

The Chilean Congress: Bicameralism in a Presidential System.

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The Chilean Congress, 2017. CC BY-SA 2.0, [Wikipedia Commons](#).

Chile is a long and narrow strip of land located in western South America. It limits to the north with Peru, to the east with Argentina and Bolivia, to the west with the Pacific Ocean and to the south, with the South Pole. It has a population of more than 19 million inhabitants and its continental territory is close to 756 thousand square kilometres). Its territorial organization is that of a unitary state and is administratively divided into regions (*regiones*, 16), provinces (*provincias*, 56) and communes (*comunas*, 346).

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The country has a Presidential system of government. The Executive Power is vested in the President of the Republic, Head of State and Government, who is elected by direct vote and by the absolute majority of the votes obtained in the first or second round of the Presidential elections held every four years. The headquarters of the Executive is the "Palacio de la Moneda", located in Santiago de Chile, the capital of the country. Legislative Power is vested in the National Congress, made up of the Chamber of Deputies² and the Senate. The Congress headquarter is located in the city of Valparaíso, capital of the second most populated region in the country.

Historical background

Chile's first Congress met in 1811. The election of its members was convened the previous year by the Governing Board (*Junta de Gobierno*) which, in the context of the crisis of the Spanish monarchy, ruled the country since September 1810 on behalf of Fernando VII, who was recognized as the legitimate King of Spain, ignoring any other authority over Chilean territory (Collier & Sater, 2004, pp. 32–35).

This Congress was summoned to decide on the best form of authority that would govern the country during the crisis of the monarchy. Throughout its sessions, which lasted from July 1811 to December of the same year, it established the separation of the Executive — that was vested in a Board elected by the Congress — and Legislative Powers — the will of the Kingdom of Chile was vested in the Congress³.

During the two decades following the installation of this first Congress, the country experienced a period of great political and institutional instability. During this period, there were several *coups d'état*, constitutions, and armed conflicts between local factions involved in dominion disputes, and directly with Spain, for the independence declared unilaterally in 1818. In this context, the Legislative Branch was dissolved and redesigned on several occasions until achieving a stable institutional design in the Constitution of 1833. In the course of its history, the country has had about a dozen constitutional texts and three of them have been in force almost from its inception and consecutively: (1) the Constitution of 1833, which introduced some

² In 2019, *Cámara de Diputados* decided to change its name to *Cámara de Diputadas y Diputados*, as a response for gender equality demand.

³ The original text, in Spanish, is available at:

https://www.bcn.cl/historiapolitica/constituciones/detalle_constitucion?handle=10221.1/17604

stability in the institutional design of the nascent Republic, (2) that of 1925, which was partially suspended after the *coup d'état* of 1973 and, (3) that of 1980 that, even with reforms, is barely maintained in force today. Its text was prepared by commission of the dictatorship that ruled the country between 1973 and 1990 and was approved in a questionable plebiscite in 1980. Under the dictatorship, the Congress had to remain closed. The Constituent and Legislative Power were exercised by the Governing Board⁴, made up of the commanders-in-chief of the Armed Forces and the uniformed Police (*Carabineros*)⁵. The triumph of the "NO" option in the 1988 referendum, marked the end of the dictatorship led by Augusto Pinochet and the beginning of the transition to democracy.

Structure and regulatory framework

The National Congress, which is bicameral since 1833, is made up of the "Chamber of Deputies" (Lower House) and the Senate (Upper House). Its legal framework is mainly defined in Chapter V of the Constitution⁶, in the Organic Constitutional Laws on popular votes and ballots (*Ley* N° 18.828, 1989) and the National Congress (*Ley* N° 18.918, 1990) and in the rules of procedure approved by each of the Chambers.

Composition and requirements

The Legislative is composed entirely of elected members. The Upper House is three times the size of the Lower House (155 versus 50 members⁷), its electoral units add to those of the Lower House (16 regions made up of 28 districts), the number of representatives to be elected depends on its population, being between 2 and 5 senators per region and between 3 and 8 deputies per district. To be a candidate for the Legislative, secondary education is required, to have the right to vote, and an older age is also mandatory for the Upper House than for the Lower House (35 versus 21 years). Candidates to the Upper House are exempted from complying with the minimum period of residence prior to the elections in the territory to represent, which is required of those who run for the Lower House (2 years).

⁴ Transitional provisions (*disposiciones transitorias*) no. 19 and 20, Constitution of 1980.

⁵ By virtue of the Constitution of 1980 Pinochet was appointed President, leaving the Governing Board and subsequently being replaced by another designated Army's officer.

⁶ Constitution Project has an English version of the Chilean constitution with the amendments approved until 2015. https://www.constituteproject.org/constitution/Chile_2015?lang=en

⁷ In 2015 the size of the Legislative was increased. The Lower House went from 120 to 155 members and the Upper House from 38 to 50 members. Therefore, given that the Senate partially renews its members every four years, between 2018 and 2022 the Senate will have 43 members.

Elections and candidatures

Legislative elections are held every four years, simultaneously with the first round of the Presidential elections. All citizens with the right to vote (Chileans over 18 years of age, residents inside and outside the national territory, and foreigners with more than 5 years of residence in the country) can participate in them. Voting is voluntary and registration in the electoral roll is automatic.

For the election of their candidates, the political parties and their electoral pacts can organize voluntary, open, and binding primary elections. The lists with the definitive candidatures must have a minimum of 40% of candidates of each gender and those who have remained in the Lower House for three consecutive periods (12 years) or two in the Upper House (16 years) cannot stand for re-election. The vote is structured based on open lists and the conversion of votes into seats is the same in both Houses, a proportional representation system that converts votes into seats in each electoral unit through the D'Hondt method, with no minimum threshold.

Main functions of the Congress

The Congress represents, legislates, and oversees. In addition to designating the members of some institutions (eg. some members of the Constitutional Court) or ratifying the candidates proposed to others (eg. candidates proposed by the President of the Republic to the Supreme Court). It has the tools to approve or reject the signing of international treaties and deliver opinions on the states of constitutional exception declared by the Executive.

Regarding legislation, it enacts exclusively on the initiatives presented by the President of the Republic or legislators, who can present bills on any subject as long as it is not the exclusive competence of the Executive, or the Chamber they do not belong to⁸. The Chamber in which the legislative process begins (first constitutional process) is called the “chamber of origin” and the one that fulfils the second constitutional process is called the “reviewer chamber”. Depending on the subject and the Chamber of origin, any of the Chambers can fulfil the role of Chamber of Origin or Reviewer.

⁸ Law matters on which the Executive and each of the chambers have exclusivity, are described in article 65 of the Constitution and are related, among others, to the political-administrative division of the country or to the management of the Nation's budget (Executive), taxes and recruitment (Lower House) and General Amnesties and Pardons (Upper House).

In regards of political control, the Lower House has the exclusive power to supervise the acts of the Government and approve the “constitutional accusations” (similar to impeachment proceeding) presented against the President, ministers and other high authorities. If approved, these accusations must be judged by the Senate, which also has the faculty to admit or reject the resignation of the President and declare his physical or mental inability to serve in the office.

Structure

The main governing body of the Chambers are their executive boards, made up of a President and vice-Presidents. Its members are elected at the beginning of the legislative year, with no limits to their re-election. The board interacts with legislators through the Parliamentary Committees represented by the chief whips (*jefes de Bancada*). Legislative work is carried out in commissions, and currently, there are more than 20 permanent commissions in the chambers. The administration of the personnel and the Chambers services corresponds to the Secretary General of each one of them (*Secretario General*)⁹

Legislative Process

In order to become a Law, a bill must be approved by both chambers, without being declared unconstitutional and being signed by the President of the Republic before its publication in the Official Gazette (*Diario Oficial*), at which point it becomes a Law. This process involves four institutional actors with veto power: The Lower House, the Upper House, the President of the Republic, and the Constitutional Court (Alemán & Navia, 2016).

The legislative process within the Chambers is similar and the differences between them are resolved in a mixed commission. In the chambers, the bill is discussed in committees and voted on the respective floor. To be approved, it must comply with the majorities required in the Constitution, which depends on the subject matter. In the event of disagreement between the Chambers, the “Navette System” must resolve the issue, otherwise, it is settled in an *ad hoc* Conference Committee, made up of the same number of deputies and senators (Tsebelis & Money, 1997, p. 57).

The President has the authority to alter the legislative agenda and has partial, not total, veto power. During the discussion in the Chambers, the President can prioritize his projects by

⁹ Similar to the Clerk of the house in the British Parliament.

requesting for urgent procedures, which oblige the corresponding Chamber to debate and vote on the project within a specified period of time (Alemán & Navia, 2016). Once a bill has been approved by the Chambers, the President has the faculty to return it to Congress, requesting the incorporation (additive veto), substitution (substitutive veto) or elimination (suppressive veto) of part of the text, before which the Congress can approve the modifications, reject them or insist on the originally approved bill¹⁰. The Constitutional Court can review the constitutionality of a *motu proprio* bill, if they interpret the Constitution, or at the request of the President of the Republic or of at least a quarter of the members of any of the Chambers in other projects.

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¹⁰ In Spanish: <https://www.senado.cl/veto-presidencial-en-chile-en-que-consiste-y-un-poco-dehistoria/senado/2020-04-07/201345.html>

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