

Political elites, agency discretion and anti-corruption governance in Chile

Bettina Schorr

Freie Universität Berlin

Sebastián Carrasco

Universidad San Sebastián

Emilio Moya

Universidad Católica de Temuco

Abstract

Between 2015 and 2018, Chile experienced several political corruption scandals that implicated the country's political elite across the party spectrum. However, the outcomes of the ensuing judicial investigations have faced wide-spread criticism for being unsatisfactory, failing to set legal precedence, and weakening Chile's anti-corruption governance. This article addresses the gap between Chile's strong structural and formal conditions and the limited legal consequences faced by politicians involved in corruption. It examines the factors that allowed most politicians and their allies to avoid significant legal penalties. Drawing on different literatures related to professional politicians and political elites, institutional weakness, and agency discretion, the article analyses four prominent political corruption cases. We argue that favourable appointments of sympathetic executives allowed the Chilean political elite to exert control over the discretionary powers of state agencies involved in the legal processes. The article relies on a press review, secondary literature, and expert interviews. *Keywords:* Political corruption, state agencies, political elites, prosecutors offices, appointment powers.

Resumen: Elites políticas, discrecionalidad de agencias y gobernanza anticorrupción en Chile

Entre 2015 y 2018, Chile experimentó varios escándalos de corrupción política que implicaron a la élite política de todos los partidos. Sin embargo, los resultados de las investigaciones judiciales subsiguientes han sido objeto de críticas generalizadas por ser insatisfactorios, no sentar precedentes legales y debilitar la gobernanza anticorrupción de Chile. Este artículo aborda la brecha entre las sólidas condiciones estructurales y formales de Chile y las limitadas consecuencias legales a las que se enfrentan los políticos implicados en casos de corrupción. Examina los factores que permitieron a la mayoría de los políticos y sus aliados evitar sanciones legales significativas. Basándose en diferentes literaturas relacionadas con los políticos profesionales y las élites políticas, la debilidad institucional y la discrecionalidad de la

agencia, el artículo analiza cuatro destacados casos de corrupción política. Argumentamos que los nombramientos favorables de ejecutivos simpatizantes permitieron a la élite política chilena ejercer control sobre los poderes discrecionales de las agencias estatales involucradas en los procesos legales. El artículo se basa en una revisión de prensa, literatura secundaria y entrevistas a expertos. *Palabras clave*: Corrupción política, organismos estatales, elites políticas, fiscalías, poderes de nombramiento.

Introduction

Between 2015 and 2018, Chile witnessed a series of political corruption scandals that implicated nearly all of the country's political parties and various business groups. These cases sparked significant political, social, and academic discussions and led to the reform of anti-corruption regulations. Judicial investigations were launched, targeting over a hundred individuals from the Chilean political elite. However, the outcomes of these legal proceedings have been widely criticised as unsatisfactory. Many defendants either received acquittals or faced exceptionally lenient sentences through negotiations with the National Prosecutor's Office. The results were surprising given Chile's high state and bureaucratic capacity and the reformed anti-corruption laws. In such a context, one would have expected more severe sanctions that could have set a precedent against the severe regional problem of political corruption.

This article addresses the discrepancy between the strong structural and formal conditions in Chile and the limited outcomes of judicial proceedings against politicians involved in political corruption. It investigates the factors that allowed most politicians and their allies to evade significant legal consequences by posing three questions: How did politicians attempt to influence the investigations when they or their party members faced accusations of political corruption? Which actions successfully influenced the course of the investigations? What was the impact of these actions on the anti-corruption governance in the country? By drawing on insights from various fields of literature that target political elites, institutional weakness, and agency discretion, we argue that the legal outcomes were achieved because the Chilean political elite was able to "manage the discretion" of the state agencies involved in the processes, namely, the Chilean Internal Revenue Service (Servicio de Impuestos Internos, SII) and the National Prosecutor's Office (Fiscalía Nacional de Chile). By appointing agency executives more sympathetic to their interests, political elites in Congress and the government influenced the institutional choices of these agencies during the process. The new executives used their discretionary powers to select less impactful (judicial) results or even terminated the processes altogether.

The article advances an innovative perspective of professional politicians in Latin America as political elites, a cohesive group with special powers to influence political and social outcomes. Specifically, it focuses on their ability to shape agency discretion, which refers to the freedom of public officials to choose from different institutional options, including the choice not to react. While previous studies have looked at autonomous bureaucracies (Wood & Waterman,

1991) and lower-ranking officials (Lipsky, 2010), our analysis explores how high-level political elites use their power to influence agency discretion for their own interests, thereby weakening existing institutions.

The article analyses four prominent political corruption cases uncovered in Chile between 2015 and 2018: Caso Corpesca, Caso Penta, Caso Soquimich, and Caso Caval. These form part of a whole avalanche (Bargsted, Bachmann & Valenzuela, 2022) of corruption scandals brought to public attention in the 2010s. The cases were selected for four characteristics: the significant public and media attention they garnered, their interconnectedness, the considerable amounts of money implied, and the large numbers of persons involved, especially politicians across the political spectrum. Given these characteristics, especially the latter, the selected cases provide a wealth of empirical material to study political elites' reactions to accusations of political corruption.

In this study, we adopt a classical definition of political corruption as exploiting entrusted power for personal or political gain (Kurer, 2014). The investigation is based on a qualitative methodology, triangulating different sources of information. In a first step, a comprehensive review of press coverage from the Chilean newspaper *La Tercera* and the online journal *CIPER Chile* was conducted. Occasionally, we also consulted additional news sources. Using the press articles, we constructed a timeline of actions from the public revelation of the cases to the end of the legal processes (in some individual cases still pending). Subsequently, a content analysis was conducted. We identified, as reported in the press, the formal and informal responses of the implicated politicians and the actions taken by individuals or organisations in their personal, corporate, or partisan networks to mitigate the legal consequences of their corrupt acts. To supplement the press review, we extensively reviewed academic literature and consulted grey literature. Additionally, we conducted seven personal in-depth interviews with experts from public and private sectors as well as academia to further validate our research findings. The distinct empirical information gathered was triangulated to construct an analytical narrative around the cases (Bril-Masca-renhas et al., 2017). It is important to note that our objective is not to establish the existence of political corruption or other illegal activities. Instead, we aim to demonstrate how political elites influenced leadership changes within the agencies involved in the judicial proceedings and how the subsequent discretionary decisions made by these new leaders affected the outcomes of the processes. We base our analysis on indicative evidence, referred to as “straw in the wind-evidence” (Collier, 2011).

Political elites and the production of institutional weakness

Influenced by the seminal works of Mills (1956) and Putnam (1976), elites are generally defined as “individuals and small, relatively cohesive, and stable groups with disproportionate power to affect national and supranational political outcomes on a continuing basis” (Best & Higley, 2018, p. 4). The political elite

forms part of this broader group and comprises all individuals who professionally exercise politics, including governmental and legislative elites and party leaders.¹ In Latin America, particularly Chile, studies on elites have grown considerably in recent years, but have focused primarily on economic elites.² More recent studies adopt political economy perspectives that relate economic elites to political elites (e.g., Madariaga, Maillet & Rozas, 2021; Etchemendy, 2011; Durand, 2019). In these works, political elites often appear relegated and subordinated, as the extended arm of economic elites.

Academic interest in Latin American politicians has been characterised as low and the lack of empirical research as “surprising” (Alcántara, García & Rivas, 2020, p. 5), given their impact on politics and society. Scholars of political elites generally acknowledge the disproportionate powers of this group in shaping democratic, political, and economic outcomes. However, our understanding of how politicians use these powers is limited for at least two reasons: First, these powers are rarely spelt out. Formal powers of political elites include legislative and executive powers, budgetary powers, appointment powers, and the power to influence public opinion. In addition, political elites possess informal instruments of power, such as access to government resources, power networks, and symbolic capital, which, together with formal powers, form their “repertoire of domination” (Poteete & Ribot, 2011). Second, most empirical studies on Latin American political elites have concentrated on social origins and recruitment channels (González-Bustamante & Luci, 2021; Joignant & Güell, 2011), the influence of politicians’ values and attitudes on democratic transitions (e.g., Higley & Gunther, 1992) and performance in Latin American countries (Alcántara et al., 2020), as well as the probability of liberal reforms (Bohigues, Guedes-Neto & Santos, 2022). Another group has analysed interactions between politicians and other groups such as business groups, between the executive and judicial branches (Helmke, 2002), between governments and technocrats (Silva, 2009; Dargent, 2015; Centeno & Silva, 1998), or between citizens and governmental elites (González-Bustamante & Luci, 2021). The latter relationship has deteriorated in recent years, generating problems of democratic legitimacy (Moreno & Osorio, 2022) and quality (López, 2020), as well as other political inequalities (PNUD, 2017). Recent literature explores the characteristics of presidents and ministers (González-Bustamante & Luci, 2021), as well as their advisors (Cisternas & Vásquez, 2018) to understand, among others, survival in office (Olivares, 2022).

Scholarship on how politicians use their special powers for private gains have mainly focused on informal behaviour. In Latin American politics, a diverse array of such informal practices exists, including political corruption (Rotberg, 2019); irregular campaign financing (Moya & Figueroa, 2018); clientelism (Hilgers, 2012), which is easier for politicians with access to state resources (Corral & Martínez, 2020); forbearance (Holland, 2016); patronage (Panizza et al., 2023); and cronyism or nepotism (Rehren, 2000). Political elites that advance their agendas by using their special powers can produce undesired social and

political outcomes. In this sense, scholarly attention has shifted recently toward understanding the relationship between politicians' practices and the enduring institutional weakness prevalent in Latin America (Brinks et al., 2020). Despite significant institutional changes, this literature argues that, in the region, political institutions tend to fall short of achieving their intended objectives.

Brinks et al. (2020, pp. 14-22) identify three mechanisms that produce institutional weakness: non-compliance, instability, and insignificance. When it comes to non-compliance, governments choose not to implement rules by disregarding them entirely or by reducing the resources allocated to the bureaucratic enforcers responsible for ensuring compliance. This may lead to "window-dressing" institutions. Instability refers to the frequent alteration of the rules by political actors driven by shifting coalitions with opposing ideologies in power. This continuous rule-changing makes it difficult for citizens to trust the official rules, as they anticipate future changes, and it also hinders bureaucratic enforcers from developing the necessary capacities to enforce the rules effectively. Insignificant institutions are designed to operate primarily as symbolic gestures without any tangible behavioural consequences. Insignificance can also arise when the sanctions for non-compliance are so minimal that they fail to deter individuals from engaging in the behaviour that the rules are intended to punish. In the context of our discussion, the typology highlights that institutional weakness is primarily a function of political elites' behaviour and that weakness can stem from both informal and formal procedures. This includes creating weak institutional designs or insignificant sanctions and diminishing the resources of enforcers.

The management of agency discretion

Political elites can exercise control over the discretionary decisions of state agencies by using their formal powers of assignment and removal. Through this process of managing institutional discretion, they can manipulate these institutions to serve their private interests while simultaneously undermining their effectiveness and strength. In modern states, professional bureaucracies play a crucial role in enforcing rules. This includes supervisory agencies responsible for "horizontal accountability" (O'Donnell, 1993), and the overseeing of other state agencies, the government, and Congress to ensure compliance with established rules. These agencies possess two seemingly contradictory features: discretion and political control. Agency discretion refers to public officials' "freedom to decide whether or not to take [...] steps" (Sklansky, 2018), choosing from a specified range of options that includes the decision not to act. Discretion is considered necessary to ensure efficiency and protect state agencies against external influence (Evans, 1995).

Discretion is related to two established concepts in institutional studies but differs significantly: "institutional ambiguity" and "institutional insignificance". Institutional ambiguity (Streeck & Thelen, 2005) refers to the potential for different interpretations each institution has, and the different effects that new

interpretations of a rule can generate. Institutional discretion, however, does not require a reinterpretation but grants individuals the power to choose from predetermined options; nor does it necessarily imply insignificance. In fact, for instance, in the context of anti-corruption laws, discretionary choices can have significant behavioural impacts depending on the option chosen.

The concept of discretion has been utilised in US political science since the 1950s to examine the flexibility of governments and state agencies. State agencies are seen as discretionary to the extent that they can disagree with the wishes of elected politicians. The literature on “street-level bureaucracy” (Lipsky, 2010) further explores the discretion exercised by lower-level bureaucrats and its impact on policy implementation (Tummers & Bekkers, 2014; Chang & Brewer, 2022). Additionally, law studies have explored the discretion of judges and prosecutors in administering justice (Sklansky, 2018; Tonry, 2012). Most of these studies were conducted in the U.S. and have identified various factors influencing the discretionary choices of judges and prosecutors, among them public opinion, philosophy, resources, and political considerations (see below).

Given the significant role of bureaucracies in policy implementation, the structure of the bureaucratic sector is an integral part of the political struggle of governments (Moe, 1989, 1990). The early academic discussions in the U.S. focused on the democratic implications of agencies perceived as overly discretionary, arguing that these prevent democratic oversight and reduce democratic quality (Wood & Waterman, 1991). Subsequent research revealed that, at the same time as granting discretion, politicians often maintain a certain degree of political control over these agencies. They establish an “upwardly embedded” relationship (Toral, 2023).

Political control can be exerted through informal and formal mechanisms. Informal mechanisms include networks of influence, threats, and pressures. Scholarship has shown that in Chile, these informal instruments are of great political importance (e.g., Ferraro, 2008; Siavelis, 2000; Espinoza, Rabi, Ulloa & Barozet, 2019). Formal mechanisms for controlling agencies include appointment powers, the ability to reorganise, congressional oversight, direct legislation, and budgeting. Among these, formal appointment powers are widely regarded as the most influential instrument of political control over agencies (Wood & Waterman, 1991; Calvert, McCubbins & Weingast, 1989). Political elites maintain control over other state agencies by appointing trusted individuals (Moe, 2005; Grindle, 2012). This practice is particularly prevalent in countries with a strong tradition of meritocracy (Dahlström, Lapuente & Teorell, 2012).

The appointment of judges and prosecutors is often influenced by political considerations as well (Rose-Ackerman, 2007). When governments have the right to select, their appointments are typically based on expected support for the ruling coalition (Weiden, 2011). Public officials, judges, and prosecutors may also engage in “functional politicisation”, where their actions adapt to the political context (Arellano & Carvajal, 2015). Studies have shown that judges tend

to adopt a more favourable stance towards (future) governments when they fear negative consequences or perceive career opportunities (Helmke, 2002).

By strategically appointing officials with discretionary powers, political elites can shape how discretion is exercised in alignment with their preferences. The manipulation of discretion is highly advantageous for politicians because it does not involve breaking or distorting a formal rule, nor does it necessarily lead to the creation of insignificant rules. By controlling discretion, politicians can exert their influence within the confines of formal procedures. As illustrated by the examination of the Chilean case, politicians frequently resort to informal practices to shape institutional outcomes in their favour. While informal tactics may, in certain instances, incur lower transaction costs and operate more expeditiously (i.e., through the bribery of a single judge or prosecutor), maintaining a formal approach can be more advantageous in the medium to long term, or in case informal procedures fail. Grounded in legal provisions, adhering to formal channels not only reduces risks for the individuals involved but also pre-emptively counters accusations of undue behaviour. Simultaneously, the drawbacks and loopholes inherent in formal institutional frameworks may attract less public attention compared to the social uproar that typically ensues when politicians are discovered engaging in informal or blatantly illegal conduct. Lastly, if discretion is used to implement the rules with minimal stringency, it can undermine its intended objectives. In essence, managing discretion can serve as a mechanism for weakening institutions without directly violating established rules. This may be particularly relevant in areas such as anti-corruption, where discretion plays a vital role.

Corruption scandals, elites, and management of agencies' discretion

Between 2015 and 2018, Chile witnessed several political corruption scandals involving multiple political parties and business groups. The cases included tax fraud, collusion, bribery, and illegal campaign financing. This study focuses on four major political corruption cases: the Corpesca case, where the fishing industry exerted undue influence on regulation through politicians from the UDI conservative party (Unión Demócrata Independiente); the Penta and Soquimich (SQM, Sociedad Química y Minera de Chile) cases, which involved illegal payments by Penta Holding and SQM to politicians for campaign financing using ideologically false invoices issued without any genuine service in exchange. The companies also faced tax fraud charges since they had demanded tax reductions for the false invoices. While Penta comprised members of the conservative UDI, SQM mainly affected the centre-left parties and the New Majority (Nueva Mayoría) electoral coalition of President Bachelet. During the inquiries, it was revealed that SQM had also bribed a conservative senator to influence the reform of the mining royalty. Finally, amid the investigations of these three cases, President Bachelet's son, Sebastián Dávalos, and his wife, Natalia Compagnon, were accused of influence peddling in the Caso Caval.

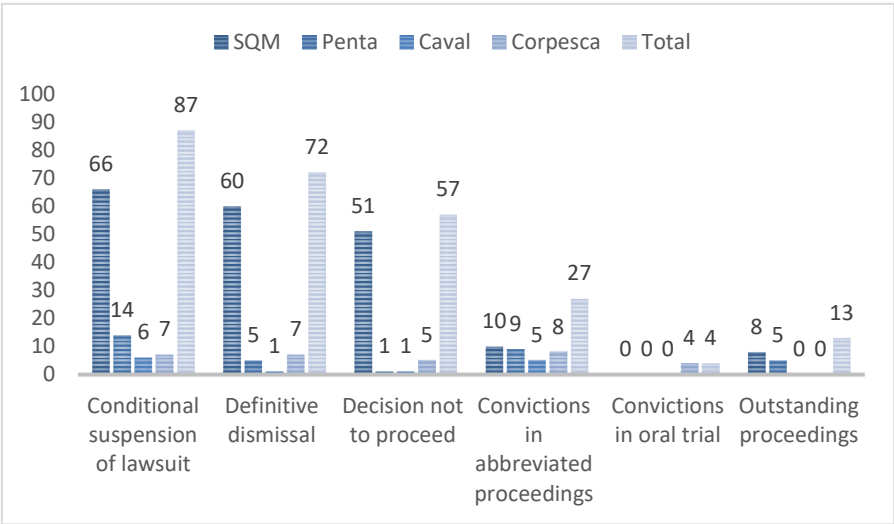
The cases triggered an ample political, social, and academic debate and initiated a process of institutional reform in anti-corruption matters promoted by a strong coalition of civil and political activism (Schorr, 2021; Aris, Engel & Jaraquemada, 2019; Fuentes, 2018; Sahd & Valenzuela, 2018). President Bachelet created a Presidential Advisory Commission in charge of drafting a reform proposal for improving anti-corruption governance, which was subsequently implemented (at least partly, Silva, 2022). The judicial investigations into the cases started in 2016, parallel to the reform process in anti-corruption. More than a hundred lawsuits against politicians, companies, businessmen, and their aides were opened, insinuating the beginning of a Chilean version of an anticorruption crusade similar to those unfolding in the context of the large Odebrecht case in Peru and Brazil (González-Ocantos et al., 2023).³

The final judicial results issued various years later (some are still pending), have been described by public opinion as unsatisfactory, including various prosecutors and lawyers (Duce, Riego, Zagmutt & Martínez, 2019), specialized NGOs (*Espacio Público*, 2017), and other state agencies such as the Consejo de Defensa del Estado (Vega, 2018) or the General Accounting Office (Contraloría) (El Mostrador, 2017). In the four corruption cases studied in this article, only four defendants accused in the Corpesca Case received a complete sentence in an ordinary oral trial (Senator Jaime Orpis from UDI, two collaborators and the company). All others received acquittals or light sentences such as fees, “remitted imprisonment” indictments, or a course in business ethics at a private university (for two businessmen involved in Penta) (Toro, 2022). Most sentences resulted from negotiations with the National Prosecutor’s Office, undisclosed to the Chilean public. Figure 1 resumes the sentences issued in the cases Corpesca, Penta, Soquimich, and Caval.

These judicial results were especially surprising since Chiles’ legal and administrative anti-corruption measures are “among the most comprehensive and toughest in Latin America” (Silva, 2022, p. 33). Particularly, the newest wave of anti-corruption reforms that followed the scandals would have facilitated more drastic sanctions that could have established precedence against the crime of political corruption. Moreover, within the Latin American regional context, Chile is known for its high state capacity (Soifer, 2012; Luna, 2008), professional state apparatus, and officials’ probity (Silva, 2016, 2019). The fact that the vast majority of the politicians and their allies managed to avoid severe legal consequences raised doubts among observers, motivating some to speak of a conscious impunity strategy.⁴ It is beyond the scope of this article to determine if an impunity strategy existed. However, when Chile’s political elite from the two dominant traditional political coalitions (the centre-left Nueva Mayoría and the centre-right Chile Vamos) became implicated in acts of political corruption with the eruption of the SQM case, the establishment responded with several actions to influence the course of the proceedings.⁵ These actions targeted the two most important public institutions in charge of the prosecutions, the National

Prosecutor's Office (Fiscalía Nacional de Chile) and the Chilean Internal Revenue Service (Servicio de Impuestos Internos, SII).

Figure 1: Legal sentences in the cases of Corpesca, Penta, Soquimich and Caval



Source: Own elaboration. Based on data from the National Prosecutors Office of Chile (2022); for the Caval case: press articles from *La Tercera*. Note that the information regarding the procedures is subject to change as the litigation progresses. This figure relies on information available in May 2022

Weakening anticorruption institutions by managing agency discretion in Chile

Two aspects of political elites' reactions are worth noting. The first concerns timing. Intriguingly, while only the Penta case was being investigated, which involved the conservative opposition, the government of Bachelet (2014-2018) granted prosecutors significant leeway in their investigations. As one of the interviewees stated: "When we were with the Penta case, which involved purely right-wing politicians, they were all happy (in the government)".⁶ This mirrors research findings on politicians using anti-corruption *lawfare* to discredit political competition (Feierherd, González-Ocantos & Tuñón, 2023). However, when politicians of the government coalition also appeared in cases of illegal campaign financing in the SQM case (Toro & Segovia, 2021), the governmental coalition joined the conservative ranks in their intent to influence the course of the *Fiscalía* and the SII, as detailed by one of our interviewees:

At the beginning, all of this was associated with right-wing parties, and then other companies linked to left-wing parties started to emerge. Alongside that, the Caval case came out, which involved Michelle Bachelet's son. When this scenario unfolded, with three corruption incidents together, the prosecutors also began to gain widespread public awareness. (...) When this milestone occurred, instead of legislating, the government tried to cover everything up

because they were also implicated (interview with a political party leader, Santiago de Chile, October 2022).

Second, in both organisations, political elites triggered a sequence, transitioning from informal tactics to formal proceedings. While informal practices did not change the course of the judicial proceedings, the formal approach eventually proved effective.

Managing discretion in the SII

When the first allegations appeared, the National Prosecutor's Office of Chile immediately initiated investigations into all four cases. The prosecutors initially in charge soon became known (and popular) for their "prosecutorial zeal" (González-Ocantos et al., 2023) and resoluteness to obtain severe punishments for those politicians and businessmen who were charged with political corruption. Since the cases of SQM and Penta involved fiscal fraud, the SII was dragged into the scene. In Chile, fiscal crimes can only be prosecuted if the SII files complaints. Consequently, the prosecutors requested the SII to sue.

According to Chilean law, the director of the SII has the discretion to decide whether and for what to sue in specific cases. Consequently, political elites put informal pressures on the administrative and judicial directors of the SII to desist from initiating lawsuits (González & Ramírez, 2015; Pizarro & Ramírez 2018a). Both directors have reported in the press and our interviews numerous summons and telephone calls on the part of the personnel of the Ministry of the Interior and the Ministry of Finance.

She [Chief of Staff to the Minister of Finance] informed me that the Ministry of the Interior was very concerned that the SII was investigating Soquimich. She told me that she was not clear about the reason for the minister's concern. She added that I should be at ease because the Minister of Finance would never ask me to do something that was not appropriate, and he respected the autonomy of the SII. However, she had to convey that concern to me because it came from the Minister of the Interior (Statement from former Director of the SII, *La Tercera*, 2015a).

Governmental representatives requested not only confidential information on the cases but also demanded direct interventions, among them the "absurd" demand to seize all documentation that could imply the coalitions' politicians from the company SQM before the Prosecutor's Office could do so (*Diario UChile*, 2015). After he resigned from the SII, the then Judicial Director Cristián Vargas wrote in a public letter:

Since the middle of last year, within the framework of the so-called Penta and then SQM cases, the Service has been pressured to not fully comply with its functions in the area of tax crimes and to limit the investigations according to interests foreign to the agency. (...) There has been an attempt to

instrumentalise the Service to act in a way that is in line with actions to cover up tax crimes and protect their perpetrators... (López, 2015).

These informal pressures did not bear fruit. The SII filed lawsuits against various politicians involved in the Penta and SQM case. However, within his discretionary options, the director of the SII limited the period under investigation to July 2009 (Pizarro & Ramírez, 2018b). Consequently, the National Prosecutor's Office was banned from accessing the complete accounting documentation of SQM, which removed many actors from the radar of the legal investigations. While this modification has been perceived as resulting from political pressure, the director of the SII justified the decision by applying a criterion of proportionality.⁸

After a few months, new evidence surfaced, and the SII had to decide again on filing further complaints (*El Mostrador*, 2015a). This time political elites resorted to formal instruments. The opportunity emerged when the investigations uncovered that the director of SII had also issued a receipt of payment to a ghost company set up with the sole intent to mobilise campaign finance through ideologically false invoices (*La Tercera*, 2015b). The interior minister used this invoice as a motive to ask the director of the SII to resign just after he had announced proceeding with further lawsuits (*La Tercera*, 2015c). While this dismissal was justified by the necessity to protect the institution, the director had repeatedly discarded the accusation as unfounded.⁹

The Director of the SII himself had invoices – I don't remember for whom – but essentially, he had created products for the campaign and had been paid for it. I trust him completely that he had produced legitimate items, meaning, he provided inputs for the political campaign and was compensated for that. However, this got mixed up with funds without corresponding products; essentially, these were illegal donations. He was in a very vulnerable position, and we had to remove him (interview with a former minister, Santiago de Chile, March 2023).

The judicial director, a zealous defender of massive lawsuits, was dismissed soon after (Leiva, 2015).

Since the SII depended on the executive, the Minister of Finance had to appoint new directors. After a brief interim directorate that remained inactive concerning the lawsuits, new regular directors assumed office: Fernando Barraza (director) and Bernardo Lara (deputy director). Using their discretionary powers, they changed the course of the agency significantly (*El Mostrador*, 2023). First, the SII desisted from filing new lawsuits in any of the cases. Second, regarding the cases already under investigation, the new authorities significantly limited the scope of the investigations. The official argument for modifying the course was that the foremost mission of the SII was to collect taxes and not to engage in lawsuits (Comandari, 2017). In this interpretation, the former directors had exceeded their competencies. Moreover, it was argued that paying for inexistent

services was not a tax crime and that the errors could be corrected administratively by rectifying the tax declarations (Sepúlveda, 2015).¹⁰ The consequences of the change of directors and the subsequent reorientation of the service were ample. The inaction of the interim paused the investigations, and with the (discretionary) decision of the new regular director, the National Prosecutor's Office had to stop pursuing more than thirty defendants in the SQM case (Urquieta, 2016). Furthermore, the SII stopped several processes against companies in exchange for delivering unpaid taxes and paying fines. Finally, the discretionary change of the legal figure also had consequences in terms of transparency. Given the confidentiality mandate for tax processes, the names of the companies and persons leaving the investigations on the administrative route remained undisclosed to the public.

The course of Director Barraza has been extensively criticised, even within the SII (Carlos, 2022). In addition, Barraza was so far the only director of the SII to survive a change of government (from the centre-left Bachelet to the conservative Piñera). This unusual continuation in office has been qualified as an indicator of a deal between the director and political elites (Duce *et al.*, 2019, p. 78). Under the new administration of President Boric (2022-2026), Barraza was asked to resign, primarily due to the accusation of having diluted the complaints in the cases of political corruption (Ayala, 2022). Later, Barraza acknowledged in an interview that if the SII had filed lawsuits in all the cases known to the agency, “the number of defendants would have been enormous” (Munita, 2022).

Managing discretion in the National Prosecutor's Office

The National Prosecutor's Office underwent a similar scheme of actions orchestrated by the political elites. Various rank-and-file prosecutors in charge of political corruption cases have publicly reported direct pressures on the part of politicians (*El Dinamo*, 2015). Intentions to alter the course of the prosecutions also took indirect forms. In order to influence public opinion, political elites and business persons promoted a discourse in the media emphasising that nothing was wrong with campaign financing, that it has always been done in this way, and that the defendants were innocent (Moya & Figueroa, 2018). Other public statements made by political elites have been interpreted as direct signals for those conducting the investigations and in charge of deciding on the defendants' fates. For example, the government repeatedly asked the National Prosecutor's Office to show “responsibility”, insinuating that a moderate course was expected (Pizarro & Ramírez, 2018). In the cases of Corpesca and Caval, high-level politicians (such as the minister of justice) issued public statements of support to the defendants who later confirmed their participation in illegal acts (Toro & Catena, 2019). Also, the prosecutors tried to influence public opinion through media appearances and leakages to the press (Duce *et al.*, 2019). Their unusual public visibility fuelled a discrediting campaign to especially frame the most zealous

prosecutors as abusing their offices and acting as “moral guardians” and “sheriffs of everything” exceeding their competencies.¹¹

The informal pressures were not successful. As in the SII, the next step involved removing the zealous rank-and-file prosecutors and replacing them with “friendlier” ones. The first attempt to change the prosecutors failed. In February 2015, the regional prosecutor of the Metropolitana region (Alberto Ayala), superior to the rank-and-file prosecutors in charge of the SQM-Penta and Corpesca cases, decided to withdraw them (Mosciatti, 2015). In Chile, regional prosecutors are delegated by the National Prosecutor. They have the right to assign cases to specific (teams of) prosecutors and remove them under certain circumstances, including professional misconduct (leaking confidential information to the public) or administrative faults (Duce et al., 2019). Regional prosecutor Ayala could never convincingly justify his decision and, several months later, was investigated for having leaked undisclosed information on the SQM case to the government (Sepúlveda & Carmona, 2015). Although it was never proven that he acted on behalf of personal ties or interests, the lack of convincing arguments for the removal, in combination with his private networks with SQM where he had worked for ten years (Mosciatti, 2015), have nurtured the suspicion of political influence to substitute the zealous prosecutors.

However, the prosecutors did not obey Ayala’s decision. Instead, they manoeuvred their way out of the threat by presenting their resignation to the National Prosecutor Sabas Chahuán. Chahuán responded unusually: he decided to personally lead the Penta and SQM cases within the framework of his discretionary powers by keeping the initial prosecutors in his team (Pizarro & Ramírez, 2018a). Thus, while removed from the Corpesca case, the “zealous team” of prosecutors continued to investigate SQM and Penta, the two most sensitive cases for Chilean politicians. Nevertheless, political elites eventually managed to change the situation to their benefit by using their formal appointment powers. The opportunity arose in October 2015 with the end of the regular period of the national prosecutor Chahuán. The election of his successor became the perfect scenario for all actors interested in altering the course of the processes.

Appointing a new national prosecutor in Chile involves the following actors and steps: The Supreme Court decides on a list of five names to be submitted to the president, who chooses one of them. The Senate must ratify the presidential decision. In 2015, the Senate and the government, whose members were implicated in political corruption cases, were particularly interested in choosing a national prosecutor to help control the damages done. Various candidates for the position of national prosecutor have reported that how to handle the cases was a prominent subject during their meetings with senators and congressmen (Vera, 2021). The person finally elected was Jorge Abbott. Like all others, Abbott had held several informal meetings with politicians, including the Minister of Justice Hernán Larraín, and several senators and deputies from different parties directly or indirectly involved in corruption cases (Toro & Azócar, 2018). In a speech preceding his election, Abbott emphasised that prosecution should be moderate

and prudent. Against the (primarily civil and legal) demands to override the faculty of the SII to sue to break the blockade in the tax service, Abbott underlined his determination to not act against the SII.

We do not know if the new national prosecutor treated impunity for votes. Once in office, however, he gave the processes a new direction by using his discretionary powers. First, Abbott refused to open further investigations without complaints from the SII, cementing the status quo of the investigations. Second, he changed the prosecutors in charge and removed the zealous prosecutors from the most sensitive SQM case, leaving them in charge of the remaining ties of the Penta case. Protesting these twists in the Fiscalía, they resigned soon after, generating significant media repercussions and leaving a team of friendlier prosecutors (*El Mostrador*, 2015b). The new regional prosecutor in charge of SQM was Pablo Gómez from Valparaíso (another Chilean city). Using his discretion, he changed the course of the proceedings (Pizarro & Ramírez, 2018), giving way to the many suspensions and light sentences presented in Figure 1.

Complementary explanations

Our intention is not to suggest that the management of discretion was the sole factor behind the lenient sentences and acquittals in the cases we have examined. Other explanations have been put forward in the specialised literature and public debate. However, these explanations complement our argument on the role of the “management” of agencies’ discretion and provide a more comprehensive understanding of the multidimensional nature of political corruption cases. The severity of offences varied significantly among the multiple charges brought forth in the cases. Naturally, minor transgressions obtained lighter sentences. However, notable political figures received disproportionately lenient sentences or were acquitted despite evidence of severe political corruption offences. Many experts, including prosecutors and politicians, expressed dissatisfaction with these outcomes. In one of our interviews, an ex-minister stated that “maybe, we should have done more”, indicating that the government could have acted more strictly.¹² Experts have pointed out two other factors that may have contributed to the overall tendency of lenient sentences (Duce et al., 2019). Firstly, there is a lack of expertise and specialised training in anti-corruption matters within the Chilean justice system, and prosecutors often face well-trained, resourceful defence lawyers. However, it is worth noting that the initial prosecutors of the cases were on the way to specialising in anti-corruption matters, raising questions about why they were replaced with allegedly less prepared prosecutors in the first place. Moreover, high-profile and expensive defence attorneys often represented political elites with the resources to protect their interests. Second, it has been argued that political corruption cases are inherently challenging, requiring substantial evidence to prove instances of bribery, graft, collusion, and related offences. Furthermore, in Chile, legislation about political corruption is limited, as it does not explicitly classify it as a crime. This creates complexities in

prosecuting such offences and challenges legal proceedings in these cases. Nevertheless, even in cases with significant evidence, lenient sentences were handed down. Not to forget that many cases never underwent judicial proceedings due to decisions made by the SII.

Finally, prosecutors have emphasised that negotiated procedures leading to minor sentences are an essential component of their standard practices and are particularly relevant in corruption cases. These negotiations should serve strategic purposes and help gather more information about the cases, potentially implicating other individuals or uncovering additional offences. From this perspective, the dissatisfaction with the legal outcomes of corruption cases arises from a lack of understanding about how the national criminal prosecution system operates. However, critics have highlighted the disproportionate use of negotiated procedures in Chilean political corruption cases and questioned their strategic execution (Duce et al., 2019). Considering the multidimensional nature of the cases we examined, these complementary explanations contribute valuable insights into the functioning of Chile's anti-corruption system without undermining our argument. The changes in agency leadership and the subsequent exercise of discretionary powers have influenced the outcomes of the judicial proceedings.

Conclusion

In this study, we traced the actions of the Chilean political elite in the face of accusations of political corruption to understand the reasons behind the unsatisfactory, mild sentences the majority of defendants received. We argue that political elites shaped this outcome by strategically managing the discretion of the state agencies involved in the processes, the SII and *Fiscalía*, through the appointment of supportive officials. While we acknowledge that not all lenient sentences can be solely attributed to managing agencies' discretion, we argue counterfactually that the outcomes would have been different without the leadership changes and subsequent utilisation of discretionary powers. By focusing on political elites' management of agencies' discretion, the article aims to add to the vibrant study on institutional weakness in Latin America (Brinks, Levitsky & Murillo, 2020). Viewing the management of agency discretion as a mechanism through which the political elite can weaken institutions allows us to move beyond the debate of whether politicians violate or properly implement rules. Instead, politicians can utilise formal rules to undermine other formal rules. This means that even if institutions possess the necessary conditions for strength, such as technical expertise, financial resources, and coercive capacity, weakness can still be generated by exercising agencies' discretion. Central to this discussion is the level of control political elites exert over public agencies, the nature of their connections, and how these shape discretionary choices. This finding raises further questions regarding the democratic implications of politicians' influence over agencies' discretion and underlines the necessity to conduct further

research on the consequences and institutional arrangements to reduce it, such as mechanisms of selection and appointment of prosecutors and agencies' directors.

Although this study primarily focuses on Chile, the analytical framework presented can also help elucidate political and judicial outcomes in other national and organisational contexts. Moreover, it can inform the development of best practices and policy recommendations. For instance, Chile's Council for Transparency, responsible for ensuring transparency and access to public information, is governed by a board selected by the president with the approval of Congress. Consequently, politicians have institutionally safeguarded their influence over this vital agency, which is an integral part of the national anti-corruption governance. Similarly, other countries, such as Peru, have witnessed political elites attempting to influence judicial proceedings in corruption cases through their appointment powers for discretionary authorities.

While political corruption remains a significant issue in Latin America, efforts to combat it have been bolstered in recent years through new legislation, the creation of specialised agencies and dedicated prosecutors and judges engaged in "anti-corruption crusades" (González-Ocantos et al., 2023). The Chilean case examined here showcases a scenario where prosecutors were on the verge of launching an anti-corruption crusade. Yet political elites intervened by leveraging their appointment powers over the relevant agencies, exposing loopholes in Chile's anti-corruption governance. Closing these loopholes and reducing political influence would significantly enhance the effectiveness of anti-corruption governance in the country. In this sense, the case of Chile presents a paradox that challenges overly optimistic views of the current fight against political corruption. Despite politicians in Chile across the political spectrum supporting reforms to enhance anti-corruption governance, their actions to influence judicial outcomes have undermined the enforcement of these very laws. By exercising their discretion, judicial actors have refrained from establishing precedents for prosecuting the severe and widespread crime of political corruption. This lack of decisive action has diminished the deterrent effect and failed to meaningfully punish corrupt behaviour. Interestingly, it is worth noting that some high-profile politicians, such as Senator Orpis in the cases of this study, have received severe sentences, which raises questions about when political elites choose to create protection shields for their members and when they do not.

Political elites often push for reforms in response to public scrutiny and attention. However, in Chile, once public attention waned and legal processes resulted in relatively lenient sentences, illicit political financing continued, as seen in the case of the former candidate for Governor of Santiago, Karina Oliva (2021). Moreover, subnational political corruption is rising, although these cases do not garner the same public attention as the national mega-scandals did. Additionally, further reforms in Chilean anti-corruption governance have faced resistance in the executive and legislative branches, impeding progress in the

public sector. These shortcomings highlight the need to go beyond specialised actors in the judicial system and consider the broader political governance structure in the fight against corruption. Understanding the interdependencies between supervisory and prosecuting agencies and the political sector is crucial, especially regarding how political control over agencies' discretion can impact the enforcement of anti-corruption laws. While communication channels between branches of government and state agencies are essential, it is equally important for these agencies to have sufficient autonomy to protect themselves from the influence of political elites and ensure fair and consistent application of the law.

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Bettina Schorr is a researcher at the Institute for Latin American Studies / Freie Universität Berlin and the director of the programme trAndeS "Advanced Studies on Inequalities and Sustainable Development". She holds a PhD in Political Science from the University of Cologne, Germany.

Address: Freie Universität Berlin / Lateinamerika-Institut, Boltzmannstraße 1, 14195 Berlin.
Email: bettina.schorr@fu-berlin.de

Sebastián Carrasco is a researcher at the School of Government, Universidad San Sebastián, and an associated researcher with the Max Planck Partner Group on the Challenges of Green Growth.

Address: Universidad San Sebastián / Escuela de Gobierno, Bellavista 7, Recoleta, Santiago, Chile.

Email: sebastian.carrasco@uss.cl

Emilio Moya holds a PhD in Latin American Studies from the University of Chile. He also holds a Master's degree in Sociology from the Pontificia Universidad Católica de Chile and is currently the director of Centro de Políticas Públicas of the Universidad Católica de Temuco.

Address: Universidad Católica de Temuco, Centro de Políticas Públicas, Manuel Montt 056, Temuco, Chile.

Email: emoya@uct.cl

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Notes

- 1 The literature uses the term “political elite” distinctly. For some authors, “political elite” is synonymous with Mills’ (1956) “power elite” and comprises different groups capable of influencing politics (politicians, business, and the military).
- 2 Among many others: Moya & Hernández, 2014; Cárdenas & Robles, 2021; Robles, 2021; Reis & Moore, 2005; Krozer, 2020; Atria & Rovira Kaltwasser, 2021; Flores et al., 2020; López, 2013, 2016. A notable exception applying a comprehensive perspective on Latin American elites is the classical volume edited by Lipset & Solari (1967).
- 3 González-Ocantos et al. (2023, p. 7) define anti-corruption crusades as “widespread efforts by judges and prosecutors to investigate, prosecute, and punish corruption through the courts”. The Odebrecht case refers to a massive corruption scandal involving the Brazilian construction conglomerate Odebrecht and its subsidiaries in 2014 (Rotberg, 2019).
- 4 The supposed “impunity strategy” was amply discussed in the press and has been mentioned in several of our interviews.
- 5 Of course, not all politicians and legislators participated in the activities to mitigate the judicial consequences of corruption. In addition to individual politicians from the two dominant electoral coalitions, particularly the (younger) members from the more recent and leftist Frente Amplio criticised the political handling of the Executive and parts of the Legislative of the cases.
- 6 Interview with senior public manager, Santiago de Chile, March 2023. When the SQM case blew up, contrarily, “they were all scared” (interview with the former minister, Santiago de Chile, March 2023).
- 7 Interview with the former administrative and judicial directors of the SII in Santiago de Chile, March 2023.
- 8 Personal interview, Santiago de Chile, March 2023.
- 9 Personal interview, Santiago de Chile, March 2023.
- 10 This perspective on the SII is commonly referred to as the “Escobar thesis” because it was formulated by the former director of the SII, Ricardo Escobar (Sepúlveda, 2015). The former director of the SII Jorrat had resisted the Escobar thesis as “absurd, the mission of the SII is to prevent and reduce evasion” (personal interview, Santiago de Chile, March 2023).
- 11 Interview with former government official maintaining this narrative, Santiago de Chile, March 2023.
- 12 According to one interviewee, taking a stricter stance towards cases of political corruption may have had a positive impact on curbing the erosion of citizens’ trust in politicians in Chile, which is currently at historically low levels. Such a response could have mitigated the social unrest in 2019 (*El estallido*).

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