

IS THE CONSTITUTION A HOUSE? HOW IS ITS ARCHITECTURE?

On Sunday, November 10, 2019, twenty-four days after the social outbreak began in Chile - and after a meeting at the President's house - the Prime Minister declared that "the constitution is the most important law,

it is everyone's house and It has to be ratified by the citizens so that it can be the new body, the new house that shelters us for the next few years.”

The fact that the second government authority has used an architectural analogy to explain the meaning of a constitution allows us to think about the architecture of this new constitution. What are the foundations of such “everyone's house”? How big should it be? Do we need a new house or just a remodel? In short, how is its architecture? With those questions, we open the debate of this issue of ARQ on Laws.

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The deceitful constitution, its crisis and the crisis solution

The metaphor of 'the house' has been intensely used to refer to the Chilean constitution. Like any metaphor, it highlights some issues of the problem and hides others. Among the first, we find we have lived the last 30 years in a house designed and built unilaterally by those who won on September 11, 1973, who took advantage of that to ensure privileged positions that can only be reformed with their consent, which is the same as saying that they cannot be reformed at all. We need a house that we all recognize as our own.

The metaphor of the house, however, has limits, and that is why it is not innocent. A house is a place for dwelling, a place from where its inhabitants leave to fulfill their vital plans. A constitution, on the other hand, is not called so because it constitutes a place of dwelling, but because it creates capacities for action. This is the main function of constitutions, and it is precisely this dimension the one that is obscured by the metaphor of the house, and where the explanation of the current crisis lies.

A constitution is a fundamental decision regarding the configuration of power. It defines its origin (God, tradition, the people, and so on), the organs through which power is exercised (Congress, President of the Republic, and so forth), how to access, exercise and lose political power; what are its purposes and limits (the so-called 'constitutional rights'), and more. In fixing those

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and similar issues, the constitution is a decision that constitutes politics.

What decision frames the current constitution? To give to power and politics a democratic form, although denying democratic content. Because of that, it configures, through a series of traps or locks, policies incapable of effectively making transformative decisions.

Why? What interest had the dictatorship in setting up a political system ineffective to transform? The constitution was the solution to a problem that the dictatorship faced. It had all the power at the time and used it to install the neoliberal model in blood and fire. The problem was how to use the total power it had to prevent the politics to come, the democratic power, from reversing its reforms; in other words, how to use the total power it had to decide what would happen once that power was lost. The solution was to give the future democracy a constitution so that the politics to come could not transform the neoliberal model. And for 30 years, we have lived under a constitutively neutralized, incapacitated political system. The assumption of those who decided on the current Constitution was that the democratic form would hide the undemocratic substance and, for a long time, they were right. But the undemocratic substance of the Constitution is the origin of a process of progressive de-legitimization of all the institutions that are founded on it.

With today's clarity, it is possible to look back and observe the development of that process. Let's make note of some of its milestones. In 2005, a reform was presented as a 'new constitution,' that is, a definitive solution to the constitutional problem. Shortly after, it became clear that it was not the case. That reform, in my opinion, marked the end of an era, because it showed that, through ordinary amendments, the constitutional problem was not solvable. The following year saw the emergence of the secondary school movement, whose main demands included the repeal of the Constitutional Organic Law of Education, the LOCE. The LOCE was repealed in 2010, being replaced by the General Education Law, LEGE. But as it was a constitutional organic law that required the votes of the political heirs of the dictatorship, the transformative content of the initial draft of the LEGE (which included the banning of profit in education and the end of the selection process) was lost as the construction of the necessary 'great agreement' progressed.

The 2011 movement learned the lesson, no longer expecting a response from institutional politics. Consequently, the attempt by candidate Michelle Bachelet to assume their demands could not count on their support. Despite that, however, she placed them at the center of her program, and with that, she won a sweeping victory in the presidential and parliamentary elections. The conditions for a transformation were as auspicious as it was possible to expect them to be. But the political culture that had flourished under the deceitful constitution was responsible for frustrating those possibilities and the Bachelet government ended in failure: partial failure in the case of educational transformation and complete failure in the constitutional process. This failure – the definitive finding that institutional politics was unable to solve

the problem – is the immediate precedent of what we live today. When institutional politics said that choosing Piñera was the rejection of the transforming project that Bachelet had assumed, and that Chile was an oasis, everything exploded.

The current crisis, then, is an especially advanced moment of a legitimation crisis produced by the deceitful Constitution and the neutralized political culture that flourished under it during the past 30 years. The solution to this crisis is not easy, in great part because its development was eroding the conditions that facilitated its resolution. Thus, today there are no legitimate political parties to speak on behalf of the social movement that has emerged. The attempts of the 'political class' to interpret it are viewed suspiciously as manipulation and misrepresentation attempts. This is not casual or gratuitous, it is the learning of the 2006 secondary movement, of the university students of 2011, of those who marched against the AFPs in 2016, or the feminist May of 2018.

These are the difficult conditions in which this crisis must be solved. The crisis is of institutional politics and will have no solution until there are different institutional politics. Different institutional politics means a different political culture. In the last 30 years, we have seen the emergence and development of the political culture that corresponds to the deceitful Constitution. That is, a neutralized political culture. The 'outbreak' was against that political culture, which is designated with various expressions, such as the 'duopoly' or the 'political class.' Constitutional change is a necessary condition for that change in political culture. Its full realization, however, is a long-term process.

What, then, is a new constitution? What criterion should we use to avoid the mistake Ricardo Lagos made in 2005 when he confused a constitutional reform with a new constitution? In my opinion, the answer is the following: if after the new constitution politics remain just like the neutralized politics that we know, we will have to say that the new constitution was a failure; if politics begin to change, we can say that it was a success ('begin to': cultural changes like the ones we are describing do not happen overnight). Because this is what it comes down to: legitimacy in democratic politics emerges insofar as the citizens see the measure of their empowerment; what has totally delegitimized the politics we know is the fact that citizens have learned to see it as the opposite, as the measure of their disempowerment. As long as this does not change, the crisis will remain unsolved. **ARQ**

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