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BLUEPRINT AND PARALYSIS: LESSONS FROM FAILED CONSTITUTION-MAKING IN NEPAL, CHILE, AND WEIMAR GERMANY.

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ABSTRACT

The process of constitution-making has been frequently hailed as the most democratic and transformative process a country has ever undertaken, but history demonstrates that this is a very delicate political activity. In the same breath, constitution-making processes have time and again failed globally because of political polarization, exclusionary politics, poor institutions, economic crises and mistrust of governments by the citizens at large. Under such circumstances, even good intentions to restore the democracy may fail to produce unity or tyrannical backwardness. The paper explores these constitutional failures using the experiences of Nepal, Chile and Germany, three nations whose geographical and historical backgrounds are divided by geography and history, yet united together by the facts that they were struggling to find a legitimate and enduring constitutional order. In Nepal, the absence of inclusion and constitutionalism was caused by the political instability and elitist negotiations. The democratic experiment in Chile collapsed due to polarization of the society and the lack of cohesion in leaders and unrealistic reformistic ideals. The economic collapse, unchecked presidential authority and poor democracy culture were some of the factors that affected the Weimar Republic in Germany. Through these comparisons, this paper will determine some common constitutional issues such as procedural imbalance to disunity of the society and how political consensus, institutional equilibrium and popular faith are the real pillars of a sustainable constitution. Finally, it concludes that constitution-making cannot be achieved solely through legal design but long-term democratic investment and national purpose.

The Deadlock of Destiny: Failure of Nepal's Constitution Making Assembly

The Nepal's attempt to transition after a decade of civil war from monarchy to republic was ultimately dependent on the success of its constitution-making process. With the end of Maoist insurgency in 2006 the constitution making began in 2007.¹ This new venture brought about the election of the first Constituent Assembly in 2008, with the vision and demand that supreme law to be made by the representatives of Nepal's people. The Constituent Assembly officially declared the abolition of monarchy on May 28, 2008. However, this effort quickly reduced to ashes when constituent assembly collapsed without birthing the Constitution.¹ The succeeding constituent assembly delivered one constitution in 2015 in the middle of protests, public disappointment and loss of confidence in leaders. This failure of constituent assembly was not an unlucky timing but a product of long-existing ethnic inequalities, weak political institutions and loss of political confidence.

The repeated need for extensions after expiry of two-year mandate and ultimately dissolution of assembly in 2012 was symbolic of internal incoherence and deep-rooted disagreements of political views. Therefore, constitutional crisis in Nepal was not just another procedural breakdown rather a victory of self-interest of political actors over collective interest of people of Nepal.²

The Unstable Foundation: Historical, Social and Economic Background

The Historical Roots of Exclusion

Nepal inherited its toxic political fabric from its authoritarian past. The country underwent nearly 250 years of autocratic regimes starting from the Shah monarchy to the barbaric Rana oligarchy, each having capital in Kathmandu. This totally excluded the political plurality and political participation in the nation. Next thirty years were again an unstable rule of absolute monarchy under the Government of Nepal Act, 1948 and Constitution 1959, where they provided for monarchy rather than democracy.³

The constitutional efforts of 1990 introduced multiparty democracy and constitutional monarchy with retention of Hindu state. This did not address the problem of exclusion and

¹ Ville Kari, *On the Constitutional Crisis of Nepal and the "Power to Remove Difficulties"*, 48 LAW & POL. IN AFR., ASIA AND LATIN AM. 187, 188 (2015).

² Aditya Adhikari, *Nepal's Constitutional Crisis*, 112 CURRENT HISTORY 146, 146 (2013).

³ Surendra Bhandari, *Constitution Making and the Failure of Constituent Assembly: The Case of Nepal*, 11 RITSUMEIKAN ANN. REV. OF INT'L STUD. 1, 3-4 (2012).

fueled the Maoist People's War in 1996. Consequently, Interim Constitution of 2007 guaranteed proportional representation, federalism and secularism.⁴ But later this democratic spirit was soon eroded by fractured politics and lack of political and constitutional morality.⁵

Crisis of social exclusion

Nepal is home to over 200 ethnic, linguistic and religious minorities. These minorities suffered institutionalized exclusion at the hands of traditional high-caste Hindu elite. According to 2011 census⁶, the social structure of minority community in Nepal is as follow:

- i. **Dalit:** Constitute 13.12% of population. They were traditional 'untouchables,' and faced extreme social discrimination and exclusion.
- ii. **Indigenous Nationalities (Janajatis):** 35.81% These groups experience cultural discrimination.
- iii. **Madhesi:** Population 14.83%. This regional identity group of southern plains struggled by historical denial of citizenship to millions.

This social plurality made federalism a natural reform to distribute power among the diverse groups. Despite of the fact that the 2007 Constitution guaranteed some radical changes like minority and women quotas proportional representation, federalism and secularism, it lagged implementation. The old elites delayed and diluted the reforms by dominating the whole transitional process.⁷ They saw these inclusions as bargaining chip rather than a transformative goal.

Economic Fragility

The economic plight in Nepal severely exacerbated its social division and exclusion. Its economy remains South Asia's one of the poorest globally, which orbits around rain-fed agriculture (71% of employment in 2006)⁸, stagnant industrialization, poor infrastructure, limited resources, and prevalent corruption. Unequal distribution of resources resulted in rural impoverishment, educational and employment opportunities.

This economic fragility and social perils further intensified the political instability in the country⁹ with many severe consequences like industrial closure, electricity deficit and

⁴ *Id.* at 7.

⁵ *Id.* at 8.

⁶ THE INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS, <https://iwgia.org/en/nepal/3607-iw-2020-nepal.html>, (last visited Oct. 24, 2025).

⁷ Mahendra Lawoti, *Prolonged Transition and Setback in Reforms: Timing, Sequencing, and Contestations over Reforms in Post-Conflict Nepal*, CRPD WORKING PAPER NO. 43, at 19, (2015) <https://soc.kuleuven.be/crpd/files/working-papers/working-paper-lawoti-2.pdf>.

⁸ WORLD BANK GROUP, <https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?locations=NP>, (last visited Oct. 24, 2025).

⁹ Cooper, 2015, p. 4

migration of youth from Nepal for foreign employment (large remittance-to-GDP ratio of 25.2% in the year 2013)¹⁰.

The widespread poverty and exclusion converted these socio-economic grievances into demands for structural change. Since democratic governance failed to deliver inclusion, identity politics energized by the Maoist promise of autonomous ethnic provinces¹ became the primary, desperate vehicle for marginalized groups to demand systemic justice, effectively turning federalism into a perceived necessity for survival.

Why constituent assembly failed?

The ultimate collapse of the Constituent Assembly resulted from not just one flaw but a sequence of events coupled with fatal decision making and bad timing. Some of the major drawbacks are listed as follows:

Elite Control and Deadlock: The Federalism dispute

The Constitutional assembly of Nepal became the political arena for parties struggling for their personal goals rather than being a forum for deliberation. The Maoists on the one hand and Nepali Congress together with Communist Party of Nepal–Unified Marxist-Leninist (CPN-UML) on the other hand had different idea federalism. Which became the ultimate blockade for the Constitution making. The two models of federalism are:

Model	Proponents	Basis of Model	Result of Model
Poly-Ethnic Model	Maoists, Madhesi, Janajati	Identity recognition and autonomy for marginalized groups to correct historical exclusion	Guaranteed representation for marginalized groups.
Mono-Ethnic Model	Nepali Congress (NC), CPN-UML, Traditional Elite	Economic viability and maintenance of geographic integrity	Perpetuation of high-caste Hill elite hegemony across almost all provinces.

The Maoists and Madhesi parties favored ‘identity-based federalism,’ whereas the NC and

¹⁰ WORLD BANK GROUP, <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=NP>, (last visited Oct 25, 2025).

UML insisted on neutral provincial boundaries.¹¹ Party leaders negotiated under confidential deliberation, alienating ordinary members of the parties.¹² The constituent assembly influenced by the elites prevented voting on the issue by postponing meeting for more than twenty times and ultimately allowed the high hill elites to block the federal reform. Thereby the assembly collapsed in 2013 after the repeated extensions.

Flaw of Dual responsibility

Constituent Assembly's dual mandate contributed to its collapse. It was tasked with two simultaneous responsibilities of drafting the fundamental law of the country as constitution making body and legislate on the ordinary laws as a Parliament. This resulted in constant postponement of the constitution as assembly was diverted towards the low-stake secondary legislations. This dual role blurred priorities by dividing its time between governance and drafting.¹³

This institutional duality crippled the institution making it weak and poorly coordinated. It is another reason why the assembly lost its autonomous constitutional role and became the extension of political parties. Furthermore, the constituent assembly was the nation's largest representative body having 601 members. This large size added to the problem as collective actions became impossible and consensus on disputed issues unattainable. Again, making it a very fragile body.

Sequencing and Timing Failures

For a post conflict nation, both timing (interim measures, elections, army integration) and sequence (trust building before finalizing the constitution) are of sheer importance. If either goes wrong, the process can stall, be reversed, or be captured by elites.¹⁴ Some of the examples from Nepal are:

- i. Premature constitutional reforms without nation's trust building
- ii. Quick elections for constitutional assembly. Convening a representative body too quickly without adequate upstream arrangements increases uncertainty and bargaining costs¹⁵
- iii. Declaring sweeping norms that lagged implementation. Rights existed largely on paper and were vulnerable to reversal.

¹¹ ADHIKARI, *supra* note 2, at 150.

¹² BHANDARI, *supra* note 3, at 9.

¹³ *Id.*

¹⁴ MAHENDRA LAWOTI, *supra* note 7 at 3–5.

¹⁵ Tom Ginsburg and Sumit Bisarya, *CONSTITUTION MAKERS ON CONSTITUTION MAKING* 20-22 (Cambridge University Press 2022).

- iv. Maoist army integration and security reform remained unresolved for a long time while the other political policy making proceeded made room for bargaining leverage for actors who could threaten instability.¹⁶
- v. Extensions and missed deadlines by constituent assembly sapped momentum and legitimacy. Despite having a conflict resolution mechanism, constituent assembly failed to utilize it, shows internal choice by the elite to prioritize constitutional collapse over a potentially losing vote on federalism.

Deep Deficit of Trust

The public's initial optimism following the 2006 popular movement was quickly "squandered" as leaders focused on "petty matters of self-aggrandizement" and corruption. The depth of the public anger and the systemic crisis of trust manifested in striking ways, notably when the chiefs of the three major parties were "slapped in public over the past two years" in outbursts of rage.¹⁷ Even within the parties, disillusionment was rampant; committed Maoist cadres felt their top leadership had "abandoned the rank and file" and become "corrupt and complacent" after entering mainstream politics. This internal party strife led to political fragmentation and the emergence of radical factions advocating renewed armed struggle. This systemic erosion of confidence confirmed the profound "democratic deficit".

Constitutional Crisis

Lack of Constitutionalism

The fundamental law was always imposed by monarchs or crafted by nominated elites, rather than being determined by the populace. As a result, the core concept of constitutionalism the political doctrine that demands limits on state power and effective citizen participation never fully took root, as sovereignty was perpetually either granted by the monarch or seized by political factions.

Surendra Bhandari distinguishes clearly between autocratic and democratic constitution-making. Under autocracy, constitutions are granted by rulers as instruments to legitimize their power, while in democracy, constitutionalism must be developed, owned, and internalized by the people. Nepal's experience reveals that democracy without constitutional ethics is hollow, and constitution-making without trust is impossible. The process demonstrated that democratic forms, when divorced from moral substance, lead only to recurring instability.

¹⁶ *Id.*

¹⁷ ADHIKARI, *supra note 2*, at 151.

Bhandari views Nepal's constitutional collapse as both political and moral. Though institutions like courts and parliament existed, they lacked constitutional ethics, transparency, and legitimacy. The 2012–2013 deadlock exposed this void when leaders appointed Chief Justice Khil Raj Regmi to head an interim government, violating the separation of powers. As Adhikari notes, this marked Nepal's drift into extra-constitutional improvisation, where expediency replaced principle. The episode symbolized the death of constitutionalism when legality surrendered to convenience.¹⁸ Acharya draws a parallel to the French Revolution, where popular sovereignty eventually replaced monarchy through a declaration of rights that bound rulers to law. Nepal, he argues, needs a similar transformation a complete shift of sovereignty from monarchs and elites to the people.¹⁹ Ultimately, Nepal's democracy failed not from weak institutions but from their loss of moral integrity and trust, proving democracy cannot survive without constitutional ethics. Acharya stresses that democracy without constitutionalism is chaos, while constitutionalism without democracy is tyranny.

“Removing of Difficulties” Clause

This legacy of flawed governance was codified in the 1990 Constitution; a document criticized for its exclusionary nature and its maintenance of the historical Hindu kingship. Crucially, the 1990 framework introduced a "dual sovereignty" structure, dividing ultimate power between the people and the King. This structural fault steered Nepal toward insurgency and instability. Furthermore, King Gyanendra exploited constitutional ambiguities, notably misusing the "power to remove difficulties" (Article 127 of the 1990 Constitution), to unilaterally dismiss governments in 2002 and stage the 2005 coup.²⁰ This controversial power, inherited from former royal prerogatives, was worryingly retained in Article 158 of the Interim Constitution. This history established a dangerous precedent where the circumvention of constitutional law was treated as an acceptable tactic for consolidating elite power, thereby justifying subsequent procedural abuses by the new democratic leaders.

In March 2013, President Ram Baran Yadav invoked Article 158 (“Power to Remove Difficulties”) of the Interim Constitution to authorize elections and appoint Chief Justice Khil Raj Regmi as head of an interim government.²¹ Its use without a sitting legislature or Council of Ministers was highly controversial. Ville Kari describes it as both a “blessing and a curse”:

¹⁸ ADHIKARI, *supra* note 2, at 150-151.

¹⁹ Upendra D. Acharya, *Constitutionalism and Democracy in Nepal: What Went Wrong?*, in *CONSTITUTIONALISM AND DEMOCRATIC TRANSITIONS: LESSONS FROM SOUTH AFRICA* 190 Veronica Federico and Carlo Fusaro, eds. (Firenze University Press 2006).

²⁰ VILLE KARI, *supra* note 1, at 191.

²¹ VILLE KARI, *supra* note 1, at 188.

while it revived the constitutional process, it also blurred the line between legality and necessity.²²

Lessons to Learn for a Post-Conflict Constitution-Making

The case of Nepal's failed transition offers critical, lasting lessons regarding the necessary elements of process, substance, and political culture required to build a durable constitutional democracy in deeply divided societies.

Prioritize the Constituent Mandate:

The body responsible for drafting the constitution must be institutionally separated from the regular Legislature-Parliament.¹ The dual role creates constant distraction, and incentivizes political leaders to prioritize short-term legislative control over long-term constitutional consensus.²³ The experiences of South Africa and Kenya shows that independent constitutional commissions and sequenced processes can produce better outcomes.²⁴

Institutionalize Conflict Resolution:

A robust, mandatory mechanism, such as the two-thirds supermajority vote, must be defined and strictly enforced for resolving deadlocked issues. Allowing dominant elites to avoid this established democratic procedure to protect their hegemony as observed in Nepal—ensures prolonged stalemate and procedural collapse.

Ensure Procedural Legitimacy:

Crucial constitutional decisions must occur within the formal, elected representative body, not through "behind closed doors" negotiations by an unaccountable few. Transparency is vital to ensure that the constitutional text maintains the trust of marginalized groups and avoids the perception that it is being dictated by self-serving elites. Future constitution-making must therefore prioritize procedures that build and sustain legitimacy through inclusivity, openness, and accountability.

Manage Timing and Deadlines Credibly:

Prolonged transitions lead to political opportunism, citizen fatigue, and the dilution of initial reform mandates. Processes must have realistic, firm deadlines backed by genuine political will and contingency plans to prevent the constitutional timeline from becoming merely a flexible tool for political maneuvering.

²² VILLE KARI, *supra* note 1, at 189.

²³ BHANDARI, *supra* note 3, at 9.

²⁴ GINSBURG & BISARYA, *supra* note 15, at 20-22.

Inclusion Must Be Institutionalized Early:

The Interim Constitution introduced quotas and proportional representation, but failure to institutionalize these reforms allowed elites to roll them back.²⁵ Inclusion cannot remain symbolic; it must be embedded in the structure and operations of the state. As Bhandari warns, “reforms left to political goodwill are easily undone by power interests.”²⁶

Avoid Zero-Sum Federalism:

In highly diverse societies, federal models must seek poly-ethnic inclusion and localized autonomy, resisting designs that simply perpetuate the dominance of the historical majority group (mono-ethnic federalism).

Prioritize Foundational Constitutionalism:

The philosophical core of constitutionalism popular sovereignty, the rule of law, and explicit limits on government power must be established first and foremost. New constitutions must explicitly prohibit the reintroduction of former authoritarian abuses, particularly mechanisms like the misused “power to remove difficulties” that allow executive overreach. Kari’s analysis warns that “temporary exceptions” can normalize extra-constitutional politics.²⁷

Cultivate Principle Over Power:

Leaders must demonstrate credible, sustained commitment to democratic principles and national interest above narrow party or personal gain.¹ The persistent erosion of trust caused by platform reversals, political opportunism, and self-serving tactics undermines the legitimacy of any resulting constitution.

Empower the Representative Body:

The expertise and voice of all elected representatives must be respected. The political malpractice of a few dominant leaders dictating the country’s fate in closed-door, oligarchic negotiations alienates the broader representative base, weakening the authority of the final document.

The Unfinished Chapter: Why Chile's Constitutional Renewal Failed

The overwhelming rejection of Chile’s proposed new constitution on September 4, 2022, was a shock to many observers. Just two years earlier, nearly 78 percent of Chilean voters had enthusiastically demanded the replacement of the dictatorship-era charter in the 2020

²⁵ MAHENDRA LAWOTI, *supra* note 7 at 19.

²⁶ BHANDARI, *supra* note 3, at 12.

²⁷ VILLE KARI, *supra* note 1, at 203.

plebiscite. This massive public mandate suggested that finding a replacement should have been straightforward. Yet, the proposal was defeated by a stunning 62 percent of voters. The failure wasn't a rejection of reform itself most Chileans still favored a new constitution even after the vote. Instead, it was a profound rejection of a specific document, deemed too extreme and too disconnected from the reality of the average citizen.

The Deep Roots of Discontent: Historical, Economic, and Social Background

The seeds of this constitutional crisis were planted decades ago, rooted in the political and economic system enforced by the 1980 Constitution.

A Legacy of Dictatorship

The 1980 Constitution has long suffered from a severe lack of legitimacy. It was not a product of democratic consensus but was drafted in secret by a small committee appointed by the military to preserve authoritarian and neoliberal principles long after Pinochet's departure. The goal was to limit democratic adversaries to follow an action "not so different from the one that oneself would yearn for."²⁸ Although the subsequent democratic government made many amendments removing the most openly authoritarian clauses yet the charter maintained the core features of its original design.

Economic Inequality and the Social Explosion

Despite impressive overall economic growth, the constitutionally entrenched economic system failed to significantly tackle deep-seated inequality. The charter made specific neoliberal policies hard to overturn, such as guaranteeing the private provision of social security and healthcare, and requiring special super-majorities to authorize state-owned economic activities.²⁹ Even judicial review was used by conservative forces to block progressive social bills. The public frustration finally erupted on October 18, 2019, triggered by a modest increase in the Santiago metro fare. These swiftly escalated into massive and largest violent street demonstrations in Chile's history.³⁰ Protesters' grievances quickly expanded, targeting deep structural issues like unequal healthcare, low-paying pensions, and the rising cost of education. These demands were seen as directly challenging the arrangements protected by the 1980 charter and eventually, demanded a new constitution.³¹

²⁸ Javier Couso, *Chile's Failed Attempt to Get a New Constitution: Or the Challenge of Democratic Constitution Making in a Polarized Era*, 30 SW. J. INT'L L. 6 (2024).

²⁹ *Id.* at 4.

³⁰ Eduardo Alemán and Patricio Navia, *Chile's Failed Constitution: Democracy Wins*, 34 J. DEMOCRACY 90, 91 (2023).

³¹ COUSO, *supra* note 28, at 3.

The Structural Breakdown: Institutional and Political Failures

The process for writing the new constitution suffered from institutional flaws and political extremism that alienated the Chilean majority.

The Problem of the Independents

In an attempt to renew democracy and counter distrust in traditional parties, the rules for electing delegates were changed to favor independents.³² This backfired. It brought in candidates without the benefit of a party's clear ideological program. As a result, more than two-thirds of delegates were independents without legislative experience.³³

This created an "atomized assembly" dominated by activists who lacked the political and legislative experience necessary to negotiate complex, multi-dimensional compromises. While inclusivity seemed democratic, it weakened coordination and negotiation. Without political parties to broker compromise, debates became fragmented and ideological.³⁴

The Politics of Exclusion

The right-wing that traditionally representing 35–40% of Chilean voters, won only 24 percent of the seats in the Convention, crucially falling short of the votes needed to veto or shape any proposal unilaterally.³⁵ Empowered by their majority, leftist delegates, led by prominent voices, stated openly that they the "non-rightists" would craft the "broad agreements". This deliberate exclusion quickly drove the political right to mobilize for the "Reject" campaign, long before the draft was even finished.

Procedural Chaos and Loss of Trust

The writing process was highly decentralized and open to the public. A major flaw was that committees approved proposals by simple majority, which encouraged delegates focused on single issues to advance "radical proposals". When these maximalist ideas were repeatedly rejected by the plenary (which required a two-thirds vote), the public saw an assembly marked by "disorder and conflict".

The credibility of the Convention was severely damaged, for instance, when a prominent independent delegate who had gained notoriety by campaigning as a cancer patient confessed, he had fabricated the illness. This, combined with delegates engaging in theatrics (like

³² ALEMÁN & NAVIA, *supra* note 30, at 93.

³³ *Id.* at 94.

³⁴ Larrain, G., Negretto, G. & Voigt, S., *How not to write a constitution: lessons from Chile*, 194 PUBLIC CHOICE 233, 240 (2023).

³⁵ ALEMÁN & NAVIA, *supra* note 30, at 94.

attending sessions in costume), eroded the public's confidence and made the assembly look disconnected from everyday citizens.³⁶

Contentious Substance and the Loss of Median Voter Support

The final proposal failed because its specific content was too radical and generated widespread anxiety among the moderate majority.

Ideological Overreach

The final document was excessively long (388- Articles), complicated, and more like a "tortuous manifesto than a constitution for all Chileans". It promised extensive rights but provided little clarity on implementation.³⁷ Its ideological bias was apparent in proposals such as the recognition of a "plurinational" country composed of distinct nations and the proposed creation of up to eleven coexisting judicial systems. Many voters felt these changes were divisive, threatening state unity, and violating the basic principle of equality before the law.

Economic and Institutional Anxiety

The draft stoked deep economic anxiety, particularly concerning pensions. While guaranteeing a public social security system, it failed to clearly protect citizens accumulated individual savings accounts in the current private system, generating widespread fear of losing their funds. Furthermore, idealistic or utopian text such as the recognition of the rights of nature or vague guarantees on housing and jobs appeared to many voters as impractical and destined for years of institutional deadlock.

Economic clauses restricting private property and water rights threatened the business community.³⁸ The Expansive welfare promises in the draft lacked fiscal realism, raising fears of economic instability.³⁹

Political Contagion

The final blow came from political dynamics. The referendum was held under compulsory voting, which mobilized a massive, generally more moderate electorate who had not voted for the radical Convention members. Crucially, the draft became tied to the performance of President Boric's administration. His declining popularity on issues like crime and the economy meant the plebiscite served as an opportunity for many unhappy voters to punish

³⁶ ALEMÁN & NAVIA, *supra* note 30, at 94-95.

³⁷ ALEMÁN & NAVIA, *supra* note 30, at 95.

³⁸ LARRAÍN ET AL., *supra* note 34, at 243.

³⁹ Verdugo S, García-Huidobro LE., *How do constitution-making processes fail? The case of Chile's Constitutional Convention*, 13 GLO B. CONSTITUTIONALISM 154, 160 (2021-2022).

political extremism. When the September 2022 plebiscite arrived, 62% voted “Reject.” The proposal lost in every region of the country.⁴⁰ Even Indigenous-majority districts rejected it, showing the depth of disillusionment.

Lessons Learned for Constitution-Making

The Chilean experience is a powerful lesson in how institutional flaws, political miscalculation, and historical rifts can undermine a democratic mandate for change. The rejection was a clear demand for a consensus-based document. The failure was a symbolic clash between elite activism and popular moderation. Chileans wanted reform, not revolution. The result reflected not a rejection of democracy, but a democratic correction. Voter reasserting balance and pragmatism over ideological excess.⁴¹

Strong Political Agency

It is crucial to strengthen the political parties as key players, sidelining them leads to instability and deprived the process from negotiation and coherence.⁴² Parties serves as a connection between delegates and voters and are essential to moderating extremes.

Representation Balance

Ensure minority voices are included and given authority positions, even if they lack veto power. The underrepresentation of conservatives and overrepresentation of independents distorted the Convention’s composition.⁴³

Balanced Transparency

It is necessary to balance total publicity, as excessive openness and live-streaming can impeded difficult negotiations and encourage grandstanding.

Utopian Constitutionalism

The belief that a constitution could instantly fix inequality led to unrealistic expectations. As it tries to transform society faster than political structures could adapt. The Constitutions should outline rights achievable within state capacity, otherwise, they invite disappointment from the document.⁴⁴

Democracy Is Self-Correcting

The rejection of 2022 draft of the Constitution was not a failure of democracy but its

⁴⁰ ALEMÁN & NAVIA, *supra* note 30, at 92.

⁴¹ *Id.*

⁴² LARRAÍN ET AL., *supra* note 34, at 241.

⁴³ ALEMÁN & NAVIA, *supra* note 30, at 94.

⁴⁴ VERDUGO & GARCÍA-HUIDOBRO, *supra* note 39, at 161.

affirmation, that people used democratic tools to **reject an unbalanced, radical draft** and demand a better, more moderate one. The rejection symbolized citizens' maturity and commitment to democracy. It was a democratic victory over ideological excess.

Avoid Association with Government Unpopularity

The draft was closely tied to President Boric, whose declining approval due to crime and inflation damaged the constitution's credibility. Thus, the referendum became a referendum on Boric's performance, not just on the constitution.

The Republic of Crisis: Failure of the Weimar Constitution

The Constitution of the German Reich, adopted in 1919 and known retrospectively as the Weimar Constitution, stands as a critical turning point in the history of global constitutionalism. It pioneered the concept of the "democratic and social constitution," departing fundamentally from the purely liberal constitutions of the 19th century. Its text established a semi-parliamentary and federal system, and its central contribution was an extensive list of rights, including, for the first time, comprehensive economic and social guarantees⁴⁵.

Despite its technically advanced and politically progressive design, the Weimar Republic collapsed into totalitarianism only 14 years after its proclamation.⁴⁶ Scholars often argue that the failure was not primarily a weakness of the constitutional text itself, but rather the result of the extraordinarily hostile economic, social, and political environment into which it was born. In essence, the constitution was "a good constitution, only it came at a bad time"⁴⁷.

However, a closer examination reveals that certain features within the constitutional architecture significantly worsened the existing crises, contributing to its inability to consolidate a stable democratic republic⁴⁸.

The Historical and Social Wound: A Republic Born of Defeat

The Weimar Republic inherited a nation shattered by World War I.⁴⁹ Born from the November Revolution of 1918, which led to the abdication of Kaiser Wilhelm II and replaced the monarchy with a parliamentary democracy, the new state immediately faced massive internal

⁴⁵ David Parra Gomez, *The Failure of the Weimar Constitution: Institutional Keys and Lessons to Be Drawn*, 11 JEHL 188, 189 (2020).

⁴⁶ Robert Poll, *The Weimar Constitution: Germany's First Democratic Constitution, Its Collapse, and the Lessons for Today 1* (Rule of Law Programme Middle East/North Africa, Konrad-Adenauer-Stiftung, May 2020).

⁴⁷ GOMEZ, *supra note* 45, at 188.

⁴⁸ *Id.*

⁴⁹ United States Holocaust Memorial Museum, *The Weimar Republic*, HOLOCAUST ENCYCLOPEDIA (Oct 27, 2025, 9:29 PM), <https://encyclopedia.ushmm.org/content/en/article/the-weimar-republic>.

upheaval.⁴ Its inception was marred by revolutionary uprisings from both the extreme left (Marxist-inspired councils) and the far right, forcing the democratic founders to rely on conservative, anti-republican forces to maintain order.

The Humiliation of Versailles and the Myth of Betrayal

A foundational problem for the Republic was the deep-seated popular rejection of the peace settlement. The signing of the Treaty of Versailles in June 1919 imposed severe terms on Germany. Article 231 assigned German guilt for starting the war, opening the door to massive demands for economic reparations.⁵⁰

This treaty was viewed by many Germans not as a negotiated peace, but as a *diktat* (dictated peace). The representatives from the Social Democratic Party (SPD) and the Centre Party who signed it were immediately branded as "November Criminals" by right-wing and nationalist opponents.⁵¹

This outrage fueled the destructive "**Stab-in-the-Back**" Myth (*Dolchstoßlegenden*). This conspiracy theory claimed that the German army had not actually been defeated militarily in 1918 but had been betrayed by internal civilian forces specifically, the founders of the Weimar Republic: socialists, Jews, and liberals. This myth was used powerfully by radical right-wing groups, including the nascent Nazi Party, to continuously attack and delegitimize the democracy as fundamentally treasonous and un-German. This pervasive feeling of humiliation and betrayal ensured the Republic was opposed by powerful segments of society from its very first day.⁵²

Economic Instability and Radicalization

The constant instability was exacerbated by two major economic disasters. First, the demand for reparations contributed to the devastating hyperinflation crisis that peaked in 1923.⁵³ This crisis inflicted catastrophic damage on government workers and, critically, on the middle classes who had invested in savings, war bonds, or pensions. What were once substantial savings became worthless, leading to intense social unrest and the destruction of the economic foundation necessary for political moderation.⁵⁴

⁵⁰ United States Holocaust Memorial Museum, *Treaty of Versailles*, HOLOCAUST ENCYCLOPEDIA (Oct 27, 2025, 8:21 PM), <https://encyclopedia.ushmm.org/content/en/article/treaty-of-versailles>.

⁵¹ *Id.*

⁵² United States Holocaust Memorial Museum, *Adolf Hitler and the Nazi Rise to Power, 1918–1933*, HOLOCAUST ENCYCLOPEDIA (Oct 27, 2025, 8:30 PM), <https://encyclopedia.ushmm.org/content/en/article/the-nazi-rise-to-power>.

⁵³ GOMEZ, *supra note* 45, at 192.

⁵⁴ Nick Goodell, *1920s Hyperinflation in Germany and Bank Notes*, SPURLOCK MUSEUM OF WORLD CULTURES (Oct 27, 2025, 10:45 PM), <https://www.spurlock.illinois.edu/blog/p/1920s-hyperinflation-in/283>.

While the Republic managed to stabilize itself temporarily during the mid-1920s, the second and fatal blow came with the global Great Depression starting in October 1929. This crisis quickly translated from the United States to Germany with immense force, causing widespread economic and political chaos. Unemployment soared, eventually surpassing six million workers.⁵⁵

Institutional Architecture of Vulnerability: Self-Destructive Design

While external factors destabilized the Weimar Republic, the institutional design of the constitution allowed anti-democratic forces to legally dismantle the system from within. The constitution's failure to exercise an effective integrative function was fundamentally linked to structural defects.⁵⁶

The Flaw of Proportional Representation

The Weimar Constitution introduced proportional representation (PR) to ensure fairness in elections.⁵⁷ However, the system failed to include mechanisms, such as an electoral threshold, to filter out small, splinter parties.

This resulted in extreme political fragmentation in the Reichstag (Parliament). Since no single party could achieve an overall majority, governing required complex, short-lived coalition governments. The resulting instability was crippling: between 1919 and 1933, Germany saw 20 different governments, making it nearly impossible for the legislature to provide stable governance or decisively address the country's severe economic and political challenges⁵⁸

This chronic paralysis of the Reichstag created a power vacuum. The failure of parliamentary consensus provided a perfect legal and political justification for the executive branch to bypass the legislative body entirely and rule by decree.⁵⁹

The Overly Powerful Reich President

Designed to be a counterweight to parliamentary dominance, the institution of the Reich President proved to be the single most devastating flaw in the constitutional design. The

⁵⁵ *The rise of the Nazi Party in the Weimar Republic*, DOKUMENTATIONSZENTRUM REICHSPARTEITAGSGELÄNDE MUSEEN DER STADT NÜRNBERG (Oct 27, 2025, 10:30 PM), <https://museums.nuernberg.de/documentation-center/topics/national-socialism/the-beginnings-of-the-nazi-dictatorship/the-rise-of-the-nazi-party-in-the-weimar-republic>.

⁵⁶ GOMEZ, *supra* note 45, at 188.

⁵⁷ Deutscher Bundestag, *The Weimar Republic (1918 - 1933)*, PARLIAMENT (Oct 27, 2025, 09:30 PM), <https://www.bundestag.de/en/parliament/history/parliamentarism/weimar/weimar-200326>.

⁵⁸ GOMEZ, *supra* note 45, at 192.

⁵⁹ United States Holocaust Memorial Museum, *Article 48*, HOLOCAUST ENCYCLOPEDIA (Oct 26, 2025, 8:21 PM), <https://encyclopedia.ushmm.org/content/en/article/article-48>.

President was directly elected by the people for a seven-year term, granting him significant, independent legitimacy.

The President held critical powers, including the authority to dissolve Parliament and, crucially, the power to appoint and dismiss the Chancellor and ministers (Article 53). Although Article 54 required the government to possess the confidence of the Reichstag, the text only required the government to maintain confidence (i.e., avoid an explicit vote of no confidence), rather than requiring a positive, active vote of trust for formation. This legal loophole often allowed minority governments to operate and eventually led to the rise of "presidential cabinets" imposed upon a weak Parliament.⁶⁰

The presidential power was ultimately used to weaken, rather than stabilize, the parliamentary system, delegitimizing the Reichstag in the eyes of the public and providing the mechanism by which the conservative elite could install anti-democratic chancellors.

Article 48: The Legal Path to Dictatorship

The most catastrophic institutional flaw was Article 48, often dubbed the "Dictatorship Article". This provision granted the Reich President the authority to declare a state of emergency in the event of a threat to public order and security, suspend fundamental rights, and rule by enacting emergency decrees.

Initially, President Friedrich Ebert used this power frequently (113 times between 1919 and 1925) to manage immediate crises, but generally relinquished his dictatorial powers quickly. However, the ambiguity and lack of limits on its application meant the power was ripe for abuse.

Under President Paul von Hindenburg, especially after 1930, Article 48 was systematically employed to bypass the paralyzed Parliament and enact economic policy, leading to a "habit of ruling via decree". Hindenburg invoked Article 48 sixty times in 1932 alone. This executive overreach allowed Germany to be governed under a dictatorial presidential system, effectively rendering the Reichstag powerless well before Hitler took office.

The ultimate weaponization of this flaw occurred in February 1933, when Chancellor Adolf Hitler convinced Hindenburg to issue the Reichstag Fire Decree using Article 48. This decree indefinitely suspended key civil liberties, marking the crucial legal step toward establishing the totalitarian state.

⁶⁰ GOMEZ, *supra* note 45, at 190.

The Absence of Constitutional Justice

Adding to the constitutional vulnerabilities was the profound lack of a robust, institutionalized constitutional court. While the State Court for the Reich (Article 108) existed, its powers were limited to disputes between federal states and lacked the authority to review the constitutionality of federal laws in a binding manner.

Without a dedicated constitutional jurisdiction, the advanced catalogue of fundamental rights, the Weimar Constitution's proudest achievement, was legally defenseless. The rights were vulnerable to legislative restrictions and could be suspended entirely under Article 48, leading observers to conclude that fundamental rights were "running on empty". The lack of judicial enforcement meant the constitution could not defend its core democratic principles when challenged by anti-democratic political actors.⁶¹

The Irresponsibility of Political Parties

A core lesson from Weimar is the devastating impact of political polarization and the resulting "irresponsible behaviour" of major parties. The Social Democrats, despite being the strongest political force, often refused to participate in coalition governments during crucial periods (1923–1928), preferring the "comfort of opposition" to the responsibility of governance.

This refusal to build functional majorities was described as an anti-parliamentary "no is no" attitude that directly contributed to the governmental instability and provided the context necessary for rule by emergency decree to become the norm. When Parliament fails to function, citizens inevitably lose trust in the democratic system, paving the way for centralized executive power.⁶²

The Fatal Role of the Conservative Establishment

The final, decisive factor in the Republic's collapse was the disloyalty of the established conservative elite. High-ranking officials, army officers, and the majority of the judiciary were never genuinely committed to the democratic values of the Republic; they merely tolerated it as a temporary safeguard against communism.

Crucially, the Nazi Party never secured a majority of votes in free elections (their electoral peak was 37.4% in 1932). The Republic was ultimately dismantled not by the overwhelming will of the people, but by a decision made by the conservative elite surrounding President Hindenburg. These elites believed they could control Hitler and made the fatal mistake of handing him the chancellery in January 1933, using the presidential appointment power as part

⁶¹ GOMEZ, *supra* note 45, at 192.

⁶² *Id.*

of a backroom political deal. This act underscores that institutional safeguards are useless if the key political actors meant to uphold them are disloyal to the democratic ideal.⁶³

Enduring Lessons for Constitution-Making

The collapse of the Weimar Constitution provided critical, costly lessons that profoundly influenced the design of Germany's post-World War II Basic Law (Grundgesetz) of 1949 and continue to serve as vital guideposts for democratic stability globally.²

The lessons learned focus on creating a democracy that is both effective in governance and legally capable of defending itself against its enemies.

Structural Stability and Effective Governance

The chronic instability of Weimar led to the clear lesson that a democratic system must be viable and effective in solving national problems to maintain public trust.¹¹

- i. **Restricting Fragmentation:** The Weimar system's extreme proportional representation was replaced by institutional mechanisms designed to ensure stable, governing majorities.¹³ This led to the introduction of the **5% Electoral Hurdle** (or threshold), which prevents marginal parties from gaining parliamentary representation, thereby stabilizing the party system.¹⁷
- ii. **Ensuring Executive Accountability:** To prevent the kind of governing vacuums that plagued Weimar, the Basic Law introduced the **Constructive Vote of No Confidence**. Under this rule, Parliament can only dismiss a Chancellor if it simultaneously elects a replacement, ensuring governance continuity and preventing destructive negative coalitions.
- iii. **Curbing Executive Power:** To prevent the concentration of power seen under Article 48, emergency powers were severely restricted in the Basic Law.⁶⁴ The new constitution ensured that emergency measures cannot fundamentally alter the constitutional structure or suspend core democratic rights, removing the legal path to dictatorship.⁶⁵

Constitutional Defense and Loyalty

The failure of Weimar proved that institutional design must be coupled with mechanisms that ensure the system can defend itself against internal sabotage and disloyalty.

⁶³ United States Holocaust Memorial Museum, *supra note 52*.

⁶⁴ GOMEZ, *supra note 45*, at 193.

⁶⁵ ROBERT POLL, *supra note 46* at 2.

- i. **Implementing Robust Constitutional Justice:** The inability of Weimar's fundamental rights to serve as a check on political power necessitated the lesson to "Implement robust constitutional justice" Post-war Germany established a powerful, independent **Federal Constitutional Court** with the authority to review the constitutionality of all laws, guaranteeing that fundamental rights are protected and enforced against legislative or executive overreach.
- ii. **Fostering Loyalty and Self-Defense:** The most profound lesson was that a democratic system "must defend itself against its enemies".⁶⁶ This led to the concept of **Militant Democracy**. This approach mandates that the state guard against anti-democratic forces through effective legal and political measures.
- iii. **The Necessity of Compromise:** The experience demonstrated that the core essence of democracy is "agreement and compromise".⁶⁷ A political culture that tolerates extreme polarization and the constant refusal to cooperate makes a democracy inherently fragile. Therefore, constitution-making must encourage a political culture of compromise and trust in institutions to ensure survival.⁶⁸

Conclusion

In Nepal, Chile, and Germany, these structural and political weaknesses have been the causes of constitutional failure although they have different histories. In Nepal, the internalization of constitutionalism and rule of law has not been achieved due to the victimization of the marginalized groups by the elite, political instability, and repeated constitution-making efforts. The collapse of the 2021-22 constitutional process in Chile was indicative of the high levels of polarization, poor political parties, overly idealistic ambitions, and institutional disconnectivity, that transformed the democratic desire into a polarizing conflict. An economic crisis, unchecked presidential authority, and the extreme fragmentation of parties destroyed the 1919 Constitution in the Weimar Republic of Germany leading to a takeover of authoritarianism.

The three cases share a common factor that constitutions are not bound to be successful where political trust, institutional balance and inclusive participation are not present. Excessively ambitious or inadequately coordinated elite or populist processes cause a destabilizing effect.

⁶⁶ GOMEZ, *supra note* 45, at 192.

⁶⁷ GOMEZ, *supra note* 45, at 193.

⁶⁸ ROBERT POLL, *supra note* 61.

All the experiences indicate that democracy is as much about political culture as it is about constitutional design. Powerful parties, practical leadership, and a sense of national purpose are mandatory. The message is simple: a constitution lasts long when it is constructed on a consensus, with a believable institution, and that which takes into consideration the social realities of the people that it is supposed to serve.

