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A Self-Eating Snake: Half-truths in the Chilean Constituent Process and Lessons for The Content Moderation Debate[*]

Uma serpente que devora a si mesma: meias-verdades no processo constituinte chileno e lições para o debate sobre moderação de conteúdo

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Abstract

On December 18th, 2023, a statue of an Ouroboro —a snake eating its own tail— was placed in Chile's capital, symbolizing the country's failed attempts at constitutional replacement. Despite 78% of initial support in 2019 to replace Pinochet's constitution, two consecutive proposals were rejected in 2022 and in 2023. Social media played a dual role in this process, enabling citizen participation in constitutional politics and facilitating the spread of tendentious constitutional interpretations. Drawing on Chile's experience and the most salient contested constitutional interpretations in the process, this article analyzes how the democratic and pluralistic openness of constitutional texts to diverse political visions was

Resumo

Em 18 de dezembro de 2023, uma estátua de um ouroboro — uma serpente que morde a própria cauda — foi instalada na capital do Chile, simbolizando as tentativas fracassadas do país de substituir sua Constituição. Apesar do apoio inicial de 78%, em 2019, à substituição da Constituição de Pinochet, duas propostas consecutivas foram rejeitadas, em 2022 e em 2023. As redes sociais desempenharam um papel ambíguo nesse processo, ao mesmo tempo em que possibilitaram a participação cidadã na política constitucional e facilitaram a disseminação de interpretações constitucionais tendenciosas. A partir da experiência chilena e das interpretações constitucionais mais relevantes e contestadas ao longo do processo, este artigo analisa como a abertura

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vulnerable to widespread accusations of misinformation. Constitutional interpretation is a political endeavor; thus, "half-truthful" interpretations —within constitutional bounds but used to promote a particular vote in the constituent plebiscite— resist standard content moderation approaches. The article structures a regulatory proposal that addresses these challenges without arbitrarily determining interpretative legitimacy or focusing on the content that social media platforms host. These findings and policy recommendations offer crucial lessons for future constituent processes worldwide and contribute to broader debates about content moderation in constitutional politics and the Latin American region.

democrática e pluralista dos textos constitucionais a diferentes visões políticas mostrou-se vulnerável a acusações generalizadas de desinformação. A interpretação constitucional é uma atividade política; por isso, interpretações "meio verdadeiras" — situadas dentro dos limites constitucionais, mas utilizadas para promover um determinado voto no plebiscito constituinte — resistem às abordagens tradicionais de moderação de conteúdo. O artigo estrutura uma proposta regulatória que enfrenta esses desafios sem determinar de forma arbitrária a legitimidade interpretativa nem se concentrar no conteúdo hospedado pelas plataformas de redes sociais. Esses achados e recomendações de política pública oferecem lições fundamentais para futuros processos constituintes em todo o mundo e contribuem para os debates mais amplos sobre moderação de conteúdo na política constitucional e no contexto da América Latina.

Keywords: constituent process; constitutional interpretation; content moderation; social media; misinformation.

Palavras-chave: *processo constituinte; interpretação constitucional; moderação de conteúdo; redes sociais; desinformação.*

CONTENTS

1. INTRODUCTION: TWO TRAGEDIES

The story repeats itself, but occasionally, twice as a tragedy. On December 18, 2023, the day after the people rejected for a second time replacing the Chilean constitution, a statue of an Ouroboro -a snake eating its own tail-, was placed in the middle of the country's capital. It was a portrayal of what had transpired over the previous four years. In 2019, nationwide protests prompted political parties to initiate a process to replace the constitution enacted under Augusto Pinochet's dictatorship. Although 78% of voters initially supported the process, it soured quickly. The first draft was rejected by 62% of voters in 2022. Chile tried again, and a second proposal was rejected on December 17, 2023. What was it about this experience that transitioned from massive support to failure *twice*? How did Chile manage, after 39 years of political struggle, to eat its own tail?

Social media poses significant and urgent challenges for democracies, which become particularly acute during constituent processes. Constituent processes typically require a supermajority quorum. These high thresholds reflect the constitution's

fundamental role in democratic societies and aim to build long-term consensus on critical issues. For the same reason, constitutional texts contain open-ended concepts and clauses that allow for different—and sometimes contradictory—visions of society to coexist under the same polity. This tension between constitutional openness and social media's amplification of contested interpretations presents a fundamental challenge. In the Chilean experience, constitutional openness was repeatedly weaponized by tendentious constitutional interpretations that went quickly viral: a public housing system interpreted as that people will lose their house; a public pension system equals people losing their pension funds; and strong reproductive rights equals legitimizing abortions up until nine months of pregnancy—all easy-to-understand, short and potentially infuriating message used to sway the people's opinion. Each of these interpretations, while controversial, remained somewhat plausible constitutional interpretations. I say "somewhat" because it is unclear where to draw the line distinguishing plausible from implausible constitutional interpretations, and even less clear is who is to draw such a distinction. Yet, disinformation, misinformation, and fake news were constantly discussed by Chilean commentators, while partisan accusations of misleading content and fact-checking efforts by non-partisan organizations plagued the debate. Thus, the already polarized political elite[1] engaged in a debate over what is true and what is false, rather than fruitful disagreements on constitutional policy, contributing to an already diminished trust in the public sphere[2].

Chile has a considerable risk of exposure to information disorders. Today, within Latin America and the Caribbean, Chile has the second-highest social media user rate, with approximately 84,5% of its population[3]. One out of two users consumes news on social media, and one out of three uses Instagram, WhatsApp, and YouTube for this purpose as well[4]. Scholars found that Chile has a higher exposure and diffusion of misinformation than the United States[5]. Researchers also found that, in Chile, imprecise and false content spreads faster on Twitter and reaches more users than truthful information on both Facebook and Twitter; Chileans with low reading abilities tend to share

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[1]   GARCÍA-HUIDOBRO, Luis. Elite non-cooperation in polarized democracies: Constitution-making deferral, the entry referendum and the seeds of the Chilean failure. **Global Constitutionalism**, v. 13, n.1, p. 168-181, 2023.

[2]   MOLINA, Paula, **La "brutal" desinformación sobre la nueva Constitución propuesta para Chile (y algunas de las confusiones más difundidas)**, BBC News Mundo. Available at: https://www.bbc.com/mundo/noticias-america-latina-62245073. Accessed on: 19th of January of 2025.

[3]   STATISTA, **Redes sociales en Chile**, Statista. Available at: https://es.statista.com/temas/10669/redes-sociales-en-chile/. Accessed on: 23rd of February 2024.

[4]   MEDINA, Francisco; NÚÑEZ-MUSSA, Enrique, **Chile | Reuters Institute for the Study of Journalism**, available at: https://reutersinstitute.politics.ox.ac.uk/es/digital-news-report/2023/chile. Accessed on: 24th February 2024.

[5]   MOLINA, Paula, **La "brutal" desinformación sobre la nueva Constitución propuesta para Chile (y algunas de las confusiones más difundidas)**, BBC News Mundo. Available at: https://www.bbc.com/mundo/noticias-america-latina-62245073. Accessed on: 19th of January of 2025.

misinformation more easily, and this content generates more engagement on Facebook than other types of content. Furthermore, the same research found that truthful content is more complex to understand than false information[6]. For instance, conveying the notion that the "right to a household" necessitates some form of state intervention is more challenging than stating that with such a system, the state will own your house.

The research question addressed in this article is as follows: How can social media content be regulated during constituent processes? More specifically, how can this regulation occur without arbitrating the truthfulness of constitutional interpretations? This article will proceed as follows. Following this introduction, the second section proposes a comprehensive framework for understanding, on the one hand, the constituent processes and constitutional interpretation, and on the other, the political power and risks associated with social media. Then, I will apply this framework to the Chilean constituent process, arguing that social media platforms provide avenues to weaponize different interpretations of open-ended constitutional texts for partisan objectives. Constitutions have open-ended concepts that allow for various and sometimes contradictory political visions to thrive under the same text, a feature that implies vulnerability to tendentious constitutional interpretation. Yet constitutional interpretation fundamentally involves political judgment. This makes it difficult to determine which constitutional interpretations are misleading objectively. As a result, the line between legitimate debate and misleading content becomes unclear in constitutional politics. A democratic and pluralistic feature of constitutions is used against it, as a Snake eating its own tail. Finally, the article proposes a roadmap to address these issues, considering a content-agnostic approach to online content moderation. Policymakers and governments planning a constituent process can learn from this experience and avoid the same pitfalls Chile experienced.

The contributions of this work are three. First, it contributes to an ongoing policy debate specific to the Latin American region regarding online content moderation and social media platform regulation. In 2024, Brazil required X to comply with its legal regulations before continuing its operations in the country. In the same venue, at the beginning of 2025, Brazil required Meta to explain the company's changes regarding fact-checking and misinformation[7]. In Chile, also in 2025, polling numbers show that 74% of Chileans think the Government should regulate more strictly the content that social media platforms host[8]. In the second place, it also contributes to

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[6]   MENDOZA, Marcelo *et al*, A Study on Information Disorders on Social Networks during the Chilean Social Outbreak and COVID-19 Pandemic. **Applied Sciences**, v. 13, n. 9, p. 1–19, 2023.

[7]   REUTERS, **Brazil gives Meta 72 hours to explain changes to fact-checking program**, CNN. Available at: https://www.cnn.com/2025/01/10/americas/brazil-meta-fact-checking-program-intl/index.html. Accessed on: 17th January 2025.

[8]   CADEM, **74% cree que las redes sociales deberían ser reguladas más estrictamente en cuanto al contenido que se publica**, Cadem. Available at: https://cadem.cl/estudios/74-cree-

a broader debate regarding political misinformation, specifically addressing accusations of misinformation related to normative interpretations and why such interpretations resist traditional fact-checking methods. Such normative statements define constituent debates, providing fertile ground for a debate focused on misinformation rather than constitutional policy. And finally, it broadens the literature regarding the latest Chilean constituent experience, its shortcomings, and lessons, to other countries that are reflecting on the process of initiating a constituent process. It does so by examining the limits of content moderation in constitutional politics and exploring policies for moderating debate without arbitrating what is plausible in the realm of constitutional interpretation.

2.   THE CONSTITUTION AND SOCIAL MEDIA: A FRAMEWORK

This section explains the role of Constitutions in democratic societies and the rationale for requiring a supermajority quorum and extensive consultation processes to amend them. Then, it digs into social media's positive and negative interactions with politics, highlighting how critical they have been for several social movements and constituent processes worldwide. The goal is to provide a framework for understanding challenges that are not present in "normal politics," that is, politics unfolding in a constitu*ted* context. Social media and normal political interactions are well-known and widely discussed in scholarly work. The spreading of misleading content makes politics harder, messier, and sometimes blatantly unfair, and may lead to undemocratic outcomes. However, constitu*ent* contexts — or the exceptional politics deployed to change a constitution — need not win an election or pass a bill, but rather create the *common ground* required for such things to be possible. If misinformation and polarization erode our common ground[9] in a constitu*ted* context, consequently creating a new one in a constitu*ent* context may be even harder.

2.1.   Constitutional politics, replacement, and interpretation

Typically, the meaning of constitutions and constitutional clauses is the object of heated and partisan debate, as hardly any other legal text is. When litigating a breach of contract, the parties' interpretation of what the "best efforts" standard means will not depend on their political ideology[10]. However, when discussing interpretations of what entails a constitutional right, one's position may vary depending on the side of

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que-las-redes-sociales-deberian-ser-reguladas-mas-estrictamente-en-cuanto-al-contenido-que-se-publica/. Accessed on: 17th January 2025.

9   WALDMAN, Ari Ezra, The Marketplace of Fake News, **University of Pennsylvania Journal of Constitutional Law**, v. 20, n. 4, p. 845–870, 2018., p. 851.

10   ATRIA, Fernando, **La forma del derecho**, Madrid: Marcial Pons Ediciones Jurídicas, 2016., p. 216.

the aisle one stands on[11]. Constitutions serve a distinct social function, different from contracts or any other legal instrument. They connect political communities to constitute them as the people[12], the subject of self-government[13]. For this function, Constitutions must embrace and manage the tension that entails bringing people from different backgrounds and political ideas together within the same common ground. To that end, Constitutions provide a framework to regulate the most critical features of a polity's political life: how to resolve conflicts over policies, including elections and a law-making process, and a set of constitutional rights that the political process cannot affect without further control and democratic accountability.

No polity is engaged to its constitution by a matter of law. It requires a special commitment from citizens that stems from political decisions rather than any constitutional mandate. Mark Tushnet distinguishes between constitutional texts and the political commitment to those texts as the *thick* and the *thin* constitutions[14][15]. The 'thin constitution' refers to a society's political commitment to its constitutional text. This differs from the 'thick constitution'—the actual written document[16] containing specific rules and rights. For example, while the thick constitution might detail free speech protection, the thin constitution represents citizens' shared commitment against censorship. A strong disagreement about what a polity needs to protect, advance, and guarantee a constitutional right, such as free speech, is not due to a lack of precision in the thick constitution but rather a feature of the thin constitution. Within a political community, having more than one way to interpret constitutional clauses is natural and desirable. That disagreement does not imply that some citizens are pro-free speech while others are anti-free speech; it simply shows that, although free speech is fundamental to the entire political community, that community may disagree over what free speech entails. Such disagreement is desirable, as a constitution's role in a democratic society is not to settle every policy dispute, but to allow

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[11]   ATRIA, Fernando, La hora del derecho: Los 'derechos humanos' entre la política y el derecho, **Estudios Públicos**, n. 91, p. 45–89, 2003., p. 71.

[12]   TUSHNET, Mark, **Taking the Constitution Away from the Courts**, Princeton, New Jersey: Princeton University Press., 1999. p., 16.

[13]   For a detailed discussion of this constitutional function, *see,* ATRIA, Fernando, Viviendo Bajo Ideas Muertas: La Ley y la Voluntad del Pueblo, **SELA (Seminario en Latinoamérica de Teoría Constitucional y Política) Papers**, 2011. Available: at https://openyls.law.yale.edu/entities/publication/f91a0650-87fb-45ec-bd3f-0bdf0961628d. Accessed on: 4th November 2025.

[14]   TUSHNET, Mark, **Taking the Constitution Away from the Courts**, Princeton, New Jersey: Princeton University Press., 1999., p. 11.

[15]   Such distinction has been drawn with different concepts. For instance, "Constitution" and "constitutional law", to differentiate what the Constitution is from what the Supreme Court says it is. See, LEVINSON, Sanford, **Constitutional Faith**, Princeton, New Jersey: Princeton University Press, 2011., p. 39.

[16]   I am using "constitutional text" although not all constitutions are written. I do so to distinguish the regulation of a political community from the political commitments to said regulations.

different and contradictory views of the same principles to be solved through political discussion[17].

Some thick constitutions are thicker than others and may try to solve more political disputes within their text. This is also natural. After all, there must be some shared values within a polity's pluralistic society, and some societies are more cohesive than others. Censorship is not tolerable under the US Constitution's First Amendment, access to health care is protected under the Chilean constitution, and laws hindering the right to abortion are not allowed under the most recent French constitutional amendment. Each of those societies values certain principles over others; thus, thickening their constitutional texts around them makes sense. By doing so, societies exclude certain discussions from the normal course of politics, closing the debate over whether censorship, abortion, or access to healthcare will be allowed or not. The Chilean society may discuss and strongly disagree on what constitutes access to healthcare under its Constitution, but not on whether access to healthcare is protected or not. Operating under a constitutional framework, normal politics excludes these fundamental societal decisions from regular debate[18].

Thickening constitutional text comes with a catch, however. The thicker the text gets, the thinner the polity's commitment to its constitution may be. Not all constitutional decisions are equally shared by a polity, and not all of them are considered equally reasonable. Some constitutions may ban specific political parties, while others may include institutional designs to hinder the enactment of certain policy decisions while facilitating others, or to skew the control of Congress in favor of one side of the aisle[19]. The more decisions made at a constitutional level, the more prone a constitution may be to exclude particular views or ideologies from the normal course of politics, either explicitly banning them or skewing the political game. Given that commitment to a constitution does not come from the constitution itself, the political decision to live under a specific text becomes thinner as the constitution becomes thicker. Constitutional exclusion of political views or groups will be met with a loss of legitimacy and a shrinking of transversality, and may eventually lead to a constitutional replacement, *i.e.*, a constituent process.

Societies' need for a thin constitution also has practical consequences for designing constituent processes. As discussed, the most obvious is preventing a constitutional exclusion of legitimate political ideas from a given polity. A less obvious one is to strengthen the commitment of said polity to the new constitution. The more political ideas can thrive under the same constitutional text, the broader the commitment

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17 WALDRON, Jeremy, **The Dignity of Legislation**, Cambridge: Cambridge University Press, 1999.

18 For a broader discussion of the constituent/constituted politics framework, see ACKERMAN, Bruce, Constitutional Politics/Constitutional Law, **The Yale Law Journal**, v. 99, n. 3, p. 453–547, 1989.

19 *See generally*, ATRIA, Fernando, **La constitución tramposa**, Santiago, Chile: LOM Ediciones, 2013.

to the Constitution will be. Consequently, one of the goals of a constituent process is to maximize a bipartisan or transversal commitment to the Constitution. For that to be the case, constituent processes typically open discussions on subjects previously excluded from normal politics. Within *constitutional politics*[20], societies lay all their cards on the table and debate what they believe to be the fundamental decisions that will unite them as a polity[21]. Counterintuitively, this implies an institutional design with super-majority quorums to pass proposals into the constitutional draft, as high as two-thirds or three-fifths of the total assembly members. The rationale is to give minorities the chance to veto proposals that affect them and to incentivize political parties to agree on the most fundamental policy level possible. Finally, constitutional processes usually include mass consultation processes, in light of a political commitment to the constitution, to involve the people, not just their representatives. Examples include opening and ratifying plebiscites, as well as citizen-participation institutions that foster citizen involvement.

Within a polity's life, constituent processes represent exceptions rather than rules. It is uncommon to have them for several reasons, including the need for political and economic stability, as well as the difficulty of replacing a constitution[22]. Constitutional politics present greater challenges than everyday politics. While normal politics focuses on specific bills, constitutional politics must establish the very process for passing laws. Similarly, rather than debating the content of constitutional clauses, it must first determine which clauses should exist. The task of a constituent process is finding what brings a group of people together and constitutes them as a polity. As discussed, long-lasting political agreements based on shared societal principles must be established so that different political ideologies can commit to the same constitutional text.

Constitutional reform and replacement present unique challenges that exceed the procedural hurdles of ordinary legislation. While traditional lawmaking typically requires simple majorities, constitutional changes demand supermajority support,

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[20]   ACKERMAN, Bruce, Constitutional Politics/Constitutional Law, **The Yale Law Journal**, v. 99, n. 3, p. 453–547, 1989.

[21]   The Chilean constituent process decided for the Constitutional Convention to start their work with a "clean sheet". But that was not the only possible input. Conservative political parties wanted to start with the 1980 Constitution as a draft, and work by amending that text. The rationale behind this idea was that where agreements would not work, there would not be any "constitutional vacuum". *E.g.,* if no agreement was reached on how to regulate Congress, then the 1980 architecture regarding Congress regulation would remain in place. On the other hand, the problem for the progressive political parties was that if there were not enough votes to amend the text, the 1980 Constitution would remain unchanged. It was an incentives problem: for the conservative parties was, thus, easier to vote against every proposal (as long as they had one-third plus one of the votes) instead of committing to a middle ground.

[22]   ZULUETA-FÜLSCHER, Kimana, **How Constitution-making Fails and What We Can Learn from It: Discussion Paper 2/2023**, International Institute for Democracy and Electoral Assistance (International IDEA). Available at: https://www.idea.int/publications/catalogue/how-constitution-making-fails-and-what-we-can-learn. Accessed on: 4th November 2025.

making consensus more difficult to achieve. This complexity deepens when we consider that constitutional politics centers on principles rather than specific policies. While this interpretative flexibility serves democratic deliberation, it also creates vulnerability to misuse. Unlike policy debates, where claims often rest on verifiable data, constitutional interpretations involve competing visions of fundamental values. This makes distinguishing between legitimate interpretations and deliberate misrepresentations particularly challenging. Following Carlos Peña, I will refer to these interpretations as "tendentious" or "partisan", highlighting that they did not aim to elucidate constitutional concepts but rather to promote the approval or disapproval of the constituent plebiscite[23]. Tendentious does not mean misleading, though. It is useful to understand them as "half-truths" rather than "misinformation"[24], because it portrays the problem at the core of democratic constitutions as one of open and pluralistic texts. The interpretation that will make sense to one political party will probably not be the same as that of the opposing one. It is also useful because it explains why it is hard to impartially qualify them as misleading, false, fake news, or misinformation. What is truthful to one side may be false to the other and vice versa.

2.2. Social Media and Content Moderation

Social media platforms, as large-scale companies with global content moderation operations, maintain a separation between policy development and enforcement teams[25]. Social media platforms play an essential role in our day-to-day lives and societies by delivering news to significant segments of society, amplifying previously unheard voices, and facilitating political participation. They have played pivotal roles in global social protests by facilitating connections between previously disparate groups, providing an accessible platform for denouncing social injustices, and enabling seamless social and political organization. Compared with traditional political organizations, such as political parties, digital networked protests operate in a lightweight manner, leveraging velocity in the short term and suffering from instability in the long term[26].

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[23]   PEÑA, Carlos, **Columna de opinión: Interpretaciones tendenciosas**, Emol. Available at: https://www.emol.com/noticias/Nacional/2022/07/15/1066976/cronica-constitucional-columna-de-opinion.html.   Accessed on: 16th January 2025.

[24]   VILLEGAS, Alexander, **Chile enfrenta una avalancha de "medias verdades" a días del plebiscito constitucional**, euronews. Available at: https://es.euronews.com/2022/08/29/chile-constitucion. Accessed on: 16th January 2025.

[25]   *See* generally, CAPLAN, Robyn, **Content or Context Moderation?**, Data & Society. Available at: https://datasociety.net/library/content-or-context-moderation/. Accessed on: 4th November 2025.

[26]   TUFEKCI, Zeynep, **Twitter and Tear Gas: The Power and Fragility of Networked Protest**, New Heaven & London: Yale University Press, 2018.

Once inside what Yochai Benkler coined as the "networked public sphere"[27], citizens could influence the public conversation in a traditional landscape as never before. Iceland's (2009), Ireland's (2012), and Egypt's (2012) constitutional processes yielded different results, yet they shared a commonality in how social media was utilized as an avenue for direct democracy. Digital platforms served as repositories to share proposals or opinions, increase people's participation in the constitutional process, and revitalize politics as an essential goal of the proposed constitutional change[28]. Social media platforms played an important role in more recent political protests on the Internet, such as the *Me-Too* movement[29], Black Lives Matter, and the Chilean social outburst that led to a constituent process. Social media provided the platform for *A rapist in Your Path* performance by *Las Tesis,* a powerful critique of the patriarchy embedded in some states' institutions, which came to be a "feminist anthem" worldwide[30]. The anthem went viral as a result of recommendation algorithms directing it to users likely to engage with it, who then chanted it across the world[31].

Social media's recommendation algorithms, the mathematical models that largely define the content users see online[32], have also had severe adverse outcomes. The consequences of such technology have been, among others, the amplification of harassment[33] and hate speech[34], as well as the censoring of free expression[35] with little

[27]   BENKLER, Yochai, **The Wealth of Networks: How Social Production Transforms Markets and Freedom**, New Haven & London: Yale University Press, 2006., p. 10.

[28]   ODDSDÓTTIR, Katrín, Iceland: The Birth of the World's First Crowd-Sourced Constitution?. **Cambridge International Law Journal** v. 3, n. 4, p. 1207–1220, 2014; MABOUDI, Tofigh; NADI, Ghazal P., Crowdsourcing the Egyptian Constitution: Social Media, Elites, and the Populace. **Political Research Quarterly**, v. 69, n. 4, p. 716–731, 2016; LANDEMORE, Hélène, Inclusive Constitution-Making: The Icelandic Experiment. **Journal of Political Philosophy**, v. 23, n. 2, p. 166–191, 2015; SUTEU, Silvia, A New Form of Direct Democracy: Constitutional Conventions in the Digital Era. **Edinburgh School of Law Research Paper**, n. 2014/39, 2014. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2511285. Accessed on: 4th November 2025; SUTEU, Silvia, Constitutional Conventions in the Digital Era: Lessons from Iceland and Ireland. **Boston College International and Comparative Law Review**, v. 38, p. 251, 2015.

[29]   On the other hand, there were also allegations of censorship against digital activists in the period. *See* SÁEZ, Chiara; PEÑA, Patricia; GARCÍA, Javier, Challenges for freedom of expression on the internet in social crisis contexts: The case of Chile (2019–2022). **Journal of Digital Media & Policy**, v. 14, special issue on Emerging Debates on Internet Platform Policy and Regulation in Latin America, p. 225–247, 2023.

[30]   **LASTESIS: The 100 Most Influential People of 2020**, Time. Available at: https://time.com/collection/100-most-influential-people-2020/5888485/lastesis/. Accessed on: 17th December 2024.

[31]   HINSLIFF, Gaby, '**The rapist is you!': why a Chilean protest chant is being sung around the world**, The Guardian. Available at https://www.theguardian.com/society/2020/feb/03/the-rapist-is-you-chilean-protest-song-chanted-around-the-world-un-iolador-en-tu-camino. Accessed on: 4th November 2025.

[32]   There are different recommendation algorithms and social media may use them in different ways, but they all share the same objective: predict user engagement. *See* NARAYANAN, Arvind, **Understanding Social Media Recommendation Algorithms**, Knight First Amendment Institute at Columbia University. Available at: http://knightcolumbia.org/content/understanding-social-media-recommendation-algorithms. Accessed on: 18th February 2024.

[33]   *See generally*, Chapter 2, JEONG, Sarah, **The Internet of Garbage**, [s.l.]: Vox Media, Inc., 2018.

[34]   FRANKS, Mary Anne, **The cult of the constitution**, Stanford, California: Stanford University Press, 2019., p. 116.

[35]   WALDMAN, Ari Ezra, Disorderly Content. **Washington Law Review**, v. 97, n. 4, p. 907–976, 2021.

or no accountability[36]. All while affecting the rights of protected groups[37] and eroding democratic institutions[38]. These algorithms operate by displaying content that is sufficiently interesting to keep users' attention locked to the screen and leveraging human psychology and our enthusiasm for engaging content[39]. With such features, social media companies can influence political sectarianism within homogenous networks[40]. Notably, social media does not need to be the main factor in increasing polarization to play a relevant role. Social media platforms provide avenues for catalyzing and shaping online polarization, such as exposure to partisan information -within "information bubbles"- and leveraging divisive content to enhance user engagement[41]. Generally speaking, recommendation algorithm features have also led to political misinformation traveling faster, deeper, and farther than truthful content[42].

Social media has also played a significant role in the spread of misinformation[43]. Recommendation algorithms that are popularity-based — i.e., amplifying content that is trending on the platform — and filter bubbles put users at risk of misinformation by reducing the range and quality of the content they see[44]. Social media's features enable other misinformation factors, too, such as user behavior in the information flow, content creators, and bots[45]. Political actors have leveraged such features in disinformation

[36]   PASQUALE, Frank, Six Horsemen of Irresponsibility. **Maryland Law Review**, v. 79, n. 1, p. 105–113, 2019.

[37]   FRANKS, Mary Anne, **The Free Speech Black Hole: Can the Internet Escape the Gravitational Pull of the First Amendment?**, Knight First Amendment Institute. Available at: http://knightcolumbia.org/content/the-free-speech-black-hole-can-the-internet-escape-the-gravitational-pull-of-the-first-amendment. Accessed on: 17th December 2024.

[38]   BAUM, Matthew; LAZER, David; MELE, Nicco, **Combating Fake News: An Agenda for Research and Action**. Available at: https://shorensteincenter.org/wp-content/uploads/2017/05/Combating-Fake-News-Agenda-for-Research-1.pdf. Accessed on 4th November 2025.

[39]   VOSOUGHI, Soroush; ROY, Deb; ARAL, Sinan, The spread of true and false news online. **Science**, v. 359, n. 6380, p. 1146–1151, 2018.

[40]   FINKEL, Eli; BAIL, Cristopher; CIKARA, Mina; et al. Political sectarianism in America. **Science**, v. 370, n. 6516, p. 533–536, 2020.

[41]   VAN BAVEL, Jay J.; RATHJE, Steve; HARRIS, Elizabeth; et al. How social media shapes polarization. **Trends in Cognitive Sciences**, v. 25, n. 11, p. 913–916, 2021. Similarly, arguing that polarization did not start with social media, but they catalyze it, BARRETT, Paul M.; HENDRIX, Justin; SIMS, Grant, **Fueling The Fire: How Social Media Intensifies U.S. Political Polarization – And What Can Be Done About It**. Available at: https://bhr.stern.nyu.edu/publication/fueling-the-fire-how-social-media-intensifies-u-s-political-polarization-and-what-can-be-done-about-it/. Accessed on: 4th November 2025. For the same argument regarding misinformation and disinformation, *see* BENKLER, Yochai; FARRIS, Robert; ROBERTS, Hal, **Network Propaganda: Manipulation, Disinformation, and Radicalization in American Politics**, New York: Oxford University Press, 2018.

[42]   VOSOUGHI, Soroush; ROY, Deb; ARAL, Sinan, The spread of true and false news online. **Science**, v. 359, n. 6380, p. 1146–1151, 2018.

[43]   FERNÁNDEZ, Miriam; BELLOGÍN, Alejandro; CANTADOR, Iván, Analysing the Effect of Recommendation Algorithms on the Spread of Misinformation. **ACM Web Science Conference**, p. 1-11, 2024.

[44]   FERNÁNDEZ, Miriam; BELLOGÍN, Alejandro; CANTADOR, Iván, Analysing the Effect of Recommendation Algorithms on the Spread of Misinformation. **ACM Web Science Conference**, p. 1-11, 2024.

[45]   PATHAK, Royal; SPEZZANO, Francesca; PERA, Maria Soledad, Understanding the Contribution of Recommendation Algorithms on Misinformation Recommendation and Misinformation Dissemination on Social Networks. **ACM Transactions on the Web**, v. 17, n. 4, p. 1–26, 2023.

campaigns and destabilization efforts in different countries[46]. For instance, the Colombian peace treaty referendum to end a long conflict with the Revolutionary Armed Forces of Colombia (FARC), was tagged as a "Castro-Chavista" agreement that sought to install a 21st-century Socialist program[47]. As was recognized by the General Manager for the campaign against the peace treaty, propagating distorted interpretations of the agreement tailored to specific demographics was part of their strategy[48].

Social media platforms have developed sophisticated content moderation systems to address these issues—these governance mechanisms structure community participation to facilitate cooperation while preventing abuse[49]. Social media have extensive content moderation policies specifying the content that is banned on their platforms, including spam, violence, intellectual property infringement, and unauthentic behavior, among others[50]. Social media platforms have teams of human and computer moderators working to identify abusive content and apply various measures to it, such as censoring or shadow-banning (reducing the content's visibility for other users), issuing warnings, suspending, or banning the accounts of users who post such content. Content moderation policies can be ex-ante or ex-post, referring to whether social media platforms moderate content before or after it is posted; and general or individual, referring to whether a decision applies to the platform as a whole or to a specific piece of content[51]. A general, ex-ante example of a policy would be Meta's Community Standards or limiting the number of comments a user can make, which apply to everyone, before posting any content. A general, ex-post moderation would be restricting the conversation of a specific topic and, therefore, censoring posts referring to it. An individual ex-post example of moderation would be suspending an account for repeated abusive behavior[52]. It is important to note that,

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[46]   At the same time, major social media platforms have focused their counter-misinformation interventions in USA and the EU. *See* MOZILLA**, Platforms' Election Interventions in the Global Majority Are Ineffective**, Mozilla Foundation. Available at: https://foundation.mozilla.org/en/blog/mozilla-research-platforms-election-interventions-in-the-global-majority-are-ineffective/. Accessed on: 5th April 2024.

[47]   GONZÁLEZ, María Fernanda, La «posverdad» en el plebiscito por la paz en Colombia. **Nueva Sociedad**, v. 269, p. 114–126, 2017., p. 123.

[48]   BASSET, Yann, Claves del rechazo del plebiscito para la paz en Colombia. **Estudios Políticos**, n. 52, p. 241–265, 2018., p. 243. These factors, while significant, do not fully explain Colombia's experience. As Basset explains, urban, peri-urban and intermediary cities did not connect with the pro-peace narrative and fear to be left behind in a post-conflict political context.

[49]   GRIMMELMANN, James, The Virtues of Moderation. **Yale Journal of Law and Technology**, v. 17, n. 42, p. 42–110, 2015.

[50]   See, for instance, Meta's Community Standards governing speech on Facebook, Instagram, Messenger and Threads. META, **Community Standards | Transparency Center**, Meta. Available at: https://transparency.meta.com/policies/community-standards/. Accessed on: 20th January 2025.

[51]   For a detailed discussion, *see* KLONICK, Kate, The New Governors: The People, Rules, And Processes Governing Online Speech. **Harvard Law Review**, v. 131, p. 1598–1670, 2018.

[52]   For a detailed discussion, *see* KLONICK, Kate, The New Governors: The People, Rules, And Processes Governing Online Speech. **Harvard Law Review**, v. 131, p. 1598–1670, 2018.

of all these mechanisms, ex-ante general moderation poses fewer risks for speech since it does not target any specific user or content.

However, how we should think of those mechanisms, and if and how to regulate them using the Law, is a much-contested issue[53]. Misinformation and disinformation are complex concepts, too[54], and to differentiate them is critical for properly understanding the underlying problems of online unauthentic behavior[55]. In contrast, the argument I intend to defend here is normative in nature. I will not engage in a discussion of the methods employed in online information dissemination during the Chilean constitutional process[56], nor will I address whether these methods were coordinated, implying instances of a disinformation campaign. The subsequent section will apply the framework developed herein to analyze how tendentious and partially truthful constitutional interpretations manifested in the Chilean constituent process. Given the difficulty in impartially claiming these interpretations as misleading, content moderation governance decisions related to misinformation in constitutional processes—whether through legal regulation or self-regulation by social media companies—must account for this uncertainty in a manner that does not arbitrarily determine the truthfulness of interpretations, rather empowering the public to make such decisions. The goal of the final section is to provide policy recommendations to meet this objective.

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[53]   LANGVARDT, Kyle, Regulating Online Content Moderation. **Georgetown Law Journal**, v. 106, n. 5, p. 1353–1388, 2017.

[54]   CLAIRE, Wardle**, Fake news. It's complicated**, Medium. Available at: https://medium.com/1st-draft/fake-news-its-complicated-d0f773766c79. Accessed on: 4th November 2025.

[55]   KLONICK, Kate, **TL;DR: Misinfo Motivated Reasoning, How to Improve Child Exploitation Tip Lines, and Jonathan Haidt's Hype**, Substack. Available at: https://klonick.substack.com/p/tldr-misinfo-motivated-reasoning. Accessed on: 4th November 2025.

[56]   *See generally*: SANTOS, Marcelo; BUSTAMANTE-PAVEZ, Guillermo; FLORES, Antonia; et al. Misleading content on encrypted platforms in Chile: WhatsApp vs. Telegram during constitutional elections. Catalan Journal of Communication & Cultural Studies, v. 16, n. 2, p. 197–216, 2024.; MENDOZA, Marcelo; VALENZUELA, Sebastián; NÚÑEZ-MUSSA, Enrique; et al. A Study on Information Disorders on Social Networks during the Chilean Social Outbreak and COVID-19 Pandemic. **Applied Sciences**, v. 13, n. 9, p. 1–19, 2023.; SÁEZ, Chiara; PEÑA, Patricia; GARCÍA, Javier, Challenges for freedom of expression on the internet in social crisis contexts: The case of Chile (2019–2022). **Journal of Digital Media & Policy**, v. 14, special issue on Emerging Debates on Internet Platform Policy and Regulation in Latin America, p. 225–247, 2023; DURÁN, Patricio, **La red social Twitter y el proceso constituyente: el caso de las cuentas anómalas**, Ciper. Available at: https://www.ciperchile.cl/2020/10/17/la-red-social-twitter-y-el-proceso-constituyente-el-caso-de-las-cuentas-anomalas/. Accessed on: 4th November 2025; SANTANDER, Pedro; ELÓRTEGUI-GÓMEZ, Claudio; ALLENDE-CID, Héctor; et al. De la hegemonía digital a la derrota electoral: Majority illusion en el plebiscito constitucional chileno. **Cuadernos.info**, n. 53, p. 70–94, 2022.

3. SOCIAL MEDIA AND THE CHILEAN CONSTITUENT PROCESS

3.1. The Chilean Political and Constituent Processes

In 1980, amidst massive human rights violations, the Chilean Dictatorship called for a fraudulent referendum to enact a Constitution that favored right-winged policies and political parties. The 1980 Constitution had several changes from 1988 to 2005, which modified its authoritarian heritage but not its bias towards right-leaning policies. Chile got rid of anti-democratic institutions, such as "designated" senators (i.e., non-elected by the people) and the disgraceful ban of the Communist Party. Still, conservative politicians refrained from changing the most controversial and influential control mechanisms of the Constitution. Where liberal policies prevailed in Congress, the Constitutional Court responded. Several bills that tried to implement policy changes to the health, educational, and consumer-protection system were rendered unconstitutional by what came to be known as "the third chamber" of Congress[57].

Although not a priority among most Chileans, the replacement of the constitution was a highly sensitive topic for left-leaning political parties and constitutional law scholars. A political movement inspired by the Colombian constituent process invited Chileans to write "*marca A.C.*" on their ballots—the first letters of *Asamblea Constitucional*, Spanish for "Constitutional Assembly." Additionally, in 2014, President Michelle Bachelet began her second term as President, promising to initiate a constituent process. She initiated a popular consultation process, promoting participation from all political sectors and ideologies. However, none of the aforementioned initiatives gained considerable traction among the people, and even fewer among conservatives, and ultimately ended without further advancements[58].

After years of living under Pinochet's Constitution, the country was politically and economically stuck. Chile was not growing as it was in the 1990s and early 2000s, and Congress was not solving urgent societal problems such as rising crime rates, low pensions, or social and gender injustices. A lack of economic growth, income inequality, and individuation processes in modern capitalist societies have been pointed out as sources of social unrest by political analysts and commentators[59]. New Chilean social movements were born during these years. High school adolescents and college students played a significant role in some of Chile's most important social movements in

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[57] ATRIA, Fernando. **La constitución tramposa**. Santiago: LOM Ediciones, 2013.

[58] CONTRERAS, Pablo; LOVERA, Domingo, A constitued constituent process? Chile's failed attempt to replace Pinochet's constitution (2013-2019). **Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, v. 13, n. 3, p. 297–314, 2021.

[59] *See* PEÑA, Carlos, **Pensar el malestar: La crisis de octubre y la cuestión constitucional**, Santiago, Chile: TAURUS, 2020.

2006 and 2011. In 2019, Students opposed a rise in public transport fees and criticized the educational system, which is protected by the constitution. Other social movements supported the students and joined the protests on October 18, along with thousands of citizens across Chile.

Within a week, 2 million people marched, stating "*No son 30 pesos, son 30 años*" —Spanish for "the problem is not thirty pesos, it is thirty years". Notably, with this statement, the 2019 mass movement negated its roots. It did so by acting like a *meme*: to convey a narrative criticizing what happened in Chile after Pinochet's dictatorship ended, and to allow more movements to be part of the movement[60]. Social movements have leveraged social media and memes for a few years, and Chile was no exception. A digital community emerged under the hashtag *#Noson30pesos*, where various political movements converged. Social media played a critical role in disseminating calls for protests, criticizing the Government, and, even more importantly, denouncing human rights violations. In November, nationwide protests prompted political parties to initiate a process to replace the constitution enacted under Augusto Pinochet's dictatorship.

By the year 2021, after a lag imposed by the COVID-19 pandemic during 2020', the Constitutional Convention started its work - a global example of political representation. It was the first constitutional assembly with a system designed to ensure that there would be equal men and women representatives. It also included quotas for the different indigenous people who live in Chile. But, at the same time, it exhibited severe political bias. Leftist and independent-progressive political movements managed to secure more than two-thirds of the representatives needed to pass any proposal. The outcome was a constitutional draft skewed to the left, criticized by the right, and later rejected by 62% of the Chilean people.

Part of the opposing parties' political strategy to get the first constitutional draft rejected was that Chile needed a constitutional change. However, the Convention failed to incorporate the entire country's vision into its proposal. When Chileans rejected the first constitutional draft, progressive political parties sought to keep the constituent assembly alive, while conservatives advocated for another attempt. Despite the interests of political parties being somewhat aligned in this regard, friction lay at the heart of the conversation. This time, right-wing politicians had more leverage than before and imposed their terms on how the assembly would be structured. Although it included a formula to guarantee gender parity, it did not do the same for Indigenous people's quotas. After negotiating for weeks, politicians agreed to a deal including an assembly composed of fifty constitutional counselors elected by popular vote and a three-fifths supermajority quorum to pass proposals into the draft.

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[60]   For a history of memes and politics, how they craft narratives and articulate political movements, see MINA, An Xiao, **Memes to Movements**, Boston: Beacon Press, 2019.

3.2. Half-truthful constitutional interpretations

Both constituent processes faced similar challenges regarding information disorders. Both processes faced several inaccurate and obviously false critics[61]. For example, a Constitutional Conventional and former Secretary of Education implied on Twitter that the Convention was eliminating the national flag, anthem, shield, and Chile's most traditional dance[62]. This was not part of the draft, nor a proposal considered by the Convention, but it still was a reason some people considered voting against the proposal a few months prior to the plebiscite[63]. Another example is a photo supposedly portraying the Convention's speaker —Elisa Loncón, a progressive Mapuche woman within "Time's 100" most influential of 2021- shaking hands with Pinochet[64]. In the second attempt, attacks against the representative's work were made, too. For instance, it was alleged that they had augmented their salary by almost double that of former representatives and had butlers working for them[65]. These cases are examples of misinformation that can be contrasted against facts and, thus, fact-checked.

In the following, I will analyze three salient constitutional interpretations that qualify as "tendentious" or "half-truthful" and cannot be impartially qualified as misinformation: a strong reproductive rights provision interpreted as legitimizing abortions up until nine months of pregnancy fostered by a Senator; a public pension system portrayed as a statization of pension funds in the front page of a national newspaper that changed the entire conversation around misinformation in social media; and a public housing system conveyed as people losing property over their houses, defended by a former Presidential candidate and criticized by the Chilean President.

Article 61 of the first proposal, which sought to protect sexual and reproductive rights and women's right to abortion, was qualified in social media as the "legalization of abortion within nine months of pregnancy". Notably, the constitutional draft did not settle on a "limitless" right; it did not define any term for its exercise. But, since Article 61 did not define a time limit for exercising such a right, it would not have been possible for Congress to do so, since it would be "going against" the Constitution in this matter. A

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[61]   For a short version of this story, *see* BARTLETT, John, **Misinformation abounds as Chile prepares to vote on new constitution**, The Guardian. Available at: https://www.theguardian.com/world/2022/aug/31/chile-new-constitution-vote-misinformation. Accessed on: 4th November 2025.

[62]   CUBILLOS SIGALL, Marcela, Twitter. Available at: https://t.co/c9lzqropqM. Accessed on 3rd May 2024.

[63]   CADEM, **Plaza Pública Survey**, Cadem. Available at: https://cadem.cl/wp-content/uploads/2022/04/Plaza-Publica-430-Se-mantiene-diferencia-en-favor-del-rechazo-44-2pts-en-el-plebiscito-de-salida-vs-39-1pt-que-votaria-apruebo.pdf. Accessed on: 20th March 2024.

[64]   FASTCHECK, **Fotografía de Elisa Loncon dándole la mano a Augusto Pinochet: #Falso**, FastCheck. Available at: https://www.fastcheck.cl/2021/07/05/fotografia-de-elisa-loncon-dandole-la-mano-a-augusto-pinochet-falso/. Accessed on: 3rd May 2024.

[65]   PADILLA, Fabián, **El segundo proceso constitucional tuvo un 79% menos desinformación que el primer proceso — Fast Check**, FastCheck. Available at: https://www.fastcheck.cl/2023/12/22/el-segundo-proceso-constitucional-tuvo-un-79-menos-desinformacion-que-el-primer-proceso/. Accessed on: 3rd May 2024.

Chilean Senator defended this interpretation fiercely over social media[66] and paid radio ads to support it[67].

During the first attempt, Bernardo Fontaine, also a representative in the Constitutional Convention, claimed that workers would no longer be owners of their pension savings if the people approved the proposal. The sentence went viral quickly on social media, mainly to be criticized as fake, and changed the conversation around misinformation[68]. The constitutional proposal did not settle this policy in any way; it only defined the pension system as *public* in its Article 45[69]. Critically, it did not foreclose Fontaine's interpretation either. The political purpose behind Article 45 was to channel the possibility of changing a pension system model based on private property to one based on pension savings. Although it may seem a considerable stretch, some may think that '*public*' equals '*state*,' and '*state*' means '*expropriation*'. Fontaine's reading of Article 45 may be similar to that of a traditional leftist, and perhaps, in the future, this view may be implemented if the majority of the Chilean Congress votes for it. Nationalizing all private pension funds may not be an optimal public policy, but it is not reasonable to qualify it as a misleading interpretation that implies a bad policy.

Article 51 of the first constitutional proposal established the right to dignified and adequate housing, and that the State would implement the necessary measures for its universal and timely enjoyment. However, it did not guarantee that people would own the houses they would get from State-sponsored housing programs. A former Presidential candidate said on Twitter that "Chileans have the right to a house of their own, not to live from State leases", and that this constitutional draft was to "take away your property"[70]. This was, again, a highly contested and viral issue after a politician made similar claims in a meeting with voters[71]; fact-checked by several

66   KAST Felipe, Twitter. Available at: https://twitter.com/felipekast/status/1539401596693491714. Accessed on: 3rd May 2024.

67   CNN Chile, **Kast es acusado de mentir en mensaje radial al decir que borrador de la Constitución "promueve aborto hasta los 9 meses"**, CNN Chile. Available at: https://www.cnnchile.com/pais/felipe-kast-aborto-9-meses_20220622/. Accessed on: 3rd May 2024.

68   TRONCOSO, Francisco, **Menciones de convencionales sobre fake news: desinformación de Fontaine sobre pensiones marcó «punto de inflexión» porque «permeó un medio tradicional»**, El Mostrador. Available at: https://www.elmostrador.cl/destacado/2022/06/25/menciones-de-convencionales-sobre-fake-news-desinformacion-de-fontaine-sobre-pensiones-marco-punto-de-inflexion-porque-permeo-un-medio-tradicional/. Accessed on: 20th March 2024.

69   Art. 45, Chilean Constitutional draft, 2022. Available: at https://www.chileconvencion.cl/wp-content/uploads/2022/07/Texto-CPR-2022.pdf. Accessed on: 4th November 2025.

70   KAST, José. Available at: https://twitter.com/joseantoniokast/status/1543753164549107712. Accessed on: 21 March 2024.

71   NEIRA, Cristian, "**Este es el caso más vergonzoso": Atria acusa fake news de Francisco Orrego sobre derecho a vivienda**. El Desconcierto. Available at: https://www.eldesconcierto.cl/nacional/2022/06/29/este-es-el-caso-mas-vergonzoso-atria-acusa-fake-news-de-francisco-orrego-sobre-derecho-a-vivienda.html. Accessed on: 3rd May 2024.

institutions[72], and even had President Boric weighing in on the matter and tagging these statements as a lie[73].

Since conservative political parties won more than the three-fifths needed to introduce rules into the draft, the constitutional text was skewed to right-wing ideas and was severely criticized by progressives. A right to housing was also passed and again was subject to tendentious interpretations. As in the first process, Chilean citizens could submit proposals to be considered and voted on by the Constitutional Council if they got enough popular support. One of them advocated for a right to a "dignified, secure, and proprietary house", but the Council rejected it. Despite passing a similar clause[74] explicitly including a mandate to promote private ownership within State-sponsored housing programs, the Constitutional Council was criticized for "making the same mistake twice" by "eliminating the right to private property over housing[75]".

Before the conclusion of the first attempt, polling data indicated that a substantial majority of the population, comprising 66%, utilized social media as a primary source of information regarding the Convention. Regrettably, half of these individuals encountered misinformation, while a significant portion, approximately 30%, shared misinformation[76]. Misinformation was present in open social media and end-to-end encrypted messaging platforms[77]. After the first attempt, a major fact-checking institution reported that 64% of the content they reviewed was found to be false[78]. Additionally,

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[72]   FLORES, Antonia; RODRÍGUEZ, Ariadna. **¿Las viviendas serán del Estado si gana el "Apruebo"? | FALSO**, UDP. Available at: https://vergara240.udp.cl/las-viviendas-seran-del-estado-si-gana-el-apruebo-falso/. Accessed on: 3rd May 2024. OLATE, Catalina; FERNÁNDEZ, Arlette, **El derecho a la vivienda está consagrado en la propuesta de nueva Constitución, pero esto no significa que las casas serán del Estado**, FactChecking. Available at: https://factchecking.cl/user-review/el-derecho-a-la-vivienda-esta-consagrado-en-la-propuesta-de-nueva-constitucion-pero-esto-no-significa-que-las-casas-seran-del-estado/. Accessed on: 3rd May 2024; PIZARRO, Gabriela, **¿Perderé mi casa o mis fondos de pensiones con la nueva Constitución?**, Ciper. Available at: https://www.ciperchile.cl/2022/07/26/perdere-mi-casa-o-mis-fondos-de-pensiones-con-la-nueva-constitucion/. Accessed on: 3rd May 2024.

[73]   T13, **Boric y fake news sobre derecho a vivienda: "No crean en las mentiras que circulan por internet"**, Teletrece. Available at: https://www.t13.cl/noticia/convencion-constitucional/politica/boric-y-fake-news-derecho-vivienda-no-crean-mentiras-circulan-internet-29-06-2022. Accessed on: 3rd May 2024.

[74]   To guarantee a right to an adequate housing, and to promote within State-sponsored housing programs private property over such housing.

[75]   ECHEGOYEN, Maximiliano, **"Republicanos rechazó el derecho a la casa propia": #Engañoso**, FastCheck. Available at: https://www.fastcheck.cl/2023/09/05/imagen-republicanos-rechazo-el-derecho-a-la-casa-propia-enganoso/. Accessed on 4th November 2025.

[76]   DATAVOZ; DERECHOS DIGITALES**, Encuesta Información y Proceso Constituyente**, Ciper. Available at: https://www.ciperchile.cl/wp-content/uploads/Presentación-de-Resultados-Derechos-Digitales-Marzo-2022.pdf. Accessed on: 25th July 2024.

[77]   SANTOS, Marcelo *et al*, Misleading content on encrypted platforms in Chile: WhatsApp vs. Telegram during constitutional elections. **Catalan Journal of Communication & Cultural Studies**, v. 16, n. 2, p. 197–216, 2024.

[78]   MIRANDA, Elias; ECHEGOYEN, Maximiliano, **Fact checking: Un 64% de las verificaciones sobre el proceso constituyente resultaron ser falsas**, FastCheck. Available at: https://www.fastcheck.cl/2022/07/05/fact-checking-un-64-de-las-verificaciones-sobre-el-proceso-constituyente-resultaron-ser-falsas/. Accessed on: 7th May 2024.

Chile had weak regulations regarding political ads in the context of the constituent process, which allowed unaccountable organizations to pay for dubious constitutional interpretations. The electoral service tried to get Google to disclose who paid for these ads. Google refused to comply as expected and was fined the maximum amount allowed by Chilean electoral law: 6.600 dollars[79].

Overall, the work of the second constituent assembly faced similar challenges regarding misinformation as the first attempt, only on a different scale. For instance, one major fact-checking Chilean institution found 78% less misinformation than in the first attempt[80]. The Electoral Service (SERVEL) President, Andrés Tagle, commented that SERVEL found less misinformation on social media than in the first attempt at the constituent assembly[81].

The problem the Chilean Constituent endeavor experienced is a version of the "liar's dividend". Within this context, individuals accused of misinformation can also accuse others of misinformation against them[82], leveraging a decreased trust in public debate to their advantage. It is a version because, although constitutional interpretations are inherently political and thus cannot be impartially labeled as misleading, politicians from both political sectors have accused the other of misinforming the people. As much as progressivist political parties accused their opponents of misinforming the people with their constitutional interpretations, right-wing political parties accused progressists of exaggerating the constitution's effect[83] and the Constitutional Convention of using "half-truths" to describe the constitutional proposal[84].

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[79] CNN Chile, **Servel cursa multa de $6 millones a Google por propaganda en el pasado plebiscito de salida**, CNN. Available at: https://www.cnnchile.com/pais/servel-multa-google-propaganda-plebiscito-salida_20230925/. Accessed on: 4th November 2025.

[80] PADILLA, Fabián, **El segundo proceso constitucional tuvo un 79% menos desinformación que el primer proceso — Fast Check**, FastCheck. Available at: https://www.fastcheck.cl/2023/12/22/el-segundo-proceso-constitucional-tuvo-un-79-menos-desinformacion-que-el-primer-proceso/. Accessed on: 3rd May 2024.

[81] PALACIOS, Jorge, **"Hemos visto menos fake news": la reflexión del Servel en relación con el plebiscito constitucional anterior**, The Clinic. Available at: https://www.theclinic.cl/2023/12/11/hemos-visto-menos-fake-news-la-reflexion-del-servel-en-relacion-con-el-plebiscito-constitucional-anterior. Accessed on: 7th May 2024. Similarly, *see* VALENZUELA, Sebastián, **Académico UC: En este proceso constituyente ha habido menos desinformación que en el anterior**, Cooperativa.cl. Available at: https://cooperativa.cl/noticias/pais/politica/constitucion/academico-uc-en-este-proceso-constituyente-ha-habido-menos/2023-12-06/171719.html. Accessed on: 7th May 2024.

[82] SCHIFF, Kaylyn Jackson; SCHIFF, Daniel S.; BUENO, Natália S. The Liar's Dividend: Can Politicians Claim Misinformation to Evade Accountability? **American Political Science Review**, v. 199, n.1, p. 71-90, 2025.

[83] SELUME, Jorge, **Tiempos mejores**. Santiago: Planeta, 2024.

[84] EL LÍBERO, **Siete medias verdades de la Guía Práctica del Borrador de la Convención**, El Líbero. Available at: http://ellibero.cl/libero-constituyente/siete-medias-verdades-de-la-guia-practica-del-borrador-que-comenzo-a-repartir-la-convencion/. Accessed on: 16th January 2025.

4. DISCUSSION AND POLICY RECOMMENDATIONS: HOW TO AD-DRESS CONSTITUTIONAL HALF-TRUTHS WITHOUT HINDERING LEGITIMATE INTERPRETATIONS?

4.1. Discussion

In this section, I will address three criticisms of the central argument I am presenting here. In summary, I argue that constitutional interpretation depends upon political judgment and hence cannot be impartially qualified as misleading. Notwithstanding the enraging and engaging potential of such constitutional interpretations in social media, where to draw the line distinguishing truthful from untruthful interpretation is not obvious. However, given that the goal of a constituent process is to find common ground for a polity, it remains critical to provide the people with the tools to make sense of the constituent debate in a way that brings them closer together, rather than further apart.

1. Some of the constitutional interpretations were extremely unreasonable and thus can be qualified as misinformation

Half-truthful constitutional interpretations may still be qualified as a misinformation problem. Not all unauthentic content can be verified[85]. Thus, constitutional interpretations are not, and that disinformation campaigns may use truthful content to destabilize their political opponent, produce disagreement in a society, or delegitimize democratic institutions[86]. In a way, both political sides are disinforming, and both present interpretations of the constitutional proposals they disagree with as misinformation — a common political problem[87]. To qualify this problem as misinformation would depend on assuming a tribal nature of the truth, one where political beliefs and groups render knowledge as correct or incorrect. There is also a connection between misinformation and polarization that would support an approach like this[88].

Framing the problem in this manner is possible, yet not entirely productive in understanding its nature and developing potential solutions for two reasons. The first one is institutional. If half-truthful constitutional interpretations were a misinformation problem, who would be —politically and legally— qualified to arbitrate which interpretations of the constitutional proposals are accurate and which are not? The second

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[85] DIRESTA, Renee, **Invisible Rulers: The People Who Turn Lies into Reality**, New York: Public Affairs, 2024.

[86] DIRESTA, Renee, **Invisible Rulers: The People Who Turn Lies into Reality**, New York: Public Affairs, 2024; RID, Thomas, **Active Measures: The Secret History of Disinformation and Political Warfare**, New York: Macmillan, 2020.

[87] PESCA, Mike, **Little Miss Information**, Pesca Profundities. Available at: https://mikepesca.substack.com/p/little-miss-information. Accessed on: 16th January 2025.

[88] VALENZUELA, Sebastián *et al*, The Paradox of Participation Versus Misinformation: Social Media, Political Engagement, and the Spread of Misinformation. **Digital Journalism**, v. 7, n. 6, p. 802–823, 2019.

reason is constitutional. A democratic and pluralistic constitution's purpose is to include not all, but at least a broad spectrum of political projects. In the large-scale content moderation operations of social media platforms, zero false positives are not an option. Thus, even a content moderation policy oriented to qualify as misinformation only the most unreasonable constitutional interpretations, will collaterally affect legitimate constitutional options for a polity[89].

2. Constitutional interpretation is a legal, not political, endeavor

Constitutional interpretation adheres to established legal frameworks and methodologies, rather than to personal or political preferences. Legal scholars and courts develop objective criteria for evaluating constitutional claims by utilizing legal sources, including the constitutional text, founding documents, judicial precedent, and, in some cases, legally established canons of interpretation. Judges and scholars employ these tools to reach legal conclusions based on reasoning rather than political ideology. Constitutions develop legal frameworks to manage political disagreements, providing a shared set of rules for democratic governance.

Even if we accept that constitutional interpretation is fundamentally a legal practice rather than a political one, practical and legitimacy challenges prevent effective moderation of constitutional discourse on social media platforms. Consider, on the one hand, a Constitutional Court possessing the expertise and legitimacy to interpret constitutional provisions. This would solve the legitimacy problem but not the practical one: it cannot evaluate the massive volume of constitutional debates circulating on social media during a constituent process. Platforms process thousands of user interactions daily, including discussions in private, encrypted channels where content is not readily accessible for moderation. Moreover, the speed of social media communication fundamentally mismatches the pace required for proper legal analysis. While a Constitutional Court might eventually determine that the law does not support an interpretation, such a determination would come after the interpretation has gone viral.

On the other hand, consider social media companies. Their sophisticated content moderation systems can address the practical issue of managing a massive content moderation operation[90], but lack the necessary legal expertise and democratic legitimacy to assume the role of constitutional arbiters. Therefore, while constitutional interpretation might follow legal principles, this distinction becomes impractical in the context of social media content moderation. These practical limitations suggest we need approaches focusing on process rather than substance.

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[89] WU, Felix, Collateral Censorship and the Limits of Intermediary Immunity. **Notre Dame Law Review**, v. 87, n. 1, p. 293–350, 2011.

[90] KLONICK, Kate, The New Governors: The People, Rules, And Processes Governing Online Speech. **Harvard Law Review**, v. 131, p. 1598–1670, 2018.

3. Content moderation is censorship

A final argument may suggest that content moderation is a form of censorship, and that moderators are as biased as anyone else, applying platform policies that favor one political sector over the other[91]. Again, one must not fully agree with this argument to acknowledge the risks that content moderation entails[92]. The difficulty of impartially moderating constitutional interpretations, as previously discussed, adds another reason to consider the third critique seriously. Plus, as Chilean research has shown, "political engagement is both a major consequence of using social media for news as well as a key antecedent of sharing misinformation"[93].

Consequently, the major challenge is mitigating misinformation and disinformation in a way that does not affect political speech. Social media manages a delicate balance between too much and too little moderation—a trade-off over how many false positives and negatives we are willing to tolerate. Given the speed and scale of social media platforms, excessive moderation will inevitably lead to an increase in false positives, potentially chilling legitimate constitutional interpretations[94]. Thus, reckoning with the third critique demands not a theoretical or conceptual counterargument, but specific content moderation policies. There are methods to moderate online discourse that do not rely upon qualifying constitutional interpretations as truthful or not, and thus, are entirely agnostic regarding the content social media platforms host and users post. These are ex-ante, general moderation decisions that structure how political content is displayed by social media platforms, rather than moderating ex-post, particular constitutional interpretations.

4.2. Policy recommendations

i) Transparency in political ads

Ex-ante transparency measures from social media platforms should be required, as well as better regulation of who can spend money on such ads. For instance, regulating that only institutions with legal representatives within the Country's territory

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[91]   *See*, for instance, HUANG, Justin T.; CHOI, Jangwon; WAN, Yuqin, Politically biased moderation drives echo chamber formation: An analysis of user-driven content removals on Reddit, 2024. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4990476. Accessed on: 4th November 2025.

[92]   *See*, for instance, LAURA, Romero, **Former Twitter execs tell House committee that removal of Hunter Biden laptop story was a "mistake"**, ABC News. Available at: https://abcnews.go.com/US/former-twitter-execs-house-committee-removal-hunter-biden/story?id=96979014. Accessed on: 20th January 2025.

[93]   Regarding the importance of transparency for accountability, *see* HOOD, Christopher, Accountability and Transparency: Siamese Twins, Matching Parts, Awkward Couple?. **West European Politics**, v. 33, n. 5, p. 989–1009, 2010.

[94]   GRIMMELMANN, James, **To Err Is Platform**, Knight First Amendment Institute at Columbia University. Available at: http://knightcolumbia.org/content/err-platform. Accessed on: 18th February 2024.

can pay for political ads is a way to enable political accountability. Requiring that only legally established political parties can pay for ads would be a further step to consider, as they can be lawfully *and* politically accountable. Transparency-wise, regulators can consider requiring social media platforms to inform users when the content they see is an advertisement, who paid for it, and to which constitutional clause the ad is referring.

ii) Friction and counter speech in open social media platforms

Friction policies[95] are deliberate design choices that slow down[96] user inter-actions on social media platforms. These policies—such as requiring users to click through warnings or imposing sharing limits—create small obstacles that encourage more thoughtful engagement with content[97]. For instance, Twitter introduced friction for the 2020 U.S. Presidential Election[98], requiring users to add a comment to a post before retweeting. Friction poses less risk to speech than reactive or ex-post[99] inter-ventions such as shadow-banning or de-platforming specific content or users. Yet, they are still effective. The Center for Economic Policy Research found that including minor hurdles, such as requiring an extra click to share news, could help reduce the spread of contentious content[100].

Another ex-ante, general moderation for open social media platforms is counter speech. Counter speech, which involves responding to bad speech with more speech[101], enables users to discuss the parts of the content they deem to be misleading. *Community notes* are a typical example of a counter speech measure, where, for instance, users post reasons ("notes") as to why a given post is misleading. Then, the most voted note will appear on the side of the post, providing additional context to the content. This approach has well-known limitations, such as the fact that social media users tend to

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95   For Facebook's take on the angry/like reactions ratio, *see* MERRILL, Jeremy; OREMUS, Will, **Five points for anger, one for a 'like': How Facebook's formula fostered rage and misinformation**, Washington Post. Available at: https://www.washingtonpost.com/technology/2021/10/26/facebook-angry-emoji-algorithm/. Accessed on: 4th November 2025.

96   What is to be deemed as social medias'"natural" pace is not obvious. For the falsehood baseline problem, *see* GRIMMELMANN, James, Speech Engines. **Minnesota Law Review**, v. 98, p. 868–952, 2014.

97   FRISCHMANN, Brett M.; BENESCH, Susan, Friction-In-Design Regulation as 21St Century Time, Place and Manner Restriction. **Yale Journal of Law and Technology**, v. 25, n. 376, p. 376–447, 2023.

98   GADDE, Vijaya; BEYKPOUR, Kayvon, **Additional steps we're taking ahead of the 2020 US Election**, X. Available at: https://blog.x.com/en_us/topics/company/2020/2020-election-changes. Accessed on: 18th De-cember 2024.

99   For a content moderation conceptual taxonomy, *see* KLONICK, Kate, The New Governors: The People, Rules, And Processes Governing Online Speech. **Harvard Law Review**, v. 131, p. 1598–1670, 2018.

100   HENRY, Emeric; ZHURAVSKAYA, Ekaterina; GURIEV, Sergei**, Fact-checking reduces the propagation of false news in social networks**, Center for Economic Policy Research. Available at: https://cepr.org/voxeu/col-umns/fact-checking-reduces-propagation-false-news-social-networks. Accessed on: 4th November 2025.

101   PENG, Kenny; GRIMMELMANN, James**, Rescuing Counterspeech: A Bridging-Based Approach to Com-bating Misinformation,** ArXiv. Available at: https://arxiv.org/abs/2410.12699. Accessed on: 4th November 2025.

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evaluate the content of other users in a biased manner[102][103]. Thus, an algorithm not designed to account for this problem, such as picking the most voted evaluation as the community note, will be ineffective since it promotes content that only one political group of users believes in. However, a "bridging-based" approach, such as the one developed by Grimmelmann and Peng, provides an algorithm designed not to identify the most voted note but content that both political sectors voted for and are inclined to believe in[104]. A counter speech approach poses fewer risks to censorship while allowing people the tools to discuss and make sense of which social-constitutional interpretation proves more reasonable to them.

iii) Friction in end-to-end encrypted messaging platforms

End-to-end encryption (E2EE) messaging platforms are becoming increasingly common. When messages are E2EE, third parties cannot read them – including the platform hosting the communication. Encryption makes content moderation and policy enforcement harder, but not impossible[105]. Consider again friction. For instance, in 2020, WhatsApp implemented a content moderation policy by tagging viral content as "shared many times" and preventing such content from being shared with more than five users at a time[106]. According to WhatsApp, these techniques reduced the spreading of viral content by 70%[107]. Such a moderation policy is a case of ex-ante, general intervention that does not scan the content shared by users, although it diminishes its potential speed and reach.

5.   CONCLUSION. SOCIAL MEDIA AND CONSTITUENT PROCESSES: A MISMATCH?

Constitutional openness with social media's avenues for easy-to-understand messages traveling fast and far is a dangerous mix. One that promotes tendentious,

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[102] ALLEN, Jennifer; MARTEL, Cameron; RAND, David G, Birds of a feather don't fact-check each other: Partisanship and the evaluation of news in Twitter's Birdwatch crowdsourced fact-checking program. **Proceedings of the 2022 CHI Conference on Human Factors in Computing Systems**, p. 1–19, 2022.

[103] NEWTON, Casey, **Meta surrenders to the right on speech**, Platformer. Available at: https://www.platformer.news/meta-fact-checking-free-speech-surrender/. Accessed on: 20th January 2025.

[104] PENG, Kenny; GRIMMELMANN, James**, Rescuing Counterspeech: A Bridging-Based Approach to Combating Misinformation,** ArXiv. Available at: https://arxiv.org/abs/2410.12699. Accessed on: 4th November 2025.

[105] DUAN, Charles; GRIMMELMANN, James, Content Moderation on End-to-End Encrypted Systems: A Legal Analysis. **Georgetown Law Technology Review**, v. 8, n. 1, p. 1–92, 2024.

[106] For other techniques in end-to-end encrypted social media platforms, *see* DUAN, Charles; GRIMMELMANN, James, Content Moderation on End-to-End Encrypted Systems: A Legal Analysis. **Georgetown Law Technology Review**, v. 8, n. 1, p. 1–92, 2024.

[107] PORTER, Jon, **WhatsApp says its forwarding limits have cut the spread of viral messages by 70 percent**, The Verge. Available at: https://www.theverge.com/2020/4/27/21238082/whatsapp-forward-message-limits-viral-misinformation-decline. Accessed on: 7th May 2024.

infuriating, and engaging interpretations of the constitutional draft, makes political consensus harder to reach, and poisons citizens' information consumption. At the same time, moderating discussions over constitutional changes is extremely hard. Constitutional interpretations cannot be impartially claimed as misleading. Thus, traditional approaches for arbitrating truthful content will not work or may silence legitimate constitutional interpretations. However, at the same time, this positive feature of constitutional texts can be easily weaponized against them, hindering the purpose of achieving common political ground within a constituent process.

This was not the place to analyze the political and legal virtues and sins of the first and second Chilean constitutional drafts. Probably, none of them was as biased as they were portrayed to be by those criticizing them on social media. That is a problem for Chile and Chileans only. However, how constitutional open-ended concepts facilitate tendentious interpretations and how social media provides avenues for such interpretations to spread rapidly are problems for policymakers in other countries to reflect on. Here, I have provided measures to tackle this issue. Firstly, electoral campaign regulation should aim to enhance transparency in political advertising. The second is implementing friction in social media, which involves slowing down social media platforms' usual pace, preventing the spread of viral content, and potentially leading to constitutional interpretations. Finally, providing avenues for counter speech in the form of community notes allows users to inform themselves of other interpretations of the content they are seeing before sharing, reposting, and so on. These proposals are agnostic to the content hosted on social media platforms and do not require any distinction between truthful and false constitutional interpretations. They pose less risk of censoring contentious, although legitimate, constitutional interpretations.

This article extensively discussed how some social media features are problematic for constituent politics. Nevertheless, political societies discuss constitutional issues daily, debate interpretations, and abide by the constitutional decisions of different institutions[108]. A future research agenda should address at least two problems. Firstly, the extent to which social media avenues for misinformation and polarization influence constitutional debates beyond constituent processes is a challenge for the socio-legal scholarly literature to address. The second is how content moderation legal regulation resonates within a Latin American tradition of free speech, one different from the US' First Amendment doctrine, where most of the content moderation debate is focused. As this article attempts to do, such a research agenda should bear in mind the importance of social media in including new voices and political actors in the public sphere. The challenge is to address its negative features while minimizing the impact on the positive ones.

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[108] On polarization and constitutional interpretations, *see* POZEN, David E; TALLEY, Eric L; NYARKO, Julian, A Computational Analysis of Constitutional Polarization. **Cornell Law Review**, v. 105, p. 1–84, 2019.

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