

# The Semi-Presidential System

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## Introduction

In the course of the 20th century the classical systems of government, mainly the parliamentary and the presidential ones, showed a deficit of adaptation in certain sociological and political environments, therefore being surrounded by criticisms. In this paper we will analyse the process of a gradual construction of a system replacing these classical systems by what many call a semi-presidential system. The process of a gradual improvement and of a conceptual delimitation was materialized through three consecutive waves, the last of which corresponds exactly to the democratization wave that swept Eastern Europe and other zones of the globe since the 1990s. We will show that the *differentia specifica* of the semi-presidential system is the adoption of a radical concept of the doctrine of checks and balances, articulated with a balanced institutional model with three powers or three political bodies. This means that while the presidential and the parliamentary systems are moving around two powers or two organs with a real intervention in the decision making process, the semi-presidential system goes through three. Therefore, the semi-presidential system will be defined as the system of government based on the dynamic balance between three political bodies – a President of the Republic, a Government and a Parliament – each of which is endowed with fungible legitimacy and effective juridical or *de facto* powers, either positive powers or the mutual power to block one another. Also we will hold that the performance of a system as semi-presidential requires a constitutional frame and a specific political reality, as with other types of government systems.

## 1. The Need for a *tertio genus*

As a system of government<sup>1</sup> that is conceptually distinct from any other, the semi-presidential system is today still fighting for its independence. Indeed, it is

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<sup>1</sup> The meaning of “system of government” adopted herein is grosso modo that used by Marcelo Rebelo de Sousa, *O sistema de governo português*, 4th ed. Lisbon, 1992, 9; Jorge Miranda, *Ciência Política*, Lisbon 1992, 128 and following; Vitalino Canas, *Preliminares do Estudo da Ciência Política*, Macao, 1992, 87/8. Used in this sense, the concept of the system of government covers the organisation, workings and interrelation of the political bodies of any given politically important entity, and may be studied from a legal or even *de facto* perspective.

not difficult to detect amongst political scientists a strong tendency towards either bringing it into line or including it within the area of jurisdiction of one of the two classic systems, the parliamentary and the presidential<sup>2</sup>. Some degree of hostility towards it can even be noted<sup>3</sup>, which is understandable. Considered for a long time models of politico-constitutional organisation – and functioning – that were perfect and unique, these systems have, since their conception in Great Britain and the United States respectively, held such attraction that any experiments have either been seen as mere off-shoots or attempts to perfect these two standard systems, or as eccentricities doomed to failure.

The semi-presidential system can, in fact, be considered the most consistent trial for the creation of a *tertio genus*, one that lies conceptually midway between these two classic models. The semi-presidential system has come about<sup>4</sup> essentially as a means of tackling the inadequacies or faults of these two.

Parliamentarianism, patiently and painstakingly built up in England over the decades, has proved workable to differing degrees in other European States. France and other countries (including Portugal) have adopted it on various occasions, although usually with resulting governmental instability stemming from the principle of “all power to Parliament”. Portugal underwent a period of such instability during the time it was still a monarchy, although it lasted for much longer during the I Republic governed by a Constitution – that of 1911 – that embraced the parliamentary assembly model<sup>5</sup>.

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<sup>2</sup> A fine example of the intellectual anguish caused by innovative constitutional experiments and by the doubt as to whether these would prove suitable for new types of systems of government is given in the lengthy section devoted by Karl Loewenstein to the Constitution of the Fifth French Republic not long after the 1962 constitutional revision. Cf. *Teoria de La Constitucion*, Spanish translation of *Verfassungslehre* (1969), reprint of 2nd ed., 1982, 17 et seq.

<sup>3</sup> See, for example, what Maurice Duverger, *Le concept de régime semi-présidentiel*, in: Maurice Duverger (ed.), *Les régimes semi-présidentiels*, Paris 1986, 7, writes about French political commentators; also Olivier Duhamel, *Remarques sur la notion de régime semi-présidentiel*, in: *Droit, Institutions et Systèmes Politiques. Mélanges en hommage à Maurice Duverger*, Paris 1987, 581, quoting Jean Gicquel, “the semi-presidential system has not received a good press among French constitutionalists”; Horst Bahro/Bernhard Bayerlein/Ernst Vesper, *Duverger’s concept: semipresidential government revisited*, *European Journal of Political Research* 34, 1998, 208 et seq.

<sup>4</sup> It is obvious that practice has preceded theory: semi-presidential constitutional systems were first outlined without taking into account their exact scope. The baptism of the system is claimed by Duverger (note 3), 7, quoting a text from 1970, the 11th edition of *Institutions politiques et droit constitutionnel*, 277/282. However, the term “semi-presidential regime” was used in 1959 by Hubert Beuve-Méry, a journalist. Curiously, the term “semi-presidentialism” was also used in Portugal by the early seventies, although it referred to different realities. Such was the case with Afonso Queiró in his findings on one of the drafts preceding the constitutional revision of 1971: see *Opinion 23/X in Revisão Constitucional de 1971. Pareceres da Câmara Corporativa*, Coimbra 1972, 253. The designation given by analysts is retained in this instance, notwithstanding the pertinent observations of Gomes Canotilho/Vital Moreira, *Fundamentos da Constituição*, Coimbra 1991, 12, and the doubts regarding the accuracy of the term ‘semi-presidential’, shared, for example, by António Araújo, *El Presidente de la República en la Evolución del Sistema Político de Portugal*, in António Barreto/Braulio Gomez/Pedro Magalhães (eds.), *Portugal: Democracia y Sistema Político*, Madrid 2003, 101-2.

In a world undergoing change, with an ever greater number of political ideologies, the definitive end of the old order, the economic crises of capitalism and so forth, the beginning of the twentieth century proved that, save rare exceptions, the pure parliamentary model weakened political institutions, frequently putting them at the mercy of volatile circumstances.

In the meantime, the desire for governmental stability was not satisfied by the presidential system. The conditions in which this system came about and matured were manifestly different from those of Europe. Coming into existence more as a result of a revolt against a colonial power than the monarchic institution, with appreciable social homogeneity, the United States adopted without difficulty (albeit with much passionate debate) a system of government which has at its top an institution very similar to the monarchic institution. The President of the Union, at least in the manner originally foreseen by the delegates in Philadelphia – less interventionist than today – has visible similarities with the monarch in a monarchic system, as interpreted at the time in the former colonial power of Great Britain.

In Europe, systems of government were set up with a King or following the overthrow of an odious King. In neither instance was there room for a presidential system; at the most, “prime ministerial presidentialism”, to use a modern-sounding expression<sup>6</sup>, or chancellor presidentialism, to use the phrase adopted in Germany during the Bismarck years.

Furthermore, and perhaps even more decisively, the social and ideological homogeneity that characterised – and essentially still characterises – North American society, enabling a system based on the almost absolute separation of powers, such as the presidential system, to function without having to surmount permanent obstacles, had no parallel in Europe. This particular circumstance would inevitably lead to any attempt to implement the North American presidential system in Europe being permanently blocked as a result of the impossibility of two bodies – President and Parliament – with apparently identical legitimacies, although obtained at different moments, reaching the degree of co-operation required for the system to work<sup>7</sup>.

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<sup>5</sup> In this model when a conflict between Government and a Parliamentary majority arise the Parliament has the tools for solving the conflict in its favour.

<sup>6</sup> Reintroduced into Portuguese political terminology by Adriano Moreira, *O regime de presidencialismo do Primeiro-Ministro*, in: Baptista Coelho (ed.), *Portugal, O Sistema politico e constitucional*, 1974/ 87, Lisbon 1989, 36.

<sup>7</sup> One can therefore understand the summary produced by Giovanni Sartori, *Elogio del semi-presidencialismo*, *Rivista italiana di scienza politica*, XXV (1), 1995, 6 and 18, in which, advocating the superiority of the semi-presidential system, he explains that while the pure presidential system is a structure predisposed towards political blocking, particularly in the event of clear majorities in the Presidency and in parliament, semi-presidentialism proposes a way around this based on the “alternation of heads”. See also Angelo Rinella, *La forma di governo semi-presidenziale. Profili metodologici e “circolazione” del modello francese in Europa centro-orientale*, Turin 1997, 195. It should be borne in mind, however, that Sartori does not appear to place importance on the conceptual distinction between the presidential system and the presidentialist system [Translator’s Note: for want of a better word, and as its meaning is explained below, “presidentialist” is used here to translate the Portuguese “presidencialista”]. Yet such a distinction does exist (cf. on presidentialist systems Richard

As the European “test lab” for political systems, France has fulfilled its obligation of demonstrating that the North American type of presidential system does not work on this side of the Atlantic: Louis-Napoleon’s U-turn rounded off this demonstration<sup>8</sup>.

## 2. Characterisation of the Semi-Presidential System

We have mentioned this already: the political category we call a semi-presidential system was born without self-awareness. More than “inventing” a new form of government, the idea was to adapt the old ones, in particular the presidential and parliamentary. Many of these attempts resulted in corruptions of these systems; some resulted in simple sub-systems within the same general framework; others in conceptually different systems. The latter includes what we have come to know as semi-presidential system.

From a juridical and political or *de facto* viewpoint<sup>9</sup>, this system is dominated by an enduring principle: a balance between three bodies, a Head of

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Moulin, *Le présidentielisme et la classification des régimes politiques*, Paris, 1978). We have used the term *presidentialist system* to designate the system in which the Head of State, elected by popular vote, enjoys legislative powers and/or controls the Government. It can thus be said that there is a hypertrophy of presidential powers, providing the holder of the office with control over other bodies. It is debatable whether this is merely a distortion of the presidential system, a mixed system combining presidential and parliamentary aspects, or a category in its own right. Such debate ends up moving down the same paths trod by debate on the nature of the semi-presidential system. And there are those, such as Sartori, that confuse the two. Jorge Miranda, for example, however, does not. Although in *Governo (Formas e sistemas de)*, Enciclopédia Polis, 3rd vol., col. 86, he alludes to the “impure presidential system” and not the presidentialist system, there is no discrepancy between what we have written and the opinion of the author, as this designation (“impure presidential system”) is only meant for situations in which Ministers co-exist with the President and are endowed with their specific own powers, albeit subject to the guidance of the President. In this sense, it may be seen as merely an impure presidential system as there is no substantial alteration in the relations between the President and Parliamentary Assembly. When the President also enjoys, directly or indirectly (by way of a Government under his or her control), legislative and other powers allowing him or her to tip the institutional balance in his or her favour, then this is indeed presidentialism. Returning to Sartori (note 7), once more, the absence of a distinction between presidential systems and presidentialist systems is evident, particularly in the chart on page 188 where they are included without any distinction. While it may be true, however, that Sartori’s summary adheres to the characteristics of presidential systems which aim, by definition, at a more or less inflexible separation between the President and Parliament, the same summary can only very rarely hold true for presidentialist systems. In the latter, there tends to be an imbalance of power in favour of the Head of State, who is thus able to resolve in his or her favour any obstacles or conflicts with another political body.

<sup>8</sup> The French Constitution of 4 November 1848, the Second Republic, embraced a presidential system. On 2 December 1851, President elect Louis-Napoleon, the nephew of Napoleon Bonaparte, launched a *coup d’état* that heralded a return to the political institutions of the I Empire. Louis-Napoleon was proclaimed Napoleon III in the plebiscite of 1852. Horst Bahro, *A influência de Max Weber na Constituição de Weimar e o semipresidencialismo português como sistema político de transição*, *Análise Social*, XXXI (138), 1996, 780, makes an interesting suggestion (citing Klaus von Beyme): the system of government of the Second French Republic is semi-presidential and not presidential as the text argues.

State, a Government and a Parliament. The principle is different from that of parliamentary and presidential systems. But how is such balance achieved? Evidently through the creation (constitutional, legal or other) and functioning of dynamic relations of mutual interaction between these three political bodies.

Such dynamic relations may take various forms, not necessarily obeying a single model. In principle they require the fulfilment of one condition: the fungibility of the legitimacy of the political bodies that participate in this interaction. In other words, one body cannot enjoy less legitimacy than any other. A semi-presidential system will function poorly at best if one of the three bodies claims "higher" legitimacy than the other two.

This problem has to do with the way in which the members of the bodies are chosen. In a democratic State, in which democratic legitimacy predominates, the more popular votes they receive, the greater the legitimacy of the holders of office. For this reason, the semi-presidential system in a democratic State presupposes that all the holders of its bodies are elected, more or less directly, by popular vote.

The expression 'more or less directly'<sup>10</sup> seeks to be sufficiently flexible to cover a wide range of situations which, although different from a technical and procedural viewpoint, are substantially close to one another: indirect election by a college of electors appointed with the exclusive aim of choosing the Head of State (as happened up until 1986 in Finland), although procedurally different from election by direct universal suffrage, may be equal in terms of the gestation of political legitimacy<sup>11</sup>; the investiture of a Prime Minister or of a Government by parliamentary majority is today equivalent to direct election by direct suffrage, as in many systems parliamentary elections fulfil the two-fold function of selecting members of parliament and choosing the head of the Government.

The absence of equivalent legitimacies renders it difficult or impossible for the system of government to function as a semi-presidential system: if the Head of State is elected and removed from office by Parliament, with the latter filled by

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<sup>9</sup> We believe that the features which characterise the semi-presidential system are the same as those that characterise it in terms of political reality. A different opinion is held by Manuel de Lucena, *Semipresidencialismo: teoria geral e práticas portuguesas*, *Análise Social*, vol. XXXI (138), 1996, 862 (and elsewhere). Naturally enough, we do not deny that a system which is semi-presidential in the Constitution may not function as such in practice. And, conversely, a system that is not semi-presidential in the Constitution may function as a semi-presidential system in practice, although this is presumably more difficult to ascertain. But the criteria it needs to fulfil to be considered semi-presidential – balance, fungible legitimacies, the effective powers of three political bodies – are valid in both juridical and political terms.

<sup>10</sup> In a similar way, Robert Elgie, *The Politics of Semi-Presidentialism*, in: Robert Elgie (ed.), *Semi-Presidentialism in Europe*, Oxford 1999, 13, suggests that the president should be elected either directly or in a 'direct like' manner. We do not feel it necessary to go as far as de Sousa (note 1), 14, or Carlos Blanco de Moraes, *Le metamorfosi del semiprezidenzialismo portoghese*, in: Lucio Pegoraro/Angel Rinella (eds.), *Semipresidenzialismi*, Milan 1997, 143, who include within the definition of the semi-presidential system the legitimisation by direct universal suffrage of both the President of the Republic and Parliament.

<sup>11</sup> See, for example, Sartori (note 7), 14.

universal suffrage, the balance will be unthinkable in operational terms; if, like Parliament, the Head of State is elected by universal suffrage but the Government is simply a result of the will of the latter, its legitimacy will be less compared with that of the Head of State<sup>12</sup>.

It should not be thought, however, that equivalence of legitimacies is sufficient to administer a semi-presidential system. It is a necessary condition but not sufficient<sup>13</sup>. For this reason we reject the idea that the introduction of direct suffrage in the process of electing the Head of State is sufficient to transform a parliamentary system into a semi-presidential system. In addition to equivalent legitimacy, the three bodies must be endowed with a range of powers that allow them to interact in a specific fashion. These powers may be designed simply to provide political control or may have a more ambitious scope, aimed at collaboration in the political decision-making process. That is, they can be either negative or positive<sup>14</sup>.

Negative powers would be those whose exercise implies the blocking or rejection of the will of another body: for example, the exercise of a veto, political or otherwise, the refusal to appoint certain civil servants, the refusal to ratify international conventions, the refusal to countersign bills, the refusal to provide parliamentary ratification, etc.

Positive powers are those whose exercise leads to a political decision which brings about change in the political order: for example, the dissolution of Parliament, the appointment or resignation of a Government, the appointment of civil servants, the sending of messages, the drawing up of legislative proposals or legislative acts, the convening of general elections, and many others.

Naturally enough, acts with a negative content will produce side-effects of a positive nature: the veto (or threat to use one) of a Government bill by the Head of a State may force the former to seek or accept a compromise which establishes common ground in terms of the content of the bill; the refusal to appoint a civil servant may force agreement regarding another person. In these cases, the power of mere obstruction is transformed into the antechamber of co-decision-making power.

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<sup>12</sup> One could ask: if it is the Head of State that appoints the Prime Minister and the Government, without the intervention of Parliament, why should the legitimacy of the executive be less than when Parliament makes the final decision? The answer lies in the rules that political dynamics have allowed Political Science to draw up. One of these demonstrates that in the relationship between equal bodies, those whose composition is smaller hold more sway over those that are larger. In the relationship between Government and Parliament, the first – less cumbersome and more effective, assumes the role of “motor” and tutor. The legitimacy of the second is transmitted or confused with that of the first without great problems. In the comparison between the Head of State (singular body) and the Government (collegial body), the former always outcores the latter in speed of decision-making, consistency with a uniform line, and the capacity for direct dialogue with the public. The former will thus always have the ascendancy, meaning that his or her legitimacy does not tend to be passed on in all its dimension to the second.

<sup>13</sup> There is clear agreement regarding this opinion, starting with Duverger. See, for all, Jorge Miranda, *Le regime semi-presidentiel portugais entre 1976 et 1979*, in: Maurice Duverger (ed.), *Les regimes semi-presidentiels*, Paris 1986, 137/8; Gomes Canotilho/Vital Moreira, *Os poderes do Presidente da República*, Coimbra 1991, 19.

<sup>14</sup> Jorge Miranda, *Manual de Direito Constitucional*, I, 7th ed., 2003, 412.

And the reverse is also true. Positive powers may have negative side-effects: the dissolution of Parliament will thwart the continuity of its political or legislative acts; the resignation of the Government will prevent it from following through its programme.

Some authors have suggested that the semi-presidential system presupposes the Government's two-fold accountability to Parliament and the President of the Republic<sup>15</sup>. But there can be a semi-presidential system without dual accountability<sup>16</sup>, just as there can be concrete systems of government in which dual accountability exists, without a semi-presidential system. Thus, the powers typical of relationships of responsibility (political or institutional), namely the power to appoint and the power to remove from office, if they exist, are just one way among others of implementing the triangular interaction between political bodies outlined above. But they are not indispensable for building the triangular relationship typical of the semi-presidential system, which can function without them. Furthermore, they are not sufficient as the simple possession by the President and by Parliament of the power (juridical or *de facto*) to appoint and remove the Government, if not accompanied by other effective powers, may not be enough to remove a concrete system from the circle of parliamentary systems of government.

### 3. The Distribution of Powers in the Semi-Presidential System

Each of the three bodies must be substantially empowered. The question arises: Is there a typical way of distributing powers in a semi-presidential system?

The answer to this question is complex. Some authors say that the actual power of the actors of the semi-presidential system is not a relevant issue<sup>17</sup>. This is in part true. Unlike the parliamentary and presidential systems, it cannot be said that there is a single model for the distribution of powers between the bodies that share in the management of the system of government. However, the kind of powers each body has and how they relate matters.

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<sup>15</sup> In Portugal, Gomes Canotilho, *Direito Constitucional e Teoria da Constituição*, 5th ed., Coimbra 2002, 518. Although noting the lack of homogeneity of what he calls mixed parliamentary-presidential systems (which coincide with what we call semi-presidential systems), he asserts that one of the structural features of these systems is the dual accountability of the Government to the President of the Republic and Parliament. De Moraes (note 10), 143, also refers to the need for the two-fold political and institutional accountability of the Government to the two other bodies making up the triangle characteristic of the system.

<sup>16</sup> See Vitalino Canas, *A forma de governo semi-presidencial e suas características*, *Revista Jurídica*, 1, 1982, 98. As in the text, others set aside the issue of dual accountability, in the wake, in fact, of the thesis of Maurice Duverger. For example, Miranda (note 14), 411. De Sousa (note 1), 14; Cristina Queiroz, *O sistema político e constitucional português*, Lisbon 1992, 57 and Elgie (note 10), 13, argue that the Government must at least be accountable to Parliament, but do not call for dual accountability.

<sup>17</sup> See Elgie (note 10), 13.

In the presidential system, Parliament legislates and limits the President through political control; in turn, the latter dictates current policy; each enjoys adequate powers.

In the parliamentary cabinet system, Parliament legislates and controls the Cabinet, which depends on it, the latter responsible for the day-to-day running of the country, this in practice suggesting influence over Parliament itself by the majority party. Each of the bodies is endowed with constitutional powers – or extra-judicial powers – to ensure that the system functions on these terms.

The semi-presidential system, on the other hand, provides numerous solutions: the attribution of legislative and regulatory powers to all the bodies, only to one, or to two; administration of current policy only in the hands of the Government or also in the hands of the President of the Republic<sup>18</sup>; dependence of the Government on the two other bodies or on just one of them.

Nevertheless, the distribution of power cannot be totally arbitrary. The principle of balance, a principle that is the backbone of the semi-presidential system, determines that none of the bodies may acquire essential and permanent influence over either of the others. The distribution of functions must obey this principle.

For this reason, in fact, the architecture of a semi-presidential system requires the careful division of powers which are united in a rigorously calibrated network. Any complacency towards one of the bodies not counterbalanced through a power attributed to another may upset the balance of the system. The history of semi-presidential systems reveals the usual outcome of non-compliance with this criterion: the change to a different system.

#### 4. The Functioning of the Semi-Presidential System

It is not hard nowadays to find people who argue that the semi-presidential system is of short-lived and uncertain duration. Even if in constitutional texts or in practice a balance has been achieved between the various bodies, this balance, in terms of the workings of the system, is unstable by nature and tending at some point to be broken, either temporarily or permanently<sup>19</sup>.

From this viewpoint, only in exceptional or transitory circumstances would a semi-presidential system in the Constitution function according to its legal framework. And any system that functions as a semi-presidential system but is not such a system in the Constitution is doomed to failure. In both cases, its function-

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<sup>18</sup> This therefore goes against Sartori (note 7), 14, when he argues that the sharing of so-called executive power between the Head of State and the Prime Minister is characteristic of the semi-presidential system.

<sup>19</sup> See Jean Claude Colliard, in his foreword to Emídio da Veiga Domingues, *Portugal Político. Análise das Instituições*, Lisbon 1980, 18.

ing would normally tend to coincide or be combined with that of other less “artificial” systems, such as the parliamentary or presidential system.

Establishing the conditions necessary for the proper functioning of a semi-presidential system, supposedly exceptional, is not easy. A comparison of various authors that are sceptical in relation to the autonomy of the semi-presidential system shows that such exceptional circumstances would result from the special combination of factors exogenous to the system of government. From three, in particular: the type of party system, the type of parliamentary majority, and the relationship between the President and this majority<sup>20</sup>. Only one exceptional combination of factors would sustain the semi-presidential system. The absence of a suitable combination of these factors would undermine it, which would then weaken the system in terms of its own conceptual autonomy.

It is important to list the possible combinations. This is done in the following tables.

#### I – Absolute Safe Majority Supporting the Government

<p>Composed of just one party</p> <p>Neutral President</p> <p>President from another party</p> <p>President is leader of majority party</p> <p>President secondary figure in majority party</p> <p><u>Coalition of two or more parties</u></p> <p>Stable coalition</p> <p>With a dominant party</p> <p>President is leader of secondary coalition party</p> <p>Neutral President</p> <p>President from a party outside the coalition</p> <p>President is leader of the dominant coalition party</p> <p>President secondary figure in any of the coalition parties</p> <p>Without a dominant party</p> <p>Neutral President</p> <p>President from a party outside the coalition</p> <p>President is leader of one of the coalition parties</p> <p>President secondary figure in any of the coalition parties</p> <p>Unstable coalition</p> <p>With a dominant party</p>
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<sup>20</sup> There no longer appears to be any doubt over the electoral system that does not directly condition the working of the semi-presidential system: see Gianfranco Pasquino, *Forma di governo semipresidenziale e sistemi elettorali*, in: Lucio Pegoraro/Angelo Rinella (eds.), *Semipresidenzialismi*, Milan 1997, 359.

President is leader of secondary coalition party  
 Neutral President  
 President from a party outside the coalition  
 President is leader of the dominant coalition party  
 President secondary figure in any of the coalition parties  
 Without a dominant party  
 Neutral President  
 President from a party outside the coalition  
 President is leader of one of the coalition parties  
 President secondary figure in any of the coalition parties

## II – Relative Safe Majority Supporting the Government

Composed of just one party  
 Neutral President  
 President from another party  
 President is leader of majority party  
 President secondary figure in majority party  
 Coalition of two or more parties  
 Stable coalition  
 – With a dominant party  
 President is leader of secondary coalition party  
 Neutral President  
 President from a party outside the coalition  
 President is leader of the dominant coalition party  
 President secondary figure in any of the coalition parties  
 – Without a dominant party  
 Neutral President  
 President from a party outside the coalition  
 President is leader of one of the coalition parties  
 President secondary figure in any of the coalition parties  
 Unstable coalition  
 – With a dominant party  
 President is leader of secondary coalition party  
 Neutral President  
 President from a party outside the coalition  
 President is leader of the dominant coalition party  
 President secondary figure in any of the coalition parties  
 – Without a dominant party  
 Neutral President  
 President from a party outside the coalition  
 President is leader of one of the coalition parties  
 President secondary figure in any of the coalition parties

### III – Absence of Any Parliamentary Majority Regularly Supportive of the Government

Given these tables, is it possible, in abstract terms, to list case by case the situations in which the system might function as a semi-presidential one?

This would appear to be a fairly pointless exercise as here and there other, more or less circumstantial, factors – always possible when dealing with human or institutional conduct – might negate any abstract conclusion.

At the best, a few trends might be suggested.

From this point of view, it seems acceptable that as the semi-presidential system is one based on the balance of powers and the rational distribution of functions and tasks between three bodies, the functioning of this system will be greater enhanced the more the concrete combination of external factors, whether of an institutional or *de facto* nature, favours automatic balance between bodies and the effective exercise of powers.

Indeed, experience has shown that this balance between bodies is jeopardised when, for example, there is:

- coincidence between the presidential majority and the parliamentary majority supporting the Government, when this is absolute and the President is the leader of the majority party. In this situation, the balance will tend to tip towards the President (presidentialism or impure presidential system);

- coincidence between the presidential majority and the parliamentary majority, when this is also absolute but with the President a secondary figure in the majority party. The tendency will be towards a concentration of powers in the leader of the majority party, whatever the office he holds, presumably that of Prime Minister (parliamentary cabinet or rationalised system);

- coincidence between majorities that are not based on one party but on a stable coalition, with the President the main leader of the coalition. Once again, the balance will tip in favour of the President (also presidentialism or impure presidential system);

- coincidence between majorities, with a stable coalition, with the President a secondary figure in one of the parties of this coalition. Balance tips in favour of the leader of the coalition, presumably holding the office of Prime Minister (parliamentary cabinet system: in the extremely unlikely event that the leader of the coalition remains in Parliament, this could be assembly parliamentarism).

On the other hand, it can quite safely be said that the balanced functioning necessary for a semi-presidential system occurs when there is:

- a relative majority of one party that supports the Government in a disciplined fashion, the presidential majority not coinciding with the parliamentary majority, that is, with a neutral or a different party President;

- a relative, disciplined majority of a stable coalition, with the President from a different political area or neutral, or the leader of one of the coalition parties;

– an absolute majority supporting the Government, made up of one party, with the presidential majority different as the President belongs to a different party or is neutral;

– an absolute majority that supports the Government, guaranteed by a stable coalition, with the President from a party not represented in the coalition, neutral, or the leader of one of the minority parties in the coalition.

Between these two rather extreme situations in which, setting aside any contingent factors that are impossible to foresee, there is an automatic tendency towards either imbalance or balance, the table shows a large number of possibilities that make it difficult to draw safe conclusions. Factors such as the political and institutional tradition of the State in question, the political circumstances of the moment, the political persuasion of the community, the existence of any pre- or post-election agreements and, in particular, the personality of the political actors of the moment, all these can be decisive in achieving inter-organic balance or in the radicalisation of concentrative trends.

By way of example: in Portugal from 1995 to 2002 there existed a relative majority which gave parliamentary support to a single party Government, with the President of the Republic and the Government belonging to the same party. The former was an important figure in the Government's party but not its leader, and the Prime Minister was the leader of the party supporting the Government. The six and half years of this innovative political scenario in Portugal have shown that the semi-presidential system can also function in such a political context.

This leads to a conclusion: it is not untrue that the functioning of a semi-presidential system requires more than a proper constitutional juridical organisation. The absence of a favourable combination of factors exogenous to the system of government is likely to lead to the self-adjustment of this system in terms of its functioning. In these circumstances, the constitutional model will go into a state of hibernation until new conditions of applicability are found.

But the "permeability" of the semi-presidential system to the influence of exogenous factors does not mean that these factors are more decisive than the institutional or juridical framework<sup>21</sup>.

Furthermore, there is nothing that allows us to conclude that the combination of factors favourable for the semi-presidential system is exceptional or is more transitory than other models of systems of government<sup>22</sup>.

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<sup>21</sup> One cannot, therefore, adhere to the opinion of Braga da Cruz, *O Presidente da República na génese e evolução do sistema de governo português*, *Análise Social*, XXIX (125/126), 1994, 264, that "presidential powers, looked at from a real and not just formal point of view, depend more on the position of the President in respect of the party system than on the institutional framework". In Portugal, although the 3 Presidents who have held office since 1976 have been in a radically different position regarding the party system, their real powers have not varied greatly.

<sup>22</sup> The acceptance of this permeability to political and circumstantial factors does not hinder the concept of semi-presidential system itself. See the discussion in Araújo (note 4), 104-7.

In effect, this dependence or “fragility” of the semi-presidential system in the face of exogenous presuppositions is not exclusive to it<sup>23</sup>. Parliamentary and presidential systems also require particular combinations of external factors to function as we would have them. For example, the presidential system would have great difficulty functioning in countries where the party system is not the same as in the United States. A system of parties in which party discipline of the kind seen in the political parties in Europe predominated would, in the absence of agreement, lead either to the system grinding to a halt (when the President and parliamentary majority do not belong to the same party) or to the domination of the President (if he or she was the leader of the majority party in Parliament). A third possibility, one that is conceivable albeit less probable, would be the predominance of the parliamentary majority in the event that the President belonged to the majority party but was not its leader.

The parliamentary cabinet system of the United Kingdom also relies heavily on the combination of the party system and relations between the majority and the Prime Minister: a perfect multi-party system (in other words, with more than two parties seriously contending for government) would have great trouble creating the perfect environment for that system of government. And the diversity amongst other parliamentary systems (e.g. Germany, Italy, Spain) is no smaller than the diversity amongst semi-presidential systems<sup>24</sup>.

## 5. The First Experiments

The beginning of the twentieth century witnessed the first attempts at overcoming the parliamentary/presidential dilemma and finding a “more applicable” system, to use Sartori’s expression<sup>25</sup>. These naturally did not appear out of thin air. During the nineteenth century prototypes of models can be found that would come to constitute the conceptual backbone of the semi-presidential system. The most spontaneous example is that of the so-called Orleans parliamentary system, which gets its name from the formula adopted in France between 1830 and 1848, created with the Constitutional Charter of 14 August 1830<sup>26</sup>.

The first attempts in the twentieth century were limited to mere constitutional consecration. There was as yet no working model for the juridical model. It was in the period between the two world wars that the German (Weimar) and Finnish

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<sup>23</sup> Although, as stressed, for example, by de Morais (note 10), 150, more than any other system “semi-presidentialism expresses great sensitivity in relation to the influence that politico-constitutional and political party practice wield over its geometry”.

<sup>24</sup> See Elgie (note 10), 11. This diversity encouraged authors to define types of semi-presidentialism: see for instance the six types of de Morais (note 10), 136 and 140.

<sup>25</sup> Sartori (note 7), 19.

<sup>26</sup> Maurice Duverger, Xequé Mate. *Análise Comparativa dos Sistemas Políticos Semi-presidenciais*, Lisbon 1978, 142, argues that this system inspired the French Constitution of 1958, before the Gaullist revision of 1962.

Constitutions of 1919<sup>27</sup>, the Austrian Constitution of 1920 (amended in 1929) and the Irish Constitution of 1937 came into being. The Icelandic Constitution of 1945 can also be included in this phase<sup>28</sup>.

What set these texts apart in terms of other political systems? Essentially the sharing of specific, freely exercised political powers – not limited by the intervention of another body – between three bodies and not two as in the standard parliamentary and presidential systems.

The first of these systems places political control in the hands of the Parliament and Government, with the Head of State acting almost a mere figurehead; the second implies day-to-day negotiation between the Head of State and Parliament as part of the political decision-making process.

In both of these systems there are two central, politically active and important bodies with powers that can be exercised without the contestation of the other. The state of balance that exists between the two will vary from case to case; in some the balance falls completely on the side of one of the bodies, as happens in the so-called parliamentary Assembly system (in Parliament's favour) or in the British parliamentary cabinet system (in favour of the Cabinet and, within it, the Prime Minister).

The above-mentioned Constitutions introduce a new element: a third body, with its own legitimacy and endowed with real political functions and powers that enable it to take part in the "political balance game", also playing a decision-making role.

Global political decision-making is no longer an exclusive result of the state of balance, momentary or permanent, between two bodies, but the product of the attitudes (of action or omission) of three. In opposition to parliamentary systems the Head of State loses the typical honorary trappings and becomes an important foreground figure. In opposition to presidential systems a Government (and a Prime Minister) claims its share of power.

This "rewrite" was a profound one. It was for this reason a lengthy process and produced only modest results at the beginning. In certain cases, it was simply abandoned.

Special care was required in building the legal basis of the Head of State. Basing his or her legitimacy on old-fashioned concepts, ones that could be contested, challenged, was not possible: as a result, monarchic legitimacy was naturally ruled out.

Basing this legitimacy on election by Parliament might be unsatisfactory: the Head of State could end up being just another element institutionally dependent on

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<sup>27</sup> We speak of a Finnish Constitution only for convenience as there is not a Constitution in the strict instrumental sense, but rather a set of constitutional laws originally enacted in 1919, 1922 and 1928. See David Arter, Finland, in: Robert Elgie (ed.), *Semi-Presidentialism in Europe*, Oxford 1999, 50-4; Carlo Fusaro, *La Finlandia in transizione fra semipresidenzialismo reale, semipresidenzialismo apparente e parlamentarismo*, in: Lucio Pegoraro/Angelo Rinella (eds.), *Semipresidenzialismi*, Milan 1997, 99.

<sup>28</sup> The Estonian Constitutions of 1920 after 1933 and of 1937 should probably be included: see Aristide Canepa, *Il Sistema Semipresidenziale. Aspetti Teorici e di Diritto Positivo*, Torino 2000, 51-2.

Parliament and thus unable to effectively contribute towards the equilibrium and stability of the political institutions.

The solution would thus have to involve having the Head of State elected by the same people that elect members of Parliament: directly or indirectly, he or she would need to be elected by popular vote. Only in this way would his or her legitimacy be equal to that granted to Parliament and, through it, the Government<sup>29</sup>.

All the Constitutions mentioned above adopted this philosophy.

The Weimar Constitution, the Austrian Constitution in 1929, and the Icelandic and Irish Constitutions all employ universal suffrage to elect their President<sup>30</sup>.

Up until 1986, the Finnish Constitution opted for election by a 301-strong college of electors, chosen by universal suffrage, with the sole purpose of electing the President. In 1986, the system of election by direct, majority suffrage, with two rounds, was introduced<sup>31</sup>.

In addition to the issue of legitimacy, however, the ideal situation of having mutual balance between the three bodies implies the proper distribution of powers. None of the three sides of the political triangle is endowed with powers so great that it may upset this balance. Moreover, tradition advised against simply adulterating one of the existing systems: simply weakening the parliamentary system by doing away with the powers traditionally belonging to Parliament or the Government, or adapting the presidential system, was not sufficient.

In the end, the Head of State was given a range of powers which, in general terms, differed from those traditionally wielded by each of the bodies making up parliamentary and presidential systems: an arbitration and controlling function, acting as a kind of shock absorber or circuit-breaker within the system. If it were not likely to lead to confusion with the doctrine of Benjamin Constant, the urge to speak of the moderating power of the Head of State would be almost irresistible.

Thus, the appointment and removal from office of the Prime Minister and the members of the Government, the dissolution of Parliament, the veto of parliamentary and governmental bills, the power to block, decide or co-decide the appointment of civil servants<sup>32</sup>, all this through free options, or options that are only partially conditioned, when not compulsorily co-operating with other bodies, allows the Head of State to arbitrate conflicts, control political decisions, balance posi-

<sup>29</sup> For the specific case of Weimar, see Bahro (note 8).

<sup>30</sup> Although in the case of the Irish Constitution, when the parties represented at the *Oireachtas* (the Irish Parliament) – in practice those able to propose Presidential candidates – agree, elections do not take place. This has already happened on 5 out of the 10 occasions when a new President has had to be chosen. See Sean Dooney/John O'Toole, *Irish Government Today*, Dublin 1992, 93.

<sup>31</sup> See Klaus Tornudd, *Le mécanisme de l'élection présidentielle en Finland: évolution et signification politique*, in: Maurice Duverger (ed.), *Les régimes semi-présidentiels*, Paris 1986, 31 et seq.; Fusaro (note 27), 111; Miryam Iacometti, *Il rapporto tra presidente, governo e assemblee parlamentari in alcune significative esperienze semipresidenziali: Finlandia e Portogallo*, in: Lucio Pegoraro/Angelo Rinella (eds.), Milan 1997, 308; Claudia Elena Herrera Cataño, *Le categorie del semi-presidenzialismo*, Udine 2000, 113.

<sup>32</sup> Cf. Duverger (note 25), 28. He shows a table comparing the powers of the Presidents of various Constitutions that he considers semi-presidential.

tions, encourage agreement, cultivate stability, simply by threatening to use his or her constitutional weapons. The Head of State thus enters the great game of politics through the main door, another factor which needs to be taken into consideration. The Head of State is not supposed to play the role of main actor, however, and is instead expected to act more as a moderator.

The five Constitutions referred to above share this general philosophy, although here and there may occasionally divert from it. The Weimar Constitution, for example, confers exceptional powers on the Head of State when public safety or order are seriously perturbed or threatened. And the Finnish Constitution endows the President with legislative power, regulatory power and administrative powers, although some of these powers have been restricted recently and the validity of his or her acts is in many cases dependent on ministerial agreement.

In one way or another, the constitutional systems established by these fundamental laws have been let down by their actual functioning. Admitting that they share a common thread as all of them took the pioneering decision to adopt the semi-presidential system as a new political category (which, up until the constitutional reforms in the 1980s and 1990s, was in doubt in Finland as the range of powers given to the President did not provide for balance with the other political bodies<sup>33</sup>), rigorously speaking only on very special occasions and for very short periods of time has any of them actually shown itself to work as a semi-presidential system.

For one reason or another<sup>34</sup>, in practice some have been transformed, into parliamentary systems (Iceland<sup>35</sup>, Ireland<sup>36</sup>, Austria<sup>37</sup>) in which the Head of State's role is greatly reduced and he or she does not make full use of his or her constitutional powers, occupying an almost irrelevant position in day-to-day politics.

The case of Finland is the most complex. The special role of conducting foreign policy played by the Finnish President in a geo-political context dominated by the fact that the country bordered on the ex-Soviet Union, the fragmentation of the party system, and the lengthy presidential terms of office of charismatic men such as J. K. Paasikivi<sup>38</sup> and Uhro Kekkonen<sup>39</sup>, were the basis for a Finnish Pre-

<sup>33</sup> For more information on the powers of the President of Finland, see Fusaro (note 27), 102 et seq.; Jan-Magnus Jansson, *Le régime semi-présidentiel finlandais: dispositions légales, pratique politique*, in: Maurice Duverger (ed.), *Les régimes semi-présidentiels*, Paris 1986, 103 et seq.; Arter (note 27), 55-66.

<sup>34</sup> Looked at briefly by Duverger (note 3), 8.

<sup>35</sup> In Iceland, the election of a strong President (Ólafur Grímsson) in 1996 created some expectation regarding the restoration and exercise of presidential powers provided for by the Constitution in a different manner than usual: see Susanna Mancini, *L'Islandia: tra forma semipresidenziali "aparente" e "reale"*, in: Lucio Pegoraro/Angelo Rinella (eds.), *Semipresidenzialismi*, Milan 1997, 163/4.

<sup>36</sup> In Ireland's case, there are some who admit the possibility of an "exceptional, intermittent semi-presidentialism": Nino Olivetti Rason, *Un semipresidenzialismo "intermittente": il caso irlandese*, in: Lucio Pegoraro/Angelo Rinella (eds.), *Semipresidenzialismi*, Milan 1997, 167 et seq.

<sup>37</sup> Heinz Schäffer, *Il modello di governo austriaco - fondamenti costituzionali ed esperienze politiche*, in: Jorge Miranda (ed.), *Perspectivas Constitucionais*, Lisboa 1998, 539.

<sup>38</sup> President between 1946 and 1956.

<sup>39</sup> President between 1956 and 1981.

sident firmly installed in the centre of the political spectrum, governing and leading the Government, even outranking Parliament itself. But most political commentators in Finland tend to think that, with the exception of foreign policy, their country's system of government has been functioning as a parliamentary system<sup>40</sup>. Nevertheless, it is extremely doubtful that they are right: up until at least the nineteen-eighties, the Finnish system appears to have been semi-presidential with presidentialist smatterings, a result of the trend to centralise political *indirizzo* in the Head of State<sup>41</sup>. From the eighties on, particularly with the presidential term of office of Mauno Koivisto (1982/1994), analysts agree on the increased importance of the Prime Minister within the system of government<sup>42</sup>. This evolution was required by membership of the European Union and was consolidated by the institutional reforms of the eighties and nineties and by the new Constitution in force since 1.3.2000. The institutional reforms, besides altering the way the Head of State is elected, gave the Government more powers and autonomy and limited the powers of the President, bringing him or her more into line with the idea of balance that presides over the semi-presidential system. An output of this removal of the presidentialist connotations of Kekkonen era could be either the reinforcement of the system's semi-presidential nature or sliding into a purely parliamentary system<sup>43</sup>. Given the powers still retained by the President the former possibility seems stronger than the latter<sup>44</sup>.

As far as Germany is concerned, where the election of the *Reichspräsident* by direct suffrage may have been designed as a transitory means of consolidating the system by the "fathers" of the Weimar Constitution (Hugo Preuss and Max Weber among them<sup>45</sup>), the fourteen years of application of this Constitution are not entirely conclusive, there being no doubt that at certain times the system effectively functioned as a semi-presidential one.

This factor did not prevent continual political instability, however, nor did it stop Hitler and his Nazi party coming to power by means of parliamentary elections.

<sup>40</sup> Sartori (note 7), 13; Rinella (note 7), 221 et seq.; in particular Fusaro (note 27), 109. Even strong presidents, such as Kekkonen, would have accepted the superiority of Parliament in respect of internal policy.

<sup>41</sup> In 1971 Paavo Kastari wrote that "foreign policy constitutes the Archimedian point on the basis of which the president can direct Finnish internal affairs to a hitherto unknown degree": quoted by Arter (note 27), 58.

<sup>42</sup> See Kalevi Sorsa, La situation juridique du Premier ministre de Finlande en face du Président de la République, in: Maurice Duverger (ed.), Les régimes semi-présidentiels, Paris 1986, 29; Fusaro (note 27), 110; Iacometti (note 31), 312.

<sup>43</sup> See Arter (note 27), 49.

<sup>44</sup> Coincident, Herrera Cataño (note 31), 115. Slightly different, Fusaro (note 27), 116, who asks whether this might not be "a residual form of semi-presidentialism", solely comprised of the "leftovers" of the previous system. Rather interesting is the "official" view of Jarno Laine, Finnish Parliamentarism – Coalitions and Consensus, in: <<http://virtual.finland.fi/finfo/English/components.html>> (visited 11 February 2004): "Today Finland is a parliamentary democracy...It does not in every respect fit into categories of parliamentarism constructed by political scientists."

<sup>45</sup> See Bahro (note 8), 781.

## 6. The Second Wave: the Impetus Provided by the Fifth French Republic and the Portuguese Revolution

It was at the end of the seventies that the semi-presidential system began to be seen as a serious *tertio genus*, with Maurice Duverger largely to thank for this<sup>46</sup>. This was some years after the beginning of the fifth French Republic and coincided with a new attempt at inter-institutional equilibrium outside the traditional framework of parliamentarism and the presidential system which sprung up in Portugal (Constitution of 1976)<sup>47</sup>.

### a) France

The fragilities and failures of the first experiments might lead one to think that the idea of a *tertio genus* was doomed. A third way based on equilibrium between three bodies which would ensure the political stability not provided by most concrete parliamentary system experiments and which could be adapted to the European political situation having not been proven practical, the semi-presidential system might have been definitively abandoned as an idea and an operational model at the end of the first half of the 20th century.

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<sup>46</sup> The examples on which Maurice Duverger based many of his ideas were, however, particularly poor ones at the time of *Echec au roi* (1978). The Weimar Constitution had foundered long before without ever actually demonstrating the feasibility of the semi-presidential system. In Ireland, Iceland and Austria, although their respective Constitutions embrace semi-presidential systems of government, the systems of government of these countries have never functioned effectively as such, operating the whole time, in fact, as true parliamentary systems. This is recognised by Duverger himself (note 26), 8, and is accepted by almost everyone (see, for example, Sartori (note 7), 9). Finland, as argued above, was at that time closer both in constitutional and functioning terms to presidentialism than the semi-presidential system. France, with a semi-presidential system in the Constitution, has almost always been run in practice using the presidentialist system, except in periods with distinct parliamentary and presidential majorities. And Portugal, the final discovery of the second half of the seventies (as Greece was not even mentioned by Duverger in his writings), had begun to experiment with its new system of government two years before, in trying and not particularly elucidatory circumstances. The Portuguese experience may perhaps have saved *a posteriori* a theoretical construction and a model that might have been condemned to general scepticism as it did not present in its favour any concrete experiment implemented with success. But whether the Portuguese system saved the theoretical creation of Duverger or not, it is also not less evident that the influence of Duverger in interpreting, consolidating and building the Portuguese system went beyond that of a simple professor of political science.

<sup>47</sup> In 1982, few years after the Greek Constitution of 1975 I raised the possibility of classifying the Greek system of government as semi-presidential: see Canas (note 16), 103; see also Mauro Volpi, *Le forme di governo contemporanee tra modelli teorici ed esperienze reali*, in: Jorge Miranda (ed.), *Perspectivas Constitucionais*, Lisbon 1998, 508; Miranda (note 14), 179. André Gonçalves Pereira, *O Semi-presidencialismo em Portugal*, Lisbon 1984, 30, and Marcelo Rebelo de Sousa, *O sistema de governo português antes e depois da revisão constitucional*, Lisbon 1983, 48, either disagreed with or were doubtful of our opinion. Twenty years after it seems obvious that the Greek system is not running as semi-presidential. In the same work, we argued the same for various examples outside Europe: the Venezuelan Constitution of 1961 and the Peruvian Constitution of 1979.

Nevertheless, the conditions to thrive and reappear in other locations were yet more favourable. Political stability was now the golden rule in democratic political systems. The discovery and development of ways and means that would help strengthen stability were now focused on.

At the same time, another star in the firmament of the concerns of the constitutionalists and political commentators began to shine more brightly: the limitation of power.

The events that led up to and, to a certain extent, brought about the Second World War had warned people of the great danger of unlimited power, even if based on the will of the majority of the people. The rationalist illusion that power simply had to be democratic to ensure individual freedom suffered a rude blow: the protection of freedom is only properly ensured if power, even that of democratically elected majorities, is limited.

For this reason, the search for ways to limit power became a priority.

These two priorities, politico-governmental stability and the limitation of the power of the actual elected representatives, now carried out as a rule by universal suffrage, discouraged reservations regarding the adoption of solutions previously viewed with suspicion: the supervision of the constitutionality and legality of the actions of a political power is the best example.

At the level of systems of government, alternatives that are at once stabilising and self-limiting are overwhelmingly favoured: parliamentary rationalisation formulae, such as the well-known constructive votes of no confidence, came into being; models of compromise were sought; the system of government was influenced by the ever more sophisticated engineering of electoral systems, whenever possible changing or avoiding pure proportional systems.

In this context, a concept such as the semi-presidential system might be resuscitated, one that takes into account its roots which, quite rightly, are deeply embedded in the search for stability and internal limitation through the distribution of power among three bodies that are as evenly balanced as possible<sup>48</sup>.

The first attempt of which there is clear record following the end of the Second World War took place in France, through the 1962 revision of the 1958 French Constitution by the Fifth Republic.

This return to systems of political organisation typical of what would later become known as semi-presidentialism was not a completely successful one. Not that

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<sup>48</sup> It should be added that although based on the classic concepts of stability and the limitation of power, the semi-presidential system also satisfies less orthodox or more futuristic ways of thinking, such as that shown by Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, Harvard 1986, and others. With a view to building an empowered democracy, protected from factions wishing to hold the State hostage or that prevent change at any moment, the author proposes a model of politico-institutional engineering based on an increased number of governing bodies that are accountable to the people in various ways, on providing one of these bodies with supremacy in the event of conflict or return to the electorate (in any event avoiding the impasse typical of the classic "checks and balances" models), and on providing the ruling party with a real chance to implement its programme however bold or progressive this might be: see page 31/32.

the French Republic failed to achieve remarkable political stability at all levels, in a State where inventing and trying out new systems of government has been the full-time occupation of political scientists and civil servants for two hundred years. In this particular instance, the aim of the political actor largely responsible for the constitutional revision of 1962 (General De Gaulle) was fully achieved in practice.

All the same, it is unlikely that this stability can be put down to the functioning of a system in semi-presidential terms. Or rather: it is not at all certain that political stability was brought about thanks to the constitutional adoption of a semi-presidential system. For one reason: for much of the time the French system of government has not functioned as a semi-presidential system.

This is not to say that the constitutional text does not consecrate the balance of powers in the semi-presidential system. But for reasons connected with its origins and the way in which it was interpreted by De Gaulle and his successors, from the outset the system has shared more similarities with presidentialism<sup>49</sup> (some prefer the term hyper-presidential<sup>50</sup> as it is softer, with less authoritarian overtones) than with any other<sup>51</sup>, except at times of so-called *c o h a b i t a t i o n* between a President and Prime Minister from different political parties, as happened for the first time between 1986 and 1988, later between 1993 and 1995, and from June 1997 to 2002<sup>52</sup>.

The person posthumously responsible for *de facto* presidentialism was General De Gaulle. He managed to place himself above political parties – although he

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<sup>49</sup> In this sense Duhamel (note 3), 587. The author makes a distinction between system and regime, using the former to refer to the functioning proper of political institutions and the latter to constitutional structure. From this perspective, France has a presidentialist system and a semi-presidential regime.

<sup>50</sup> See Queiroz (note 16), 62.

<sup>51</sup> Unlike Maurice Duverger, in the various publications mentioned (namely note 3), we concur with Miranda (note 14), 174-5. In French literature it is not difficult to find those in favour of the inclusion of the French system within the club of presidentialist systems: cf., e.g., Jean Gicquel, *Droit Constitutionnel et Institutions Politiques*, 18th ed., Paris 2002, 466-78. It cannot be said, however, that one position is dominant: there are some who favour a joint parliamentary/presidential system, e.g. Pierre Pactet, *Institutions Politiques, Droit Constitutionnel*, 5th ed., Paris 1981, 347; Charles Debbasch/Jacques Bourdon/Jean-Marie Pontier/Jean Claude Ricci, *Droit Constitutionnel et Institutions Politiques*, 4th. ed., 2001, 579. Others advocate a republican parliamentary monarchy or dualistic parliamentary system: e.g. Jacques Cadart, *Institutions politiques et droit constitutionnel*, 3rd ed., Paris 1990, 871. Others simply include the French system within parliamentary systems, such as Jean-Claude Colliard, *Les régimes parlementaires contemporains*, Paris 1978 (which speaks of the parliamentary system with “presidential correction”); and Philippe Ardant, *Institutions Politiques & Droit Constitutionnel*, 14th ed., Paris 2002, 596. There are also those that use radical designations such as “consular Republic” and “plebiscitarian monarchy”. In short, doctrinal alternatives for all tastes. A detailed list can be found in Duhamel (note 3), 582. These doctrinal differences have to do with the fact that in many cases the authors do not make a clear distinction between the workings of the system and constitutional configuration of the system, an omission that the last author does not make, as mentioned in an earlier footnote.

<sup>52</sup> Situations of latent conflict, like those of crisis, generally give rise to a return to the constitutional text in its strictest interpretation, whatever the system of government adopted in the Constitution. On the French case, see Rinella (note 7), 196; Miranda (note 14), 174.

served as an inspiration for some – entering into direct dialogue with the population, who gave him their backing whenever necessary. Despite being in favour of French parliamentary tradition his successors (like Mitterrand, for example), could not resist using such structural dynamism.

In this context, the constitutional balance was upset. The model has rarely functioned as a semi-presidential system. Save for occasional historic moments, neither the Parliament nor the Government has had any choice but to resign themselves to the politico-institutional leadership of the all-powerful President, the holder of an office inevitably longer-lasting than their own, with a larger audience and legitimacy reinforced by both the electorate and the party universe itself.

## b) Portugal

The 1976 Portuguese Constitution was elaborated at a crucial turning point in Portuguese history, and was the result of a complex compromise. The governmental system adopted by the framers constituted a delicate balance between various trends: the temptation to adopt the republican-parliamentary system of the First Republic; the rejection of the authoritarian presidentialism of the *Estado Novo*; the monarchical-presidential tendency of more conservative sectors; the Portuguese governmentalist tradition; and pressures exerted by the post-revolutionary military complex to reserve powers to the armed forces, even after the enactment of the constitutional text<sup>53</sup>.

The fragile balance achieved by the founders of the new constitution (in an intense dialectic with the military powers<sup>54</sup>) had no precedent in Portugal. Furthermore there was no comparative governmental model abroad<sup>55</sup> which increased the level of scepticism.

That the 1976 Portuguese Constitution adheres to the semi-presidential model is an opinion held almost unanimously within Portuguese legal doctrine<sup>56/57</sup> and is

<sup>53</sup> Concerning all these tendencies, see Miranda (note 13), 134-5; Jorge Miranda, *A experiência portuguesa de regime semipresidencial*, *Direito e Cidadania*, I (1), 1997, 15-6; Miranda (note 14), 366-7; Pereira (note 47), 64; Lucas Pires, *Teoria da Constituição de 1976. A transição dualista*, Coimbra 1988, 226; de Sousa (note 1), 61; Luis Salgado de Matos, *L'expérience portugaise*, in: Maurice Duverger (ed.), *Les régimes semi-présidentiels*, Paris 1986, 58; da Cruz, (note 21), 238; Bernhard Bayerlein, *Origens bonapartistas do semipresidencialismo português*, in: *Análise Social*, XXXI (138), 1996, 807.

<sup>54</sup> Which increased the suspicions of Bonapartist roots of the Portuguese system of government: see Bayerlein (note 53), 803 ff.

<sup>55</sup> There is no evidence that the French model served as a reference, despite suggestions to the contrary by Sartori (note 7), 12, with doubts, and by Rinella (note 7), 233. The differences between the Portuguese system and the French Fifth Republic were – and are – notorious and substantial; see Miranda (note 53), 18; Miranda (note 14), 369; Canotilho/Moreira (note 13), 16. We do not however fully agree with these authors in affirming that the Prime Minister in France is subordinate to the President, since the latter is the supreme head of Government. This is not the case in the Constitution, and is not always the case in political practise, especially in periods of cohabitation in which the President of one party is elected by a majority and the Prime Minister of another party is elected by a different majority.

also shared by the majority of foreign authors who have written on the Portuguese system<sup>58</sup>.

The Portuguese system benefited from historical circumstances, in that it was initially designed and proposed to the Portuguese people at a time in which there was no living memory of the correct functioning of a classical governmental system. In addition to this factor, the party system – also generated by the Revolution and consolidated by the 1976 constitutional mechanisms – was confronted with a new system of government at a time in which the parties could painlessly adapt to the new system. The familiarisation of the political community to the political practice inherent in the new governmental system also helped ensure over time that the system was seen as something entirely natural.

It is possible to assert that the governmental system, the party system, the practice of the political players and the political behaviour developed alongside the implantation of democracy. For this reason, the semi-presidential system of government has become a matter of routine intimately linked to Portuguese democracy, just as the presidential system appears to be an inherent characteristic of the political system of the United States. There are very few marginal voices which contest the broad consensus about the system<sup>59</sup>.

<sup>56</sup> Jorge Miranda, Marcelo Rebelo de Sousa, Gomes Canotilho, Diogo Freitas do Amaral, Francisco Lucas Pires, António Vitorino, Guilherme d'Oliveira Martins, Isaltino de Morais, José Mário Ferreira de Almeida, Ricardo Leite Pinto, Blanco de Morais, Manuel de Lucena, Braga da Cruz, António Araújo and others.

<sup>57</sup> Among Portuguese authors, Marcelo Rebelo de Sousa, *Sistema Semipresidencial: Definição e Perspectivas*, in: *Nação Defesa*, year 2, n. 3, May 1977, was probably the first adopting this view. I adopted this direction in 1982. It is very rare to find doctrinal positions which vary from this orientation. The most notorious are: Pereira (note 47), and Paulo Otero, *O poder de substituição em Direito Administrativo*, vol. II, Lisbon 1995, 792, which classify the Portuguese system as a rationalized parliamentary system; Moreira (note 6). Queiroz (note 16), 69, also speaks of the presidentialism of the Prime Minister although she subsequently alludes to semi-parliamentarism. It is important to note that amongst the defenders of the semi-presidential nature of the Portuguese system of government are those who choose mitigated designations. For instance, Freitas do Amaral, *Governos de Gestão*, Lisbon 1985, speaks of a semi-presidential system which tends in the direction of a parliamentary system. And in the opinion of Canotilho (note 15), 591, the established constitutional system is a mixed parliamentary-presidential system. See also Canotilho/Moreira (note 4), 205 et seq. The creation of a mixed parliamentary-presidential system would appear, however, to be logically impossible. A mixed system combines essential principles from other systems, whereas the essential principles of the parliamentary and presidential systems are mutually exclusive, and cannot co-exist. This argument is further developed in Canas (note 16), 97; see also Elgie (note 10), 6-8.

<sup>58</sup> Maurice Duverger, Luís Sanches Agesta, Andre Thomashausen, Giuseppe Vergotini, David Corkill, Giovanni Sartori, Mauro Volpi, Horst Bahro, Ernst Veser, Valeria Piergigli, Aristide Canepa, and many others. Nonetheless, Corkill and Sartori argue that the Portuguese Constitution only adopted a semi-presidential system until 1982.

<sup>59</sup> In this regard, see Canotilho/Moreira (note 13), 23. Partial – but decisive – aspects of the governmental system also seem to be absent in the political agenda. For example, there are only residual doubts concerning the “question of the manner in which the President of the Republic should be designated due to the disproportion between the extent of legitimacy attributed and the actual privileges conferred”: see however da Cruz (note 21), 264. One of the reasons for this is that the means of election of the President has had repercussions on the organization of the Portuguese political parties (although it would be going too far to declare that the internal “presidentialization” of parties

We turn now to the key aspects of the Portuguese system of government<sup>60</sup>.

(i) Balance between three powers

The constitutional system of government established in the 1976 Constitution is based upon a distribution of powers between the President of the Republic, the Assembly of the Republic and the Government. In general terms it is possible to speak of balance between these three components of the politico-constitutional triangle.

The Government fulfils the role of political leadership, using instruments appropriate to the functions of basic legislative and political decisions and the function of the execution of fundamental decisions. Parliament exercises the role of political-legislative control and definition and as a chamber of political debate. The President exercises the role of arbiter or “regulatory power of the political system”<sup>61</sup>, establishing limits on the powers of the Government, and safeguarding the regular operation of the institutions, moderating conflict and exceptionally, jointly participating in fundamental decisions or in their execution<sup>62</sup>.

The general framework of balance naturally varies in accordance with political circumstances.

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referred to by Braga da Cruz, is the result of the means of electing the President), and as a result, any significant change in the system of government or in its foundations, would provoke shock waves in the Portuguese political system which no-one desires. The last time that the question of the governmental system was in the centre of political debate was immediately before and during the constitutional revision in 1982. At this time, the most serious proposal of alteration was by Sá Carneiro, *Uma Constituição para os anos 80*, Lisbon 1979, which spoke of a dramatic strengthening of the presidential qualities of the system. This proposal was not adopted, and to the contrary, in the 1982 revision, certain presidential powers were reduced.

<sup>60</sup> In relation to the evolution of norms and praxis, readers should consult the abundant documentation and commentaries contained in the works listed in the bibliography concerning the Portuguese system. Texts of particular importance include the following: Miranda (note 13); Miranda, see note 53 and note 14; Pereira (note 47); de Sousa (note 1) and also *A Coabitação Política em Portugal*, Lisbon 1987; Canotilho/Moreira (note 13); de Matos (note 53), 55 and following; José Durão Barroso, *Les conflits entre le Président portugais et la majorité parlementaire de 1979 à 1983*, in: Maurice Duverger (ed.), *Les régimes semi-présidentiels*, Paris 1986; Pires (note 53); Pier Luigi Lucifredi, *Il Presidente della Repubblica in Portogallo*, *Il Politico*, 4, 1983; Raúl Machado Horta, *A Constituição da República Portuguesa e o regime semi-presidencial*, in: Jorge Miranda (ed.), *Perspectivas Constitucionais*, I, Coimbra 1996, 515-31; Isaltino Morais/José Mário Ferreira de Almeida/Ricardo Leite Pinto, *O sistema de governo semi-presidencial. O caso português*, Lisbon 1984; de Morais (note 10); da Cruz (note 21); Iacometti (note 31); Vitalino Canas, *Sistema de Governo Semi-presidencial*, in: *Dicionário Jurídico da Administração Pública*, 1st. Supplement, Lisbon 1998; Ernst Veser, *Semipräsidentielles Regierungssystem und institutionelle Effizienz im Prozess der Transformation. Eine empirisch-systematische Studie am Beispiel Portugals von 1974 bis 1992*, Frankfurt am Main 1999; Pedro Santana Lopes, *Os Sistemas de Governo Mistos e o actual Sistema Português*, Lisbon 2001; Araújo (note 4).

<sup>61</sup> Luís Salgado Matos called the Presidency the “central bank of the political system”. But in a figurative sense the President is more a regulatory power than a central bank ...

<sup>62</sup> For the classification of state functions used in the text see Canas (note 1), 117.

(ii) Bases of effective legitimacy

The President of the Republic is elected by universal and direct suffrage. Candidacies to the Presidency must be subscribed by citizens, and not subscribed by the political parties. This condition enables a certain level of independence in relation to the parties. The Assembly of the Republic is composed of deputies elected by universal and direct suffrage in multi-candidate lists, and under the principle of proportional representation, applying the Hondt method. Candidates are exclusively subscribed by political parties or by party coalitions. The Prime Minister is nominated by the President of the Republic, after consultation with the parties represented in the Assembly of the Republic, and based upon the elections for this organ. The most generalised practice (with only two or three exceptions in the seventies, so-called Governments based on presidential initiative), is that the Prime Minister is normally the leader of the party with most votes in the parliamentary elections. As a result, parliamentary elections also serve, if not primarily serve, to choose the Prime Minister, who in this manner may consider himself or herself to have direct legitimacy based upon universal suffrage.

(iii) Dual responsibility

The investiture and mandate of the Prime Minister and other members of government, who are nominated by the President on the basis of a proposal by the Prime Minister, can only be maintained if the programme of the Government is passed by Parliament, if motions of confidence are passed, or if there is an absence of formally manifested acts of censure, via parliamentary acts. The positive consent of the Parliament does not have to be manifested. The Government also depends upon the President of the Republic's understanding that the democratic institutions are functioning properly and that there are no motives for dismissing the Government (article 195° of the Constitution, number 2<sup>63</sup>).

The duration of the mandate, and some political acts of the Government, thus depends upon the will of the President of the Republic, in conjunction with the will of the parties which hold a majority in the Assembly of the Republic at the time.

As a result, one can speak of dual responsibility in the Portuguese system, even though this is not essential to the paradigm case of the semi-presidential system, as we saw earlier.

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<sup>63</sup> Article 195° of the Constitution, number 2 has been much discussed but never used in practise. This article enables the dismissal of the Government by the Chief of State, whenever the proper functioning of the institutions is in peril.

## (iv) Powers which concretise the balance

The Portuguese President of the Republic has a rather extensive amount of relevant, not purely nominal, powers. Those powers enable him to exercise the role of arbiter and mediator, in particular the power to dissolve the Assembly, the exercise of political veto, the sending of messages to the Assembly of the Republic, the power to initiate an enquiry into constitutionality and legality, and the power to dismiss the Government.

The exercise of these powers in a parsimonious manner, or the simple prospect of their use, in combination with permanent direct dialogue and consultation with public opinion, obliges the other organs to share with the President the function of conforming or fundamental decisions<sup>64</sup>, and not restrict the President to the exercise of the function of political control<sup>65</sup>.

The Assembly of the Republic, in addition to being the exclusive trustee of derived constitutional power, also received an ample list – increased in 1997 – of legislative powers, some of which are of an absolute nature. Although the Assembly cannot claim to be the legislative organ par excellence, since this function is shared with the Government, it may however assert that fundamental legislative decisions are made by it. In addition to this fact, the Assembly has mechanisms available which enable it to accompany, control and even submit the Government to its political logic. Nonetheless, it should be said that a complete submission of the will of the Government to the “*indirizzo*” of the Assembly depends upon a conjunction of factors that only arise once in a while. As a result, political direction rarely escapes from the hands of the Government. The Assembly normally restricts itself to the role of reserve force of the system, controlling, accompanying, inspecting and serving as a support mechanism to the executive.

The Government is responsible for a significant proportion of fundamental decisions, and is also given the function of executing fundamental decisions<sup>66</sup>.

## (v) The functioning of the Portuguese system of government

The Portuguese system of government has displayed the typical characteristics of a semi-presidential system since 1976, despite the existence of major and minor oscillations. Despite the tendency towards presidentialisation in certain moments of the first mandate of Ramalho Eanes (1976-81) and of “governmentalisation” in periods of majority governments, the fears and announcements of the substitu-

<sup>64</sup> For further reference on this issue, strictly in constitutional terms, see Queiroz (note 16), especially 49/50.

<sup>65</sup> Well-known cases revealed the virtues of a presidential intervention of a “legislative” nature in occasions where as a result of the political charge involved, a non majoritarian Government and parliamentary majority would be unable to come to an understanding.

<sup>66</sup> The question of an eventual reserve of executive powers of the Government has been considerably discussed in recent years. See the most recent contribution to this debate by Jorge Reis Novais, *Separação de poderes e limites da competência legislativa da Assembleia da República*, Lisbon 1997.

tion of the semi-presidential system by a parliamentary system<sup>67</sup> or other system<sup>68</sup>, were not confirmed. This is basically due to the fact that the exogenous factors, to which we alluded earlier, combined in a favourable manner and to the fact that the semi-presidential system has been slowly interiorised by political and civil society.

We may conclude that the electorate has favoured an essentially competitive model. On most occasions where the question arose, majorities with opposite party orientations were created in the Presidency and the Assembly of the Republic. In this manner, neither organ could infer that the respective elections represented a popular consensus in favour of the programme of the Government or the legitimacy of the President to the detriment of the other organ. As a result, the only option was political co-existence, with permanent vigilance and self-control, including from time to time an intense political dialogue between the President of the Republic and the Prime Minister.

## 7. The Third Wave, After the Fall of the Berlin Wall

Within the democratisation wave which many countries started in the last decades, the semi-presidential model blossomed worldwide, in some cases with more success than others.

The list of semi-presidential examples changes according to each author. Horst Bahro for example<sup>69</sup> lists 23 countries in Europe, Africa, Latin America and Asia, in addition to the six referred to by Duverger. Elgie<sup>70</sup> includes in his own list not less than 42 countries from Africa (Angola, Benin, Burkina Faso, Cape Verde, Gabon, Ghana, Madagascar, Mali, Namibia, Niger, Togo), the Americas (Dominican Republic, Guyana, Haiti), Asia/Middle East (Lebano, Maldives, Mongolia, South Korea, Sri Lanka), Central and Eastern Europe (Bulgaria, Croatia, Macedonia, Poland, Romania, Slovenia), the former USSR (Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgystan, Lithuania, Moldova, Russia, Ukraine, Uzbekistan) and, of course, the classical *duvergerian* western Europe samples (Austria, Finland, France, Iceland, Ireland and Portugal). Araújo<sup>71</sup> accepts most of Elgie's list (with some exceptions, like Angola) adding Tadjikistan, Serbia, Argentina and Algeria. Besides Angola and Cape Verde, Portuguese authors might add other Portuguese speaking countries like S. Tomé and Príncipe and Guinea-Bissao<sup>72</sup>. And the newest member of the United Nations, East Timor, is most certainly a semi-presidential country<sup>73</sup>.

<sup>67</sup> See e.g. David Corkill, *The Political System and the Consolidation of Democracy in Portugal*, *Parliamentary Affairs*, vol. 46, n. 4, October 1993, 517 et seq., 525; Sartori (note 7).

<sup>68</sup> Such as the presidentialism of the Prime-Minister, of Adriano Moreira, after 1987.

<sup>69</sup> Bahro (note 8), 778: "Duverger's Pleiades has almost become the Milky Way".

<sup>70</sup> Elgie (note 10), 14.

<sup>71</sup> Araújo (note 4), 104.

<sup>72</sup> Canotilho (note 15), 605-6.

<sup>73</sup> Constitution of 22nd March 2002.

In a certain way, this inflation of semi-presidential systems corresponds to a real phenomenon. Meanwhile, many of the situations pointed out cannot be confirmed at the moment. Hence the effective list will not be so impressive<sup>74</sup>.

It is natural that societies arisen from long periods of dictatorship, or even with a total absence of democratic traditions, feel attracted by mixed or compromise models that, simultaneously, may assure a stable leadership, that may assure the partition of power among several centres and that may overcome the dilemma parliamentary system versus a presidential system. The search of that model, more or less fantastic, walks away those societies from the parliamentary and presidential traditional models. Some of the new democracies, arising from the most recent wave of democratisation, chose rationalized parliamentarism models. Others, could not avoid to fall in the presidentialism. In a different way others opted by semi-presidentialism, attracted by the promise of the balance of powers implicit in that system. Duverger is probably right when he claims that semi-presidentialism has become the "most effective means of transition from dictatorship towards democracy"<sup>75</sup>. In some of these experiments, more so than in the previous ones, the choice of a semi-presidential system may have been the result of merely pragmatic considerations and not adherence to the intrinsic virtues of the system: in States formerly under the yoke of authoritarian systems, Communist or otherwise, the option for semi-presidential systems implies less far-reaching reforms than the application of parliamentarism<sup>76</sup>.

But the number of countries that chose the semi-presidential model must not be artificially amplified whether by an over-enlarging conception of this system or by the non-distinction of concepts such as, for instance, those of presidential and presidentialist systems<sup>77</sup>. The lists by the three authors previously reported seem to have been under inflation precisely due to these two last circumstances, as is shown when we look carefully at some examples.

The Russian example is one of the most elucidative. The Russian Constitution of December 1993 does not establish a plainly semi-presidential system. Assigning to a President, elected by universal suffrage, the supreme command of the army, the responsibility of the definition of basic orientations of internal and external policy and the powers of nomination of the Prime Minister, with Duma agreement, of the dissolution of Duma in certain circumstances, of legislative initiative and issuing of decrees, the Constitution does not create institutional conditions of powers balance, therefore missing one of the essential aspects of the semi-presidential system. Besides, only with great difficulty, could the Russian Constitution have joined a

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<sup>74</sup> However it is bigger than what is suggested by Volpi (note 47), 516-27.

<sup>75</sup> Maurice Duverger, *The Political System of the European Union*, *European Journal of Political Research* 31, 137.

<sup>76</sup> Bahro (note 8), 790, citing the opinion of Arend Lijphart.

<sup>77</sup> It is worth to mention that there are some authors that suggest other alternatives. See for instance Matthew Shugart/John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge (Mass) 1992: pure presidential, premier-presidential, president-parliamentary, parliamentary with president, pure parliamentary.

system with that nature, due to the shock between President Yeltsin's convictions and the tendencies of the majority of the Parliament that, inevitably, enhanced the approval of the new Constitution.

In the field of the system behaviour there is also not any proximity with the logic inherent of the semi-presidential system. It did not exist with Yeltsin and also not with Putin. The Russian system, whether in the constitutional field, or in the field of political reality, is a system of predominancy of one of the organs of the power, the President, without conditions for the other organs to have, at least, the pretension of balancing the political game. The Russian system is based on a presidentialist shape and not a semi-presidential one<sup>78</sup>.

In Central and Eastern Europe, although still early for definitive conclusions, the only systems that truly seem to fit in the semi-presidential model, as defined previously, are those of Poland, Romania, Ukraine, Lithuania and Bulgaria.

In Poland<sup>79</sup>, the system settled down, having as background the debate between those who wanted a strong President of the Republic and those who preferred a figurehead President with weak powers<sup>80</sup>. The construction of the system was also conditioned by political circumstances and occurrences that strengthened partial aspects of it. For instance, through the end of 1990, a decision was taken in order to promote the direct election of the President even before a complete democratic constitutional reform. That is, before having a whole vision of the political institutions and without being debated the relationships among the President, the Government and the Parliament, one of the essential aspects of the system that would remain in the future was defined. But these and other options unfit over the government system also strengthened the situation of conflict over the role of each organ that occurred during the interim Little Constitution<sup>81</sup> (October 1992) until the Constitution of 1997. That situation of latent or effective conflict was particularly intense until the end of the mandate of President Lech Walesa (1995). Walesa believed that a presidential system was better adjusted to the needs of the transition and adopted a flexible interpretation of his constitutional prerogatives<sup>82</sup>, particularly regarding the choice of the Prime Minister, the composition of the Govern-

<sup>78</sup> Different, Stephen White, Russia, in: Robert Elgie (ed.), *Semi-Presidentialism in Europe*, Oxford 1999, 218-25. For Rinella (note 7), 251, the Russian model of the 1993 Constitution lies halfway between the semi-presidential system and the presidentialist system. Volpi (note 47), 503 says that it is a hybrid system. De Morais (note 10), 149, prefers to classify the Russian system as a "semi-presidentialist system leaning towards reinforced presidentialism"; see also Mario Ganino, *Oltre il semipresidenzialismo: la Russia "Post-Sovietica"*, in: Lucio Pegoraro/Angelo Rinella (eds.), Milan 1997, 195.

<sup>79</sup> On Polonia see Rinella (note 7), 265-315; Ania Krok-Paszowska, Poland, in: Robert Elgie (ed.), *Semi-Presidentialism in Europe*, Oxford 1999, 170-92; Mario Ganino, *Le forme di Governo dei Paesi dell'Europa Centro Orientale*, in: Luca Mezzetti/Valeria Piergigli (eds.), *Presidenzialismi, Semipresidenzialismi, Parlamentarismi: Modelli Comparati e Riforme Istituzionali in Italia*, 1997, 366-72.

<sup>80</sup> See Krok-Paszowska (note 79), 171-2.

<sup>81</sup> On the distribution of powers under the Little Constitution, see Krok-Paszowska (note 79), 179-9; Ganino (note 79), 367-72.

<sup>82</sup> See Krok-Paszowska (note 79), 186.

ment and even the policies. The controversial situation around the presidential powers resembles, besides, the one that Portugal experienced between 1976 and 1982, with President Eanes<sup>83</sup>. In Poland it was the election of President Aleksander Kwasniewsky, (1995) that made for stabilization. He was the leader of a party (SLD) that had been standing against the enhancement of presidential powers.

In the Constitution of 1997 the direct election of the President remains. Also, the great majority of the President powers remains, specially the nomination of top officials, the veto of the legislation, the designation of the Prime Minister and the dissolution of *Sejm* (Parliament) in certain circumstances. The Government may fall if there is a constructive vote of no confidence. It was enhanced the principle of cooperation within dual executive, rather than the general supervision of the President<sup>84</sup>. The presidential tendency was weakened. Thus, the President works mostly as a referee and as obstacles breaker. The Prime Minister saw his functions strengthened regarding his Cabinet, the *Sejm*, and the President himself and so the daily policy is led by the Government and not by the President. All this makes the system fulfil the balance characteristics among three organs pertaining to the semi-presidential system, being, therefore, one of those of the third wave that interpret better that balance.

The Romanian situation also seems to be reasonably safe<sup>85</sup>. The Constitution of 1991 sustained the existence of a President elected by universal suffrage, a Government capable of leading the current policy, responsible before the Parliament and with a distribution of powers that may assure a certain balance in the Constitution and in its practice, with no hindrance for the implication of the political circumstances in the oscillations of the power relations among those organs<sup>86</sup>. Although inspired by the Constitution of the 5th French Republic, the Romanian Constitution grants to its President more limited powers than the former<sup>87</sup>.

The systems of Ukrainian<sup>88</sup>, Lithuanian<sup>89</sup> and Bulgarian<sup>90</sup> government also present features that point out the semi-presidential system. The Macedonian situation

<sup>83</sup> The resemblances between portuguese and polish experiences go, besides, much further. See Ganino (note 79), 366.

<sup>84</sup> See Krok-Paszowska (note 79), 190; Ganino (note 79), 367.

<sup>85</sup> See however Ganino (note 79), 372-3; Rinella (note 7), 323-7.

<sup>86</sup> During the first six years of its existence the trend was towards a stronger president (Ion Iliescu 1990-96) and a weaker government. With Emil Constantinescu (1996-2000) the institutional system functioned more as a 'classical' semi-presidential system: Tony Verheijen, Romania, in: Robert Elgie (ed.), *Semi-Presidentialism in Europe*, Oxford 1999, 207-9. After 2000, again with Iliescu the stabilization process continued.

<sup>87</sup> See Verheijen (note 86), 197; more radical Florin Bucur Vasilescu, *Le bilan de la transition roumaine*, in: Slobodan Milacic (ed.), *La Démocratie Constitutionnelle en Europe Centrale et Orientale. Bilans et Perspectives*, Bruxelles 1998, 531-542.

<sup>88</sup> Constitution of 1996.

<sup>89</sup> Constitution of 1992.

<sup>90</sup> Constitution of 1991. See Venelin Ganev, Bulgaria, in: Robert Elgie (ed.), *Semi-Presidentialism in Europe*, Oxford 1999, 124; see however Raina Kartcheva, *L'impossible lecture semi-présidentielle de la Constitution bulgare*, in: Slobodan Milacic (ed.), *La Démocratie Constitutionnelle en Eu-*

has atypical characteristics that do not allow an accurate assessment. Thus, it can be considered as an example of an atypical semi-presidential system or a specimen not fitting in any consecrated model<sup>91</sup>. On the other hand, for different reasons, Slovenia<sup>92</sup>, Croatia<sup>93</sup>, Belarus<sup>94</sup>, Serbia<sup>95</sup> and Moldova<sup>96</sup> do not comply with the prerequisites previously defined.

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rope Centrale et Orientale. Bilans et Perspectives, Bruxelles 1998 and Angelo Rinella, I "Semipresidenzialismi" dell'Europa Centro-Orientale, in: Lucio Pegoraro/Angelo Rinella (eds.), Semipresidenzialismi, Milan 1997, 226-7.

<sup>91</sup> Constitution of 1991. See Svetomir Skaric, Le bilan de la construction démocratique en ex-RY de Macedoine 1991-1996, in: Slobodan Milacic (ed.), La Démocratie Constitutionnelle en Europe Centrale et Orientale. Bilans et Perspectives, Bruxelles 1998, 497-513.

<sup>92</sup> Constitution of 1991.

<sup>93</sup> Constitution of 1990.

<sup>94</sup> Constitution of 1994, amended in 1996.

<sup>95</sup> Constitution of 1992.

<sup>96</sup> Constitution of 1994. Since 2001 the President of the Republic is elected by the Parliament.