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How Chile Moved Towards Greater Political Transparency

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**Overcoming Inequalities in a Fractured World:
Between Elite Power and Social Mobilization**

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Acronyms

CODELCO	Corporación Nacional del Cobre, Chile (National Copper Corporation, Chile)
GDP	Gross Domestic Product
LAC	Latin America and the Caribbean
LAPOP	Latin American Public Opinion Project
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
RGI	Resource Governance Index
UDI	Unión Demócrata Independiente (Independent Democratic Union)
UNDP Chile	United Nations Development Programme Chile
SERVEL	Servicio Electoral de Chile
SOQUIMICH	Sociedad Química y Minera de Chile (Chemical and Mining Society of Chile)

Abstract

Policy and legislative mechanisms that enforce transparency and accountability, and place limits on politicians' behaviour, are useful tools for addressing political corruption, which constitutes a problem of particular gravity in Latin America. A number of scandals have recently come to light, such as the case involving the Brazilian company Odebrecht, showing the scale of political corruption in the region. While the subject of political transparency is at the top of many domestic political agendas, however, comprehensive regulation to prevent political corruption through mechanisms of transparency and accountability is still rather scarce. It would seem that curbing the opportunities for collusion between politics and business is particularly difficult in Latin America's unequal societies, because this would require that those holding power and potentially benefiting from political corruption must adopt and implement rules that would restrain such behaviours. Thus, one of the most important questions when dealing with issues of political transparency is how to push regulators to regulate themselves. While Latin America on average scores poorly regarding the adoption and implementation of political transparency rules, Chile's performance is an outlier. Since 2015, reforms have been under way in the country to improve political transparency. This paper analyses the political process that led to the relatively progressive political transparency governance scheme in Chile. It identifies the mechanisms and factors that shaped the political process in such a way that political reforms for greater transparency were enacted.

Keywords

Civil society; political corruption; governance, political process; public policy

Bio

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Introduction

Restricting politicians' behaviour and imposing mechanisms for transparency and accountability through policies and legislation is a useful tool for addressing political corruption, which is a problem of particular urgency in Latin America.¹ A considerable number of disclosed scandals testify to the large scale of political corruption in the region.² The recent case involving the Brazilian company Odebrecht (and the associated Operação Lava Jato³ scandal) is particularly telling: over a number of years, the corporation operated a transnational collusive network managed in an orderly and bureaucratic fashion by a specialized unit based at its headquarters in Salvador da Bahia. During the latest period of economic boom (from roughly 2000-2013), Odebrecht bribed politicians—presidents, vice-presidents, cabinet ministers, legislators, political party leaders and regional governors—all over the continent in order to obtain concessions and assignments for huge infrastructure projects, significantly bolstering their profits (Durand 2018). Other expressions of political corruption in the region include secretive contributions to electoral campaigns or political parties, the misuse of public resources, the traffic of influences as well as collusive networks of mutual gain involving politicians and businessmen.⁴

A vast body of literature demonstrates that the costs of political corruption are enormous and that it seriously affects the opportunities for the well-being of nations. It entails stealing public money and distorting public spending and policy priorities for the benefit of private interests and to the detriment of collective ones (Rose-Ackerman and Palifka 1999; Hessami 2014). As a consequence of political corruption, public resources for the provision of infrastructure or public services are skimmed off and rules are adopted which prevent a better distribution or redistribution of wealth, well-being and power. In addition, political corruption reduces the capacity of public bureaucracies which, once affected by corruption, do not provide the services the way they are intended in legislation or regulations. By reducing representation, disconnecting popular agendas from actual policies and preventing public oversight, political corruption also lowers the quality of democracy. Further, corruption is detrimental for the economy (Pellegrini and Gerlagh 2004): estimates of its annual costs in Mexico vary from 2 percent to 10 percent of GDP (Casar 2015). For Peru, Quiroz calculated that between 1820 and 2000, collusion captured up to 40 percent of government spending and 3-4 percent of GDP growth per year (Quiroz 2008).

By affecting services and reducing the overall amount of public money available for social policies and collective infrastructure, political corruption hits the poor and

¹ Political corruption is defined as the use of powers and resources by public officials for private gains. At the heart of political corruption lies the deviation from norms that are supposed to bind public office holders, which results in benefits for particular persons, groups or organizations. For a discussion of the concept of political corruption, see Heidenheimer and Johnston (2017).

² Caputo 2012; Casas-Zamora and Carter 2017; Rotberg 2019.

³ Operation Car Wash

⁴ Mönckeberg 2015; Matamala 2015; Crabtree and Durand 2017; Cañete Alonso 2018.

marginalized particularly hard.⁵ In addition, by benefitting those who command the resources needed to buy favours from office holders and to bypass institutions, it contributes to the concentration of power and wealth and, thus, perpetuates social inequalities. The tendency to cement poverty and increase inequality is of particular importance for Latin America, considering that Latin American countries are among the most unequal countries on earth (ECLAC 2018). Inequalities in Latin America apply to income and wealth as well as many other essential (land, water, a healthy environment) or socially-valued goods and services (education, security, etc.), political power, and formal and informal rights (Braig et al. 2015; Jelin et al. 2017). In fact, political corruption is a constitutive element of Latin America's tenacious "inequality traps,"⁶ which seriously prevent the region from achieving inclusive and sustainable development (Schorr 2018).

In recent years, strengthened international cooperation among judicial branches and governments, as well as an increasingly professional investigative journalism, brought several cases of large-scale corruption to light (such as the Odebrecht case). As a consequence, social pressure (combined in some cases with international pressures or incentives) demanding greater public control of authorities' behaviour has risen sharply. All over the region, the subject of political transparency reached the top of domestic political agendas and was incorporated into international development programmes. Likewise, in many countries, prosecutors and attorneys have taken up the battle against corporate and political perpetrators of corruption.⁷ In sharp contrast to this stands the fact that regulation aiming at the prevention of political corruption by restricting politicians' behavior and imposing mechanisms for transparency and accountability is still rather scarce.⁸

In fact, curbing the opportunities for collusion between politics and business and raising the consequences for undue political influence or the embezzlement of public funds can be assumed to be particularly difficult in Latin America's unequal societies. It would require that those holding the power who are in all likelihood benefitting from political corruption must adopt and implement rules that would restrain it. Thus, when dealing with issues of political transparency and the reduction of the costs that political corruption is provoking in the region, one of the most important questions is how to push regulators to effectively regulate themselves.

⁵ Gupta et al. 2002; Mohtadi and Roe 2003; Kaufmann 2015.

⁶ Inequality traps are defined as situations "where the entire distribution is stable because the various dimensions of inequality (in wealth, power and social status) interact to protect the rich from downward mobility, and to prevent the poor from being upwardly mobile" (Rao 2006:11).

⁷ For instance in Peru, where the last five former presidents are under investigation for corruption.

⁸ Under the recent "enabling environment" component of the National Resource Governance Institute's Resource Governance Index (RGI), the LAC region (the Latin American and the Caribbean countries together) receives on average 50 out of a total of 100 points, compared to the 95 percentage point average for the Organisation for Economic Cooperation and Development (OECD) countries. The region scores particularly low under the Rule of Law and Control of Corruption variable (NRGI 2017). Likewise, according to Transparency International, the perception of corruption has increased in almost every country of the region (see Transparency International. 2019; also other regular Latin American opinion polls, like LAPOP [Latin American Public Opinion Project] and Latinobarómetro, confirm this trend).

While Latin America on average scores poorly regarding the adoption and implementation of political transparency rules, Chile's performance is an outlier. Starting in 2015, an impressive reform process towards effective political transparency governance set in and several reforms aiming at greater transparency and accountability have since been adopted (such as the regulation of the financing of electoral campaigns, or rules about transparency of interests of legislators or public institutions and employers).⁹ These reforms are not trivial given the fact that Chile is among the most unequal countries worldwide with a business elite classified as particularly influential and thereby not expected to easily give up their privileges. The policy process is generally viewed as "closed"¹⁰ and, in past years, politicians have regularly been involved in corruption scandals (Matamala 2015; Mönckeberg 2015). Moreover, the extensive reform process not only materialized against many odds and expectations, it also evolved within a short period.

This paper analyses the political process that led to the relatively progressive political transparency governance scheme in Chile in a fairly short period of time. It studies the mechanisms and factors that shaped the political process in such a way that political reforms for greater transparency were enacted and regulators ultimately agreed to regulate themselves, rather than exploring the causes, consequences or dimensions of political corruption in Chile. On a more general level of inquiry, studying the case of the Chilean reform process towards a more effective regulation of political corruption will shed light on the conditions underlying policy change in adverse political environments characterized by social inequalities and power asymmetries such as the Latin American ones.

The paper proceeds as follows: First, it describes the political and social context in Chile in which the reform process took place. It then proceeds to a case analysis that highlights a series of factors that have been (so far) identified as having facilitated the adoption of transparency laws.¹¹ This section builds on data and information from expert interviews conducted during two field stays in Chile in 2018 and 2019 as well as on extensive literature and media reviews. The conclusion summarizes findings and finishes with some reflections on the lessons learned from the Chilean experience regarding policy change in adverse environments.

Corruption and Political Change in Chile

Since Chile's return to democracy in 1990 a series of corruption scandals involving the embezzlement of public funds have been revealed. The most prominent among them in terms of social disapproval and political debates was a case of secret speculations within the public copper company CODELCO in 1994 which provoked the Chilean treasury a loss of USD 200 million (Silva 2016: 189). Two other bribery scandals (the so-called "Caso Coimas" and "MOP-gate") came to light in the early 2000s in the Ministry of

⁹ Sahd and Valenzuela 2018; Mailet et al. 2018; Arís et al. 2019.

¹⁰ Fairfield 2015; Bogliaccini and Luna 2016; Olavarría-Gambi and Dockendorff 2016.

¹¹ The analysis stems from ongoing research. It is therefore preliminary in nature.

Public Works and Transport. Officials had ordered irregular payments to subcontractors for fictitious activities. The money later went back to the ministry and was used for extra bonuses (*sobresueldos*) to a large group of persons, including the minister, deputy minister and chiefs of different departments.

While minor cases involving the use of public resources to finance political campaigns continued to pop up during the 2000s (Silva 2016), it was in 2013 that a wave of major cases of collusion were revealed. These involved public officials and their families from the entire political spectrum (Casas-Zamora and Carter 2017:20). For instance, the “Penta Case” refers to a collusion between the Chilean holding company Grupo Penta (which manages investments in the banking, insurance, pension fund, health care and real estate sectors) and employees of the Chilean National Tax System who together committed tax fraud by creating fake invoices. The payments for these invoices were directed to the political campaigns of party members from the right-wing party Unión Demócrata Independiente (UDI). In 2013, the arrangement collapsed when the general manager of Penta, Hugo Bravo, was fired after over 30 years in the job, in the midst of tax fraud investigations. In reaction, Bravo took the company owner to court for unjustified dismissal and denounced the illegal campaign contributions. During the investigations of the case, another illegal arrangement between a company and politicians became public: Sociedad Química y Minera de Chile (SOQUIMICH; Chile’s Chemistry and Mining Society, mainly engaged in lithium production in the north of the country) had issued false bills and receipts to get tax reductions and used fake invoices to transfer money to the centre-left party Nueva Mayoría.¹²

Several other cases were revealed in 2013. The former delegate and head of the congressional mining commission, Jorge Insunza, by then General Secretary of the government of Michelle Bachelet, provided classified information to mining corporations via his consultancy firms. The rather large “Caso Corpesca” confirmed that the fishing industry had practically written the sectors’ governing legislation, thereby guaranteeing important (fiscal) benefits and preventing environmental regulation that would have reduced the allowed levels of production. There have been several further cases of corruption and collusion since 2013, some between private actors, as in the case of the “toilet paper cartel,” which involved two of the country’s biggest toilet paper manufacturers establishing a price-fixing scheme to corner the market for sanitary tissue and other products between 2000 and 2011.

While all these scandals provoked public outrage and nurtured demands for stricter regulation, the revelation of the “Caso Caval” became a political tipping point because it affected then President Michelle Bachelet personally. It involved Bachelet’s son Sebastián Dávalos and his wife Natalia Compagnon in an act of traffic of influence. Dávalos had facilitated a 10 million dollar loan from the Bank of Chile for his wife’s real estate and consulting firm Sociedad Exportadora y de Gestión Caval Limitada by making

¹² At least in one case it has been confirmed that the illegal campaign contributions have resulted in political favours (the case of the former mining minister Pablo Wagner). Others are still under investigation.

use of his contacts to the bank's director, Andrónico Luksic. The company received the loan only 24 hours after Bachelet's victory at the polls and used it to buy land near the town of Machati. Later on, Dávalos was found to have influenced the municipal government of Machati to re-classify the area in question from "agricultural use" to "urban use," which considerably increased its value and thereby the profits of his wife's company.

The Caso Caval hit President Bachelet immediately: the opposition and the media accused her of covering her son's illegal activities. Initially, Bachelet did not show any reaction to the allegations, which rose even more suspicions towards her. Public disapproval of her presidency increased to an astonishing 61 percent. Given this threatening political scenario, Bachelet finally announced that the struggle against corruption would be one of her top priorities and in February 2015 she instituted a presidential commission. The Consejo Asesor Presidencial contra los Conflictos de Interés, el Tráfico de Influencias y la Corrupción (Presidential Advisory Council against Conflicts of Interest, Traffic of Influence and Corruption) was charged with preparing a report with policy proposals for a governance scheme that would promote political transparency and reduce political corruption. The council comprised 16 persons and was headed by the economist Eduardo Engel, an internationally renowned professor of economics at the University of Chile. Because of him, the commission was soon dubbed the Comisión Engel (Engel Commission).

After only 45 days, the Engel Commission submitted a final report of 217 pages with 234 concrete policy recommendations for probity and transparency in the public sector. The proposals were grouped into five categories: prevention of corruption, regulation of conflicts of interest, political finance, trust in markets and, finally, integrity, ethics and civil rights (Consejo Asesor 2015). President Bachelet accepted the majority of the recommendations and sent them to Congress for adoption. Matching the pace at which new corruption scandals were coming to light, such as "Pacogate", involving the Chilean *carabineros* (police),¹³ in the following three years a frenetic reform process set in. As of 2018, the Chilean Congress had approved 62 percent of the policy proposals formulated by the Engel Commission, transforming Chile into one of the most advanced countries in the region in terms of probity and anti-corruption governance (Sahd and Valenzuela 2018; Arís et al. 2019).

Explaining Chile's Rush Towards Political Transparency

Chile's rush towards a tougher political transparency governance can be explained by the confluence of several factors that allowed social discontent to translate into concrete political outcomes. On the one hand, a series of actors and structures already promoting political transparency facilitated the reform process. On the other hand, with the several scandals involving all political parties, a window of opportunity opened up for these

¹³ In June 2017, the "Pacogate" scandal brought to light a large system of collusion established within the national police (colloquially called "Pacos") that allowed for the diversion of public funds to private accounts of former policemen.

actors and their reform ideas. Lastly, the quick reform process would not have been possible without a series of supporting factors such as the decisive commitment of President Bachelet to the Agenda de Probidad y Transparencia (Agenda of Probity and Transparency),¹⁴ and also certain characteristics of the Engel Commission itself and its report. In the following, these structures, actors, opportunities and supportive factors will be described in more detail. While acknowledging that these factors are interdependent, mutually reinforcing and overlapping, the analysis will present them in an analytically separated way.

Prior history of transparency politics: Policies, institutions and actors

Transparency politics and institutional attempts to curb political corruption in Chile did not start from scratch in the year 2015. Rather, the recent reform process built on a prior history of transparency debates, initiatives and policies. Most importantly, the political processes around previous efforts to increase transparency led to the establishment of a series of social and public actors lobbying for political transparency which would become key during the most recent reform wave.

Regarding corruption in Latin America, Chile is generally mentioned as an outlier not infected with the degree of collusion and theft prevalent in its neighbouring countries (Rotberg 2019). Scholars argue that the relative poverty of the former parts of the Spanish colony that formed the Chilean state resulted in a lack of greed on the part of its public functionaries, producing a strong culture of public probity (Silva 2016). Moreover, at least since the 1930s, Chileans have preferred a technocratic state model with professionals in charge of affairs that were perceived as free of vested interests. Nevertheless, political corruption did explode during the dictatorship of Augusto Pinochet from 1973 to 1990 (Orellana Vargas 2018).

From the outset of the emergence of political corruption, Chilean politicians have reacted with institutional innovation for greater efficiency and probity to perceived threats or the actual presence of corruption: in 1927 the Controlería General de la República (National Comptroller Agency) was established, and in 1958 a new electoral law came into effect aimed at curbing patrimonialism and electoral bribery.

The transition to democracy in 1990 (under President Patricio Aylwin, 1990-1994) was the result of a brokered deal that came with a high price, not only for overlooking the many human rights violations, but also for the acts of corruption perpetrated during the Pinochet dictatorship (Silva 2016). After this transitional period, subsequent democratic governments adopted policies aiming at the modernization of the state. Under President Eduardo Frei (1994-1998) the principles of probity and transparency were introduced in the general regulation of the public administration. The government of Ricardo Lagos (2000-2006) followed the path of state modernization by creating the Consejo de Alta Dirección Pública (Council for High Public Management) charged with the selection of

¹⁴ Hereafter, "Probity Agenda".

personnel for top positions in public administration on the basis of professional expertise, experience and personal merits. A modest law to control undue political influence and the behaviour of politicians and parties was launched in 2003.¹⁵ Michelle Bachelet also continued the direction of these transparency policies during her first government (2006-2010) by creating the Consejo de Transparencia (Council for Transparency), an autonomous entity in charge of monitoring the implementation of existing laws and guaranteeing citizens' access to any sort of information on public activities (Olavarria-Gambi 2016). Other reforms enacted during the first Bachelet government which would favour the later reform process were related to Chile's admission to the OECD in 2010. In order to obtain full membership, the country had to implement a series of reforms to fulfil the OECD standards, among them laws aiming at the reduction of corruption, such as legislation against bribery by corporations and converting the public copper company Corporación Nacional del Cobre of Chile (CODELCO) into an autonomous corporation. In 2011, Chile joined the Open Government Partnership, a multilateral initiative with seventy participating countries, which voluntarily adopted commitments for promoting transparency, empowering citizens, fighting corruption, and harnessing new technologies to strengthen governance.¹⁶ Forming part of this partnership requires member-countries to submit a two-year National Action Plan which governments must elaborate together with civil society actors. In this context, in 2012 the Chilean National Congress, along with several other Latin American legislators, signed the Declaración de Santiago sobre Transparencia e Integridad en los Parlamentos y Partidos Políticos (Santiago Declaration on Transparency and Integrity in Parliaments and Political Parties) and committed itself to engage in an "open parliament process" (Declaración de Santiago 2012). In June 2012, the Chilean congress became a member of the Red Parlamentaria Latinoamericana Pro Transparencia, Acceso a la Información Pública y Probidad (Latin American Parliamentary Network for Transparency, Access to Public Information and Probity) and in November of the same year, a bi-cameral group for transparency was created (Guillán Montero 2015). Altogether, these transformations and institutional changes created significant entry points for civil society actors to engage with politicians, in particular in the legislative branch, and ensured that the subject of transparency would stay on both the public and political agendas.

In the context of greater attention to transparency issues, in the 1990s public awareness of transparency, probity and the need of citizen participation increased, leading to the creation of civil society organizations active in this field. In fact, several persons who later went on to hold important positions in these organizations already had exerted an important influence on the first Bachelet government or were active transparency lobbyists even earlier during the government of Eduardo Frei (Olavarria-Gambi 2011). In 1998, Chile Transparente, the Chilean chapter of Transparency International, was founded, followed by the NGO Fundación Ciudadanía Inteligente (Intelligent Citizenry

¹⁵ Most importantly, the law regulates private donations to political parties and candidates and introduced an accounting mechanism on the basis of official payment receipts which must be handed to Servicio Electoral de Chile (SERVEL; Chilean Electoral Service).

¹⁶ See: <http://www.ogp.gov.cl/en/what-is-the-alliance-for-open-government/>

Foundation) in 2009. In 2012, Eduardo Engel and others established the NGO Espacio Público (Public Space). Also, political transparency is one of UNDP Chile's (The United Nations Development Programme, which has operated in Chile since 1965) focus areas. In the years leading up to the reform process beginning in 2015, these actors accumulated a great deal of expertise regarding the subject of political corruption and transparency, as well as strategical experience and both national and international contacts, and would become central actors in this process. As a matter of fact, the Engel Commission was only able to produce its voluminous report in such a short time frame because the majority of the proposals already existed and were promoted by these organizations. Likewise, the subsequent process of legislative adoption heavily benefitted from resources, expertise, contacts and, last but not least, the legitimacy and good reputation of these actors.

Public attention: A window taken by specialized civil society actors

For quite some time, Chileans did not consider their political authorities and system to be particularly corrupt, especially when compared to the rest of South America. This changed dramatically starting in 2013, when intensive media reporting revealed one scandal after another. As a consequence, the subject of political corruption rushed onto the public agenda and at moments appeared in surveys as the most important issue for the majority of the Chilean people (Aris et al. 2019:20).¹⁷ The large corruption scandals and the ensuing heightened public attention towards the perceived corruptness of the political class provided a huge window of opportunity for social organizations concerned with transparency issues, mainly the NGOs mentioned before (Espacio Público, Ciudadanía Inteligente, Transparency International, UNDP-Chile). Representatives of these groups took this window and actively engaged in the process in order to have their proposals enter first into the commission's report and then into the legislative process (Aris et al. 2019).

Two aspects were particularly outstanding: first, Chilean civil society organizations engaged in a sort of coordinated activism. Embedded in a dense network comprised of professional and personal contacts, representatives of these NGOs organized events, collected and shared data, prepared reports, and analysed and supplied information to the press and the general Chilean public. By joining forces, the whole endeavour was able to obtain not only wider outreach but also more legitimacy. Moreover, staff from Espacio Público—most notably Eduardo Engel—and from UNDP were members of the Consejo Asesor, which allowed them to feed their expertise into the report to the president. Second, the strategy of the NGOs involved in the Chilean transparency process was two-sided, which significantly contributed to their success (Maillet et al. 2018). Based on the entry points created previously (for instance in the framework of the open parliament process), they actively lobbied politicians and legislators into supporting the probity agenda. Their lobbying benefitted from their reputation as specialized and trustworthy interlocutors. On the other side, they acted as civil watchdogs. One of the most important

¹⁷ Aris et al. (2019) and Casas-Zamora and Carter (2017) offer a detailed description of these various corruption scandals.

instruments developed jointly by the NGOs Espacio Público and Ciudadanía Inteligente was the Observatorio Anti-Corrupción (Anti-Corruption Observatory), a virtual platform launched in 2015 that meticulously documents the advances (and setbacks or gaps) in the implementation of the probity agenda.¹⁵ It offers informational material and detailed analysis of the processes of adoption and implementation for journalists, researchers, public officials and interested citizens. The platform allows for a quick assessment of how the reforms are progressing and which gaps still have to be filled. Activists are also very active in their use of media, both traditional forms as well as new ones, specifically social media (Maillet et al. 2018). Also, Chile Transparente and UNDP actively promote the transparency agenda and monitor the reform process by providing information for the general public and the media as well as by maintaining contacts with legislators and other public institutions. In 2018, Chile Transparente launched a web platform that registers meetings and audiences of public office-holders with private actors.¹⁸ The platform constitutes a tool for critically scrutinizing political decisions adopted by state institutions and individual office-holders. Chile Transparente also opened the Centro de Asesoría Legal Anti-Corrupción (Anti-Corruption Legal Advice Centre), which provides gratis legal assistance for victims of corruption or collusion, whistle-blowers, and witnesses of corruption involving public authorities, officials or institutions.¹⁹ UNDP for its part organizes workshops with legislators in order to create awareness of the importance and the social value of public probity and political transparency.²⁰ All of these organizations frequently produce reports and informational material that can be accessed publicly.

The Engel Commission: Special properties

The Engel Commission was not the first Commission established on issues of political transparency in Chile. Already during the government of Eduardo Frei, a presidential commission had drafted a proposal for probity reforms (Olavarria-Gambi 2016).²¹ However, the Engel Commission was able to produce a much greater impact (Arís et al. 2019).²² This particular success depended upon a series of special properties that endowed it with an important legitimacy in the eyes of the Chilean public, which in turn made it especially difficult for legislators to veto its proposals. The composition of the commission was one such special property. Although the 16 members publicly stressed their technical and professional expertise, which made them appear as a homogenous body, regarding their political and ideological positions, there was no homogeneity at all. In fact, they came from very different political backgrounds (Sahd and Valenzuela 2018; Arís et al. 2019). The integration of various political tendencies increased the level of acceptability of the commission's proposals by different political forces. On the other hand, given the fact that political parties suffer from a very low reputation in most Latin American countries, including Chile, the commission's emphasis of their technical expertise enhanced their legitimacy in the eyes of the general public (Sahd and Valenzuela

¹⁸ See: www.integritywatch.cl

¹⁹ See: <https://denunciacorrupcion.cl/>

²⁰ Interviews with NGO staff in Santiago de Chile, April 2018.

²¹ Moreover, the establishment of commissions fits into the tradition of technocratic politics in Chile (Centeno and Silva 1998; Silva 2006, 2009).

²² Individual assessments of Commission members in personal interviews, Santiago de Chile, June 2019.

2018). In addition, members of the commission obliged to adhere to a set of rules of conduct, such as the agreement not to discuss internal conflicts in public, which also contributed to the perceived legitimacy of the commission, as well as the quality of the proposals.

The head of the commission, Eduardo Engel, also significantly contributed to the public acceptance of the commission. As a professor of economics at the University of Chile with an outstanding academic track record in Chile and abroad, and considerable expertise in public policy issues (as founding president of the Chilean Public Policy Society), Eduardo Engel enjoyed a strong public reputation. In 2016 he was elected as one of the most admired personalities in Chile by the readers of the newspaper *La Segunda* (Espacio Público 2017). Engel, as well as other members of the commission, maintained good contacts with public institutions, politicians and legislators, which further helped to advance the commission's agenda.

Not only could the commission draw on the expertise and legitimacy of some of its members, it was also supported logistically by the organizations from which some of their members came. Both UNDP Chile as well as the NGO Espacio Público supported the work of the commission by providing funds for material and staff. This was particularly important since the commission received a very limited budget from the president and members acted *ad honorem*. The team from Espacio Público assisted the commission, while Marcela Rios, coordinator of the governance programme at UNDP Chile, was permitted to use her institution's infrastructure to support the commission's work.²³ As a result of this influx of additional resources, the commission was able to conduct meetings with civil society and political groups throughout the country, which allowed them to collect a wide array of ideas (Arís et al. 2019). At the same time, the staff at the commission's headquarter gathered information on transparency governance regulation and experiences in other countries. As a result, the report not only integrated perspectives from Chilean society but also international expertise and good practices, which ensured high quality and made it more difficult for legislators to oppose, for fear of looking corrupt themselves.

Finally, the detailedness of the report also contributed to its relative success in terms of legislative adoption. It contained 234 very concrete policy recommendations for probity and transparency in the public sector. Once introduced into the legislature, this specificity guaranteed very concrete discussions in Congress which entailed little risk of slipping into too general debates. Given the concreteness of the proposals, the margin of interpretation available to the legislators for the formulation of the laws was very low. In addition, the specificity of the proposals made it easy for the NGOs and the general public to supervise the process of adoption. Among others, it allowed for the establishment of the virtual measurement tool (see previous section) which monitors the adoption of the probity agenda point by point.

²³ Interview with Marcela Rios (UNDP) and staff from Espacio Público in Santiago de Chile, June 2019.

Presidential commitment

Another key factor facilitating the reform process towards political transparency governance in Chile was the support of President Bachelet, both with regard to the establishment of the Engel Commission as well as concerning the legislative process initiated after the Commission had turned in its report. In the wake of the Caso Caval, Bachelet had declared political transparency her priority, presumably in order to undo potential accusations against her family and herself. However, once the report was on the table, she continued to promote the subject within her government by issuing the Probity Agenda, which included the majority of the proposals made by the Engel Commission and was sent to Congress for approval.²⁴ In addition, in 2016 she created by decree the Comisión Asesora Ministerial para la Probidad Administrativa y Transparencia en la Función Pública (Ministerial Advisory Commission for Administrative Probity and Transparency in the Public Service) which monitors and promotes the implementation of the transparency agenda within governmental institutions.

The president used two instruments to advance the probity agenda in Congress: first, Bachelet put pressure onto the congressional representatives of her own parliamentary coalition, which held the majority of seats. Second, she made use of the format of “urgency legislation” in order to force Congress to discuss and vote on the policy proposals on probity within a period of two weeks.²⁵

While the support for the probity proposals was not significant among Chilean congressional representatives, the combination of social pressure in general and of specific organizations in particular, as well as presidential pressure on the governmental coalition reinforced by the use of urgency legislation, reversed this situation completely. It became very costly for any delegate to publicly dismiss or resist the transparency reforms, which would have meant being seen not only by the president but also by Chilean citizens as “pro-corruption”. As one interviewee mentioned, social and political pressure during the reform process was so strong that delegates simply could not afford to vote against the reform proposals—unless they were committed to an act of political suicide.²⁶

Discussion and Lessons Learned

The recent explosion of massive corruption scandals all over Latin America has revealed the worrisome dimensions of political corruption in the region. Political corruption is not only a problem in its own right, by which established rules are bypassed for the benefit of those endowed with resources and positions of power. Because political corruption furthers the concentration of resources and power, it also perpetuates poverty and social inequality. Thus, it affects the most vulnerable social groups or individuals in a region

²⁴ Bachelet weakened the proposals by explicitly excluding all provisions regarding political transparency in the subnational governments for considering them “not viable” at the time (Interview with UNDP staff member in Santiago de Chile, June 2019).

²⁵ On Chilean presidential powers for “emergency legislation,” see Vial et al. (2011).

²⁶ Interview with Espacio Público staff member in Santiago de Chile, April 2018.

which, by almost all conventional measures, counts as the most unequal one in the world (ECLAC 2018).

Social outrage and demands for a better regulation have followed the recent wave of corruption scandals. However, while the subject generally ranks high on the political agenda, comprehensive reforms towards a political transparency governance that prevents and sanctions political corruption are still lacking in most of the region. Chile is an exception to this trend as the most recent reform process shows. The aim of this paper has been to trace the process that led to the adoption of the new political transparency regulations.

The analysis has revealed several key factors and mechanisms which led to the unexpected outcome in Chile: First, Chile had a prior history of transparency politics, which led to the creation of certain institutions, the organization of specialized public and civil actors concerned with the subject of political transparency. This also fostered the accumulation of expertise in the field as well as the establishment of network contacts. Thus, when social discontent and public attention opened up a window of opportunity for action in the shadow of the various corruption scandals, these actors were prepared to take it. Second, social pressure pushed President Bachelet to form a commission which gathered concrete policy proposals in a very elaborated report and made them available to the president. Moreover, the Engel Commission consisted of members endowed with high social legitimacy and who at least partly commanded considerable technical expertise that resulted in over two hundred very concrete policy proposals. The concreteness of these recommendations reduced the margin of interpretation in the process of policy formulation and facilitated the monitoring of the legislative process that led to the adoption of over 60 percent of the proposals. Third, presidential pressure on the governmental coalition and on Congress in general was key to promote the new political transparency rules within public institutions. Fourth, the activism of civil society groups, both within and outside governmental institutions, was very important to ensuring the issue remained on the political agenda and pressuring Congress to adopt the proposals (by means of lobbying and watchdog activities).

On a more general level, the case of the political transparency reforms in Chile holds several lessons with respect to policy change in unequal societies and adverse environments.

First, as mentioned above, social pressure and discontent are not enough to achieve policy change. Although they are without a doubt important because they can put pressure on public office holders, they are not sufficient to push Congressmen and -women to regulate themselves. In the case of Chile, there were scandals and social outrage before, but they failed to trigger major reforms, and when change took place, it never reached the dimensions achieved by the process promoted by the Engel Commission.²⁷ The assertion

²⁷ On the other hand, there were also transparency reforms without social pressure, for instance under the presidency of Eduardo Frei (Olavarria-Gambi. 2016).

that social pressure and discontent are not sufficient in order to trigger policy change is established knowledge in several academic literatures, such as the policy process literature (see Sabatier and Weible 2007) or the social movements/contentious politics literature (see Tilly and Tarrow 2007). In order to achieve political change, other factors must be in place, for example social actors must mobilize resources, organize public actions and find allies within the political system. In Chile, it was not massive collective protests that pushed regulators to regulate themselves; rather, highly specialized civil society organizations pursued a twofold strategy that combined rather classical lobbying with an active watchdog role during the legislative process. The civil society organizations acted, thus, as brokers between Congress and society and ensured strict control during the process of rules adoption. Three aspects strike as particularly important: first, the importance of commanding specialized knowledge regarding the reform subject. Expertise enhances the legitimacy and authority of social actors and raises the costs for legislators to oppose the reform proposals. On the other hand, reformers should have concrete policy proposals at hand in case a window of opportunity opens up—echoing the “multiple streams” propositions formulated by Kingdon (1984) and Cohen et al. (1972). Having concrete proposals already available will significantly reduce the transaction costs associated with their formulation and design and will allow for a quick reaction, which is very important given the fact that windows of opportunities open up only for a very limited time (see below). Moreover, once in Congress, the concreteness of the proposals reduces the margin of interpretation available for legislators in the process of policy formulation and facilitates an easier monitoring.

Second, the coordinated actions among civil society actors had a very similar effect: they united forces and resources, which increased their knowledge base, their outreach and, consequently, their legitimacy. In this, virtual instruments allowing for quick diffusion to a wide audience were also of great support.

Third, the policy process consists of different phases, each one comprising different actors and featuring different dynamics, namely the phases of agenda setting, policy formulation, policy adoption and implementation (Kingdon 1984). While analytically separated as phases, they generally take place parallel to one another. However, what the case of Chile clearly shows is that civil society actors must engage in all phases of the political process that they expect to lead to change, not only in the phase of agenda setting, as social movements often do (see Kolb 2007). In Chile, they contributed (and are still contributing) to keeping the subject of political transparency on the public and political agendas. They influenced the formulation of policies by participating in the Engel Commission and the Congressional sessions. The latter was of particular importance since delegates intended to change the content of policies in their internal committee meetings. By being present, civil actors managed to expose these manoeuvres to the public and prevented them from being successful. Lastly, civil society actors also managed to keep an eye on the voting behaviour of the legislators, thereby enhancing the opportunities for adoption of the policies. The case also stresses the importance of the constant monitoring and evaluation of congressional behaviour in processes of policy change. In Chile,

congressional representatives were constantly under scrutiny by recognized external experts who, by using digital instruments allowing for mass communication, exposed their behaviour on a permanent basis to the Chilean voters. As a result, voting behaviour perceived as opposing the probity agenda became extremely costly for legislators.

A fourth lesson stresses time as an important factor to be considered in processes of policy change. In Chile, the great bulk of reforms were achieved in a relatively short time, more or less two years, after which the speed of reforms slowed down considerably. This should remind reformers to try to achieve as much change as possible as quickly as possible while public attention is fresh and pressure on Congress is high. Both get lost on the way and once the window of opportunity closes, reform will become significantly more difficult and costly.

The last lesson emphasizes the support of presidents in particular and the importance of institutional quality in general in processes of policy change in Latin America's unequal societies. Latin American polities traditionally feature competition between presidents and their parliaments (Alcántara et al. 2017). Additionally, Latin American presidents are often constitutionally endowed with specific powers that allow them to bypass or pressure congress, such as the urgency legislation in the case of Chile. The Chilean case suggests the effectiveness of allying with the executive in order to press the legislature into policy change. However, only strong presidents who can count on solid majorities will be able to exert their influence and contribute to policy change, if they support it at all. In addition, policy change promoted against the opposition of powerful actors is only possible where at least rudimentary democratic procedures are in place and respected by the public office holders. In fact, Chile counts among the most stable democracies in Latin America—again an outlier in this sense—and the congressional representatives indeed played by the rules in the reform process towards political transparency governance. It follows that the Chilean case may rest on specific conditions which are rather exceptional in the region, as the fate of transparency initiatives in other countries such as Bolivia, Peru and Ecuador underline.²⁸ Thus, when dealing with reforms, political will must be analysed in a particular context. The existing institutional quality should be taken into account as an underlying force. Further research is needed to determine whether it affects primarily the timing and speed of reforms, or whether such special characteristics are indeed a precondition for reforms of any kind.

A final note of caution is called for here. This study conceives of the case of Chile as a successful one regarding the adoption of a comprehensive regulation aiming at the reduction of political corruption. However, this is not to say that the policy process in Chile was (or *is*, since it is ongoing) without problems. To the contrary, while the transparency coalition was able to achieve many reforms in a period of two years, since then the process has slowed down significantly. There are several proposals promoted by the Engel Commission that are currently “sleeping” in Congress, because delegates will

²⁸ See Aris et al. (2019) for an overview of experiences in these countries.

not act on them. As the presidency stopped classifying the proposals as “urgent”, there is no more legal pressure on Congress to adopt them. For instance, a law establishing an autonomous Office for Congressional Ethics is currently (as of 2019) being blocked by several legislators who do not wish to lose control over the body (currently the office is being managed by the delegates themselves). Moreover, legislation addressing private-sector corruption, horizontal corruption or undue influence within the state’s structures has so far not been translated into official laws.²⁹ Nor did the Chilean Congress adopt measures for political transparency in municipal governments, where, according to many observers, corruption is particularly massive.³⁰ Moreover, Chile still has several regulations in place which openly counteract political transparency such as the *gastos reservados* (earmarked expenses) for the Chilean police and the military. These expenses are not subject to public disclosure.

Finally, the full implementation of the Agenda for Probitry and Transparency is still a long way off and it is too early to assess the effectiveness and actual implementation of the laws. However, what already can be observed is that legislators and politicians have reacted and adapted to the new legislation with manoeuvres intended to avoid its consequences. For instance, since favour buying is prohibited now in the pre-election period, it was transferred to the post-election period (Barozet and Espinoza 2019). Moreover, public officials promoting the fight against corruption have been replaced with supposedly “friendlier” candidates. Such was the case with the former director of the Servicio de Impuestos Internos (National Revenue Bureau), Michel Jorrat, who had initiated a legal procedure against SOQUIMICH for fiscal offenses. The government dismissed him because of unconfirmed allegations of misbehaviour. His successor decided to treat the cases as administrative offenses which implied a far softer treatment of the defendants (Matamala 2015). Another case involves the new attorney general of Chile who was accused of secret meetings with indicted senators in the run-up to his election by the senate. This situation revealed one of several persisting weaknesses and shortcomings of the Chilean transparency governance scheme: The attorney general, charged with fighting political corruption, is dependent upon the votes of the politicians he might have to prosecute. It can be expected that senators will most likely not vote for a candidate they are fearing will put them to trial and candidates will not threaten the people they are depending on for election. Altogether, these reactions and adaptations strongly call for a careful investigation of the implementation of the new legislation in order to identify and ultimately rule out those institutional arrangements and contradictions still in place that jeopardize political transparency and lawful governance in Chile.

²⁹ Interview with NGO staff in Santiago de Chile, April 2018.

³⁰ As always in the case of corruption, clear numbers are missing. But anecdotic evidence on corruption in local governments has been multiplying over the last couple of years. (Interviews with staff from Chile Transparente in April 2018, Santiago de Chile). See also Barozet and Espinoza (2019).

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