Lawmaking and Presidential Attributes in the Chilean Constitution: What's the Urgency?

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In 2019, Chile was struck by an uprising that shook its political structure to the core. Mobilization was so overwhelming that political elites decided—against what they had defended vigorously during past decades—to allow for a comprehensive reform of the Constitution enacted in 1980. Because constitutions allocate decision rights and define their political system as they do so, the process reopened the debate regarding the country's imbalanced presidential design. This article contributes to the debate on checks and balances in the Chilean political system by examining a specific procedure that promotes imbalance: the urgency prerogative.

Building on recent research, this study suggests that the urgency procedure tips the balance in favor of presidents, further deepening the power imbalance between the branches. We argue that reforms seeking to diminish the prevalence of the executive in the decision-making process would benefit from limiting urgency procedures—if not abolishing them altogether.

The elements of a political system are complex, including many rules that allocate decision rights among the branches (Shugart and Carey 1992). The rules that allocate power between presidents and legislators are important to enable representation of citizen preferences through policy choice. When specific rules systematically benefit one branch over the other, democratic representation is compromised (Krehbiel 1998; Palanza 2019). The prominent constitutional scholar Roberto Gargarella (2013) referred to this complex set of institutions as "the engine room of the constitution," arguing that absent modifications to this engine room, other reforms may be useless.

The urgency procedure can tilt the balance in favor of presidents. Our academic understanding of its uses and consequences, however, has been descriptive. At a basic level, the prerogative enables presidents to impose urgent consideration of specific bills in Congress, which alters legislators' capacity to determine their own agenda. This article follows recent research claiming that the urgency procedure is still more incisive in Chile, allowing presidents to shape legislative outcomes to better represent their preferences (Magar, Palanza, and Sin 2021).

The constitutional-reform process underway in Chile since 2019[1] provides a unique opportunity to reflect on the limits of presidential powers and the institutional balance between presidents and Congress in policy making (Heiss 2022; Martínez 2022; Suarez-Cao 2021). Considering the relevance of the urgency prerogative, this study reviews its use in past decades and draws lessons from the proposal that failed to pass in 2022. Our analysis seeks to strengthen debates and decision making in the ongoing process.

Contrary to proposals to limit urgency procedures, the rejected constitutional text expanded the prerogatives to multiple actors, complicating the decision-making process without necessarily preventing policy advantages for the executive. Given scholarly concern with executive encroachment of legislative power, we believe that curtailing urgency procedures would be a more effective solution than distributing them among various actors. Legislative representation requires that legislators can channel demands by controlling the legislative agenda.

This article is organized in two sections. The first section analyzes interbranch interactions in the legislative process and situates the urgency prerogative within that context. The second section presents urgency prerogatives in Chile and analyzes Chilean reform intentions of the Constitutional Convention of 2021–2022. Considering the constitutional-reform process currently taking place, we believe that our analysis will broaden our understanding of legislative institutions and lawmaking in presidential countries with powerful executives.

LEGISLATIVE INTERACTIONS BETWEEN LEGISLATURES AND PRESIDENTS

The debate confronting presidential and parliamentary systems as well as semi-presidential systems representing a hybrid of the two has been ongoing for decades (Cheibub 2007; Fontaine 2021; Mainwaring 1993). Presidential democracies, characterized by the separation of powers among branches, aim to prevent abuses through checks (Hamilton, Madison, and Jay 1787/2008; Morgenstern, Perez, and Peterson 2020). However, Latin American systems are

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inherently imbalanced because constitutions in the region grant extensive legislative powers to the presidency, including exclusive legislative initiatives, broad veto powers, and interventions in the legislative agenda through urgency procedures (Alemán and Tsebelis 2005; Basabe-Serrano and Huertas-Hernández 2021). These procedures differ from the original US design (Morgenstern, Polga-Hecimovich, and Shair-Rosenfield 2013).

The current constitutional-reform process in Chile, agreed to in 2019 following the social uprising in October, raised concerns about the continuity of the presidential system due to identified flaws (Dammert and Figueroa 2022). In the Constitutional Convention, the Committee on Political System agreed to retain the presidential form while addressing known shortcomings in the Chilean design, such as super-majoritarian requirements for the passage of what most democracies consider to be ordinary laws, as well as enhanced presidential proposal powers that lend presidents exclusivity in nine issue areas, among others (Fontaine 2021; Palanza 2021).

Interactions between branches are crucial for the functioning of presidential systems. The original US system of separation of powers was established on the principle that the presidency is responsible for executing laws passed by Congress but lacks the unilateral power to create laws (Morgenstern, Polga-Hecimovich, and Shair-Rosenfield 2013). In Latin America, this relationship often is strained and characterized by excessive presidential influence, which is facilitated by executive decrees, expanded veto powers, and urgency procedures to expedite the legislative agenda. These prerogatives limit the legislature's ability to influence the legislative process (Palanza 2019).

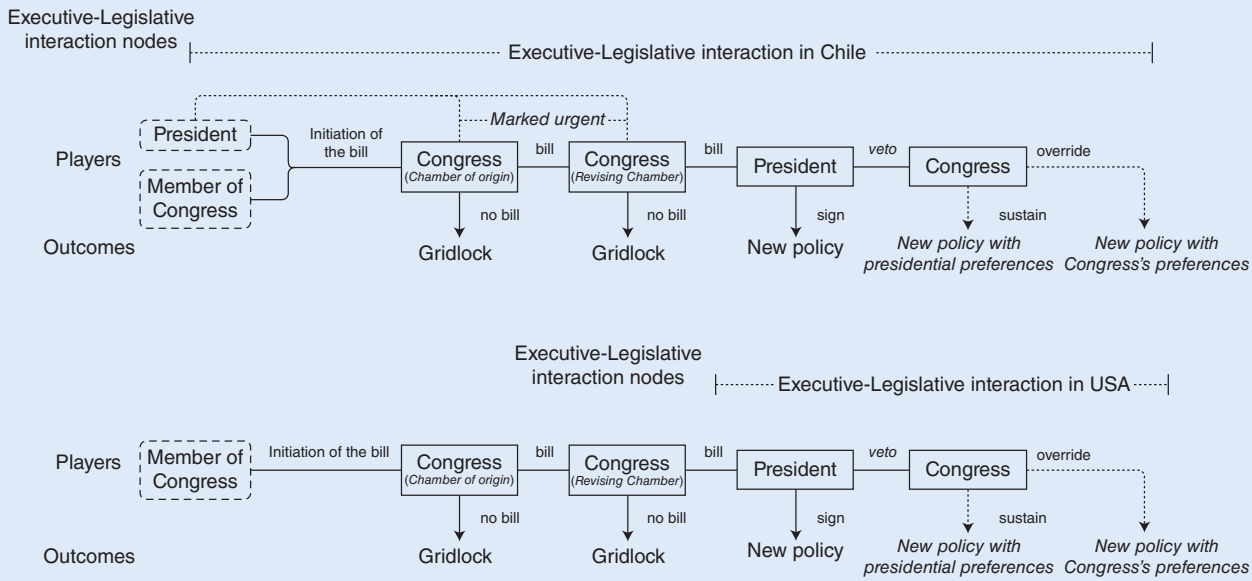
Figure 1 is a stylized depiction of the current Chilean legislative process. It follows Krehbiel (1998) in showing sequences, possible outcomes, and points of gridlock. Unlike the United States, the lawmaking process in Chile allows both presidents and legislators to propose bills. These are debated, modified, and voted on in congressional committees and both chambers (Londregan 2000). If differences arise between the Lower Chamber and Senate versions of a bill, a joint committee is formed to produce a common text. The resulting text then returns to each chamber for passage and is sent to the executive for final approval.[2]

Figure 1 allows us to distinguish aspects of the legislative process in the typical US presidential system by several provisions that grant significant advantages to presidents in Chile: presidential bill proposal, exclusive presidential initiative in nine key issue areas, amplified veto prerogatives, and urgency procedures (Palanza 2022). These prerogatives are shown in figure 1 in italics.[3] The literature on Chile's presidential system highlights these imbalances (Alemán and Navia 2009; Carey 2002; Siavelis 2002, 2016),[4] although recent studies argue against the hyper-presidential mode, suggesting weak presidents in Chile's system (Olivares et al. 2022).

To overcome the problems of divided government, presidents and Congress moderate their positions and can govern, albeit with a less ambitious agenda (Mayhew 1993). Nonetheless, gridlock is a common component in US legislative politics (Krehbiel 1998), ultimately shaping opportunities for change and the prevalence of the status quo. In Latin America, the relationship between presidents and Congress is characterized by conflict and polarization, often leading to legislative gridlock and political instability (Palanza 2021).

Figure 1

Nodes of Legislative Interaction Between Presidents and Congress



Source: Based on information from the Biblioteca del Congreso Nacional.

The Constitutional Convention of 2021–2022 sought to improve checks and balances. Because convention members and academia were concerned about stagnation and fragmentation, the Convention sought to strengthen Congress while not disarming presidents (Fontaine 2021).[5] They introduced changes in several dimensions regarding the allocation of prerogatives between the branches, limiting presidents' exclusive proposal prerogatives and empowering Congress by diminishing super-majoritarian quorum requirements for ordinary bill passage. It also sought to alter the advantage that presidents gain from urgency procedures. This article focuses on this prerogative, its use in Chile, and which reforms to this prerogative would favor checks and balances between the branches.

THE URGENCY PROCEDURE IN CHILE AND THE CONSTITUTION-MAKING PROCESSES

Urgency prerogatives exist in seven Latin American countries and primarily aim to expedite the passage of bills. Figure 2 shows the three types of urgency that exist in Chile: simple urgency, supreme urgency, and immediate discussion.[6] The most prominent difference among the three types is the time limit that each imposes for the approval of bills. Yet, as with most regulations establishing how Congress works in Chile, the classification of legislative urgencies into three types is not contained explicitly in the Constitution but instead in the Organic Constitutional Law on Congress (Law 18918). The Constitution states that presidents will qualify urgencies in accordance with this law, which establishes the three types, with distinct time limits.

Distinguishing among urgency types is important because in the Chilean Lower Chamber, supreme urgency triggers restrictive floor rules, whereas the highest and lowest urgency types do not (Magar, Palanza, and Sin 2021). Therefore, it is the procedural rules accompanying urgency qualifications that allow presidents to interfere in committee deliberations. Presidents strategically qualify bills as urgent to gain policy advantages because urgent bills face an up or down vote on the floor (Magar, Palanza, and Sin 2021). This strategic selection of committees and timing of urgency qualifications enables presidents to push for bills that align with their preferences, creating an imbalance in the presidential–legislative checks.

The use of urgency procedures in Chile is complex and carries significant political implications. Although it allows presidents to expedite specific bills, it has faced criticism for diverting congressional attention to the president's agenda and for potentially bypassing the usual legislative process and public debate (Londregan 2000). It is interesting that there are no sanctions associated with unmet urgency deadlines. In their study, Magar, Palanza, and Sin (2021) explained that although the use of simple and supreme urgency types remains an enigma, immediate discussion forces committees to report bills within a limited timeframe and, in practice, forces an up or down vote. They explained how this favors presidents because they can use immediate urgencies when they foresee the benefits.

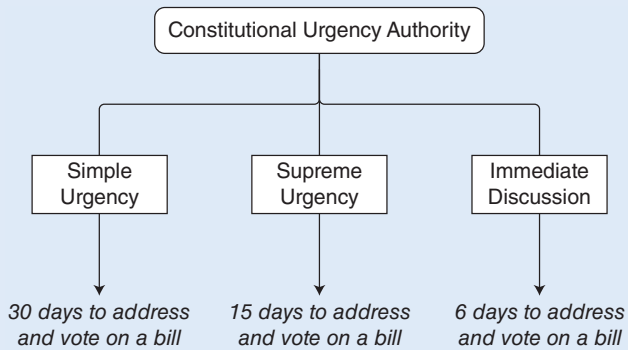
A common critique of the prerogative posits that bills passed with urgency lack appropriate technical and legal scrutiny. However, because no sanctions are imposed when Congress fails to meet deadlines, the critique fades. Research conducted by Magar, Palanza, and Sin (2021) indicates that presidents who face significant legislative opposition (e.g., Bachelet I and Piñera I) marked their bills "urgent" at rates of 39% and 50%, respectively. This implies that presidents with greater congressional opposition may be more inclined to interfere with the congressional agenda compared to those with stronger legislative support, such as Lagos, who marked 25% of his bills "urgent."

In other Latin American countries, the use of the prerogative is less extended. This is by design because Chile places no limits on its use. Uruguay adopted urgency procedures in 1967 and, since then, presidents have designated only 14 bills as urgent (Chasquetti 2016). The rules in Uruguay allow only one urgency at a time. Similarly, in Colombia, presidents have designated only 16% of bills as urgent (Alemán and Pachón 2007).

Moreover, Chilean presidents can withdraw urgency designations, which suggests a more complex negotiation process

Figure 2

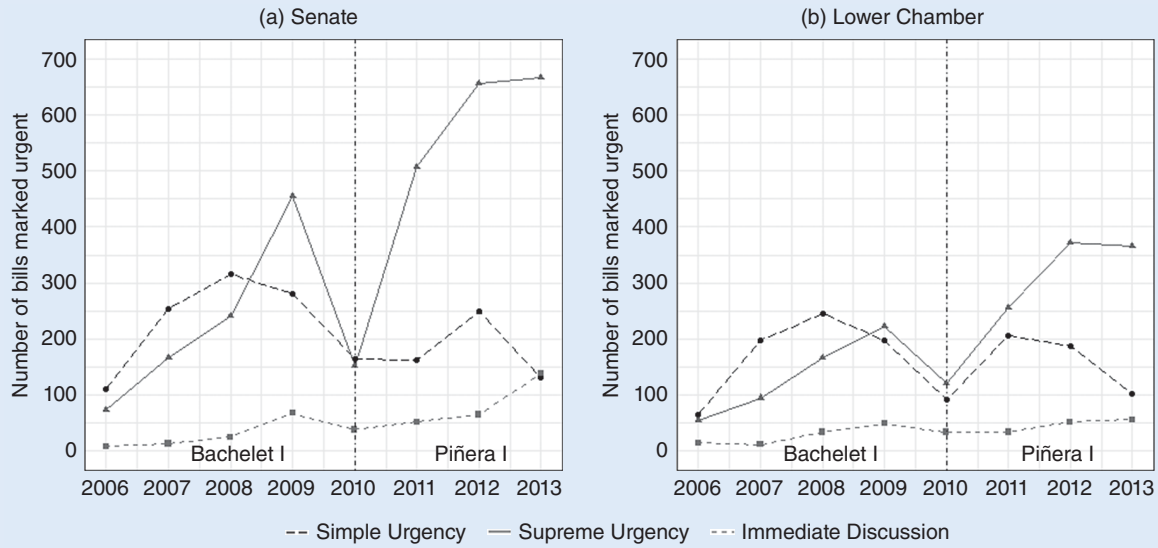
Types of Urgency in Chile



Source: Constitution of Chile and Law 18918.

Figure 3

Bills Passed with Urgency During Bachelet I and Piñera I



Source: Le Foulon and Palanza (2019).

when there are more urgency motions on a bill. Mimica, Navia, and Osorio (2023) argued that presidents withdraw urgency qualifications to facilitate bargaining with chamber majorities, leading to more effective progress on a bill. Figure 3 seems to suggest that negotiations between the branches tend to become tense after the "honeymoon" period.[7]

Figure 3 shows that presidents mark more bills urgent in the Senate than in the Diputados (i.e., Chamber of Deputies or the Lower Chamber). Alemán, Mimica, and Navia (2022) considered that this mechanism enhances legislators' bargaining power, increasing the likelihood that the second Chamber can successfully amend proposals. Navia and Mimica (2021) proposed that bills marked as urgent are more likely to go to Conference Committees in Chile.

The constitutional text rejected in 2022 made changes to the urgency prerogative in Chile. Maintaining the three categories by including them in the proposed text (Article 275 §1), it also sought to expand the procedure's application to legislators and citizens, and it delegated the determination of which actors could issue which urgency types to a future law (Article 275 §2). It is interesting, however, that the failed proposal maintained the one urgency type that matters (i.e., immediate discussion) exclusively in presidential control (Article 275 §3).

The Constitutional Convention's proposal on the urgency prerogative was confusing and seemed to lack focus. Although there may be logical arguments to decentralize power in some circumstances, it is difficult to see how the decentralization of a prerogative intended to lend presidents influence in the legislative process could be helpful. If the Convention meant to diminish presidential influence—which it did not because it gave presidents exclusive authority to use the immediate discussion—it could have eliminated urgency procedures altogether. Extending their use to legislators—whose agenda-setting power the procedure was created to reduce—seems like an oxymoron. Extending it to citizens (i.e., popular urgency) appears to disdain the role of representatives.

This design is questionable because it reclaims agenda power originally in the purview of Congress. Although granting citizens the attribute could lead to interesting but unpredictable practices, limiting the reach of the procedure—rather than sharing it with more actors—is the most efficient way to diminish presidential influence over the legislative process.

The next step in the constitutional-reform process, marked by the work of the Expert Committee designated by Congress and charged with producing a new proposal, also addressed the urgency prerogative. This proposal maintains the urgency procedure exclusively in presidential control (Article 79), it extends the time limit to a maximum of 60 days, and it gives legislators a voice in establishing the deadline. It is interesting that it acknowledges the importance of sanctions when urgency deadlines are not met. However, instead of implementing sanctions such as the paralyzation of all other congressional matters until the urgent bill is decided, it proposes sanctioning individual legislators. Unfortunately, this proposal fails to solve current problems and may create new ones.

CONCLUSIONS

The 2022 constitutional proposal was rejected, and we have yet to see what the Constitutional Council currently in session will do with the Expert Committee's proposal—and what citizens will decide. The question remains: What should be done with urgency procedures in the ongoing constitution-

making process? One option is to eliminate them entirely to prevent the imbalance they create. The Chilean constitutional tradition, however, makes it more likely to believe that the procedures will remain.

This article contends that reforms should focus on limiting the use of urgency procedures to reduce the executive's dominance in the decision-making process. A reasonable reform would be to implement a single urgency procedure, discarding the three types currently in place. Additionally, it is advisable to restrict the use to one bill at a time, enabling focused efforts by Congress when strictly necessary. This would prevent constant distractions caused by new bills that are designated as urgent. Moreover, the inclusion of sanctions is necessary to streamline congressional work on an urgent bill. To enable collaboration, sanctions should be understood as consequences to be faced by the full set of actors involved in lawmaking.

In conclusion, the use of legislative urgency in Chile raises crucial questions regarding the balance of power between the executive and legislative branches as well as the role of public participation in the lawmaking process. Despite the perception that urgency procedures expedite bill passage, the evidence does not support this claim. Instead, the procedures undermine democratic principles and accountability. Current drafters seem distanced from the analysis of the effects of this key institution in its different variations. Therefore, further analysis and debate are necessary in the Chilean political context.

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DATA AVAILABILITY STATEMENT

Research documentation and data that support the findings of this study are openly available at the *PS: Political Science & Politics* Harvard Dataverse at https://doi.org/10.7910/DVN/BPBVIG.

CONFLICTS OF INTEREST

The authors declare that there are no ethical issues or conflicts of interest in this research. ■

NOTES

1. Although it is true that before 2019, President Michelle Bachelet had promoted the idea of a constitution-making process and presented Congress with a proposal a few days before leaving office, this attempt was unilateral and never stood a chance.
2. For more details about the Chilean legislative process, see www.bcn.cl/formacioncivica/detalle_guia?h=10221.3/45763.
3. Congressional rules that give the presiding officers and committee chairs agenda-setting power counterbalance presidential intrusion. However, Magar, Palanza, and Sin (2021) show precisely how the urgency prerogative (i.e., *discusión inmediata*) in Chile turns those rules to favor presidents.
4. The president's urgency prerogative goes further to limit the intervention of other branches of government in legislative debates. Chile's 1980 Constitution relating to the judiciary (Article 77) establishes that the Supreme Court has the right to present its opinion before Congress when introducing changes to the Organic Law on the Judiciary. This, however, will be accelerated if the bill is marked as urgent—and may not even take place if the timeframe does not allow it.
5. For a context of public opinion, see https://agendapublica.elpais.com/noticia/17756/chile-politica-constituyente-debe-trascender-identidades; https://agendapublica.elpais.com/noticia/17926/chile-convencion-requiere-articulacion-politica-urgente.
6. We follow the names used by Magar, Palanza, and Sin (2021), but see also Aninat (2006).
7. For a replication of this figure, see Huertas-Hernández and Palanza (2023).

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