



The Chilean Institutional Crisis and the Estrangement of Law

La crisis institucional chilena y la ajenidad del derecho

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Abstract

This article provides a comparative reconstruction of the debate on the Chilean institutional crisis in the national social sciences and in legal opinions. In this regard, even though the critical effects of the transition to democracy (as well as the multiple indicators of social unrest) have been studied in the social sciences since the return of democracy, the Chilean institutional crisis has only been subject to sporadic analyses in the field of law. Accordingly, this article shows the evolution of the central characteristics of the debate in two areas and urges for greater debate and dialogue in the legal sciences. In their absence, their transdisciplinary effects will become unnoticed, and the same will occur regarding the content and functioning of other social science disciplines.

Keywords: *Institutional crisis; Constitutional problem; social sciences; legal scholarship.*

Resumen

El artículo presenta una reconstrucción comparada de la discusión de la crisis institucional chilena en las ciencias sociales nacionales y en la literatura jurídica. Mientras los efectos críticos de la transición y, posteriormente, la multiplicación de indicadores de malestar social han sido tal vez el objeto privilegiado de análisis de las ciencias sociales desde el retorno de la democracia, la crisis ha sido solo un

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objeto esporádico de interés en el derecho. El artículo muestra los rasgos centrales de la evolución de la discusión en las dos áreas y presenta una defensa de la necesidad de la expansión y de diálogo en las ciencias jurídicas. Sin ello, no solo su efecto transdisciplinar es bajo o nulo, sino que el conocimiento que se maneja en otras disciplinas sobre el contenido y funcionamiento de las disciplinas también se ve limitado.

Palabras clave: *crisis institucional; problema constitucional; ciencias sociales; academia legal.*

INTRODUCTION

Chile is experiencing its most intense moment of institutional and social pressure since the return to democracy. From a comparative perspective, this institutional pressure can relate to that of the 1960s and early 1970s.¹ This does not mean the outcome of the current situation will be similar, more so if considered the disparity of economic and international contexts. Nonetheless, the sense of crisis is effectively similar. And said crisis mainly affects the relationship between citizens and formal institutions. From a legal perspective, how have we approached the analysis of this institutional crisis?

Since the 1990s, the crisis in question has been subject to constant and growing concern in the social sciences. As we will see, its development has been closely followed by the social science disciplines in Chile: the social sciences first approached these issues in a rather structuralist and theoretical manner in the 1990s, followed by a diagnosis characterized by the disaffection (based on certain behavior patterns) shown by citizens in the 2000s; in the 2010s, the approach shown by the social sciences involved more diversified empirical evidence.

In the legal field, on the other hand, the approach to studying the institutional crisis has been sporadic and rather static. The disaffection of citizens with the institutions and the institutional crisis has only been addressed in Chilean constitutional discussions. It is difficult to find references whereby the institutional crisis is addressed outside constitutional debates. By way of example, a reader whose contact with the country was limited to reading articles in law journals published in recent years would very likely not even notice the existence of an institutional crisis. Whoever has approached the matter from a constitutional perspective would surely think that it involves a discussion whereby the phenomenon —the crisis— has not changed greatly.

The estrangement of law is striking, because its presence has been undeniable during the development of the crisis. The Constitutional Convention — which was mainly composed by lawyers and who helped define the objectives linked

¹ NOVOA (1968); NOVOA (1972).

to overcoming the crisis²— has been the most relevant institutional milestone produced by the crisis. During the social outbreak of October 2019, the law also continued to be as present and as relevant as it has always been in modern societies. Almost all the central aspects of this conflict had legal dimensions and there was always reference to the legal rules by its participants.³ Accordingly, reference to said legal rules in connection with police repression or violent demonstrations was constant. In this regard, those type of actions were promptly denounced through the legal language.⁴ Moreover, the processing of violence has taken place through the means provided by law. Lawyers have thus been privileged actors in the crisis, however, but its jurists—at least in their academic publications— do not seem to be the most interested in it.

By using the institutional crisis as a case study, this article aims to analyze in parallel the evolution of social sciences and law as academic disciplines in Chile. For the reader interested in the Chilean institutional crisis, this article presents an accessible comparative description of the evolution of the discussion in these two disciplines. For the reader interested in the sociology of academia, this paper illustrates the differences in the evolution of production methods in two areas whose professionalization took place in Chile after the 1990s. But above all, this article is a manifesto about a loss of opportunity: its purpose is to account for the information and analysis deficits that are produced by a counterproductive relationship between social sciences. In a special edition of this journal about interdisciplinarity and law, it regards a work that urges for the relevance of dialogue and interdisciplinary efforts between social sciences and law.

The work is structured in three stages: the first section addresses the development of the crisis' diagnosis and analysis in the social sciences. The second section presents the thesis of estrangement: the discipline of law has not paid attention to the development of a phenomenon that directly affects the institutional framework in which its subject of study is construed, because its disciplinary boundaries assume that attitudes and behaviors are, by definition, outside its subject of interest—even when attitudes towards the rules and behaviors directly relate to its field of study. Said static disciplinary boundaries limit (to some extent) its field of study exclusively to formal law. In cases such as the constitutional discussion, in which some authors go beyond formal law, Chilean legal theory does not consider aspects related to other social sciences. The third section tries to carry out the opposite exercise. It relies on the crisis to show how in certain contexts the incorporation of other complex variables (not only formal law), such as the behavior of institutions and the relationship with individuals, can allow to generate

² Of the 155 original members, 66 of them received legal training. No profession had representation even close to this number. We thank an anonymous reviewer for this reference.

³ WILENMANN & FEDDERSEN (2022).

⁴ SOMMA *et al.* (2020).

knowledge and allow exchanges between social sciences. Accordingly, said approach can even help create empirical methodologies for legal research.

I. THE INSTITUTIONAL CRISIS IN THE SOCIAL SCIENCES: A SHORT RECOUNT

The crisis diagnosis in the relationship between citizens and institutions is not a novelty in the last decade. However, it has intensified with a variety of disciplines studying it and the robustness of the empirical evidence that has arose in the last five years.

In the social sciences, the problems related to the development and transition model imposed by the dictatorship —and the possible path towards a new crisis— have been a constant theme since the 1980s. Two current of thoughts (that sometimes intersect) have dominated this discussion.

The first current —originally dominant⁵— has focused on the experiences of individuals in the encounter with their environment and on the study of the material conditions of that environment. The central thesis is that the structure of the political-economic model developed during the dictatorship would lead to contradictions that could translate into a crisis. Norbert Lechner, for example, suggested in a famous book⁶ that the neoliberal transformation of the Chilean economy had begun to produce adverse effects in the ordinary lives of individuals. The dictatorship would have generated mistrust among citizens and a feeling of abandonment from the political and legal institutions. In parallel, while their personal living conditions improved, individuals sought refuge in their personal and work relationships. Consequently, this led to a disconnection between the time of the individual and the operations of the politics and the State. This would have constituted a source of possible future crises. In the public discussion of the 1990s, the discomfort or well-being of individuals and the existence or not of contradictions in their life experiences was one of the central topics that confronted intellectuals. These confronted intellectuals were described as self-indulgent⁷ and self-flagellating.⁸

Along with the contradictions that individuals experienced in relation to their structural and individual environment, the second source of structural contradictions noticed in the early stage of the transition to democracy period was related to political discourse. The critical evaluation of the political and economic model of the transition to democracy was a central topic in the discussion of the

⁵ HUNNEUS (1988), p. 114.

⁶ LECHNER (1988).

⁷ BRUNNER (1994); TIRONI (1999).

⁸ MOULIAN (1998); PNUD (1998).

1990s.⁹ Said critical view of the state of affairs assumed an even more preponderant role in the discussion of the 2010s, where social discontent was constantly linked to a possible crisis.¹⁰ Chile was a privileged example of the contradictions of the time: a country where the elites of the dictatorship were capable of denouncing the corrosive and destructive effect of political confrontation and ideologies. Accordingly, the story of the success of this transformation was based on denying political matters and relying on the only possible path: that of neoliberal institutional seriousness together with consolidating capitalism.

In accordance with this diagnosis, the political elite of the transition to democracy was compelled to follow these guidelines. Their survival and the overcoming of the dictatorship depended, paradoxically, on denying political matters. Chile was facing a potential crisis due to “*the imposition of a utopian ideology, neoliberalism, which consisted in a non-ideological manner of handling social issues (...)*.”¹¹ Thus, as long as the hegemony of neoliberal ideology survived as the only acceptable ideology, the country could maintain stability at the cost of suffocating democratic life. However, said suffocation had its cost: without vitality, the elements of democracy—specially the political parties—would lose meaning before citizens. With the neoliberal charm broken, Chile could find itself naked in the face of the next crisis.

The second current of thought regarding a possible crisis focused, instead, on the institutional design and particularly on the legacy of the dictatorship.¹² The possible evolution of a democratic system tied to “authoritarian enclaves”¹³ and a “low-density democracy”¹⁴ was a central topic of the institutionalist discussion of the 1980s. and 90s. This approach involved valuative and descriptive analyses: even though political science and sociology were at the forefront in terms of denouncing the illegitimacy of authoritarian enclaves and the constitutional order, an important part of their approach can be traced to democratic theory and to the limitations imposed on popular sovereignty (by the Chilean agreed transition to democracy).

In both displays, the early discussion over a possible crisis of the Chilean model share the characteristics of its generation: it is highly theoretical and written by public intellectuals who show a certain contempt for professionalized academic forms.¹⁵ However, this style and these approaches changed significantly in the late 2000s. With a great increase of the signs of discomfort in spite of the Chilean

⁹ CORTÉS (2000); LECHNER (1994); MOULIAN (1997); TIRONI & AGÜERO (1999).

¹⁰ RUIZ ENCINA (2019); RUIZ ENCINA & BOCCARDO (2014).

¹¹ MOULIAN (1997), p. 58.

¹² GARRETÓN (1988); HUNEEUS (1988).

¹³ GARRETÓN (1988), GARRETÓN (1994), GARRETÓN (1995), GARRETÓN (2000).

¹⁴ See SIAVELIS (2016).

¹⁵ MOULIAN (1997), prologue.

economic development and the welcome of a new generation of professional social scientists, the emphasis no longer remained in the denounce of a hidden crisis. In particular, the study of three behavior patterns tended to dominate the discussion regarding the possible existence of a political crisis: the decrease of trust in institutions, low electoral participation, and the increase of protests (many times violent).

The decrease in trust in institutions has been a constant in opinion polls in recent decades. For some decades, periodic and representative surveys, such as Latinobarómetro or the surveys applied by CEP and by the UNDP¹⁶ have been including questions about trust in particular institutions.¹⁷ Although some institutions, such as political parties, Congress or the courts of law have always shown very low results and have only continued to fall in the prevalence of positive opinions, several other institutions have had deep approval percentage decreases from middle and even high levels of trust.

That is the case for Government. Confidence in the government has experienced a significant decline in recent decades. In the Chilean political scene of the 1990s and 2000s, the Government had a minimum approval percentage linked to the percentage of people who identified with their political sector and, on occasions, even went beyond that threshold.¹⁸

In recent governments this has ceased to be the case, reaching levels of almost zero support. This is also the case for aspects such as security and order forces that have traditionally had very high levels of trust.¹⁹ They continue to be the only institutions trusted by more than a third of those surveyed, but this has shifted significantly from previous surveys (where the trust levels could even reach 70%).

Figure 1 shows, for example, the evolution between 2008 and 2019 of the percentage of positive responses to the question about trust in six institutions in the CEP survey. Young people are shown in yellow and older people (older than 60 years old) in gray.

¹⁶ PNUD (2019).

¹⁷ The site <https://www.cepchile.cl/cep/site/edic/base/port/graficador.html> contains a graph that incorporates the information from all the CEP surveys, which makes it very easy to look directly at the evolution of trust regarding each institution over time. The Latinobarómetro Chile 1995-2020 report includes information on the evolution of the confidence measurement in the respective period. See LATINOBARÓMETRO (2020), pp. 34-39.

¹⁸ GAMBOA & SEGOVIA (2016); JARA (2014); SEGOVIA *et al.* (2008).

¹⁹ DAMMERT (2016).

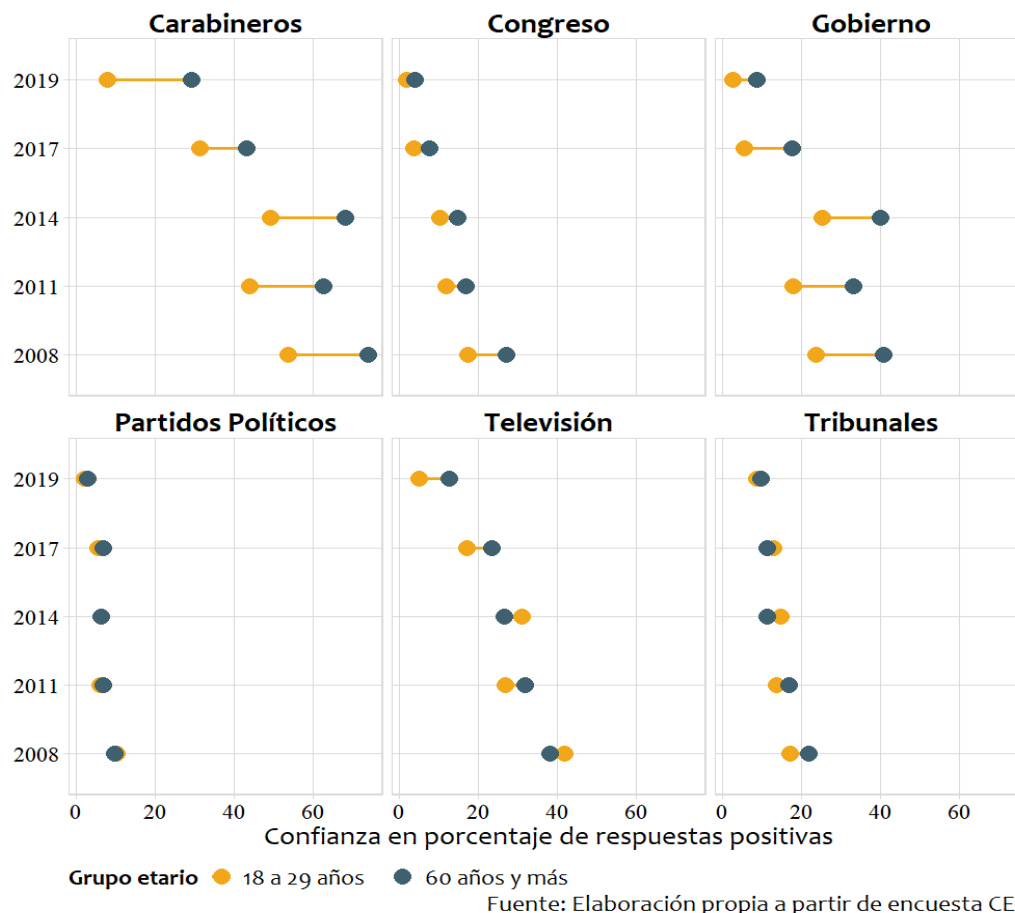
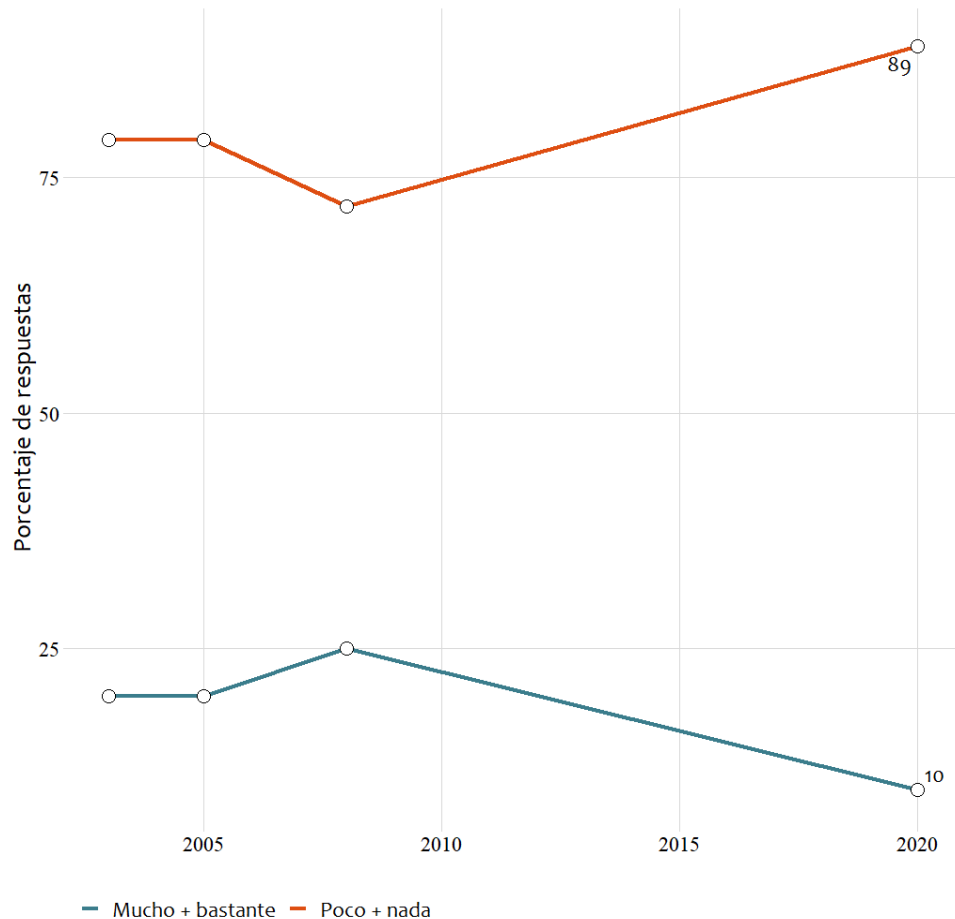
Figure 1: Evolution of trust in institutions in young people and older adults

Figure 1 obviously shows a tendency to the left of the x-axis (lack of trust) between 2008 and 2019 for virtually all institutions. However, it also shows that, in all cases except *Carabineros* (Police), this tendency does not correlate to the results shown by young people and older adults. To the contrary, in recent years the gap has been closing. The population, regardless of its age, has generally lost confidence in formal institutions.

Notwithstanding the distrust shown by citizens in institutions that are mostly associated with the production and application of laws —Congress, the courts, or the Public Prosecutor’s Office—, in recent years there has also been a very significant drop in perceptions of justice associated with the State. Indeed, *Latinobarómetro* shows a high prevalence of the perception that justice and the

State do not impose the laws equally on everyone.²⁰ The evolution in this tendency is notorious, as shown in Figure 2.

Figure 2: Evolution of the answer to the question: Do you consider that Chileans are equal before the law?



Fuente: Latinobarometro

The drop in trust in institutions has thus become a frequent starting point for researching the causes and consequences of Chilean social unrest and a core aspect of the current crisis.

The second aspect that typically helps to confirm the diagnosis of institutional crisis is related to the evolution of electoral participation in Chile—a problem that has been discussed since the late 1990s.²¹ The phenomenon is not

²⁰ LATINOBARÓMETRO (2020), p. 29.

²¹ LEHMANN (1998).

exclusive of Chile.²² However, the accelerated decline in participation in the country stands out internationally,²³ going from 86.9% in 1990 to 43.3% in the elections of that year. In elections that do not involve the Presidency of the Republic, participation is even lower.

The decline in electoral participation has also been accompanied by a process of stratification in participation. With the exception of two elections of constitutional significance after the social outbreak, political participation shows a marked difference between age groups (greater participation of older groups) and between social classes (greater participation of higher income strata).²⁴

The decline in youth participation had its inverse correlation in the increase in participation in protests—the third pillar of the diagnosis of institutional crisis. Contrary to what the discourses of apathy suggest, since the mid-2000s youth involvement in politics has not diminished but rather has mutated towards street demonstrations and through other pressure methods. Similarly, the structure of social mobilization has changed. Several studies show, for example, the closeness that the social movements of the 1990s or early 2000s exhibited with left and center-left institutional actors.²⁵ This began to change in 2006 with the student demonstrations against education policies.²⁶ Since then, social protests have increased and amplified their demonstrations, including a growing tendency to use disruptive forms of mobilization.²⁷

These three reference points are now easily perceptible in a large part of the publications that refer to the crisis: the diagnosis of crisis starts from a situation that has been standardized. This is a first distinguishing mark of the evolution of the analysis social sciences have done about the crisis.

In this line, the discussion shows since the 2010s changes in the style and in the type of prevailing theoretical approaches. Even though the crisis has continued to be linked to the old hypotheses of the effect of constitutional limits on democracy²⁸ or the Chilean modernization process,²⁹ other related theoretical frameworks have reflected on it, namely, the role of affective and disruptive power in the relationship between elites and the rest of society.³⁰ The theoretical style has also mutated. With exceptions, theoretical claims tend to be much smaller in scope,

²² LEVITSKY & ZIBLATT (2018).

²³ PNUD (2017).

²⁴ BELLINGER & ARCE (2011); CASTILLO *et al.* (2015); CONTRERAS *et al.* (2016); LUNA (2014).

²⁵ DONOSO & VON BÜLOW (2017).

²⁶ DONOSO (2013); DONOSO (2017); SOMMA (2017).

²⁷ MEDEL & SOMMA (2016); ROBERTS (2016).

²⁸ ESCUDERO (2021); HEISS (2017); HILBINK (2021).

²⁹ ARAUJO (2019).

³⁰ SOMMA (2021).

but they reflect a greater variety of sources and tend to provide systematic empirical evidence that did not prevail in the previous generations.

This is even perceptible in the few works that maintain the somewhat more totalizing theoretical orientation that characterized the specialized literature of the 90s. The work of Kathya Araujo and Danilo Martuccelli —probably the most influential work within the line of thought linked to recent theoretical-sociological considerations— is illustrative in this regard. Like its predecessors from the 1990s, the work has its origins in European theoretical sociology rather than North American professional social science, particularly, the sociology of the individual in late modernity.³¹ Early modern individual identity in the Global North would have been shaped according to the relevant institutional mandates and more or less consistent with what was demanded. The traditional example is that of the family: the individual identity in the home had to be formed according to the adaptation to the roles assigned to the traditional nuclear family. Faced with this, contemporary institutions would deliver incomplete and contradictory mandates for conforming an identity; the formation of contemporary individual identity would take place through an individual effort to battle that contradiction. For example, there would no longer be a dominant family model, but rather contradictory family formation mandates.³²

According to Martuccelli and Araujo, recent Latin American individualization processes would have been built on institutional weaknesses.³³ Against the “institutional individualism” prevailing in the Northern Hemisphere, in Latin America an “agentic individualism” began to operate. According to this type of individualism, citizens could never forge an identity primarily dictated by institutional mandates; instead, citizens would conceive themselves through a set of highly individualized responses to the vicissitudes of social life.³⁴ Citizens would not only feel compelled to “comply” with the insufficiency of institutions but would also not perceive themselves subject to the effects of institutional interpolation. Individuals would define themselves much more according to their intrinsic abilities to deal with social life, than on their capacities to adhere to a prescriptive institutional program.³⁵

In Chile, the experience of agentic individualism would have led to a “*circuit of detachment*” crystallized in the social outbreak of October 2019.³⁶ While overwhelmed by excessive demands (“excessiveness”) imposed by neoliberal

³¹ ARAUJO & MARTUCCELLI (2014).

³² BECK (2007), BECK (2012).

³³ ARAUJO & MARTUCCELLI (2014); MARTUCCELLI (2018); MARTUCCELLI & DE SINGLY (2012).

³⁴ MARTUCCELLI (2018), p. 26.

³⁵ ARAUJO & MARTUCCELLI (2014) pp. 27–28.

³⁶ ARAUJO (2019), pp. 16-17.

capitalism to manage their lives, they would have gradually built disenchantment relationships, which expressed itself in their total criticism towards the model or the system.³⁷ These criticisms confirmed the uselessness of the institutions and, faced with the fact that they continued to structure their ways of living, this would have led to an “irritation” of citizens. That vital experience would be at the origin of the crisis and the social outbreak.

Although Araujo’s work seems to maintain the highly-theoretical and based-on-the-insight-of-the-observer orientation that characterized the previous generation of intellectuals, it regards a type of work that presents in a clearer way the issues at hand and in line with the production methods of academia. His work builds on ethnographies and other qualitative methodological designs.

The crisis has thus become probably the most privileged subject of observation of the social sciences since the return to democracy and the development of the crisis as a social-scientific topic clearly reflects the evolution of these disciplines in the country.³⁸ For our purposes, it is also crucial to note the increase in inputs that this evolution has meant: our empirical knowledge of the crisis —and more generally of the relationships that Chileans establish with institutions— has also increased enormously in recent decades.

What has happened meanwhile with law?

II. LAW AND THE CRISIS OF INSTITUTIONS

Law, as an academic discipline, has had a limited influence on the study of the Chilean institutional crisis, both at the level of findings and diagnoses. With the exception of the constitutional discussion, the critical relationship between citizens and institutions has not been a relevant subject of research. In a context of collapse of the capability of institutions and state rules to guide people’s behavior, the questions surrounding the crisis have been rather irrelevant to the Chilean legal academia.

This state of affairs is consequence of a disposition of law, as a discipline, that makes it oblivious to the developments that manifest outside of what is considered formal law. The estrangement of law reveals the definition about the scope of the intellectual interest, accepted *de facto* by most of the national legal academia. It regards a phenomenon where the *attitudes of individuals* towards formal rules and

³⁷ ARAUJO (2019); ARAUJO & MARTUCCELLI (2012).

³⁸ Proof of this is that in recent years a series of research centers have been created in social science departments aimed at explaining the effects and causes of the institutional crisis. See, for example, the *Centro de Estudios del Conflicto y Cohesión Social* (COES), the *Centro Núcleo Milenio Autoridad y Asimetrías de Poder* (NUMAAP), the *Instituto Milenio para la Investigación en Violencia y Democracia* (VioDemos), and the *Centro de Estudios Justicia y Sociedad* of the faculty of Sociology of Pontificia Universidad Católica.

practices or their behavior in institutional contexts —such as the phenomena of mistrust and rejection described in the first part of this work— *are not deemed subject of legal interest*, since they are not part of the study of law.

The estrangement of law is mostly reflected by omission. It is difficult to find in the set of branches and disciplines that make up the study of law any that has paid significant attention, even indirectly, to the study of the institutional crisis. Two simple exercises carried out with databases created for another project allow us to illustrate this statement. Of the 523 Fondecyt projects that had been awarded in the field of law between 2000 and 2021, the only mention of the word “crisis” refers to the recomposition of family relationships after a crisis. At the same time, the review of another database that collects all the articles published in the three most important general legal journals in the country (*Revista Chilena de Derecho*, *Revista de Derecho de Valdivia*, and *Ius et Praxis*) between 2002 and 2020 shows some additional references (in the titles of the articles) regarding the concept of crisis: 6 out of 1124 articles published. Two refer, however, to historical constitutional crises (of 1891 and 1925) and the others refer to issues not linked to the institutional crisis.

The above exercise certainly has limitations. The exercise is blind to assessing the involvement that, in the field of public action, law professors have had in generating diagnoses and providing solutions. This includes, in some cases, participation in interdisciplinary instances regarding empirical work: lawyers have participated in studies on the criminal system, in UNDP diagnoses of the functioning of democracy, or in evaluation commissions of sectoral areas regarding pensions, health, labor and others.³⁹ There have also been advances in the generation of interdisciplinary efforts in the study of particular institutions.

However, the exercise described above aims to highlight, in a highly summarized way, the estrangement shown by academic publications in the face of the pathological development of relations between citizens and institutions: even though, in abstract, one might think that these issues are of the utmost importance for national legal thought, in reality it barely emerges.

A partial exception to this state of affairs is found in the constitutional sphere. However, this exception can be expected. After all, one of the central frameworks for diagnosing and making sense of the crisis —the legacy of a limited democracy by constitutional authoritarian enclaves, as we saw above— involves an evident formal legal dimension.⁴⁰ However, the discussion about the need for a constitutional change adds to the debate other central aspects the national legal academy in comparison to the social sciences. Here we focus on three: the low initial prevalence of publications around the constitutional problem; the tendency to focus

³⁹ We thank the anonymous reviewers for this reference suggestion.

⁴⁰ TSCHORNE (2020).

the analysis on high-level conceptual correlations rather than mechanisms; and the lower variation of types of analysis.

The first comparison is striking: while the problem of authoritarian enclaves has been influential in social criticism since the transition to democracy, the constitutional problem tended to play a minor role in the national legal academia until the beginning of the constitutional process called by Michelle Bachelet in 2014.

It should be noted that the problem was not entirely irrelevant. Academic articles were published from time to time insisting on the deficit of democratic legitimacy of the constitution⁴¹ and the excessive limitations that some of its rules impose onto democracy.⁴² Nonetheless, the constitutional problem acquired somewhat more prominence in the national constitutional debate after the failed constitutional process called during the second government of Michelle Bachelet⁴³ and, ultimately, with the call for the Constitutional Convention after the social outbreak.⁴⁴

A second relevant characteristic of the treatment shown by legal opinion is its detachment from social and institutional behavior: legal opinion tends to focus on the attribution and evaluation of characteristics rather than on the analysis of institutional mechanisms.

As pointed out by Tschorne,⁴⁵ the clearest characteristic of the constitutional debate has been its fixation on the so-called illegitimacy of origin of the constitution.⁴⁶ Thus, the most recurrent form of analysis of the problem is related to the attribution and criticism of a static characteristic.⁴⁷ The success of the book “*La Constitución Tramposa*” by Fernando Atria⁴⁸ can perhaps be explained precisely by virtue of breaking with that model: counterintuitively, it was one of the first attempts from the law to reconstruct in a sufficiently detailed way the design of the *system of rules* of the 1980 constitution as a *mechanism* for limiting democracy.⁴⁹ By making an involuntary reference to Moulian’s thesis of the 1990s, Atria, Salgado and Wilenmann⁵⁰ speculatively linked the crisis of representation to the neutralized

⁴¹ VIERA (2011).

⁴² ATRIA (2010); COUSO & CODDOU (2010); JIMÉNEZ *et al.* (2013); SOLARI & GARCÍA (2000); SUÁREZ (2009).

⁴³ GALLARDO OLIVOS (2018); RÍOS (2017); VERDUGO & CONTESSE (2018).

⁴⁴ ALEMPARTE (2021); ANSALDI & PARDO-VERGARA (2020); ATRIA (2020); CHARNEY *et al.* (2021); CHARNEY & MARSHALL (2021); ROJAS (2022); TSCHORNE (2020).

⁴⁵ TSCHORNE (2020).

⁴⁶ Criticized already by ATRIA (2010).

⁴⁷ COUSO & CODDOU (2010); RÍOS (2017).

⁴⁸ ATRIA (2013).

⁴⁹ See SOLARI & GARCÍA & 2000).

⁵⁰ ATRIA *et al.* (2017).

political system experienced by citizens —the *constitution would thus have been a mechanism* of the crisis. In both cases, however, the style is much closer to that of the public intellectuals of the 1990s than to that of the professional academics of the social sciences of the 2010s.

The third characteristic has not changed much, not even with the social outbreak: the tendency to maintain discussion frameworks linked to constitutional theory and democratic theory —typically centered on highly abstract discussions of sovereignty and democracy and constituent power⁵¹—, to describe conceptual and speculative forms of reasoning and maintaining a discussion disconnected from the rest of the social sciences.⁵²

Thus, practically none of the contributions shows a major change in theoretical or methodological orientation and only some works provide highly aggregated empirical information.⁵³ The same occurs even with those works that declare being part of interdisciplinary research paradigms or those whose research is focused “on reality.”⁵⁴ The main findings on the crisis that come from social scientific research tend to be downright ignored. This is certainly a two-way street: the social sciences have not fully used the information that comes from legal discussions either.

As summary, the treatment of the institutional crisis by legal academia shows a double estrangement: most of its branches and traditions consider it a non-legal issue, even though it refers to the relationship of people with the rules and institutions; and even the legal field more directly linked to the institutional crisis —the constitutional discussion— legal discussion developed in parallel and disconnected from other disciplines.

III. THE LIMITS OF A FRAGMENTED ACADEMIA

In this third section, we are interested in highlighting the limitations of the absence of relationship between law and social sciences described in the previous sections. This section is purely argumentative: it only provides a critical argument of the losses of both knowledge and analysis that are produced by the reciprocal ignorance between law and social sciences in the study of institutions (exemplified in the study of the constitutional crisis). We sustain our position by analyzing three characteristics of legal academia: its distant nature from the great political-social discussions; its mainly abstract character; and its lack of capacity to absorb information from other disciplines and capacity to influence them.

⁵¹ ANSALDI & PARDO -VERGARA (2020); ATRIA (2020); RÍOS (2017); SOLARI & GARCÍA (2000).

⁵² TSCHORNE (2020).

⁵³ CHARNEY & MARSHALL (2021), pp. 12–13.

⁵⁴ CHARNEY *et al.* (2021).

The first finding is linked to an old diagnosis of the evolution of academia and the legal profession, *i.e.*, *their displacement as central political agents and analysts during the 20th century*.⁵⁵ Even in the field of legal academia closest to public discussion in recent decades—the constitutional debate—the courses of legal discussion tends to be strongly disconnected from the dominant political and social discussion. Even though there are considerable lawyers and jurists who become influential public intellectuals in Chile, their academic production is not connected to the institutional evolution shown in Chile.

The causal path towards this public irrelevance of the legal-academic production is not obvious, but it is difficult to deny. This may be explained by the loss of influence of the legal thinking in the face of the advancement of the economic and consequentialist technocracy and critical discourses. It may also be self-induced and simply reflect a path that began to be noticed in the 1960s, namely, the displacement of the jurists' concern for political matters and their focus on discussions pertaining to their practice areas.⁵⁶ Under either of the two hypotheses, the professionalization of legal academia may be augmenting rather than diminishing the gap with the great political and social discussions.

The second characteristic supplements the previous one. The legal constitutional discussion reflects the *tendency to discuss under the style of the old public intellectual* rather than the professional academic.⁵⁷ Lawyers tend to maintain this style when they leave their practice area and go on to analyze other matters. This is probably a natural consequence of the previous point and of the characteristics of the Chilean legal academia: with a type of training and culture closer to the humanities than to the social sciences; one can expect that the participation of legal academia in the public debate—the few times that it takes place— may be characterized by general observations supported by theoretical and conceptual considerations rather than by any empirical strategy.

This is not a defect *per se* and may even provide some advantages in the current situation. According to the new orientation that social sciences are experiencing, *i.e.*, from a field focused on high-level analysis to one much more focused on smaller empirical reconstructions,⁵⁸ national academia may present difficulties when providing public proposals and in generating general social criticism. The notoriety of some jurists in the public discussion, despite their scarce participation in general social diagnosis, may be due to this.

⁵⁵ GONZÁLEZ (2018); VILLALONGA (2021).

⁵⁶ GONZÁLEZ (2018); VILLALONGA (2021).

⁵⁷ BERNASCONI (2010).

⁵⁸ LUNA (2021).

The third characteristic is related to the *low theoretical and methodological diversity* shown by legal academia. The comparison here is especially eloquent.

The evolution of the discussion of the crisis in the social sciences is characterized by a progressive replacement of the style of production. Formerly, it consisted of the exploitation of structuralist frameworks by public intellectuals, for later to mutate into a style inherent to professional social sciences. The latter style is characterized by an important plurality of theoretical sources that try to integrate case studies and other forms of empirical research—closer to quantitative methods in political science and to qualitative methods in sociology. These traditions—of social movement theory, the sociology of the individual or the study of voter behavior, to name a few—mutually cite each other when dealing with the topic of institutional crisis. Nonetheless, they obviously focus their discussion on their respective traditions. Thus, the research methods have mutated: empirical work has gone from being focused only on reading and interpreting high-level aggregate data to a diversity of quantitative and qualitative strategies.

Regarding law, on the other hand, it is difficult to see a change at all. This difficulty is based on the lack of a greater thematization of the issue by the legal academia until the end of the 2000s. The comparison is also complex due to the lack of standardization in the use of theoretical frameworks in law: it is not a common practice to “frame” legal works within theoretical traditions; their work approach is more essayistic. That style prevents, for our purposes, drawing clear comparisons of the evolution of theoretical influences. Finally, the lack of empirical work in legal opinions prevents us from seeing important methodological changes.

Despite all these difficulties, the difference shown by the constitutional discussion regarding both traditions is eloquent: the effect of the professionalization of academia is much easier to perceive in the social sciences than in the legal academia.

This state of affairs generates at least three problematic effects: potential loss of influence and contact with other disciplines; methodological deficits; and loss of information in the analysis of institutions.

The three problems go together. Given that the production methods of law have not evolved in a similar way when compared to other disciplines, it is likely that their interventions will not be properly interpreted and received in said disciplines. This state of affairs is generated because of the prevalence of the dogmatic legal model—aimed at reconstructing the content of formal law—before more realistic research models.⁵⁹ Legal academia, in the best of cases, maintains its capacity to influence the legal profession and the institutions most obviously committed to the discourse of law (*i.e.*, the courts, but also institutions that relate to

⁵⁹ WILENMANN *et al.* (2023).

lawyers' endeavors, such as the Comptroller's Office, the Public Prosecutor's office, the Office of the Public Defender, etc.). However, it has little capacity to communicate with the rest of the institutions.

The pernicious effects of this state of affairs are numerous. For our purposes, the central effect is one of limitation: legal knowledge on the meaning of the rules and the functioning of institutions does not reach the research performed by other disciplines. At the same time, the lack of methodological differentiation generates limitations when learning on institutions and their regulation. Jurists look more closely at the content of the rules but do not consider simultaneously the practical operationalization of those rules, their effects, or the perception of citizens that relate to practices strongly influenced by those rules. That represents a loss for legal academia, but also for the general knowledge about the institutions.

This does not mean that law school academics (in all areas) have failed in their efforts to influence more generally the understanding of how institutions work. We do not have information in this article to make a *general* statement of this type and it is possible that the knowledge produced on the functioning of some bureaucratic sphere, the criminal system or other niche institutions, has had the capacity to influence the general design of institutions and public policies.

Nonetheless, where there is little production of fine empirical knowledge is in the discussion of effects and consequences of institutional designs linked to the crisis. The organization of the work addressing this issue has been problematic: social scientists produce knowledge about perceptions, behaviors, and attitudes toward institutions, however, matters of fine institutional design are not particularly important to them, unless a particular discipline has manifested competence over said issue. Obvious cases refer to the political system and political science or the Central Bank, other organisms and political economy. This does not happen, however, with much of the design of the administration of the State or the administration of justice. Lawyers continue to influence these areas.

CONCLUSIONS

As we noted in the introduction, our article can be read in three different ways. First, it provides a comparative description of the treatment of the Chilean institutional crisis in the social sciences and in law.

The article has shown the paths that the social sciences have followed since their structuralist-institutionalist bifurcation in the late 1980s and early 1990s; their evolution from rather essayistic styles based on more or less insightful observations of public intellectuals towards a professional style, more empirical and with greater theoretical diversity as seen today. And the crisis also serves to characterize this evolution.

In legal academia, on the other hand, the crisis has been rather an absent topic. It has only been addressed in relation to the so-called “constitutional problem”, in an increasingly intense manner since the start of the formalized political process during the second government of Michelle Bachelet but conserving a style of discussion based on the observations of public intellectuals.

The second way of reading —or the second contribution— of our article is linked to the production methods of the professionalized academia on both sides of the equation at least on what the crisis shows. As can be seen, the evolution has been asymmetric, and the result is the asymmetry in production styles between both sides of the equation.

The third contribution builds on the previous point and is in the form of an appeal. In our opinion, this configuration generates important pernicious effects. These pernicious effects are not concentrated only in law; the professionalization of the social sciences has costs,⁶⁰ while the maintenance of the essayistic style of analysis and the more general argumentative style in law has benefits. However, these effects generate problems for the interaction between disciplines. From the point of view of law, these problems are reflected in the loss of academic influence (but not necessarily political) and limitations in the fine knowledge of the functioning of the institutions provided by the legal academy. This is the main shortcoming that an interdisciplinary approach can correct.

Abstractly speaking, Chilean legal academia is in a good position to improve these problems. On one hand, in recent years the interdisciplinary opening has been exceptionally intense —this especial volume, and other similar efforts⁶¹ are an example of this trend. On the other hand, Chilean legal academia has a degree of academic professionalization unprecedented in its history.⁶² However, if there are no efforts aimed at developing distinct research skills in law schools and encouraging the hiring of professional academics with interdisciplinary profiles, that opportunity may simply remain a potential one.

⁶⁰ LUNA (2021).

⁶¹ AZÓCAR *et al.* (2022).

⁶² WILENMANN *et al.* (2023).

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