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Judicialization and Citizens: Elites and Election Practices—Chile, 1860–1920

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Abstract

This paper examines the judicialization and election practices and their impact on Chilean citizens in the nineteenth century. It is established that the formation and maintenance of an archaic political-electoral system served for many decades the interests of an elite that kept the middle and lower classes excluded from political participation. The political culture of the elite, which was tied to fraud, corruption, bribery, and intimidation against the voters, was not transformed by the decorative political and electoral reforms. In that context, these forms of behavior were supported by the existence of a pseudo-democratic government that ruled with a complete indifference of the legal and constitutional standards and whose main victims were poor people and farmers frequently treated despotically. The lack of a “human rights culture,” meaning, the idea that all individuals have rights, as well as the absence of a genuine competition between parties to regulate the political power through equal and effective vote, showed, until around 1920, the fragile state of a political-electoral system controlled by the infights between important families that alternated their position in ruling.

Keywords: elite, citizens, judicialization, electoral practices, electoral fraud, Chile, 1860–1920

1. Introduction

In the last decades, Latin America has been affected by continuous allegations of corruption. Comparing the present to the predominance of the Republican spirit and practices in the past has quickly emerged in the everyday talk among citizens in every country. This preoccupation about the danger and the significance of the corruption has also become a relevant topic in Chile, a country that since the nineteenth century has been regarded by the international community thanks to its institutional seriousness and devotion to the Republican righteousness.

In the Chilean notion, there still exists a kind of acceptance that Chile was, for a long time, exceptional within the Latin-American context. The official historiography transmitted the idea that the political life elapsed peacefully and along their respective institutional lines [1]. Likewise, the belief in the victory of liberal ideas in the construction of a solid national state is emphasized¹. The most complicated thing

¹The myth of an exceptional Chile is an image born in the second half of the nineteenth century with liberal historiographers and reinforced in the twentieth century with the assumption that this long and stable institutional liberal structure was only disturbed by the coup d'état that overthrew Salvador Allende in 1973.

about these analyses, however, hinged upon the omission of the civil society's reactions and the political actors in respect to their nature and citizenship ([2], p. 16).

However, for some time now, mainly because of the renewal of political historiography, historiographers are doubting the truthfulness and interpretation that those images present ([3], pp. 404–405). A set of violent events (uprisings, riots, revolutions, strikes, slaughters), as well as a scarcely democratic character of the political life that excluded most of the voter communities, has caused the appearance of articles and books that analyze topics regarding the elite's power, the private violence, and the civic life, among others [4].

To this historiographical preoccupation, in the present time, the citizenry concerns are added. After Pinochet's dictatorship, citizens have anxiously watched how the neoliberal transformations that have made the country grow and progress have negatively impacted the political life and its relations. Beyond the democratic electoral competition and the alternation of the power between right-wing and center-left-wing parties, the return to democracy has been difficult because of the repeated cases of corruption among politicians that have appeared before the Courts of Justice. The theme of political corruption and bribery and, of course, the relationship between economy and politics have rocked the public opinion that sees how the democracy is being chipped away because of limitless ambition and the need to win an election at all costs.

In this context, studying the judicialization of politics from a historical perspective proves to be relevant in understanding how the Democratic and Republican lives that the country built in the past are now in danger if they continue through the same route. The recurrent cases of judicialization that occurred since the return to democracy in the 1990s have tended to show attitudes that quarrel with ethics, as well as to expose the scarce respect for the electoral regulations. To this, the lack of efficient controls for its compliance is added.

This was not always the reality. While there were cases of corruption, in the nineteenth and the majority of the twentieth centuries, institutions such as the Council of State and the election court played a key role in controlling and solving those behaviors that called into question the validity of a developing democracy. The article centers its attention precisely in the past and analyzes the endeavor of those judicial institutions in the elections.

A way to delve into these topics is to analyze the political practices and, specially, the electoral fraud as a problem that directly affects the civic political life ([5], pp. 234–235). By means of what is called the judicialization of politics that has been a field of study mainly for political scientists, sociologists, and jurists, we can approach the political culture and see the real nature of the governments of this period, the political behavior of the powerful elite, and the reactions of an emergent citizenry ([6], pp. 14–15).

The period between 1850 and 1930 was chosen for this analysis because, in that time, Chile started a modernization process driven by the liberal government that, aside from prompting urbanization politics and the moralization of the population, incentivized the transformation of the political system by, for example, expanding the suffrage and stimulating the financial and economical free trade. It is also a time in which an elite that refuses to die still maintained its privileges, as well as corresponding to a strong period of struggle by other social classes (middle and lower) that burst forth asking for participation in the public life, something they would achieve in the second decade of the twentieth century ([7], p. 126). Ultimately, a synchronous analysis allows us to step closer to history and backward from myths, as well as the study of the Chilean liberal institutionalism and, hence, to how the political culture of the Chilean people was in the past.

Delving deeper in the topic of judicialization of the politics, certainly in the conceptions of the liberal theory and especially in what was pointed out by Montesquieu in the eighteenth century, justice should be a third power to help avoid tyranny and the despotism of the powerful [8]. Establishing a judicial power independent from the other two, executive and legislative, would contribute to the liberal and Republican formation. Each power would understand what their areas of would be and, in the case of the judicial power, would come into being specifically to not be involved in the dilemmas and the subjects within the political world ([6], p. 21).

Going to the Courts of Law to solve problems derived from the political activity has been a recurrent reality in the history of western democracies, especially in the present day ([9], p. 30). The mistrust in the system and the criticism leveled to practices in opposition to the rules and ethics have been reported by both the political actors involved and an organized civil society. Government authorities, members of political parties, political leaders, warlords, and chieftains, inter alia, have been under the spotlight of a vigilant citizenry that questions the ways and practices of their actions in the political life. This mistrust has been the main motive that has encouraged the people to seek refuge and protection in the Court of Law ([6], p. 23).

In the case of Latin-American countries, all of them established in their first constitutions such ideas: the ideal Republican blindly trusted in virtue and honesty. Nevertheless, the fraud and corruption practices within the system led this third power to participate in political dilemmas. Thus, and paraphrasing Noretto, the term judicialization refers to the general phenomenon by virtue of which the social and political practices of various natures take the tribunal form. This means that the conflicts that normally were resolved “by custom, trust or deference are progressively led to judicial instances for their resolution.” The same happened with “the activities belonging to the political sphere or system, such as party life, electoral competition, public debate, legislation and government.” However,

the judicialization consist in the passage from the normal to the norm, this is, from the customary rules of resolution of social conflicts to normative and judiciable guidelines ([10], p. 96)

2. The contexts of the political judicialization

The Chilean political history of the nineteenth century (and the twentieth century) was marked by the obsession of the political elite by means of fear and order. These not only constitute the cultural matrix of the Chilean elite’s political actions, but it also contributed to limiting the development and consolidation of a full democracy. Although the fear and the order were habitual practices in the wide spectrum of the rural world at the time of the Spanish colony, it was with the foundation of the national state in the nineteenth century that this matrix reached its maximum refinement. Laws and discipline strategies for the population were promoted in order to consolidate the development of the new state, which quickly aligned in economic matters with the worldwide free trade in vogue at that moment and with the doctrinaire ideas of liberalism [11].

In macro terms, the life of the Chilean elite in the nineteenth century—with a common social culture and many of its members related through family ties—resulted in the constant struggle between liberals and conservatives: the first, supporters of the principles of the liberalism spread by the French Revolution, freedom, equality, and fraternity and, the latter, believers of “God, the fatherland, and the nation.” In other words, there are two ways of seeing the world that

prompted tensions and conflicts in the society of the time, tensions that, according to Sabato, put into discussion the “liberties of the moderns,” meaning the idea of a republic without restriction and, on the other hand, the “liberties of the ancients,” which was related to the maintenance of the old corporatist structures of the colonial times and the conceptions of a society of notables that firmly believed in the “honor, wealth, and prestige” as foundation of the political life [12]. However, this tension was nothing more than an inter-elite conflict.

The ideas of this inter-elite (conservatism or liberalism) that suffered were first put into doubt with the irruption of radicalized political parties that demanded their incorporation into the system. For them, it wasn't fear or order, but their inclusion in politics. One of the groups that set a precedent in the 1840s was led by Francisco Bilbao and was called the Society of Equality, a group of utopic socialists that was composed mainly of artisans and liberal elite youth: Benjamín Vicuña Mackenna, José Antonio Alemparte Vial, Federico Errazuriz Zañartu, and Santiago Arcos. The objective of the group was to end the old conservative regime and guarantee civic liberties. By replicating the revolutionary barricades of Paris in Santiago, Bilbao kept the Chilean elite in check, which came together (liberal and conservatives) to fight against the Society of Equality and, in the end, imprison and banish its leaders ([13], pp. 14–15).

The political impact of the advent of the Society of Equality, especially the fear that the barricades in the streets of the capital brought, changed the liberal discourse: from the second half of the nineteenth century, the idea of liberty was still present but restricted and controlled, just like what happened with the enactment of the print law that ordered a censor to monitor all writings and articles to prevent any threats against the established order. Meanwhile, the idea of equality was definitely eradicated. From then on, the elite's political discourse was nourished by two concepts: order (that came from the conservative world) and progress, this second one being in alignment with the image of the European development that the elites wanted to replicate in the country, discarding with this the originality of the culture and its local identity. Thus, along the country, in every province or commune, the so-called Progress Clubs multiplied, consolidating an order that was still far away from democracy.

On the other hand, the political life of the liberals showed contradictions (and tensions) between the discourse and political practices. Thus, the liberty, equality, and fraternity discourse, as the fathers of the liberalism conceived it, encountered a reality that consisted of cities full of the poor and scarcely paid illiterates, while in the countryside, a countryman population was kept captive and submissive by the landowners. In this situation, democracy was impossible: civil rights existed, yes, but constrained, political rights too, but only a few could hold the political positions of popular representation, and in the case of equality, it was just an incredibly remote idea. With this political logic, the idea of order (that came from the conservative world) and progress (that the liberals advocated for) joined with the psychological factor of fear, leading them to join (the so-called liberal-conservative fusion) to defend again, and as a consolidated group, the privileges and political power.

Fear certainly was a psychological and maybe an unfounded phenomenon, but in politics it sometimes can become so real that it ends up translating into threats to the group's survival and hegemony. That was what the elite saw in the nineteenth century. As Correa Sutil points out:

the Chilean elite from the 19th century, forced by the historical circumstances, transforms in the second half of the 20th century into the right wing, since it's the first time they have to compete in the political life against social antagonistic forces, which had become the left wing, that challenged its control of wealth, power and social consideration, until then undisputed ([14], p. 9).

The first threat appeared from the emergence of the Radical Party in the second half of the nineteenth century, a conglomerate consisting of liberals disappointed of the union with the conservatives and mainly of individuals that came from an incipient middle class—mostly professionals and bureaucrats—taught in the Universidad de Chile [15]. From then on, the radical marked the way to the political fight against the liberal conservatism that refused, on one hand, to grant the citizenship to the middle and poor classes and, on the other hand, attacked the continuation of stately behaviors inherited from the colonial era that, according to them, prevented the genuine social, economic, and political progress of a citizenry integrated mainly of countryman and illiterates. The Radical Party, conformed by a central committee that operated in the capital, Santiago, and along the country, with provincial and district committees, shook the archaic structures of the Chilean political life that was dominated by the conflicts of the elitist families and the power of the landowners in the rural zones that removed or designated local authorities at their whim.

The political changes and specifically the emergence of the radicals can be explained by the changes happening in Chile and the world. Surrounded by a growing modernization process, Chile started a scarce industrial development with a group of factories. It certainly wasn't an industrial revolution like the European or North American, but the few factories established in the important cities like Santiago and Concepción by Chilean and foreign businessmen represented a growth in the urban population, as well as a slow development that translated into stonework and street lighting, transforming their rural look, although without entirely changing their customs and social habits that were still bounded to the countryside. In fact, the 1930 census, for example, kept showing that more than the 50.6% of Chile was still rural [16].

This scarce modernization managed to significantly change the colonial physiognomy of those cities, but it couldn't radically transform the archaic structures and ways of the political life. These old ways of the Chilean politics were related to the existence of a society of notables that, since the colonial era, maintained the political order [17]. After the establishment of electoral systems and the pursuit of the suffrage in the nineteenth century, the old elite families fortified the old practices that were prone to the reproduction of the social power, using strategies and mechanisms such as marriages of convenience and promoting political nepotism, cronyism, and patronage. Municipalities, base of the local power, and the congress witnessed the actions of the group that not only hoarded the political power but also used its influence and wealth to increase its lands and to take ownership of mining sites and forests, among other things. Until the first decades of the twentieth century, at which point the predominance of the notables end, the Congress presented a face that showed, euphemistically speaking, a big family where parents, uncles, brothers, and cousins discussed the future of the country. In this reality, the democratic ideal in Chile still remained far-off ([18], p. 157).

A second threat to the liberal-conservative elite came from the lower classes that were historically excluded from the political life, and their culture was rejected for an elite that saw them as a class composed of ignorant, idle, lazy, and drunk people [19]. Living in the outskirts of the estate and “eradicated” in the cities, these classes were marginalized because of their ethnic background and poverty [20]. According to this, stately elite, natives, half-breed, and poor white people did not deserve to be treated as “decent and good,” qualities that were up to them to designate, since they were honorable, honest, and reasonable. Even though those ideas were fought by radicals and progressive liberals, the prejudice and the stereotype prevailed. The color of their skin was reason enough to be discriminated [21].

The official historiography keeps denying the possibility that the people had political ambitions, seeing them as subjects “carried” in those important historical milestones such as the Independency in 1810, the inter-elite civil wars during the

nineteenth century (1829, 1851, 1859, and 1891), and the military conflicts with Peru and Bolivia in 1836 and 1879. These days, the new political history has demonstrated that the lower classes—aside from the artisans that voted as free people with self-supporting activities—were the architects of the political acts, knowledge, and maturation. In the current political historiography, the idea of rational inability, incomprehension, and political ignorance of these people in the nineteenth century proves to be unsustainable. Demystifying helps to better understand the idea of the rational participation of the lower classes in the events of the past; admittedly, in Chile there were no popular heroes, nor presidents like the Mexican Benito Juárez, but that does not mean that the people were absent in intellectual and political terms [22].

With the economic transformation of the second half of the eighteenth century, where the industrial capitalism and the Pacific War provided the country with vast resources, the lower classes put pressure to be included in the political life [23]. A way to do so was the social mobilization in the big cities and in the mining communities where, by means of marches, walks, and strikes, the workers complained about their economical and life conditions, holding the governments of those times in check. In the mining north, the work days were frequently interrupted by the ideologization of the conflict that, in this way, started to tear down the conformity of a mutualism that was still based on the idea of supportive and Christian aid. From then on, the *mancomunalismo*, a new form of workers' organization, strongly influenced by the socialist and anarchist ideas coming from Europe, was what elevated the workers' fight to a political organization level and convinced that the social changes could only be achieved by changing and participating in politics [4].

While this was happening in the cities and mining communities, in the rural zones, the countrymen and their families were still under the landowners' control, which combined traditional submission practices, such as paternalism and authoritarianism, that tended to neutralize any possible interest in politics ([24], pp. 107–108). This explains why the old tenancy system, born in the Colonial era, namely, a modern form of slavery of countrymen in the central zone of Chile, remained untouched until the agrarian reform promoted by Salvador Allende in 1970.

In 1924, workers obtained social and labor rights, like the establishment of employment contracts, Sundays as day off, child labor regulations, and health, disabilities, and occupational accident insurances that warranted a pension, among others. This effectively represented the social rights' acknowledgment. However, the fight for political rights was still pending. In 1874, with the electoral reform that expanded the number of votes, the elite benefited the most, because they were part of the so-called Major Taxpayers Board, groups formed by landowners and big merchants that chose the voters in each parish church. Thus, they obtained social and civil rights, but politicians were still far away.

3. Judicialization and citizenship

The judicialization of politics was related to the fragility and the deficiencies of an archaic political system, scarcely democratic and still dominated and controlled by notables. In this context, it is obvious that, from the second half of the nineteenth century, two different viewpoints about political practices amalgamated, especially those referring to elections. Fraud, corruption, and the use of politics as an instrument of electoral intervention was seen, among many other practices, as something natural and normal by the elites and the traditional political parties. From the implementation of the liberal election system at the beginning of the nineteenth century, which forced elite families to pursue the votes they needed to win and maintain their dominance, corruption and bribery were recurrent in the

Chilean society [25]. However, from the second half of the nineteenth century, a new way of conceiving the political activity started to emerge: from then on, fraud was seen not only as a crime but also as an anomaly of a system tailored for the elites; with this and the persistent radicals and lower classes opposition, citizens' reports in the press and the Courts of Law appeared after every suffrage. Essentially, the practice of complaining and reporting to the Courts of Law focused on the request of annulment of the elections that were considered questionable in ways and ends. Thus, the electors of the control, stolen ballot boxes, the appearance of votes that did not match with the total amount of voters, the handing over of votes already marked to "slave" voters, and the direct involvement of local authorities at the service of the big landowners' families during the electoral events were part of the plethora of citizens' complaints before the legal institutions [26].

The protest before the law about political matters was not a practice founded in the nineteenth century with the establishment of the liberal elections. In the colonial era, the possibility to complain at the first instance before the colonial councils for the electoral transparency was already established. Certainly, those elections only concerned the elite, but they were as close as those of the liberal era: achieving a position in the old colonial councils granted prestige and honor to the families, as well as serving to economic purposes, since they were the ones who finally decided on issues related to local prices, rates, and taxes ([27], pp. 105–107).

Another colonial institution that revised the electoral conflicts was the Real Audiencia (Royal Audience). This was the main colonial judicial institution that attended the claims of the wealthy neighbors ([28], pp. 60–70). According to Muñoz, since it was far from the Metropolis, Spain, the Real Audiencia not only fulfilled its usual responsibilities to achieving justice, but the judges also acted as counselors for the governor-general. With this and with an extralegal "golden aura" of prestige and influence, "the hearers were almost always the closest natural counselors of the governor, in such way that it can also be said that there was no matter of any importance that had not been known or 'talked' with the Audiencia ... or with the hearers in particular" ([29]: p. 217).

In the era of the liberal state, the practice of complaints remained. Theoretically speaking, liberalism established the separation of power, and in the case of the judicial power, it was supposed to be independent from the executive and legislative powers, as well as grant justice for the citizens. In reality, however, this did not happen as it was conceived by the enlightened philosophers because, in the case of Chile, the local courts kept receiving complaints from the neighbors for fraud and patronage practices at the services of family factions. In 1824, for example, citizen Manuel Araos filed a political persecution complaint in the Court of Santiago against the judges Juan Vial and Gabriel José de Tocornal. In the opinion of Araos, his life would be in danger if he fell into the hands of these judges, devoid of neutrality, equanimity, and honor, because they were tied to the conservative party and declared publicly that the causes of any liberal will end if they fell into their hands. He concluded by saying:

*Here is the most proper portrait of the evil magistrate! Here it is illustrated the vilest corruption of the justice administration in Chile! [...] He ended up asking to find out the "terrible odiousness and if it was true that said odiousness is kept for all men who claim to be from the liberal party, that it is said are hungry dogs, hawks and other degrading epithets, and if I belong to the liberal party."*²

The bias and venality of judges, as well as the pressure experimented by the political system at the hands of the middle and lower classes demanding inclusion and to

² Acts that Mr. Manuel Araos continues against Juan Vial and other for political enmity. 1824, Archivo Nacional, Fondo Judicial de Santiago. Civic. Leg. 63, piece 5, lbs. 1–3

be recognized as citizens, explain the growing political importance that from 1860 on, the State Council starts to have for the resolution of electoral conflicts an institution that accomplished the “advisory, governmental, and judicial” labors ([30]: p. 17). Fundamentally, until well into the nineteenth century, the institution was responsible for political issues related to electoral conflicts and the cases that demanded the impeachment of the authorities to be civilly tried. Other responsibilities of the council were to decide the granting of pardons, to approve the municipal ordinances, and to authorize the bills that were sent to the National Congress for discussion.

The council was a state body that served the interests of the Chilean elite. Its development as an electoral institution proves to be paradoxical and counterproductive in the history of civic struggle to democratize the country. Conformed by members of the elite with different occupations—judges, soldiers, ministers, pastors, intendants, and municipal mayors ([31]: p. 188)—it was supposed to look out for the transparency in the political-electoral acts, working as an Electoral Court that resolved the conflicts of the different factions of the families.³ Thus, in fact, its existence was conceived to ensure the continuation of a political system bias toward the notables. Just in 1925, during the first middle class government of the president Arturo Alessandri Palma, a real Election Control Board was formed to serve all Chilean people. Until then, the requirements to be considered a citizen-elector remained excluding for many Chilean locals.

In fact, according to the 1833 Constitution (that lasted until 1925 and that established the restricted and based on a census suffrage), those married men over 21 and single men over 25, that knew how to read and write, and that had the pecuniary requirements of a “real state” property, assets, an industry or a job that were proportional to the honor of being a citizen-elector were considered “active” citizen with the right to vote. Because of this, those who had some “physical or moral deficiency, domestic servants, tax debtors and prisoners” were left out ([31]: p. 174). Also, a transitory article clarified that the requirement of reading and writing would only come into force in 1840, a situation that allowed the elite to expand the electoral register with illiterate people who, with the vote already marked with the name of the candidate, were taken to the voting sites. With the electoral transformation of the 1970s that gave control and organization to the so-called Major Taxpayers Board, that is to say, to the landowners and urban notables, corruption and citizen distrust increased. In fact, when the pecuniary requirements were lowered, the process of electoral registration was easier for a greater number of voters, thereby expanding the electoral body; but this did not necessarily meant a turn or a step toward the democratization of the country, as Valenzuela argues ([32], pp. 101–102). The fact that there was electoral competition toward the end of the nineteenth century was an important aspect in the political evolution of Chile, but this did not necessarily mean paving a path toward democracy since a great number of citizens remained excluded from being able to vote, due to the continuation of practices that were at odds with democracy and, above all, because the elections were still in the elite’s hands ([33], pp. 72–74).

It is clear, then, that the State Council served indistinctly to the dominant political class, whether they were liberals or conservatives, and, although it received criticism for its actions, they were rather decorative without actually trying to change or transform the institution. The truth is that, toward the ends of the nineteenth century, the council emerged as a kind of fourth power that, in electoral matter, threatened the freedom to choose. For example, Abdón Cifuentes, conservative senator, referred to it as:

³The Election Control Board was a late creation in Chile. Arturo Alessandri Palma’s government created the Election Control Board under the Law Decree number 542, on September 23, 1925.

a hybrid body that lives off the attributions that it steals and of the blood that sucks from the other powers, which it crushes, when they do not serve as a screen or a shackle. Like those monstrous deities of fable, that had the head of a man, the wings of a bird, the hooves of a beast; the State Council has been among us a hermaphrodite body, which participates of the nature and of the attributions of all public powers ([34], pp. 480–481) (Table 1).

In the period between 1860 and 1910, the State Council received 33 claims that requested the nullity of the elections. The motives were varied: fraudulent preparation of the lists of voters, corruption, bribery, threats and intimidations, use of force, and marked votes, among others. Most of the requests were concentrated in the central-northern area of the country (8 in the north and 20 in the center). It corresponded to the fight of radicals and progressive liberal individuals who fought against the electoral management of the great rural chiefs in places like Lontué, Chillán, San Fernando, Cauquenes, and Linares, denouncing the countryman submission and the intimidation of the voters through the police and civic guard. In the case of the north, the petitions particularly referred to mining sites that traditionally complicated the ruling elite of Santiago since the beginning of the republic. The criticism to the centralism imposed from Santiago was directed toward the abandonment of the regions, an aspect that originated two civil wars, one in 1851 and the other in 1859. Regarding the requests of the southern towns of Puerto Montt and Ancud, they specifically referred to the electoral intervention of the executive power. The south, unlike the other two areas, was still not fully incorporated in the national electoral reality, since it was still seen as a peripheral area, isolated and scarcely populated.

Some cases serve to exemplify the judicialization of politics in the hands of the State Council. The first deals with fraud by forgery of the list of the major taxpayers for the legislative elections in the mining town of Petorca. In practice, the people who organized and decided the conformation of the electoral roll won the elections. From then, therefore, it was strategic to negotiate the names of those who would form part of the Major Taxpayers Board. In this context, the anger of the citizen Pedro Montt (who, years later, would be president of the Republic) is explained. He asked the State Council to, “in the exercise of the popular action,” impeach the titular and alternate governor (Alberto Luco Lynch and Pascual Torres, respectively) to submit them to the civil courts and explain how and why they favored the conservative side with a greater number of people qualified to vote, going above the regulation and the practice of conversing and negotiating the number of voters. This conflict also unveiled the clientelist practices of the conservatives that, in the eagerness to win elections no matter what, had dismissed the legitimate mayor and put a fellow member in order to conform the list of taxpayers; with this, it is denounced that “the first mayor had erased most of the liberal taxpayers.”⁴

	North	Center	South
1860–1869	1	9	2
1870–1879	1	9	
1880–1889	6	1	3
1890–1899			
1900–1909		1	

Source: *Cases of Election Nullity of the National Archive, Council of State Fund. 1860–1909.*

Table 1.
Claims for nullity of elections before the Council of State, 1860–1899.

⁴Fraud for falsification of list of major contributors. Petorca, March 24, 1885, Archivo Nacional, Fondo Consejo de Estado, Vol. 56, lbs., 172–177

A second example that allows us to see the actions of the State Council as a political court is related to the nullity of elections in the agricultural town of Lontué. The fraud referred, again, to the procedures used by the municipality in the appointment of the election qualifying boards. Within said practices, it was an accepted behavior to add to the lists individuals that did not meet the requirements established by law in that voters were those citizens that paid taxes, were of legal age, and had never been in jail. However, in spite of this, the opposite happened in Lontué because “there were many poor people, condemned to forced labor in the urban prison, and minors.” Along with this, corruption, bribery, and threats were common themes practiced by the political parties. Thus, it was common practice to visit the voters to secure the votes the days prior to the elections, and:

to those that they could not seduce with flattery and authority services, they intimidated them assuring that they will be persistently and grimly persecuted, keeping them away from their homes and imprison them in the public jail if they did not vote for the government or, at least, abstained from voting in favor of the opposition.⁵

Another case that shows the electoral culture is related to the political machine and the voters' intimidation. Using the public force, nepotism, and clientelism was part of the electoral mechanism of the elites. Thus, to conquer, the members of the candidate's family, friends, and paid thugs traveled to every city and countryside to pressure the voters. On the election day, those “oppressed” voters went out of their houses escorted by “the mayor, the civic battalion's mayor sergeant, and local sub-delegates” until they reached the voting sites, where “an infantry picket circulated the table and another from the cavalry placed on the right flank, both, as in war, perfectly armed with enough ammunition. All the civil and military servants were there and with their attitude and discourse inspired terror in the voters.” This scene tended to repeat itself in every town:

A wall of soldiers divided the town from the voting site and, through this mechanism, some non-registered citizens voted following the official lists, using external qualifications, and also voted some people excluded from doing so, in spite of the claims of the opposition's representatives⁶.

4. To conclude: an interpretation of the judicialization

In theoretical terms of what the meaning of liberalism is, taking politics to the Courts of Justice may be considered an inadequate way to resolve the conflict. There is no doubt that it should be observed as abnormal if we stick to the liberal principals of the no intervention of courts in political issues. The electoral problems and conflicts are supposed to be resolved by their own institutions. In the past, in the absence of the electoral courts or an electoral commission, the State Council helped resolve and stop the possible cases of corruption. Imbued in the Republican spirit and practices, citizens blindly believed in the virtue of those who should resolve the conflicts arising from the electoral disputes. The cases studied here show the citizens' preoccupation to prevent fraud. This was a permanent concern resulting from a way of feeling and practicing the political life on the basis of fulfilling the Republican principles of virtue and probity.

⁵ Appeal for annulment filed by Mr. Pascual Meneses against Nacagua's subdelegate. June 22, 1875, in the Archivo Nacional, Fondo Consejo de Estado, Vol. 41, lb. 20–25

⁶ Mr. Luis Urzúa's record about the nullity of the Lontué's municipal election. Talca. Archivo Nacional, Fondo Consejo de Estado, Vol. 110, lbs. 297–322

The judicialization of politics in the nineteenth century and the beginning of the twentieth century responds to the changing contexts of a peripheral country. Far away, in the end of the world, the ideas of liberalism were strongly introduced, adapting to the surrounding historical reality, which means the presence of an elite of landowners that made the country a place dominated by the conservatism. The electoral judicialization happened mainly in the areas they believed were possible to lose in the hands of the new social and political forces that emerged during those years. The cases of judicialization were won by this conservative elite, keeping the local citizens waiting for an opportunity.

The political judicialization in Chile is also explained by the fragility of a political system that is scarcely democratic and where, moreover, the presence of a system of separation of powers and a culture of rights still did not exist in the era studied. This way, what can be observed—beyond the liberal signs—are authoritarian and archaic governments in disguise that clung to not disappear, in spite of the changing historical contexts that were transitioning to the so-called liberal modernity that has as basic principle to establish the granting of rights and the citizens' participation. It is clear that, even though the country was moving forward on the economic front, as a result of the revenue from the Pacific War, the social and political aspects at the end of the nineteenth century were still far away from being truly democratic.

The system's fragility was shown in the tensions arising from the ideology of an elite that monopolized the political activity and whose members, simultaneously, considered themselves as natural guardians of that order. This world and political view also explain why the lower classes were excluded from the formal political life for so long, as well as the persecution of the ideas that diverged from the liberal elite's propaganda. Riots, mutinies, and strikes marked the historicity of the struggles of those classes before the stereotyped rejection and depreciation from the elite that considered itself morally and intellectually superior. Repression, protected by the use of law, characterized the authoritarian and semi-democratic governments of the era, which mostly cared for the order and the establishment of a social and population control system.

The judicialization is also explained by the elitist nature of the elections. At the beginning of the twentieth century, the writings of the Democratic Party Leader, Luis Emilio Recabarren, and those from workers' press reported a great dissatisfaction with the authoritarian character of these governments, once elected. Following what was stated by Prezworski, once the elites gained power through pseudo-democratic electoral mechanisms, the authorities tended to completely forget the legal and constitutional standards that were supposed to regulate the exercise of political power. Thus, in the Chilean case, the main victims of such system were the population integrated of, mostly, poor people and countrymen that were treated despotically, especially in the rural areas ([35], pp. 61–89).

It is also added to that time, particularly from the cultural point of view, that it was difficult to find the presence of a "culture of rights," that is to say, an existing social acceptance of the principle that individuals have rights, as studied by Tate ([36], pp. 20–30). Certainly, laws and formal declarations of rights existed, such as the individual guarantees, but this did not prevent despotism from the chieftains' and elite's governments to happen. Just in the middle of the twentieth century, thanks to the pressure exerted by the lower classes, organized by the left-wing parties (communist and socialist), "support structures" for the legal and social mobilization rise, which demanded the legislation of public policies.

In Chile that time, the idea of party competition and regular assignment of the political power through equal and effective votes from all the adult population could not have existed. In fact, Karen Remmer showed in her study that, approximately until 1920, a competition system between political parties for the power did not exist and what rather prevailed was a fight between families' sides

that alternated the power. Independently from the rise of the Radical Party and its modern structure formed by committees, the governments—meaning, the power itself—continued to have the same owner: a notables' elite that, because of their family's fortune, participated in the political life with a traditional viewpoint [37].

Conversely, the judicialization of politics was the denial of the possibility to have a democracy. Samuel Valenzuela's thesis about the impact of the suffrage expansion in 1874 and the participation of the lower classes in the elections as precedent and as a step forward toward the future democracy is questionable in the current historiography. This is because, while it is true that it was an opening measure, it was ultimately a clever maneuver that prevented working-class riots and disorder. However, toward 1920, these groups' wish was unstoppable [38]. To this we should add that the victory of the conservatives in the State Council was the victory of a patronage political machine. Judges related to the landowner families, the nepotism and the patronage were fundamental in maintaining their localities controlled. There is no doubt that a major study, maybe prosopographical of the State Council and the junction of the information with the patronage, could show us the interweave between justice and politics.

One last thought about the electoral corruption in the past is concerning the preoccupation of the Chilean political historiographers for these issues. This responds to the concerns about the current meaning of citizenship. So, it is about looking for explanations and clues about the past to understand the present of a citizenry still limited by the social inequality and harassment on the part of the elites in power. A study based on the collection of empirical data would mostly help to those ends, especially to demystify the ideas that have been left "marked by fire" in Chilean historiography.

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