

Shifting the Status Quo: Constitutional Reforms in Chile

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ABSTRACT

This article outlines the factors that explain changes in the rules of the game in Chile after the restoration of democracy in 1990. It looks particularly at the reasons why the right-wing parties—strong defenders of the constitution imposed by General Augusto Pinochet in 1980—accepted reforms that eliminated many of what the literature has termed authoritarian enclaves. The article explains this shift by observing significant changes in the political context that, in turn, affected the priorities of veto players. In this context, short-term strategic calculations by the right-wing parties, aiming to achieve a new balance of power less detrimental to their interests, opened a window of opportunity that led to congressional approval of important reforms. Particular institutional features of the Chilean political system—party discipline and a balance of power in favor of the executive—also helped the political actors to reach agreement.

This article outlines the factors that explain changes in the rules of the game in Chile after the restoration of democracy in 1990. It focuses particularly on the reasons for which the right-wing parties—strong defenders of the constitution imposed by General Augusto Pinochet in 1980—modified their position and accepted reforms that eliminated many of what the literature has referred to as authoritarian enclaves.

Chile's road to democracy involved the imposition of an institutional framework defined by the Pinochet dictatorship and supported by the right-wing parties loyal to his regime. After defeating Pinochet at the ballot box in 1988, the opposition to his regime, grouped together in the Concertación coalition, was willing to respect his constitution in exchange for taking power. The constitution established a series of authoritarian "enclaves" that gave the armed forces high levels of autonomy and allowed them to intervene in the political process by appointing senators. In addition, it established an electoral system that initially favored the right.

The Concertación was able to stay in power for four consecutive presidential terms (1990–2010).¹ Its first two governments implemented minor constitutional reforms, but the right-wing parties held the key to any attempt to change the status quo, since they held a majority in the Senate; reform of the constitution, moreover, required special supermajorities.

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Although the congressional balance of power remained unchanged throughout this 20-year period, political agreement on an important reform of the constitution was reached nevertheless in 2005. This reform included repeal of the institution of designated and life senators, a change in the composition of the National Security Council and a reduction in its powers, restoration of the president of Chile's power to remove commanders-in-chief of the armed forces and the director of the *Carabineros* (the uniformed national police force), a modification of the composition of the Constitutional Tribunal, an increase in the powers of the Chamber of Deputies to supervise the executive, a reduction in the presidential term of office from six to four years without consecutive re-election, a reform of the constitutional states of exception in order better to protect rights, and the elimination of special sessions of Congress.

This article seeks to explain why veto actors were willing to accept an important shift in the status quo. Based on a theoretical model that combines macropolitical factors and institutional features of presidential systems, it puts forward an argument that comprises two elements. First, the interplay between certain key features of the political system (party discipline, balance of power) and relevant shifts in the political context affected the political priorities of veto players, opening a window of opportunity that led Congress to debate and approve important reforms. Second, forward-looking strategic calculations made by certain veto players provided important incentives for engaging in negotiations in order to maintain or gain new privileges.

The first section of this article assesses the theoretical relevance of the subject. The article then looks at what has been written about the Chilean postrestoration political process, before going on to describe the case for constitutional reforms. The article concludes by discussing some of the study's implications from a comparative perspective.

THE POLITICS OF CONSTITUTIONAL REFORM

A decisive moment in Chilean politics occurred when political actors who had opposed Pinochet decided to play by the rules imposed by the military regime. According to them, any attempt to change the rules would require an agreement with the right-wing parties in Congress (Boeninger 2008). This raises the question of the factors that drove legislators to change the constitution through legislative amendments.

This question has been debated extensively in the literature, which has focused principally on the political and institutional incentives for changing the status quo (Cox and Morgenstern 2001; Uslander and Zittel 2006). The adaptation of constitutional rules through amendments may be triggered by significant shifts in the balance of political power, along with the prospective calculation among political actors of the benefits of existing rules. In addition, change in the status quo may be prompted if a constitution performs dysfunctionally: "in such cases, the decision to initiate revisions is usually preceded by a perception of constitutional crisis among political elites, the media and the general public" (Negretto 2012, 57).

In explaining the factors driving political actors to change constitutions, Negretto (2011) suggests that they are endogenous to the political system, for two reasons: the preexisting performance of constitutional structures and of party interests, and the relative power of the reformers to transform the status quo. Negretto argues that decisionmakers are limited by preexisting constitutional rules and, in many cases, by exogenous and endogenous shocks (institutional crises, electoral uncertainty, disputes between parties when the president lacks a majority, etc.).

Thus there are certain conditions, either temporary or pertaining to the political environment, that are exogenous to the legislative process and could affect legislative production. These include, for example, the level of presidential approval (Calvo 2007) and the relevance of the legislative or presidential electoral cycle (Alemán and Navia 2009; Visconti 2011). This explanation does not rule out institutional variables but rather conceives them as complementary factors that are retrofitted by the political environment.

Studies generally combine analytical models in a bid to capture the complexity of legislative politics. Cox and Morgenstern (2001) developed a model of how the executive and legislative branches relate based on their formal powers (proactive executives, reactive assemblies), but point out that not all legislatures respond in the same way, or are powerless or nontranscendental. Studying the case of Latin America, Negretto (2012) suggests an interactive model in which the frequency of constitutional amendments is likely to decrease when amendment procedures are rigid and party fragmentation is high. According to Negretto, serious political crises trigger the replacement of constitutions, rather than their amendment through congressional reforms. Thus, as fragmented party systems tend to prevail in Latin America, “amendments are a viable means of constitutional change only if amendment procedures are relatively flexible” (Negretto 2012, 68).

The mechanisms through which Congress approves constitutional rules also play a role. We have focused so far only on the political context, the balance of power, procedural rules allowing for some reforms, and levels of fragmentation. However, once political actors decide to enact a given reform, its shape will depend on certain features of the political system, including the formal balance of power between the executive and the legislature (Siavelis 1997; Cox and Morgenstern 2001; Saiegh 2010), as well as specific dimensions, such as seniority and committees (Carey 2002), amendatory observations by the executive (Tsebelis and Alemán 2005), and two-chamber structures (Tsebelis and Money 1997; Uhr 2006).

THE CHILEAN CASE: EXAGGERATED PRESIDENTIALISM

In the case of the Chilean political system, there is broad consensus that the key features of the political process include a balance of power in favor of the executive (exaggerated presidentialism), party cohesion and strong coalition discipline in terms of in-house voting behavior, and a strong incidence of formal and informal procedures when evaluating the impact of policies (Siavelis 2000, 2001; Londregan 2002; Godoy 2003; Alemán and Saiegh 2007; Toro 2007; Alemán and Navia 2009; Saiegh 2010; Toro et al. 2010).

Exaggerated presidentialism refers to the powers concentrated in the executive that are formally granted by the constitution. One is an exclusive right to initiate legislation in strategic areas. Others relate to the executive's ability to determine the priority with which bills will be debated in Congress; its capacity to act as legislator, as, for example, through amendatory observations (*indicaciones*) at any time during the discussion of a bill; its ability to attend commissions discussing bills and express opinions; and the power to veto a bill passed by Congress or to reintroduce a bill rejected by one of the houses. There are, in addition, differences in the informal powers of the executive and the legislature that favor the former in terms of access to information and staff to prepare discussions and draft bills (Siavelis 2000, 1–45). A number of empirical studies have confirmed the enormous influence of the executive in advancing or delaying initiatives in the legislature (Siavelis 1997; Baldez and Carey 1999; Alemán and Navia 2009; Fuentes 2011).

The executive's overwhelming formal power notwithstanding, it is worth making a distinction between its constitutional and political power (Siavelis 2002, 80). In effect, when analyzing the case of Chile, Siavelis (2002) concludes that presidents after the return of democracy did not fully exercise their powers, mainly because of the political context. The nature of the transition (a pact with the military), the electoral system, and the presence of senators designated by Pinochet are important factors in explaining this situation. The result is an executive that has been willing to negotiate and a legislative branch that has progressively increased its influence in the process of defining public policies.²

Other authors have also highlighted similar conditions as giving Congress more relative weight than would be expected on the basis of its weakness in terms of formal powers. For example, Carey notes that the electoral system has forced the two coalitions it produced (Concertación de Partidos por la Democracia, or Concertación, and the Alianza por Chile, or Alianza) to cooperate in the legislative process, and we should expect this condition to be crucial in relation to constitutional amendments. In turn, the existence of these two coalitions has affected the way the internal functions of Congress have operated, especially in regard to mechanisms of appointments and the composition of commissions. From this point of view, according to Carey, two "legislative coalitions" have been formed that, on the basis of intraparlimentary work, have resulted in strong professionalism, with increased capacity and autonomy (Carey 2002, 253).

In terms of the internal functioning of the Chilean legislative branch, some authors have highlighted its progressive professionalization. The indefinite re-election of members of Congress and a multiplicity of formal and informal mechanisms that stimulate negotiations and cooperation in the legislature have fostered strong legislative expertise (Carey 2002; Saiegh 2010; Visconti 2011). Hence, legislators “try to develop themselves into an institution, passing more and better laws of their own” (Visconti 2011, 94). In other words, the enormous formal and informal capacity of the executive is partly “balanced” by a legislature that has, over the years, become professionalized and autonomous (Alemán and Pachón 2008).

In a study of Chilean legislative behavior from 2002 to 2006, Toro concludes that Concertación legislators “have assimilated strength from the executive, delegating greater legislative responsibilities” (Toro 2007, 38). Through different formal and informal mechanisms of coordination between the executive and legislature, the coalition that governed between 1990 and 2010 achieved a high degree of efficiency in passing bills and implementing policies. In the opposition, the positions of the right-wing parties differed significantly. The Independent Democratic Union (UDI)—the most conservative party on the Chilean political spectrum—showed a greater tendency to reject bills, while the National Renovation (RN) party played a “pivot” role. Toro argues that this different behavior within the right-wing coalition is explained by the internal structure of its parties: the UDI is a more cohesive and hierarchical ideological party and the RN a less cohesive party with more obvious internal factions.

The incorporation of exogenous variables in the legislative process itself has also been analyzed in the Chilean case. Alemán and Navia (2009) studied the factors associated with the passing of executive bills from 1990 to 2003, concluding that the probability of their approval increases in the presence of two conditions associated with presidential powers: the setting of priorities for debating the bills, and whether the issues under discussion have been initiated exclusively by the executive (issues that include the use of government funds or international treaties). Other relevant factors detected by these authors are the “honeymoon” effect, defined as the first year of a newly elected government; and party support in Congress, especially in the Chamber of Deputies. They also note that executive bills seeking to reform the constitution are less likely to be approved, since the special majorities required make agreements more elusive.

On the other hand, Visconti (2011) carried out a diachronic analysis of legislative production in Chile (1990–2009). He concludes that three significant variables can explain an increase in the approval of laws: a government in its first year and still settling in and, therefore, giving the legislative branch an advantage; a period in which congressional elections take place; and a long-term process of accumulation of experience by legislators. He observes a preponderance of the executive in the enactment of laws in spite of an increase in the role of the legislature over the years and attributes this to legislators’ interest in increasing their productivity as an institution. He thus highlights corporate incentives associated with the production of individuals in connection with their re-election. Unlike Alemán and Navia (2009),

Table 1. Balance of Power in Congress, 1990–2014

	Chamber of Deputies			Senate		
	Concertación	Alianza	Independent	Concertación	Alianza	Independent
	Center-Left	Right		Center-Left	Right	
1990–1994	60.0	40.0	—	46.8	53.2	—
1994–1998	58.3	41.7	—	44.7	55.3	—
1998–2002	58.3	41.7	—	50.0	50.0	—
2002–2006	52.5	47.5	—	50.0	50.0	—
2006–2010	54.2	45.8	—	52.6	44.7	2.7
2010–2014	47.5	48.3	4.2	52.6	44.7	2.7

Source: Servicio Electoral de Chile.

who take the view that legislative activism during a government's first year is due to the honeymoon effect, Visconti relates it to a greater capacity of the legislative branch compared to that of an executive that is just settling in.

DETERMINANTS OF CONSTITUTIONAL CHANGE IN CHILE

Specifying the factors that explain the process of constitutional reform in Chile is theoretically and empirically important. As stated in the literature, the Chilean political-institutional context is characterized by high levels of power concentrated in the executive branch, along with a balance of power that favors those who defend the status quo, a balance that remained virtually intact throughout the 20-year period under study (table 1). In addition, a series of formal and informal veto actors (the armed forces, the Catholic Church, the right-wing parties) and veto points (a two-house congress, high special majorities, and the Constitutional Tribunal) presumably inhibit reform.

The literature has shown that in Chile, both presentation and approval of constitutional reforms are less likely than for regular bills (Alemán and Navia 2009; Toro et al. 2010). Moreover, constitutional reforms face an important challenge in coordination between the two houses of Congress due to the lack of a joint commission to resolve disputes between them. As one would expect, the number of reforms proposed and approved is, therefore, lower than for regular bills.

Despite all these obstacles, the constitution was reformed 24 times between 1990 and 2010, introducing changes to 91 of its 120 articles. The political cycle considered a first reform in 1989—before the transition to democracy—which addressed 56 issues. This moderate reform created better institutional conditions for future reforms. Once democracy was reestablished in 1990, partial reforms were enacted, including advancing some civil and social rights, democratizing municipal elections and Supreme Court appointments, and reducing the presidential term from eight to six years. The governing coalition, the Concertación, proposed major

Table 2. Key Constitutional Reforms

Year/Episodes	Number of Areas	Actors	Subject (most important)
1989 (1)	56	Pinochet Regime; Referendum	Presidential term for first democratic government (4 years), increased senators; balanced appointment of senators between civilians and military, reform of the constitution, acceptance of the Communist Party
1990–2003 Aylwin (3) Frei (7) Lagos (4)	14	Concertación and Alianza; Congress	Presidential term (6 years), terrorism, municipal elections, Supreme Court appointments, gender equality, mandatory preschool and secondary education, freedom of expression
2005 Lagos (1)	58	Concertación and Alianza; Congress	Elimination of “enclaves” (designated senators, armed forces, National Security Council), executive-legislative balance of power, presidential term (4 years), states of exception, Constitutional Tribunal
2006–2010 Bachelet (9)	12	Concertación and Alianza; Congress	Rome Statute, regional government, voluntary voting system and automatic electoral registration, presidential election date, quality of politics and probity, Easter Island as special territory
Total 25	140		

reforms of the Constitution on three occasions (1992, 1994, and 1995), but these were rejected in Congress by the right-wing parties.

The most significant of all constitutional reforms since the restoration of democracy was approved in 2005, without a change in the distribution of forces in Congress. Under this reform, a large number of authoritarian enclaves were eliminated and important changes made to balance state powers. These included the elimination of designated senators and life senate seats for former presidents.³ Others were a reform of states of exception, the elimination of several prerogatives of the armed forces, restoration of the president's power to remove commanders-in-chief of the armed forces and the chief of police by submitting a symbolic report to Congress, and a substantial reduction in the powers of the National Security Council. Other important institutional changes were also made, including the reduction of the presidential term to four years without the possibility of consecutive re-election, a reduction in the executive's power to control the legislative agenda through the elimination of the “extraordinary” period of sessions in Congress, the establishment of a mechanism for Congress to require the presence of cabinet ministers, increased powers for Congress to create investigative commissions, and a reform of the composition of the Constitutional Tribunal (see table 2).

The question, then, is which factors can explain the change in the constitutional status quo. Although constitutional provisions are defined as “a bargain among the elites that is meant to be enduring” (Elkins et al. 2009, 7), this case shows a relatively constant process of change in the rules of the game. This article focuses particularly on the incentives that led political actors to change the status quo in 2005. Building on the work of authors whose proposed explanations integrate contextual and institutional factors, this study suggests that in the first place, it is important to look at changes in the political context, since they affect the interests of political actors. However, in defining “political context,” we must be able to distinguish between institutional and political conditions (balance of powers, executive provisions, etc.), recurrent political cycles (elections, inauguration of mandates, etc.), and political “shocks,” or exogenous events that may sporadically affect the political system. In other words, actors’ ambitions are contextually determined, and we must therefore trace how different inputs affect their interests.

The politics of constitutional amendments are quite different from normal legislative politics in that they require high levels of consensus. A key element, therefore, is to explain the circumstances under which political actors are willing to revise the status quo. Once actors accept the idea of reforming the constitution, other institutional factors become relevant. The shape of a given clause and the timing of a reform’s approval are affected by a set of formal and informal institutional mechanisms present in presidential political systems.

This in-depth qualitative study of constitutional reform in Chile will allow us to examine closely the causal mechanisms that previous quantitative studies have already verified. This study seeks to clarify some of those causal mechanisms by detailing the dynamics of constitutional reform. For instance, while most analysts have underlined the elimination of authoritarian enclaves as a driving force for constitutional reform, this article suggests a distinction between factors that open opportunities for change and factors that explain the content of the reform. While shifts in the political context may trigger the opportunity for change, the content of a given reform is explained by the strategic calculations of political actors.

THE CONTEXT: POLITICAL CYCLE AND EXOGENOUS SHOCKS

We assume that political actors have ambitions and interests that are expressed in a political and institutional context. This study shares the view put forward by some authors of the need to incorporate variables associated with the political environment that have a bearing on the actual legislative process. However, we must distinguish between those that respond to the political cycle in the strictest sense (electoral calendar, initiation of a government’s term) and conditions external to the debate relating to political scenarios that affect legislators’ and government authorities’ scale of priorities (accidents, political crises, etc.).

The “political cycle” refers to a variable that is external to actual legislative production but is internalized by the actors in that it limits the time in which the leg-

Table 3. Constitutional Reform Initiatives Presented to Congress by the Executive, 1990–2010

Presidency (years)	1st Third	2nd Third	3rd Third	Total	First Year	Last Year
Aylwin (4)	4	2	2	8	1	1
Frei (6)	6	5	3	14	3	3
Lagos (6)	1	4	2	7	—	2
Bachelet (4)	6	2	3	11	3	3
Total	17	13	10	40	7	9
Percent	42.5	32.5	25.0	100	17.5	22.5

Source: BCN. Database constructed by the author using bill proposals submitted to Congress by the executive.

islative debate will take place. Actors are able to plan their actions according to a timetable known by all. In turn, “shocks” refers to exogenous events that have a direct or indirect impact on parliamentary debate. These are events that substantially affect the actors’ scale of priorities.

To this end, the causal mechanisms must be clarified, as multiple incentives could be at work. It is very likely that the executive will have incentives to present bills soon after election so as to be able to show results by the end of the term. However, this does not necessarily apply in the case of constitutional reform. If no government obtained sufficient seats to approve reforms that require a three-fifths or two-thirds majority in Congress, the authorities would be likely to submit only bills for which a sound political base existed in Congress. By the same token, it is also probable that there would be incentives to approve legislation during an election year (Visconti 2011).

Observing the number of constitutional reform initiatives submitted to Congress by the executive (table 3), we see that in general, the highest percentage of bills (42.5 percent) were presented during the first third of the respective presidential period, followed by those presented during the second third (32.5 percent). However, only 17.5 percent of bills were presented during the first year of the respective government’s term.

The governments of Presidents Patricio Aylwin and Michelle Bachelet—which, coincidentally, both lasted four years—presented the largest percentage of bills in the first third of their administrations, most probably because they wanted to mark their agenda with political reforms from the beginning. During the government of President Eduardo Frei, bills were more evenly distributed between the first and second thirds. Political conflicts with the armed forces during the second semester of 1995 fostered a greater incentive for the executive to introduce bills for constitutional reform, although without success. Finally, the government of President Ricardo Lagos was the only one in which the pattern is markedly different, in that most constitutional reform bills were presented during the second third of its

Table 4. Constitutional Reforms Approved by Congress, 1990–2010

Presidency (years)	1st Third	2nd Third	3rd Third	Total	Last Year	Following Government			
						1st Third	2nd Third	3rd Third	Last Year
Aylwin (4)	1	1	1	3	1				
Frei (6)		3	4	10	3	3			
Lagos (6)		1	1	7	1	2		3	3
Bachelet (4)		1	3	4	3				
Total	1	6	9	24	8	5		3	3
Percent	4.1	25.0	37.5	100	33.3	20.8		12.5	12.5

Notes: The respective presidential periods are divided into thirds due to their transient nature. Of the 24 bills approved, 17 were initiatives of the executive branch and 6 of the legislative branch that were later sponsored by the executive.

Source: BCN. Database constructed by the author using constitutional reforms approved by the Congress.

period. This can be explained by the executive encouraging the Senate to present a package of constitutional reforms at the very beginning of the period.

It is also important to look at bills presented during the last year of a president's term. These could be interpreted as a political "legacy signal" that the executive is attempting to transfer to the following government. Since the Concertación coalition won four consecutive presidential terms, it is most likely that, over time, this trend became a practice, with the intention of leaving a distinctive mark of the government (and coalition) in the context of a presidential election that, on three occasions, took place simultaneously with parliamentary elections (1993, 2005, and 2009).⁴

Considering only the constitutional reforms approved by Congress (regardless of their origin), we find that 16 of the 24 (67 percent) were approved during the period of the government that presented them and that a significant percentage (37.5 percent) were brought to completion during the last third of the government, and mostly during its last year (table 4). In other words, both legislators and executive authorities were motivated to pass these reforms. Likewise, during the Frei and Lagos governments, we find a tendency for bills to be approved at either the start or the end of the following government. In other words, 11 of the 24 constitutional reform bills approved (45.8 percent) was enacted during the last year of one of the Concertación governments.

The likelihood of a bill's approval will, of course, depend on the actors' interest in pushing a specific reform, a favorable power balance, and the difficulty entailed by any given issue. It is not surprising, then, that the bills approved during the Lagos administration took significantly longer than others, since this government, in particular, made progress on the most significant reform ever since the restoration of democracy.⁵

Therefore, with regard to the political cycle of bills, there seems to be an incentive for the executive to present constitutional reform bills in the first third of a government's term. Moreover, regarding the approval of initiatives, we also observe an

incentive—this time for legislators as well as the executive branch itself—to approve reforms before the end of the term. For the legislators, the incentive could be related to their re-election, while for the executive, it could reflect an incentive to fulfill the programmed commitments or an interest in marking the legislative agenda in an electoral context. Since proreform authorities inherited the 1980 Constitution from the Pinochet dictatorship, center-left governments could be expected to promote reforms as a programmatic goal.

Exogenous Shocks

In addition to political cycles, however, a political process generally faces circumstances that cause changes in priorities. In Chile, we see that the first two Concertación administrations submitted a limited number of constitutional reforms, which were approved and which did not dramatically affect the interests of the right and its desire to protect the status quo. President Aylwin opted for a strategy that avoided entering into conflict with the right-wing opposition (Boeninger 2008). During the second administration, President Frei presented bills to make much more substantial changes in areas that included the political regime and the functions of the armed forces, as well as the electoral system, but failed to achieve political agreement on these initiatives.

It was during the Lagos administration that agreement was reached on substantial reform. The question this raises is why, despite the absence of any significant change in the balance of political power, the actors who had previously defended the status quo were then willing to negotiate and change the rules of the democratic game. Part of the explanation lies in the change in the Chilean political scenario that occurred between 1998 and 2005, with the prospect that the right might form a government, and actual changes in civil-military relations following a series of events that weakened General Pinochet's influence.

From a political point of view, the 1999 presidential election placed the right in an expectant position because it had managed, for the first time since 1990, to threaten the Concertación. Its candidate, Joaquín Lavín (UDI), obtained 47.51 percent in the first round of the election, with Ricardo Lagos (PS-PPD) only slightly ahead at 47.96 percent.

The importance of this is that for the first time, it gave the opposition a strong chance of forming a government. This situation was also borne out in the subsequent elections for senators and deputies in 2001, when the right-wing parties increased their percentage of the vote for deputies by eight points, as compared to the previous election in 1997.⁶ The expectation of obtaining the presidency led the Alianza—and in particular the UDI—to significantly change its stance on authoritarian enclaves. Strategically speaking, the right-wing parties opened to the possibility of reforming the constitution so as to pass the “test of democracy” and parry constant criticism from the Concertación on the grounds of their loyalty to these enclaves. Moreover, in relation to legislative debates, it was the hope of changing the balance of power that strategically mobilized the right to modify its position.

The importance of this situation was such that it even enabled the Lagos government to foster debate on constitutional reform within the UDI. Then–Interior Minister José Miguel Insulza recalls having attended a meeting with the UDI at the beginning of the government to explain its objectives. He recognized the UDI’s willingness to modify the constitution (Insulza 2011). Overall, this confirms Geddes’s assertion about the greater likelihood of progress on political reforms when political forces are evenly balanced (Geddes 1994).

A second element that indirectly favored political dialogue was the “MOPgate” scandal, which broke in 2003. A legal investigation discovered irregular payments within the Ministry of Public Works (MOP) that involved overpaying ministry professionals and channeling funds to finance election campaigns. This situation prompted a significant decrease in the popularity of the Lagos government, which reached a low in public opinion polls in 2003. It nevertheless also created a political opportunity to broker an agreement between the government and the UDI, leading to an important reform of the state apparatus and a law on election funding. Indeed, Minister Insulza has recognized the importance of having a “hotline” to UDI president Pablo Longueira in order to facilitate contact and reach constitutional agreements in Congress (Insulza 2011).

The transformation of civil-military relations and, in particular, the weakening of General Pinochet’s influence also facilitated agreement. If the central issue of constitutional reform was to reduce the power of the armed forces and reestablish the military’s subordination to civilian authority, then a crucial factor was the relative power of the military in the political class.

Pinochet played a key role throughout the transition period. After stepping down from government, he stayed on as army commander-in-chief and headed three uprisings against the civilian authorities (Fuentes 2006). In 1998, he was eligible to take up a lifetime senate seat in accordance with a constitutional bylaw, and did so in March of that year. However, seven months later, he decided to travel to London, where he was arrested by Interpol for a case being investigated by the Spanish courts.

After Pinochet’s return to Chile in March 2000, national and international speculation about his fate mounted. On May 3, the Santiago Court of Appeals decided to deprive him of immunity from prosecution on the grounds of well-founded suspicions of his involvement in the kidnapping of 19 persons. Shortly afterward, this ruling was upheld by the Supreme Court. Pinochet resigned his senate seat and pleaded senile dementia. The courts initially accepted this, but in May 2004, the Court of Appeals and subsequently the Supreme Court rejected this plea, putting him in a position to be judged in the case known as *Cóndor Operation*.

In addition to lawsuits for human rights violations, the former dictator faced accusations of corruption. At the end of September 2004, Chile’s Internal Revenue Service (SII) filed charges against Pinochet and others for fraud, estimating the fiscal damage at in excess of US\$8.4 million over a six-year period (1998–2004). In mid-March 2005, the police also submitted a report on his U.S. dollar bank accounts in the Riggs Bank of the United States valued at over US\$19.5 million, equivalent to

Pinochet's debt to the state (*La Nación* 2005). During the same month, a U.S. Senate investigating committee established the existence of more than 125 accounts in banks and brokerage houses belonging to Pinochet. It confirmed that records showed activities for at least 25 years and involved several banks and persons (*El Mercurio* 2005).

Pinochet's situation had an important impact on public opinion. Society was deeply divided on the subject of the military regime. In 1994, when Pinochet was still army commander-in-chief, polls showed that 29 percent of the population had a positive evaluation of his government, 30 percent considered it so-so, and 35 percent evaluated it negatively. By 2000, the positive evaluation had fallen by ten points, while the percentage of people who did not state their opinion had risen from 6 percent to 17 percent (CEP-Chile 2014). Between 2000 and 2005, in response to social perceptions, the political right gradually distanced itself from Pinochet, recognizing his regime's human rights violations although defending its modernizing work. Divisions also appeared between some leaders of the right who remained more loyal to Pinochet and those who had presidential ambitions and, hence, took a greater distance (*El Mercurio* 2000; *Terra online* 2003; FASIC 2003).

The vote on the Senate floor on reducing the powers of the armed forces is the clearest evidence of the shift in the right's position. Alianza legislators supported all the bill's articles on this point, and only four senators designated by the armed forces (former military officers) and two designated by the Supreme Court voted against, demonstrating their loyalty to the Pinochet constitution. When the bill was submitted to the Chamber of Deputies, the changes were approved unanimously on the floor.

AMBITION: WHY VETO ACTORS STOP VETOING

The most important political agreement since the return of democracy was reached in August 2005 on a total of 58 topics, after long political negotiations that had started in March 2000. Formally, the proposal was put forward when both coalitions agreed to present two separate motions for institutional reform, but informally, the story is somewhat more complex.

President Lagos took office on March 11, 2000. Like those of previous governments, his agenda was marked by the challenge of simultaneously promoting growth and equality. Constitutional reforms stood in tenth place on the agenda and included the demands that the Concertación had traditionally put forward, such as eliminating authoritarian enclaves.⁷

Reviewing the past was, however, a particularly sensitive matter at the beginning of the Lagos government. General Pinochet had returned to the country eight days before the inauguration, and Lagos seized the opportunity to propose comprehensive constitutional reform.⁸ From May to July, he explored with Senate President Andrés Zaldívar (DC) a formula to make the reform viable. They agreed that the ideal arena for reaching consensus was the Senate. The right, however, had a majority there, and Zaldívar therefore began a round of conversations with Alianza and Concertación

senators that culminated in the presentation of two independent bills to the Senate Constitutional Commission in early July 2000 (*Historia de la Ley* 2005, 51).⁹

The Senate Constitutional Commission became the arena where, for a little over a year, both proposals were discussed until, in November 2001, they were merged into a single bill on which the two coalitions agreed. Interior Minister José Miguel Insulza (PS) attended every meeting on behalf of the executive during this crucial stage (*Historia de la Ley* 2005, 28). The bill was debated in the Senate for four years until its initial approval in November 2004. It involved two commission reports, three complementary reports, and 381 motions presented by different senators, and it was debated on the floor of the Senate on four occasions. The bill was then dispatched to the Chamber of Deputies, where it was debated from March to mid-June 2005 in a much quicker procedure that was limited to certain issues concerning the Constitutional Tribunal and the role of the Chamber of Deputies. The reform was unanimously approved by both the Concertación and Alianza forces represented in Congress in August 2005.

Why, then, did the right accept changing the status quo? Any chance of reform certainly depended on the willingness of the right to approve it, so the motivations and strategies of this coalition need to be explained. As we have seen, part of the explanation lies in a change in the political context that facilitated a more extensive political agreement, especially with regard to the roles assigned by the constitution to the armed forces and the police force. However, two other elements also converged among actors on the right: their prospective evaluation of the inconvenience of maintaining designated senators, and a strategy that sought to rebalance powers within the state so as to retain their veto power over certain reforms (electoral system), increase the powers of the legislative branch to oversee the executive, and strengthen other vetoing instances (Constitutional Tribunal). The constitutional reform would therefore imply surrendering the traditional authoritarian enclaves but also the chance to politically legitimate the constitution while rebalancing institutionalism in the right's favor.

A prospective evaluation of the institution of designated and life senators carried out by the right in 2000 concluded that over the years, the designation had ceased to play its intended role of providing a legislative majority in the Senate. As center-left governments began to appoint designated senators, the balance of power in the Senate had become a virtual tie. Moreover, since the constitution gave former presidents a life seat, the right also faced the risk of finding itself in a minority by 2006.

In addition, the designation of senators by the National Security Council and the Supreme Court did not necessarily translate into loyal votes for the Alianza. Some political scenarios caused some senators to change their position, making the outcome of votes more uncertain. From the very beginning of the discussion on constitutional reform, right-wing senators were therefore inclined to eliminate both designated and life senators on the grounds that the institution of designated senators had lost its original purpose, as they gradually took positions in favor of the governing coalition (*Historia de la Ley* 2005, 811–901).

The conclusion of this prospective analysis was obvious: as long as the Concertación remained in office and continued to designate senators, the balance of

power would continue to shift in its favor. The right-wing rationale was as follows: it would accept the elimination of designated and life senators, but at the same time, it would request a significant reduction in presidential powers. This involved increasing the oversight powers of the Chamber of Deputies, allowing a political minority to request accountability from ministers; increasing the possibility of establishing investigative commissions in the Chamber of Deputies; strengthening the Constitutional Tribunal's powers by fostering its role as a veto actor in the political process; allowing the Senate to intervene in the appointment of authorities (for example, ambassadors); and reducing the executive's capacity to control budgets. These five issues were explicitly set out in the original proposal put forward by the Alianza in July 2000. The final agreement included the first three points, significantly increasing the power of Congress to oversee the executive.

It is interesting to note that the Alianza linked the elimination of designated and life senators with the need to preserve an "adequate balance between political powers" (*Historia de la Ley* 2005, 31). This would be achieved through greater participation in the appointment of Constitutional Tribunal ministers, who, in most cases, would have to be approved by the Senate. In the original formula proposed by the Alianza, four out of nine of its members would be appointed by the president of the republic with the agreement of two-thirds of the Senate, another three by the Supreme Court, and two by the tribunal itself. This formula was designed to ensure the control of the political minority over appointments. The final arrangement modified this proposal but still ensured control over appointments, since four members would be appointed by Congress.

But if the Alianza was expecting to win presidential elections, why was it willing to reduce presidential powers? While its prospects were good during the first three years of the Lagos administration, the outlook became much tighter after 2004, due to a shift in the political environment. First, the 2004 municipal elections were favorable to the governing coalition. Second, popular support for the governing coalition increased significantly from mid-2004 on and, by early 2004, Michelle Bachelet was already the frontrunner in the polls. Thus, facing an uncertain political outlook, the right-wing parties opted to advance a set of reforms to reinforce their role as opposition parties.¹⁰

INSTITUTIONAL SETTING: PROACTIVE EXECUTIVE AND DISCIPLINED PARTIES

This article has so far argued that actors' ambitions are influenced by a changing context, according to which they review their priorities and interests, as well as the endogenous transformation of the relations of power generated by the political system. In this case, the evolution of the institution of designated senators and the demand to control presidential powers prompted the right-wing actors to seek reform. Contextually defined ambitions help to explain the change.

Nevertheless, a third force for change was also at work, related to the institutional and political power game between the executive and the legislature. The liter-

ature has already extensively referred to this subject, observing the importance of a powerful executive that promotes certain reforms, combined with disciplined parties.

Executive: Limiting the Agenda and Accelerating Approval of the Bill

As described above, President Lagos decided to wait for a political agreement forged in the Senate Constitution and Legislation Commission. This strategy was carefully monitored by Interior Minister Insulza, who attended most meetings during the first years of the discussions. The executive's main interest was in eliminating the authoritarian enclaves, and government officials knew that in order to achieve this goal, they needed an agreement with the opposition. They therefore always sought to limit the number of reforms on the agenda. From the beginning of the debate, the executive took a very proactive role in promoting agreement, stating that the reform's main focus had to be the elimination of the authoritarian enclaves (*Historia de la Ley 2005*, 52–55).¹¹

Four years later, when the government had little more than 18 months of its term left, Minister Insulza organized a legal advisory team in his office to push the bill forward, with the aim of reaching agreement within those 18 months. The reform proposal was then still in the first stage of deliberation in the Senate, where several hundred amendments had been filed. By mid-2004, after a series of meetings between government and opposition leaders, a turning point was reached. The head of the legal team, Gonzalo García, recalls that more than 213 amendments were pending for senate approval and the executive decided to “rationalize” the reform, reducing it to 75 essential topics (García 2010).

In October 2004, both coalitions reached a formal political agreement resolving the pending issues for the reform's approval, which was signed at a meeting held by Minister Insulza with the senate leaders of both coalition parties. It addressed three sensitive issues. In the first of these, it removed from the Constitution reference to the binominal electoral system. It achieved this by transferring the definition of the number of senate seats and the electoral system to a constitutional organic law, reducing the majority required for any future reform from three-fifths to four-sevenths. However, the fact that the constitution still stipulates 120 deputies implies that changing this would necessarily require constitutional reform.

On the second issue, it was agreed that the President of the Republic would be allowed to remove commanders-in-chief of the armed forces and the chief of police, subject to a well-founded report to Congress. The third issue of granting nationality on the grounds of blood (*jus sanguinis*) was addressed by specifying that children born to a Chilean mother and father were Chilean. This reform implied that exercising the rights conferred by citizenship would depend on whether the person had lived in Chile for more than one year (*Historia de la Ley 2005*, 2813). It took longer to reach agreement on this point because it related to the sensitive issue of the right to vote for citizens born abroad, which under this formula would be impossible, favoring the position of the right.

After the agreement was achieved, the executive pushed for the bill's quick approval in the Chamber of Deputies. The drastic reduction in the length of the debate there is evident in retrospect: in the Senate, it took 97 months, as compared to just 8 months in the Chamber of Deputies. There was also a striking difference between the 23 sessions devoted to debating the bill on the floor of the Senate during its first stage and just 3 sessions in the Chamber of Deputies. Analyzing parliamentary activity in terms of the number of sessions, months, and speeches in each chamber, it is clear that most of the negotiation was accomplished in the Senate, significantly limiting debate once the reform entered the Chamber of Deputies. Indeed, in order to accelerate the bill's approval, the parties represented at the roundtable agreed to restrict the number of speeches, thereby limiting the opportunity for interchange outside the Senate.¹²

Once the reform had completed the second stage of deliberation in the Chamber of Deputies, a culminating moment occurred, between June and August 2005. Since there was no mechanism for a mixed commission to resolve differences between the Senate and the Chamber of Deputies, a procedural impasse was reached. This was resolved through an executive veto. An informal mechanism was created that enabled the Interior Ministry's legal team to coordinate final negotiation of the 27 points on which there were discrepancies between the two houses (García 2010).

To sum up, once it became evident that there was a realistic chance of reaching an agreement with the opposition, the executive showed obvious interest in achieving approval of the reform before the end of the presidential term. Its strategy consisted of reducing as far as possible the number of topics for discussion, as they would only intensify discrepancies. Moreover, once consensus had been reached in the Senate, the executive sought to reduce discussion time in the Chamber of Deputies. Finally, because there was no constitutional instrument to resolve discrepancies between the two houses, it used the presidential veto as a mechanism through which to reach agreement.

Decisionmaking Process and Party Discipline

One of the main characteristics of the negotiations that culminated in the 2005 constitutional reform was that they took the form of a centralized, top-down decision-making process. Systematization of those who participated in the debate confirms some of the characteristics already identified by the literature on the Chilean case. First, the political parties of both coalitions delegated the role of negotiating crucial agreements to key legislators. Members of the Constitution and Legislation commissions of both houses played a key role in terms of drafting bills, negotiating with the executive, and briefing their own parties.

A total of 164 people actively participated in the reform's debate in Congress, including those who participated on commissions and those who made significant speeches on the floor of one of the houses.¹³ Among the most important participants, 31.7 percent were senators, 26.2 percent were deputies, 15.9 percent were constitutional experts, and 10.4 percent were representatives of the executive. Representatives

of civil society and professional organizations played a minimal role (9.1 percent). As regards the total number of speeches, senators accounted for 80.3 percent (1,242 speeches), followed by the executive (7.6 percent) and deputies (6.6 percent).

For the purposes of this article, influence was measured in terms of the authors of the original proposals, those who headed or were members of commissions, and those who engaged actively in debates on commissions or on the floor. This count was then contrasted with interviews with key actors who participated in debate and negotiation of this crucial bill. The results indicate that 53 key actors participated, of whom 17, 22, and 14 had a high, medium, and low level of importance, respectively.¹⁴ Senators Chadwick (UDI), Espina (RN), Viera-Gallo (PS), Boeninger (DC), and Zaldívar (DC) and deputies Burgos (DC), Luksic (DC), Paya (UDI), and Guzmán (RN) played a particularly important role while, for the executive, Minister Insulza was the most important, since he directly conducted all the negotiations.

These figures do not, of course, allow us to capture the informal networks that exist among the different actors. Interviews with key actors helped to confirm the important role played by the executive in setting the agenda, promoting informal agreements on divisive issues, and proposing alternative courses of action for legislators. Minister Insulza centralized all negotiations with the opposition, establishing a direct hotline with the presidents of the two right-wing parties represented in Congress and, particularly, with Pablo Longueira, president of the UDI, the most conservative party. Insulza briefed President Lagos weekly at informal Sunday meetings, which took place at the president's residence (Insulza 2011; Lagos 2011; García 2010). Moreover, the agreements in Congress were reached by Minister Insulza and the heads of the parliamentary party committees in each house, with whom he met weekly on Tuesdays for dinner in Valparaíso (Insulza 2011).

The political actors involved had a high level of expertise in constitutional matters. Sixteen of the 17 key actors were lawyers and 5 were prestigious professors of constitutional law, implying a high level of debate in Congress. Moreover, parties in both coalitions received technical support from constitutional lawyers, particularly in the early stages of the debate and subsequently during the process of redrafting some specific aspects of the bill in mid-2004.¹⁵

This centralized decisionmaking process had a direct impact on the voting record on the floor. Once agreements were achieved by political leaders in Congress, legislators acted accordingly, approving the bill unanimously in all its stages. As noted, the only exception was the designated senators' rejection of the proposed reductions in the powers of the National Security Council and the power of the president to remove commanders-in-chief of the armed forces (*Historia de la Ley* 2005, 2687–88).

DISCUSSION

This article has argued that significant changes in the political context, along with a modification of the interests of the main veto actors, explains a continuous policy of amendment in Chile. Once veto power actors are willing to reform the rules of the game, other institutional factors become relevant, principally a proactive executive branch, along with high levels of party discipline in order to make agreement possible.

The in-depth study of this case allows us to clarify some causal mechanisms that have previously been discussed in the literature. In this sense, this article complements quantitative studies that have underlined the importance of elements such as “rules rigidity” and “party fragmentation” (Negretto 2012). The case of Chile shows that despite the enormous institutional limitations on constitutional reform in terms of the special majorities required and a highly cohesive right-wing coalition, amendments to the constitution have been possible.

This article suggests that changing conditions in the political environment and the short-term strategic calculations of political actors prompted political action. In this sense, Negretto’s work regarding the impact of the perceived legitimacy of constitutional origins on reform strategies is correct (Negretto 2012, 69). The right-wing parties understood that the closer they were to the Pinochet regime, the less chance they had to win presidential elections. Accepting the idea of reforming the constitution allowed them to pass a very important “democratic test.” Moreover, this conclusion confirms Negretto’s (2013) and Geddes’s (1994) assertions that constitutional reforms may be more relevant in contexts where competitive forces are trying to control the presidency.

With regard to the variables of “context,” it is important to distinguish between those that are inherent in the political cycle and those that are exogenous to a bill’s discussion; the latter open up opportunities for action. In the case of the political cycle, the literature has highlighted two causal mechanisms: the interest of members of Congress in their own re-election and the government’s being in its first year in office. This article adds another mechanism that can be complementary to these: the executive is interested at the start of its period in fulfilling its program, and will seek to obtain approval of emblematic bills before ending its term. The coalition in power will insist on emblematic bills during election periods in order to transfer a new political agenda to the new government. With regard to “exogenous shocks,” this study shows how the political right opened to certain democratizing reforms insofar as it was interested in forming a government. It is therefore plausible to expect that the tighter the political competition, the greater the actors’ willingness to accept democratizing reforms. In this case, the actors on the right sought to distance themselves from the legacy of the dictatorship, and by accepting those reforms, achieved precisely that.

As for the interests of the actors, this study confirms that they make strategic short-term calculations. The reform provided an opportunity to rebalance the political game, and in this context, the veto actors sought to eliminate institutions that were starting to be detrimental to their own interests (designated senators) and to

strengthen institutions in which they could exercise more control (Congress, Constitutional Tribunal). This represents a short-term perspective option in that the right sought to strengthen instances in which it exercised a role as “opposition.” As Negretto has recently suggested (2013), inconsistent design trends in constitutional reforms are explained by short-term calculations on the part of policymakers. However, this article suggests that political forces in the opposition may attempt to gain influence over the political decisionmaking process by increasing the number of veto powers and reducing the powers of the executive.

Regarding the impact of institutional aspects in facilitating the reform, this study confirms the findings of other authors about the unequal distribution of power between the executive and the legislature. The former has both formal and informal instruments to accelerate the legislative process and facilitate agreements. This article underscores particularly the relevance of the informal mechanisms that are crucial in explaining how legislation is passed. Nevertheless, legislators have had the capacity to influence the process by introducing issues of interest to them. In redefining the rules of the game and facing a context of exaggerated presidentialism, legislators agreed to increase oversight powers over the executive. In this way, the reform represents both an attempt to eliminate the authoritarian enclaves and to balance power between the executive and legislative branches.

NOTES

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1. Presidential terms of Patricio Aylwin (Christian Democrat Party, PDC, 1990–94), Eduardo Frei (PDC, 1994–2000), Ricardo Lagos (Party for Democracy and Socialist Party, PPD-PS, 2000–2006), and Michelle Bachelet (Socialist Party, PS, 2006–10).

2. For informal and formal legislative powers, see Siavelis 2002; Godoy 2003; and Nolte 2006.

3. This institution was created by the 1980 Constitution and allowed the following institutions to designate senators with an eight-year term: four by the National Security Council from among former commanders-in-chief of the armed forces and heads of the police force, three by the Supreme Court, and two by the President of the Republic from among former ministers and former provosts of state universities.

4. In the initiatives submitted during the last year, the executive branch proposed changes to the constitution that were not minor. These included the duration of the presidential period, the convening of plebiscites, nationality, the principle of proportionality in the electoral system, the creation of special territories, a reform of water rights, and the elimination of a number of seats in the Chamber of Deputies (reforms also associated with the electoral system).

5. Toro et al. (2010) note that, on average, the majority of bills (6,674 bills) take 1 to 2 years to obtain approval. The average under the Lagos and Bachelet governments was slightly lower than those of the first two governments. In the case of constitutional reforms,

approval of bills took an average 4.3 months under Aylwin, 20.8 months under Frei, 47.6 months under Lagos, and 15.5 months under Bachelet.

6. The Alianza obtained 36.26 percent in the 1997 election for deputies. This increased to 44.27 percent in 2001 (Servicio Electoral de Chile).

7. They also included eliminating designated senators, reducing special majorities for approving laws; changes in the powers and composition of the National Security Council; restoring the power of the head of state to appoint, promote, or dismiss members of the armed forces and the police; changes in the composition of the Constitutional Tribunal; a proportional electoral system; and strengthening the powers of the Chamber of Deputies.

8. Lagos stated before Congress, "If we want our human development to be on a par with our economic development, we must face, with maturity, reforms to the constitution.... We need a constitutional order that fully interprets us all. The present constitution is 20 years old. During this time, it has already been modified. The time has come to submit it to a thorough evaluation in order to adapt it to our times and give it the legitimacy it requires as a higher legal regulation of the state" (Lagos 2000, 26).

9. The Alianza proposal was sponsored by Senators Andrés Chadwick (UDI), Sergio Diez (RN), Hernán Larraín (UDI), and Sergio Romero (RN). The Concertación proposal was sponsored by Senators Sergio Bitar (PPD), Juan Hamilton (DC), Enrique Silva Cimma (PRSD), and José Antonio Viera-Gallo (PS).

10. The Alianza obtained 38.7 percent in the 2004 municipal elections, 1.3 points less than in 2000. According to survey data, approval of the government increased from 40 percent in December 2002 to 57 percent in June–July 2004. By June 2005, surveys showed significant popular support for Michelle Bachelet (56 percent) as compared to the two right-wing candidates, Joaquín Lavín (28.9 percent) and Sebastián Piñera (27.5 percent).

11. See especially statements by Minister Insulza (*Historia de la Ley 2005*, 52, 55). This position was shared by some senators of the ruling coalition. See Senator Juan Hamilton (DC) (*Historia de la Ley 2005*, 61).

12. The president of the Chamber of Deputies, Gabriel Ascencio, announced at the beginning of the debate that the parliamentary committees had reached an agreement to distribute the total number of agreed hours for each session (two-and-a-half hours or four hours, depending on the session) per party. Each committee appointed the deputies who would intervene, thus limiting the opportunity for speeches.

13. We counted the total of actors (legislators, representatives of the executive, civil society representatives, and experts) who made substantive comments during the five-year period of debate. Comments on procedural aspects of the debate were excluded.

14. We assigned scores in each of the dimensions according to the specific impact of each: president of a committee (10 points), member of a committee (6 points), statements in committees (1–5 scale according to the number of statements), and authors of the bills (3 points). We double-checked the list of relevant actors with interviews with ten key actors who directly participated in the decisionmaking process of this bill, including President Lagos, Minister Insulza, Undersecretary Jorge Correa, Senator José Antonio Viera-Gallo, Deputy Jorge Burgos, and advisers Gonzalo García, Gastón Gómez, Francisco Zúñiga, and Humberto Nogueira.

15. Particularly important were Professors Francisco Zúñiga and Humberto Nogueira (advisers to the Concertación) and Arturo Fernandois and Gastón Gómez (advisers to the Alianza).

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