While Simon Collier and other historians argue that the institutions, structure and language of the Chilean Constitution is similar, or in some places the same, as the American Constitution of

¹ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

1789, each nation held similar values while forming their constitution with respect to the issue of representation with similar concerns, but in distinct ways and for differing reasons. While similarities exist between the American and Chilean Constitutions and their approach to representation, it is reductionist to argue that the Chilean Constitution was a replica of the American Constitution when both were formulated in unique historical and intellectual contexts.

Historiography:

According to Justin Collings, a comparative legal scholar of Brigham Young University, “the most striking aspect of current constitutional historiography is its scarcity.”² Constitutional comparative studies are limited both in terms of volume and geography i.e. current constitutional historiography is largely limited to North America, Europe, Japan, and little elsewhere. In the last twenty years the scholarship surrounding constitutional history has been expanded to include more about Latin American Constitutions and their development. In Chile, comparative constitutional literature has examined the Constitutional portrayal of the executive as well as of the judiciary.³ This paper will be situated in the scarce historiographical setting of comparative constitutional history so as to pave the way for more Latin American, and specifically Chilean, constitutional comparison to enter the scene and expand the limited literature available. As well as giving the case of Chile a spot in the historiographic scope of constitutional comparison, this paper moves away from the traditional, simplistic discourse of Latin American countries “importing” their Constitutions post-independence, namely from the United States.⁴ This paper will use a relational comparison, as Collings deems it, in looking at political thought surrounding the ideals of

² Justin Collings. "What Should Comparative Constitutional History Compare?" *University of Illinois Law Review* 17, no. 08 (February 16, 2017): 110.

³ See Richard B. Cappalli, *Comparative South American Civil Procedure: The Chilean Perspective*, 21 U. Miami Inter-Am. L. Rev. 239 (1990) and Druscilla L. Scribner (2010), *The Judicialization of (Separation of Powers) Politics: Lessons from Chile*, in: *Journal of Politics in Latin America*, 2, 3, 71-97, to name a few.

⁴ See Javier A Couso's "The Globalization of Latin American Constitutional Law" and Simon Collier's *Ideas and Politics of Chilean Independence, 1808-1831*. (Cambridge University Press, 1967).

representation, independence era documents, and Constitutional documents to the chosen Constitutions of study as the basis for comparative analysis. This paper, then, will add to the field of constitutional comparative historiography by expanding on Chilean constitutional literature, comparing the relation between Latin America and the United States via political thought and post-independence experiences in informing their notion of representation in their constitutions, and act as a trailblazing example of relational constitutional comparison.

Sources and Methodology:

Considering the question posed in the paper, major political writings in Chile and the United States surrounding the new constitutions are the primary sources being considered. American political thought surrounding the Constitution is largely encapsulated in the writings of figures like Alexander Hamilton, John Adams, James Madison and Thomas Jefferson. Each of those figures wrote letters, formal editorial pieces, speeches, and some took notes on the Constitutional Convention debates.⁵ Simon Collier notes, however, that political theory was indulged in for practical purposes in Chile between 1810 and 1833 (129) and that Chileans did not produce seminal works like *The Federalist No. 1-85* (130). Further, Collier argues that the Chilean revolution produced no original political thought or theorist (131). Collier noted that most political thought was encapsulated formally and informally in local newspaper editorials and in the writings of a few key figures.⁶ Surrounding Chile's *Gran Convencion* from 1831-1833 there are a plethora of available documents online ranging from editorial political opinions in local newspapers, convention summaries, and formalized constitutional proposals, like Mariano Egaña's *Voto*

⁵ See *The Writings of Thomas Jefferson*, *The Federalist Papers*, and other writings of each thinker.

⁶ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

Particular of 1832.⁷ In both Chilean and American writings, political thoughts and opinions surrounding the rights of representation in each Constitution are included.

Chilean sources will be evaluated through a comparative lens against American sources. I have compared Chilean sources, looking for similarities to American sources, because I am familiar and comfortable with the English language and with the ideas encapsulated in those writings. Secondary sources will affirm or clarify my readings of both Chilean and American political theory and provide a more robust source set for debates. Between primary sources I am looking for similarities, not to affirm the idea the Chilean Constitution was copied and pasted, but to prove that each nation formulated their rights to representation in their constitutions for similar reasons but in distinct ways. This type of analysis feeds directly into the historiography I'm trying to contribute to and answer the question of what ways the Constitutions were a reflection of their own nation's political thoughts and experience.

Thematic Considerations:

What Constitutions Are

Constitutions, according to Denis J. Galligan and Mila Versteeg, establish a system of government, either in written text or through a semi-codified system of common law. Constitutions also define the powers and functions of institutions, provide limits on such institutions, and regulate the relations between institutions and the people (6).⁸ Fundamentally, Constitutions promulgate social institutions that interact with society at large in complex and varying ways (7).⁹

The Framers in every instance of *The Federalist* insisted that Constitutions act as means to define

⁷ See Observaciones a la Constitucion,” *El Valdiviano* no. 29, 30, 31, 32, 33, August, 15 1829; September, 21 1829; December, 21 1829; January, 19 1830; and February, 11 1830., R.B.’s “A la Honorable Convencion,” *El Mercurio* np. 137 and 138, December, 12 and 13 1831., and Mariano Egaña’s, *Voto Particular*. May 12, 1831 as some examples.

⁸ Denis J Galligan and Mila Versteedg. *Social and Political Foundations of Constitutions*. (New York, New York: Cambridge University Press, 2013).

⁹ Ibid.

the powers of government, provide limits on such institutions, and to regulate the interactions between government and the governed. Chileans held that Constitutions were of fundamental, sacred importance to society (150).¹⁰ Andrés Bello, a lifelong intellectual figure in Latin America, operating in Chile during the drafting of the 1833 Constitution, once said,

Constitutions are often the work of a few architects, who sometimes get it right and sometimes not; not really because the work did not arise from the social base, but because it lacks the qualities necessary to influence society gradually, and to receive its influences, so that this reciprocal action, by modifying the two, brings them closer and harmonizes them,¹¹

Constitutions, as social institutions, can be an expression of a country's values and aspirations, as well as statements of core values (73).¹² The drafters of each of Chile and the United States' Constitutions sought to bear their country's core values in mind, and at times, they failed. The Constitutions in question, America's Constitution of 1789 and Chile's Constitution of 1833, are examples of each country getting it right, at least in terms of the people's rights to representation.

How Constitutions Handle People and the Idea of Representation

This essay focuses on the American and Chilean Constitutions of 1789 and 1833, respectively, and how they regulate the relations between government and its people, with regard to individual rights to representation. To legal scholars of modern constitutions, including the ones in question, "the people" can make up to three appearances in the Constitution: a preamble by the people, to provide for the election of representatives, and to vote on amendments or referendums

¹⁰ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

¹¹ Andrés Bello. "Constituciones". *El Araucano*, February 11, 1848 as referenced in Juan Pablo Couyoumdjian and Cristián Larroulet's "Ideas, Leaders, and Institutions in 19th-Century Chile." *Journal of Institutional Economics* 14, no. 5 (2018): 925–47.

¹² Jeff King writing in *Social and Political Foundations of Constitutions*. "Constitutions as Mission-Statements." (New York, New York: Cambridge University Press, 2013).

(134).¹³ In general, Constitutions say little about the people, and the Constitutions at hand, regarding representation, are no different. The only real authority left to the people is to elect representatives, and sometimes the executive.¹⁴

American thinkers from the Declaration of Independence to the ratification of the Constitution (1789) held that government had to derive their powers from the consent of the governed, be it directly or indirectly.¹⁵ In the Constitution, therefore, the Framers involved the people by ensuring their right to engage in the political process by electing their officials.¹⁶ Chile ascribed to similar thoughts and demanded a government which was governed by the consent of the people.¹⁷

The American Experience of Independence:

Colonial Grievances

By 1750, the American colonies were well established on a growing sense of national identity and self-dependence, despite English governorships over the American peoples (315).¹⁸ Between 1756-1763, the American colonists were conscripted into the Seven Years' War to fight the British war in Canada. The American colonists felt deep grievances over the war in terms of how it was managed and the economic despair it caused.

An anonymous author for the *Boston Independent Advertiser* wrote extensively about the grievances felt by many of the colonists. To the author, men enlisted, often forcibly, and the

¹³ Denis J Galligan. and Mila Versteedg. *Social and Political Foundations of Constitutions*. (New York, New York: Cambridge University Press, 2013).

¹⁴ In this paper, the "people" refer to those that were to be given suffrage. In general, then, it does not include indigenous peoples, women, minority members of the populous or the economically poor.

¹⁵ Declaration of Independence. July 4, 1776 and James Madison's *The Federalist Papers: No. 39*.

¹⁶ Alexander Hamilton. *The Federalist Papers: No. 1*.

¹⁷ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

¹⁸ J. Revell Carr. *Seeds of Discontent: The Deep Roots of the American Revolution 1650-1750*. New York. 2008.

economy suffered while men of a town's population of enlisted men died.¹⁹ Another grievance held by the colonists was that they were not protected at home by the British whom they fought for. Further, during the war the British military was incompetent and indecisive, leading to the disproportionate deaths of colonists in the war.²⁰ The author left his readers with a bitter piece of his truth,

It is impossible for any man who truly loves his country, to be unaffected with the present melancholy situation of its affairs. To behold the fruits of our labors, toils and hazards, given up at once to our proud insulting enemies! And ourselves, after all the brave attempts we made, and the blessings of divine providence on our bravery, in a far worse condition than when the war commenced!²¹

To the writer, the grievances of the war extended beyond seven years both back in time and into the foreseeable future.

Americans, weary after seven years of fighting, destroyed colonial economies, and the loss of thousands of young men, were disillusioned and uneasy about their future, specifically with Britain. Britain, hemorrhaging economically after the war and trying to keep soldiers stationed in the American colonies, imposed a number of tax acts. The tax acts of the 1760s were contentious to say the least: the Sugar Act of 1764, the Quartering Act of 1765, the Townshend Acts of 1767 and the Tea Duties of 1768 created riots, boycotts and incited leaders of American politics to push for independence via revolution (325-326).²² Riots and fighting continued for a decade with varying, repressive responses from the British Crown. The Revolutionary War began officially on April 18, 1775 as the British sent 1,000 soldiers to Boston to capture Samuel Adams and John

¹⁹ *Boston Independent Advertiser*, Number 46, November 14, 1748. Edited by Samuel Adams and speculated to have been written by the revolutionary man from Boston, as well. Annexed in J. Revell Carr's *Seeds of Discontent: The Deep Roots of the American Revolution 1650-1750*. New York. 2008. Carr argues it is one of America's best kept records of colonial grievances in writing prior to the revolution.

²⁰ *Boston Independent Advertiser*, Number 46, November 14, 1748. Ed. Samuel Adams. Annexed in J. Revell Carr's *Seeds of Discontent: The Deep Roots of the American Revolution 1650-1750*. New York. 2008..

²¹ *Ibid.*

²² J. Revell Carr. *Seeds of Discontent: The Deep Roots of the American Revolution 1650-1750*. New York. 2008.

Hancock to be met by resistance.²³ The British and the Americans fought bloody battles across the colonies from 1775-1783, until the Americans prevailed. It was in 1776, however, that the Americans produced the Declaration of Independence.

The Declaration of Independence (1776)

The Declaration of Independence, according to Rett R. Ludwikowski and William F. Fox, Jr. is a constitutional document.²⁴ It is an important document to analyze with regard to the development of the Constitution of 1789 because its promulgation provoked the creation of constitutions post-independence and provided for much of the language that found its way into the Constitution.²⁵ Beyond the language, it was the ideas, formed from grievances as well as hopes for the future, that found their ways into the Constitution and subsequent amendments like the Bill of Rights. In 1776, following the outbreak of the revolutionary war, Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston, appointed by the interim Continental Congress, drafted the Declaration of Independence.

Fundamentally, the authors of the Declaration claim that some rights are self-evident. Rights such as happiness, liberty, property, all of which can only be protected by “governments...instituted among men, deriving their just powers from the consent of the governed,”. The colonists sought to abolish the governance of Great Britain in favor of one which advocated on behalf of the “public good” of Americans. In the Declaration, the authors outlined a myriad of grievances posed by the King. Of the ones related to representation, there were several.

²³ Ibid.

²⁴ Rett R. Ludwikowski and William F. Fox, Jr. *The Beginning of the Constitutional Era: A Bicentennial Comparative Analysis of the First Modern Constitutions*. Washington, D.C. 1993.

²⁵ Ibid.

For one, “He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.” Another, “He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.” Finally, “He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise.” In all, the colonists believed that the King was tyrannical in refusing the people’s rights to representation, to legislation on their behalf, and to a choice in their government. Securing the fundamental rights of man meant that the governing must derive their just powers from the consent of the governed. This idea of popular sovereignty was integral to achieving all other rights and was requisite in the formation of the Constitution of 1789.

The Articles of Confederation:

American leaders knew that a union was essential after the Declaration of Independence (1776). In 1777, the Second Continental Congress drafted the Articles which were finally ratified in 1781 (8).²⁶ The Articles of Confederation attempted to walk the fine line between giving too much power to a new continental government, akin to Great Britain, and not nearly enough to do anything meaningful. To most historians, the Articles of Confederation unfortunately suffered the latter: being too weak to achieve anything meaningful.

The Articles of Confederation are often criticized for their flaws, of which, objectively, there were many. The Articles of Confederation could not levy taxes, and therefore, could not raise revenues to pay for the expenses of government. The Articles required the unanimous approval of state legislatures for any amendments and failed to provide a chief executive necessary for unity

²⁶ Richard Beeman. *Plain, Honest Men: The Making of the American Constitution*. 2010.

and a functioning government (9).²⁷ Beyond the failures of the law, the Articles of Confederation also had practical problems: The Congress could rarely reach quorum to act and the provincial interests overwhelmed the interests of the country. Additionally, there was a lack of institutional knowledge due to the fact that term offices were limited to one year.²⁸ Further, the Congress lacked any enforcement measures as states were recognized as the supreme governing bodies. The Articles of Confederation were originally designed to enable the 13 states to coordinate their war efforts, which left political affairs hanging in the balance (11).²⁹ In terms of representation, the people had no say. Representatives to the national Congress were selected by state legislative representatives.

After 3 years of dysfunctional government, America's influential leaders sought change. A small group gathered in Annapolis, Maryland on September 11, 1786 to discuss reform, but few showed up and leaders like James Madison and Alexander Hamilton desired more (21).³⁰ The Convention began on May 14, 1787 and achieved quorum to start work on the 25th. It did not address questions of representation until May 30th. At which time, the delegates embraced the ideas of legislatures, just not how they would be formed or elected (106).³¹ Along with concerns for forming the legislative branch, the delegates were concerned with how a legislature would represent the diverse interests of the national citizenry. To James Madison, the solution was proportional representation and a bicameral legislative branch. While states favored a bicameral legislative branch, the delegates were conflicted on proportional representation, especially the delegates from smaller states that feared larger states overwhelming their votes in both houses of

²⁷ Ibid.

²⁸ Michael J. Klarman. *The Framers' Coup*. (Oxford University Press). 2016.

²⁹ Michael J. Klarman. *The Framers' Coup*. (Oxford University Press). 2016.

³⁰ Richard Beeman. *Plain, Honest Men: The Making of the American Constitution*. 2010.

³¹ Ibid.

the legislature. From May 25th to September 17th the Convention met to debate pressing issues such as these. It wasn't until 1789 that the Constitution was ratified. In the 2 years between drafting the Constitution and ratifying it, a political debate ensued between Federalists and Anti-Federalists. For the sake of this paper, since both parties generally agreed on representation, the political thought concerning representation is focused on broadly, with acute analysis of prevailing Federalist thought.

American Political Theories of Representation:

Americans generally agreed that legislatures, and bicameral legislatures at that, were both necessary and expedient for good governance. Federalist thinker James Madison focused the majority of his discussion in *The Federalist Papers* on the Legislative branch and then the Executive branch. To accomplish the republican values of popular sovereignty, James Madison outlined the ways in which members of the national government were elevated to their position by the people. The Legislative branch was a bicameral institution with two different houses: The House of Representatives and the Senate. The House was to be composed of directly elected officials based on territorial, proportional representation. To Madison, the House was most immediately dependent upon the people, or representative of them.³² The Senate, on the other hand, was indirectly representative of the people. Senators were appointed by members of state legislatures as a way to give States a hand in the formation of the federal government.³³ Madison argued that the Senate was indirectly derived of the people because the people chose their State representatives, which then chose their Senators who worked on behalf of their State's and its

³² James Madison. *The Federalist Papers: No. 52*. Feb. 8, 1788. New York.

³³ James Madison. *The Federalist Papers: No. 62*.

people's best interests. As for the executive, Madison argued that the people had an indirect say in their President. The people of each state elected national representatives that then chose the President. Madison's thought was that the people would elect well-informed citizens to make decisions in the interest of the people and the Union at large.³⁴ The people, then, were responsible, or semi-responsible, for the election of their representatives, but had no real say beyond their perceived right to elect, either directly or indirectly.

James Madison chose a republic because fundamentally the government should be accountable to the people. Madison chose a divided form of government to prevent a concentration of powers in a singular body. To him, the division of powers and means of representation in the federal government was essential to the protection of individual liberties and prevented tyrannical practices.³⁵ James Madison also chose a representative republic, as opposed to direct or pure democracy, because it counteracted the ignorance and factionalism of the common people. Madison recognized that his form of republicanism forced citizens to work through an intermediate, chosen body who would then discern the best interests of the people. The voice of the people, then, was siphoned through one individual or a body of individuals that believed they knew what was best for the many and varying interests of their people.

James Madison was not the only American thinker to agree upon the values of accountable governance, popular sovereignty, and the right to representation. Thomas Jefferson, a Founding Father, and later President of the United States, writing from Paris to Madison argued that the form of government for the American republic had to be one "wherein the will of every one has a just

³⁴ James Madison. *The Federalist Papers: No. 39.*

³⁵ James Madison. *The Federalist Papers: No. 51.*

influence... and in our states, in a great one”.³⁶ To Jefferson, a representative form of government like the one proposed by Madison was the best way to ensure a just degree of liberty and happiness.

Ideas Ratified in the Constitution:

The Constitution ultimately encapsulated the ideas put forth by the Federalists during the convention and defended in *The Federalist Papers*, among others. The Preamble of the Constitution begins, “We the People of the United States,”. One of the areas in which the people are considered is in the preamble of a Constitution. The American preamble, and the first words of the Constitution, make clear that the people ordained the Constitution. It is a supreme governing document by and for the people, instead of for the leaders. Fundamentally, American government was to be accountable to the people in all its actions, which is then reflected in Articles pertaining to representation. Article I, Section 1 states, “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” Article I, Section 2 outlines the fact that the House of Representatives would be chosen by direct popular vote. Article I, Section 3 states, “The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof,”. Beyond the legislative branch, the people are entitled to nothing more. Even electing the executive is out of their hands, “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.” It is the state that has the authority to choose the President, not the people.

The Framers of the 1789 Constitution, considering their grievances against the British Crown as well as the failures of the Continental Congress, created the Constitution to be accountable to the people via representation, and to the states. The people would have the just

³⁶ Thomas Jefferson, letter to Madison, Jan. 30, 1778. Paris, France.

degree of influence in choosing their House Representatives directly, and their Senators and President indirectly. To the Framers, the people's will was represented through both the preamble and the Constitution.

The Chilean Experience of Independence:

The Proclamation of Independence (1818)

After eight years of bitter fighting in Chile, four revolutionary Chileans gathered to put an official end to the war against Spain and the monarch's loyalists operating out of Peru, and to proclaim Chile's independence from Spain.³⁷ This section details the movement towards independence, beginning in 1810, the ideas of independence enshrined in the Proclamation, as well as ideas of representation pronounced by the Proclamation.

As most revolutions in Latin America began, Chile received word of Napoleon's conquest in Spain by May of 1808, and Charles IV's subsequent abdication. Although Chilean Creole elites were initially willing and desired to work with the monarchy, the Creoles had many grievances against Spanish elites living in Chile and against the Spanish Crown (6, 15).³⁸ Creole grievances mixed with the opportunity posed by Charles IV's abdication became the impetus for the movement for home rule, despite some loyalist Creoles hoping for the regeneration of the monarchy. The Creoles, in 1810, created a Junta concerned with the sovereignty of the community, based upon home rule (72). Even so, many of those that attended the Cabildo Abierto of September 18, 1810 to create the Junta were devotedly loyal to the crown (91).³⁹ 1810 marked the beginning

³⁷ The four revolutionaries were Bernardo O'Higgins, Miguel Zañartu, Hipólito de Villegas, and José Ignacio Zenteno. Bernardo O'Higgins was an early proponent of home rule and then independence who was President from Independence until 1823. The other three were O'Higgins' ministers and soldiers, as well. Today they are all considered to be heroes of Chilean Independence.

³⁸ Simon Collier describes creole elites to be Chilean-born Spaniards of high socio-economic status with little political power on page 6 of his *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

³⁹ Ibid. Although Collier notes that an equal number were also willing to break away from the Spanish Crown at the time.

of partisan divides in Chile between the loyalists and the revolutionaries. It was the voices of the revolutionaries that would eventually win out, but not without conflict.

Revolutionary ideology, nationalism and an official movement away from Spain defined the years between 1810-1814. By 1812, the government of Chile had gone beyond formal proclamations of loyalty and semi-sovereignty to discussing the advantages of home rule, yet independence was never publicly proclaimed in these years (108-109).⁴⁰ Chilean Creole elites even attempted to work with the restored monarchy until 1814 to address Creole grievances as Chileans were unready to cut ties with the motherland. When their grievances could not be meaningfully addressed, the conflict between loyalists and revolutionaries became deeply pronounced as the royalists' call for separation became heightened. The conflict between these factions became evident in May, 1814 when royalists and revolutionaries came together to sign a peace agreement called the Treaty of Lircay (46).⁴¹ The Treaty asserted that the Chilean government would administer the region with a degree of autonomy but not independent of the Peruvian viceroy or Ferdinand VII. The Treaty further articulated that Chile was an "integral part of the Spanish monarchy" but that Chile would retain its trading relations (46).⁴² The Treaty put a temporary end to the fighting between royalists and revolutionaries, but in reality, it was a temporary measure by which the revolutionaries sought to appease the royalists.

After years of revolutionary squabble, the revolutionaries won out on battlefields in 1817 and on the grounds of patriotic enthusiasm in 1818. In 1818, the revolutionaries gathered to proclaim their independence. In their calls for independence, they cite the "disorder of all abuses" which the Spanish Crown expected them to live under as what naturally inspired Chile to

⁴⁰ Ibid.

⁴¹ Juan Luis Ossa Santa Cruz. *Armies, Politics and Revolution: Chile, 1808-1826*. (Oxford University Press, 2015).

⁴² Juan Luis Ossa Santa Cruz. *Armies, Politics and Revolution: Chile, 1808-1826*. (Oxford University Press, 2015).

“unanimously” decide to separate from Spain.⁴³ Another disappointment to the revolutionaries, not unlike American grievances several decades earlier, was Spain’s refusal to allow Chile to form a National Congress to vote on pressing issues such as declaring independence. To the Chilean revolutionaries, who believed in a government founded upon popular sovereignty, the Spanish monarch’s actions and rulership over the country had no legitimacy.

Within the Proclamation of Independence, the values of popular sovereignty are encapsulated. Besides calling for a National Congress, the revolutionaries asked for an independent state, reflective of their interest, developed by the citizens themselves.⁴⁴ The revolutionaries then reference the people that they speak for as justification for their proclamation. The revolutionaries reference the unanimity that backs them in proclaiming independence from Spain, reaffirming the popular will of the people they represent. The ideas of representation proclaimed by the revolutionaries in their Proclamation of Independence became core values for the Chilean people that became installed in the 1833 Constitution.

Chilean Post-Independence: 1817-1831

Between 1817 and 1833, Chile had 16 presidents and a vacancy, as well as 4 Constitutions. Moving towards a new system of governance, Chileans agreed that monarchy and other indirect forms of election were unacceptable, akin to the tyranny of Ferdinand VII just before (143-147).⁴⁵ Bernardo O’Higgins, a revolutionary leader and signatory of the Proclamation of Independence of Chile (1818), was the first Supreme Dictator of Chile (the name was derived from Argentina). O’Higgins chartered the first Constitution of 1818, which Collier describes as provisional (245). The Constitution of 1822 was far more complex and was the first “full-scale” Constitution in

⁴³ Proclamation of the Independence of Chile. (February 12, 1818)

⁴⁴ Ibid.

⁴⁵ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

Chilean history (245).⁴⁶ It fully promoted the ideals of popular sovereignty, while maintaining the powers of the Supreme Dictator. In January of 1823, however, Bernardo O'Higgins was forced to abdicate his office and flee, never to return to Chile again (261).⁴⁷ Following O'Higgins' resignation, the Constitution of 1823 was passed and promoted to be the permanent Constitution of Chile. Its regulations abridged into the public and private lives of all Chileans but maintained their rights to vote. Article 29 of the 1823 Constitution stated, "The sovereignty of the Republic resides fully and fundamentally in the whole body of citizens," (264).⁴⁸ The writer of the 1823 Constitution, Juan Egaña, believed in a republican form of government with checks and balances between the branches of government. Article 276 of the 1823 Constitution proclaimed its permanency, but it was broken down by the liberal regime by 1828 (281).⁴⁹ In 1828, the "liberal" Constitution of Chile was passed while the liberals had power. The 1828 Constitution struck an apparent balance between centralism and federalism, for the first time in Chile (292).⁵⁰ In all, Simon Collier argues that the widespread political turmoil and disorder of the period 1817-1831, in part the result of many political changes and failures, created a strong current of political disillusionment (323).⁵¹ By 1831 calls for constitutional reform were renewed.

The original impetus for constitutional reform came from the Cabildo of Santiago, a provincial group of authorities. In February 1831, the Cabildo informed President Ovalle's administration that they believed reform was necessary. The administration immediately informed the Congress of Plenipotentiaries which decreed that the next Congress would be charged with carrying out the reforms (45).⁵² On October 1st, 1831, Joaquin Prieto, the new President, signed

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

⁵² Jay Kinsbruner. *Diego Portales: Interpretative Essays on the Man and the Times*. (The Hague, 1967).

into law a mandate to reform the 1828 Constitution and the body which would do that work: The Gran Convención.⁵³ Those charged with reforming the Constitution sought to bring stability to Chile, by whatever means necessary, without infringing on the liberties of the people. The first session of the Convención met on 20 October 1831 to elect the president of the convention. The next day the convention met to select the delegates for reforming the Constitution (51).⁵⁴ There were 36 delegates: 16 deputies and 20 enlightened citizens (45).⁵⁵ Once the delegates were chosen, the Convención immediately set to work to reform the Constitution of 1828, but eventually decided to write an entirely new one.

Chilean Political Theory:

Fundamental Principles During the Revolution and Immediately After: 1808-1831

In my studies, it appears as though Chileans did not produce seminal works like *The Federalist*, nor did they utilize political theory for intellectual purposes, with notable exceptions. Simon Collier argues that political theory was engaged in for practical purposes between 1810 and 1833 to convince other elites of their practical ideas on government (129). The Chilean revolution also failed to produce an “original” political theorist (131).⁵⁶ Despite not having original theorists or producing seminal works, Chileans ascribed to key principles: a social pact was one between society and its rulers; rulers ensured the functions of a society; and a social contract (134-136).⁵⁷

The social contract theory, one widely cited in revolutionary writings from all around the Americas and Europe, and widely discussed in Chile was a key subscription by the Chilean revolutionaries. The notion of a social contract was highly important to the revolutionaries; they

⁵³ *El Boletín de las Leyes*, libro 5, número 4. October 6, 1832.

⁵⁴ Jay Kinsbruner. *Diego Portales: Interpretative Essays on the Man and the Times*. (The Hague, 1967).

⁵⁵ *Ibid.*

⁵⁶ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

⁵⁷ *Ibid.*

believed that society gave men happiness (136).⁵⁸ Connected with the doctrine of social contract was popular sovereignty. During the revolution, revolutionary friar Camilo Henríquez wrote,

Sovereignty is a power superior to all the other powers in society. Considered at its root, the term can only correspond to a power anterior to all others, a power which constituted all others, which is to say the power that created the social pact or constitution; and nobody doubts that this primitive and inalienable power, independent of all forms of government, resides in the community (138).⁵⁹

Another of Henríquez's pieces, "Fundamental Notions of the Rights of Peoples", written in 1811 affirmed the notion that "supreme authority finds its origins in the free consent of the people, which we call a social pact,".⁶⁰

During the legislative session of December 11, 1824, a delegate reaffirmed the value of popular sovereignty,

Sovereignty resides in the people. It is intransmissible. [The people] can never be rid of it. We for our part are simply a few commissioners, entrusted with making laws... We do not possess more than this power, which is a part of the delegated sovereignty (139).⁶¹

To most Chileans, representative government was thought to be the only valid mechanism through which sovereignty could be delegated.⁶² Government, fundamentally, was to be governed by the consent of the governed. For this reason, Chileans rejected indirect forms of election, preferring direct election. Even so, universal suffrage was not a key element of their representative government (147).⁶³ Chilean governments, under each Constitution, passed various suffrage requirements including literacy requirements, property requirements, and others, to limit the

⁵⁸ Ibid.

⁵⁹ Camilo Henríquez "Que es el Pueblo en los Gobiernos Representativos?", *Mercurio de Chile*, no. 10, 31 August 1822 as referenced in Simon Collier's *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

⁶⁰ Camilo Henríquez "Fundamental Notions of the Rights of Peoples". *Aurora de Chile*. 1811 printed in Elizabeth Q. Hutchinson and others', *The Chile Reader*. Durham, Duke University Press. 2014.

⁶¹ Session of 11 December 1824, *SCL*, x, 119.

⁶² Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

⁶³ Ibid.

franchise, and thus the voice and will of the people. Although the franchise was limited, Chileans believed that representation had to be fairly allocated, and that representatives had to be “prudent organs” that could promote or represent the public good of the people (147).⁶⁴

Beyond conceptions of representation, Chileans had beliefs regarding the importance of Constitutions. Chileans held that Constitutions were of fundamental importance to society as they embodied the guarantees and obligations of a social contract (150).⁶⁵ To Chileans, a constitution was a sacred document endowed with the means of efficiency (188).⁶⁶ Within their Constitutions, the rights to representation and various other individual rights were a man’s noblest possessions. As noted previously, constitutions can be seen as mission statements and reflections of core values. For Chileans, then, the constitution was seen as the objective of the people, a document encapsulating their future hopes and dreams, and reflecting the values of the nation-state.

As Andrés Bello noted, drafting constitutions is the work of trial and error. Prior to 1833, the Chilean Constitution’s previous writers couldn’t seem to get it right, even if their values and conception of people were in the right place. Following decades of political and social turmoil, the drafters of the 1833 Constitution proposed something new, although their political thinking on matters of representation and Constitutions wasn’t too different.

Political Thought Between 1829-1833

President General Prieto, like other conservatives between 1829-1833, argued that the Constitution of 1833 by and large was, “a means of putting an end to the revolutions and disturbances which arose from the confusion in which the triumph of independence left us,”

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

(332).⁶⁷ By 1829, the people of Chile were deeply disillusioned with liberal leadership and focused on order and power as a solution to its problems. The conservative victory in the 1829 Vice Presidential election arguably gave the conservatives the backing they needed to install their ideas in political institutions.

The Conservative idea was simple: establish a strong, central and businesslike government.⁶⁸ As many have noted, the Constitution of 1833 essentially created a “constitutional dictatorship” under the guise of stability.⁶⁹ Collier put it a little more diplomatically: Chile managed to stop disorder by creating a strong and impersonal authority by constitutional government (324).⁷⁰ In the conservative camp, key figures like Mariano Egaña (the key drafter of Chile’s 1833 Constitution) and Diego Portales, dominated the discourse. Although Diego Portales did not participate in the Gran Convención, and his role in establishing Constitutional ideas is debated, it is true that Portales’ conservative ideas dominated the political scene at the time. Mariano Egaña and his writings, however, played a significant role in the textual and ideological development of the constitution. In particular, Egaña’s *Voto Particular* wielded considerable influence (344-345).⁷¹

Mariano Egaña’s *Voto Particular* was written in May of 1832 and proposed to the Gran Convención as a draft of the Constitution. While some of his more ideologically conservative ideas were ultimately abandoned or voted down by the convention delegates, his opinions on the rights to representation were adopted in some form or another. Chapter 4, Article 12 states, “the government of Chile is representative. The national representation will be composed of the

⁶⁷ Brian Loveman. *The Constitution of Tyranny: Regimes of Exception in Spanish America*. (University of Pittsburgh Press, 1993).

⁶⁸ Stephen Brown. "THE POWER OF INFLUENCE IN UNITED STATES - CHILEAN RELATIONS." 1983.

⁶⁹ Juan Pablo Couyoumdjian and Cristián Larroulet. “Ideas, Leaders, and Institutions in 19th-Century Chile.” *Journal of Institutional Economics* 14, no. 5 (2018): 925–47 are a few who use this language.

⁷⁰ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

⁷¹ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

President of the Republic, of a Senate, and of a Chamber of Deputies,”.⁷² Chapter 4, Article 13 states, “the method of choosing national representation pertains to the citizens, in the form and with the quality prescribed by the Constitution,”.⁷³ The ideas laid forth in Chapter 4, Articles 12 and 13 were fairly consistent with the ideas of most other Chilean intellectuals. His method of election was more contentious: Chapter 13, Article 95 states, “The citizens will gather in *electoral assemblies* for the election of national representation, and the other arrangements of the Constitution or the law,”.⁷⁴ However, as Collier notes, Chileans rejected indirect forms of election such as electoral colleges (assemblies), instead preferring direct election (147).⁷⁵ His proposal for election was voted down during the convention. It was during the convention that Egaña also changed his mind. On October 25, 1832, Mariano Egaña argued that everything functions from the public, and that they should choose their destiny.⁷⁶ In other reflections of representation surrounding the Constitution, most would agree with Egaña’s proposal on October 25, 1832.

An author by the penname “R.B” writing on October 13, 1831 defended the values of popular sovereignty and the necessity of representative democracy. R.B. argues that the origin of modern representation, that of bicameralism and legislatures, is due to the division of labor among civilized states. Further, the divided interests of a nation have led to different, divided needs of the people to be represented.⁷⁷ To, R.B., the only rational form of government had to be democratically elected in the form of a legislature. R.B. believed this because every man was able to give his opinion by which the legislator was to listen carefully and critically in order to make informed

⁷² Mariano Egaña. *Voto Particular*. May 12, 1832. All translations are my own unless otherwise stated.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Simon Collier. *Ideas and Politics of Chilean Independence, 1808-1833*. (Cambridge University Press, 1967).

⁷⁶ Sesión en October 25, 1832 as referenced in Valentin Letelier’s *La Gran Convención de 1831-1833*. 1901.

⁷⁷ R.B. “Ideas del mismo periodico en contra de la reforma de dicho codigo” October 13, 1831. *El Mercurio* numbers 137 and 138, December 1831 as referenced in Valentin Letelier’s *La Gran Convención de 1831-1833*. 1901.

decisions.⁷⁸ Any other body, such as a parliament, would be a function of the state, versus the people. To R.B. and most Chileans, the people were to reign supreme in their government and their constitution was to work to ensure that the people were heard.

Ideas Made Constitutional

In the end, the Constitution read in Chapter I, Article 1, “the government of Chile is popular and representative.”⁷⁹ Whereas there is no preamble, aside from an explanation for the reforms presented in the new constitution, the first thing stated, to be supreme in the land is that Chile’s government would be by and for the people. Unlike the American Constitution, the Chilean Constitution defined their form of government as both “popular and representative.” While the American government is both, it does not define itself as such in the Constitution. Chapter V, Article 16 states, “The Chamber of Deputies shall be composed of members elected from the departments by direct vote in the manner determined by the law of elections.”⁸⁰ The Chamber of Deputies is elected and formed in similar form to the House of Representatives in the United States. The Senate, however, is apportioned differently in Chile than in the United States. Chapter V, Article 22 states, “The senate shall be composed of members elected by direct vote from the provinces.”⁸¹ The convention delegates determined to put forth a constitution in which representation would be direct, not indirect, for both Senators and Deputies, whereas in the United States only the House Representatives would be elected directly. The president, however was chosen by elected electors. Chapter VI, Article 54 outlines the method of electing the president, “The President of the Republic shall be elected by electors chosen by direct popular vote.”⁸²

⁷⁸ Ibid.

⁷⁹ “Political Constitution of the Republic of Chile Promulgated May 25, 1833 Translated.” Translated by C W Tooke. 1899.

⁸⁰ Ibid.

⁸¹ “Political Constitution of the Republic of Chile Promulgated May 25, 1833 Translated.” Translated by C W Tooke. 1899.

⁸² Ibid.

Although both the United States and Chile utilize an electoral college or assembly for the President, the people of Chile are given the choice to directly elect their electors, whereas the people of the United States were subject to the will of their state representatives in choosing the president. Although the Constitution is detailed and goes to great lengths to prescribe the means to regulate society, it says nothing more of the people's role in choosing how said society is to be regulated.

Although Chileans and Americans both heavily valued popular sovereignty, representative republics, and similar means of electing their various representatives, and each Constitution shows that, Chileans came to similar conclusions by different means. Both nations cite an oppressive colonial governing system and said colonizer's refusal to allow for national legislatures. However, following independence, each nation had substantially different experiences. In Chile, social and political disorder pushed Chileans towards reform consistent with their political values regarding representation and greater social stability. To Chileans, popular sovereignty was essential, and the Constitution of 1833 encapsulated that value better than any Constitution prior to it.

Conclusion:

Constitutions, fundamentally, are a reflection of a nation's needs, hopes for the futures, and solutions for issues of the past. In both Chile and the United States, Constitutions were seen as sacred and necessary for stability, order and legitimacy in newly independent countries and for the centuries to come. Both Chile and the United States suffered a series of setbacks in attaining independence and trying to develop a Constitution worthy to their people and equally functional. In 1833 and 1789, respectively, each nation developed a Constitution to achieve their unique desired ends with similar respect to the people.

In both nations, the values of popular sovereignty and a direct right to representation were developed, in varying ways. Both fundamentally agreed on the governing attaining the consent of

the governed, but how that was executed differed in their Constitutions. In Chile, both Senators and Deputies were directly elected, and the franchised people even had a say in choosing their executive electors. In the United States, the only directly elected representatives were those of the House of Representatives. In terms of the executive, the state had the authority to choose its electors, not the people. In Chile, the value of direct election was held at a higher rate, whereas the American framers had to be mindful of states' rights and requests for semi-autonomy.

While the Constitutions handled the issue of representation in semi-similar ways and equally respected popular sovereignty, the unique needs and hopes of each country were represented differently in their Constitutions based on each country's historical experiences and contemporary political considerations. For this reason, it is reductionist to argue that the Chilean Constitution merely copied and pasted the American Constitution of 1789. Through a holistic understanding of Chile and America's independence history, their primary governing documents, political thought at the time, and the resultant clauses pertaining to representation, it is clear that each Constitution is a reflection of the nation, the people's values, and representative of the people's rights in choosing government. Although each nation conducted a number of trials and suffered a number of errors, the Framers of America's 1789 Constitution and Chile's 1833 Constitution were able to modify the application of values that were held throughout each nation's history and create lasting, supreme documents that ensured their people's right to be represented.

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