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Playing by Pinochet's Rules: Legal and Constitutional Impediments to Progressive Immigration Reform in Chile

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Playing by Pinochet's Rules: Legal and Constitutional Impediments to Progressive

Immigration Reform in Chile

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Abstract

This thesis explores the political context of Chile's current immigration laws and policies, tracing changes through the dictatorship of the late 20th century, the transition to democracy in 1991, and up through the current administration. Using the backdrop of the Venezuelan migrant crisis, focus is given to specific stipulations of current policies and the impact they have on arriving migrants. A comparison with neighboring Argentina highlights key differences in policy reactions and is used to argue that a new constitution is needed in Chile in order to effectively respond to the arrival of over 250,000 Venezuelan migrants. Lastly, consideration is given to the current protests in Chile and how a constitutional referendum, planned for April 2020, represents a unique opportunity for Chile to amend its immigration policies. This thesis argues that Chile's 1980 Constitution and the reigning immigration policy, Decree Law 1.094 of 1975, are inherently authoritarian and antiquated pieces of legislation that prevent sensible and human rights-based immigration reform in Chile.

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Note regarding translations: quotes taken from sources in Spanish are translated in the body of the text and the original Spanish is provided in the footnotes.

Introduction

South America is currently facing the largest migration crisis in the Western Hemisphere in recorded history and it is not likely to stop in the near future. Following economic collapse, political corruption, and widespread food and medicine shortages, over 5 million people have fled Venezuela in search of better lives. Mostly travelling southeast through the continent, many individuals and families have settled, albeit temporarily, in Colombia, Peru, Argentina, and Chile. As any significant refugee flow is basically unprecedented in the region, these countries have implemented different policies and attitudes in an attempt to respond to the constant arrival of Venezuelans. The varied reactions and lack of a regional consensus come as a result of the disparate historical contexts and political realities of South America, their past experiences with immigration, and their historical development.

In the case of Chile, one of South America's richest countries, Venezuelan migrants have been met with restrictive policies and complex processes for procuring regularized status. Recent legislation has made it harder for migrants to obtain necessary visas to enter and work in the country, requiring Venezuelans to apply at the Chilean embassy in Caracas where they are subject to month long waiting periods amid the bureaucratic collapse. Migrants have also experienced deportation and harassment by border and immigration officials as well as a growing anti-immigrant attitude among the population. These factors have pushed many Venezuelans into unregularized and precarious situations.

The origins of Chile's restrictive policy and the inability of progressive democratic governments to change this reality, can be found in the country's history of military dictatorship.

From 1973 to 1990, General Augusto Pinochet and an armed forces junta supported by the United States ruled Chile by decree, routinely violating human rights and espousing neoliberal economic policies. Among the lasting impacts of this authoritarian period are two important pieces of legislation: a constitution and an immigration law. In tandem, these documents prescribe an extremely restrictive and security-oriented immigration framework in Chile, defining migrants as potential threats and proposing criminal penalties for those with irregular status, among many other things. Further, the highly contentious 1980 Constitution ensures the continuity of Pinochet's policies to this day and has defanged subsequent administrations following the country's transition to democracy.

The illiberal and authoritarian essence of Chile's 1980 Constitution and the inordinately restrictive elements of Pinochet's 1975 immigration Law 1.094 represent fundamental obstacles that prevent robust and progressive immigration reform in Chile.

Theoretical Framework

Tracing contemporary policy through political development is vital in exploring Chile's reaction to transnational migration, a multifaceted and often politicized phenomenon. It is helpful to adhere to one framework of scholarship in order to explore how the arrival of migrants impacts sovereign countries (in this case, Chile) and how these countries respond to the arrival of non-citizens. Stephen Castles is one of the foremost scholars on contemporary migration, specifically focusing on the economic and political dimensions of population movements in the 20th and 21st centuries. His 2009 book *The Age of Migration* provides a clear and precise

framework for the many dimensions of this subject, from regional policy accords to methods of control and security, and maintains a global and progressive point of view throughout.

This thesis focuses more on migration policies and attitudes in Chile than the “push” factors that cause migrants to leave their countries of origin and the patterns that their movements follow. While attention is given to the collapse of Venezuela and reasonings behind the mass exodus, a general summary of the political and economic conditions is given rather than a theoretical analysis of migrant decision-making processes. Therefore, it is more pertinent to summarize research and theories about the structures that migrants face when they arrive in a country of destination, and how and why those structures are formed. Castles and his co writers explore this aspect in chapters eight and nine of his book, respectively titled “The State and International Migration: The Quest for Control” and “Migration and Security”. Here, the author explores various ways in which a state can try to control migration, whether they follow restrictive (i.e. limiting the amount of migrants that can legally enter the country and impose sanctions on irregular migration) or expansive (i.e. allow more legal entries and regularization programs for those who lack status) political policy goals. Castles identifies and explains...

Key components of governmental strategies designed to better regulate immigration flows... including employer sanctions enforcement, legalization or amnesty programmes, temporary foreign-worker admissions programmes, asylum and refugee policies, regional integration approaches, and measures against human smuggling and trafficking. (Castles 181)

Each of these stated methods of control can be found in the immigration policies of Chile and serve as important keystones for identifying the core of the country’s stance on migration.

Due to the large amount of Venezuelan migrants fleeing across the Western Hemisphere in recent years, the most relevant methods of control have been legalization programs and work visa schemes. Legalization and amnesty refer to programs that offer irregular migrants (those lacking official authorization or with lapsed status in their country of residence) a pathway to regularize their status and even eventually gain citizenship. Oftentimes such programs include providing proof of employment, language capabilities, back payment of taxes, or a clean criminal record. Many progressive scholars laud these programs, noting that “legalized aliens generally experience improvements in their overall socio-economic and employment prospects” as well as increased ability to access safe housing, medical care, and education (Castles 186). In the context of large-scale migration movements, such as the one Latin America is currently facing, offering arrivals an opportunity to regularize their status and access key social services could be a factor that prevents the establishment of refugee camps, disadvantaged minorities, and an increase of crime in countries of destination.

Lastly, Castles offers some useful information about the impact of immigration policy on minority formation and migrant incorporation into society. He argues that the historical immigration background of a nation has a strong impact on its present policies. Under this framework, Chile qualifies as a “classical immigration country” in which policies during the colonial and early independence period “encouraged family reunion and permanent settlement and treated most legal immigrants as future citizens” (Castles 250). In the case of Chile, a majority of the population in the 18th and 19th centuries was formed by European migration, mostly from Italy and Germany, in addition to the colonial vestiges from Spain. According to Castles, the origin of classical immigration countries has resulted in policy and attitudes

prioritizing regular and controlled migration with the goal of permanent residence and eventual citizenship, rather than temporary admittances and short term protections.

The way in which a government, whether federal or municipal, engages with migrants is vital to their ease of incorporation into society and ability to access social services: “cultural and political interaction is negotiated around complex processes of inclusion and exclusion, and of cultural transference” (Castles 258). Generally speaking, if policy is aimed at easing the transition of migrants into the host country’s society, these migrants tend to experience far better economic gains, humanitarian conditions, and harmony with native populations. These policies - that may include housing vouchers, inclusion in local politics, mobilization of civil society groups, access to education, among many others - represent the overall paradigm of restriction or expansion in migration law just as much as residency policies and visa schemes do.

Developments During Dictatorship

The history of Chile was fundamentally altered on September 11, 1973 when the armed forces deposed socialist President Salvador Allende in a C.I.A. backed coup d'etat. The military established an authoritarian dictatorship, led by General Augusto Pinochet, that ruthlessly persecuted its ideological rivals from 1973 until 1990, executing over 3,000 civilians and torturing an estimated 10,000 (Comisión Nacional de Verdad y Reconciliación). Strongly influenced by Milton Friedman and “Chicago School” economics, Pinochet and his advisors worked to enshrine neoliberalism in the legal foundations of Chile. Companies that had been nationalized under Allende were sold to the highest bidder, social welfare programs and poverty

reduction policies were slashed, and Friedman's laissez-faire economic model reigned supreme, free from government regulation and oversight (Letelier).

The Chilean Constitution of 1980, passed by a civilian plebiscite considered to be fraudulent by the international community, allowed the dictatorship to ensure the continuity of its political ideology and supremacy of the right wing even after the return to democracy in 1990. While recent administrations have been able to eliminate some of the most anti-democratic elements of the constitution, it is still the governing document of the country and strongly impacts any and all policy put forth by the legislature. Provisions of the constitution have made it nearly impossible for presidents, federal judges, and members of congress from both sides of the political spectrum to replace Pinochet's 1975 Decree Law No. 1.094. This law is the core of Chile's immigration policy and creates large institutional obstacles to the entrance, regularization, and integration of immigrants into Chile.

These two important pieces of legislation adopted under an authoritarian dictatorship, the 1980 Constitution and 1975 Immigration Law, as well as the inability of Chilean governments to overturn them after the return to civilian rule, are critical to understanding the contemporary immigration policy of the Chilean state and its reaction to the arrival of large numbers of Venezuelan migrants.

The 1980 Constitution and Entrenched Authoritarianism

Chile's current constitution was ratified on March 11, 1981 and became effective upon the return to civilian democratic rule nine years later on March 11, 1990 (Constitute Project). By

the late 1970's General Pinochet and his government junta were facing mounting international criticism and accusations of human rights violations, and the dictatorship began drafting a new constitution to institutionalize its power and present the façade of domestic legitimization. A plebiscite in October 1980 gave citizens the option to vote for or against the proposed constitution, and the "Sí" option won with 67 percent of the vote, delivering Pinochet a victory that "became the cornerstone of the government's claim to legitimacy" (Angell 32). However, the process of the plebiscite was heavily tipped in favor of the dictatorship and the "Sí" vote: opposition campaigns were outlawed, international bodies were not allowed to observe, there were wide reports of voter fraud, and blank ballots counted for the "Sí" option (Bascuñán 199, Angell 32). Consequently, the Constitution was approved and paved the path for the future of Chilean politics.

The document of the constitution itself clearly entrenches the ideology and supremacy of the military dictatorship in almost every aspect of procedural government. In his book *Democracy After Pinochet: Politics, Parties and Elections in Chile*, Professor Alan Angell, the emeritus chair of Latin American studies at Oxford University, describes what he calls the "Pinochet Factor" in the Chilean Constitution:

The core of the Pinochet [Constitution] was the creation of an institutional and constitutional structure to embody Pinochet's ideas, values and policies. The constitution of 1980 embodies his ideas of a state with a limited role, but with authoritarian controls over democratic processes. (Angell 142)

The Pinochet Factor was manifested in many undemocratic "enclaves" of the constitution that solidify the power of the military in the future of Chilean democracy. For example, the new

congress would include nine senators nominated by the armed forces and a National Security Council made up of military and police officials with advisory rights to the president, and it prevented the president from removing the head of the armed forces. Most notably, the constitution protected itself from reform by a future leftist government through the designated senators, a proportionally biased electoral system that favored the right wing, and the prerequisite of supermajorities to overturn certain laws and constitutional provisions. These protected “*leyes de amarre*” (binding laws) prevented the government of the first democratically elected president Patricio Aylwin from, among other things, prosecuting military personnel for human rights violations, expanding social security programs, and amending Pinochet’s 1975 Immigration Law (Angell 142-4).

Decree Law 1.094 of 1975 and the National Security Doctrine

The military junta spent the first five years of the dictatorship unravelling the leftist policies of Salvador Allende and replacing them with neoliberal economic plans and authoritarian executive policies. While the University of Chicago-trained economists worked to shrink state involvement and allow for uninterrupted free-trade capitalism, the dictatorship asserted its absolute control over social and political matters. In 1975 the junta adopted Decree Law 1.094 concerning Immigration, a law that remains in effect to this day. This law reveals import influencing factors of the Pinochet regime, and its elements can be clearly seen in the present policies governing the response to the Venezuelan refugee crisis.

Decree Law 1.094 created a restrictive immigration framework that sought to limit the number of arrivals into the country and strengthen border protection. This in and of itself is somewhat unexpected due to the fact that scholarship on the politics of immigration has tended to show dictatorships adopting more permissive policies. In the journal article *The Politics of Immigration: Dictatorship, Development, and Defense*, Dr. Nikola Mirilovic summarizes the common argument that the demand for migrant workers tends to be high in countries with an authoritarian regime type and argues that the influx of these workers lowers wage costs and expands the taxpayer base, increasing the profits of the business elite and the authoritarian state alike. Further, this demand is usually higher than in countries with democratic regime types because “dictatorships are less likely than democracies to treat access to entitlements as a noncitizen’s right... [and] can deny immigrants access to the welfare state” (Mirilovic 274-5).

The Pinochet regime’s legislation ran contrary to this theory for two reasons. During most of the 20th century, Chile did not experience any significant waves of labor-based migration because its economy was at the very early stages of development and was not a premier destination for South American workers. The second reason is based in a critical ideology of Law 1.094 and the dictatorship in general.

Chile’s dictatorship and post-dictatorship immigration policy was framed in the context of the National Security Doctrine (NSD). This Cold War-era ideology was exported from the United States to the military dictatorships of Latin America and taught of the danger of an “internal enemy” that usually took the shape of a communist guerilla. Following this doctrine, the dictatorships of Argentina, Chile, Uruguay, and many other Latin American countries shifted their military and policing attention from external threats to the domestic surveillance and

persecution of leftist ideology. María Fernanda Stang, a professor at Chile's Universidad Católica Silva Henríquez who has published dozens of investigations on international migration in the Southern Cone, traces the NSD ideology through Pinochet's 1975 Law 1.094:

The [law] safeguarded the territorial border as an area through which "agitators" could enter that could threaten the internal order [in Chile] — the territorial border became an ideological frontier... within the idea of all-out war that guided the NSD, the enemy was both internal and external. (Stang 87)¹

The main goal of Law 1.094 was to stop the entry of any person ideologically opposed to the Pinochet regime and continue the persecution of the state's "enemies," whether it be at the border or in the cities.

The restrictive nature of the law and the influence of the NSD can be seen in its articles and stipulations, a majority of which remain in function to this day. Article 15 specifies types of immigrants prohibited from entry into Chile, namely "those who propose or propagate, through written or spoken word or any other means, doctrines and ideologies that seek to alter or destroy the social order or government system of the country" (Decreto Ley No. 1.094 3)². This designation further specifies union members, political activists, academics in the social sciences, and those without "good moral behavior" as ineligible for entry, residence, or visa status in Chile. Article 15 goes on to prohibit the entry of any person with criminal antecedents (no matter the severity) and those who "cannot practice their profession" and would thus "constitute a

¹ ... [la ley] resguarda de la frontera territorial como espacio por el que podían ingresar "agitadores" que podían amenazar este orden interno [en Chile] —la frontera territorial hecha frontera ideológica... [en] la idea de la guerra total que guiaba la DSN, el enemigo era interno y externo a la vez.

² Los que propaguen o fomenten de palabra o por escrito o por cualquier otro medio, doctrinas que tiendan a destruir o alterar por la violencia, el orden social del país o su sistema de gobierno.

public charge to the Chilean state” (Decreto Ley No. 1.094 3)³. This designation, along with accompanying requirements to prove income or gainful employment, follows the neoliberal logic of the elimination of the welfare state, and can be seen in many current visa requirements for Venezuelan refugees.

Another component of the law that remains startlingly relevant in the current situation is the absolute executive authority regarding deportation. Article 2 grants the federal executive (the military junta at the time of ratification) the authority to prohibit entry and deport any individual or group “for reasons or interests of national security” with complete discretion (Decreto Ley No. 1.094 1)⁴. Lastly, Law 1.094 allocates increased funding to border security measures and authorizes the armed forces, the police (Carabineros), and the PDI (Chile’s federal investigative force) to enact border control. Law 1.094 is one of the oldest immigration policies still enforced in South America and has provided a framework for one of the most restrictive responses to the influx of migrants seen throughout the region.

Democracy and the Challenges of Reform

Another milestone in Chilean history was reached on October 5, 1988 when Chilean voters rejected Pinochet in a plebiscite regarding the future of governance in the country. The 1980 Constitution provided a framework for a return to democratic rule and the 1988 plebiscite gave Chileans the option between eight more years of Pinochet (this time serving as an elected

³ Los que no puedan ejercer profesión u oficio... [y] constituir carga social [al estado Chileno].

⁴ por razones de interés o seguridad nacionales.

president) or the establishment of parliamentary elections and a full return to civilian rule. A strong opposition campaign and growing discontent with the dictatorship's impunity contributed to the "No" option winning with nearly 56 percent of the vote. Many international factors, such as the end of the Cold War and the adoption of a human rights paradigm into U.S. and global foreign policy, led the military junta to respect the results of the plebiscite, and on March 11, 1990, Patricio Aylwin was sworn in as the first democratically elected president in over 16 years (Angell 32-3).

The presidential election of 1989 represented a victory for the broad coalition of center left parties called the *concertación* that won a slight majority in both chambers of the congress. Nevertheless, "the left was hit badly by the electoral system and the representation of [leftist] parties in congress [was] lower than it would have been on the traditional electoral system," giving the *concertación* a congressional majority but not nearly enough to reform the *leyes de amarre* or the constitution itself, which required a two-thirds vote in both houses (Angell 48-49). Parties on the center and far right did not have any political motivation to change a system rigged in their favor, and many still stayed loyal to Pinochet, who remained as the commander in chief of the armed forces. Although the dictatorship was no longer running the show in Chile, the entrenched authoritarianism of the constitution functioned as planned and ensured the continuity of neoliberal economics and an immigration policy dictated by the National Security Doctrine.

Patricio Aylwin and the subsequent center-left governments of Eduardo Frei, Ricardo Lagos, and Michelle Bachelet claimed modest successes in reforming some of the authoritarian enclaves of the constitution and proposing more humanitarian laws. The first significant set of amendments to the constitution came in 2005 under the administration of Ricardo Lagos.

Although the leftist coalition still lacked a supermajority, an erosion of *pinochetismo* and military loyalty among the center-right parties allowed for a compromise to eliminate some of the most anti-democratic elements of the constitution. The agreement eliminated the designated senators, reduced the influence of the national security council, increased the number of deputies in the lower chamber of congress, and allowed the president to dismiss the commander in chief of the army (Fuentes 100). Additional advances made by these administrations included investigative truth-seeking reports about human rights violations committed by the dictatorship and an increased equilibrium of power with the armed forces. Despite the advances made in constitutional reforms, the supermajority requirement and weak political will left Law 1.094 untouched and in full effect.

Immigration Projects and Policy: 1993 - 2013

The model of immigration policy in Chile has shifted in the last three decades throughout various democratically elected political administrations, but it has remained tethered to the framework of Law 1.094.

Many factors, including the implementation of a more moderate version of neoliberal economics, led to a boom in Chile's development beginning in the early 1990's. The expanding middle class and high regional wages increased the demand for foreign imports, and many international companies began investing in the country (French-Davis). This steady economic growth, stronger than in many other countries in the region, naturally made Chile a popular

destination for South American migrant workers looking for better opportunities. The subsequent boom in the immigrant population was significant:

After 1992 the foreign-born population grew by over one third and by 2002 Chile had the largest absolute number of foreign-born ever recorded... [and] by 2009 this population almost doubled again, growing 91% in seven years. (Doña-Reveco, “Policy and Development” 5)

This expansive growth resulted in a foreign-born population of over 300,000 in 2009, about 2 percent of Chile’s total population. For a relatively small country, such a large percentage change of arriving migrants in less than two decades yielded a demographic shift and calls for appropriate policy reaction. Political alternation has trended towards the center-left and center-right since Chile’s return to democracy, but the five subsequent administrations have taken differing approaches in responding to the new age of migration and tackling the fundamental obstacle of Law 1.094.

The first attempt at modernizing Chile’s immigration framework was introduced by President Patricio Aylwin in 1993. *Proyecto de Ley Sobre Migraciones No. 2.891* recognized that Law 1.094 “not prepared to respond to the growing challenges Chile will face in relation to the movement of people” and instead proposed “a framework of rules, processes, practices, decisions, and bureaucratic routines” to regularize immigration (Stang 91)⁵. Due to the constitution’s majority requirements, Aylwin’s law was soundly rejected by senators from the Renovación Nacional and Unión Demócrata Independiente parties (center-right and far-right,

⁵ No se encontraba preparada para responder a los crecientes desafíos que Chile enfrentaría en relación con la movilidad de las personas... un entramado de reglas, procedimientos, prácticas, decisiones, en fin, rutinas burocráticas.

respectively) and eventually shelved in 1997. However, the attempt to shift Chile's immigration paradigm away from the restrictive NSD and towards a regulated and bureaucratic system served as a template for more robust proposals that followed.

Socialist President Michelle Bachelet claimed the biggest victory in reforming Chile's immigration policy in 2008 with the *Instructivo Presidencial No. 9*. Albeit not a formal law, this set of directives injected the philosophy of human rights into the visa, refugee, and social policies in Chile. According to Cristián Doña-Reveco, a scholar of Southern Cone migration at the University of Nebraska, the biggest contribution of this "proto-document" was the guarantee "to provide equal access in the public system to health, education, housing and crime protection" regardless of the legal status of a migrant (Doña-Reveco, "Policy and Development" 6). In addition, Bachelet reaffirmed Chile's commitment to an important international accord from the United Nations: the 1951 *Convention Relating to the Status of Refugees*. Based on the reasoning that "Chile needed to repay a debt of solidarity to the rest of the world for having received the half million exiles of Pinochet's dictatorship," the government increased the number of refugees it would accept for resettlement within Chile and further expanded their social rights (Levinson). These advances marked a strong step towards a more expansive and accepting immigration paradigm in Chile, but the fact that they were executive directives and can easily be overturned has in part contributed to the precarity that migrants and refugees entering the country face today.

The last notable effort to deliver comprehensive immigration reform before the start of the Venezuelan migrant crisis came from current president Sebastián Piñera during his first term in office. The first right-wing President to be elected since the return to democracy, Piñera proposed *Proyecto de Ley de Migración y Extranjería No. 8.970* in 2013. This law included

some of the human rights-oriented aspects of the *Instructivo Presidencial No. 9* but was a decidedly more conservative piece of legislation. Primarily concerned with the economic facet of migration, *Ley 8.970* was a response to “pressures from specific business sectors, namely those dedicated to the export of agricultural products, due to their need for temporary and cheap labor for unskilled work” (Stang 97)⁶.

This proposal would have created new and specific visa categories for temporary workers while maintaining limited pathways to permanent residency and citizenship. Stephen Castles refers to this policy approach as a “guest worker” paradigm and highlights the state’s desire to reduce the number of migrants with irregular status and reap the benefits of their labor without integrating them into society in the long term (Castles 188). Though it was never passed in the congress, this policy project saw the return of a desire for restriction and control regarding immigration and set the stage for the logic of current proposals.

The Venezuelan Migrant Crisis

Repeated failed attempts to significantly reform the constitution and replace Law 1.094 has left the Chilean immigration framework woefully underprepared for the country’s largest influx of foreign migrants in its history: those fleeing political and economic chaos in Venezuela. The unprecedented outflow of migrants from Venezuela has tested the hospitality of almost every nation in South America and, especially in the case of Chile, highlighted flaws in immigration and border policies. When Law 1.094 was unilaterally implemented by the dictatorship in 1975,

⁶ la presión de ciertos sectores empresariales, concretamente el dedicado a la exportación de productos agrícolas, por la necesidad de mano de obra temporal y más barata para labores no calificadas.

a mass migration as large in scale as the Venezuelan crisis would have been practically inconceivable, and thus the 45 year old law prevents any pragmatic approach that reflects the values and interests of a modern and democratic Chile. The institutional barriers that have kept Law 1.094 intact despite years of attempted reform have also contributed to what Doña-Reveco calls a “policy of no policy” of immigration in which progressive and adaptive initiatives are defanged by an intrinsically conservative core law. Lastly, the ability of migrants (especially Venezuelans) to integrate and flourish within the Chilean society and economy has been significantly hampered by the lack of a concise federal policy.

Background: The Collapse of Venezuela and Push Factors

The origins of what has been called one of Latin America’s worst humanitarian crises and its resulting ramifications can be found in the 1999 election of Hugo Chávez and the mandate of his successor, Nicolás Maduro, beginning in 2002. Chávez developed a uniquely Venezuelan concept of democratic socialism called *Bolivarianism* to advocate for expanded social services to the people and increased Latin American cooperation while rejecting capitalist inequality and U.S. imperialism in the economic sphere. Chávez, and later Maduro, used Venezuela’s vast oil profits to fund social initiatives and invest in the development projects of those who shared his vision for the country.

The downturn and eventual collapse of Venezuela can be traced through the following 15 or so years in political and economic terms. In the realm of political culture, the populist tendencies of Chávez became increasingly authoritarian in tone and in framing himself as “what

it is to be Venezuelan, opposition to Chávez became opposition to Venezuela itself” (Swaminathan). Crackdowns on the opposition became worse after the death of Chávez in 2002, and the regime of current President Nicolás Maduro is widely classified as authoritarian by the international community. According to the Freedom House *Freedom in the World* report from 2018:

Venezuela’s democratic institutions have deteriorated since 1999, but conditions have grown sharply worse in recent years due to a concentration of power in the executive and harsher crackdowns on the opposition... government corruption is pervasive, and law enforcement has proven unable to halt violent crime. The authorities have restricted civil liberties and prosecuted perceived opponents without regard for due process. (Freedom House)

Repression of the opposition has caused many Venezuelans to lose their faith in the Bolivarian project of Chávez, and Maduro has proved incapable of replicating the populist galvanization of his predecessor or garnering any substantial public support. Many spectators attribute the continued survival of the regime to the support of the armed forces as well as China and Russia (Gedan 63).

During the last two decades, Venezuela has undergone a sharp economic decline that, paired with political instability, has pushed millions of people to leave the country. Chávez’s use of profits from the state-owned oil reserves brought about entrenched corruption and when oil yields began to slow, so did the economy at large. The total amount of oil produced in Venezuela fell by more than 30 percent between 2015 and 2018, and accelerated by a global fall in oil prices and the fact that “a sizeable portion of Venezuela’s oil exports is shipped to creditors to

repay loans, generating no income whatsoever," the economy has gone into a tailspin (Gedan 58). In 2018 alone, the economy contracted over seven percent, inflation surpassed 1,000 percent, and GDP fell dramatically (Gedan 57). This has had immediate and tangible impacts on the Venezuelan people: high unemployment and a plummeting currency have made vital imports, such as food and medicine, impossibly expensive. According to in-country reports, "10 million Venezuelans now eat one or two meals per day... [and] 85 percent of medicines [are] unavailable, including antibiotics and painkillers" (Gedan 58). Millions of people are at risk of starvation and those seeking medical care often face life-threatening infections.

The exodus from Venezuela started in the early 2000s with those ideologically opposed to *Bolivarianism* (mostly business owners and the capitalist elite) and has since expanded to represent a cross section of all social echelons as the economy and rule of law have collapsed. According to the United Nations Refugee Agency, as of 2019 over four million Venezuelans have fled the country and "globally, Venezuelans are one of the single largest population groups displaced from their country" (United Nations). The biggest group of migrants, about 1.3 million, can be found in neighboring Colombia, followed by Peru with over 800,000, and Chile with approximately 288,000 (United Nations). The arrival of such a significant number of migrants is unprecedented in Latin American countries and has presented a myriad of political, social, and economic challenges.

Venezuelan Migrants in Chile: Pull Factors and Demographics

Of the estimated four million Venezuelans who have fled their country in the last five or so years, roughly 10 percent have made their way to Chile. Despite the geographical distance from Venezuela, Chile's appealing "pull" factors have influenced the decisions of many Venezuelans to come to the country. Compared to the current economic and political turmoil in Venezuela, Chile is quite stable. According to Freedom House, "Chile is a stable democracy that has experienced a significant expansion of political rights and civil liberties since the return of civilian rule" and democratic tenets such as due process and a plurality of political ideas are commonplace (Freedom House). In addition, many Venezuelans distrustful of the left-wing populism of Chávez and Maduro support the more centrist political spectrum in Chile, especially the center-right administration of Sebastián Piñera (Guzman). The World Bank has classified Chile as Latin America's fastest growing economy and praised the 25 percent reduction of poverty since 2000 as well as policies to protect against fluctuations in the global price of copper, the country's main export (World Bank). These political and economic characteristics have made Chile an attractive destination for many migrants seeking opportunity and stability.

Beginning in 2012, Chile began to experience a gradual uptick in visa applications from Venezuelan citizens and by 2015 the rate was skyrocketing. In a six year span, Chile saw an 11,000 percent increase in visa applications from Venezuelans, from 1,249 in 2012 to 145,449 in 2018 (Departamento de Extranjería y Migración). This statistic fails to capture the entire scope of the influx as there was an estimated population of 288,000 Venezuelans in the country as of 2018, leaving a difference of well over 150,000 people in situations of irregular or lapsed status. Of these arrivals, about 40 percent are ages 18-45, 53 percent are male, and 71 percent reside in the Santiago metropolitan area (Departamento de Extranjería y Migración). The relatively young

and urban demographic of Venezuelan migrants is representative of the fact that many are well-educated professionals sending money back to their families. These funds, known as remittances, totalled over 150 million USD in 2017 and are expected to rise in proportion to the Venezuelan population in Chile (International Organization for Migration).

Another important factor in the type of migrants arriving to Chile is geography: Santiago is more than 4,500 miles (7,300 kilometers) from Caracas, and the journey is neither cheap nor easy. According to the president of the Migration Policy Institute, Andrew Selee:

Geography dictates that [Chile] attracts wealthier Venezuelans... a very well-educated group, [while] the most vulnerable populations, the most sick or who have malnutrition, are not going to be able to travel the distance... they're likelier to end up in Colombia or Peru. (Guzman 6)

Despite the professional qualifications of many of the Venezuelan migrants arriving in Chile, they face immense difficulties in finding relevant employment or even securing a regularized status that allows them to work. After making the long and arduous journey to Chile in hopes of safety and stability, Venezuelans are met with an increasingly obsolete immigration framework that pushes many into vulnerable positions and curtails their human rights and economic potential.

State Reactions and the *Nueva Ley de Migraciones*

Since the first arrivals of Venezuelan migrants, the Chilean state's response to the crisis has focused on amending, rather than replacing, Law 1.094 and the executive policies adopted

over the past two decades. In the case of the 2018 *Nueva Ley de Migraciones*, specific policy reactions to the arrival of hundreds of thousands of migrants do little more than modernize the existing restrictive systems in place. At its core, this proposal is less of a law and much more of a cosmetic overhaul of visa classifications that nonetheless jeopardizes the fate of many Venezuelans. Moreover, the paradigm of the *Nueva Ley* appears to be a curious mix of progressive rhetoric and elements of the restrictive philosophy of Law 1.094. Currently, this law is under discussion by the Chilean congress and many of its stipulations are in effect through executive decree. The specifics of this law, many of which uniquely apply to Venezuelan migrants, represent a continuation of the decades old status quo in Chile's immigration policy and fail to incorporate necessary human rights considerations.

The *Nueva Ley* (officially called *Reforma Migratoria y Política Nacional de Migraciones y Extranjería*) was introduced during center-right president Sebastián Piñera's second non-consecutive term in office which began in 2018. The proposal of the law is centered around "secure, well-organized and regulated" migration to combat precariousness in the labor and housing markets, human trafficking, and abuse of the existing immigration system (Ministerio del Interior 1)⁷. The text of the proposal begins with an obvious, albeit important, recognition of the urgency of the immigration situation in Chile. After summarizing statistics of migrant arrivals (over 1 million in 2017) as well as percentages of the population at large (over 5.5 percent), the policymakers go on to recognize that "the outdated immigration framework, from 1975, does not contain the principles, institutionality, or the flexibility necessary to adequately

⁷ segura, ordenada y regular.

safeguard the interests of the country or the rights of migrants” (Ministerio del Interior 1)⁸. The stated recognition of the insufficiencies of Law 1.094 is an important step in building a consensus in the political mainstream (parties across the political spectrum support broad immigration reform), but the proposals that follow in the *Nueva Ley* fail to reform the most conservative elements of Pinochet’s law and, in some instances, put forward new restrictions.

In the first clause of the working proposal, the *Nueva Ley* promises “fair and humane treatment to regularized migrants and those fleeing persecution”. The specification of “regularized” migrants is key in this context, given that the very next clause advocates for a “strong hand” in dealing with “irregular and clandestine entry into the country” (Ministerio del Interior 2)⁹. This distinction in attitude and obligations based on legal status harkens to the philosophy of the National Security Doctrine, in which migrants entering the country without authorization are seen as an inherent threat that must be dealt with criminally. Instead of framing irregular migration as a negative phenomenon based on the precarity that accompanies it (less access to health care, education, housing, etc.) the law instead conflates migrants lacking official status with drug dealers and human traffickers, a harmful and baseless claim that often contributes to anti-immigrant backlash.

In the proposal’s ninth directive, the law urges decriminalizing irregular entries in order to comply with international accords, but soon after authorizes “expedited expulsions... of those who have infringed upon the migration laws” and limits the appeal timeframe for deportation to

⁸ ... una regulación migratoria anticuada, que data de 1975, que no recoge los principios, la institucionalidad, ni la flexibilidad necesaria para resguardar debidamente los intereses del país ni los derechos de los migrantes.

⁹ Trato justo y humano a los migrantes regulares y a los perseguidos... Mano dura... para luchar contra el ingreso irregular y clandestino al país.

only seven days (Ministerio del Interior 3)¹⁰. Infractions that can lead to expulsion include entering the country through unauthorized passages, providing false information to border officials, and using altered documentation or identification belonging to someone else. These stipulations apply to many Venezuelan migrants who cannot obtain accurate or up to date documentation due to the bureaucratic collapse in their home country and often are forced to reckon with isolated and dangerous land border crossings due to a lack of available funds for air travel.

The restrictions on migrants with irregular status also extend to those with lapsed status and limit the possibilities for regularization. The law's eighth directive proposes a "radical change [in] procedure for obtaining temporary residence" wherein residential status can only be solicited at the Chilean consulate in the migrant's home country, a requirement that "prohibits the change of immigration status... from inside Chile" (Ministerio del Interior 3)¹¹. Once again, this requirement has a disproportionate impact on migrants without the resources to afford round trip travel to solicit a status change as well as Venezuelans for whom return is not an option. In the long-term, increased difficulty in obtaining permanent residency will yield a larger population of migrants with irregular status, leaving thousands in vulnerable positions in the labor and housing market.

The *Nueva Ley* does, however, establish a regularization program for migrants with irregular or lapsed status who entered Chile during a specific timeframe. According to the program subsection within the law, migrants lacking any kind of authorization as well as those

¹⁰ Expulsión expedita para aquellos extranjeros que hayan infringido la ley migratoria.

¹¹ El proyecto de ley cambia radicalmente la operatoria que hoy existe para la obtención de residencia temporal, ya que ésta sólo se podrá solicitar fuera de Chile, prohibiendo que se pueda solicitar el cambio de calidad migratoria de turista a residente estando en Chile.

with expired tourist or residency visas who entered the country before April 8, 2018, can apply for temporary residency from within Chile. While this program paves a road for stability for some migrants, it is very limited in scope and contains many of the hallmark drawbacks of amnesty programs. First, the established time frame was very short; migrants with expired tourist or residency visas had to “register and apply before the Subsecretary of the Interior... within 90 days of April 23, 2018” while those who entered the country illegally had to do so within 30 days (Ministerio del Interior 5-6)¹². This short time frame for applications, as well as the 70,000 CLP fee (about \$90 USD), inherently limited the number of migrants able to submit the necessary documentation, and put a strain on an already under resourced immigration bureaucracy in Chile.

Stephen Castles elaborates on another more psychological impediment of legalization programs: “Many eligible aliens [do] not know about legalization programmes or fear to participate in it...” despite the fact that “legalized aliens generally experience improvements in their overall socioeconomic and employment prospects” (Castles 185-6). The potential consequences of noncompliance with the terms of the legalization program are clearly spelled out in the *Nueva Ley*: “Foreigners with irregular status who do not present proper regularization applications within the previously signaled time frame will be deported” (Ministerio del Interior 6)¹³. The threat of deportation is mentioned over 10 times in the six page draft of the *Nueva Ley*,

¹² Registrarse y solicitar ante la Subsecretaría del Interior... dentro del plazo de 90 días corridos a contar del 23 de abril de 2018

¹³ Los extranjeros en situación irregular que no presenten solicitudes de regularización dentro del plazo señalado anteriormente serán expulsados.

a testament to the restrictive and control-oriented philosophy behind the proposal and, moreover, marking continuity with the core of Law 1.094.

The most direct reaction to the Venezuelan crisis contained in the *Nueva Ley* is the creation of the Visa of Democratic Responsibility (VDR). One of seven new visa categories proposed in the law, the VDR is essentially a one year residency permit that can be renewed only once. According to the law, the creation of this specific visa is a response to “the democratic crisis that Venezuela is currently going through, and which seriously affects the nationals of [the] country” (Ministerio del Interior 5)¹⁴. Many see the direct condemnation of Venezuela’s democracy as a political maneuver by president Sebastián Piñera, a conservative who is ideologically opposed to the ruling party in Venezuela and in early 2019 refused to recognize the legitimacy of Nicolás Maduro’s mandate (The Santiago Times).

Nevertheless, the VDR does not offer much of a lifeline to those fleeing starvation and violence in Venezuela. Notably, any Venezuelan national who has any kind of criminal record is unequivocally ineligible for the VDR. Considering Venezuela’s skyrocketing rates of petty crime due to widespread shortages, this stipulation excludes a significant portion of the population. In addition, the VDR maintains similar solicitation requirements to the permanent residency status, in that the visa “must be applied for at the Chilean consular authority in Venezuela... [with] a valid or expired passport granted after 2013” (Ministerio del Interior 5)¹⁵. The bureaucratic

¹⁴ ... la crisis democrática por la que actualmente atraviesa Venezuela, y que afecta gravemente a los nacionales de[] país.

¹⁵ Deberá ser solicitada ante la autoridad consular chilena en Venezuela... [con] pasaporte vigente o vencido, otorgado a partir del año 2013.

collapse in Venezuela, paired with the immense number of emigrants, has rendered it almost impossible to obtain a renewed passport or a validated criminal background check.

On April 16, 2018, the first day that the VDR was offered, journalists in Caracas reported that hundreds of Venezuelans were lined up outside the Chilean consulate, many of whom had travelled long distances from other cities in hopes of obtaining legal authorization to live and work in Chile. However, “there were no extra staff at the consulate and only about 20 people with an appointment were permitted to enter” (Zerpa). The lack of solid institutional support in both Chile and Venezuela and the restrictive requirements for solicitation have rendered the VDR more or less insufficient in dealing with the influx of migrants. According to the Chilean General Consulate in Caracas, roughly 20,000 people were granted the VDR in its first year of operation. This number equates to less than 7 percent of Venezuelans living in Chile as of 2019 and is fewer than the number of Venezuelans who entered Chile on tourist visas in the single month before the VDR was announced (Guzman). Numerically, the *Nueva Ley*’s fix-all visa plan for the Venezuelan crisis has not made much of a dent in logically or effectively regulating migrant arrivals.

Chile’s *Nueva Ley de Migración* is an undeniably restrictive piece of legislation for the express reason that it incorporates additional requirements onto existing policy. In seeking the goal of “well-organized and regulated” migration, the law’s new visa classifications make it harder, not easier, for migrants to obtain stable status in Chile, with the unintended consequence of pushing thousands into irregular and precarious situations.

The restrictions contained in the *Nueva Ley* have not stopped the flow of Venezuelans into Chile and, with the political and economic crisis continuing to worsen, more migrants are

expected to enter Chile in 2019 than in any prior recorded year (International Organization for Migration). Daniela Guzman, reporting for Bloomberg News in the months after the implementation of the new visa system, argues that Venezuelans continue to arrive despite the restrictions, only now they find themselves without immigration status, work authorization, or full access to social safety nets:

People can't wait for the consulates to provide these visas, so [Venezuelans] will continue coming in as tourists... Far from preventing illegal immigration, [The *Nueva Ley*] may force tens of thousands of undocumented Venezuelans to slip into the black economy.

(Guzman)

Lacking visa status, countless migrants will and have turned to the unregulated economy which often leads to exploitation and abuse. Wages below the minimum wage, dangerous working conditions, and arbitrary firings have all been reported in Chile. The consequences of a lack of regular status reverberate far beyond the labor market. An investigation by the Washington Post revealed that “there is also evidence of a worrying trend: Desperate Venezuelans, particularly women, have become commodities to be bought and sold” (Falola). Many migrants with irregular status are hesitant to seek legal and police support for fear of deportation, making them easier targets for human trafficking and prostitution rings.

The restrictive nature of the *Nueva Ley* has unintentionally resulted in the exact matters it was intended to prevent: hundreds of thousands of migrants with irregular status, countless pushed into the black market or worse, and an increased rate of migrants entering the country. Far from the more expansive efforts of previous administrations, the proposal put forth by Sebastián Piñera's conservative government is much more akin to Law 1.094 and the status-quo

of restrictive immigration policy in Chile over the past four decades. Many aspects of the policies in the *Nueva Ley* can be clearly traced to the framework provided by Law 1.094: the criminalization of unauthorized entry, the requirement of a clean criminal record, and the constant implied threat of deportation. At its core, the *Nueva Ley* is a document guided by the National Security Doctrine as it treats migration as a phenomenon to be controlled, limited, and viewed with distrust.

This underlying philosophy, enshrined by Law 1.094 and put into practice through the *Nueva Ley*, has framed the discourse surrounding immigration in Chile and, to some extent, shaped public sentiment. Since the first significant arrivals of migrants to Chile in the first years of the 21st century, anti-immigrant sentiment has been steadily growing, in parallel to a disturbing global trend. A 2017 survey showed that 41 percent of Chileans believe that migrants increase crime, a 10 percent increase from 2015, and “just one-third agreed that immigrants were good for the economy” (Doña-Reveco, “Chile Turns Rightward” 6).

These public sentiments have given rise to corresponding reactionary politics, most notably in the far-right *Partido Republicano* led by José Antonio Kast. After a surprisingly popular but ultimately unsuccessful presidential campaign in 2018, Kast has become the central figure of the anti-immigration movement, often criticizing Piñera and the *Nueva Ley* as being too lenient. In an op-ed published in July of 2019, Kast urged citizens and politicians to “stop creating the illusion that Chile is a paradise for foreigners” and openly called for physical barriers along the country’s northern borders with Peru and Bolivia (Kast)¹⁶. As an outspoken defender of the Pinochet regime and the 1980 Constitution, Kast has often cited Law 1.094 as the

¹⁶ Dejemos de crear la ilusión de que en Chile hay un paraíso para el extranjero.

best tool to restrict immigration to Chile and maintain a homogenized national identity. In essence, the continuity of a 45 year old law passed under a dictatorship has not only guided the policymaking that determines the fate of hundreds of thousands of migrants, but it also emboldens the most extreme of public viewpoints to openly call for mass expulsions and militarized borders.

Looking East: a Comparison with Argentina

Chile's response to the Venezuelan migrant crisis, guided by the country's authoritarian vestiges, is just one example of restrictive reactions across Latin America. For many countries, most of which have significantly fewer resources than Chile, the arrival of massive numbers of Venezuelan migrants has stoked anti-immigrant rhetoric and prompted the adoption of more conservative legislation. However, not all countries in the region have responded this way; some have opened their doors, eased restrictions, and facilitated integration into society. In a striking comparison to the development and current reality of the immigration framework in Chile, its neighbor, Argentina, has opted for a human rights-based approach to the crisis, strengthening the case that Chile's failure to adequately serve its migrants is a matter of legal development rather than state capacity.

Argentina experienced a neoliberal military dictatorship around the same time that Chile did, but the Argentine junta lost power much earlier and in a significantly different way than Pinochet's junta. In his book *State Terrorism in Latin America* author Thomas C. Wright tracks the decline of the Argentinian military junta, headed by Jorge Rafael Videla, from the economic

crisis and the disastrous Falkland Island War of the early 1980's to the widespread protests and demands for elections in 1983. The junta, disgraced and discredited, ceded control back to civilian government when Raúl Alfonsín was elected president in 1983. "In Argentina the military left via the back door, assuming that the amnesty and memory of terror would assure its impunity" but the relatively weak position of the military and pro-dictatorship right allowed the resurgent democratic institutions to repeal protective measures, neoliberal policies, and immunity for those who violated human rights (Wright, 127). Unlike Pinochet, who was forced to relinquish control due to international pressure from liberal governments and human rights groups rather than a resounding opposition within Chile and "remained firmly in control during the transition," the Argentine junta quickly saw its policies and impacts expunged from Argentine political society (Wright 84).

Perhaps the most important distinction between the cases of Chile and Argentina is that the Argentine dictatorship never consolidated its power through a constitution, which has allowed democratic governments to repeal and replace authoritarian laws with significantly more ease than in Chile. In addition, the congress drafted and ratified a robust and modern new constitution in 1994, paving the way for progressive legal initiatives over the next two decades. Regarding immigration, the clearest example of this can be seen in the case of what is known as *Ley Videla*, its subsequent annulment, and the ratification of a new human rights-based immigration law in 2004.

Colloquially named after the Argentine junta's most emblematic leader, *Ley Videla* (officially Law 22.439) is Argentina's version of Chile's Decree Law 1.094. Passed in 1981, this law follows a restrictive and national security doctrine-oriented paradigm that "provided very

few avenues for legal immigration,” cut off social services to migrants, and authorized the government to reject, detain, or deport “subversives” or anyone with criminal antecedents (Hines 477). Much like Pinochet’s Law 1.094, *Ley Videla* created a hostile and precarious environment for migrants and ultimately increased the number of irregular migrants within Argentina (Hines 477).

Following Argentina’s return to democracy in 1983, *Ley Videla* continued to be the determinant for immigration policy, but with increasing rates of immigration to the country in the late 90s and the growing importance of international human rights accords, congress faced significant pressure from business sectors and civil society groups to scrap the law. Without insurmountable supermajority requirements, the Argentine legislature was able to quickly and effectively repeal *Ley Videla* and replace it with one of the most expansive and progressive immigration laws in the Western Hemisphere: Law 25.871.

In a nearly unprecedented move, this 2004 law directly defines migration as a human right: “the right to migrate is essential and inalienable to all persons and the Republic of Argentina shall guarantee it based on principles of equality and universality” (Ley 25.871)¹⁷. This bold declaration guides the stipulations of the law and provides an overarching framework facilitating the entry and incorporation of migrants into Argentina. Barbara Hines, an immigration legal scholar, summarizes just how progressive Law 25.871 really is:

The objectives of the law are to ensure that all persons who seek admission temporarily or permanently enjoy the benefit of non-discriminatory admission criteria... [and] develop immigration policies and strategies in order to comply with international

¹⁷ El derecho a la migración es esencial e inalienable de la persona y la República Argentina lo garantiza sobre la base de los principios de igualdad y universalidad.

obligations... [but] it is broader in scope than the [UN] International Convention on the Protection of the Rights of All Migrant Workers. (Hines 488-9)

The law also affords significant rights to migrants with irregular status, and states that “ in no case can migratory irregularity of a foreigner impede their admission as a student [nor] restrict access or rights to healthcare or social assistance” (Ley 25.871)¹⁸. At its core, this law treats migrants with dignity and respect while recognizing their right to free movement, education, healthcare, and work. It is with this framework that Argentina has enacted one of the most progressive and welcoming responses to the Venezuelan crisis.

The sweeping provisions of Law 25.871 have allowed the Argentine migration authorities to draft specific policies with the intention of easing the arrival and integration process for thousands of Venezuelans. Since the beginning of the crisis, Argentina has received fewer Venezuelan arrivals than Chile, about 130,000 as of late 2018 compared to Chile’s 288,000, but the rates of arrival have been increasing throughout 2019 (Cullen). In January 2019 the administration of Mauricio Macri, a center-right president more or less akin to Chile’s Piñera, announced the creation of the Assistance to Venezuelan Migrants Programme (AVMP) with the goal of “facilitating the arrival to the territory, the regulation of migratory condition and [the] social insertion [of Venezuelans] into the community” (Buenos Aires Times).

In many ways, the specifics of the AVMP run directly contrary to Chile’s *Nueva Ley* and the VDR. The program allows Venezuelans to enter Argentina with nothing more than a national ID card or a passport, and either can be expired. While a criminal background check is required

¹⁸ En ningún caso la irregularidad migratoria de un extranjero impedirá su admisión como alumno [ni] restringírsele en ningún caso, el acceso al derecho a la salud [o] la asistencia social.

for permanent residency, it can be solicited online from within Argentina. All visa and residency applications can be filled out at the border or even from within the country after arrival, saving thousands the need to wait months for documents from the defunct Venezuelan bureaucracies. The recognition of the “inability among Venezuelans to provide complete documentation” has vastly reduced the number of migrants with irregular status within Argentina, and allowed for a mutually beneficial integration (Buenos Aires Times). In the labor sphere, many public and private universities in Argentina have implemented equivalency programs, allowing Venezuelans to verify their degrees and gain the necessary credentials to work in the legal, medical, and other specialized fields (Buenos Aires Times).

In summary, despite sharing significant similarities in historical development and migration trends with Chile, Argentina’s response to the Venezuelan crisis is distinctly more humane, rational, and successful. Just as the disenfranchisement of irregular migrants in Chile is a result of restrictive legislation, the relative success of Venezuelans in Argentina can be attributed to the expansive and progressive policies that guide their entry and integration.

The key factor in explaining such disparate policies is the constitutions of the two countries. Argentina’s ability to amend the authoritarian legal vestiges of their dictatorship and draft a modern national charter lies in the dictatorship’s lack of legal enshrinement through a constitution of their own. Conversely, Chile is very much still playing by Pinochet’s rules when it comes to government procedure. The 1980 Constitution of Chile has resulted in bipartisan inability to craft a proactive and involved state in Chile, and those who have and will continue to suffer the consequences of this are migrants, minorities, and the poor. However, for the first time

in a long time, Chile now has a chance to turn the page on authoritarianism and offer real support to Venezuelans and Chileans alike.

Looking Forward: Current Protests and a New Constitution

In early October 2019, a 30 peso (approximately \$.03) increase in Santiago's metro fare ignited widespread and multifaceted protests across Chile. What began as students protesting the fare hike by jumping turnstiles has since come to be a reckoning with Chile's sustained inequality and neoliberal economic model. A purely numbers-based economic look at Chile's development over the past 2 decades points to a considerable success story, especially in comparison to many other Latin American nations, but the reality of socioeconomic and political performance within the country tells a different tale. Alan Angell sums up the underlying factors that have led to the tremendous protests of 2019:

The story of Chile as conveyed in the opinion polls is one of relatively low levels of satisfaction with the performance of democracy, low levels of trust in the major institutions of government and questions of its commitment to equity, given the unequal distribution of income. (Angell 191-3)

Much of Chile's economic and social inequality has deep roots in the hierarchies established in the early days of the colonies and protected during the reign of the dictatorship. While overall GDP has increased and poverty rates have fallen since the return to democracy, many claim that social mobility has remained stagnant due to privatized welfare and pension programs, high costs of education, and the continuity of Pinochet's constitution.

In recent months, protestors have focused their demands on the 1980 constitution, the neoliberalism it protects, and the possibility of writing a new one. Many lower and middle class people see a clear connection between their grievances and the nation's current charter, and rightly so. Protocols on issues ranging from healthcare access and political representation to water allocation and retirement pensions are specifically determined by the 1980 constitution, in a model that "hands the markets responsibility for what other models delegate to the government... [and] constructs a welfare state with an incredibly limited capacity" (Bartlett). At its core, Pinochet's Constitution has and continues to achieve its goal of enshrining the policies of the dictatorship and vastly limiting the power of the democratic government.

On November 15, 2019, nearly a month after the start of the protests, President Piñera and his cabinet announced a plan in collaboration with opposition lawmakers to pave a path towards a new constitution. In April 2020, the government will hold a national plebiscite "asking Chileans if they want a new constitution and how they would like it to be drafted" (Bartlett). The congress has agreed upon two possible routes for drafting the document, should the monumental undertaking be approved by the public. In the first option, an assembly would be convened with half of the members coming from the congress and half being chosen from the general public. The second option would vest the power in an entirely public assembly.

According to CADEM, one of Chile's most respected polling agencies, over 78 percent of Chileans say that the country needs a new constitution. Of the reasons cited, 32 percent of citizens asked say that a new constitution is needed to "establish a new social contract with the people" and another 20 percent cite the fact that the 1980 constitution was "originated under dictatorship". Other reasons include the desire to "generate real changes" and "guarantee a

minimum of social rights” (CADEM)¹⁹. Though mass protests continue and many have called for Piñera’s resignation, the bipartisan effort to give citizens a voice in the future of their country represents an important, albeit long overdue, turning point in the precedent of Chilean politics.

The constitutional plebiscite also offers an opportunity for the government and people of Chile to reaffirm their commitment to human rights and social solidarity, this time towards migrants. Migrants, especially those in vulnerable positions, are particularly affected by the constitution’s status quo in Chile; not only does an antiquated and restrictive immigration law limit their options for legal entry, but the lack of a robust welfare state leaves thousands without secure access to healthcare, education, and housing once they arrive. Administrations past and present have had their hands tied in building a more equitable society for Chileans and immigrants alike, and since the country’s return to democracy in the 1990s none have been able to deliver significant reform on immigration. At each turn, the constitution’s supermajority requirements and authoritarian enclaves have prevented the replacement of Law 1.094 and defanged any progressive executive policy.

Now, at the peak of an unprecedented humanitarian and immigration crisis in the region, Chile’s framework for responding to the arrival of hundreds of thousands of migrants is little more than an increasingly restrictive fortification of Law 1.094. The ratification of a new constitution could very well be a turning point in Chile’s immigration policy and a rare opportunity to build a more effective and humane plan from the ground up. Without the shadow of Law 1.094 and its restrictive philosophy looming at the legal core of the matter, the Chilean

¹⁹ Establecer un nuevo trato con la ciudadanía... porque se originó en dictadura... generar verdaderos cambios... garantizar derechos sociales mínimos.

government can catch up to where it needs to be with a modern and human rights-oriented law that has significantly more staying power than a hodgepodge of executive actions.

Analysis and Conclusion

Looking closely at the contemporary history of immigration law in Chile is vital to understanding the present situation in the country. The reality that is unfolding at the borders and in the cities has not developed in a vacuum, but is rather the culmination of a turbulent and varied process of political transition and legal precedent. While the administration of Sebastián Piñera has exacerbated the issue of migrant precarity through restrictive executive policy, the issue at its core is more than 40 years old and lies in the inherited and authoritarian constitutional system bequeathed by the military dictatorship. It is true that no one could have predicted such a large flow of migrants across Latin America in the 1970's, but the philosophy of Pinochet's 1975 Law 1.094 takes a strongly anti-migrant stance that has guided Chile's policy well into the 21st century.

First, it is important to reiterate the significance of Chile's 1980 Constitution and the extent to which it continues to sway business as usual politics in the country. Alan Angell describes the "authoritarian enclaves" of the constitution in his book *Democracy After Pinochet: Politics, Parties and Elections in Chile*: designated senators, disproportionate electoral rules that favor the right, undue supremacy of the armed forces, enshrined neoliberal policies, and sky high supermajority requirements to amend the constitution and overturn certain laws. These vestiges of the dictatorship have prevented significant forward motion in many aspects of Chilean society

- everything from prosecuting human rights abuses to changing the pension system - and have made the ruling piece of immigration legislation, Law 1.094, virtually untouchable.

Law 1.094 is the Chilean military dictatorship's keystone on immigration policy, unilaterally drafted and enacted in 1975 within the context of the Cold War and the National Security Doctrine. The law views migrants as potential criminals that should be kept out rather than integrated into society. It militarizes the Chilean border and makes obtaining residency or visa status laborious and expensive. Lastly, this law places extreme authority and powers of discretion in the executive, establishing a precedent for decades of patchwork policy that has changed with almost every administration. 44 years later, Law 1.094 is still the guiding national law regarding immigration despite numerous attempts to repeal it and an approximately 450 percent increase in migrant arrivals to the country (International Organization for Migration).

Law 1.094 and the 1980 Constitution that protects it have created a system that is tepid towards migrants at best and hostile at worst. Piñera's *Nueva Ley* is little more than a modern update of Law 1.094 and pushes tens of thousands of Venezuelan migrants into precarious situations by restricting visa access and regularization opportunities. Given the continuity of Law 1.094 and an authoritarian constitution, Chile's current response to the Venezuelan migration crisis was unavoidable. A progressive and pragmatic policy that effectively processes and integrates a large number of migrant arrivals cannot coexist with such a conservative law. Even in spirit, the continuity of Pinochet's policies is holding Chile back from showing true support and solidarity with the people of Venezuela.

The only way for Chile to implement comprehensive and progressive immigration reform is to ratify a new constitution. The country's current constitution is too effective at protecting

itself from reform and ensuring the continuity of neoliberal and national security doctrine-oriented policy to facilitate progressive initiatives. The development of immigration policy in Argentina is a compelling example of what kind of modern and robust policy is possible with a democratically sound constitution, and can provide a template for the next stage in Chile's legal and political evolution. The recent events in Chile are a clear rejection of the status quo that has contributed to maintained inequality and mistreatment of migrants. The upcoming constitutional referendum puts the future of Chile into the hands of its citizens and presents a golden opportunity to firmly reject the authoritarianism that has haunted the country for over fifty years and finally provide an effective and ethical immigration framework that welcomes migrants into the social fabric of the country.

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