

ORIGINAL ARTICLE

Giving society a form: Constituent moments and the force of concepts

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1 | INTRODUCTION

What meaning, if any, does the question of the social have in constituent moments? In what sense is society's mode of being relevant to the political creation and transformation of constitutional orders? How are concepts of society placed, mobilized, disputed, and manufactured by practices of constitution-making? The aim of this article is to explore these questions in order to outline a point of entry into constituent moments that pays close attention to how society becomes an object of constitutional reflection and, in consequence, a domain of normative reconstruction and political intervention. The argument I wish to put forward is that the political dimension of constituent moments is intrinsically tied to, if not defined by an immanent relation to the concept of the social; this is so to the extent that constitution-making is a historically situated endeavor, materially invested in concrete and open-ended struggles to give society a form.¹

The main concern of the discussion ahead is neither to address the dilemmas of constitution-making mechanisms to channel political will nor to add another chapter to the already saturated discussion on constituent power. Instead, I focus on something that seems a minor issue and, perhaps for this very reason, is somewhat ignored in most scholarly analyses on constituent moments: namely, the question of how the form of society is problematized, conceptualized, and actually produced. The underlying proposition is that the social is not to be taken lightly as if it were a constitutionally given value, but rather must be brought into the center of our examination as an unsettled space of constitutional possibilities and impossibilities that crystalizes in the conceptual struggles that constituent moments bring about.

To be sure, the political legitimacy of power, the democratic emergence of the people and the normative grounding of rights are all equally fundamental questions that intersect in moments of constitutional creation. Yet, in my view none of these concerns, important as they are, capture the extent to and the ways in which society's mode of being becomes the locus of the political. The questioning of what defines society *as* society, I contend, is something that concrete actors in concrete settings are confronted with once the very form of society is put into question and becomes an object of political dispute. Turning attention to these struggles—and the responses they generate in society at large—is key to comprehending constituent moments as instances by which society reveals as much as it conceals the political formation of its own foundations.

Within this framework, the second and third sections of the article develop the idea of constituent moments as experimental sites for the *mise en forme* of society. Instead of approaching the question of form from the perspective of public representations and dramatic expressions of acts of constitutional creation, as it is often the case, I propose

to do so through the lenses of the less visible work of practices of conceptualization of society. Drawing on insights from Lefort, Schmitt, and Koselleck, I argue that the ways in which the concept of society figures and deploys in constituent moments matter not because one can first define it and then criticize how well the concept coincides with the empirical reality of society, but rather in order to explore the materialized invisibility of the knots that the concept itself ties across a variety of spheres (economic relations, political participation, cultural practices, public order, everyday sociability) and sources of meaning (historical experiences, normative expectations, intellectual constructs, and political imaginaries). Consequently, my contention is that the form of society is brought into existence not by the stroke of a single definition, principle or authority, but by the subtle, fragmentary, and, for the most part, contradictory exercise of political re-arrangement of the space between words and things that ordinary citizens inhabit.

How is this space politically instituted and its semantic contours made legible? Where is its binding force grounded? How may it be critically scrutinized, deconstructed, and transformed? All these questions can only be addressed in the light of what can we learn from historical cases. Among the many cases one could think of, in the fourth and fifth sections of the article I discuss the paradigmatic experience of the creation of Chile's 1980 Constitution. This Constitution has a special status in recent Latin American political history, not only because it was created and legitimized in a dictatorship under conditions of violence and repression, but because it successfully set the model to give form to a radically new market-centered society and was the breeding ground for the unfolding and consolidation of the neoliberal experiment (Couso, 2018). Based on archival materials of the Constitutional Commission (1973–1978), I reconstruct the process by which society's mode of being became an object of constitutional reflection in the wake of the struggle against Marxism, and explore a number of conceptions of society deployed in the process of constitutional writing as political devices intended to reshape the form of social relations. The aim of this analysis is to shed new light on the constitutional core of the neoliberal grammar that General Pinochet's dictatorship brought about; namely, the claim to transform the conceptual economy of society so as to trigger a profound transformation of the self-understanding and structure of social life.

This exploration of constituent moments, discussed from the perspective of authoritarian acts of political creation, may appear conceptually incongruous and normatively unacceptable in the eyes of democratic theorists. After all, "to interpret a constitutional objectification correctly, it is always advisable to return to what produced it, to the *demos* and its free action" (Abensour, 2011, p. xxxi). And yet, the constitutional objectification of society cannot be delimited by normative criteria that set in advance the boundary of what is constituent and what is not. As a matter of fact, the very formulation and resolution of that question is a historical outcome that constituent moments contribute to crystallize in the form of conceptual distinctions.

No one would dispute that the power of shaping the form of society is unequally distributed between different groups, institutions, and territories. If anything, the reflection on constituent moments that this article proposes in the light of the Chilean experience is an attempt to demystify the myth of foundations that the figure of constituent moments itself contributes to reproducing. For if we are ever going to reach what is beyond the reassuring power of constitutional orders and rebel against the forms of life they allegedly produce (and also disallow) we need to understand the ways in which the concepts of society these orders incarnate have become concrete modes of organizing the daily experience of citizens and the horizon of what they take to be as right and envision as possible.

2 | THE QUESTION OF FORM

In recent years, political theory has contributed significantly to unpacking the historical, normative, and philosophical dimensions of moments of constitutional creation. In fact, constituent moments have become a privileged field for exploring and enriching our critical understanding of a number of key concepts that are at the basis of the development of modern democracy (e.g., constituent power, representation, legitimacy, normativity, resistance, sovereignty, and the people, among others). Much of the debate has revolved around the questions of who has the authority to constitute the norms of a political community, and how these extraordinary claims of self-government are enacted and contested in various political settings. Within this framework, the analytical emphasis has been placed on reviving the

political nature of acts of democratic self-authorization and unpacking the paradoxical capacity of the people to constitute themselves in the process of remaking the institutions through which they are governed (Bernal, 2017; Brito Colón-Ríos, 2014; Frank, 2010; Kalyvas, 2005; Loughlin, 2014; Loughlin & Walker, 2007; Vatter, 2014; Vieira, 2015).

Despite important differences between scholars in this field, it is striking to note the extent to which they all coincide in bracketing the question of the social, either by reducing the social to a given hermeneutic grid of constitution making, or by identifying it with the material interests upon which political subjectification unfolds. In any case, the result is that the theorizing of constituent moments is predicated upon a conceptual hierarchy that unavoidably moves the political away from the social (Bernstein, 1986; McNay, 2014). Against the exaltation of the political, the recent wave of sociological constitutionalism has responded by invoking the societal foundations of constitutions and arguing for a change of perspective: from an abstract, celebratory, and overly normative view of the political to a descriptive understanding of the concrete social forces at play in the making of constitutional norms and legal orders. This shift would allow us to observe the socially constructed nature of constitutions and constitution-making mechanisms, the range of conflictive social contents that constituent actors bring to the table, and the social functions that constitutions play in stabilizing the normative structures of modern polities (Blokker & Thornhill, 2017; Brunkhorst, 2014; Kjaer, 2014; Scheppele, 2017; Sciulli, 2010; Teubner, 2012; Thornhill, 2017). As important as this sociological turn may be, the problem is that it reverses the conceptual hierarchy it wishes to overcome by minimizing the dialectical slippage of the social and the political in the constitutional experience.

While the difficulty faced by political theorists concerned with constituent moments is that they do not fully engage with the problem of what version of the social world is being enacted by acts of constituent power, the limit of sociological approaches lies in the fact that they uphold a functional conception of the political restricted to a subsystem of modern society without an instituting force. Having said this, the challenge for a critical engagement with constituent moments is not that of making the political identical with the social, as it were, but rather that of “inserting the production of the political into the creation of the social” (Negri, 2009, p. 307). Some scholars have found a productive way to bridge this gap by drawing on the rational potential of procedures of deliberation, or by holding onto the substantive normative claims of social justice (Habermas, 2008). However, my view is that constituent moments should be expanded beyond the framework of specific procedures or contents. A significant contribution in this regard is Jason Frank’s proposal to explore the plural repertoire of aesthetic representations that acts of “popular authorization” elicit. Frank advances a theory that interprets constituent moments through the “performative dynamics” and “imaginative projections” continually produced in everyday political struggles. The performative logic of these “micropolitical enactments” entails the idea that what really matters is the “narrative” texture of constituent moments; namely, the composition of a “public hermeneutics” that gives a “people” shape across time in “small dramas of self-authorization” (Frank, 2010, pp. 33–37, 238, 253–254).

Frank’s theory is relevant for the purposes of my argument inasmuch as it makes the question of form politically relevant again, in terms of a persistent need and an inexorable source of frustration for those involved in constitutional politics. Nevertheless, I find Frank’s approach somewhat restrictive in the sense that it reduces the question of form to an aesthetic consideration of the symbolic dimension of constituent acts, and also assumes that the category of the people is the defining feature of constituent moments, which is the naturalized trope of US constitutional history but can hardly be made for the *de facto* catalogue of interpretation and scale of comparison for constituent moments in general. My intention here is not to correct Frank or others who may follow this path, but rather to explore a different question; namely, the question of how the form of society—that is, the space of relations in which the people is meant to live and coexist—becomes an object of constitutional reflection and an active political drive of constituent moments.

Here, I argue that the question of form is not reducible to the imaginary-cum-rhetorical wrapping of acts of constitutional creation. Form itself should be regarded as one of their primary contents. This proposition draws upon one of the most stimulating ideas suggested by Claude Lefort; that is, that the political, far from being an essence or specific domain of reality, is the very way in which power addresses “the question of the constitution of the social space, of the *form of society*” (Lefort, 1988, p. 11, italics in original). Although this conceptual gesture towards the priority of forms (or society as form) cannot be taken as an indicator of a full-fledged theory of constituent moments, we may take it as a productive point of entry. In fact, Lefort argues that the question of form is the concrete channel through which

“political power is circumscribed within society” and “acted out there” (Lefort, 1986, pp. 186–187), in accordance with “a specific mode of distinguishing between the real and the imaginary, the true and the false, the just and the unjust, the permissible and the forbidden, the normal and the pathological” (Lefort, 1988, p. 12). Taken in this broad theoretical sense, the form of society is thus not reducible to a system of institutions, functions, or empirical relations between individuals, but it entails the materialized invisibility of a conceptual order that creates principles of vision and division of the social world (Lefort, 1986, p. 198). The materialization of such an order suggests, on the one hand, that society is not a natural domain of interaction but a politically instituted form of coexistence, arranged through a “multiplicity of signs” that produce a “quasi-representation” of society’s mode of being (Lefort, 1988, p. 219). The invisibility of such an order, on the other hand, suggests that the political choices made between different possible worlds become semantically internalized in more or less “implicit conceptions of the relations between human beings and of their relations with the world” (Lefort, 1988, p. 12).

Drawing on these considerations, I propose to understand constituent moments as instances where the form of society is problematized, conceptualized, and actually produced; that is to say, moments where “the being of the social vanishes” and “presents itself in the shape of an endless series of questions” about the elements that define social life and the need for translating them into a legal order (Lefort, 1988, p. 228). Confronted with the experience of the contingency of norms and institutions, constituent actors have no option other than finding ways to generate a body of knowledge, reservoir of terms, and repertoire of practices that can sustain a sense of the unity of society. In this respect, the problem of giving society a form is shown to be inseparable from a reflection on the force of juridical concepts to establish conditions for the self-description and normative articulation of society, by bringing together heterogeneous elements, accommodating contradictory claims, and encoding living relations in an area of validity that orders experience and demarcates a space of possibilities as well as exclusions (Thévenot, 1984, pp. 11–15).

This does not mean that acts of constitutional creation operate as a communicative stylization of the political reality of society (discourses *on* the social), or simply as a juridical projection of objective social determinations (discourses *from* the social). It instead highlights the fact that constituent moments, understood as creative form-giving practices, are enacted through conceptual struggles about the legitimate definition of the social world (Bourdieu, 1987). For it is in the form of concepts, I would like to contend, that society reveals, as much as conceals, the historical-political conditions of its own human formation, the fact that “the subject of what is political in a society is society itself” (Thornhill, 2008, p. 169).

3 | THE FORCE OF CONCEPTS

My contention so far has been that the question of the form of society (i.e., its mode of being) is not an appendage to but a central drive of acts of constitutional creation. If so, the ways in which form is problematized and eventually brought into existence by concrete actors should be treated as an object of empirical observation. This entails at least two interrelated propositions.

The first proposition is that form must be understood as an exercise of tracing a specific distinction that, while it creates a space of objects, meanings, and possibilities of being, always leaves something unmarked, unobserved, and excluded. This arrangement is therefore unavoidably political. This is so in a double sense: first, because form is a means to exert power, inasmuch as the arbitrariness of its operative distinction is made invisible by the naturalized belief in its existence as an objective principle; and, second, because a form is almost by definition an object open to be contested, to the extent that the identity it enacts is founded upon the absence of an essential unity.

The second proposition is that the ambivalence of the question of form just mentioned may be explored through a reconsideration of the force of concepts. This stance supposes an inflection in the way we engage with conceptuality: from understanding concepts as cognitive resources that individuals may acquire, to seeing concepts as open fields of struggle and the political matter of which society is made.

These general ideas can be further unpacked and developed through a brief consideration of what Carl Schmitt once vaguely designated as the “sociology of concepts” (Schmitt, 2005, p. 44). In Chapter Three of *Political Theology* he

outlined a methodology for the study of juridical concepts that places itself in opposition to the Marxist and Weberian variations of the sociology of knowledge, and apart from traditional normative philosophies. Schmitt's view is that none of these approaches is appropriate for investigating the basic conceptual structure that dominates the organization of society in a given time, inasmuch as concepts are never regarded in their own right but as epiphenomena of something else: material determinations, individual consciousness, or transcendental meanings. The gist of Schmitt's proposal is to capture the structural interdependence between "the *metaphysical image* that an epoch forges of the world" and "what the world immediately understands to be appropriate as a *form* of its political organization" (Schmitt, 2005, p. 46; emphasis added). His argument is that this can be done only if we account for the emergence and operation of concepts in relation to a "style of political existence" (Schmitt, 2011, p. 119). This supposes, in the first place, acknowledging that in the absence of foundational values, modern society does not move away from metaphysics but reproduces it in novel forms via the exteriorization of images of itself (i.e., the people, the nation, humanity, and the like), which in turn create semantic connections between a variety of objects, temporalities, and practices. Rather than coherent unities of meaning, these connections show that concepts lack ontological meaning and should be seen as webs of heteronomous significations that shape the political form of society in conflicting ways.

Tailored to our discussion on constituent moments, Schmitt's methodological remarks invite us to advance the empirical study of concept formation in terms of conceptual fields (Schmitt, 2011, p. 119). This entails the exploration and reconstruction of the relational logic that constitutes every concept, rather than constructing a philological inventory of definitions for single words. It is very much an issue of mapping the systematic structure of the distinctions that concepts internally enact (e.g., friend/enemy, internal/external, right/wrong, legal/illegal, social/political, etc.), as well as the semantic connections they externally produce between a variety of societal domains by transferring and adapting meaning from one to another (e.g., theology to politics, economy to jurisprudence, and science to morality). As a consequence, if we accept the argument that constituent moments are entangled with the problem of how the form of society becomes an object of constitutional reflection and political intervention, then the sociological study of concepts, as suggested by Schmitt, offers a suitable path for exploring constituent moments as instances where the conceptual field of society is politically rearranged.

Overall, this stance on concepts presupposes that the form of society is forged in a subtle, fragmentary, and contradictory process of conceptualization, rather than being the result of single definitions. In order to pursue this path of exploration in the context of constituent moments we need to emphasize then that concepts are not inanimate abstractions printed in legal texts (e.g., Constitutions), the spectral property of institutions (e.g., the State) or the sudden creation of the gifted minds of individuals (e.g., lawyers). As Reinhart Koselleck reminds us, following Schmitt, concepts are constellations of apparently dispersed elements in society, crystallizations of the ways in which actors make sense of the world, and social relations are historically organized (Cordero, 2016, p. 62). From this perspective, the binding force of a concept—and the concrete work of conceptualization through which it unfolds in times of constitutional creation—lies less in the establishment of solid definitions than in its archival capacity to register social-historical experiences, as much as in its performative capacity to participate in shaping the direction of social-political transformations (Koselleck, 2004, pp. 85–86). In other words, to quote Koselleck again, such a force is grounded in the ability of a concept "to bind, stamp, or destroy [social] connections" (Koselleck, 2011, p. 17).

Seen in this light, the transformation of society into an object of constitutional reflection matters not because it reveals a piece of truth about the social world or because it suddenly changes the way the social world actually is. It matters because in it the concept of society registers the traces of our own conflictual relations to the world we live in and our efforts to shape its direction in concrete, durable forms. For the purposes of my general argument, observing these struggles is key to comprehending constituent moments as instances by which the workings of society become distilled and known, where its tensions are documented and expressed and its institutions are tested and contested. This formulation opens up the possibility of approaching constituent moments as ethnographic sites in which society encodes its immanent divisions and the alleged transcendence of its norms within a conceptual horizon that, once established, enables a number of things to be said, thought, related, and visualized, but also to be divided, excluded, destroyed, and even forgotten.

Situating ourselves in this critical threshold, I argue, is important not only for deconstructing the political myths that work as unquestioned facts, but also for comprehending the historical articulation and impurities of the conceptual economy that sustains and enacts those myths in the constitutional fabric of society.

4 | MAKING SOCIETY A CONSTITUTIONAL OBJECT

In what follows I put to work the understanding of constituent moments outlined in the two previous sections. For the sake of precision, it is important to say that I am not interested in using empirical cases as tests to probe how good a theory is, but rather to comprehend how the questions I am dealing with in relation to constituent moments (i.e. the form of society and the force of concepts) are themselves part of the object to be described, even if sometimes they are not considered to be relevant questions at all by the actors involved.

More specifically, in this section I draw on the paradigmatic case of the creation of Chile's 1980 Constitution in order to explore, in a descriptive fashion, the way in which society became a central object of constitutional reflection. Drafted by a Commission appointed by the Military Junta led by General Augusto Pinochet, this Constitution was discussed over a period of 5 years (1973–1978), approved in a sham plebiscite in 1980, and then ratified, with some amendments, months before the dictatorship ended in 1989. Since the return to democracy it has been an object of both worship and disdain, somehow constituting the lens through which democratic life is thought about, debated, practiced, and projected to this very day in Chile (Heiss, 2017). As a matter of fact, the student movement that put into question the post-transition neoliberal consensus in 2011 and the recent process of constitutional change initiated in 2016 have both been driven more or less explicitly by the same critical idea: breaking free from the model of society imprinted in the text of the 1980 Constitution in areas as sensitive as education, health, property rights, labor market, and family.

Although the idea of drafting a new Constitution was incubated in Chilean right-wing parties and elites long before the military coup d'état that deposed the democratically elected government of Salvador Allende, the revolutionary nature of the constitutional project unfolded only after the traumatic events of September 11, 1973. Two weeks after the coup, the new regime's project of "national reconstruction" was well on track. A few blocks from the ashes of La Moneda Palace, a room in the National Congress, now closed due to the dissolution of the legislature, was opened to host the first meeting of a small group of prominent legal scholars and politicians who had just been appointed to begin studying and drafting a new Constitution. The formation of a Constituent Commission was one of the first decisions of the Military Junta. It testifies not only to the Junta's early inclination to foster political legitimacy using legal means (Barros, 2003, p. 47), but, most importantly, to its quasi-messianic claim to embody the power to constitute a new democracy and revolutionize the structure of Chilean society as a whole (Cristi, 2000; Vergara, 1984). The mandate of the Constituent Commission was to offer the country an institutional order that could purify democratic life of its main vices and reconstruct the spiritual and material foundations of a broken society after the catastrophic collapse of the socialist dream and the alleged failure of liberal values and institutions. The Commission did not have a specific timetable or guidelines for conducting the assignment, besides the *Declaration of Principles of the Military Junta* and the shared catholic-conservative and anti-Marxist background of the appointees (Huneus, 2000).

Despite political uncertainty over the final constitutional design and the future return to democratic normality, the commissioners shared a fundamental constitutional intuition; namely, that the severe institutional breakdown had revealed a crisis in society whose deepest causes could not be treated by simply reforming the constitutional state in a conventional juridical manner: it also required a radical transformation of the concept of society as such. As an early policy statement of the Junta put it: "the new society will define its form in the new Constitution ... while [the Constitution] will teach citizens the new way to understand national coexistence" (Junta de Gobierno, 1974, p. 90). The juridical question of the organic structure of the state and the organization of public power was part and parcel of the official work of the Constituent Commission. However, what the historical situation actually demanded was the much more difficult, less visible work of reprogramming the conceptual economy of society in order to constitutionalize a new form of social life.

Although the members of the Constituent Commission never formulated this reflection on the form of society in any systematic manner, it is the running thread of 5 years of weekly deliberations. This work often appears in terms of an intellectual-normative struggle to debunk socialist ideas, as they were said to contain “a concept of man and society” that destroys human freedom, national values and the rule of law (Comisión Constituyente, 1983, Vol. I, p. 13). But it was also visualized as essential to a broader therapeutic endeavor to immunize society against its own political demise by exploring conceptual formulas to propel “the formation of a new national consciousness and a new mentality in future generations” (1983, Vol. I, p. 46). From this perspective, the challenge of the constituent process, as an invited guest to the Commission once pointed out, amounted to determining “the concept of social life” that should be at the basis of the new constitutional order (1983, Vol. I, p. 321).

The violent transit from a socialist democracy to the new military rule was seen by the commissioners as an unavoidable path to economic and moral progress. Within this context of justification, the process of constitutional writing was permeated by the idea that the fundamental conceptual structure of liberal democracy was no longer able to protect and hold society together. For it had not only been overtaken by the “excess of politicization” and nullified by “anachronistic institutions,” but also corrupted at its core by “foreign schemes” of thought (i.e., Marxism) that had infected the “cultural-historical identity” of Chilean society (1983, Vol. I, pp. 27, 100, 130, 491, 916). Then, the question of how to purify, retrieve, and reconstruct the “true meaning” of a number of basic concepts (1983, Vol. I, p. 102) became central for what the members of the Commission understood to be the political struggle for the “survival of society” (1983, Vol. I, p. 141).

Self-awareness of the novelty of the task was manifest during the first months of discussions, which mainly focused on the concepts and principles that should inspire the new Constitution. Not knowing where to start, the commissioners decided to write a “memorandum” containing a 12-page long diagnosis of the causes of the institutional breakdown and constitutional formulas intended to make the future democracy work. The memorandum, of course, had strategic purposes: to obtain the Junta’s endorsement and facilitate communications with government officials; to gain support from the legal community and scholars, as well as from civil society organizations; and to counter criticisms of the international community due to the regime’s lack of democratic credentials. But, above all, it was devised as a piece of constitutional pedagogy for citizens. The “didactic approach” that inspires this document is based on the commissioners’ strong belief that “the crisis that affects the nation is more about [civic] habits than [legal] provisions” (1983, Vol. I, pp. 8, 79, 100; Vol. V, p. 587). Consistent with this view, commissioners thought that the very act of making explicit the conceptual horizon of the new constitutional order could spark off awareness of the long-term effort: “to inculcate democracy in the consciousness of citizens in such terms that Marxism can no longer reappear” and “to give form to a social order that allows everyone to achieve their personal freedom and well-being” (1983, Vol. I, pp. 82, 797).

An essential part of this pedagogic-revolutionary aspiration to transform society’s mode of being was prefigured upon the idea of finding constitutional formulas to bridge the gap between the invisibility of citizens’ consciousness and the visible reality of social institutions. In the course of the long debates regarding the content of the said memorandum and the drafting of the articles, clauses and subsections of the Constitution, commissioners often returned to the same conclusion: that it was the actual work of concepts to bring the subjectivity of citizens and the objectivity of institutions closer together. More precisely, it is the implicit but determinant binding force that Jaime Guzmán, the youngest but intellectually most prominent member of the Constitutional Commission, passionately attributed to the “philosophical concept of society” that should be placed at the heart of the new constitutional order (1983, Vol. I, p. 77).

What is this basic concept of society and how does it work? The constitutional reflection of society staged at the center of the Constitutional Commission is at moments rather obscure and unclear, mixed with critical diagnoses of historical problems, political expectations on the future of democracy, and highly technical debates on the juridical function of institutions and the organization of power. And yet, the question of society reappears once and again around a number of disputes over the central aims of the constitutional order in the making. Crucially, it appears in relation to the problem of asserting the ontological priority of human beings and securing the functional autonomy of the social; the development of institutional devices to limit the influence of collective action and provoke a depoliticization of social relations; and the design of normative mechanisms to favor individual property as a principle of political freedom and market competition as a principle of social coordination.

5 | REPROGRAMING THE CONCEPTUAL ECONOMY OF SOCIETY

In order to understand the way in which society became an object of constitutional reflection and an object of political intervention it is important to consider the epistemological position from which the process of transformation of the conceptual economy of society unfolded. Interestingly enough, the work on concepts envisioned by the Constitutional Commission was paradoxically anti-intellectual and anti-constructivist (Cristi, 2015). It was anti-intellectual in the general sense that it was thought as a work that could not be drawn from “a theory crafted at a desk” or in an “academic debate”, but rather had to respond practically to the “situation of exception” and “the transformations taking place in the country”. More crucially, it was a work seen in stark opposition to the alleged influence of foreign theoretical schemes in Chilean society, being Marxism, the vilified epitome of theory and abstract thought (Comisión Constituyente, 1983, Vol. I, pp. 483–484, 520). The anti-constructivist stance, on the other hand, is more pronounced in the persistent criticisms directed towards the prevalence of liberal legal positivism, which is described as a framework able to craft norms with technical perfection but that was totally devoid of what some of the commissioners call, in a quasi-religious manner, “spirit” and “life” (1983, Vol. I, pp. 977–80; Vol. II, p. 5).

Under this epistemic umbrella, the so-called philosophical concept of society was thought as a means to give form to a space of meaning and normativity that enacted internally a number of distinctions that sought to restore value to what the socialist past had corrupted, and enable society to defend itself against everything that contradicted and threatened to destroy its form of life. More precisely, this was the actual work that “a concept of society that excludes the conception of society founded on class struggle” was expected to do in the new constitutional order (1983, Vol. VII, p. 927). But in order to produce this innovation, the philosophical concept also had to perform the role of articulating meaningful connections between a variety of societal domains in order to become a concrete device that oriented the style of political existence and the everyday conduct of both citizens and authorities.

The obvious question that then emerges, and that haunts the whole process of constitutional writing, is how to produce such a conception, where to place its limits and how to secure it as a normatively admissible and historically plausible notion. In other words, it is the question of how to constitutionalize something that was recognized to be beyond the constitution and that arguably exceeded the “juridical conception of the state”? How could they translate “the concepts that govern the life of society, [...] a style of life within society,” into binding constitutional forces? (1983, Vol. X, p. 924).

The hypothesis that I wish to propose is that, despite appearances, there was no single overarching concept of society in the entire process of constitution making. For even if the concept that the members of the Commission had in mind was forged in direct opposition to the Marxist concept of society (and its liberal alternative too), it is not possible to reduce it to a unique coherent principle. This is not because they did not believe strongly in the need for a coherent and organic conception of society anchored in Catholic values, but instead because the very experience of crisis and disintegration of Chilean society that they claimed to be responding to had made it practically impossible ever to recover such lost unity, despite all the constitutional rhetoric and political efforts that asserted the contrary. Almost every session of the Commission, if not every decision taken in the actual drafting of the articles of the Constitution, is imprinted with the idea of coming to terms with the structural causes of the societal rupture. Against this epochal threshold, the constitutional text was intended to “heal” the present as well as set the ground for a “tomorrow” (1983, Vol. V, 587).

Now, the absence of an overarching concept of society may be explained in practical terms as well. The Commission lacked a grand constitutional design and its work was divided by the persistent tension between, on the one hand, the demands of drafting the proposal of the whole Constitution and, on the other, helping to give legal form to the acts and decisions of the Military Junta (through ad hoc decrees, legal counseling and topic-based Constitutional Acts). The fragmentary nature of this work, although contentious on many occasions, was assumed by most of the commissioners to be part of the historical situation and their patriotic duty. As one of them forcibly argued, “if I were asked what is more important [for the Commission], I would respond that laying the bricks instead of having the blueprint.” Because, “[by helping the Junta to create] the new institutional structure, the Commission is producing something akin the plan of a great cathedral” (1983, Vol. V, p. 792).

The claim to make the Constitution like a cathedral, as metaphorical as it may sound, reveals the commissioners' concrete faith in the transcendental nature of the project; namely, giving a secularized form to the ideal of institutional and moral perfection of society. This great cathedral may be conceived as a single architectural space but its layout is a diverse assemblage of symbolic and material features. Consistent with the image, what we see in the actual process of constitutional writing, according to the available records, is not one concept of society but the slow articulation of at least three conceptual threads, which run in parallel, converge, and sometimes conflict with one another.

5.1 | A nationalist conception of society

The first thread is characterized by an understanding of social life as founded in the historical identity of the nation, which builds upon traditions, practices, and institutions rooted in the Hispanic Catholic heritage and its idiosyncrasies developed since Independence (Cristi & Ruiz, 1990). It is a socially cohesive, culturally homogeneous and functionally organic concept that served as a standard to measure the disintegrative forces of contemporary society and judge its destructive effects over bonds of solidarity, moral conduct, and public life. This conception underlies the very idea that the new Constitution must "affirm the permanent values of *Chilenidad*" and, therefore, "translate the deep feelings, forms of being and fundamental character of the Chilean people" (Comisión Constituyente, 1983, Vol. I, p. 97). Against this background, commissioners could not help but see themselves as giving life to "a document authentically Chilean, in the sense of not being inspired by foreign schemes" (1983, Vol. II, p. 91).

In this regard, the work of the Constituent Commission was not intended to produce a tabula rasa conception of society, as it were, but to retrieve the lost historical-cultural identity that the *Unidad Popular* had put into question. The nationalist conception of society was thus explicitly conceived as a way of responding to the moral crisis that had corroded the nation's soul and turned citizen's consciousness away from institutions: weakening traditional authority, polarizing everyday sociability, and fostering all kinds of incivilities and transgressions of the rule of law. The discourse on the social here asserted itself on a pedagogical model that conveys knowledge from the emotional remembrance of a supposedly unitary people, the political diagnosis of the dangers of demagoguery and moral disorder in all walks of social life, and the imagined construction of economic development as the real stage upon which the spiritual strength of society is tested.

But as commissioners progressed in their task, it became more apparent to them that the unitary identity could not be restored at all, as the historical society to which it appealed no longer existed. And even if they rhetorically insisted in calling on the nation's past and its permanent values throughout the constituent process as part of a gradual work of cultural and political re-education (1983, Vol. I, pp. 490–1), they were aware that these notions did not have enough binding force to sustain by themselves the constitutionalization of the future concept of society and make it work as a concrete reality. From the juridical point of view, "it is almost impossible to guarantee the correct functioning of the nation's fundamental institutions, because the moral behavior of people exceeds the juridical aspect" (1983, Vol. I, p. 109).

The emerging consensus then was that in order to "protect the life of society" along with "the rights of individuals" as "absolute values" (1983, Vol. III, p. 839), the elaboration of the concept of society needed a higher level of abstraction. In other words, it needed to be encoded as a moral horizon beyond the contingencies of social life and the oscillations of democratic politics. After all, national identity, even when considered essential and permanent, is a learnt historical reality that can be subject to contestation and transformation precisely because depends on individual's socialization, embodied practices and everyday affective attachments to rituals, symbols, and mores.

5.2 | A metaphysical conception of society

The second thread is characterized by the idea that society is built upon transcendental foundations that are independent of the human will, prior to political decision and beyond the positive juridical order. This conception was formulated against a totally immanent, radically secularized understanding of society. It does not reject modernity per se but rejects the liberal neutralization and the Marxist corrosion of the natural law foundations of social life.

For while Liberalism makes the organic unity of society disappears into the sum of individual interests and opinions, Marxism obliterates the natural rights and dignity of the individual under the amorphous call to the collective. Although commissioners considered the liberal conception of society to be somehow ethically superior to the socialist counterpart, their diagnosis was that liberal democratic institutions lacked the ontological determination to defend the “spiritual values” and “inalienable rights” that “emanate from human nature” (1983, Vol. I, p. 957; Vol. V, p. 106). Here would lie the seeds that led to a destructive “politicization of society”: namely, the colonization of a number of social forces and non-political organisms of society (i.e., guilds, universities, schools, unions, youth organizations, and even the family) by demagogic party politics, particularistic class-based interests, and excessive state interference. The critical issue with this intrusion is not only that the exercise and respect of fundamental rights (e.g., property, freedom, participation, and life) become relative to contingent political motives, but also that social relations turned into an unstable battlefield of political interests and normative choices.

The greatest challenge for the Constitutional Commission then became to find a way to constitutionalize a conception of society that created a strong division between the social and the political, and at the same time introduced a transcendental core that “could not be destroyed” by any “reform,” “plebiscite,” or “political majority” (1983, Vol. I, p. 1053). The role to produce this important conceptual transformation was assigned to the notion of the “common good” (1983, Vol. I, pp. 789–790). Conceived as a first principle of the new constitutional order, “the concept of common good defines in a nutshell a whole conception of society” (1983, Vol. I, p. 956). In words of its main advocate, Jaime Guzmán, the concept consists of “the group of social conditions that allow everyone and each one of the members of a community to achieve their full *spiritual* and *material* realization” (1983, Vol. I, p. 956, emphasis added), and which public power must secure and actively promote. The apparent vagueness of the term was not an obstacle for the commissioners but, on the contrary, a mark that the concept could do exactly the work it was asked to: to set the normative foundation of life in common in the authority of what is natural and independent of the jurisdiction of democracy and sovereignty (Cristi, 2014).

The ontological priority given to this concept of society is the axis of a number of constitutional dispositions that seek to “de-state the state” (e.g., defending the subsidiary role of the state and promoting private initiative) and depoliticize society (e.g., the reconfiguration of rights in accordance with individual choice and market principles) (Comisión Constituyente, 1983, Vol. I, p. 1045). Despite mounting concerns within the Constitutional Commission that the concept of the common good could “imbue the Constitution with a religious doctrine” (1983, Vol. I, p. 981), the view by Jaime Guzmán—to which the majority finally subscribed—was that, in the last instance, “it is not a question of religious faith” but of the political value of “human nature” (1983, Vol. I, p. 983; Vol. III, p. 130). Undoubtedly, there is a fundamental theological-political mutation that opens up here. Because faced with the problem of the institution of a new form of society, the tie between spirituality and materiality semantically forged by the concept of the common good is, after all, a call to faith. Yet it is a call that cannot remain in the space of pure transcendence; it must find a way to work immanently as a practical point of view that fosters standards of cognition and correctness in society. In fact, the common good is the transcendental image by which public order should organize itself and the constitutional bedrock that provides normative ammunition to restrict pluralism in mass media and art, naturalize traditional family and gender roles, promote docility to authority in schools and the workplace, and keep control of those whose existence is located on the borders of the social (the uneducated, the uncivilized, the immoral, and the poor).

5.3 | An economic conception of society

The third and last conceptual thread that emerges from the discussions of the Constitutional Commission is an economic conception of society. It appears as a conceptual response to postwar state-driven modernization and the idea of a state-centered society that this process allegedly brings about. Early on in their deliberations, members of the Commission reached the conclusion that the stability of democracy and the exercise of individual freedom were being eroded as a consequence of the cultural disempowerment of private initiative, the legal weakening of private property, and the political intervention of economic activity. The attempt to address all these issues in one stroke was perhaps the underlying motivation for the coinage of a new term: “economic democracy” (1983, Vol. I, p. 49). Even if the term

recurred in various forms throughout the constitutional debate, no one quite knew how to define it. What is certain, though, is that the term was not intended to convey democratic principles to the economic field but to transpose economic rationality into the political organization of society. In line with this view, two considerations stand as fundamental to the concept: first, that state action must be “economic” in the sense of restricted, efficient, and rationally oriented by “concepts provided by science and technology rather than political or partisan concepts” (1983, Vol. I, p. 16); and, second, that democratic life must be economic in the sense of being modeled upon the idea that “the right to private property is the foundation of all public liberties” (1983, Vol. I, pp. 6–7).

Within this general framework, commissioners soon realized that a new way of articulating the relations between state and society was emerging, one that could complement, if not directly translate, natural law principles (i.e., the common good) into a creative and effective institutional manner. They named it “public economic order” (Fernandois, 2000, p. 76). In simple terms, this is conceived as a group of legal dispositions that gives constitutional rank to the organization of economic relations as a defining attribute of public life and a source of freedom. This conceptual innovation matters not simply because it institutionalized a normative space previously absent in the Chilean Constitutional order, but because it configured an epistemic grid upon which actors and institutions would be able to reflect themselves in the future. This grid established the basic coordinates for a neoliberal understanding of social life in which economic knowledge defined the jurisdiction of state intervention as a subsidiary agent, while the natural functioning of market competition legislated on the validity of political decisions and the adequacy of mechanisms of popular representation. Thus put, the consideration of society in terms of a public economic order was a conceptual formula that promised to reinvigorate society by way of domesticating its democratic impulses and excesses. It was presented by one of the commissioners as follows: “This public economic order will not be achieved on the first constitutional attempt, but it is the first stone for having an economic democracy that responds to a democratic philosophy. [This concept] has enemies and the Constitution should try to take account of them” (Comisión Constituyente, 1983, Vol. II, p. 381).

Consistent with this view, the reach of such public economic order extended well beyond the liberal ideal of establishing strict boundaries for state action. For it was explicitly intended to promote the diffusion of property throughout society as a right and an ideal that everyone should aspire to; a goal that is set in direct opposition to the socialist distribution of property. In this manner, the concept of a public economic order aspired to reprogram the conceptual economy of institutions so as to trigger a crucial transformation in the structure and self-understanding of Chilean society; that is, the transition from a society of proletarians to a society of owners and consumers (1983, Vol. V, pp. 321–2).

The issue that constitution makers were unable to thematize at the time, but which the neoliberal economists working for the Military Junta already knew to be true, was that this metamorphosis could take place only beyond the text of the Constitution (Vergara, 1984, p. 226; see Fischer, 2009). For as long as the source of property was always materially limited and unequally distributed, faith in this new concept of society and social subject could stay the course only if market principles were expanded and mobilized as constitutional principles throughout the experience of social life as such. It is no mystery, then, why Chile became a laboratory of neoliberal experimentation. The radical policies implemented during the late 1970s and 1980s were nurtured and justified by an almost religious attachment to the rationality of economic knowledge to shaping institutions and practices, as well as to the natural force of markets to coordinate and regulate the form of social life in the name of freedom. And yet this experimental politics would not have been possible without the less visible work that stemmed from the constituent process; that is to say, without the conceptual work of rewriting the codes of the *nomos*, precisely in moments in which the constitutional fabric of society was dramatically put into question.

6 | EPILOGUE

In the context of contemporary debates on constituent moments, the story of the laboratory-like and undemocratic making of Chile's 1980 Constitution may certainly appear too exceptional and problematic in order to be taken as anything other than an example of what authoritarian regimes and elites can do when they hold all the means of power.

However, from my perspective what makes this moment constituent is the process by which the very concept of society was turned into a central object of constitutional reflection and a domain of political intervention. As I have argued, the question of the social is not a subordinate clause or an external object to the work of constitutional creation, but rather a driving force of the political experience of defining the form of society as a binding mode of coexistence.

The analytical traction of this conceptual-historical exploration comes from showing the frictions and relations of force that concepts activate in the process of constitutional creation, and therefore from engaging with the conceptuality therein produced as fields of struggle. Of course, concepts assert claims to identity but the work they do is powered by the uneven, heterogeneous and contingent quality of the histories they exert, the distinctions they enact, the relations they activate, the possibilities they disclose and the silences they produce. For this very reason, constituent moments can never be the place for the discovery of any mythical origin, but a place of political distillation of conceptual threads and “enduring vocabularies that both innocuously and tenaciously cling to people, places, and things” (Stoler, 2016, p. 20).

If we accept the now customary thesis that the 1980 Constitution constitutionalized, perhaps for the first time, a neoliberal concept of society, we must also accept and further understand the heterogeneity of this concept as part of a broader conceptual economy that succeeded not because its coherence but because of its capacity to accommodate contradictory normative, epistemological, and historical impulses. After all, neoliberalism has never been a homogeneous rationale or theory, but more like a call to faith that manifests, circulates, and embodies in a variety of social forms.

All in all, the conceptual threads reconstructed from the writing of the 1980 Constitution should be taken as entry points of critical inquiry and productive touchstones of political contest, instead of as fixed and coherent blocks of meaning. The point of this inquiry is not to declare concepts inadequate or simply false, but to work through their threads by untying the complicated knots that lawyers, politicians, historians, and economic elites have patiently tied. It is a simple gesture, but one that may prove relevant in contemporary struggles to expand the constitutional horizon of what is accepted as right and envisioned as possible in our society.

NOTE

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