



Expectations about fundamental rights: People's initiatives in the 2023 Chilean constitutional process

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Abstract

This article reconstructs a set of expectations, that is, what an individual or group of individuals expects in terms of fundamental rights regarding the Chilean constitutional process of 2023 through the lens of one of the channels officially enabled for citizen participation. To do so, it analyses the foundations of the popular initiatives by means of the content analysis method. In this way, it is shown that what is pursued by some of the actors outside the world of legal operators reflects a set of historical demands, but also a series of disagreements regarding what constitution Chileans need in the face of what recent reform processes have shown.

Key words

Constitutional process; people's initiatives; Chilean constitution; failed constitution; fundamental rights

Resumen

Este artículo reconstruye un conjunto de expectativas, es decir, lo que un individuo o grupo de individuos esperaban del proceso constitucional chileno de 2023, en materia de derechos fundamentales, a través del lente de uno de los canales oficiales de participación ciudadana habilitados. Para hacerlo, se analizan los argumentos de las

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iniciativas populares de norma constitucional mediante el método de análisis de contenido. De este modo, se demuestra que aquello que perseguían algunos de los actores externos al conjunto de operadores jurídicos, reflejan una serie de demandas históricas, pero también una serie de desacuerdos sobre qué constitución necesitan los chilenos frente lo que han demostrado los recientes procesos de reforma.

Palabras clave

Proceso constitucional; iniciativas populares; Constitución chilena; Constitución fallida; derechos fundamentales

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1. Introduction

As has occurred in Chile in recent years, the discussion of a new constitution acquires special relevance insofar as it opens the opportunity to shape a new constitutional corpus which, for a large part of the community, means leaving behind a complex past. Usually, interest in constitutions is materialised through their analysis, either in their textual content, from the point of view of the judgments that apply constitutional norms, or from the theoretical-dogmatic point of view, both legal and political. But there is another less explored point of view: that of the population, or part of it, which observes how this text, intended to govern social life, is being modified before their eyes. If, in addition to observing, the community can influence through channels of participation, the interest can be understood as even greater.

The main objective of this article is to observe and analyse what kind of expectations external actors – or some of them, as will be seen below when the portion to be analysed is emphasised – had of the constitutional process. The reason for choose for this point of view lies in at least two issues: i) these set of expectations are not usually analysed; and ii) at the end of the day, these actors have an impact, not only in their contributions to the constitutional text, but also with respect to its final approval (in the case of ratifying plebiscites) or acceptance in its implementation. Thus, if it is possible to demonstrate a disconnect between the participants' expectations regarding the final text proposed by the Council – i.e. the body responsible for drafting the new constitution, hereinafter referred here as CC – this could be useful in identifying at least one of the reasons for the failure of the constitutional process.

For this purpose, the basis that accompanied the presentation of the people's initiatives (hereinafter referred as IPN due to the Spanish initials of *Iniciativa Popular de Norma*) are observed, especially those related to rights, for two reasons: first, because analysing the justification speeches is a way of observing the intentions pursued by a person – or group of persons – when proposing a certain component in the constitutional text; second, as the data collected by the *Secretaría Ejecutiva de Participación Ciudadana* indicates, most of the IPNs dealt with rights in general, which is evidence of a direct interest on this subjects.

The work combines two methodologies: discourse analysis to identify specific and fundamental beliefs of groups of people (Van Dijk 2005, 15-47); and content analysis to identify patterns in the discourses of justification of the proposals (Krippendorff 1990). The first aims to textualize extra-legal contents in the discourses to be analysed, which imprint a set of beliefs on the notion of constitution. The second identifies patterns in the arguments that justified the incorporation, modification, or suppression of a part of the proposed constitutional text.¹

A quick disclaimer. This paper does not intend to analyse the internal aspects of the constitutional process or the constitutional text that was proposed through the

¹ The IPNs were based on the proposal of the Expert Commission (hereinafter EC), based on a set of pre-established agreements to submit a preliminary draft Constitution to the Constitutional Council (hereinafter CC). (Available at https://www.bcn.cl/procesoconstitucional/detalle_cronograma.html?id=f_acuerdo-por-chile)

initiatives: here interest only the basis of the IPNs.² These were one of four mechanisms adopted to receive and listen to the public's expectations regarding the new constitution, representing a novel case of initiatives in the context of constitutional processes in comparative law.³ The other three channels were 'Public Hearings,' 'Citizen Consultation,' and 'Citizen Dialogues'.⁴ So, why the IPNs? Firstly, because, as mentioned above, they represent one of the channels enabled for citizen participation, and this is directly linked to Chile's history: one of the most controversial issues of the in-vigour text since 1980, even with the reforms carried out to legitimise it, is its lack of legitimacy resulting from its origin. It should be remembered that much of the current constitution is based on the text inherited from the dictatorial government of Augusto Pinochet. Secondly, but directly linked to the previous issue, one of the characteristics of the latest Chilean constitutional processes is the enabling of different channels of participation as a way of legitimising the constitutional text. Finally, the processes of 2022 and 2023 are, to a certain extent, an organised response by the political class to the social demands that led to the 2019 riots.

Of course, we must not lose sight of the fact that participation through the channels provided is not necessarily representative of what *the whole* of Chilean society thinks or says about the constitutional process. In this regard, the IPN analysis takes this flaw into account, insofar as it cannot be ignored that, just as political representation mechanisms are imperfect, the channels established for this milestone in Chilean constitutional history may replicate asymmetries, lobbying power, diverse interest agendas, among other problems. Nevertheless, due to their novelty, it is argued that they are a way of observing – albeit not fully – the expectations of those who did not participate directly in the design of the constitutional text in this experience.

Having said that, the IPNs present themselves as *one of the bridges* between what is happening within the internal legal culture and what the external legal culture desires⁵

² Statute number 21.533 established the procedure for the adoption of a new constitution. It established the mechanisms for citizen participation, delegating the coordination of these mechanisms to a group of accredited universities in the country. Article 106 of the Regulations for the Functioning of the Organs of the Constitutional Process defined the creation of the 'Secretaría Ejecutiva de Participación Ciudadana' whose task has been to design, coordinate, implement and systematise the four mechanisms for citizen participation. In the case in point, the initiatives were submitted via a website indicating whether they were amendments, deletions or the incorporation of new articles to the text previously submitted to the CC by the EC. A space for justification was added to the proposal, limited in the number of characters. For more information on the procedure, see <https://www.secretariadeparticipacion.cl/como-participar/iniciativa-popular-de-norma/>

³ Popular initiatives, with some nuances, have their origins in European systems after the French Revolution and have recently been studied as a case of legal transplantation, arriving in Latin America in the last decades of the 20th century. However, the Chilean case represents a novel experience in using this mechanism during failed constitutional replacement processes. For a comparative study of initiatives at the legal level and further information on the case of IPNs, see Soto and Suárez (2024) with emphasis on chapter 3. There, those authors reconstruct the details of the antecedents that originated the inclusion of the mechanisms for citizen participation, specially the IPNs.

⁴ For a more comprehensive understanding of citizen participation during the constituent process, see Delamaza 2024, Soto 2024, 153–168.

⁵ Here, 'legal culture' refers to the category of analysis introduced by Lawrence Friedman in *The legal system: A social science perspective* (1975) and Giovanni Tarello in *La nozione di diritto positivo nella cultura giuridica italiana* (or. 1977, Spanish translated version in 2003). Friedman understands that "legal culture" is used to describe various related phenomena: it refers to public knowledge and attitudes and patterns of behaviour

during the process. In other words, the IPNs are fertile ground for identifying and analysing demands in view of the possibility of influencing the text of a new constitution.

The decision to focus the analysis on this part of the recent process is due not only to a matter of time or problems with the size of the sample to be analysed – because a sample that includes all the mechanisms will be a very large one – but also strategically to the novelty of what is being proposed: the latest process is part of a set of three attempts to replace the Constitution – 2015-2018; 2022 and 2023 – and is therefore the least researched.

The first section of the work reconstructs the methodologies and delimits the sample to be studied. This is on the understanding that the study only reconstructs only a part of the external expectations, that is, outside the bodies in charge of designing the constitutional text, focusing on the fundamental rights contained in the preliminary draft of the 2023 constitutional process. In other words, it does not focus on other sections of the draft. The second section interprets the proposed discursive genre⁶ based on the codes and categories developed in the previous section. Finally, a few conclusions are provided.

2. Methodologies: sampling, coding and categorising data

In this section the aim is to compile some of the expectations that the population had regarding a new constitutional text by analysing the ideologies in the discourses that justified the presentation of the IPNs; and by codifying and systematising the contents on the foundations of the IPNs.

It should be noted that the IPN analysis represents a portion of citizen participation during the 2023 process. This means that the results obtained here should not be confused with the totality of expectations regarding the new constitution. On the contrary, the IPN's approach indicates one of the existing channels of participation, but also perhaps the one that represents the largest citizen organisation. This organisation highlights, for example, the importance that social organisations have at the end of the day, as opposed to political parties. In other words, this could be read as a continuation of the lack of confidence in traditional politics channels inherited from the 2019 riot.

towards the legal system (1975, 193). This definition presupposes the existence of a legal system which, according to this author, constitutes one of the many social systems of modernity (Friedman 1975, 5). Tarello and Friedman agree that 'legal culture' has the two components mentioned above: one internal, normally consisting of the culture of [...] legal technicians or specialists: law school professors, judges, administrative officials with legal expertise, lawyers, notaries' (Tarello 2003, 229); and an external one, to which they do not devote too many lines. Friedman argues that external legal culture is '[...] the legal culture of the general population,' while Tarello identifies it as opinions and knowledge about positive law (Tarello 2003, 227). At the end of the day, this idea of separation between legal subcultures can be understood in terms of internal legal culture related to constitutivity – i.e., the practices that create, inform, teach or technify law, usually characteristics of legal practitioners – and external to it – beliefs, knowledge, and expectations about the law among the public.

⁶ There is no label that encompasses this discourse, so we propose one that explains it under the phrase 'public expectation of a phenomenon of positive law,' which in a way represents the "ought to be" of the constitution to which the segment under analysis aspired.

With that said, in order to carry out these tasks in an orderly manner, we opted to begin with content analysis and then analyse the ideologies present in the chosen discourse, following these methodological steps: delimitation of the sample (2.1), where the reasons for taking the data from a given set of discourses are circumscribed and argued; coding of the basis of the chosen IPN (2.2); systematisation of the codes in thematic categories (2.3). All this with the following question in mind: what kind of constitution did the participants expect?

2.1. The IPNs: a – very short – sample of people's expectations.

As mentioned above, during the 2023 constitutional process, the IPN mechanism was one of the channels enabled for individuals or organisations to propose amendments to certain articles of the draft proposal for the new Constitution prepared by the EC, either to delete, replace, modify or add norms. It was determined that those initiatives that received more than 10,000 citizens' supports would be debated and voted by the CC (Secretaría Ejecutiva de Participación Ciudadana 2023, 9-11).

A total of 1,602 IPN were submitted through the electronic channels, of which 1,309 were accepted and published. Only 52 were rejected, while 241 were not resubmitted by their authors following a request for correction. Subsequently, 3 IPN were withdrawn, leaving a total number of 1,306 published.

These 1,306 IPNs represent 52.3% of the IPNs published in relation to the previous constitutional process, which had 2,496 IPNs. This could be seen as negative, but if one considers that the previous process lasted twice as long, there is some consistency on participation. For this purpose, it should be considered that during the 2023 process the admissibility rate increased from 41% to 82%, in relation to the previous constitutional process.

Only 31 IPNs achieved the required 10,000 endorsements, which were submitted to the CC for further processing. Of these, this paper analyses the 28 about fundamental rights (hereinafter FFRR), as this was the topic that aroused the greatest interest: participation was concentrated around the "Fundamental rights and freedoms, constitutional guarantees and duties" of the preliminary draft, accounting for 40.1% of the proposals and 63.9% of the support (Secretaría Ejecutiva de Participación Ciudadana 2023, 18).

Most of the proposals have at their genesis a set of expectations from one or several sectors of civil society. This shows that the interest in influencing the design of the constitutional text is mostly focused on the contents of the declarations, rights and guarantees, and not so much on the part aimed at the creation or functioning of organs of a legal-political nature. This raises a question: why did Chilean society – at least the part we analysed – emphasise this section of the constitutional text?

One possible answer to this question can be linked, as mentioned above, to a portion of demands that gave rise to 2019's social outburst. Another may be linked to the tradition from which the rights recognised in the legal system originate: on the one hand, the great factor of "proprietarisation" of these rights, which began with the sanction of the 1980 constitution and which implies conceiving them as things susceptible of being incorporated into the patrimony and, consequently, of being safeguarded by the constitutional guarantee of properties rights (Sacco-Aquino 2006, 479-508); on the other

hand, but linked to the above, because rights are a way of delimiting the form of the State, imposing a set of benefits with respect to some of them — as will be seen later in this paper.

2.2. Coding...

During this stage, the relevant units of analysis in the IPN basis were identified and labelled. Coding can be thematic, conceptual or structural, depending on the research objectives and the theoretical approach used. As Neuendorf (2017) indicates, coding involves categorising the units of analysis in terms of their explicit and implicit content.

Here we opt for thematic and conceptual codes due to the type of discourse being analysed. As mentioned, the discursive genre composed of *public expectations about a positive law phenomenon* is little studied and has some characteristics that motivate the interest of this work: the possible lack of technicalities and conceptual categories typical of the technique makes this discourse a fertile field for the analysis of how the public knows, understands and expresses itself with respect to the law.⁷

The codes were elaborated using the 'Dedoose' platform, where the basis of the IPNs were analysed. In this way, they are induced from the expectations that can be inferred from the IPN section mentioned above. Thus, after a series of preliminary readings, the following thematic codes were established according to: i) the rights proposed by the IPN, i.e. freedoms, social demands, etc.; ii) the model of state in which it is inscribed, i.e. whether it aspires to a subsidiary or social state model; iii) the principles or values on which it is based, such as nationality or human dignity, among others; iv) the basis or references used to achieve its objective, such as national history or the international context, among others; and v) the subjects it seeks to reach, whether natural or legal persons, etc. All codes in turn contain sub-codes — or conceptual codes — that specify their use.

A simple outline of these codes can be illustrated by the following table:

TABLE 1

Codes	Sub-codes
Proposed rights	Freedom - prerogative
	Immunity
	Political rights
	Social rights

⁷ This is based on the idea that the procedure for submitting IPNs was open and that, while allowing for the participation of legal operators not involved in the constitutional process, the reasons should reach the public in an accessible language if the IPN required support in order to be dealt with by the body destined to discuss it during the process.

	Cultural rights
	Guarantees (protection mechanisms)
	Other rights (new generations)
State model	Social (imposes duties on the State)
	Subsidiary (relegates activities to the private sector)
Principles - Values	General principles of law
	Identity values (<i>Chilenidad</i> , nationality, etc.)
	Religious values
Arguments - References	Chilean History
	Equality issues (gender, minorities, etc.)
	Hierarchy of international law
	Hierarchy of the Constitution
	Hierarchy of rights
Addressees	Natural persons
	Legal persons
	Other subjects (animate - inanimate)

Table 1. Codes and sub-codes based on IPN with more than 10,000 supports.
(Own elaboration.)

A cloud was then formed with the codes packaged according to their presence in the basis (image 1). This shows a high preponderance of some of them, especially "duties of the state", some freedoms, international law issues, etc. In other words, all those mentioned in the table are present, except for the addressees that were filtered out for the generation of the cloud shown below:⁸

⁸ IPN codes (in Spanish) available at <https://bit.ly/4bgV6an> (own source). The basis for each IPN can be found at <https://ucampus.quieroparticipar.cl/m/iniciativas>, searching by initiative number. Visited between 6 April 2024 and 30 May 2024.



Image 1. Cloud of codes packaged according to their number of occurrences.
Own elaboration (Dedoose).

A reading of this image shows that the main expectation regarding the text implied a certain *duty* on the part of the State, which configures – either directly, due to the explicit presence of the label “social State” in the IPN’s basis, or without it – a model of State that can be linked to the Convention’s proposal during the 2022 failed process. On the other hand, one of the constitutional foundations – or minimums – for the development of the constitutional text was the Social State of Law.⁹

Some of these demands are linked, as will be analysed below, to specific policies: education, health, equality, etc. In this way, the concern of ordinary people is expressed about a set of historical demands that originated especially after the imposition of a neoliberal market model in the 1970s and 1980s.

But another set of expectations can be directly linked to contingent debates. These types of issues are usually discussed through public policies, and their inclusion in the constitutional text could generally be understood as an entrenchment of agendas (Bastos-Arantes and Gonçalves Couto 2010, 545-85).

2.3. Categorising...

From coding, categories are proposed that capture the patterns and meanings present in the data obtained. This process involves grouping similar units of analysis and identifying relationships between them.

The codes are systematised into three categories: i) according to the notion of fundamental right that appears to be implicit in the proposal, i.e. whether they aspire to

⁹ The “social state” model was one of the agreements - the fifth - prior to the 2023 constitutional process. For more details see García Pino 2023, 5.

a fundamental freedom, a right of a social nature, etc.; ii) according to whether they pursue the recognition of a certain axiological imprint, such as a certain way of understanding the state; and iii) according to the model of constitution that the proposed appears to pursue, i.e. whether it aspires to a constitution as a set of supreme norms, or of a political type, etc.

About the notion of FFRR, it is necessary to make some preliminary distinctions. In constitutional doctrine, it is usually identified as those rights conferred by a rigid constitution (Guastini 2018, 84). It should not be lost sight of the fact that what we are analysing here is a set of expectations with respect to the constitutional text. Therefore, before analysing the content of the rights proposed through the initiatives, it is necessary to mention that within the FFRR label, we usually distinguish a set of different subjective positions: freedoms, political rights and social rights.

Having said this, the aim is to analyse: i) those initiatives that seek the recognition of a freedom, i.e. that the constitutional text grants a *freedom to act* in a broad sense; ii) those initiatives that seek to require the State *to act*, i.e. a public service; and iii) those that seek to establish an immunity, i.e. which impose a limit on third-party interference.

We also analyse those initiatives that seek the recognition of a certain axiological content. These contents make up a coherent set of ethic-political values that assign a certain identifiable profile depending on what type of indicators are present in the constitutional text or, as in our case, in a potential constitutional text. Thus, the identity of constitutions "lies in the set of supreme principles that characterise it" (Guastini 1995, 269).

Constitutions can also be classified into models according to how they are interpreted. If IPNs represent expectations regarding the design of new positive law, this way of perceiving the constitutional text is useful insofar as it gives an account of what goal are pursuing. Models of interpretation can be divided into two sets: a descriptive one of constitution-as-norm, in which the constitution is understood in a formal sense as that which founds the legal order; or an axiological one, when the object constitution itself is considered as endowed with values (Comanducci 2016, 27-40). These models are not mutually exclusionary, and the constitution can be interpreted in both senses, but each responds to a distinguishable object of constitution: the first to formal constitutional texts in a hierarchical sense; the second to constitutions of a political type.

Finally, they can also be grouped according to whether they seek: i) the creation of new rights; ii) the constitutionalisation of rights recognised in international instruments to which Chile subscribes; or iii) those that the Chilean legal system already recognises, either through jurisprudence — the so-called implicit rights — or those that are regulated in ordinary legislation.

With these systematisations in mind, it remains to analyse and interpret the data arising from the chosen object of study.

3. Rights, values and ideologies for a Chilean constitution

Before analysing and interpreting the data, it should be noted that, regarding the number of supports obtained according to the Commission to which the proposal is assigned, the initiatives under study are presented as follows:¹⁰

TABLE 2

Commission 3 Principles, Civil and Political Rights	
Name of the initiative	Total support
Respect for the activities that give rise to the identity of being Chilean.	16,050
Every life count	15,659
I was cared for, am cared for and will be cared for: Constitutional right to care	14,935
Guaranteed self-defence	13,472
Never again in Chile — guaranteeing non-repetition of human rights violations	13,190
Sexual and reproductive rights	13,038
It recognises the Chilean cueca and rodeo as living emblems of the Chilean nation.	12,911
For freedom of conscience and religious freedom as a fundamental human right in a democratic, pluralistic and diverse society	12,713
Nothing without us	12,622
Home confinement for prisoners over 75 years of age	12,443
Freedom of thought, conscience and religion	11,878
An end to profiteering in health, education and pensions. No more abuses by the AFP, Isapres and the market in education.	11,874
Zero tolerance for violence	11,675
Children and Adolescents in the new Constitution #Don'tForgetChildhood	11,159

Table 2. Number of supports for each IPN.

(Based on data available at <https://www.secretariadeparticipacion.cl/>)

TABLE 3

Commission 4 Economic, Social and Cultural Rights	
Name of the initiative	Total amount of support
Chile for animals	25,415
Not with my money — let's protect our pension savings	24,505
For the preferential right of parents	19,941
Water for life	15,705
Public education for Chile	15,266

¹⁰ The original titles were in Spanish and have been translated here for ease of reading, but in them, the titles can be used as indicative as some issues can be inferred from them, i.e. presence or absence of inclusive language, identification with a group, etc.

For dignified, timely and quality health for everyone	14,526
The right to housing in dignity, security and ownership	14,161
It's my money, full stop. The crowd will continue to fight for our pension funds.	13,633
Free and protected health for all Chileans	12,947
A political constitution for the workers of Chile [1].	12,593
Legal certainty for water use	11,704
Education and care from the cradle	11,187
Fundamental rights of persons with disabilities	10,735
A political constitution for the workers of Chile [2].	10,518

Table 3. Number of supports for each IPN.
(Based on data available at <https://www.secretariadeparticipacion.cl/>)

If one translates the number of supporters into interest, these tables show that interests were expressed around IPN on a variety of issues. Some are contingent policy issues such as pension funds or citizen security issues, which, as will be seen, respond to a maximalist constitutional model. Others emphasise issues related to animal rights or identity-related activities. From this arises the cross-cutting nature and diversity of issues that achieved the minimum support required for their treatment in the CC.

3.1. Expectations about rights in IPNs

Of the 28 IPNs analysed, 19 of them — 67.85% — seek the recognition of some right, either through the constitutionalisation of new subjects of rights not recognised in the current constitution — such as children, teenagers, people with disabilities, etc., or through the incorporation of new rights into the catalogue of the draft — such as IPN 10,107 on rights to care —, among other situations.

From the basis justifying the popular initiatives that were codified, a set of diverse subjective legal positions emerge under the label “rights” and, because of the characteristics they pursue, they can all be understood as an expectation with respect to FFRR insofar as they aspire to the recognition of a subjective position in the constitutional text.

Nine (9) of the totals analysed — i.e. just over 32% — sought the introduction of liberty rights in a broad sense — for example, IPN 6,739 which called for the new Constitution for Chile to “[...] duly guarantee Freedom of Thought, Conscience and Religion. This freedom, inalienable and non-derogable, is one of the basic foundations of a democratic, plural, inclusive and non-discriminatory society”. Of these aspirations, seven (7) were previously protected in international instruments to which Chile adheres, such as the IPN 6,739. On the other hand, at least two are new rights — such as the right to bear arms for personal security in IPN 10,859 or IPN 2,419, which sought the recognition of the “freedom of all persons to make decisions in crucial aspects [...] especially on the basis of sexual orientation and gender identity”.

At least two issues can be inferred from these data: i) the expectation of constitutional recognition of rights that are protected in international instruments as a response by the participants of the process facing the lack of openness to international human rights law

and its recognition in the domestic legal system;¹¹ and ii) the expectation of recognising rights at the constitutional level that are recognised or are being shaped in other legal systems, which shows the participants receptiveness to what is happening in other latitudes.

For their part, rights that can be traced back to immunities also play a major role in the basis. An immunity is, in general terms, a limit to the interference of third parties, whether public or private.¹² It can be noted that at least seven (7) IPNs refer to this type of rights. A simple reading of these data allows one to infer that there is an expectation of imposing a set of limits on state activity and other third-parties.

In addition, the recognition of immunities for natural and legal persons is being pursued, as in the case of institutional conscientious objection contained in IPN 6,739. This can be interpreted as the desire for constitutional recognition of a direct mechanism to prevent legal situations that, in practice, have been arising within the Chilean legal community. An example of this is the intention of some medical establishments to oppose the legal termination of pregnancy on legal grounds, which is in force in Chile under Statute 21,030.¹³

The participants also imposed a strong performance requirement on participation of the State when it came to the fulfilment of expectations regarding rights. This emerges from at least fifteen (15) IPNs, which claim an active role for the State. Of these, only a couple claim that the model of the State should be subsidiary, and the rest, either explicitly or implicitly, allude to a Social State model.

In addition, there is the presence of IPNs demanding political participation rights. For example, the case of the IPN demanding gender parity in the sense of a general principle, as a way of influencing legislation regarding the political participation of women and men; or the case of the IPN recognising equal political rights — i.e. between women and men — in trade unions.

3.2. Ideologies and axioms in IPNs

Identifying ideologies in the IPNs presupposes the observation of discourses — textual — through the so-called “ideological square”. This offers four overarching strategies to identify ideological contents that tend to polarise discourses through the expressions used: emphasis on *our* good things; emphasis on *their* bad things; minimisation of our bad things; and minimisation of their good things (Van Dijk 2005, 30). This is not merely limited to issues of strict politics, but also to a set of religious, economic, social, etc. interests that pose a clear divisive question.

As can be seen, the discursive resources of “us” and “them” are present in various senses, explicitly or implicitly. One of them demonstrates discontent with the political class in power, according to IPN 4,459, emphasising the latter’s inability to exercise good pension fund management. Another example refers to the need for “all Chileans”, according to the IPN 10,859, to have the right to bear arms for legitimate self-defence. The proposal places those who are in the group “all Chileans” in a different category

¹¹ On this situation, see Henríquez 2018.

¹² On types of immunities, see Guastini 2018, 79-80.

¹³ For more information on this topic, see Marshall and Zúñiga 2020.

from the inhabitants, i.e. those who do not belong to the group of citizens. The latter make up a “they” that threatens the “property, life and family” of the former, an issue that can be understood as linked to the discourse on insecurity associated with immigration.¹⁴

In these cases, substantiation has a strong sense of persuasion. In fact, some IPNs persuade the adoption of visions belonging to different ideological spectrums. An example of this is the basis for adopting a way of understanding religious freedom or conscientious objection, which can be associated with questions of a religious nature – IPN 3,903 and 8,103. Another case in a different argumentative key is represented by those justifications for the adoption of a certain model of State, be it *subsidiary* and therefore associated with the conservative model, or *social*, associated with the progressive sectors of Chilean politics.

The axiological contents are a diverse set of ethic-political values – explicit or implicit – and, therefore, plausible for the identification of the ideologies present in the constitutions,¹⁵ or, as in this case, of those that sustain the introduction of textual elements to a new constitutional text. For example, it can be thought – as will be explained shortly – that the text in force since 1980 possesses features of the humanist tradition, among other things. These sets give the constitution an identity in the material sense. This example shows that axiological contents can come from different sources, which is why it is necessary to group them into categories. To this end, it is proposed to distinguish between: (i) those that hold a certain conception of the nature of rights; (ii) those that hold a certain conception of the nature and purposes of the state; and (iii) those that impose a value or set of values, such as those of an identitarian nature, assimilable to membership of a group or groups – be they ethnic, religious, etc.

Of the proposals that have a conception of the nature of rights, there are five (5) that mention nature and/or human dignity as sources of rights – IPN 1,115, 10,327 or the IPN 3,903. On the other hand, the apparent hierarchy of the right-to-life in some of these proposals is notorious, proposing an intra-rights supremacy.¹⁶ This can be understood as a continuation of the humanist tradition of human rights in the 1980 constitution, which marks the way in which the participants understand the nature of these rights.¹⁷

For its part, the subsidiary state model emerges from a couple of IPNs, while the social state model is found in fourteen (14) out of the total. This denotes a strong expectation regarding the benefits demandable from the State in terms of rights, mostly of a social nature and not previously recognised in the Chilean legal system.

¹⁴ For an analysis of these discourses, see Cociña-Cholaky 2020, 181-200.

¹⁵ Latin American constitutionalism shows a set of ideological elements of various kinds, the result of reforms and replacements in recent years. Bolivia's constitution proclaims itself to be “[...] a free, independent, sovereign, democratic, democratic, intercultural, decentralised, and autonomous Unitary Social State of Community Plurinational Law”. Nicaragua assumes “[...] the task of promoting the human development of each and every Nicaraguan, under the inspiration of Christian values, socialist ideals, solidarity, democratic and humanistic practices, as universal and general values, as well as the values and ideals of Nicaraguan culture and identity”.

¹⁶ IPN 3,309 argues that “Of all the natural rights of the person, the first is the right to life”.

¹⁷ On this influence see García 2020, 199-197.

But this is not the only thing that emerges regarding the social role assigned to a subjective situation: the IPN “every life counts” – *Toda vida cuenta*, in Spanish – proposed to constitutionalise the social role that maternity would have by constitutionalising the protection of the unborn child from conception. This can be interpreted as an axiological content that pursues a certain life plan, assigning a social function over personal decisions regarding reproductive rights, obliging the State to guarantee the assistance and protection of unborn persons and mothers.

Regarding identity recognition, the IPN shows basis about national identity through the adoption of duties towards certain symbols such as the flag, but also towards certain activities typical of “being Chilean” – IPN 7,999 or 10,687 – such as the *rodeo*¹⁸ or the *cueca*.¹⁹ These types of axiological content expressed in terms of obligatory nature can be understood as a desire to unify behaviour under a certain set of symbolic content in the discursive form of the traditions of the “nation” as a whole.

About other identity content, there is evidence of questions relating to the identities of minority groups, in various senses of the label: sexual minorities, ethnic minorities – there are references to multiculturalism – or minorities without express recognition in the constitution, such as children and adolescents or people with disabilities. In addition, there are some references to religious aspects as necessary elements for the delimitation of identities. It should not go unmentioned that axiological contents are usually linked to references to national history as a way of justifying their recognition, either to evidence historical continuity or to denounce events of the recent past.

3.3. *What kind of constitution for Chile: minimalism or constitutional maximalism?*

It is necessary to categorise the constitutional model(s) pursued by the initiatives. As mentioned, constitutional texts can be interpreted in at least two broad sets: descriptive and axiological. The former refers to a set of norms, while the latter points to a set of values and is typical of political constitutions – of which Chile is an example insofar as this type of text usually leaves a small set of issues to contingencies. Consider the “granted” character of the 1980 constitution (Zúñiga Urbina 2024, 1-5) that led to the establishment of “protected democracy” (García 2020, 184).

Of the total number of IPNs analysed, a small group (just 7%) understand the constitution as a set of superior norms that determine: i) the way in which the creation of other norms is regulated; and ii) the recognition of norms on rights.²⁰ In contrast, the majority (93%) understand the constitution as a text that recognises a certain set of ethical-political values that exist – in the opinion of those who argue – independently of a

¹⁸ This practice arose as a need to brand livestock, developed in the central region of Chile. It was not until the middle of the 20th century that it began to be institutionalised and expanded to the rest of the country. Although there is a 1962 official document in which it is recognised as a sporting practice, it was not until 2023 that a bill was presented for its declaration as a national sport

¹⁹ This dance dates to the independence of Chile. But it was only in September 1979, under decree No. 23 signed by Pinochet, that it was instituted as a national dance. On the identity roots of this dance, see Ramos and Spencer 2021.

²⁰ Such as the IPN on the *right to care* 10,107, which mentions the Constitution as a superior norm that imposes a set of duties on the powers of the State in terms of legislation necessary for the recognition of the rights promoted by this initiative.

constitution, ergo, they tell the constituent to introduce them into the text.²¹ But not only that, several initiatives (60%) understand that the constitution must impose a certain set of political and moral values, regardless of the plurality of conceptions that may coexist in the Chilean legal-political community.

This highlights the tension between two opposing constitutional models but closely linked to the above issues. These are constitutional minimalism versus constitutional maximalism. The first assumes a constitution based on three theses: it is not the Constitution that should resolve problems of a social nature; the Constitution should not be understood as a finished project; and it should contain basic rules, both in its organic and dogmatic aspects.²² Maximalism, on the other hand, can be understood as antagonistic to these theses. This is not minor, insofar as the constituent processes that aspire to a constitution of maximums hope for the entrenchment of interests that respond to certain ways of understanding the socio-political life of a community. This is evident from expectations in general, from the final texts submitted to plebiscite and in comparative terms. The last few years have provided experiences of constitutional maximalism in the region and, according to data from the process, Chile would not be an exception despite recent rejections.²³

It remains to analyse the context in which the expectations of a constitution with these characteristics are framed. In this sense, the 2023 constitutional process had some relevant characteristics from its genesis. One of them stems from the electoral mechanisms that led to the election of the councillors. A brief analysis of the propaganda slots prior to the May 7 elections reveals at least two clear discourses: one from the sector close to the ruling party, aimed at overcoming the rejection of the exit plebiscite of September 2022; the other, close to the opposition, aimed at continuing the rejection of the constitutional process opened in 2019 as a response to the crisis (CNTVChile 2023a). What is certain is that, with the electoral result in favour of the latter group, the discourse became an opportunity to shape a new constitutional text, imposing a particular vision. This can be seen not only in the cuts made to the text submitted by the EC to the CC, but also in the abrupt change in the message of the fringes with a view to the exit plebiscite on 17 December 2023: from promoting candidacies to reject again and thus continue the momentum of the previous process against the ruling party, to pursuing approval to change Chile (CNTVChile 2023b).

In this context, the impact of the IPNs on the constitutional process can be analysed at various levels.²⁴ For the purposes of this paper, a synthesis of the impact on the articles of the final text approved by the CC is chosen. In this sense: only two IPN were fully

²¹ Such as the IPN 8,103 on the *right to life and the protection of unborn children and mothers in Chile*, which attempts a better description of the content of these rights according to the authors of the proposal. This presumes that the text proposed by the EC did not do it in a "correct" way.

²² For more on these theses, see García 2014, pp. 267-302.

²³ A set of constitutions, like Colombia (1991); Venezuela (1999); Ecuador (2008) and Bolivia (2009), make up the so-called "new Latin American constitutionalism". See Viciano and Martínez 2011.

²⁴ Four levels of impact emerge from the final advocacy report: according to the presentations made by the authors of the IPNs to the Commission; according to the amendments made by the councillors that incorporate the IPNs' proposals; according to the impact that the IPNs have had within the Council, both in favour and against; and according to the incorporation into the final text of one or more of the main ideas or specific policy proposals included in the respective IPN. Secretaría Ejecutiva de Participación Ciudadana 2024.

incorporated into the text;²⁵ eight were significantly incorporated;²⁶ ten had a minor impact;²⁷ and eight had no impact at all.²⁸ This 'final outcome' can be interpreted as a disconnect between what those who participated through the IPNs expected from the constitutional text and the composition of the CC, which was influenced by an ideological bias that, for reasons unrelated to what is being analysed here, differed from that of its direct predecessors in the 2021-2022 process.

4. Conclusions

This paper analysed the basis justifying the introduction of new rights through IPNs in the CC debate that led to the failed constituent process of 2023. This analysis was carried out by reconstructing part of the speeches from the participants through the IPN basis by the content analysis method. This sample represents one and only one of the channels enabled for citizen participation during the 2023 constitutional process, acknowledging the partial view that this may entail. Indeed, it could be argued that these contributions reflect only those sectors with vested interests, even revealing lobbying power and agendas influenced by partisan interests, among other factors. However, it was decided to highlight them because they reveal two issues: i) on the one hand, a novel mechanism in this type of process; ii) on the other, a section – and only a section – of society that is organised and eager to influence the drafting of a new constitutional text.

Through the codification and analysis of ideologies in the basis of the IPN, the paper exposes the disconnection between the participants and most of the CC with respect to the content of what the constitution and its FFRRs should be. As the IPNs demonstrates, what was pursued by some of the actors outside the world of legal operators – especially those in charge of having the last word on the constitutional text – did not coincide with what the latter expected from the failed process in 2023.

Considering the conceptual issues and fundamentals analysed, it can be concluded that the external demands channelled through the IPNs relating to the FFRR strayed too far from the interests pursued by the majority represented in the CC. An example of this is the demand on the role of the state regarding social rights, which had little impact on the final text. By way of reflection, it is possible to argue that Chile faces profound disagreements about the content that a constitutional text should have.

Those disagreements are not only present in the political class, but also among citizens. This may be due to various factors that this paper does not address. But from the identification of the tensions between the content of the constitution and expectations about FFRR based on the IPNs, at least an indication emerges of some of the issues that led to the rejection and, why not, how to confront future constitutional attempts. Therefore, perhaps the best constitutional model to which Chilean society can aspire is closer to the minimalism referred above.

²⁵ IPN 7,999 and 10,163.

²⁶ IPN 4,131, 2,507, 1,115, 5,127, 6,707, 8,103, 6,739 and 9,619.

²⁷ IPN 3,903, 10,107, 167, 10,327, 4,459, 6,007, 9,951, 9,247, 2,911 and 9,271.

²⁸ IPN 10,687, 10,267, 10,859, 10,891, 2,419, 8,247, 9,315 and 10,887.

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