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Technical Autonomy, Neoliberal Political Economy, and Democratic Deficit

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TEXT

I. Introduction

1 In 2025, the Consejo Fiscal Autónomo (CFA) gained prominence in political and economic discourse and in public opinion throughout Chile. Its authorities granted interviews and issued reports on fiscal policy, advocating adjustments to public expenditure; furthermore, they offered opinions on legislative initiatives and public policies with fiscal implications, and scrutinised the fiscal management of the preceding government in light of the structural deficit. This situation was particularly noteworthy, even amidst the presidential election campaign, during which candidates' advisors presented their programs and fiscal perspectives to the council. This represents an unprecedented public role for an organisation established only in 2019. The CFA continues to define its institutional identity, confronting the inherent challenges of such a process. Until the previous year, it was primarily recognised for the macroeconomic expertise of the Executive's technical staff, the most specialised parliamentarians in fiscal and budgetary matters, academia, and segments of the financial sector.

2 The inquiry seeks to understand the reasons for the existence of such councils and the principal motivations underpinning the establishment of the CFA in Chile as an autonomous legal advisory body whose activities influence fiscal policy managed by the Executive Power.

3 The underlying hypothesis of this analysis posits that the CFA, inspired by authoritarian (neo)liberal ideologies and characterised by its autonomy and technocratic neutrality, functions as an institutional instrument that embodies the constitutive nature of law in the formation and preservation of the market order. Through the normative channelling of fiscal policy, it assists in embedding a specific neoliberal political economy within the constitutional framework of the Chilean state, which substantially operates as a constitutional restriction and is articulated within a fragmented governance model that impedes the development of alternative proposals for fiscal policy decision-making. Based on the key facts presented in the initial paragraph, a potential role can already be inferred; however, this assertion alone remains insufficient.

4 To substantiate the hypothesis, the study is laid out into three sections. The first section introduces a methodology grounded in three accumulative theories and supplementary frameworks of Law and Political Economy (LPE), aiming to advance an under-explored dimension of Chilean Public Law, which has predominantly been examined in the economic and legal literature. The second section analyses the evolution of Chilean fiscal norms, from the military dictatorship period to today, including the Constitution and the principal laws concerning fiscal rules and councils. These institutional arrangements, which pursue the same fundamental political objective, necessitate joint examination. Finally, the conclusions assess the movements considering the interplay between LPE theories and the fiscal normative framework, elucidating the existence, functioning, impact, and positioning of the CFA within the Chilean fiscal and normative architecture.

II. Critical theoretical framework for analysing the CFA: the triple movement

1. First movement: Current authoritarian (neo)liberalism

5 In 1933, Hermann Heller delivered a compelling critique of German liberalism within the Weimar Republic, asserting that an authoritarian state represented a virtuous alternative to the democratic regime. His work titled "Authoritarian Liberalism?" contends that the defining characteristic of the authoritarian state is its capitalist perspective on the economy. Heller describes this viewpoint as authoritarian liberalism and advocates for a separation or autonomy between state politics and economic affairs. This critique opposes the "Strong State and Sound Economy" discourse championed by Carl Schmitt, [1] who promotes the concept of a qualitatively total state as a non-partisan political entity that employs all its powers and institutional capacities to exclude the democratic state from the productive economy and from redistributive social policies. This objective was pursued by implementing mechanisms to

maintain the state's separation from the free market and foster autonomous economic management practices. [2]

6 Although Heller's critique is articulated within a specific and exceptional period in German history, the fundamental premise identified—that fear of democratic decisions, as developed by (neo)liberalism, [3] can lead to authoritarianism—can be observed in later experiences such as the Chilean military dictatorship [4] and the post-2008 economic integration process of the European Union. [5] Inquiring today, in 2026, whether this critique remains pertinent is highly relevant, considering the current global scenario and the transnational and national dynamics in both the economy and democratic politics. [6]

7 Consequently, this movement connects two objectives. The first step is to establish the broader context in which the CFA operates within the framework of fiscal policy. The second is to examine why, or for what purpose, this legally autonomous entity exists within the current Chilean institutional framework, particularly regarding whether to restrict or not restrict redistributive decisions, and how and who should participate in the management of the economic order.

2. Second movement: The constitutive character of the economy by Law

8 The second movement involves understanding the role of Law in the normative construction of various sectors of the economy and their economic-political impacts. Karl Polanyi emphasised the artificial nature of land, labour, and money markets, which are materialised through Law. Consequently, he challenged the economic policy assertions that promote the idea of the expansive market as a natural, neutral, and spontaneous order. He concluded that Law is an essential mechanism for reproducing power relations and interests, as well as for embedding specific forms of reciprocity and the redistribution of goods and services within a free-market society. [7]

9 The role of Law in the reproduction and organisation of the economy has been adopted by other intellectual traditions and epistemic communities. Through the Original Institutional Economics and

American Legal Realist traditions, Jamee Moudud proposes an institutionalist theory of *political* political economy based on the legal-economic nexus, in which politics and power struggles over the legal design of social and economic life need to be at the center of economic analysis, given that profit-making is the wellspring of wealth creation in capitalism. [8] Furthermore, Katharina Pistor also emphasises this role, as before being an economic system, capitalism is a legal regime that depends on the normative production of the State, which empowers (some) private actors to use private law to govern or even dominate others, while also protecting these practices against state intervention with the help of public law. [9] From the perspective of material constitution, Goldoni and Wilkinson have argued that to understand constitutional articulation, it is essential to understand the material context, that is, the political economy, political culture, social relations, religion, as well as geopolitical factors, international relations, and imperial forms of domination—all conditions of possibility for constitutionalism and the dynamics of constitutional change. Material conditions and relations are thus both constituted (by law and politics) and constitutive (of law and politics). The dynamic interactions among these elements are intrinsic to constitutional ordering. [10]

10 Britton Purdy et al. describe the so-called "Twentieth-Century Synthesis" as a methodological instrument that facilitates the identification of criteria underpinning the rationality of legal institutions and economic markets. Criteria such as autonomy, efficiency, technocratic neutrality, and depoliticisation or anti-politics are prevalent arguments within political, legal, economic, and institutional discourses, as well as in public debates generally. These criteria are embedded within our legal norms and are often presented as religious mantras or indubitable axioms in decision-making processes pertaining to economic-political issues. The aim of these criteria is to establish self-defensive mechanisms that mask the existing power relations involved in the construction of Law and its economic implications, perpetuate inequality within regulated markets, and undermine effective oversight by democratic representative bodies. Additionally, they contribute to the neglect of fundamental political objectives that the economy should prioritize in favor of the common good. [11]

11 This second movement encompasses three objectives associated with the CFA. The first aims to validate the thesis regarding the constitutive nature of Law and the artificial character of this economic domain by examining how fiscal power relations are structured and operate. The second objective is to analyse the current political economy underpinning the normative production of Chilean fiscal political institutions, both during the military dictatorship and the subsequent market-oriented democracy, utilising the analytical categories established in the preceding paragraph. The third objective seeks to examine constitutional mutations or material changes resulting from the normative evolution of fiscal policy, with particular emphasis on shifts in the dynamics among public bodies with competencies in macroeconomic policy.

3. Third movement: The democratic deficit as the main effect

12 Specialised literature within the European Union has extensively critiqued the approval of fiscal rules and fiscal councils. The primary concern cited is the emergence of a democratic deficit, both in decision-making and in the operations of supranational institutions and member states. This issue extends beyond fiscal matters to encompass monetary policy and other economic sectors, directed towards autonomous and technocratic entities, with notable implications for the social state as a political entity. [12]

13 Examples of the aforementioned include the centralisation of authority in favour of supranational institutions; the modification of the balance within supranational institutions favouring non-representative bodies such as the Commissioner for Economic and Monetary Affairs and the European Central Bank; the replacement of "soft" governance with "hard" governance as a tool for intervention in fiscal and macroeconomic policy; and the heightened substantive bias of European Law, which increases pressure towards deflationary measures and restricts the participation of labour income in socially generated wealth. [13] Furthermore, the adoption of austerity policies—often of questionable justification and empirical support and based on fundamentally moralising conservative arguments. [14] This has

facilitated the marginalisation or evasion of fiscal policy decision-making from national constitutions. This has resulted in a process of discipline, as such arrangements favour a pro-market, competitiveness-oriented approach and exert pressure on EU Member States that do not meet expected fiscal and monetary performance benchmarks.[15] Finally, the implementation of the Fiscal Compact has precipitated a constituent phase of the European Economic Constitution, involving a profound process of constitutional transformation driven by various structural reforms and measures adopted at both national and supranational levels.[16]

14 In his book *The Redress of Law*, the late Emilios Christodoulidis offers a comprehensive analysis of the historical and conceptual transition from rationality of governance to governance itself. This transition significantly influences the evolution from political constitutionalism to market constitutionalism. By extending economic rationales and embracing total market thinking, a critical perspective was developed regarding public and bureaucratic functions, deeming them inefficient. Consequently, a new model of governance emerged—one that is more efficient, responsive, heterarchical, and pluralistic—characterised by horizontal actors and networks with specific interests, referred to as stakeholders, who participate in public decision-making in various capacities. The primary consequences of this transformation have been the redefinition of the constituency, alterations in political representation, and a changing interpretation of the common good, leading to the displacement and dilution of the substantive content of democracy and solidarity.[17]

15 Subsequently, in the third movement, a significant objective is anticipated to be attained. To ascertain whether a common conjunctural pattern exists in the implementation of the fiscal rules and fiscal councils, or whether it is predominantly a matter of model or intended design. This design appears to aim at promoting governance dynamics that result in the hollowing out or deficit in the democratic deliberation of representative bodies with fiscal competence, as the primary constitutional consequence.

16 The three analytical movements outlined above find their concrete expression in the normative evolution of Chilean fiscal framework,

which the following section traces from the military dictatorship to the establishment of the CFA in 2019.

III. Fiscal Rules and Fiscal Councils in Chile: The Progressive Autonomisation and Technocratisation of Fiscal Policy Decision-Making

1. General framework of fiscal rules and fiscal councils

17 Fiscal rules and fiscal councils are part of a symbiotic proposal to regulate various aspects of the macroeconomy under public law, developed over the past thirty years.[18] The implementation of these is a political and legal phenomenon that has mainly developed in contexts of economic crises of all kinds, especially fiscal crises, either as a concrete response to the experienced crisis or as a disciplining formula to prevent future economic crises. It has been an elitist and technocratic response to confront such economic phenomena with political and social consequences.[19]

18 The evolution of fiscal rules can be delineated into four distinct stages: the first associated with pioneering experiences in the 19th century, involving Portugal, Honduras, Nicaragua, and several US states; the second linked to the decolonisation of African nations under French influence around 1959–1960; the third correlated with the Tax Revolt campaigns and the Balanced Budget Amendment in the United States during the late 1970s; and the fourth following the 2008 financial crisis, during which the European Union and various European countries—namely Austria, Germany, Italy, Slovenia, and Spain—adopted fiscal rules and the so-called "golden rule".[20] Concerning fiscal councils, two stages are evident: an initial one post-World War II, with instances in Belgium, the Netherlands, Denmark, Austria, and the United States; and a subsequent stage, also following the 2008 crisis, whereby most OECD nations established

independent fiscal institutions responsible for overseeing the budget cycle and/or fiscal rules. [21]

19 The main justifications for implementing fiscal rules and mechanisms governing fiscal councils include commitments to fiscal discipline and responsibility, as well as the regulation of populist and irrational decisions that may threaten the stability of the political community. These responsibilities are overseen by independent and technical bodies that collaborate on complex financial matters. The most extensively studied fiscal rule in academic literature is the Balanced Budget Rule, which requires an annual balance between income and expenditure. Additionally, there are rules that evaluate the long-term fiscal impacts of deficits and structural rules, such as the Chilean rule, which determines income and expenditure levels based on future scenarios. Furthermore, these rules may take various forms, whether they establish absolute balances or allow deficits, and the consequences for non-compliance. [22] Regarding fiscal councils, parliamentary budget advisory offices serve as complementary bodies; some countries employ them in a supplementary capacity or embed them within other agencies. Their functions and authority vary depending on the specific context and institutional framework. Certain independent fiscal institutions (IFIs) produce and evaluate macroeconomic or fiscal projections, monitor compliance with fiscal rules, finance public policies, analyse fiscal responsibility and sustainability, and support Parliament in the budgetary deliberations. Generally, parliamentary offices are led by a single director and a technical team, whereas fiscal councils are collegiate bodies comprising members with diverse profiles. [23]

20 The IMF and the OECD have directed their attention towards fiscal rules since 1998, justifying the benefits, documenting experiential knowledge, exchanging recommendations, and establishing standards and best practices. This progression fosters a transnational technocratic legitimacy that favours their adoption. Furthermore, since the beginning of the 21st century, extensive literature has emerged on the advantages of the fiscal councils and their implementation, exemplified by the OECD Guide, which standardises certain fundamental principles. [24] In essence, these analyses demonstrate how international organisations engage in economic

governance and contribute to the erosion of democratic institutions in fiscal affairs. [25]

21 According to literature in international political economy, beginning with Alami and Dixon, rules and fiscal councils exemplify tangible manifestations of state capitalism. The first set encompasses measures designed to absorb and recycle surpluses as financial capital, including "toxic" assets and "bad" debt, with the objective of stabilising the financial system. The second aims to mitigate crises, support asset values, prevent economic crises, and uphold sovereignty and political order. The third involves coercive and repressive domestic policies, frequently associated with national identity, along with active governmental efforts to shift economic burdens through geoeconomic influence. These rules and councils are intended to ensure fiscal sustainability and systemic financial stability, whether at the supranational or national level, and to regulate domestic debates that diverge from conventional market or growth pathways or conflict with the imperatives of global capitalism. [26]

2. An introduction to the Chilean fiscal framework

22 In Chile, the existing fiscal arrangements date back to the military dictatorship era, during which reforms such as the centralisation and technocratisation of the financial and fiscal system were implemented. [27] The primary reason was the profound distrust and apprehension regarding macroeconomic decisions made by democratic authorities, stemming from the traumatic history of political and institutional conflicts in fiscal and monetary matters throughout the twentieth century, particularly during the administration of the Unidad Popular. [28]

23 This institutional framework has been developed based on a robust normative structure within the Chilean legal system. Emphasising the creation of autonomous spaces, whose complexity and depth have progressively increased, it stems from the rationality of fear and depoliticisation described earlier, as inherent elements of the political and constitutional project of the hegemonic political economy in Chile. [29] Consequently, to better understand the

integration of fiscal councils into the Chilean fiscal institutional framework, a brief analysis of the key constitutional and legal norms relevant to this subject will be conducted. Initially, it is asserted that multiple fiscal rules are present in the indicated legal sources. The study will focus on Law no. 20.128 concerning fiscal responsibility and Law no. 21.148 of 2019, which establishes the Autonomous Fiscal Council, as discussed in subsequent sections.

2.1. The 1980 Constitution

24 The 1980 Constitution delineates a series of regulations distributed across various articles. Article 32, no. 20, stipulates that the President must oversee the collection and investment of funds in accordance with the law, which has two primary effects: first, it enshrines the principle of legality of taxation and expenditure, regulated exclusively by law. [30] Second, it grants the Executive branch exclusive initiative in fiscal and financial matters, as well as in formulating the budget law. Additionally, it authorises the declaration of economic emergencies, which are financial reordering measures that can encompass up to 2 % of the national budget to address calamities, attacks, shocks, threats to national security, or the depletion of essential funds. [31]

25 The Constitution, as delineated in Article 65, confers upon the Executive branch the exclusive authority to introduce bills concerning fiscal, financial, and budgetary matters related to public expenditure. This mandate encompasses projects pertaining to political and administrative divisions, financial administration, taxation, the establishment or dissolution of public agencies, public debt, and fiscal incentives. [32] The power of exclusive initiative—a fundamental prerogative of the presidency within the Chilean system [33]—creates a notable asymmetry in legislative authority between the Executive and Congress. [34]

26 Article 67 delineates procedures for drafting, submitting, and approving the budget law, establishing specific rules and deadlines that restrict proposals, amendments, and discussion periods. In Chile, the President holds the exclusive authority to submit the bill three months prior to the legislative session; If Congress does not approve it within 60 days, the version submitted by the President becomes law. Congress's capacity to modify revenue provisions is limited, and

it may only decrease expenditures, excluding permanent expenditures. The President is solely responsible for estimating revenues and allocating new resources, with assistance from the Finance and DIPRES. No expenditure may be authorised without an approved funding source. In cases of resource insufficiency, the President must proportionally reduce expenditures through a formal report and approval process. This framework emphasises the technical and political functions of the Executive in maintaining macroeconomic stability while preserving parliamentary authority. Originating from the original 1980 constitution, this article embodies the principle of a balanced budget, serving as the foundation of structural balance rule. [35]

2.2 The financial administration of the State

27 The primary regulation governing the financial administration of the State is Decree Law no. 1,263 of 1975 issued by the Ministry of Finance. It is a foundational law for all administrative financial procedures, allowing flexibility through administrative norms. This provision was approved by the military dictatorship, following internal reforms to simplify the budget classifier, eliminate affected revenues, and abolish extra-budgetary accounts and deposits. The regulation centralises and technicises financial and budgetary administration within the Ministry of Finance and its technical teams, such as DIPRES, to prioritise economic growth policies, maintain macroeconomic balance, and promote a free market as a fundamental political objective. [36]

28 The law centralises and technicises the financial and budgetary administration within the Ministry of Finance and DIPRES, regulating, in seven sections, the State's financial system, the preparation and execution of the budget, the role of the Treasury Service, public debt, oversight by the Comptroller's Office, and the public sector's accounting system. Article 10 is the most relevant provision for this analysis: it assigns to the Ministry of Finance the setting of the methodology for the structural balance, which constitutes the normative basis on which the fiscal rule operates and, by extension, the mandate of the CFA.

3. Recent history of fiscal rules in Chile

29 The implementation of fiscal rules in Chile commenced in 1990, coinciding with the nation's return to democratic rule. Initially, this was a political decision enacted by the centre-left Concertación political coalition and was subsequently formalised through legal and administrative norms. The establishment of the Copper Stabilisation Fund in 1987 served as a precedent during the dictatorship and after the 1982 crisis. [37] However, it was the governments during the democratic transition that emphasised fiscal policy, grounded in sustainable revenues and expenditures, to foster economic growth, macroeconomic stability, and equitable employment. [38]

30 This strategy, inspired by ordoliberalism and third-way social democracy, has chiefly directed public decision-making in recent decades, predominantly under the political and technical leadership of the Ministry of Finance and DIPRES. [39] Mainstream economic literature has acknowledged and positively assessed Chile's macroeconomic outcomes, including both monetary and fiscal achievements. It considers Chile's experience exceptional both within the Latin American context and among OECD members. [40]

3.1. The fiscal rule of the structural balance as a political decision-making restriction

31 The economic team of President Ricardo Lagos's government adopted the structural balance fiscal rule for the 2001 budget, which served as a guiding principle for fiscal policy. They committed to maintaining a structural surplus of 1 % of GDP. This measure was innovative within Latin America and served as a precursor to its broader application across the region a decade later. [41] The structural balance fiscal rule entails aligning the evolution of permanent expenditures with the structural fiscal income. For each fiscal period, fiscal income is estimated within a context of full employment of potential GDP. When the economy overheats, the treasury accumulates savings, particularly in economies with VAT-based tax systems linked to domestic demand. If the majority of revenue is not utilised, it results in the accumulation of savings or a reduction in liabilities. During periods of economic cooling, these resources are

utilised or borrowed against to offset declines in tax revenues, thereby maintaining a stable expenditure trajectory. [42]

32 Two justifications were presented for implementing the fiscal rule: economic and conjunctural. The decision was made in the aftermath of the 1999 Asian economic crisis, considering the necessity to sustain a fiscal deficit, and following the electoral victory of a left-wing president concerned with financial stability. The Executive prioritised expectations and the credibility of the rule within a context of persistent fiscal deficit since 1999. The market accepted this deficit, supported by a structural surplus of 1 % of GDP, the actual surplus recorded between 1990 and 1998, and the reduction of public liabilities, which collectively reinforced the credibility of these policies. [43] The second group of justifications derives from adherence to political economy principles. Grounded in neoliberalism —particularly institutionalism [44] and Buchanan's conservative liberalism [45]—the arguments are as follows: First, the depoliticising and autonomous rationale, which provides certainty regarding the operation of the rule amid conflicts when reaching agreements. Second, the restrictive rationale, which channels discretionary and populist conjunctural decisions, thereby enhancing the credibility of public policy decisions. Third, the temporal inconsistency rationale, to preserve solidarity and prevent future burdens with social costs to new generations. Consequently, authorities discourage public expenditure decisions for partisan reasons during the budget cycle. Fourth, the technocratic rationale, which confines the debate to expert or technical authorities, ensuring greater impartiality in fiscal matters decisions. [46]

3.2. The fiscal rule of the structural balance as a legal norm of restriction

33 In 2006, Law no. 20.128 on fiscal responsibility was approved, which underwent swift approval in the National Congress. It is a regulation that guides the financial and budgetary management of the Executive by legalising the most significant fiscal policy decisions, the creation of two funds, the investment of resources from these funds, and the authorisation of capital contributions to the Central Bank of Chile. [47] Subsequently, through the approval of Law no. 21.683, which

promoted responsibility and transparency in the State's financial decision-making, modifications were introduced to the law under review. For the purposes of this analysis, we will develop the following ideas that explain the effects of the aforementioned law.

34 This legislation mandates that the Executive establish its fiscal policy by decree within 90 days of taking office, outlining the implications for the fiscal rule and medium-term debt. The CFA conducts a review and provides an opinion within 60 days. [48] In unforeseen circumstances, such as natural disasters or international events impacting the macroeconomy, the legislation includes provisions for "escape clauses". These clauses permit the Executive to deviate from the fiscal targets for up to two years, resulting in higher deficits and debt as a percentage of GDP attributable to external factors. This temporary mechanism requires a decree that explains the reasons and mechanisms for upholding the structural balance rule. Should the measures not be implemented within the designated timeframe, the Ministry of Finance must appear before Congress, and the CFA must confirm the Executive's non-compliance. [49]

35 The legislation currently under review includes provisions to enhance transparency and accountability regarding political decisions and technical reports related to fiscal and budgetary policies. The Ministry of Finance is mandated to dispatch copies of decrees and to submit an annual report detailing compliance with structural balance and debt obligations, thereby providing essential background information to Congress and the CFA. Furthermore, the DIPRES is required to include in its reports comprehensive details on the methodology for the balance, the attainment of specified targets, programme evaluations, and the revised fiscal plan, which should encompass projections of income, expenditure, debt, and the financial position. [50]

36 The Fiscal Responsibility Law establishes two sovereign funds: the Pension Reserve Fund (FRP) and the Economic and Social Stabilisation Fund (FEES). These funds function as stabilisers within the realm of state capitalism. [51] The FRP is designated to finance pension obligations and to apportion the financial burden borne by the State, whereas the FEES is tasked with ensuring fiscal stability through the accumulation of surpluses. Additionally, a Financial

Committee of experts provides advisory support to the Ministry of Finance on the investment strategies for these funds.

4. Recent history of fiscal councils in Chile

4.1. First stage: The Consejo Fiscal Asesor

37 The Consejo Fiscal Asesor was established by Decree no. 545 of June 2013, issued by the Ministry of Finance during Sebastián Piñera's first term in office. It was the first fiscal council, based on the specialised literature reviewed. [52] It operated between 2013 and 2019, until Law no. 21.148 was enacted, which created the CFA. [53] This council, composed of five experts in fiscal and budgetary matters appointed by the Minister of Finance, also elected its President and Vice-President. [54]

38 Its main responsibility was to support the discussion, analysis, and formulation of recommendations concerning the fiscal rule for the structural balance. [55] Additionally, the Advisory Fiscal Council served as an observer to the technical committees on GDP trends and copper prices, offered insights into the cyclical adjustment of the structural balance, and provided counsel to the Ministry of Finance on fiscal issues pertinent to its mandate.

39 The primary reasons for establishing this fiscal council were threefold: to enhance the institutional framework for calculating the fiscal rule of the structural balance, particularly as its application became increasingly complex due to the repercussions of the 2008 financial crisis; to promote greater transparency by establishing a technical and independent body responsible for estimating structural economic variables; [56] and to incorporate internationally recognized practices in fiscal governance, public-private collaboration, and meetings between the public sector and external professionals.

4.2. Second (and current) stage: The Consejo Fiscal Autónomo

40 With the approval of Law no. 21.148 of 2019, the CFA was established as an autonomous entity of legal rank; its powers and competencies, core characteristics, and the method of appointing its members are delineated. This legislation was enacted during President Sebastián Piñera's second term and was processed expeditiously through the National Congress. Subsequently, Law no. 21.683 of 2024 was enacted to promote responsibility and transparency in the State's financial management, thereby conferring additional powers on the CFA to oversee the calculation and enforcement of structural balance rule by the Executive, in both ordinary and extraordinary circumstances. In this manner, a significant portion of the principal proposal advanced by the Corbo Commission in 2011, [57] as well as elements of economic and legal scholarship, has been realised. [58]

41 The main role of the CFA is to contribute to the responsible management of the Executive's fiscal policy. [59] To achieve this objective, Article 2 of Law no. 21.148 establishes various functions and competencies, primarily focused on the control and analysis of public expenditure. Matters related to revenue and taxes are rendered invisible and are not subject to the CFA's control.

42 The CFA assesses and supervises the calculation of the cyclical adjustment of actual revenues for the current year, the budgeted amount, and the medium-term forecast, in accordance with the standards established by the Ministry of Finance. It acts as an observer in procedures to gather expert opinions on the revenues and expenditures of the Central Government, reviews the calculations, and renders its opinion. The CFA also provides observations and recommends methodological and procedural modifications for the Structural Balance. It evaluates and ensures compliance with fiscal rules, comments on deviations, and proposes mitigation measures. Furthermore, it assesses the sustainability of public finances over the medium and long term and disseminates the findings. It provides advice to the Ministry of Finance on fiscal matters, prepares reports, and distributes copies to the Finance Committees. To fulfil its responsibilities, the CFA may commission

studies and consultancy services and propose members of the Copper Reference Price and Trend GDP Committees to the Minister of Finance. Finally, it evaluates and monitors indicator projections that guide fiscal rules and the management of the Treasury's financial assets for the year, the annual budget, and the medium-term forecast.

43 Based on the comparison between the CFA and its predecessor, the Consejo Fiscal Asesor, we can observe an expansion of the CFA's powers, in line with the Corbo Commission's proposals at the time. [60] Furthermore, this article incorporates the recommendations and principles formulated by the OECD regarding the institutional structure of such fiscal councils, within the nomenclature of IFIs, as indicated in its published reports on the subject. Additionally, this law complies with the OECD principles developed for fiscal councils. [61]

44 The CFA functions as an autonomous entity endowed with legal personality and possesses its own assets. It maintains a relationship with the Executive branch through the Ministry of Finance. [62] Established under legal autonomy, it is comparable to a Fourth Branch in the distribution of powers and responsibilities, aligning with contemporary trends to effectively manage its duties within a political framework at both national and supranational levels. [63] This subject is a point of discussion in Chilean and comparative law, particularly regarding independent regulatory agencies in Common Law systems and public-interest services governed by European Union Law. [64] The CFA is established as a technical and advisory council composed of five members possessing expertise in fiscal and budgetary matters, each serving a renewable five-year term. [65] The President, appointed by the President of the Republic, serves for three years or for the duration of their remaining term and is eligible for re-election. The Vice-President is selected from among the council members. [66] According to legal provisions, members of the CFA are appointed by the President of the Republic through a decree issued by the Ministry of Finance, subject to approval by the Senate via a two-thirds majority in a specially convened session. [67] This procedure is similarly employed for appointments to the Electoral Service and the Transparency Council. Appointments are mandated to ensure gender parity.

45 Moreover, this legislation delineates responsibilities for the CFA, including the preparation of reports and the upholding of transparency and accountability, in addition to those already outlined in Article 2. Additionally, it mandates the submission of biannual compliance reports to the Congressional Mixed Budget Committee, which initiates budget discussions and supervises the Executive within Congress. [68] The CFA is also authorised to request assistance from state agencies and to solicit necessary information and documents for its review. [69] Ultimately, all reports and information generated by the CFA must be published, excluding those deemed secret or confidential in accordance with Law no. 20.285. [70]

4.3. Complementary advisory technical committees

46 Since 2002, subsequent to the approval of the fiscal rule in 2001, the Ministry of Finance established two advisory councils: the Tendential Non-Mining GDP Committee and the Copper Reference Price Committee. At present, their operation, convocations, and methodology are governed by Article 19 of Decree no. 346 issued on 29 September 2023.

47 The initial committee serves as an advisory body that convenes and consults with independent macroeconomic specialists outside the Ministry of Finance concerning their projections of economic growth, excluding the mining variable, referred to as tendential non-mining GDP calculations. These projections encompass estimates of non-mining gross domestic product, the unemployment rate, and inflation, all on a quarterly basis and seasonally adjusted. The second advisory committee engages independent experts from the Budget Directorate to discuss the calculation of the Reference Price, also known as the Long-Term Copper Price, which involves estimates of the average annual copper price derived from the London Metal Exchange for the forthcoming ten years. The findings of this committee are considered by the Executive in the short-term computation of the structural balance, in the assessment of structural revenues, in the formulation of the Budget Law, and in projecting medium-term fiscal revenues within a four-year multi-year budget framework. [71] Members of these committees must be

registered in a public register and have experience in economics, finance, mining, or public policy. [72]

48 Regarding the functioning of both committees, the CFA participates in meetings to review their proposals, offers comments on requests from the Ministry of Finance regarding consultations on significant modifications to the parameters and their implementation, and proposes or evaluates changes to the committees' composition. [73]

49 This trajectory is not a neutral sequence of institutional reforms. Read through the analytical methodology developed in Section II, it reveals a coherent pattern: each stage in the evolution of Chilean fiscal rules and fiscal councils has progressively narrowed the space for democratic deliberation while consolidating technocratic autonomy. The following section applies the triple movement directly to this evidence to substantiate the article's central hypothesis.

IV. The triple movement in action: critical conclusions on the role of the CFA in the Chilean fiscal framework

1. The CFA as a knight of a restrictive Chilean fiscal policy decision-making

50 The initial movement examines the rationale behind the existence of the CFA within the Chilean institutional framework and its contextual background. It traces a continuum from Heller in the Weimar Republic, through the Unidad Popular, the dictatorship, and the democratic transition in Chile, to the post-2008 European integration, regarded as significant milestones of authoritarian (neo)liberalism.

51 The rationale for establishing and operating fiscal councils stems from a liberal-conservative perspective in political economy and can be distilled into two primary reasons. Firstly, there is mistrust of irrational democratic decision-making processes that could adversely affect the market, rooted in concerns about fiscal irresponsibility or

in positive experiences in which fiscal rules and councils have resulted in favourable macroeconomic outcomes. In the case of Chile, both of these factors are combined. Secondly, it was deemed necessary to establish an autonomous, technically proficient, and independent body to oversee the government's adherence to fiscal rules, given the current challenges and complexities of calculating and monitoring them in the present economic environment.

52 The implications of the Chilean case are exemplified by the fact that initiatives solely related to legislation on public expenditure or to the promotion of the budget law (Articles 65 and 67 of the Constitution) operate within a technical framework whose legitimacy is contingent upon the CFA's evaluation, as previously elucidated. The Executive retains formal authority; however, its exercise is conditioned by the CFA. In a political system where fiscal credibility before international financial markets is of paramount importance, this reputational penalty influences the political feasibility of the Executive's decisions —effects that no formal norm could engender with such efficacy or at such minimal political cost to the designers. Consequently, the CFA functions as an internal institutional mechanism of the State, serving as a true knight that safeguards the implementation of an inherently restrictive fiscal policy, under the guise of a soft power wielded by authoritarian (neo)liberalism.

2. The constitutive nature of fiscal regulation in Chile and its objectives

53 The second segment involved comprehending the role of law in the normative construction of various sectors of the economy and their associated economic-political effects, specifically, in the context of fiscal policy. An examination of fiscal regulations facilitated understanding of the primary characteristics of the CFA's legal functioning as an institutional mechanism.

54 The primary objective of this movement is supported and validated by legal norms that formalise fiscal policy, ranging from the 1980 Constitution and the dictatorship-era decree-law on financial administration to the recent 2024 reforms, which have reinforced the technocratic oversight of the CFA. Moreover, there has been a shift from discretionary restrictions to legally mandated obligations

governing the Executive branch's fiscal decision-making, aimed at maintaining macroeconomic stability. As a secondary objective, neoliberal criteria have been identified in fiscal regulations and endorsed by international organisations. Elements such as autonomy, efficiency, neutrality, technicality, and independence are implicitly embedded within these regulations. Three illustrative examples are noteworthy: firstly, in terms of power and efficiency, public expenditure is subject to continuous evaluation by the CFA, whereas income and taxation issues remain outside its jurisdiction; secondly, regarding neutrality and equality, an asymmetry exists between expenditure and income that influences the distributive decisions of the Executive; and thirdly, in the context of depoliticization and democracy, Congress receives information from the CFA but lacks mechanisms to interrogate or question it, with Article 2 serving as the legal reference for this depoliticization. The third objective permits the argument that political practices have directly contributed to the erosion of democratically elected bodies in Chile, specifically the Executive and Congress, thereby favouring the strengthening of the CFA as a substantive constitutional entity. While alternatives to the fiscal rule of maintaining a structural balance are not explicitly prohibited by law, they are implicitly disfavoured due to the technical and reputational costs of maintaining them, given the CFA's analyses and the epistemic community's backing. These dynamics influence the articulation of the CFA as a central institution within Chile's hegemonic neoliberal political economy; by prioritising fiscal responsibility as a key political objective, it substantially impacts the organisation of social relations within the country.

The earlier objectives of the second movement underpin the assertion that a process of mutation or material constitutional change is underway. The daily operations of the powers' responsibilities and competences have been modified as a result of reforms implemented to support fiscal regulations and councils in Chile, through the previously examined infraconstitutional regulations.

3. The effective democratic deficit in the conduct of fiscal policy in Chile

56 To conclude the final analysis, the aim was to identify a demonstrable normative effect resulting from the implementation of the fiscal rules and fiscal councils in Chile. Additionally, whether this effect can be considered a situational occurrence or if it is more of a pattern or desired institutional design.

57 The answer to the first question is affirmative. There is a decline in democratic deliberation and decision-making on fiscal matters. The Executive has less discretionary fiscal power, and Congress does not adequately oversee fiscal and budgetary aspects. It externalises this function to the CFA, which possesses the neutrality, independence, and technical legitimacy necessary to supervise fiscal rules and, indirectly, public policies. The two-thirds quorum of the Senate to approve the appointment of the counsellors reinforces this externalisation, with broad political consensus, both presidential and senatorial.

58 The above is exemplified through three interconnected instances. Firstly, the CFA informs Congress; however, there is no mechanism for questioning, methodological scrutiny, or effective accountability before the Legislative. The technical body reports rather than responds, thereby inverting the logic of democratic oversight. Secondly, the approval of the fiscal rule in 2001 and 2006, along with the establishment of the fiscal council in 2013 and 2019, demonstrates a pattern of progressive institutionalisation that enhances technical autonomy while diminishing democratic deliberation. This observation is notable, as in the European context, this phenomenon manifests as a rupture; conversely, in the Chilean case, it functions as a continuous process from the military dictatorship through to the democratic transition. In both instances, international organisations have reinforced these fiscal norms. Thirdly, due to their rapid approval, Laws no. 20.128 and no. 21.148 did not undergo substantive deliberation within Congress, indicating that the democratic deficit was present prior to their enactment.

59 Finally, these aspects address the second question posed. The democratic deficit stems from a longstanding institutional framework

that has evolved from a centralised and representative government, whose objective was the common good, towards a fragmented, polycentric governance model, as outlined by Christodoulidis, in which technical actors participate indirectly in fiscal decision-making. This transition is accompanied by institutional fragmentation, including interactions among collegiate committees such as the CFA, the Non-Mining GDP Committee, and the Copper Price Committee. Consequently, the Executive and Congress are marginalised, particularly when the political aim is to implement redistributive policies related to income and public expenditure.

60 Hence, the initial movement elucidates the rationale for the CFA's existence—that economic liberalism necessitates custodians to regulate redistributive pressures. The second elucidates its legal operation—law forms the market order by embedding a neoliberal political economy within the State's normative framework in tangible ways. The third demonstrates its verifiable constitutional impact—a progressive decline in effective democratic deliberation on fundamental fiscal decisions, absent any formal constitutional norm that either endorses or prohibits such deliberation.

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ABSTRACTS

English

This article analyses Chile's Consejo Fiscal Autónomo (CFA) through a Law and Political Economy (LPE) framework, arguing that it functions as an institutional instrument of authoritarian (neo)liberal ideology. Rooted in principles of autonomy, technocratic neutrality, and depoliticisation, the CFA embeds a neoliberal political economy within Chile's material constitution, thereby operating as a structural constraint on redistributive fiscal policy decisions. Through three analytical movements—authoritarian (neo)liberalism, the constitutive role of law in economic organisation, and democratic deficit—the article traces the evolution and progression of Chilean fiscal norms from the military dictatorship to the present day. It concludes that fiscal rules and the CFA constitute a symbiotic institutional arrangement that hollows out democratic deliberation in representative bodies, consolidating a material constitutional transformation that forecloses alternative approaches to fiscal policymaking.

Français

Cet article analyse le *Consejo Fiscal Autónomo* (CFA) chilien à travers le prisme du droit et de l'économie politique, en soutenant qu'il fonctionne comme un instrument institutionnel de l'idéologie (néo)libérale autoritaire. Le CFA intègre une économie politique néolibérale au sein de la constitution matérielle du Chili, agissant ainsi comme une contrainte structurelle sur les décisions de politique budgétaire redistributive de l'Exécutif. À travers trois axes d'analyse – le (néo)libéralisme autoritaire, le rôle constitutif du droit dans l'organisation économique et le déficit démocratique –, l'article retrace

l'évolution et la progression des normes budgétaires chiliennes depuis la dictature militaire jusqu'à nos jours. Il conclut que les règles budgétaires et le CFA constituent un dispositif institutionnel symbiotique qui vide de sa substance la délibération démocratique au sein des organes représentatifs.

INDEX

Mots-clés
(néo)libéralisme autoritaire, politique budgétaire, conseils budgétaires, droit et économie politique, dépolitisation

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authoritarian (neo)liberalism, fiscal policy, fiscal councils, Law and Political Economy, depoliticisation

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