

# **Informal Institutions and Horizontal Accountability: Protocols in the Chilean Budgetary Process**

## **Abstract:**

The executive-legislative relations rely on formal and informal institutions, but the literature usually studies only the former. This bias leads to questionable results when scholars examine the capacity of state institutions to audit other public agencies and branches of government. I explore how the protocols, an informal institution that shapes the Chilean budgetary negotiations, have increasingly allowed the congress to have a more relevant budgetary role than what the constitution permits. I argue that protocols accommodate the undesired consequences of a charter that is strongly biased toward the central government, and describe how this institution has departed from its stringent budgetary-focus to encompass broader executive-legislative agreements that enhance the capacity of the congress to audit the executive.

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## 1. Introduction

In an influential article, O'Donnell (1998) argued that many developing democracies lack horizontal accountability: allegedly autonomous state powers are unable to exercise controls over the executive (see also Mainwaring and Welna 2003). Weak checks among state powers lead to law violation, less transparency, more corruption and to a sub-representation of the preferences of the voters that elect congress. O'Donnell (1998) claimed that the lack of horizontal accountability could be explained by the patterns of interaction between formal and informal institutions. However, although previous works have extensively showed that informal rules shape politicians' behavior (e.g., Helmke and Levitsky 2006), usually studies that address executive-legislative relations only examine formal rules. In this paper I examine the role of protocols (*protocolos*), an agreement signed between the two elected branches of government during the budgetary negotiations in Chile. I argue that the protocols are an informal institution that bypass the 1980 constitution and helps congress to keep the government accountable. Protocols commit the executive to disclose information, make concessions, commission research, evaluate programs, increase, limit and reallocate expenditures, and send bills to congress.

Previous studies have examined informal institutions in the Chilean executive-legislative relationship (Ferraro 2008; Siavelis 2006; Carey and Siavelis 2006; Montesinos 2003), and some authors have described the legislators' effort to influence the budget (e.g., Siavelis 2002; Baldez and Carey 1999; Baldez and Carey 2001), but how and to what extent informal institutions shape the public budget remains unexplored. Some of these studies have aptly suggested that to understand executive-legislative relations it is necessary to go beyond the examination of the legal framework and carefully observe day-to-day political practices. For instance, Ferraro (2008) interviews 29 key actors that reveal how Chilean legislators influence the bureaucratic output using informal channels. Legislators and civil servants revealed him that lawmakers influence the appointment of bureaucratic jobs and hold informal networks among public officials, with whom they meet regularly. I contribute to this line of research doing a systematic examination of how and to what extent congress uses protocols to exert horizontal accountability in the budgetary process.

I argue that the absence of studies examining the role of informal institutions in the public budget has led to a misunderstanding of the Chilean executive-legislative relations in general and the budgetary process in particular. The vacuum is surprising because the public budget is one of the most important political documents in any country: it represents the governments' policy choices (Fenno 1966; Wildavsky 1988) and has a significant impact on electoral outcomes (Ames 1987; Bueno de Mesquita et al. 2004). When political scientists fail to acknowledge the impact of an informal institution as an independent variable and attribute its effect to a formal rule, the causal explanation is characterized by omitted variable bias and formal rules tend to be overestimated.

The budgetary superpowers of the Chilean president have helped scholars to rank her as one of the most powerful presidents in the world. Shugart and Carey (1992) rank the Chilean president as the second most powerful in a sample of forty four

countries, while Samuels and Shugart (2003) rank her third among twenty six nations. Among works that only examine Latin America, Shugart and Mainwaring (1997) rank the Chilean president as the most powerful along with the Colombian; Shugart and Haggard (2001) classify her in the second place; Tsebelis and Alemán (2005) in third place and Negretto (2008) in the fourth.

In Latin America, Chile is considered to have one of the most executive-based models of budget elaboration (Alesina et al 1999; Vial 2001), and the main budgetary actors (i.e., congress and the executive) supposedly profess a stringent respect for the institutional design (Aninat et al. 2006). As reported by the OECD (Blöndal and Curristine 2004, 25): “The current budget process is designed for the congress to swiftly approve the government’s proposal with no changes. The influence of the congress in informal terms would also appear to be small.” Scholars have widely accepted this view, and even one of the most renowned experts in Chilean politics argues that “it appears that members of congress are satisfied with a president with strong budgetary powers” (Siavelis 2002, 100).

The alleged conformity of the Chilean congress contrasts with the active role played by other regional legislatures to increase their budgetary role. Hallerberg, Scartascini and Stein (2009) have documented how budgetary actors in Latin America go beyond their legal powers and directly contradict the law –or its spirit. I argue that Chilean budgetary actors also accommodate the constitutionally-based norms, but in a more subtle way: using informal institutions to advance congressional preferences.

To comprehend the role of protocols, I conducted semi-structured interviews with 15 actors involved in the process in Santiago and Valparaíso. These interviews uncovered the origin and meaning of the protocols: why and how they emerged, what the signatories pursued with them, why they have evolved and which are their political implications.

Chilean legislators use protocols to advance their preferences because they want to increase their influence in the budgetary process, and to amend the charter is too costly; it requires a supermajority of 3/5 of the legislature. The minister of Finance and the members of the congressional Special Budget Joint Committee (SBJC) signed the first protocol for the 1997 public budget on November 20, 1996. Since then, the same actors have signed protocols for every year except for 2000. Consequently, I do a content analysis of the fourteen protocols agreed for the budgets between 1997 and 2011. The systematic analysis of the protocols shows that they are a critical bargaining tool that allows congress to audit the government and that they help to avoid an executive-legislative gridlock. Furthermore, with time protocols have evolved to become a source of formal institutional change: they have led to changes in Organic Constitutional Laws (OCL), which are complementary to the constitution in certain issues.

The descriptive evidence presented in this text shows the limitations of previous accounts of executive-legislative relations in Chile and challenges the description of Chilean budgetary actors as outliers in the region. More broadly, this research calls into question the classification of presidential and legislative powers based on what the charter says, because it relies on the debatable assumption that constitutional rules are widely enforced in Latin America. Examples about unenforced constitutional provisions

abound in the region. For instance, the 1853 Argentinean charter granted lifetime tenure to Supreme Court justices, but since the 1940s almost every government has filled the court at will (Helmke 2004). Moreover, many clauses of Mexico's 1917 charter were ignored for decades, allowing to practices such as the *dedazo* ("finger tapping"), an unwritten code that allowed the president to choose his successor. As in these countries, the Chilean political elite has also accommodated constitutional rules to their preferences.

## **2. The Executive's Budgetary "Superpowers": Myth and Reality**

The formal and informal rules that regulate the budgetary bargaining between the executive and the legislature vary across countries, even within presidential systems. Scholars view the American federal budget as being jointly determined by presidents and congress (e.g., Canes-Wrone 2006; Kiewiet and McCubbins 1991). In contrast, they claim that in most Latin American democracies the power of the purse is strongly biased toward the executive; constitutions and laws tend to delegate the initiative on budget formulation and execution to the executive (Hallerberg et al. 2009; Pelizzo et al. 2005). Even in this context, Chile is an extreme executive-based model of budget elaboration.

The Chilean constitution, created by the military regime (1973-1990) in 1980, concentrates almost all of the budgetary process in the executive to avoid disagreements that could lead to stalemates with the legislature.<sup>1</sup> The constitutional designers wanted to avoid a conflict such as the one that led to a civil war in 1891, when the president José Manuel Balmaceda enforced a Budget Law without congressional approval.

Despite several reforms to the charter, the budgetary discussion remains highly centralized in the executive, with a strong preeminence of the Finance Minister and the Budget Office (*Dirección de Presupuestos, Dipres*) Director. Article sixty five of the constitution gives the president control over all tax and spending policies, while article sixty seven establishes that the executive is responsible for creating a budget bill that considers all fiscal expenditures. Article sixty seven also establishes that (1) congress cannot change the economic assumptions or the government's forecasts of future fiscal income; (2) if congress has not approved the budget bill within sixty days after the executive's proposal, it becomes law; (3) congress can only reduce the budget without touching the portion allocated by previous permanent laws, but (4) the legislature cannot increase any budget item or reassign expenditures among programs.<sup>2</sup>

In sum, formally the budgetary participation of the legislature is limited to reduce the flexible part of the budget in only 60 days. The prerogative to reduce some allocations is of dubious interest to legislators. According to most scholars that have studied executive-legislative relations in Latin America (e.g., Nacif and Morgenstern 2002; Hallerberg et al. 2009; Scartascini et al. 2010) or elsewhere (Poterba and Von Hagen 1999; Haggard and McCubbins 2000), legislators are mostly interested in distributing goods and services to their constituencies. Hence, they have incentives to increase spending. Recent research also suggests that pork distribution is crucial to the survival of Chilean legislators (Aninat et al. 2006; Toro 2007).

So far, scholars that have discussed the budgetary process have assumed that the net effect of the congressional intervention in the public budget is marginal and only reduces the executive's budget bill. However, this assumption is inconsistent with congressional behavior. Table one shows the differences between the executive's budget bill proposal and the Budget Law that congress approved from 1991 to 2010. It documents that, despite restrictions in the charter, the legislature increased the overall public budget in seven of the twenty years.

**Table 1: Budgetary Variation due to Congress**

| Year | Executive's Bill | Budget Law | Change (%) | Year | Executive's Bill | Budget Law | Change (%) |
|------|------------------|------------|------------|------|------------------|------------|------------|
| 1991 | 2,509,002        | 2,514,309  | 0.2122     | 2001 | 10,225,550       | 10,222,796 | -0.9731    |
| 1992 | 3,175,499        | 3,175,499  | 0          | 2002 | 11,340,114       | 11,336,360 | -0.9669    |
| 1993 | 3,866,243        | 3,880,877  | 0.3785     | 2003 | 11,889,979       | 11,890,246 | 0.0022     |
| 1994 | 4,610,964        | 4,610,964  | 0          | 2004 | 12,496,288       | 12,425,588 | -0.434     |
| 1995 | 5,505,171        | 5,474,843  | -0.5509    | 2005 | 13,102,590       | 13,102,639 | 0.0004     |
| 1996 | 6,267,275        | 6,265,357  | 0.0306     | 2006 | 14,763,933       | 14,763,971 | 0.0003     |
| 1997 | 7,135,565        | 7,135,565  | 0          | 2007 | 17,430,780       | 17,430,780 | 0          |
| 1998 | 8,053,023        | 8,053,023  | 0          | 2008 | 20,209,839       | 20,209,839 | 0          |
| 1999 | 8,495,969        | 8,495,969  | 0          | 2009 | 22,906,583       | 22,922,583 | 0.0699     |
| 2000 | 9,274,596        | 9,274,709  | 0.0012     | 2010 | 25,046,832       | 25,046,832 | 0          |

\*In Chilean million thousands pesos. Source: Websites of the Dirección de Presupuestos ([www.dipres.cl](http://www.dipres.cl)) and the National Congress ([www.congreso.cl](http://www.congreso.cl)).

To uncover agency variation, table two shows the largest variation among the budgets of the 22 agencies included in the public budget (nineteen ministries plus congress, the judiciary, and the comptroller's bureau). Noticeably, in thirteen years the largest variation increases the agencies' budgets (up to 13.46%). Moreover, on seven years (1992, 1994, 1997, 1998, 1999, 2007, and 2008) the budgets of some agencies changes while the overall public budget does not, indicating patterns of reallocation among agencies.

**Table 2: Largest Change within Agencies due to Congress**

| Year | Agency                    | Change (%) | Year | Agency                     | Change (%) |
|------|---------------------------|------------|------|----------------------------|------------|
| 1991 | Secretariat of Presidency | -2.26      | 2001 | Congress                   | 2.70       |
| 1992 | Transport and Telecomm.   | 5.68       | 2002 | Planning                   | -1.40      |
| 1993 | Agriculture               | 9.22       | 2003 | Congress                   | 1.81       |
| 1994 | Secretariat of Govt.      | 2.02       | 2004 | Congress                   | 1.40       |
| 1995 | Secretariat of Govt.      | 13.46      | 2005 | Congress                   | 4.66       |
| 1996 | Mining                    | -11.84     | 2006 | Congress                   | 5.61       |
| 1997 | Agriculture               | 2.16       | 2007 | Housing and Urban Planning | -0.60      |
| 1998 | Congress                  | 3.09       | 2008 | Secretariat of Presidency  | -0.47      |
| 1999 | Agriculture               | 5.89       | 2009 | Secretariat of Government  | -1.68      |
| 2000 | Agriculture               | 7.94       | 2010 |                            | 0.00       |

\*In 2010 there was no variation within ministries' budgets.

The difference between the amounts in the executive's bill and the Budget Law result from bargaining practices through which congress increases the budget of some agencies reallocates resources among agencies. In sum, tables I and II document that the agency's budgetary changes bypass articles sixty five and sixty seven of the constitution.

The budgetary changes are mainly explained by specifications included in the budget. Both the executive and the legislature can include specifications during the budgetary negotiations that take place before the protocols are agreed. Specifications introduce changes that increase or decrease an agency's budget, and can also only modify parts of its content. Although protocols also occasionally reallocate resources, congress uses them mainly to keep the executive accountable.

Even though the executive is conscious of its legal budgetary advantage, it eludes a direct confrontation with congress. "We avoid leaving wounds so deep in the budgetary negotiations that may reappear in another bargaining", says Mario Marcel (2006), former Dipres director (2000-2006). "The budget is not the only bill, so the Finance Ministry has to be alert of several legal projects, and if it hits the table too strong in one, legislators will retaliate later. We have to treat congressmen extremely well. You cannot hit the table", comments Joaquín Vial (2005), former Dipres director (1997-2000).

The executive does not "hit the table" often because the legislature uses five tactics to raise the costs of neglecting congressional preferences. Both Vial (2005) and Marcel (2006) claim that legislators often threaten to reject other executive bills when the executive does not include in the budget bill the amendments that they propose. Second, lawmakers threaten to escalate the conflict through the media to affect the government's popularity. "The meetings between the executive and the SBJC attract the media, giving legislators the opportunity to criticize the executive if it rejects to include sensitive amendments", comments the SBJC analyst, Rubén Catalán (2006). SBJC member of the Concertación ("Concert") coalition and socialist Senator Carlos Ominami (2006) also emphasize this point: "Public discussions are useful to include changes in the budget".

This tactic, however, is seldom used by pro-government legislators because they may receive political retaliations from the executive. Moreover, this tactic is typically limited to sensitive issues in which legislators can expect to capture the attention of the media –and their audiences.

Third, the legislators can delay the voting of the budget to earn extra time to bargain with the executive. Since the SBJC votes the executive's bill proposal by items, any SBJC member can ask their peers to postpone the voting of specific items. According to budgetary actors, these petitions almost always succeed due to an underlying reciprocity commitment. As former SBJC member, Planning minister and Christian Democrat (DC, centrist) deputy Andrés Palma (2006) argues, "Every legislator may want to do an amendment, so legislators respect fair play and support all these petitions. This happens three or four times every year".

Fourth, legislators take advantage of the constitutional rule that establishes that an absolute majority of congress is required to approve in the Budget Law the fiscal debt

beyond the current budgetary year. Palma (2006) affirms that since Chilean governments usually incur debts beyond their terms, the representatives threaten to approve the executive's bill but reject its debt proposal. Finally, sometimes congress uses its constitutional prerogative to reduce a budgetary item to a ridiculous amount (e.g, US\$2) to force a governmental concession to their demands. This is a powerful and somewhat extreme resource that typically needs a wide support within the SBJC. The SBJC used this tactic in 2004 to force a reduction in the allocations to the Municipal Theater (a traditional big opera theater located in Santiago) because the committee preferred to allocate money for regional cultural infrastructure. "Only when the government accepted our demands, we approved the budget for the Municipal Theater", comments Ominami (2006). However, the executive can still block this tool supplementing expenditures through the Provision for Committed Financing (PCF, Organic Law 18,899).<sup>3</sup>

The most extreme case of a confrontation between congress and the executive took place in the negotiations for the 2008 budget, when the legislature reduced the budget for the transportation ministry in 41%. Congress was eager to represent the general dissatisfaction with the "Transantiago", a public transport system that serves Santiago and whose launching caused traumatic problems to the capital city. The government solved the dispute getting a loan from *Banco Estado*, the state-owned bank. This case illustrates that the legislature can put heavy pressure on the executive, but it cannot prevent the government from getting funds to cover emergencies.

Although the legislature uses these five tactics to get concessions from the government, protocols are far from being mere executive "abdications" to congress. Palma (2006) and former Dipres Director Sergio Granados (2009) recognize that the government also uses the protocols to advance sensitive reforms that are resisted within the executive or by part of the ruling coalition. Therefore, sometimes the government makes concessions to legislators in exchange of their support to agreements resisted by part of the governing elite; once the agreements are signed, the executive can claim to have its hands tied. "In the protocols you see many times non-budgetary issues addressed, especially those related to the management of the state. No human right issues are included; but you see agreements about labor policies and corruption norms. These reforms are advanced both by the SBJC and the government", says Palma (2006).

### **3. Protocols in Action**

For congress, the budgetary negotiations work against the clock. Every year, on September thirty, the government sends the budget bill directly to the SBJC, which is composed by thirteen deputies and thirteen senators that proportionately represent the forces in the legislature. Usually the SBJC is composed by economists and lawyers, who have served for more than one term in office. The committee reviews and amends the budget bill before sending it to the Chamber of Deputies, which votes on the proposed bill and sends it to the Senate. The Chamber of Deputies and the Senate can also amend the bill, but they rarely do so. Thus, the SBJC –controlled by pro-government

forces until the 2010 budget and was tied for the 2011 budget-, de facto represents congress in the budgetary process.

The SBJC works year-round since 2003 and is divided into five subcommittees, who study and debate the agencies' budgets for an average of four weeks. The subcommittees are constituted by pro-government and opposition legislators, granting the opposition the chance to review the entire budget and also enhances cross-party agreements. The SBJC has some weeks to approve amendments or to bargain changes to the executive's bill before sending it to the Lower Chamber, where it is briefly discussed before sending it to the Senate. The Budget Law must be approved by November thirty or the initial executive's bill becomes law.

The short timetable caused tensions between the executive and the SBJC members in the first post-authoritarian years; legislators were unsatisfied with their limited capacity to influence the budget process. Moreover, legislators were annoyed with the scant time that they could devote to the negotiations in electoral years, when elections (held in December) and the campaign overlap with the budgetary bargaining period (October and November). In fact, the written press has highlighted that legislators approve the Budget Law faster in electoral years to concentrate their energy on the campaigns (e.g., *El Mercurio* 2000, 2005). The increasing tension reached its limits in the seventh budgetary negotiations, when the government was having a hard time in getting approved the bill for the 1997 budget. To solve the situation, the deputy Dipres director Mario Marcel proposed to the SBJC to sign an agreement in which the government would commit to fulfill in the execution of the budget some of the most important congressional requirements that were not being included in the bill. The committee agreed. Unexpectedly, the protocols were created and since then become a relevant tool that is used to close the annual negotiations. With the first six-page protocol signed on November 20, 1996, the government started to share parts of its exclusive budgetary and legislative powers with congress.

Protocols allow unlocking the budgetary discussion, permitting both the executive and the legislature to reach unlimited agreements and also avoid the sluggish system of voting them one by one, as happens with the specifications. Protocols are signed after the regular negotiations in which the SBJC votes amendments to the executive's budget bill proposal and are the last step before congress approves the Budget Law.

The bargaining actors can include in the protocols promises to change future public budgets, especially if the executive estimates that an accord cannot be implemented in the budget under negotiation (e.g., in the protocol for the 1999 budget, the executive committed to reallocate resources within the Defense Ministry in the 2000 budget). As Marcel (2006) argues: "protocols allow agreeing things that cannot be solved in the regular negotiations. They have been a great contribution to the budgetary discussion and have strengthened the complicity between the executive and the SBJC."

Among legislators, it seems that there is a consensus about the function that protocols serve, and there is a strong commitment to maintain them. The SBJC member and Senator for the Independent Democratic Union (UDI, rightist) Evelyn Matthei (2006) considers that the protocols are "the most useful tool to oversee the executive in the

budgetary process.” The also SBJC member and DC Alejandro Foxley (2004) argues that protocols “are very effective to reduce the tension between government and congress, and to avoid focusing all the negotiations on the Budget Law. Protocols establish a timetable of issues that are resolved during the year with the government’s commitment.”

Something that contributes to the survival of the protocols is that the group that bargains them is small, which reduces collective-action problems. The congress is mainly represented by the 26 SBJC legislators plus staff members, while the executive is represented mainly by the Finance Minister, the Dipres director and second-rank public officials. An additional strength is that the SBJC members are relatively stable. The 26 members of the committee tend to stay in the SBJC during the four-year legislative term, and in fact many of them have served in the committee for more than one period. The representatives of the executive are also very stable: in the five post-authoritarian governments, there have been only six Finance ministers and six Dipres directors. The repeated iterations and the “shadow of the future” –the possibility that the players can suffer retaliations if they do not cooperate– help to reduce transaction costs: negotiators are specialists in the public budget, know each other and therefore have accumulated interpersonal trust. They can also anticipate the bargaining strategy of the other actors and know relatively well how far they can push their counterpart to advance their agenda.

The actors that signed the first protocol –which were to become the same in future agreements; the Finance minister and the presidents of the SBJC subcommittees– recognized that the agreement was motivated by three main reasons: (1) to count with mechanisms that stimulate the efficiency in the management of public institutions; (2) to achieve a deeper transparency in the administration and allocation of public resources; and to (3) dispatch the bill according to the constitutional deadlines. These three reasons were recognized in subsequent protocols, in which the signatories also added as motivations (4) the executive’s commitment to recognize and execute the spirit of amendments proposed by the legislators that were legally inadmissible because they entailed issues of exclusive presidential initiative (1997, 1998); (5) “several issues” that need to be studied or considered for the convenience of the public sector and that are not included in the Budget Law (1998); (6) improve the procedures for the budgetary discussion; (7) strengthen the emphasis of the budget in the creation of employment; (8) develop studies to enrich future budgetary discussions (2000); and (9) renew the commitment with fiscal discipline (2001). Excepting the third and sixth reasons, all of them point toward the same direction: complement the executive’s budget bill proposal with measures that lead to a budget process more accountable to congress.

The fourth reason mentioned illustrates an explicit agreement to bypass the constitution, because the government commits to include in the Budget Law what the constitution prohibits to the congress. This is unambiguous in the protocol for the 1998 budget (1997, 1), which recognizes that “several deputies and senators presented amendments that were declared inadmissible because they involve matters of

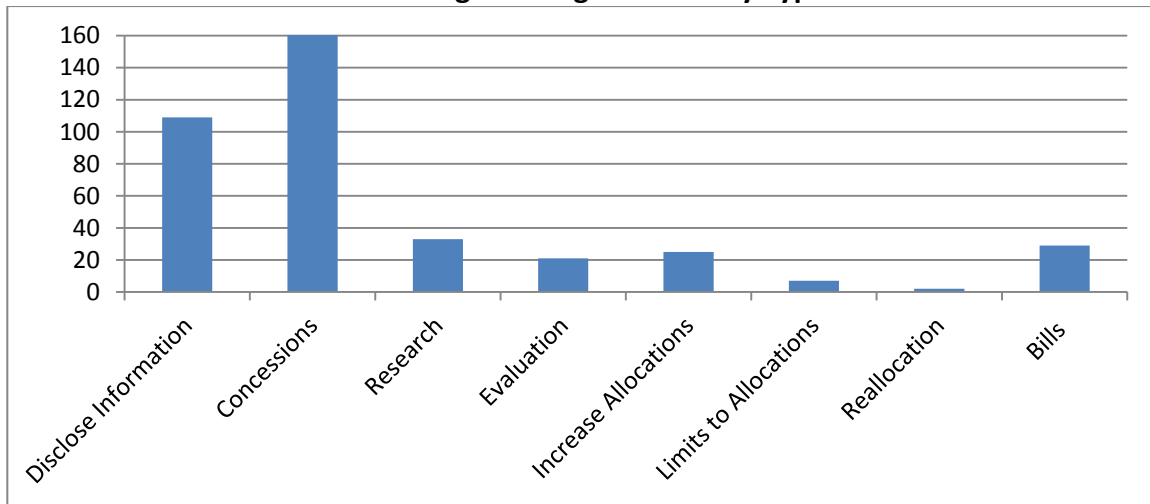
exclusive initiative of the president...This protocol expresses the commitment of the executive to implement those aspects raised in the spirit of the amendments”.

The protocols are between 3 and 11 pages long, and contain between 11 (1998 and 2003) and 52 agreements, each expressed typically in one paragraph (2008). The documents establish only one-year agreements, so the legislature and the executive have to renegotiate some issues over the years. In fact, 14.4% of the 389 accords made between 1997 and 2011 appear at least two times. Nonetheless, some of the repeated accords slowly evolved and become permanently included in the Budget Law or in other laws, such as the 2006 rule on fiscal responsibility (Law 20,128) and the 2008 on transparency (Law 20,285). The government engaged to send the fiscal responsibility law to congress in the protocol for the 2005 budget and it was jointly agreed to approve it before the following change of government in the protocol for the 2006 budget. The transparency law was initially discussed in the protocol for the 2004 budget, and was subsequently mentioned in protocols until the bargaining actors agreed to approve it in the protocol for the 2008 budget. Furthermore, the SBJC acquired the status of a permanent committee after an agreement signed in the protocol for the 2003 budget, when the executive committed to send a bill to regulate it. This change of status led to a virtuous circle of horizontal accountability: since 2003, the SBJC meets more frequently and has more time and resources to discuss the public budget and oversee its execution.

These examples show that some portions of the protocols have an unexpected legislative implication and, conceptually, demonstrate how an informal institution can modify formal institutions such as laws. Through its effect on the Budget Law, the protocols have also contributed to the stability of the budgetary process, reducing the congressional complaints to their formal role in the budget. This confirms the expectation of Helmke and Levitsky (2006, 22), who claim that changes in informal institutions that are the product of strategic interaction among a relatively small number of actors -typically the case of elite-created institutions- are more sensitive to change than rules that involve more actors, typically “bottom-up” arrangements that emerge in a relatively decentralized manner. Arguably, the protocols have changed over time due to maturation in the shared beliefs and experiences of the actors that interact in the negotiations. With time, bargaining actors realized that protocols could be used to agree issues that surpass the annual discussion of the Budget Law to include broader agreements.

The protocols cannot be quantitatively estimated because their content is mainly of a qualitative nature. From the 389 agreements contained in the protocols between 1997 and 2011, the government committed to action in 387 and the congress in 15 (only in two accords the legislature is the solely actor that commits to action). According to their content, I classified the protocols in eight categories: those that (1) promote information disclosures; (2) commission a study; (3) entail a governmental concession; (4) requests the evaluation of programs; (5) increase, (6) limit and (7) reallocate expenditures; and (8) forces the government to send a bill to congress. Figure 1 summarizes the content of the agreements divided by type.

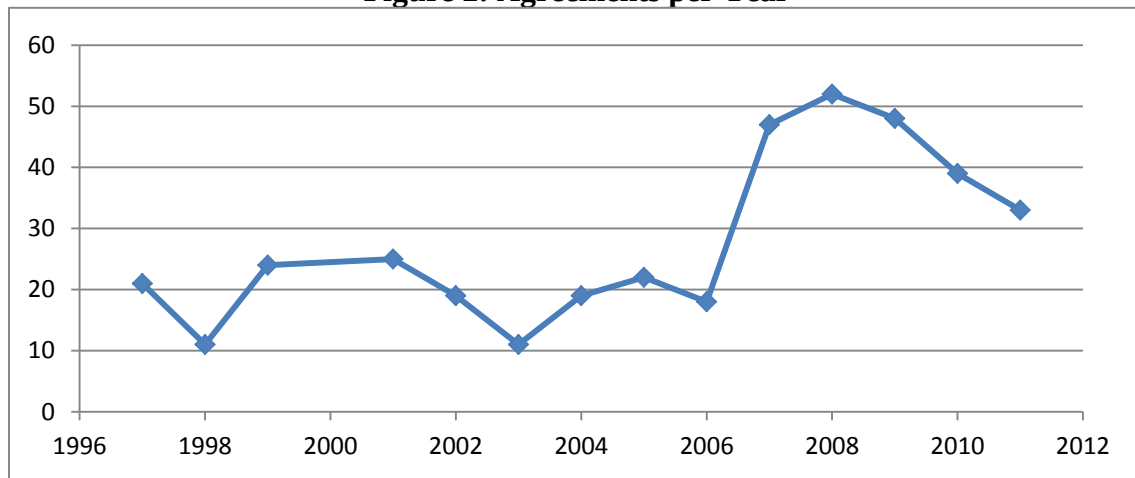
**Figure 1: Agreements by Type**



The figure clearly suggests that protocols enhance horizontal accountability. According to Schedler (1999), accountability entails answerability and enforcement. Answerability requires officeholders to inform and explain what they have done or plan to do. Enforcement is the capacity of accounting organizations to sanction officeholders that have violated their duties. The first four categories described account for 83% of the agreements, and they are all focused on making the government more accountable. The information disclosure, the commission of studies and evaluations significantly increase the budgetary information released to congress, while the written commitments made by the executive guarantees enforcement. Furthermore, protocols are highly enforced: both the government and the SBJC make a close follow-up of the fulfillment of the promises. In case of noncompliance, the responsible minister for a service, program or public policy is cited to give explanations to the SBJC. According to the bargaining actors interviewed, so far there have been no serious unfulfilled promises. The main cause quoted to justify the high level of enforcement is that a broken commitment would antagonize the government with congress and probably would mean the end of the protocols.

Figure 2 shows that the number of agreements contained in the protocols has been increasing over time: 54% of them were agreed in 2007-2011 and only 47% in the nine previous years. This trend suggests that the SBJC members have increased their demands over time, and that protocols have gained more relevance in the last years. Protocols have increasingly become a regular part of the budgetary negotiations. In the same vein, the government has used the protocols as a mean to get the support of legislators and commit to reforms that otherwise would be difficult to undertake, due to opposition within the ruling coalition or within the bureaucracy.

**Figure 2: Agreements per Year**



Each type of agreement entails interesting patterns of executive-legislative negotiations. At a minimum, the agreements in which the government commits to release information lead to a more transparent allocation of resources and enhance the congressional capacity to oversee. An example of this type of accords is evident in simple paragraphs such as the one present in the protocol for the 2011 budget (2010, 6) that states that “the ministry of Housing and Urban Planning commits to report quarterly to the SBJC about the progress in the spending on housing subsidies.” However, more often these agreements help congress to reduce the likelihood that the government will allocate public resources with political goals. For instance, in the protocol for the 1997 budget (1996, 2), the government agrees to include in the Budget Law a norm to force the public organizations that transfer resources to foundations to require from them “an annual financial balance, a list of programs and activities conducted and a list of their board members and their senior executives.” An interviewee recognizes that the disclosure of this kind of information allows legislators to detect if the government is using resources to help a foundation associated to political interests.

The executive’s concessions to congress is a somewhat umbrella category whereby the government commits to modify a public policy or introduce any kind of change into the planning or execution of the budget that cannot be classified in the other categories. These concessions allow congress to influence the budgetary process, and they can be written in general or specific terms. In an example of the latter, the protocol for the 2001 budget (2000, 2) states that “to facilitate the actualization of medium-term financial forecasts, the reports about bills with fiscal impact will cover four years.”

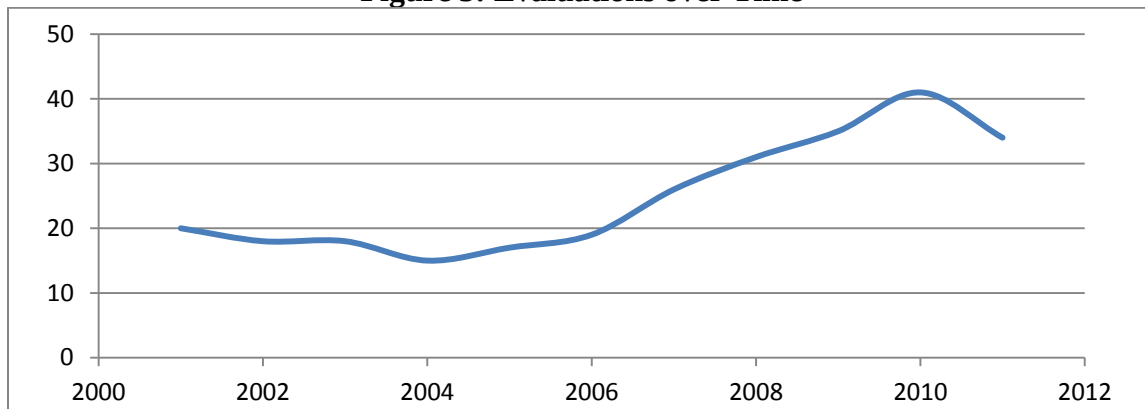
The commission of studies offers legislators the possibility to advance a policy agenda. For instance, in the protocols for the 2004 budget (2003, 5), the government agrees to commission the study of “alternatives to the expansion of preschool coverage and support for the economic integration of women” and “policies for the extreme zones”. The further integration of women in the labor force, the expansion of welfare

policies and plans for regional development respond to the policy preferences of legislators interested in distributing pork and claiming credit for advancing these issues.

The evaluation of programs allows legislators to assess a public policy that they (or the executive) want to change or replace. For instance, in the protocol for the 2007 budget (2006, 9) the government agreed to assess the Housing Assistance Program of the Ministry of Housing and Urban Planning “to do the necessary adjustment in such program to suit the objectives and instruments of the new housing policy”. Such an evaluation is unlikely to be well accepted by the civil servants that execute it or politicians that may benefit from it. Its inclusion in the protocol, nonetheless, makes the evaluation inexorable.

Besides the evaluations described in the protocols, since 2001 the government has committed to thoroughly assess programs in the annex of the protocols. As shown in figure three, these evaluations have increased over time, enhancing the horizontal accountability of the executive. The evaluations increased from an average of 17.8 for 2001-2006, to 33.4 for 2007-2011.

**Figure 3: Evaluations over Time**



The agreements that discuss limits, increases or reallocations of expenditures play a minor role in the protocols (they represent only 9% of the agreements). This is mainly because the amounts for the next fiscal year are previously negotiated. In addition, protocols tend to discuss expenditures in general terms, committing the executive to allocate (or not) resources in a certain direction. For instance, while the protocol for the 2011 budget (2010, 4-5) states that “the government commits to incorporate more resources to the Labor Direction, to the extent there is available budget”, the protocol for the 2002 budget (2001, 1) states that “during the year 2002 the spending on honorariums on public services cannot be increased through transfers from the Treasury”.

Although protocols were created to extend the congressional influence on the budget process, with time the informal institution evolved to include agreements that exceed budgetary concerns and that makes it a mechanism that creates long-term policy. This is particularly clear in the accords whereby the government agrees to send bills. In them, the executive not only concedes to share its legislative powers; many of

the bills refer to non-budgetary issues, and in fact some of them involve extremely relevant political issues. This seemingly executive “abdication” suggests that the Chilean executive underuses its power, such as it has been documented by other authors (e.g., Siavelis 2006). However, as described by Palma (2006) and Granados (2009), what may seem as an executive “abdication” may in fact be functional to the interests of the government to advance reforms that may be difficult to achieve otherwise due to internal divisions in the ruling coalition. Table three summarizes the content of the bills that the executive agrees to send to congress:

**Table 3: Executive’s Committed Bills**

|      |                                                                |      |                                                                    |
|------|----------------------------------------------------------------|------|--------------------------------------------------------------------|
| 2011 | Reform of the Senior Public Management System                  | 2007 | Reform of the Office of the National Comptroller General           |
| 2011 | Reform of the Financial Management of Public Universities      | 2007 | Reform of the Civil Servants Employment Contracts                  |
| 2011 | Redesign of the Graduate Scholarships                          | 2007 | Expansion of the Senior Public Management System                   |
| 2011 | Reform of the Copper Reserve Law                               | 2007 | Reform of the National Sports Institute                            |
| 2011 | Regulation of the Mine Closures                                | 2007 | Creation of the Education Superintendence                          |
| 2011 | Creation of a Family Ethical Income                            | 2007 | Replacement of the Labor Bonus for Extreme Regions                 |
| 2010 | Reform of the Post Work Bonus Law                              | 2005 | Improvement of Fiscal Responsibility and Transparency              |
| 2009 | Creation of the Bicentennial Scholarship Fund                  | 2005 | Creation of the Differentiated Educational Grant                   |
| 2009 | Reform of the Office of the National Comptroller General       | 2003 | Grant Permanent Character to the SBJC                              |
| 2009 | Create Pension Program for Public Universities Staff           | 2003 | Reform of the Financial Administration and State Personnel         |
| 2009 | Reform of the Chilean Prison Guard Force                       | 2003 | Standardization of the Adjudication of Public Investment Contracts |
| 2008 | Reform of the Office of the National Comptroller General       | 2003 | Acceleration of the Administrative Investigations                  |
| 2008 | Creation of a Long Term Investment Budget for the Armed Forces | 2003 | Strengthening of the Regional Governments                          |
| 2008 | Reform of the Public Companies Corporate Governance            | 2001 | Regulation of the President’s Exclusive Trust Officials Rights     |
| 2008 | Enhancement of the Extreme Regions Development                 |      |                                                                    |

As can be noticed, the executive started agreeing to send bills in 2001 and the number increased since 2003, suggesting a growing rate of shared legislative responsibilities. Some bills promised refer even to changes in Organic Constitutional Laws (OCL), which complement the charter in certain issues. OCL regulate highly important subjects and institutions, such as the public educational system, central bank, congress, national police, armed forces, municipalities, political parties, constitutional

court and the Office of the National Comptroller General (ONCG). An OCL can be changed only by a very high quorum: four sevenths of the active members of congress.

The fact that the government and the congress use an informal institution such as the protocols to change issues related to the constitution shows how intricate can be both types of rules, and how a by-product of the charter can end up modifying laws that complement one of the most sacred formal institutions that a country has. Moreover, some of these bills have a direct impact on the congressional capacity to exert horizontal accountability. The protocol for the 2003 budget (2002, 1) states that “the executive will do all the necessary to facilitate the fast dispatch of the bill that amends the OCL of the National Congress to give permanent status to the SBJC”. As mentioned, this agreement led to a virtuous circle of horizontal accountability, allowing the SBJC to devote more time and resources to participate, follow and influence the budgetary process.

Table three also shows that the executive committed three consecutive years (2007, 2008 and 2009) to send a bill to reform the OCL that regulates the ONCG. This bureau was reformed after the second attempt, but the congress and the executive agreed to make further reforms. The ONCG is an independent institution whose main goal is to keep the government accountable: it has a constitutional mandate to review and approve the legality of all the documents issued by the state. The reforms were intended to change what both opposition and pro-government legislators depicted for many years as an outdated institution that does not have the real capacity to oversee the executive, a criticism shared by some scholars (e.g., Waissbluth 2005; Harasic 2006; Ávila and Silva Cimma 2006). “The Contraloría has too little faculties, a small staff, and its work is not well focused”, comments Senator Matthei (2006). Consequently, the changes to the ONCG enhanced horizontal accountability increasing the capacity of an independent agency to audit the government.

The executive also promised to send to congress bills that entail modifying highly sensitive OCL. Perhaps the most emblematic is the one that proposes to reform the “Copper Reserved Law” (Law 13,196), a relic of the Pinochet dictatorship that guarantees that 10% of all sales made by the state-owned Codelco, the largest copper exporting company in the world, must be given to Chile’s Armed Forces. Although the current center-right president Sebastián Piñera promised to reform the law for the 2010 presidential campaign –as it happened with the Family Ethical Income bill-, the government committed the timing of the bill through the protocols.

#### **4. The Public Budget and the Protocols**

As North (1991) argues, politicians obey to both formal and informal incentives, and the degrees to which formal and informal rules enable and constrain politicians vary considerably. I follow the criterion delineated by Helmke and Levitsky (2006) to argue that protocols are accommodative informal institutions. The authors define informal institutions as “socially shared rules, usually unwritten, that are created, communicated, and enforced outside officially sanctioned channels” (2006; page 5).<sup>4</sup> Helme and Levitsky (2006) classify the informal institutions in four categories according to their interaction with formal institutions; complementary, accommodating, substitutive and competing.

These categories are defined taking in consideration two dimensions. One is the degree of convergence between formal and informal institutional outcomes. If the outcome is substantively different, then formal and informal institutions diverge. Otherwise, they converge. The second dimension relates to the effectiveness of the relevant formal institutions, something directly correlated with the probability of enforcement. The authors argue that accommodative informal institutions are often created by actors who dislike outcomes generated by the formal rules but cannot change them or violate them.

Protocols are informal rules because they are known, respected and enforced by the political actors that participate on the executive-legislative budgetary negotiations. Protocol's existence depends on the will of the bargaining actors; any given year, the congress or the executive can refuse to sign a protocol and no one can recur to a legal or administrative instance to reverse the decision or demand sanctions. In fact, that is what happened during the budgetary discussion in 1999: there was no protocol agreed.<sup>5</sup> Likewise, if the executive does not honor a protocol, it cannot be formally sanctioned. However, protocols are highly enforced. This is not surprising because current agreements rely on the successful implementation of previous ones, and the government risks a conflict with the legislature and losing credibility among voters if the accords are not executed. Moreover, if protocols are not honored, they are likely to disappear, something that is not in the interest of either the government or congress.

Congress uses protocols to have a more relevant budgetary role and the executive uses them to avoid conflicts with the legislature and to reach broader agreements. Protocols are a creative way of producing an outcome that departs from what the constitution mandates. Therefore, both branches of power have chosen to accommodate the expected formal outcome of the budgetary process instead of agreeing a constitutional reform. As scholars have pointed out (e.g., Elkins et al. 2009, 67), to change a charter is very costly, because bargaining actors need to invest significant time and political capital until the final outcome takes place. The chances of success are especially low when the amendments require a high quorum, as is the case with the 1980 constitution.

Other authors have also described informal institutions in Chilean politics. Siavelis (2006) argues that the Chilean political elite has used accommodating rules such as the *cuoteo*, a formula to allot governmental positions and parliamentary candidacies, the *partido transversal*, a supra-party core of elites within the governing coalition, and a pattern of informal agreements known as *democracia de los acuerdos*, to reach agreements. Carey and Siavelis (2006) describe as a complementary institution the "electoral insurance", that allowed the ruling center-left Concertación to compensate high-profile politicians that competed for congressional seats that were difficult to win. From the four institutions, the *partido transversal* and the *democracia de los acuerdos* do not exist anymore, while the "electoral insurance" still needs to demonstrate its endurance showing that the new coalition in power since 2010 continues using it. So far, the *cuoteo* is the only institution that clearly survives and is used by both coalitions.

The *democracia de los acuerdos* and the *partido transversal* were highly sensitive to the political environment and relied on an unidentified group of influential politicians.

Perhaps their dependence on such feeble bases condemned them to disappear. In contrast, the survival of the *cuoteo*, the “electoral insurance” and the protocols depend on formal institutions. The first two rest on the electoral system, whose continuity is uncertain on the long term due to the continuous attempts of the Concertación to change it. Protocols depend on a seemingly more stable formal institution; none of the political coalitions have attempted to change articles sixty five and sixty seven of the constitution despite nine reforms to the charter since 1980.

A relevant difference between protocols and the other informal rules mentioned is that the former are the only written agreements, which avoid arbitrary interpretations and thus facilitate their enforcement. A second difference is that protocols are the only informal rule that have evolved to become a source of change of formal institutions. Finally, protocols are the only informal institution that violates the charter -in fact three articles of it. Besides articles sixty five and sixty seven, the protocols violate article fifty three, which prohibits the Senate to oversee the acts of the government and of all of the entities under its dependency, or adopt agreements that imply overseeing.

### **Concluding Remarks**

This text has shown that the protocols are an informal institution that the Chilean congress uses to circumvent the constitution to increase its influence in the budgetary process. The protocols challenge previous accounts of executive-legislative relations in Chile and call into question the classification of the Chilean president as one of the most powerful presidents in the world, and the depiction of the budgetary actors as outliers in Latin America due to their –allegedly– rigorous adherence to law.

A long-lasting image of Latin American presidentialism is one of executive dominance unconstrained by institutional checks (e.g., Carles Boix 2003). The literature that examines informal institutions in the region has tended to reinforce this negative image highlighting their damaging consequences over horizontal and vertical accountability, expressed in forms such as nepotism, corporatism, clientelism and patrimonialism (Hagopian 1993; Wiarda and Kline 1996). In contrast to this literature, protocols illustrate some potential positive effects of informal institutions. Protocols set constraints to the executive and endow congress with a tool that keeps the government accountable during the elaboration and execution of the public budget. Protocols also provide a mechanism to reach broad executive-legislative agreements, exceeding budgetary concerns. In fact, they have evolved over time to become a source of formal institutional change: new laws, institutions and policies have been created under the flexible frame guaranteed by protocols. Being a mechanism that promotes the settlement of budgetary disputes, protocols can also be depicted as reinforcing governability.

However, protocols also have a negative side. Since informal rules are unregulated, they do not have the required transparency to exert vertical accountability. In Chile there is a popular figure known as the *maestro chasquilla* (akin to a handyman), usually a low-cost worker that performs all kind of domestic services. A *maestro chasquilla* is hired as a plumber, painter, mechanic, electrician or builder. He usually provides temporal and creative solutions, but his work is also associated to

indirect costs (e.g., someone gets injured because a brick falls). As a cheap, second-best solution, protocols are also likely to entail indirect costs.

The protocols reduce the incentives that the legislature has to attempt a constitutional change to have a more relevant role in the budget, which would make congress formally more responsible and accountable to the constituencies and civic organizations that would like to have their preferences represented in the budget. Some authors (e.g., Carey and Shugart 1998; Cox and Morgenstern 2001) have noted that congressional members may delegate their overseeing function to avoid challenging a popular president or to support unpopular policies. Currently, congress has strong incentives to have an inconsistent overseeing role, because in the first place it does not have a clear mandate to exert it. The informality of protocols also offer SBJC members the possibility to advance the preferences of non-representative groups (i.e., interest groups) and more power than their peers to influence the budget and to get executive's concessions.

A broader implication of this study is that the classification of presidential and legislative powers needs to be reviewed because they are based on formal powers. By omitting the effect of informal institutions, these studies tend to overestimate the effect of formal rules. We can expect that informal rules are widely used in settings where the political elites have strong incentives to complement, accommodate, replace or counteract formal institutions. The book edited by Helmke and Levitsky (2006) describes several examples of how informal rules shape Latin American politics, and Hallerberg, Scartascini and Stein (2009) demonstrate that regional budgetary actors recur to informal procedures to adapt the public budget to their preferences, but we still know very little about the systematic influence of informal institutions in Latin American politics. To explore informal rules is difficult and time-consuming: the researcher often needs to do field research to uncover their existence and examine data that many times is difficult to collect, measure and test. However, if political scientists want to understand better how politics actually work, it is a task that cannot be ignored.

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## NOTES

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<sup>1</sup> Although congress was closed during the dictatorship, the 1980 constitution stipulated future presidential, congressional and municipal elections.

<sup>2</sup> In addition to these constraints, congress cannot oversee the purchase of weapons by the military based on the income that they receive from the *Corporación del Cobre* (Codelco), the copper state company.

<sup>3</sup> Article 21 of Law 18,899 establishes that the PCF’s are meant to provide resources for unexpected contingencies and to finance new budgetary requirements. In 2010, the PCF was equivalent to 3.3% of the public budget.

<sup>4</sup> In contrast, they define formal institutions as “rules and procedures that are created, communicated, and enforced through channels that are widely accepted as official” (2006, 5).

<sup>5</sup> In 1999, the political class was polarized and there were strong chances that the center-right coalition *Alianza por Chile* (Alliance for Chile) could win the presidency in the following elections for the first time since the return of democracy. Both the executive and the SBJC were dubious in signing a protocol that would commit the future government, although future agreements did commit new administrations in 2006 and 2010.