

## Virtues and Vices of Semi-presidential Government\*

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### ABSTRACT

Constitutional engineering has to consider the history, societal conditions, political culture, and the intended prospects, especially for a political system that is in the process of transformation from autocracy to democracy. Recently quite a few countries have resorted to a regime termed semi-presidentialism, differing from parliamentarism and presidentialism (see the article by Ernst Veser).

It is the task of constitutional engineers to avoid two obstacles: (1) deadlock between the legislative and the executive branches, and (2) dictatorship through seizure of power by one person. To overcome deadlocks, the institutionalization of a "strong" president seems to be the answer. But too strong a president, especially if he is a charismatic personality, could be tempted to seize the absolute power—bonapartism or cesarism are the historical warnings.

Strength depends on how powers are defined in the constitution. It emerges from the combination of powers, the most important of which are the formation and the dismissal of the government as well as the dissolution of parliament. The party system will determine if the president is able to wield such powers according to his wishes. In a semi-

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presidential regime cohabitation may occur: parliamentary majority of a party, backing the prime minister, in opposition to the “president’s party”. Curtailing presidential prerogatives means, in the first place, not to extend them to those fields that can better be executed by the government of the prime-minister (and parliament). If, however, it seems necessary to endow the president with emergency powers they can be made dependent on the countersignature of the prime minister or liable to rejection by parliament. Nearly all “semi-presidents” are considered to have an important role in foreign affairs and in defense, and if so, they must be able to have a say in the staffing.

**Key Words:** Semi-presidentialism, regime types, Constitutional engineering, presidential powers

## 1. Semi-Presidential Government and Constitution Drafting

### 1.1 Some Problems of Drafting New Constitutions

Discussing a form of government<sup>1</sup> seems to be a technical matter. How is the political system expected to work? Yet I think that “Virtues and Vices” can direct attention to the fact that constitutions cannot be built in a vacuum, but have to take into consideration the historical, societal and cultural conditions of the respective society. This is an ethical problem since it means finding the “Good” and “Bad” for the people.<sup>2</sup> Only those individuals, empowered to draft the constitution, can find the appropriate decision. But to take this decision, the technical questions have to be answered. This is what this paper attempts to do: Explaining in detail the conditions under which a semi-presidential regime can—hopefully—guarantee a working government.

Thus it has to be cautioned that to take over a whole body of a certain legal domain like, for example, the constitution of another successful political system—although sometimes realized—will certainly not solve the problems of the country under discussion. There are probably no two coun-

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1 Or, preferably, to use the more exact term ‘regime’, according to Duhamel (1993: 653).

2 This idea is much better expressed by Yves Mény in his article “L’Etat, c’est nous”, in *Le Monde* of May 7, 1997: “Only some wise precautions can, if tradition or virtue are not sufficient, guarantee the difference between a real democratic republic and another of banana type. The ethics of the state is the issue (my translation).”

tries in the world that have identical historical, societal and cultural conditions.

This paper deals with the problems of semi-presidential regimes, because this form of government is widely applied in constitution making of the “Third Wave” (Huntington 1993). The concept is by no means a clear one. Although its designer, Maurice Duverger, has attempted a thorough description of—originally—seven countries (the ‘*pleiade*’) that had institutionalized it by 1978, his “definition” is somewhat vague or at least ambiguous (Duverger 1978: 28f). This starts with his first criterion, the election of the president by universal suffrage. As he included Finland in his ‘*pleiade*’ where at that time the president was elected by an electoral college, he wanted also to include indirect election by the people. The second criterion, “important powers” of the president, in spite of some indications (Duverger 1978: 22), is altogether mysterious: He avoids even a description of what could be meant. To have an operational definition, these powers have to be specified in a very meticulous manner. His last characteristic, the dependence of a prime minister on the confidence of parliament needs, to be sure, some differentiated treatment.

As this paper deals with the various features of semi-presidential regimes in the process of constitution making, I do not have to enter into the problems of the application of the constitution in reality (*Verfassungswirklichkeit*)—a task a political scientist is supposed to occupy himself with. This cannot be achieved in a paper of the type presented here, that has to cover the different aspects of most of the existing semi-presidential regimes in the present world.<sup>3</sup> This is why the exposition is limited to the normative rules of the respective constitutions, thus leaving aside their consequences in practice, unless some important additional information is available. Possible consequences of constitutional provisions will have to be considered. I suspect that in many of the newly democratizing countries, particularly in post-communist Central Asia, former Yugoslavia, and in Africa, the provisions are not applied to the letter of the constitution.

Some discriminations have to be made at the beginning. First, I can-

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3 At present, the countries listed in the Annex can, at first sight, be assigned to the concept of semi-presidential regime: Argentina is not mentioned since the information available to me is not sufficient. For the sake of brevity, the constitutional provisions will be cited as follows: abbreviation of the state, article (figure), and paragraph (Roman figure), e. g., RC28iii.

not deal with issues relating to states with two chambers as this would exceed the limited space of this paper. Second, since in my understanding the outstanding essential of semi-presidentialism is the configuration of two incumbents of different legitimation who share the executive power, allowing under certain circumstance “cohabitation,” some regimes that do not fit the definition have to be eliminated: constitutions that make the (popularly elected) president head of the executive (AZ99, BY95, NAM27i, CL30i, TJ64, UZ89) are ruled out.<sup>4</sup> As the dependence of the prime minister on the confidence of parliament is another essential element of the definition, premiers who are not obliged to resign upon a vote of no-confidence or presidents who are not obliged to dismiss them in this case, also have to be removed from the list; the examples are CV214ii and RK63i.<sup>5</sup> Countries where the vote of no-confidence can work only under severe restrictions such as KZ270vi, KI71v, RUS117iii, are included although they stand at the margin of semi-presidentialism. In SP86xvii, the vote of no-confidence is laid down; but there is no clause that in case it has been passed the government is obliged to resign or be dismissed. São Tomé e Príncipe is nevertheless included.

## 1.2 Advantages and Disadvantages Discussed

The assessment of the advantages and disadvantages of the semi-presidential regime as a model for constitutional engineering is quite controversial. Apart from the fact that the concept of semi-presidentialism is practically unknown in Germany (Bahro & Vesper 1995: 471ff.), some students of the Weimar Republic have deemed the institution of the so-called “strong” president as a cause of its breakdown (Bracher 1964a: 40f., 1964b: 111f.; Loewenstein 1965: 24). Bracher (1985: 18b; 1964b: 111f.) has stressed the “structural deficiency” of the dualism of head of state and parliament, as it prevented the consistent functioning of the parliamentary system, opening the way for the presidential alternative. The parties in parliament were thus released from their responsibility to find solutions in times of

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4 Doubts may be raised on the formulation of the constitution of Niger. NI53 states that the president is the head of the administration which indicates that he is in charge of the execution of policy; but NI60 clearly lays down the position of the prime minister as head of the government.

5 There are doubts, if this applies also in the case of RC57ii, after the prime minister has offered his resignation to the president.

crisis. Indeed, the existence of a president, endowed with the duty to form governments, could induce the parties to rely on him, especially in strongly fractionalized parliaments, instead of building coalitions with compromises which might be disapproved of by their voters.

In general, the semi-presidential construction is rejected because it is liable to cause deadlock in government (Gläßner 1994:170). Rüb (1994: 286f.) ironically stresses the “advantage” that semi-presidentialism in post-communist countries links up with authoritarian patterns and the hope for a “strong” state. He says that so-called semi-presidentialism’s flexibility is considered an advantage in transitional post-communist countries. He sets us thinking, then, that in this regime, as the Weimar Republic has taught us, the president is unable to compensate for the underdevelopment of the party system. Linz (1991: 95), too, points to the fate of the Weimar Republic, stressing the danger of this type of government when the fragmentation and polarization, combined with the powers of the president, could lead to the impasse in which the president uses his “reserve powers.” This is exactly the problem where the charismatic leader, as suggested by Max Weber in 1918 for the future *Reichspräsident*, may show his “Janus head,” that is, when he changes into a dictator.<sup>6</sup>

On the other hand, some scholars are enthusiastic about semi-presidentialism as a form of government because it is supposed to offer a very flexible configuration for solutions in political crises (Massari 1996: 17, 29, 45; Pasquino 1996: 145). Lamounier (1991: 57f.), who though in favor of parliamentarism yet thinks that the longstanding presidential tradition of his country precludes a full change, has put forward this regime for Brazil. All in all, however, damnation as well as praise are stated in rather general terms without indicating what really makes this institution work or break down.

Shugart and Carey (1992: 23) accept the concept of semi-presidentialism, but prefer to call it “premier-presidential.” They rule out regimes in which the president appoints and dismisses ministers and can dissolve parliament and/or has legislative powers (1992: 24). In their arguments, they emphasize the advantages of “premier-presidential” regimes in opposition to presidentialism (1992: 49ff.), as fixed terms for elections will be avoided, there is less support for the president in his parliamentary majority, the dual

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6 Barbera (1996). Cf. also Bahro (1995) and as concerns the reception of Max Weber’s notion of the charismatic leader in China, Wang (1997: 163-183).

legitimacies can easier avoid deadlock in legislation, there are mutual checks and the president may act as an arbiter. On the other hand, they do not disregard the “perils of cohabitation” (1992: 56ff.).

According to Duverger (1978: 130), the semi-president elected for a fixed term, has a significant advantage compared with a government elected by parliament. He is alone and stable though only for the term he is elected. This makes him an equal with the U.S.-type president. But as his prime minister depends on the parties in parliament, he can only be considered capable of acting independently in a limited way; he needs as a rule the government, depending on parliament.

Sartori (1994: 136f.) makes the strongest case for semi-presidentialism. Semipresidentialism, in his view, can better cope with split majorities and is far more amenable to constitutional engineering than parliamentarism. This is why he strongly recommends semi-presidentialism. He cautions, though, against the inauguration of this regime with a minority president or even with a president without party backing.

### 1.3 Presidentialism, Parliamentarism, and Semi-Presidentialism

Quite often, the semi-president is labelled the “neutral power” (*pouvoir neutre*) or he—“above the parties”, as all semi-presidents tend to perceive themselves<sup>7</sup>—characterizes himself as such. This suggests that he can act as an “arbiter” *vis-à-vis* prime minister and parliament. Such a denomination can never crop up in either presidential or parliamentary regimes: the president in a presidential regime can only be opposite to the parliamentary majority, unless it is his; and in parliamentarism, the (indirectly elected) president will dodge conflict with any majority. As semi-presidents call themselves “representative of the whole people,” “safeguard of the constitution,” and such like, they may carry this bias with them (Junker 1963: 30). But this image of neutrality, very close to the metaphor of a “balance” in the political system, must be called into question *a priori*, that is, independent of empirical findings. If a government, by definition, depends on parliament, the president cannot play a reconciling role simply because there is no need for reconciliation between a government supported by (the majority of) parliament and parliament itself. If parliament no longer supports the government, the semi-president may at best side with the prime minister.

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<sup>7</sup> Cf., for example, the former Portuguese President Mário Soares (Soares & Resendes 1995). Also Linz (1991: 69).

In this case he would definitely take the part of one party, contradict the majority principle and put himself over parliament which is supposed to reflect the will of the people. He is in a different situation, and then may act as an arbiter, when the formation of government is difficult.

Duverger has rightly pointed out that in a democracy the prime minister (and party leader) is the strongest leading personality in the classical parliamentary system (1974: 119f.). This is valid without any reservation for two-party systems like, for example, Britain's but also—with reservations—under the rule of stable coalitions with two-and-a-half party systems, as in the Federal Republic of Germany and Austria. In these cases, the government does not only have the whole executive at its disposal but also all legislative powers by means of party discipline.

In contrast to the semi-president, the incumbent of the top position in the presidential regime of the American type, the chief of the executive, is politically limited in his action, although in full power of the administration: he is restrained in his influence upon legislation. The fate of a bill in both houses of Congress is beyond his direct influence, and he can only try to implement his objectives using his personal authority towards senators and congressmen—easier when the majority is of his own party, more difficult when this is not the case.

What is, in comparison, the position of the semi-president? The difference between the semi-president and the president of U.S.-type is evident: he is not the top executive. He can only have effect on the executive body through the government—only if he has a majority in parliament. Under the same condition he can indirectly influence legislation. If the semi-president does not have such a majority or even if he is opposed by parliament as in cohabitation, he can do neither.

Semi-presidential regimes are said to be more inclined to tolerate minority governments than parliamentary ones.<sup>8</sup> In parliamentarism, a minority government can be formed only if the prime minister can be elected by simple majority. But then it is evident from the beginning that this will be a transitional solution. In semi-presidentialism, the government continues to be capable of acting in the executive sphere as long as parliament does not pass a vote of no-confidence. Even a caretaker government

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8 Duverger (1978: 30), in this respect emphasizes the "négative confidence" which is practiced by all systems named by him, with the exception of Ireland. Cf. also below 3.1.

can act, after such a vote with the support of the semi-president, in the sphere of the executive as long as the president does not appoint a new government.

The establishment of presidential governments, that is, governments in a semi-presidential system appointed by the semi-president without the explicit backing of parliament, is also a special trait of semi-presidentialism. These governments deviate from the principle of responsibility of government *vis-à-vis* parliament. Yet they can only live as long as they are tolerated by parliament (as proven by the vote of no-confidence against the Franz von Papen government in the Weimar Republic 1932, or the Mota Pinto government in Portugal 1978-79).

The president, the chief of the government and his cabinet, the parties (in parliament) and their leaders do not always go in the same direction. Independent of formally regulated procedures for mutual communication, they have to adapt themselves to varying situations and to react to them in an adequate manner, that is, also differently. This is especially true when the parliamentary parties are highly fractionalized or even polarized. In such situations the role of the semi-president may move close to that of a dictator, as happened at the end of the Weimar Republic. In semi-presidential regimes, the relationship of the president and the prime minister depends on their political backing. While the president can refer to his legitimation by the people, the premier has to rely on the majority party/parties in parliament. If the president states the objectives of policy, particularly when he has a majority in parliament, and the prime minister has to execute them, any failure of their implementation falls on the latter. Under specific conditions, the prime-minister can be used by the president as a scapegoat (Suleiman 1980: 121, 133). If, on the other hand, the parties in parliament are closing ranks in their policies, only a symbolic role is left for the semi-president, unless he wants to become a disturbing factor.

In states whose constitutions provide for the institution of a vice-president (RC+2i, B94) the design of the position is important. Semi-presidential regimes may adopt the American model according to which the vice-president is presented by the candidate for the presidency as his running mate. The latter will then tend to take somebody who represents a different line within his own party to enhance his own chances in the final voting.<sup>9</sup> The vice-president, though, may be elected independently of the

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9 Cf. insofar for USA Lowi (1985: 150).



president, as was the case in Brazil according to the Constitution of 1946.<sup>10</sup> In states with two-party systems a vice-president could even belong to another party when he is the running mate of the candidate for presidency to later cover parliamentary support. Such a construction has not been introduced in semi-presidential regimes so far. The political position of the vice-president is determined by functions given to him either by the constitution or—corresponding to the American model—by the president. But as a rule, these can be only supplementary functions for the president. The main function of the vice-president remains to take the place of the president in case of his premature drop out (John F. Kennedy—Lyndon B. Johnson; Fernando Collor—Itamar Franco).

The succession problem of the president can be settled in various ways. Again, hardly a difference can be perceived between the semi-president and the president of the American type and the one elected by parliament. An unambiguous succession will always exist when there is a vice-president. Otherwise there is only the election of a new president. In this way, for the transitional period a “president-free” state of affairs is being accepted in which a deputy—without political powers—exercises the formal competences of the president.

#### **1.4 Elections and Their Effects**

In principle, the effects of elections in presidential and semi-presidential systems do not differ: to gain “all the power” both elections have to be won. This is an important difference from the parliamentary system where only the legislative elections count. Yet the semi-president, by definition, can never win all the power as his rule over the executive depends on the cooperation of the prime minister and his cabinet—in contrast to the U.S.-president. Semi-presidential regimes will therefore work on the same political lines only when the presidential<sup>11</sup> and the parliamentary majorities coincide. If the semi-president in this case is the recognized head of the majority party in parliament, he will be an “absolute monarch” and reduce the prime minister to chief of staff (Duverger 1978:189)—a position, the

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10 Cf. art. 81 of the Constitution of Brazil of September 19, 1946, *Constituições do Brasil* (de 1824, 1891, 1934, 1937, 1946, e 1967 e as suas alterações); Senado Federal, *Subsecretaria das Edições Técnicas*, vol. 1, Brasília 1986.

11 The “presidential majority” is a fictitious one, that is, the coincidence of majorities in presidential elections and in parliament.

U.S.-president can never attain. Provided a uniform effective policy is the objective, this solution will be preferred. It implies, on the other hand, the loss of checks and balances.

If an objective of constitution-making is to evade deadlock between the executive and the legislature, then "cohabitation" should be avoided. How can this be done? The best way is to have a two-party, or at least a two-and-a-half-party system. But in periods of transition this situation is rarely seen (see 2). The second best way is to create such a system. This can be attempted by introducing a plurality electoral system which is liable to establish solid majorities in parliament. Notwithstanding the fact that it is not quite feasible to do this by constitution and not by ordinary law, it is very doubtful if it can be done in polarized societies (Sartori 1994: 69). Thus the next step, maintaining proportional representation, could be to "bipolarize" the party system by making the parties join in presidential elections. If a greater party wants to improve the opportunity for its candidate, it has to unite with one or more other parties in support of him. In a run-off election, where only the two candidates who have won the most votes in the first ballot, parties must coalesce! This, at least for the presidential elections, makes for a temporary coalition which may, perhaps by transitional agreement, lead over to coalition in parliament (Bartolini 1984: 242f.). Duhamel (1993: 567f.) agrees, but stresses the importance of plural elections. This can be observed, for example, in Portugal after the legislative elections of October 6, 1991, that have transferred its political system from an, at least, strongly fractionized, if not partly polarized multiparty system practically into a bipolar two-party system (Sartori 1966: 138f.).

Such coalitions for the election of the president will have repercussions on government and parliament. On the one hand, in the campaign the president makes himself dependent on the parties which have backed him. This can go so far as to result in "election capitulations" like that of the Portuguese President Ramalho Eance in summer of 1982. He had to promise to the Partido Socialista to resign from his post of Chief of the General Staff of the Armed Forces to gain its support for his second candidacy. On the other hand, parties back not only the president but also necessarily part of his program. Such a program has to consider the interest of the parties and their voters if the president does not prefer to promote himself with his personality. Another consequence of party coalitions for presidential elections is observed by Cruz (1994: 254; 264), namely the "presidentialization" of the parties. This means that the parties are being streamlined toward the

president or presidential candidate. If the president is a leading person, his election may cause internal conflicts and he may also interfere in party affairs. This is what Duhamel (1993: 143) meant when he said that presidential elections restructure and destroy parties.

Lawmaking on electoral systems may not be the cocksure solution as there is no guaranty that parties and voters behave as the lawmakers would like them to. The next attempt could be to, at least, synchronize presidential and legislative elections. In their impressive and convincing exposition on the temporal correspondence of these elections, Shugart & Carey (1992: 237ff.) investigated the cycles of presidential and legislative elections: distinguishing concurrent from nonconcurrent electoral cycles. In the former, the coincidence of party affiliation of the president and majority in parliament is likely, unless the presidential candidate is an independent.<sup>12</sup> Concurrent elections are only conceivable if president and parliament have fixed and temporarily identical terms. This can only be achieved by constitutional norms if they provide for a deputy of the president, namely a vice-president as in BG94 and RC+2i, and a deputy of the deputy on the one hand, and exclusion of pre-term dissolution of parliament, that is, members who drop out will be replaced, on the other.

As far as non-concurrent elections are concerned, they make further distinctions (1992: 242ff.):

- \* "Honeymoon elections," that is, elections that occur within one year within the president's inauguration.
- \* "Counterhoneymoon elections," that is, elections that occur within the year before the presidential elections.
- \* "Midterm elections," that is, any election that does not occur within a year before a presidential election or within a year after a new president has taken office.
- \* "Mixed cycle elections," that is, the terms of elections are not synchronized so that some presidents experience honeymoon elections while others do not.

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12 Although in the era of television the candidacy of an outsider is no exception, as Fernando Collor in Brazil, Ross Perrot in the USA, Tymiąski in Poland, the chance of his victory in semi-presidential regimes is meager. To avoid outsiders, the proposals for the candidates could be restricted to the political parties (AG601), but this may be criticized as being undemocratic.

The differing cycles show differing results. While honeymoon elections tend to be beneficial for the largest party or coalition from the presidential election, counterhoneymoon elections will be quasi-parliamentarist (Shugart & Carey 1992: 265), as the preferences expressed in the legislative elections will be an asset for the parties in parliament. Midterm elections, on the other hand, are liable to weaken the impact of presidential elections, and likely to induce cohabitation.

No possibility exists to fix rules in the constitution that guarantee the intended election cycle. A president who is in full power to dissolve parliament without any counteraction (AR55iii, CV68ai (1), FIN+20i, F12), can attempt to have honeymoon elections. Constitutions that provide against the dissolution of parliament within a certain time after the election of the president (see below 3.3), even try to prevent the president to find an own majority in parliament. Thus if the framers want to avoid cohabitation, they must authorize the president to dismiss the government and to form a new one according to his choice and even to dissolve parliament at his will (Pasquino 1996: 118f.).

The mode of election is of exceptional significance for the legitimation of the semi-president in his relation to the party system and the execution of his duties. Within a two-party system the president can be elected in a single ballot. This could also be achieved in a two-and-a-half party system, as in Austria. In multi-party systems which are abundant in countries with semi-presidential regimes, the situation is fundamentally different. If there were only one ballot (as SP74i) it has to be expected that the president would only be elected with a—possibly very slight—majority. This would not only reduce the legitimation of the president but would also put him in clear connection with the party that has backed him in the campaign. If this is to be avoided, a second ballot has to be introduced in which either a run-off between the two candidates with the highest number of votes in the first ballot will take place or relative majority decides—supposing the parties are now willing and capable for arrangements, even including new candidates as in Weimar (and as is possible in Austria [A60ii]).

The constitutions of semi-presidential regimes have different patterns for the election of the president. Some examples are mentioned:

- \* The terms of office of a popularly elected president vary between four (RC+2vi, RUS81i), five (DZ74i, AG59, C61, BG93i, GB66, HR95i, MK80, PL127ii, P131i, SP75i), six (A60v) and seven (F6i, W43i) years.

In SP74 the simple majority seems to be sufficient.

- \* Double ballot with run-off elections is the rule: AG57ii, BG93iv, C66iii, GB64ii, PL127v. In W, new candidates could be introduced for the second ballot; A60ii allows for the introduction of a new candidate by one of the two groups whose candidate has won the highest number of votes in the first ballot.
- \* An unlimited reelection is mostly excluded because a concentration of power is feared as a consequence of longer incumbency. A second reelection—either in general or in direct succession—is inadmissible (DZ74ii, BG95i, C61iii, GB66ii, MK80ii, P1i1, ST75iii, SLO103i, RUS81iii); under two constitutions (FIN, W43i) there are no limits as regards reelection.
- \* For nearly all presidents elected by the people, a compulsory termination of office is determined in the form of impeachment or accusation of the president (AG65, BG97i[1], HR105, MG35ii, RC+2ix, x, RUS93, SLO109). An exception seems to be Algeria. In any case, even if the party affiliations of president and parliament differ, parliament will be cautious in filing a charge and will only resort to impeachment in extreme cases (Watergate scandal; Collor-corruption).

## 2. The Function of the Semi-presidential Regime in Periods of Transition

Often the necessity to have a strong executive head is emphasized as one reason for introducing semi-presidentialism. In times of transition from autocratic to democratic rule, this argument seems to be convincing. As a rule, new or newly democratizing political systems resort to a mixture of parliamentary and presidential regimes. Duverger himself has purport-ed that the fathers of the Weimar Constitution had exactly this motive (1978: 71). Recently this reason is quoted in the former Soviet Republics in Middle Asia.<sup>13</sup> The real content of this expectation however is subject to doubt. Already at the beginning of the Weimar Republic, Friedrich Ebert and Philipp Scheidemann disagreed on which, between the positions of

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13 Cf. e. g., the statement of the meanwhile dismissed Georgian President Zviad Gamsa-churdia: "Moj ideal—General de Goll", Svobodnaya Gruzija July 2, 1991.

the Reichspräsident or that of the Reichskanzler, were more important.<sup>14</sup>

Obviously, 'semi-presidentialism' is being institutionalized in processes of basic transformations from authoritarian or totalitarian regimes to democracies when party structures are nonexistent or weak. This can already be ascertained for Duverger's original seven semi-presidentialisms that have been introduced in times of revolution, after secession, or in times of crisis. The observation that semi-presidential government is a form of government, suited for political systems in transition, seems even more pertinent for the new or newly democratizing states in recent years. Duverger himself believes that the semi-presidential configuration has proved its adaptability in the transition from dictatorship toward democracy (1993: If.), but points equally to the fact that the economically higher developed post-communist countries Hungary and Czechoslovakia have rather institutionalized parliamentary regimes. In some cases, the constitution of other states that seem to convey a democratic air, can be adopted by countries that have no democratic experience at all, for example, Russia and Romania.

Transitions in general seem to be determined by the fact that no single political institution will be created that can completely dominate the political system. Rather, a diversified arrangement of checks, balances and flexible mechanisms helps to adapt the participation of the actors to the process of transformation. Semi-presidential government may offer just such prerequisites. The popular election of the president in like circumstances may be of salient weight as the reconstruction of the belief in the legitimacy of the new order could be decisive for the transition. On the other hand, in times of transitions from autocratic toward democratic government the party system, as a rule, is still in a turbulent process of reconstruction, thus leaving a plebiscitarian president as the only source of legitimacy. It has been argued, too, that stable and firm government can be guaranteed by an executive presidency with democratic appearance, but without too much interference from parliament, standing midway between totalitarianism and the savagery of wild capitalism (Wilson, 1980: 146).

A general indication as to the pace of institutional transformation has been presented by Moulin (1978: 325) who reports on the position of the

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14 Ribhegge, Wilhelm: "Diese Hand mußte nicht verdorren—Vor siebzig Jahren wurde der Sozialdemokrat SCHEIDEMANN erster Reichsministerpräsident", *DIE ZEIT*, February 10, 1989, p.42.

framers of the preliminary draft of the Peruvian constitution of August 7, 1931. They concluded that they could imagine the complete abolition of presidential government, but only as consequence of a profound change, for example, a revolution. This does not mean that there will be a recourse to the complete traditional system, but it can be also a combination of some of its institutions with new, apparently democratic traits. Indeed, the time factor is of outstanding importance in autocratic → democratic transitions (Linz, 1986:18). This is why there is a tendency toward establishing provisional governments and provisional institutions (Linz, 1986: 17f.). This tendency can be demonstrated in most of these transitions; the temporary auxiliaries, however, may petrify and thus create a new tradition. Equally, it has been pointed out that the only way to avert the consequences of the death of Charles de Gaulle was to change the institutions (François, 1992: 310).

Thus, semi-presidential government may be an important example of the gradual change of political systems. As far as new or newly democratizing countries lack ethnic-societal identity and coherence, the change to parliamentary government is rendered difficult and a popularly elected president may serve as a symbol of national unity. If, as often is the case under such circumstances, political parties are weak, then the semi-presidential solution seems to be the best option. On the whole, there is no clear-cut explanation for the emergence of semi-presidential governments in times of transition, but rather various more or less brilliant attempts to find an approach.

Even if the political situation which has led to the installation of semi-presidentialism has altered and the idea of the personalization in politics is no longer valid, this type of regime is liable to continue. If the circumstances which have caused its introduction change in a fundamental way, this may have a significant impact on the relation of the functions of president ⇔ government ⇔ parliament. Empirical observation in Austria, Finland, France, and Portugal show that semi-presidential regimes are workable after the end of the transitional period.

### **3. The “Creative Role” of the Semi-President**

A “creative role” of the semi-president can be advanced when he is in the position to produce a new political situation. Strictly speaking, this position does not meet the regular state of semi-presidentialism with the

president and the premier in a “duet or duel”. It is a matter on the critical margin of politics when new configurations are to be designed and offices have to be filled with other incumbents: forming (or reshuffling) governments, dismissing a government or dissolving parliament. The situation for the semi-president differs from that of a “pure” president, as the latter cannot dissolve parliament, and from the premier that he may have only indirect influence on parliament.

In this respect, there is one more problem that Duverger disregards: According to his exposition, government depends on the confidence of parliament. But does that mean that the confidence of the president is insignificant? I do not think so. Of course, “confidence” in the realm of politics does not have the same, ethical meaning as in interpersonal life. It can only denote the president’s view that the prime minister and his government will execute the will of the people, represented by parliament—irrespective of a situation of president’s majority or of cohabitation (Bahro & Vesper 1995: 478). In case of cohabitation, the “confidence” of the president can only consist in the belief that government will perform according to the policy that is designed or followed by the majority of parliament. Thus, the semi-president could not appoint a premier if he thinks that this person will have difficulties with the coalition that has been formed.

### **3.1 Formation of Government**

Semi-presidentialism differs in all these cases from presidentialism and parliamentarism just by enhancing the danger of discontinuity of government policy: When semi-president and prime minister do not want to cooperate, the president can only dismiss the latter (in the end). If he gets into conflict again with his successor(s), he can only accept his/their policy unless he does not want to make changing governments a rule. It is different in presidentialism: Here the president can continue with his policy even if parliament does not follow him, possibly with difficulties. In parliamentary systems, this problem does not arise at all or is only dependent on the continuity of the coalition.

Before a semi-presidential regime can start working, a government must be formed. For, in my opinion, it is a special quality of such a system that opposite to the president there is a prime minister, depending on the confidence of parliament. Thus the most important step that the president



has to take is the appointment<sup>15</sup> of a prime minister and thereby—the formation of the government.<sup>16</sup> Depending on the features of this procedure and political conditions, the president can use this act to ensure his influence on the government. In semi-presidential regimes five different proceedings can be observed:

- (a) parliament elects the prime minister—upon proposal of the president—who, in turn, selects the ministers, and the president has to appoint them: IRL13i(1), MK90iii, RM90i, SLO111.
- (b) The president proposes to parliament the prime minister and the ministers for appointment and parliament accepts or rejects the nomination: LT67vi, SE83i.
- (c) the president appoints the prime minister and—as a rule, with his consent or consultation—the other members of the government with the approval of parliament: RH137, KZ44iii, KI46i(2), MG33i(2), RC55, UA106ix.
- (d) the president appoints or proposes a government that seeks the approval of parliament by a vote of confidence; this can also be done by the obligation of the government to present its program that needs the approval of parliament: DZ80, 81, C96i, MD82i, 98ii, PL154i, RO85i.
- (e) the president appoints a government that stays in office as long as parliament does not pass a vote of no-confidence (*confiance négative* according to Duverger 1978: 30): AR55iv, A70i, HR98iii, FIN36, 39i, F8i, IS15, RN47i, SP76vii, W53, 54.

The simple statement in many constitutions that the president appoints the prime minister, does not indicate the real powers of the incumbent. It may mean that the president is the salient institution for the appointment, that it is his prerogative to appoint the premier. But it may also indicate only that the president has to act upon someone's—the parliament's or party leaders'—wishes so that he acts as a notary public, dependent on the will of

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15 I use the term 'appointment' for the legal act that authorizes a person to execute the powers of the respective office. 'Nomination', on the other hand, is meant as the proposal toward another person or a (legal) body to elect the person proposed.

16 'Government' in this paper designates the executive body that implements the policy of the country. It equals 'cabinet'.

another party.

In the case of (a) there is no choice for the president but to appoint the candidate, acting as a notary public. This is the normal situation in countries with a two-party system as in Iceland and Ireland. But also in a political system with a “two-and-a-half” party system, as in Austria, the election by a solid coalition offers no alternative to the president. Under these circumstances, government formation operates in the same way as in a parliamentary regime.

Where there are no such clear-cut parliamentary majorities, as in many new or democratizing countries, government formation is more difficult and may assign a different role to the president. The proceedings (b), (c) and (d) do not seem to differ; for in all these cases a decision of parliament on a candidate for the premiership, named by the president, is necessary without which he cannot enter office. Yet in case (b) the influence of the president on the appointment of the chief of the government must be considered to be weaker than in the cases (b) and (e). For already the word “proposal”—other than “appointment”—expresses that the decision is not the president’s but parliament’s. Also in this case it is at least advisable if not necessary that the president contacts the parties in parliament before he presents his proposal in order that it will be accepted. In the cases (c) and (d), coordination with the parties in parliament will be considered expedient in the forefield of the appointment; yet the power to appoint—other than nominate—endows the president with an influence that surpasses a proposal. In both of these cases a vote of investiture is required to confirm the appointment. This is exactly the difference between cases (c) and (d): While in case (c) the president can appoint the prime minister only when he is positive of the approval of parliament, in case (d) he can declare the appointment before consultation with parliament. A refusal of the approval in the latter case comes close to a vote of no-confidence against president and prime minister.

A “presidential government”, that is, a government that depends solely on the confidence of the president, can only be formed in case (d), as happened several times at the end of the Weimar Republic, as the *Reichstag* was too divided to decide on a vote of no-confidence. The three presidential governments in the first years of the Portuguese Second Republic only had short durations as they were followed by votes of no-confidence. There are significant differences as far as consequences are concerned when parliament does not follow the proposal of the president or does not approve

of his appointment or, if it is so determined, rejects a vote of confidence. Here is a touchstone of what power is at the disposal of the president. A president whose proposal for the formation of the government is rejected has, as a rule, the power to dissolve parliament (see 3.3), which means that he can exert considerable pressure on parliament.

The nomination and appointment of the remaining members of the government can modify the power of the president. In general, the president depends on the proposals of the prime minister (or prime minister to be) as to who shall become minister. This is, in my view, a useful clause as the prime minister has to rely on these people for the execution of his policy. But the nomination or the appointment of the prime minister can be made subject to the preceding approval of the president, as has happened in the Weimar Republic. A special case was the Little Polish Constitution of 1992 (PL61) where the prime minister is obliged to “consult” the president on his candidates for the “power ministers”, that is foreign affairs, defense and interior.

According to some constitutions (P190i; MD82i), the president has to consult the majority party in parliament before he bestows the mandate for forming a government to a candidate for premiership. In Bulgaria, Haïti, and Macedonia, the president has to appoint the leader of the majority party as prime minister (BG99i, RH137i, MK90i). The details of the nomination and appointments of ministers cannot be dealt with. As a rule, the candidates for the office of minister are selected by the prime minister and are appointed by the president with the approval of parliament.

The role of the semi-president in reshuffling the government, meaning the maintenance of the prime minister, will differ from that of the formation of government: No matter if he exercises influence according to the constitution or a powerful political position on the appointment or dismissal of ministers, he will not be able to impose upon the remaining prime minister a candidate of his own without endangering further cooperation.<sup>17</sup> In any case, his conduct will be quite different from that of the American President who can freely appoint and dismiss his secretaries. In the purely parliamentary system, on the other hand, a more than formal participation of the president in reshuffling the government can hardly be imagined.

In some instances, obviously following the French example (F9), the president chairs—or can chair (MD83, RO87i)—the cabinet meetings

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17 An explicit regulation of the reshuffling can be found in MD82ii and RO85ii.

(DZ77iv, AG66iv, C80, RH154, RM54i, RN48). This position, of course, widens his influence as he is in direct contact with the persons who are to execute the policy. A similar situation exists when the president can chair the cabinet meeting whenever he wants, even if the constitution does not include a relevant ruling, as was the case in the Weimar Republic. Whenever, though, the president chairs these meetings only on invitation of the prime minister (C100ii, GB68xii, SP76ix), his influence in this respect will be nearly nil.

### 3.2 The dismissal of the government

The dismissal of the government, unless caused by changes in the coalition, is a decision of the president of considerable importance where he can act independent of parliament and government. In this case he has to answer the question of how to form a new government for which he, in principle, needs the approval of parliament. If he is not sure in this respect, he is also taking the risk of having to dissolve parliament. In this case his action differs from that of the U.S.-President who does not have this problem by definition, and also from a president in a parliamentary system who can only dismiss government—and thus himself—by initiative of parliament.

An important criterion for the presence of a semi-presidential regime is, in my opinion, the modes of the dismissal of the government, although not included in Duverger's definition. Here the different dependence of government on parliament and president is particularly evident. The following configurations can be distinguished:

- (a) The president has to dismiss government on the basis of a vote of no-confidence or rejected vote of confidence<sup>18</sup> or with the consent of parliament; he has no means of sanction at his disposal against parliament: AR55iv(2), A74i, C79ii, 143, F50, RH129-4, 129-5, IRL1(3), KZ44iii, LT84v, MG33i(2), PL159ii.
- (b) as (a), but he is at liberty to either dismiss the government, and (with the approval of the government) to appoint a new one or to dissolve parliament: IRL13ii(2), KZ70vi, KI71v, RUS117iii.

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18 This applies also when the government is bound to declare its resignation after a vote of no-confidence has been passed by parliament. Shugart & Carey (1992: 24) exclude all the cases from their notion "premier-presidential."

(c) the president can dismiss the government at any time; in the case of a vote of no-confidence the proceedings (a), or (b) apply: DZ77v, AR55iv, C143, KI46i(4), SP76vii, UA106ix.

Some constitutions (AR74v, LT101iii(2), MK93iv, MD103ii, SE93ix) rule that government has to resign or that it will stay in office (only) until a new government has been formed after a vote of no-confidence has been passed, but do not explicitly state that the president has to dismiss it. This is equivalent to case (a). The position of the president *vis-à-vis* the government and, at the same time, his influence on it, is strongest when he is at liberty at any time to dismiss the government. In this case, the dependence of the government on parliament is extremely weak. But even when the constitution does not contain the provision that the president can dismiss the prime minister, there is no obstacle against a resignation of the prime minister, initiated by the president. It is even reported that presidents have not appointed prime ministers unless they had presented their declaration of resignation in blank! In P198, there is a variation in that the president may only dismiss government 'when it is necessary to secure the regular functioning of the democratic institutions'. Most constitutional lawyers read this clause as a forceful limitation of the presidential powers. The question, in my view, is, however, who will decide whether this situation has arrived?

Another situation comes about when the government declares its resignation after a vote of no-confidence or a rejected motion of confidence. If the government would not be obliged to file its resignation in such a situation, then the regime cannot be considered to be semi-presidential as the condition of its dependence on the confidence of parliament is not met. It would be, rather, a parliamentary form of government.

### 3.3 Dissolution of Parliament

The dissolution of parliament is the act of the semi-president which interferes most strongly with the political process of a country: it leads necessarily to a new election and thus—according to its possible or probable purpose—to a change in the relations of majorities in parliament. For the strongest party, the loss of the majority may be imminent, for the deputies the loss of their seat, for all parties the problem of an election campaign. Thus the dissolution of parliament is the *ultima ratio* of a president in whom this power is vested, if he can make use of it without limitation (for example, not depending on a counter-signature of the prime minister). This

strong means can only be handed to a president, elected by the people.

By his power to dissolve parliament, the semi-president differs from the president in presidentialism as well as from the prime minister in the parliamentary system: while the first does not hold this right, the latter does not only consider the consequences of new elections for his party but also for his personal position. The semi-president, on the other hand, is independent and has only to take into consideration the voters who presumably would react negatively upon frequently repeated elections.

The power of the president to dissolve parliament is not part and parcel of Duverger's definition of semi-presidentialism,<sup>19</sup> but it certainly belongs to his most important powers. It marks his relationship toward parliament as well as to the government that depends on it. Also in this respect, different proceedings can be ascertained that are characteristic of his authoritative position:

- (a) The president has to dissolve parliament under certain conditions, for example, if it does not approve the candidate for premiership or his program of governmental action: DZ82, KZ63i, KI71iv, LT58ii(1), MD85, PL155ii, UA106viii.
- (b) The president may dissolve parliament under certain conditions, sometimes as a sanction against government: KI63ii, LT58ii(2), RO89, SE89ii.
- (c) The president can dissolve parliament—possibly after consultation of the prime minister and/or the state council—that is according to his own discretion—in some constitutions if a “severe crisis” exists: AR55iii, BG102iii, FIN + 20i, GB69i(1), F12, SP76xv.

The proceeding (a) is usually institutionalized to avoid deadlock between government and parliament, as, for instance, parliament, is unable to elect a prime minister within a certain span of time or pass the budget or important legislation. The proceeding (c) can be combined with (a) and (b). In any case, the position of the president is strongest when he can dissolve parliament at any time according to his discretion. Nearly as strong is the posture of the president when he has to dissolve parliament after his proposal for the approval of his candidate for the forming of the government

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19 Shugart & Carey (1992: 24) assign this power to “president-parliamentary” regimes. Cf. also Shugart (1993-94: 30ff.).

has been rejected (RUS111). For this means that parliament is under pressure to accept the proposal or to face new elections. It has to be considered, though, that the dissolution of parliament is always a political feat which cannot be repeated at will without shaking the political system.

Moreover, dissolution of parliament is often restricted regarding its frequency or at certain times (state of emergency, war, after presentation of a motion of no-confidence or of confidence). If parliament shall not be dissolved within a certain span of time after the election of the president (12 months in CV156i, six months AG95i, P175i) or during the last six months of his term (AG95i, P175i), the semi-president has to act very carefully as not to produce deadlock and he cannot resort to honeymoon elections.

#### 4. The “Interfering Role” of the Semi-President

The differentiation of governmental functions, especially of the semi-president, is necessary to understand the real powers of the governmental offices and thereby the efficacy and efficiency of the respective configuration. An approach to reach this objective is the introduction of the notion of “veto points” that Weaver & Rockman (1993: 26ff.) have proposed and applied for the measurement of the “capabilities” of a system of government.<sup>20</sup> The idea of this approach aims at examining which institutions within the decision making process with the competence to voice a “veto,” that is, to annul or change preliminary decisions already taken. They distinguish these points according to their number, a necessary majority (in decision making bodies), the extent to which the veto is complete, continuing and not subject of abolition instead of partial, transitory and subject to abolition. This approach, however, requires a supplement: Specific institutions also command the competence for initiatives, others do not (for example, initiatives for legislation). Such “points of initiative” have also to be distinguished according to their power to put a legal or political obligation on another actor, whether it can delay or circumvent the initiative or whether it can be completely disregarded by the other actor.

Very often the formal constitution does not convey the correct image of the powers of the president: the way the actors practice the constitution may determine whether the president can make decisions of his own or is

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<sup>20</sup> The veto points correspond to the “clearance points” that have been developed by Pressman and Wildavsky (1973: xvi).

restricted to a mere ceremonial role or the role of a notary public. Duverger has pointed to several powers of semi-presidents in the countries of his *pléiade* (1978:22 table); yet there cannot be any doubt that this selection is quite haphazard and necessitates completion and distinction.

The president is in his weakest position when he needs the countersignature of the prime minister (or another member of the cabinet). Rarely, however, does countersignature in semi-presidential regimes cover the complete range of presidential powers, as stipulated in W50 and RM60. The fate of Weimar Republic shows that this clause did not prevent the *Reichspräsident* from issuing orders of his own will and, in the end, the appointment of Adolf Hitler for *Reichskanzler*. This was rendered possible by the fact that at this time parliament was extremely polarized and, thus, the executive was dependent on the *Reichspräsident* only.

As a rule, though, constitutions of semi-presidential regimes stipulate the countersignature only for certain acts. The salience of these prescriptions depend on the importance of the action subject to it. Normally, the countersignature serves as a means to curb (semi-)presidential powers. A further limitation takes place when the president can act only upon a proposal of the prime minister.

#### 4.1 Lawmaking Authority

Shugart and Carey claim that the president in a presidential regime must have some lawmaking authority (1992: 23). Sartori in his criticism says that this statement is too vague, but if the president appoints the executive it goes without saying that he has this power (1994: 84). Asking for the (semi-)president's actual power in lawmaking demands a more effectual description.

I will discriminate the following actions of the lawmaking process:

- (a) Decree-making by the president: DZ77vi, AR56, IS28i, KZ45i, KI47i, MD94, RUS90i.
- (b) Making of ordinances by the president: AR56, KZ45i, MG34i, PL142, RUS90i.
- (c) Introduction of legislation in parliament: IS25, KI46v(1), MD73, LT68i, MG26i, PL144iv, RUS104i, UA93i.
- (d) Veto against laws passed by parliament: BG101i, GB69ii, RH121, KI46v(2), MD93ii, LT71i, PL122v, MK75iii, MG33i(1), RO77iii, RUS107iii, SP77i, SE84i, UA106xxx.



- (e) Submission to the electorate of laws passed by parliament and important political issues (referendum): IS26, KI46vi(2), RO90, UA72i, 105vi.
- (f) Reference to the constitutional court for judicial review: BG102vi, FIN19i, KZ72i(2), IRL26i(1), LT106iv, PL122iii, RO77iii, RUS125ii(1).
- (g) Administrative capability of the president.

The lawmaking procedure comprises a series of formal points of initiative and veto points, laid down in the constitution and standing orders. The strongest form of lawmaking by a president exists if the constitution endows the president with the power to issue decree laws, that is decrees with the force of law. This power can be restricted to decrees in cases of emergency (for example, W48). If this right is not checked by counter-signature (as in LT85), it is a very potent instrument and may come to the brink of dictatorship. An outstanding example is Russia, where the president may issue decree laws in case a certain domain has to be regulated and parliament does not act in this respect. But even where the parliament is entitled to cancel presidential decrees the sheer mass of them and inertia of parliament may lead to hyper-presidential conditions (Sartori 1994: 167).

The making of ordinances by the president, defined as rules for the implementation of laws enacted by parliament, is a matter of less importance, although sometimes such rules cause actual problems for the citizens. In a semi-presidential regime, I suppose, it makes no sense to confer such competence on the president for (1) he will possibly not have the knowledge of the details necessary to issue the pertinent rules and (2) the administration under the authority of the government would find enough excuses not to implement presidential ordinance. Yet as shown above AR56, KZ45i, MG34i, FIN28i, MG34i, PL142, RUS90i, the president can issue ordinances. There are some doubts as to the substance of ordinances in Russia and probably in other post-communist countries there does not seem to exist a hierarchy of norms (Bahro 1997: 5).

At first sight, the right of the president to introduce legislation in parliament seems to be a weighty matter. This is probably the case in pure presidential regimes where this rule sees to it that parliament does not have the monopoly of legislation. Yet in semi-presidential systems there is no need for such a prerogative: If president and premier pursue the same policy, the initiative can be exercised by the government; if they do not, as in the case of cohabitation, then parliament will certainly not accept a bill that is dir-

ected against its own government.<sup>21</sup> Nevertheless, some semi-presidential regimes have institutionalized the legislative initiative for the president (IS25, KI46v(1), MD73, LT68i, MG26i, PL144iv, RUS104i, UA93i). According to KZ61iii, the president can make parliament deliberate on a bill with priority.

The presidential veto against laws passed by parliament is widespread in the constitutions of presidential and semi-presidential regimes (example d). As a rule, this veto can be overruled by a simple or a qualified majority in parliament. Where only a simple majority is necessary for the override, it just means that a second chance of deliberation is given to parliament as the simple majority was sufficient to pass the law (BG101iii, RH121-5, KI46v(2), RM57ii, MK75iii, MD93ii, SE84i, UA106xxx). A qualified majority, on the contrary, may demand an inclusion of (parts of) the opposition and thus—depending on the extent of qualification (absolute—SP77ii; two-thirds—DZ118ii, GB69ii, RN49v, MG33i(1), RUS107iii, threefifths—PL122v) and the distribution of the parties in parliament—impart to the president a veritable impediment against change.

The same is true—all the more—if the (semi-)president can use the “pocket veto,” that is, when he tacitly refuses to sign a law passed by parliament. There are rules in most of the constitutions that compel the president to sign a law within a certain time limit (RN49i, ii, RM57i, RUS107ii, iii). If the indicated time for the execution of the law is rather protracted, and time elapses after parliament is dissolved or has come to an end, the pocket veto has the same effect as a normal veto that could not be overridden.

The most intriguing point might be the problem of item veto. As far as the constitutions of the semi-presidential regimes show, this question is only rarely solved by constitutions (RH121, RM57ii, MG33i[1]). The item veto, according to Shugart & Carey “increases presidential powers dramatically” (1992: 134). But whenever the constitution is silent about this veto, the political process will decide who wins. In semi-presidential systems, item vetoes will probably only be used in times of cohabitation.

Another, sometimes very important power of the president may rest in his submission of a law passed by parliament to the electorate (DZ77viii, RN51). A referendum can also be initiated on any problem of the country that is essential for its existence, for example, the institutionalization of the

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21 I explicitly revoke my differing opinion (1997: 16).

election of the president by universal suffrage (in France 1962) or the acceptance of a new currency (United Kingdom to be expected)—examples can be found in KZ44x, KI46vi[2]). As the procedure of a referendum is an expensive one, it will only be applied in extraordinary exceptional cases. If it is used by the president against a law, it means that the regime lives in a state of cohabitation and the president is not ready to tolerate the policy of government and parliament. Dissolution of parliament or deadlock is near!

If the president has the right to refer legislation to a constitutional court, his position seems to be less political than in the case of a referendum. He may take the posture of the “impartial arbiter” who acts on behalf of the “common weal,” even if the majority in parliament and thus the government belongs to his own party. Just so, his chances to emerge victorious can hardly be estimated.

The administrative capability of the semi-president as concerns the lawmaking process has until recently escaped the attention of students of political systems. Certainly, the president in a presidential regime is charged with execution of laws passed by parliament and, normally, will comply. The Russian example shows that in a semi-presidential regime it is not necessarily the case that the government executes the laws, but that the presidential administration has a strong hand in implementation. Huskey has pointed to the fact that the presidential administration is the decisive actor in the implementation of laws. He reports (1995: 116) that the size of the professional staff in the presidential administration contains 2,180 persons. If, indeed, the president is the one who executes the laws and, as in Russia, issues his own decree laws, doubts must be raised as to the semi-presidential character of the regime.

## **4.2 Appointment to Higher Offices**

Quite often constitutions confer the right upon the president to appoint the candidates for higher offices, for example the procurator general, the president of the national bank, the members of the constitutional court. If in these cases the president’s act is subject to a proposal or the counter-signature of the prime minister, it is not his policy, but the prime minister’s. He may, however, refuse to follow the proposal and thus build a policy of patronage of his own. In all cases where the semi-president can appoint the judges of the court that is empowered to decide upon the constitutionality of his acts or of laws that he submits to the court, he is tempted to “pack the court” according to his own wishes.

### 4.3 “Reserve Powers” and Emergency powers

Two types of extraordinary powers have to be distinguished: (a) a grave danger threatens the existence of the state, as in cases of foreign aggression or internal strife (emergencies) and (b) parliament and its government are unable to fulfil the normal, necessary tasks of day to day policy. Only if the president is endowed with special powers in the latter case, should these be called “reserve powers.” Emergency powers are institutionalized in all constitutions, sometimes as a prerogative of the president. Their exercise can become dangerous for the political system if civil rights can be suspended and, in any case, if the countersignature of the premier is not necessary.

### 4.4 The Semi-president in Foreign Policy and His Relationship to the Military

Although the position of the semi-president in relation to the armed forces and to power in international relations is similar to that of a “presidential president” or a president in a parliamentary regime, his position may be quite different, due to his dependence on the prime minister in the execution of policy. The example of the French Fifth Republic, where charismatic General Charles de Gaulle coined this domain, seems to have influenced the practice of many of the newer semi-presidential regimes. It is the rule for all heads of state, irrespective of the regime type, to represent his state in international relations. Again, this simple statement of the constitution does not convey the real authority of the semi-president. His power depends on his political situation.

Some examples of the formal position of the president are selected:

- \* The president is designated as the Commander-in-Chief of the Armed Forces: DZ77i, AR55xii, GB100i, MK79ii, PL134i, SP73, W47; he may be also responsible for national defense or the actions of the armed forces: DZ77ii, AR55xiii.
- \* The president concludes international treaties (DZ77ix, AR55vii, A65i, BG98iii, PL133i(1)), appoints and dismisses the ambassadors of his own country (DZ78ii, AR55viii, A65i, BG98vi, MK84ii, PL133i(2), SP76xi), receives the credentials of the diplomatic representatives of foreign countries (DZ78ii, AR55viii, A65i, BG98vi, MK84iii, PL133i(3), SP76xi, SLO107iv).

#### 4.5 Pardons, Titles, Messages—Political Paraphernalia?

There are a series of powers that traditionally belong to the head of state, namely the exercise of the right of pardon, the award of orders, decorations, and honorary titles. This applies to parliamentary as well as presidential regimes. But while in parliamentary governments the exercise of these rights may be a formal one because the respective power is invested in the premier, and in presidential ones it is the prerogative of the president, due to the popular legitimation of the semi-president, semi-presidentialism can be quite different. These rights can become an instrument of interference into the political process, as was the case of Portugal under President Eanes when he used speeches, travels, and messages to influence the policy of the government. Some examples can be mentioned:

- \* The president can grant pardons: DZ77vii, AR55xvii, A65ii(3), BG98xi, MK84x, PL139, SLO107v.
- \* He can confer titles and orders: DZ77x, AR55xvi, A65ii(2), BG98viii, MK84ix, PL138, SP76xii, SLO107vii.
- \* He can address messages to parliament or public: BG98ii, PL140, ST76vi.

The provision of the president with salary, travelling expenses, staff and materials is normally not stated in constitutions but, if necessary, in a special law, and above all in the budget. It may seem that this is a technical problem without political significance, but this is in fact not the case. The president can only execute his political powers, either granted by constitution or assumed, if he can resort to advice and has the capacity to implement his policy. For this purpose he needs such means. If parliament keeps him short, there can be the danger that advice will be given to him only by interested sides which are always present. If he receives substantial means he can enlarge his field of activity.

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# 半總統制良窳論

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## 摘 要

從事憲政工程應該考慮當地的歷史、社會條件、政治文化以及未來的展望，尤其是在政體從一專制轉換為民主的過程中，更應是如此。近來，有為數不少的國家採取所謂的半總統制，與內閣制或總統制是大不相同的。

憲政工程師應該避開以下兩個障礙：(1)行政與立法部門間的僵局，(2)由一人擅權的獨裁。為解決僵局的問題，設計出強勢的總統，似乎是其答案。但是過度強勢的總統，尤其如果其又具個人魅力，可能導致其擁有絕對權力一拿破崙及凱撒是歷史的教訓。

總統的實力決定於權力在憲法上如何界定。權力的結合，尤其是形成或解組內閣以及解散國會的權力，是其實力的來源。政黨體制是決定總統是否能依其意志行使權力的因素。在一半總統制的政府，可能發生國會多數黨支持的總理與總統屬不同黨的共治情況。對總統權力的限制，首要應是指，不將由總理及國會可以執行較好的權力，給予總統。不過，如果有必要賦予總統緊急處分權，應要求總理的副署，或者得由國會否決。幾乎在所有半總統制的國家，其總統在外交及國防上皆負重要的角色，如果是的話，其應該具有某一程度的有關人事權。

**關鍵詞：**半總統制，政體類型，憲政工程學，總統權力