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**Ending Legislative Gridlock
through Old European Recipes;
another Mexican Mirage?**

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Marzo de 2017

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ABSTRACT

We all know political tensions between the US and Mexican governments escalated, after President Donald Trump took office in Washington D.C. in January, 2017. The paper surveys the new constitutional attributions of his Mexican counterpart, that is, whomever is elected in 2018 to replace current President Enrique Peña Nieto. In order to avoid partisan gridlock in the future, these constitutional reforms will introduce an old European recipe, Coalition Government (CG), as a new tool of political governance in Mexico.

Coalition Government (CG) appears to offer a viable alternative to Mexico's traditional single party rule. From the 1930's until the year 2000, Mexicans were ruled by the same political party, which won every presidential election. Historians speak of Revolutionary Nationalism, as the common ground which united a diverse country under the rule of not only a single man, but of a single party. The Institutional Revolutionary Party (PRI) survived every electoral term on the strength of a single persuasive slogan: the call for national unity. Party leaders would call on Mexicans to avoid political fragmentation.

Then in 1997, opposition representatives obtained the full majority of the Chamber of Deputies (Mexican House of Representatives). Divided governments were installed after that term, with no exceptions. Vicente Fox, the right-wing National Action Party's (PAN) candidate won the 2000 elections; he passed the presidency to one of his political fellows in 2006: Felipe Calderón, who six years later was unable to secure for his party the Executive branch, losing 2012 elections to a new PRI President. The President could no longer count on a majority; the Executive was forced to negotiate with a highly fragmented Congress.

As legislators, constitutional law scholars and political scientists currently debate federal legislation necessary to implement the impending constitutional reforms, Mexico's political leadership may revert to the same old banner: the call for national unity. I argue that nationalism (a la Trump) should not be employed in Mexico to justify reconcentrating political power in the Executive branch. While avoiding partisan gridlock, the impending constitutional reforms must not upend the opposition's role in Mexico's current open democracy.

Both Mexico and the United States have been caught up in partisan gridlock. In the United States, Congressional gridlock seems to be one of the main factors explaining the current malfunctioning of the federal government. If we try to understand what happened prior to the 2016 presidential elections in the United States, electoral results could have been more predictable than they look today. An American political scientist recently laments:

The [American] federal government does perform poorly in a vast range of domestic programs [; the] legislative process is highly dysfunctional [not to speak of how such gridlock shut down the federal administration in 2013]. [A]mericans perceive a gap between 'everyday life' and democracy as practiced in Washington [, D.C.] [P]rosperity may have raised public expectations [...] tend[ing ...] to erode respect for authority. [W]e the People are not responsible for the government's failures. [...] [Quoting President Kennedy], "Failure produces more finger-pointing than blame acceptance".¹

In Mexico, as may be seen from recent public anti-Trump demonstrations all around the country, intense popular reaction has followed the aftermath of Donald Trump's inauguration in January 2017. In the face of his threats and disparagement of the Mexican people, political par-

¹ SCHUCK, PETER, WHY GOVERNMENT FAILS SO OFTEN; AND HOW IT CAN DO BETTER, 4-7 (Princeton U. Press, 2014).

ties have federated together under an old slogan: the call for national unity. Mexico's newly emerging political coalescence may sweep away current partisan cleavages in Congress (despite the Mexican legislature's having worked under the arithmetic of divided government for the past 20 years). Amongst Mexicans, the need for national unity against unfriendly calls by President Trump for strengthening southern borders, jeopardizing free trade and putting into effect an extreme control for illegal immigrants, may produce, by extension, a beneficial, unintended consequence: new perspectives for more efficient governance for the years to come. However, a more efficient government might not mean a more responsible one.

In Mexico, political actors are not strangers to loud speech and bold statements, and in the past have coalesced around the call for national unity. The political backlash against the Trump administration has united the minds and will of the Mexican people of both the right and the left of the political spectrum. But still, political fragmentation has been present for the past few decades, with no way forward foreseeable in the near future. At least, back in 2011, Mexico's Congress took a noteworthy step forward with a major initiative of constitutional reform designed to avoid political fragmentation and partisan gridlock at the level of Mexico's current open democracy. The next Mexican president to be elected in 2018, who will replace Enrique Peña Nieto, will count on a new institutional framework, at the constitutional level, to assemble a majority vote in Congress (even if it is, in a sense, an artificial majority) despite the steady unpopularity of the ruling parties (whatever the color of alternative winners in Congress or event at the Presidency.)

In Mexico, few other alternatives are viable for the political establishment, other than functioning under the old European recipe of a scheme of Coalition Government (CG). This paper describes how, beginning in 2011, this particular model of governance was conceived and negotiated between the leadership of Mexico's political parties, under the guise of moving Mexico's traditional constitutional presidential system closer to European parliamentary standards. After analyzing some of the specific elements of Mexican political institutions, I survey some of the possible unintended consequences which may follow the transplanting of European parliamentary seeds into the traditionally barren soil of Latin-American presidentialism.

Mexico's impending constitutional reforms may have several technical shortcomings. The reforms might upend the opposition's role in Mexico's current open democracy. The reforms might reduce the President's oversight of his or her own cabinet (which I argue is not necessarily a positive aspect for democratic governance). Despite the political cleavage which has in the United States traditionally divided Republicans and Democrats, and the spread of extremism as one of the elements explaining recent political outcomes, and the increasing tensions amongst the several states and the federal government², Mexico's strategy to beat partisan gridlock may have other unintended consequences as well, at odds with an appropriate functioning of western democracy.

Driving south of Trump's promised wall, the political strategy of reducing the influence of the opposition through the impending constitutional reforms follows long established patterns in Mexican political culture. A few months after taking office in December, 2012, President Peña Nieto seemed to accomplish the near impossible task of bypassing Congressional gridlock. During his first 100 days in office, Mexican legislators approved reforms which had been pending for the

² GARRET EPPS, *WRONG AND DANGEROUS: TEN RIGHT-WING MYTHS ABOUT OUR CONSTITUTION* 93-102 (N.Y., Rowman & Littlefield Publ., 2012).

past two presidencies (2000-2012), despite the political weight of opposition parties in Congress. *Time Magazine's* international headlines read “Saving Mexico”, as a description of Peña Nieto’s successful first year in office.³ With the recent constitutional amendment, analyzed in this paper—concerning the installation of Coalition Governments (CG)—, our political system seems to have laid down (*e.g.*, in concrete constitutional rules) the strategy of the Institutional Revolutionary Party (PRI) of avoiding legislative paralysis for good... but, wouldn’t that be *too good to be true?* The new constitutional new rules might be successful, but enshrining everything in definite constitutional language may lead to unforeseen problems and serious unintended consequences for political governance in Mexico’s fragile democracy.⁴

In Section I of this paper, I describe how conventional in Mexican political culture it was for President Peña Nieto to consider Coalition Government (CG) as a viable solution for Mexico, in view of the long tradition by political operatives in this country to circumvent and skirt differences through the call for national unity. I further describe how those concerns were put together in a bill for federal legislation that will carry out the impending constitutional reforms and assure the implementation of the Coalition Government (CG) model, which the Executive projected would be discussed and approved before the end of 2018. In Section II of this paper, I examine how the influential party leaders behind this bill, inspired by the example of European parliaments, considered political coalitions as an operational manner of avoiding legislative gridlock in a cooperative rather than in a competitive way, as if Mexican institutions didn’t follow presidential patterns. In this section, I’ll try to prove how superficial that type of solution might result if not followed through with other technical adjustments (in the federal legislation that will implement the impending constitutional reforms.) Both presidential or parliamentary systems attempt to provide for expedient political governance, and at the same time impose mechanisms designed to curb abuses of power committed by the government itself. Given Mexico’s long tradition of political and legal impunity and government abuse, in Section III, I enumerate certain technical adjustments which I propose would make this new form of government operational. In Section IV of this paper, I insist on how important it is for the new Coalition Government (CG) model to maintain opposition’s strength as a valuable check in Mexico’s current open democracy, and how important it would be to adjust the current electoral rules for the Senate of the federation to adequately represent diverse political cleavages within Mexico’s territory. Finally, in Section V of this paper, despite the multiple misgivings I express in the previous sections, I conclude that Coalition Government (CG) model is nevertheless a viable solution for political governance in Mexico, as long as political actors assume their responsibility of maintain accountable governments; or at least, to accomplish better work in the best interest of solving the national political agenda. But for that purpose, Mexico doesn’t need reams of new rules. What politicians need is the political will to act as responsible governors.

³ *Saving Mexico*, TIME MAGAZINE INTERNATIONAL (Asia, Africa, Europe and South Pacific Editions), Feb. 24, 2014, at A1.

⁴ Skeptical opinions have been heard for the past 20 years in the same direction. Coalition governments tend to be ephemeral; governments ineffective, unable to assure legislative support of his government program. Legislative paralysis seems inevitable in this perspective, SCOTT MAINWARING & SOBERG SHUGART, *PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA* 394-437 (Cambridge Univ. Press 1997).

I. PREVIOUS AND PENDING STEPS OF A MEXICAN CONSTITUTIONAL AMENDMENT

While launching its government program in 2012, Peña Nieto's new born administration intended to be operational under a frequently publicized “Pact for Mexico”, signed by the three main national party leaders the day after presidential oath took place.⁵ Putting into writing a very broad agreement, president Peña Nieto pretended to formalize the end of political cleavages through the call for national unity⁶. Then, in a very short period of time, the most strategic reforms, translated into policies and statutes, were approved by Congress, despite the existing divided government scheme.

1. Reducing cleavages meant not only recovering the missing civil rights agenda. It meant also passing very controversial bills and constitutional amendments, pending confirmation for many years (such as labor law regime, health care, public education or the approval of a new Amparo trial statute). Such an impulse concerned also some of the main economic aspects (related with oil and electricity production —a former State monopoly—; promoting alternative energies and opening the national oil company —PEMEX— to private investments).

After 12 years of conservative presidents —Fox and Calderon, whose policies were mostly led to internal security and war against illegal drugs—, Peña's strategy was focused on launching all sort of pending policies. This meant, in a second degree, that each one of parliamentary fractions would find its own *momentum*.⁷ Opening the agenda was, suddenly, extremely profitable for everyone. Including opposition parties.

Even though, prior to 2012 elections, nobody expected the next president would recover majority in the House of Representatives. Fragmentation had been a stable fact in Mexican parliamentary standards. In preparation for facing once again the inconvenience of a divided government, Senator Beltrones proposed (in 2011) a constitutional amendment aiming to establish new rules, allowing the President to negotiate and establish Coalition Governments (CG), whose main goals were reducing cleavages and improving partisan bargaining at both of the chambers. The amendment was finally confirmed in February 2014. But some relevant events intervened.

2. After July's 2012 presidential elections, political enthusiasm was in the air, even though electoral predictions did not fail: the Congress majority ended up being opposite to the president's party. Peña's strategy was centered on approaching opposition leaders before submitting his enduring program to a vote. Once the *Pact for Mexico* was signed, in closed chambers, the most important reforms would be confirmed and publicized as a joint political success. Mostly every congressman (with few exceptions) consented the approval of new constitutional and legal provi-

⁵ On interviews for the French press, opposition party leaders declared “such a Pact do not compromise neither our task of criticism or our role of checks upon the government; we enter a great period of national unity” (right wing PAN Gustavo Madero). “We are ready to assume the risk as the most important left-wing party acting in a responsible manner” (PRD Jesus Zambrano). The former populist presidential candidate, Lopez Obrador, shut the door, founding a new party; Cathy Ceibe, *Le pacte du Mexique ou le retour du PRI au Mexique [The pact for Mexico or the Comeback of PRI in Mexico]* L'HUMANITÉ, December 4, 2012 at 12.

⁶ “To build the country envisaged in the Pact for Mexico, the policy designers identified five challenges in the medium-term: full compliance with the rule of law; social inclusion; optimal quality in education; access to opportunities on an equal basis; and increased global leadership and responsibility”. Juan José Gómez Camacho, *Guest Editorial*, 20 EUR. FOREIGN AFF. REV. 149-154 (2015).

⁷ “Sometimes they tip a glass. Sometimes they share a pizza. And, increasingly, they reach agreements”, Juan Montes, *How Mexico ended political gridlock*, WALL ST. J., august 15, 2013 at 24.

sions as a common gain, whenever international leaders visited our country.⁸ The American press noticed this Mexican uncommon way to build agreements.⁹ And that was precisely what the official propaganda wanted to spread out.

But very soon, after that unusual outcome took place, the administration would be heading to the end of the honeymoon. Legislative gridlock came back to life few months later.¹⁰ The rest of the presidential term faced an unfriendly Congress majority vote, as usual.

3. For the past two decades, the chamber of deputies' agenda had stagnated because of the lack of a presidential majority, succeeding one legislature after the other as a permanent condition; going from internal divisions during the XIX Century,¹¹ to openly divided governments after 1997 elections. In more recent terms, polls didn't seem to change perspectives after 1997 elections, and so forth.¹² Despite the fall of the PRI, for the first time in 2000 presidential elections, Presidents have been facing hostile majorities after every renewal of the House¹³. On the other hand, political pluralism seemed unable to be modified in a near future, as far as Mexican multiparty scheme kept growing its scope and number.

During the past couple of decades, Mexican institutions had expended a lot of energy, public resources and time building strong electoral institutions: the quality of Mexican democracy was measured in terms of organizing elections, counting votes, and publishing trustful results.¹⁴ More recently, measurements started to change. Mistrust against the government (and political parties) was no longer related on *how the designations were made*, but on *how do the persons designated*

⁸ The Brand new legislation had to deal with eleven “structural” (e.g. core) reforms, developed either in constitutional or on federal statute legislation, related with a) individual rights (education, Habeas Corpus and oral litigation trials); b) institutions (transparency and elections) and c) economy (energy, tax, labor, financial, competitiveness and telecommunications).

⁹ For its 2013's list, *Time* magazine named Enrique Peña #46 amongst the 100 Most Influential Leaders in the World: “The US shouldn't treat Peña Nieto like a patsy; he combines Reagan's charisma with Obama's intellect and Clinton's political skills”. Bill Richardson, *Enrique Peña Nieto*, TIME MAGAZINE, Apr. 18, 2013, at 56; “After the death of Hugo Chávez, Peña Nieto may now take up the torch of Latin American leadership and revive the Washington Consensus predominating in the region during the 1980s”, John Ackerman, *The Mexico Bubble*, FOREIGN POLICY, May 1, 2013, at 24; “Washington should be cheering Mexico's gridlock busting—and taking it as an example”, Editorial Board, *Mexico's grand bargaining*, WASH. POST, Mar. 29 2013; “parties have just signed ‘a grand bargain’, a k a ‘Pact for Mexico’, [...] to work together to fight the big energy, telecom and teacher monopolies that have held Mexico back. If they succeed, maybe Mexico will teach us something about democracy”, Thomas Friedman, *How Mexico got back in the game*, N.Y. TIMES, Feb. 23, 2013, at 22.

¹⁰ Enrique Krauze, *Mexican Dubious Reforms*, N.Y. TIMES, Sep. 9, 2014, at 14.

¹¹ MARIA AMPARO CASAR & IGNACIO MARVÁN, GOBERNAR SIN MAYORÍA: MÉXICO (1867-1997) [Governing with no majority] (México, CIDE-Taurus 2002).

¹² TODD A. EISENSTADT, CORTEJANDO LA DEMOCRACIA EN MÉXICO: ESTRATEGIAS PARTIDARIAS E INSTITUCIONES ELECTORALES [Wooing Democracy in Mexico: Partisan Strategies and Electoral Institutions] (México, El Colegio de México, 2004).

¹³ The House of Representatives (Cámara de Diputados) is elected every 3 years. During 2018 elections, its 500 seats shall be completely renewed (as far as reelection has been historically banned since 1933). It will only be possible to compete for reelection, for the first time during 2021 elections.

¹⁴ At the beginning of this process, a certain rehabilitation of Congress' role seemed to let behind the old hegemonic party system, leaving the parties the opportunity to make part of most influent actors taking relevant decisions, in 207, MARIO GARZA CANTÚ, MARIO, LA SURVIE POLITIQUE D'UN PARTI POST-HÉGÉMONIQUE [Political Survival of a Post-Hegemonic Party] (Saarbrücken, Ed. Univ. Européennes, 2010).

*should exert power.*¹⁵ It has been said, the CG scheme was intended to *rationalize the exercise of presidential power* (I'll insist on this idea further).

4. According to specific competencies derived from this CG agreement, the President will be able to sign, in black and white, a *Coalition agreement* or *covenant*, containing a very precise program. Some would say the Mexican democracy finally got stronger by the simple fact of making written compromises with senators from two or more different parties. Those minority parties (never mind if potential allies or open rivals facing the president's party) should gain seats on his Cabinet, in exchange of supporting the Coalition. Such an agreement might last a concrete period of time (also determined in the covenant), or leave the term open until the entire aspects of the program would be accomplished. As a correlate, the Chief of State should be compelled to include a plural integration of his new cabinet.

(Article. 89) Competencies and obligations of President imply:

(...)

XVII.- To take an option, at any moment of his term, of governing through a Coalition Government with one or several political parties represented at the Congress. Coalition government shall be regulated in terms of a covenant and a program, both being approved by the majority of present members of the Senate. The covenant shall establish the causes for dissolving the Coalition Government.

What was not specified in the ratio for this constitutional amendment, is what kind of practical consequences should have been expected. But all along the presidency of Peña, the PRI tycoons have been insisting the only security to find the new governmental scheme to get functional, is to vote an additional statute containing the terms and conditions of functioning for those Cabinet Governments.

Bibliography related with CG design has being barely oriented on how adequate it would be to make coalition governments work, either if the regime might be presidential, parliamentary or semi-parliamentary.¹⁶ Debate in Latin America is still, as Mainwaring and Shugart mentioned years ago, in an emerging stage.¹⁷ But now, this is certainly the right time to encourage the study of this new mechanism for Mexico.

As far as none of the drafts for a new CG bill have been officially submitted upon the Mexican Congress until now,¹⁸ our concerns shall focus on the most relevant aspects to be defined before December 2018. So far, it has been said that regulating Cabinet Governments (and not leaving it to informal partisan negotiations) seems absolutely necessary in Mexico because *i* any arrangement among the Executive and Legislative powers in a presidential regime would only matter if they count on constitutional and legal authorization; *ii* once a very detailed instructive has been formalized in law, mistrust against political parties should disappear; and *iii*.

¹⁵ 215-297, PIERRE ROSANVALLON, LE BON GOUVERNEMENT [The Good Government] (Paris, Le Seuil 2015).

¹⁶ For all, WOLFGANG MÜLLER & KAARE STROM (Eds.), COALITION GOVERNMENTS IN WESTERN EUROPE, Oxford Univ. Press (2000); more recently, other studies have been published, including other realities such as for presidential countries; 163-192 Daniel Chasqueti, *La supervivencia de las coaliciones presidenciales de gobierno en América* [Survival of Presidential Government Coalitions in Latin America], 11 POSTDATA, (2006); 3-28 George Tsebelis & Eduardo Alemán, *Politics of Government Coalitions in the Americas*, 3 J. OF POL. IN LAT. AM. (2007).

¹⁷ 396 SCOTT MAINWARING & MATHEW S. SHUGART, PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA, Cambridge U. Press (1997).

¹⁸ In this paper we will analyze one of those draft bills, proposed by very reputable colleagues at the National University, 19 DANIEL BARCELÓ & DIEGO VALADÉS, ESTUDIO SOBRE EL SISTEMA PRESIDENCIAL MEXICANO QUE CONTIENE ANTEPROYECTO DE LEY DEL GOBIERNO DE COALICIÓN [Essay on Mexican Presidential System containing the Preliminary Draft of the Coalition Government Bill] (Mexico, UNAM-CEDIP 2016).

understanding Cabinet Government model seems so unfamiliar amongst Mexican politicians, that a CG Bill should become mostly a blueprint, figuring out every single decision to be taken from now on.¹⁹ Our concerns would not intend to respond to those particular matters, impossible to solve through legislation, but to encourage an open and critical debate before a definitive Statute shall be voted during the next few months.

If such a new bill is approved with such a formalist intention, which seems the most likely outcome so far, the Cabinet itself shall acquire the monopoly of political direction of the Executive upon the Congress: Budget, National Development Plan and Government Program shall be conceived, from now on, under these new constitutional and legal constraints, including a myriad of parties as making part of a plural Cabinet. All kind of Bills should be formally proposed, not by the president, but by the Cabinet. According to this, any topic included at the covenant (or coalition agreement), would be exclusively initiated through the Cabinet.²⁰ The President *might do no wrong*, as mentioned further, the medieval sentence would deprive the King's of any responsibility. Then, should *neither* the Cabinet do any wrong?

Even if the Senate committees could analyze each proposal sent by parties making part of the coalition, in terms of the new CG bill about to be approved, the whole Cabinet should be appointed by the plenary assembly of the Senate, in a single vote (art. 30 of the CG bill project). Concerning what every secretary of state is supposed to respond, Political responsibility would be no longer individual, but collective (art. 20 of the CG bill). That would mean, if the Secretary of Defense incurs in arbitrary acts (for example, waterboarding a suspect illegal drug traffic) the whole cabinet would have to respond before the Senate; not only the Secretary in charge. Accordingly, a victim of human rights violations could plead for compensation upon every office in charge; not only against the one who mistreated him. The first effect, if those rules were approved as they were proposed, would be the dissolution of political responsibility on specific agents.

5. The weakness of the CG draft, nowadays awaiting consideration to be voted, seems to be multiple. Even though political responsibility is supposed to be collective, specific mechanisms of individual appearance (actually contained at the CG bill project) intend to hear individual members of the Cabinet (secretaries), compelled to be present at monthly hearings at the Senate (not weekly, as for *question time* patterns in parliamentary systems). Following two consecutive *interpellations*, after which a simple majority of senators might determine (after consecutive hearings) he has formally *failed* (art. 40 of the CG bill). Secretary would be compelled to resign. But only after two chances of failure.

According to this draft CG bill (which I repeat, is still not confirmed but might be voted soon), every covenant should establish, with no restrictions, a certain amount of *delegates* authorized to each party to make themselves present at the Cabinet meetings. According to the draft CG bill, the covenant or Government program would also determine if all of them have the right to cast a vote or if they are only observers (art. 31 of the CG bill). Delegates will be in charge to control if the covenant terms were to be strictly followed (art. 33 of the CG bill). In other words, Senators cannot exert any type of opposition against the coalition if their own parties make part of it. But “delegates” can, in a Cabinet functioning closed chambers. In other words, the second

¹⁹ Daniel Barceló Rojas, *El gobierno de coalición en las constituciones y leyes de desarrollo constitucional de los estados* [Coalition Governments at state constitutions and statutes], vol. 2, 27 (CIEN ENSAYOS PARA EL CENTENARIO, G. Esquivel *et al.*, eds., UNAM-IBD, 2017).

²⁰ While signing the CG, either the covenant and the government program must be both subscribed by the parties of the coalition at both of the Assemblies, according to art. 11 of the CG bill, *id.* at 48.

effect of this new form of government could produce, if the CG bill is voted as it is in the project, to tight up hands to opposition senators, whose parties signed the covenant.

Something else being not considered by the authors of this initiative is the fact “incentives for cooperation in a coalition, are considerably less important in a presidential regime”.²¹ Maybe party delegates could submit a proposal to be voted and make the President change his mind... who knows. Or maybe the same day, the President would decide not to make himself present at the Cabinet meeting (art. 32 of the CG bill), but being represented by the Secretary of Interior (in contrast with parliamentary systems, where the President or the Prime Minister are always compelled to preside the Cabinet or *Council of Ministers*). In fact, under Mexican new legal standards, the Secretary of interior might become a sort of chief of cabinet, as far as he could preside the aforementioned meetings, as well as the *Permanent Conference of the CG* (art. 5 section 10 and 2.4 of the CG bill).

It seems important to underline that both of the Chambers should be included in such a *Conference*, because that would be one of the very rare moments in which representatives should be listened by Senators, given any other mechanisms for popular questioning is absent from the CB Mexican model.

What makes different the CG Mexican model from other Latin American examples²² is the fact, Mexicans put it into rules; as a formal requirement supposed to be written black and white, into paper.²³ Conference meetings would take place as frequently as determined at the covenant. But they could also never take place, despite those encounters are intended to become an exercise of public accountability, even upon the international community. On the other hand, it would be not the President, but the Secretary of interior, to be authorized (under the instructions of the former) to negotiate with party leaders of the CG how would the covenant evolve. The signature would formally constraint not only Senators but also members of both of the Chambers of Congress, during those *Conference* meetings. The third predictable effect of this CG model would be to tight up hands, not only of Senators signing the covenant, but also to representatives belonging to the chamber of deputies, who didn't even vote the terms of the covenant.

Rules applicable to CG scheme might be found not only in the Constitution, but also in federal statutes and some other regulations (relating to Congress, Public Administration, Administrative Procedure and even the internal statutes of single parties in the Coalition).²⁴ Finally, ac-

²¹ Alfred Stepan & Cindy Scack, *Constitutional frameworks and democratic consolidation: Parliamentarism versus Presidentialism*, 46 WORLD POL. 1-22 (1993).

²² First approaches to Brazilian or Chilean cases from a Mexican perspective at TANIA PEREZ FARCA, LAS COALICIONES DE GOBIERNO: UNA NECESIDAD MEXICANA [Government Coalitions: a Mexican Need] 104-139 (Preface by J. Carpizo, Porrúa, 2011).

²³ Analyzing 123 different Cabinets, functioning in 9 Latin American countries other than Mexico, 56% of the cases ended up establishing a formal coalition; instead, minority governments handled to survive on 71% of the cases. But whenever the Assembly was divided into three major parties (which might be the permanent situation in Mexico, after 2018 elections), the success rate of GC (under this study, on presidential standards) corresponded only to 11% of the cases. Incentives for cooperation seem still very low in those ideal cases, José Antonio Cheibub, Adam Przeworski & Sebastian Saiegh, *Government Coalitions and Legislative Success under Presidentialism and Parliamentarism*, 34 BRIT. J. OF POL. SC., 565-587 (2004).

²⁴ Insisting on the necessity to formalize every single coalition arrangement into law, “la convención política en el seno del Congreso mexicano no puede ser fuente de derecho vinculante para regular competencias constitucionales de dos poderes públicos distintos” [Political conventions in Congress could not be mandatory to regulate competencies affecting two branches of the State] See BARCELÓ ROJAS, *Supra*, note 19, at 26.

According to this CG bill project, if by any circumstances, the Coalition would be broken, the Cabinet would end, but the government (*e.g.* the administration) would remain. That means the breaking parties' fractions would no longer be obliged to follow the covenant. But the administration would continue to be functional, until they would need again congressional support. The fourth effect of this CG scheme should be there is no interest for the opposition to put pressure on government, as far as the latter is the one he determines, unilaterally, when the Coalition gets to an end.

And here, another of those weaknesses regains importance. As it will be analyzed further on, party discipline functions in a very different manner under presidential than in parliamentary standards.²⁵ Under Mexican new rules, members of the coalition were to be constrained to impose party discipline amongst every Senator and Representative from his own party, who will systematically vote in the sense indicated by the covenant (art. 14 of the CG bill). But no political or legal consequences were to be established if anyone would not follow.

Finally, a very singular new mechanism would be attached to the CG scheme if the Bill project were approved in a near future. The House would count on the brand new *Political Council of the CG*, to be integrated by the President, the Secretary of interior, the party leaders of the Coalition (seating at both of the Chambers of Congress) and the national party leaders. This council would be integrated even before the CG is signed (art. 9 of the CG bill project), and would meet as frequently as established at the covenant.

What are going to be the specific decisions included in the covenant? Formally, the ones included in every political platform of parties chosen to make part of the coalition. That means the President's party could promote banning cannabis consumption, while other parties (suddenly becoming partners of the coalition) would have proposed the opposite. The fifth consequence of this new scheme might be the unpredictable outcome of aspects included in the covenant. Is the president always going to impose his party's view; is he going to leave his rivals to impose this aspect on the agenda, or is he simply going to adjourn the point amongst the list of priorities?²⁶ Coalitions made with extremely different parties are nothing but time bombs. But there is nothing to worry about: according to Mexican model, the CG ends whenever the president decides; or whenever the time determined at the covenant were to be elapsed. According to PRI tycoons, inspiring all these new mechanisms, Mexico would approach to parliamentary practices.

II. IS THIS AMENDMENT *REALLY* APPROACHING MEXICO TO PARLIAMENTARISM?

For the past few years, European scholars spoke of “presidentializing parliamentary systems”, to define the need to concentrate competencies on cabinets in order to improve stability and efficiency of governments.²⁷ At the meantime, Latin American scholars announced the opposite trend, in the sense of parliamentarizing presidential regimes.²⁸

²⁵ Fred W. Riggs, *The Survival of Presidentialism in America: Para-Constitutional Practices*, 9 INT. POL. SC. REV., 247-278 (1988).

²⁶ In fact, the third of these options would be possible: the covenant might determine the aspects not to put on the table. That means all those aspects simply disappear.

²⁷ The process of presidentializing/personalizing democracies has been long and steep. Departure has been the universalization of right to vote (in France, in 1848). Then, democracies debated if it had to be the Assembly who should exert power by itself or through delegates. The process ended after a generalized consensus all over Europe, admitting

Two years before the new constitutional framework of CG shall enter into rule in Mexico, such interesting path of apparent approach to parliamentary scheme might produce counter-productive consequences, already mentioned, such as erasing opposition influence at the House or building an artificial representativeness of the Senate. But some of those points precise several remarks.

I. Parliamentarism diverges from presidentialism since the former is structured over a *confidence* link.²⁹ The cabinet legitimacy (and durability in office) depends on the parliament; *e.g.*, on a majoritarian agreement being its permanent support, allowing government agents to exert power. On the other hand, presidential system encounters a single legitimacy source for each one of the branches of power: Executive and Legislative existence do not depend on each other.³⁰ They are both elected through different ballots.

In other words, in parliamentary systems, confidence would bind the government to the majority of a popular assembly; which means each one of MP's can contribute to put at stake the government program amongst his peers whenever something is not following (the majority; the program; or in a single word, trust). Such an institutional scheme implies the existence of institutional mechanisms conceived to function around *political responsibility*.³¹ The members of the cabinet cast a collective intention to vote (in the sense of government choices) looking for support amongst the members of the popular Assembly. While electing their representatives for Congress, every single citizen, exerting his individual right to vote, would be installed as the system's cornerstone. To put this otherwise, common citizens are intended to stay constantly and permanently vigilant of current Cabinet's actions.³² This is an ideal finish line, where the Mexican presidential system were supposed to approach (little by little). At least that was said amongst considerations to justify these new rules.³³

The lack of this formal link of confidence makes presidential systems, in general, less adaptable to ministerial crisis. Presidents formally found their own legitimacy from direct elections. But generating trust, *e.g.* confidence, might not depend only on this specific mechanism of

the direct election of heads of the Executive. The long way to the exercise of responsive rule had just started, See ROSANVALLON, *supra*, note 15, at 111-179.

²⁸ DIEGO VALADÉS, LA PARLAMENTARIZACIÓN DE LOS SISTEMAS PRESIDENCIALES [Parliamentarization of Presidential Systems] (UNAM, Instituto de Investigaciones Jurídicas) (2008).

²⁹ JEAN-CLAUDE COLLIARD, LES RÉGIMES PARLEMENTAIRES CONTEMPORAINS, [Contemporary Parliamentary Regimes] (Presses de la Fond. Nat. de Sc. Pol., 1978).

³⁰ PHILIPPE LAUVAUX, LES GRANDES DÉMOCRATIES CONTEMPORAINES [Great Contemporary Democracies] 164-166, 155-157 (Paris, Presses Univ. de Fr., 2d. ed., 1998).

³¹ MARGUERITTE BOULET-SAUTEL, LA RESPONSABILITÉ À TRAVERS LES ÂGES [Responsibility through the Ages] (Paris, Economica 1989).

³² 1-29 WALTER BAGEHOT, THE ENGLISH CONSTITUTION (Oxford U. Press 1929) (2d. ed. 1872).

³³ Sen. Beltrones' initiative underlined how, existing mechanisms intended to approach fractions (in a permanent state of divided governments), were not contributing much to foster consensual decisions in Congress. The bill had even proposed the creation of a *Chief of Cabinet*, in charge of structuring the link between executive and legislative powers (in this point, the task has been finally left to the Secretary of Interior). A *Chief of Government* could have been appointed, "as it has been conceived in France" (that part of the proposal was not confirmed). According to Beltrones, the bill allows cooperation without weakening the Executive's competencies, Horacio Jiménez, *Beltrones propone Gobiernos de Coalición* [Beltrones proposes Coalition Governments], EL UNIVERSAL, Sep. 15, 2011, at 1N.

designation.³⁴ There are many other institutional features created to promote a permanent relationship of trust between the Chief of State and national legislatures.

Whenever the President counts on a Congress majority, the administration can shape Congress' agenda or even impose his direction powers upon the current majority in order to keep together the ensemble of representatives, supporting his program till the end of their electoral mandate.³⁵ Democratic functioning of presidentialism does not depend on a directly elected president but on the manners in which the executive branch can be able to exert his influence over legislative process.³⁶ But how would those elements of the system change, whenever the President has no longer the support of legislative majority? This consequence makes mixed governments (presidential/parliamentary) an interesting alternative for making presidentialism work back again.³⁷

2. Thinking positively, Mexican new regulations could be anchored on European early parliamentary institutions, where individual Ministers (acting under a Cabinet scheme) were intended to exert the unitarian and individual will of the Monarch. Given, as mentioned before, the King *can do no wrong*,³⁸ the Cabinet in earlier times was a College exerting Kingdom's authority, turning its priorities into reality.

Next to the Cabinet, the so called in French as *Parlements*, were conceived as deliberative Assemblies, allowing the monarch and his ministers to match political actions with collective opinions, spread all along the territory.³⁹ The first group was authorized to *act* in the name of the community; the second one, to *control* the acting power of government.

If it was stability what the Mexican institutional framework tried to reach (according to Beltrones' proposal), some other adjustments should be introduced, or the new framework risks to be partially operational. In Mexican instrumental terms, the notion of "trust" on the cabinet would be absent from new legal and constitutional terminology. Any type of open support by popular representatives (or at least, by a majority of the House) won't be manifested by national representatives. Why? Because building up such Covenant (in a similar way after which the *Pact*

³⁴ After Sen. Beltrones initiative (supposed to enter into force, originally in 2012), the chambers would intervene, appointing each member of the Cabinet. Designations should be done *one by one*, submitting every presidential proposal to a vote. The chamber would then be able to reject nominations once; if a second reject came by, then the President would be able to appoint that member of cabinet with no restrictions. Even though the proposal was not approved as such, it is interesting to remind how enthusiastic were the most influent members of parties to support the initiative, Leticia Robles, *Beltrones, Cárdenas y el Jefe Diego defienden gobiernos de coalición* [Beltrones, Cárdenas and Diego the Chief uphold Cabinet Governments], EXCELSIOR, Nov.8, 2011.

³⁵ José Antonio Cheibub, *Reforming Presidential and Semi-Presidential Democracies*, in 24 *CÓMO HACER QUE FUNCIONE EL SISTEMA PRESIDENCIAL: MAKING PRESIDENTIALISM WORK*, (Andrew Ellis *et al.* ed., UNAM-IDEA International, 2009).

³⁶ Angelina Figueiredo & Fernando Limongi, *Presidential power, Legislative Organization and Party Behavior in the Legislature*, 32 (2) *COMP. POLITICS* (2000).

³⁷ ANDREW ELLIS *et al.*, *Supra*, note 35.

³⁸ WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 238 (1765), quoted in 43 DIEGO VALADÉS, *EL GOBIERNO DE GABINETE* [Cabinet Government], (UNAM, Instituto de Investigaciones Jurídicas, 2003).

³⁹ Barons, close to French monarch, were summoned four times a year in precise dates, to meet *in parlamento*. Paris Parliament was created in 1250. It was originally the place for pleading justice trials. The transformation of such a royal court to an assembly of counsellors followed centuries later; in ARLETTE LEBIGRE, *LA JUSTICE DU ROI: LA VIE JUDICIAIRE DANS L'ANCIENNE FRANCE* [King's Justice: Judiciary Life at the Ancient France], 32 (Paris, Albin Michel, 1988). For a general perception of early days, See 65-118. CHRISTOPHER SILVESTER, *THE PIMLICO COMPATION TO PARLIAMENT: A LITERARY ANTHOLOGY* (London, Random House, 1996).

for Mexico was conceived) shall be externalized *only* within the Senate... instead of the House. As well as for the US, the former is a territorial assembly and the latter, a popular one.⁴⁰ This scheme would compete with parliamentary orthodoxy, where the aforementioned link of trust should be understood in popular, not in territorial grounds.

3. Following with European parliamentarism old standards, mostly customary, created after centuries of uses and practices, trust would be the institutional cement putting together this collective opinion.⁴¹ But trust implies also a direct and permanent pressure on the Cabinet. To translate this into specific procedures, a minority of MP (members of Parliament) can submit to the Assembly a motion of censorship, after which, every MP (linked either to majority than to minority groups) have a short period of time for reflection. Then, their single vote, whether or not supporting the current Cabinet, should build up a majority. That is why, the length of Minister's appointments could be shortened anytime; *e.g.* whenever the majority of the Parliament considers the Executive's action did not match the majority's interests.

In the other extreme, as a correlate of such a legislative utensil, the Executive (in mostly all cases the Prime Minister) is authorized to dissolve the popular assembly as a discretionary (and almost unlimited) competence.⁴² Whenever dissolution is declared, every MP must resign (as indicated below). In contemporary terms, such a possibility would not represent a *Coup* to the House, because all resigning representatives should share a short period of time to go back to the ballots and campaign upon their former constituencies.⁴³ Prompt elections give common citizens the status of a last layer of decision: either favoring what the Cabinet proposed, or confirming what the opposition promoted as an alternative program prior the Parliament was dissolved.

I have to admit, at this point, people who grew up in a presidential country, should certainly need additional explanations: censorship and dissolution seem totally stranger to presidentialism.

And that is so because Parliamentarism took centuries to define two main goals of the existence of cabinets: viability and operability.⁴⁴ Cabinets are *viable* once they count on the assembly majority support. And they are *effective* only if the cabinet is able to assemble a majority, with which the government's bills should pass.

⁴⁰ The inclusion of second assemblies in Europe had to do with the improvement of representative democracy. After the universalization of vote, the idea of a second assembly intended to take advantage of political and administrative experience amongst territorial authorities. Senators were frequently elected through indirect mechanisms, at 56-58, JEAN MASTIAS & JEAN GRANGÉ, *LES SECONDES CHAMBRES DU PARLEMENT EN EUROPE OCCIDENTALE* [Second Chambers of Parliament in Western Europe] (Paris, Economica, 1987).

⁴¹ René Capitant, *Les Régimes Parlementaires* [Parliamentary Regimes], in *MÉLANGES CARRÉ DE MALBERG* 33 (Paris, Economica ed., 1933).

⁴² ANDRÉ CABANIS & MICHEL LOUIS MARTIN, *LA DISSOLUTION PARLEMENTAIRE À LA FRANÇAISE* [Parliamentary Dissolution a la Française] 154-164 (Paris, Presses de Sc. Po, 2001).

⁴³ Exerting dissolution rights, on classic parliamentarism, the Executive intends to dissuade the minority to trigger a motion of censorship, precipitating the ministerial crisis that such a censorship would have provoked instead, See PHILLIPE LAUVAUX, *LA DISSOLUTION DES ASSEMBLÉES PARLEMENTAIRES* 137 (Paris, Economica, 1983).

⁴⁴ This double objective was technically accomplished through a dualist model of government. On the one hand, a Council should deliberate and build a joint solution, and on the other hand, ministers would execute those decisions. The model was created after the French Revolution. The members of the Council could even be elected by citizens themselves; not by the Assembly, becoming officers of the people instead of delegates of representatives, See Michel Troper, *Discours du 24 avril 1793: Saint Just et le problème du pouvoir exécutif*, [The april 24th 1793 speech: Saint Just and the Executive Power's problem], 191 *ANNALES HISTORIQUES DE LA RÉVOLUTION FRANÇAISE* 645 (1968) (Fr.).

From there, a better explanation can be elaborated. In very few cases, a vote expressing a majoritarian support has been constitutionally established; it could be said, as part of a protocol (*e.g.*, while investing a new government). Then, depending on political sensitivity, the government can ask the majority to confirm their intention to support the Cabinet (*e.g.*, submitting a question of confidence to a vote).⁴⁵ Likewise, the opposition could ask the same question (but in negative sense; the other way-around) to their peers, in order to know if the cabinet still counts on majority support (*e.g.*, submitting a motion of censorship). If the acting cabinet do not encounter a majority vote, it resigns immediately (beginning by the Prime Minister). If the motion of censorship does not find a majority, the controversial bill would be automatically approved.⁴⁶

It has to be said a certain amount of filters have been conceived in order to reduce the number of motions of censorship submitted at every legislative term. *Constructive censorship* vote, functioning in Germany, make part of these filters (*e.g.*, current cabinet cannot resign until a new Prime Minister shall be appointed by the majority).⁴⁷ Those filters make the appearance of motions of censorship as something very uncommon, at least after the Second World War. What has to be retained is the strength of those mechanisms is concentrated on its own persuasion capacity.

In Mexican terms, once the new CG rules will get into force (2018), it could be said that the cabinet contains the first (similar to dissolution), but not the second element (something close to censorship). As mentioned before (I-5), the President has been authorized to declare the end of the Cabinet's Covenant rule, whenever he considers *it's appropriate* (*e.g.*, if a different party would not promote government's program of action in both of the chambers of Congress). But in exchange, the minority of the Assembly would not count on firm mechanisms to compromise political responsibility of the Cabinet in the face of the Assembly. Some type of censorship is somehow missing to opposition parties, even though that might not be shocking at all, since political responsibility has always been another external element to presidential countries.

4. Political responsibility concerns a type of liability linked to an asset, *e.g.* the authorization to exert power.⁴⁸ Assets and liabilities are intended to stay in equilibrium, according to *responsive rule* guidelines. Accountability comes first from a democratic election; then, other mechanisms are established in order to validate (*e.g.* to normalize) the obedience to authority. Accepting to exert authority implies the submission to specific checks and balances, which should be imposed by citizens. Being responsible refers to a personal engagement with the past (in terms of accountability) but also with the future (as the power to accomplish specific goals).⁴⁹ Once submitted to this type of dependency, government agents bring about (a much easier) acceptance from their governed fellows.

⁴⁵ According to art. 49 of the V Republic Constitution, the french government could ask for a *déclaration de politique générale* [a declaration of general policy] concerning a general approval of its program. After 1993, any of these motions has been proposed, at Pierre Avril, *Renforcer le Parlement, qu'est-ce à dire?* [What does it mean to strengthen the Parliament?] 146 POUVOIRS, 11 (2013). (Fr.).

⁴⁶ But if censorship was not previously submitted, any other negative vote to the cabinet would not imply its resignation, See MARCEL PRÉLOT, *LE PARLEMENTARISME, PEUT-IL ÊTRE LIMITÉ SANS ÊTRE ANNIHILÉ?* [Could Parliamentarism ever be contained without being wiped out?] 4 (Paris, Presses de la Fond. Nat. de Sc. Pol., 1965). Technical restrictions to this article were imposed after 2008 constitutional amendments taking place in France, in 146 POUVOIRS (Le Renouveau du Parlement) [The Renewal of Parliament] (2013).

⁴⁷ KAARE STORM, *MINORITY GOVERNMENT AND MAJORITY RULE* 4-5 (Cambridge U. Press, 1990).

⁴⁸ OLIVIER BEAUD & JEAN-MICHEL BLANQUER, *LA RESPONSABILITÉ DES GOUVERNANTS* [Governant's responsibility] 12 (Paris, Descartes & Cie, 1999).

⁴⁹ DENIS BARANGER, *PARLEMENTARISME DES ORIGINES* [Parliamentarism of Origines] 25 (Paris, Presses U. Françaises, 2002).

But what happen when those citizens were facing an abuse, or misuse of powers? As mentioned before, the head of the State would not respond directly, because formally unable of wrong doing, personally; but his Secretaries could. Even though, any response to an accusation would be, after all, criminal. In England, the accusation order (or *impeachment*) was elaborated at the House of Commons, and the judgement, at the House of Lords. Resignation permitted the Parliament not to touch royal powers, personally.

None the less, this solution ended not being that harmless. Tensions between the King and the Commons were more and more frequent at the beginning of the 1700's; risks of revolution were not absent. That's why, the British Cabinet itself decided to avoid a more complex *impeachment* procedure, proposing in exchange the resignation of all of its members, as a political sanction (instead of impeaching one or some of its members, which would bring about criminal responsibility).⁵⁰ The aim was to dismantle a criminal trial through a voluntary resignation.

When the mechanism was exported to America, the subject of impeachment procedure was not only the President and his secretaries, but every civil officer “for high crimes and misdemeanors”. In fact, the reasons to be involved in those facts could be not only criminal. The House would qualify every cause and eventually consider those acts as compromising public trust.

According to the American Constitution (Art. I section 2 and 3), the procedure is quite similar as in the UK: The House kept the power “to impeach” (*e.g.* to investigate); the Senate, the power “to try all impeachments” (*e.g.*, to condemn) —through a 2/3 majority—. It's intended to “remove a person from an office of public trust upon the occurrence of any behavior, *criminal or not*”.⁵¹ Only two American presidents have been impeached: Andrew Johnson (1868) and Bill Clinton (1999). Both of them survived the Senate trial, being finally acquitted. Not more than a couple of federal judges have been withdrawn from their posts after an impeachment procedure.⁵² But the procedure is still a deterrent against the abuse of power.

According to the Mexican constitution, impeachment procedure doesn't exist; it had always been important to avoid the President to be distracted by ordinary petitions.⁵³ Thus, presidential political responsibility is practically inexistent to the South of the Rio Bravo. It depends on specific (and difficult to prove) behaviors, to be evaluated by the House: the commission of serious crimes, or the fact of betraying the Nation (art. 108 fraction II). None of those have to do with presidential competencies, and none of those are included yet on criminal legislation (which is a constitutional condition to be investigated for a criminal conduct).

But if in a near future, criminal codes (state of federal) were modified and one of those two reasons happened to be defined by law, the House could finally proceed to retire presidential immunity, and then to instruct a “political trial”, which is mostly an impeachment procedure,

⁵⁰ After Lord Walpole resigned to his ministry in 1742, the Impeachment model fell into disuse; the Westminster model of political responsibility was finally imposed in terms of accountability, DIANA WOODHOUSE, *MINISTERS AND PARLIAMENT: ACCOUNTABILITY IN THEORY AND PRACTICE* (Oxford, Clarendon Press, 1994).

⁵¹ House Judiciary Committee's final report on the impeachment of Richard Nixon, rep. no. 1035, 93d Cong. 2d Sess., quoted by CALVIN MASSEY, *AMERICAN CONSTITUTIONAL LAW: POWERS AND LIBERTIES* 56 (NY, W. Kluwer, 4th ed., 2013).

⁵² ROBERT G. MCCLOSKEY, *THE AMERICAN SUPREME COURT* 203 (U. of Chicago Press, 5th ed., Sanford Levynson rev., 2010).

⁵³ ELIZUR ARTEAGA NAVA, *DERECHO CONSTITUCIONAL [Constitutional Law]* 730-759 (Mexico City, Oxford U. Press, 1999).

where the House investigates and the Senate condemns, as well.⁵⁴ Compared to most of Latin-American presidents, the Mexican one is almost untouchable.⁵⁵ The aforementioned deterrent effect gained by impeachment procedure, is practically ineffective in Mexico. Stability standards prevail, as far as the process of destitution of the Executive becomes virtually ineffective.

5. Stabilizing governments is not only a Mexican concern. The trend of lacking a majority support of the Congress is present all over presidential countries for the past decades. Very few of them run in accordance with legislative majorities supporting the president. The lack of majorities usually explains the breakdown of presidentialism.⁵⁶ But other than cleavages, the context might also explain the new strength of legislatures, keen to look for coalition agreements.

From a presidential perspective, an approach to Parliamentarism consists on the impossibility to establish back a majoritarian party system.⁵⁷ But in Mexico, electoral and party system tensions increase the level of polarization or ideological fracture of societies.⁵⁸ For seventy years (1929-1997), those elements—rather unimportant—had been silenced by the extraordinary domination of an official party: the PRI.

Back to Parliamentarism, the old notion of *political cleavages*, proposed by Adhémar Esmein in France (and reviewed by Maurice Duverger, as a strict model for the expression of bipolar opinions; black *or* white),⁵⁹ would evolve to achieve what Robert Dahl called *polyarchy structures*, based on very broad social and political agreements—despite the multiplicity of social groups, competing at different layers of society—.⁶⁰ In a world of differences, interparty consensus would end up by being always perceived as an asset.

⁵⁴ Art. 108 C.P. (Political Constitution of the United Mexican States) sections I and III have established a list of responsibilities and actions intended to initiate these “political trial” against almost every federal and state agent, other than the President. The later would not be distracted in any of these procedures all along the time he exerts his function, even if the facts would be related with his competencies (section II).

⁵⁵ Enrique Sánchez Bringas, *El presidente de México y el sistema de responsabilidad de los servidores públicos* [The President of Mexico and the Functionaries Responsibility System] XVI ANUARIO JURÍDICO, 262 (1989).

⁵⁶ S. MAINWARING & S.M. SUGART, *PRESIDENCIALISMO Y DEMOCRACIA EN AMÉRICA LATINA* [Presidentialism and democracy in Latin America] (Buenos Aires, Paidós, 2002); JUAN LINZ & ARTURO VALENZUELA, *THE BREAKDOWN OF DEMOCRACIES* (Baltimore, J. Hopkins U. Press, 1997).

⁵⁷ Not to speak of the deep crisis of party systems in our continent. French scholars refer to *Cartelization phenomenon*, to mean they tend to make themselves part of the system, making everything they can in order to remain in the market despite institutional efforts to proscribe them. The main objective of cartels is related with their own survival, at Richard S. Katz & Peter Mair, *La transformation des modèles d'organisation et de démocratie dans les partis: L'émergence du Parti-Cartel* [Transforming organization models and partisan democracy: the rise of Cartel-Parties] at JOHANN AUCANTE & ALEXANDRE DÉZÉ, *SYSTÈMES DE PARTIS DANS LES DÉMOCRATIES OCCIDENTALES: LE MODÈLE DU PARTI-CARTEL EN QUESTION* [Party Systems in Western Democracies: challenging Cartel-Party model] 35-47 (Paris, Presses de Sc. Po, 2008).

⁵⁸ Signing a Covenant should not depend on how likely it would be, for Assemblies, to impose a cooperative intention (instead of a competitive one). Deadlock between parties at the Congress, as it is a congenital fact of presidential systems, could be immediately transferred to the Executive. That would be the worst scenario for a CG, according to Dieter Nolhen, *El poder ejecutivo en el presidencialismo, alternativas en debate* [Executive Power in Presidentialism, debating alternatives] ELLIS *et al.*, *Supra*, note 35 at 41-42.

⁵⁹ ADHÉMAR ESMEIN, *ÉLÉMENTS DE DROIT CONSTITUTIONNEL FRANÇAIS ET COMPARÉ* [Elements of French and Comparative Constitutional Law] 241-260 (ed. rev. J. Barthélemy, Rec. Sirey, 1914) (preface D. Chagnollaud, reprint U. de Paris II, 2001); Maurice Duverger, *Le bipartisme est-il possible en France?* [Is bi-partism possible in France?], 3 LES ENTRETIENS DU SAMEDI, 1-6 (1995).

⁶⁰ Democratization of parliamentary regimes has been inheritant of three waves of institutional transformations. During the XIX century, oligarchies started being competitive through universalization of suffrage; then, from the end of that century till the first World War, parliamentary systems were institutionalized, becoming real polyarchies. Final-

Then, under 20th century new standards, better known for Republican virtues of a responsible Welfare State, individuals were taken care of, from childhood to old age. Scandinavian but also Swiss, Dutch, Belgian, Austrian, or more recently German democracies functioned under a scheme of “Grande coalition” (Große Koalition), as far as all parties would fight for mostly the same priorities;⁶¹ never mind if formally right or left wing inspired. Polyarchies seemed to widen government’s social legitimacy.⁶²

According to the model, Parliamentary systems seemed the best adaptable schemes in terms of consensus and deliberative public decisions. In the other extreme, presidential countries were conceived as owing more rigid structures, institutionally speaking. After presidential intentions, lock-out possibilities seemed as the natural consequence of progressive decline of influence of Cabinets, starting after the very next day the Administration gets in office.

But it is still clear today that, under presidential standards, incentives for cooperation between Executive and Legislative branches are based on their own and independent sources of electoral legitimacy.⁶³ In addition, the *Winner takes all* mentality, typical of presidential regimes, reduces potentiality of bargaining between political actors.

This could partially explain why a permanent scheme of divided government has been wide-spread. What we Mexicans don't know yet, is what would we want broad agreements for; or at least, what is the kind of regime we want. Wouldn't it be too late to insist on a comeback of hyper-presidentialist Welfare State (Mexican style) of the 60's and 70's? And what if the suppression of the very idea of opposition would drive to hyper-presidentialism? Isn't that what oligarchs all over the world would have always dreamed of?

III. LET'S RATHER *STABILIZE*, WHILE *CONTROLLING* THE EXECUTIVE

Maybe, some of the useful instruments conceived at European parliaments in order to avoid cabinet gridlock could be exportable to presidential frameworks, such as Mexican. Some of those solutions (technically known in terms of *rationalization of Parliamentarism mechanisms*) could provide additional elements to improve the functioning of its current framework. It might be difficult to preconize how would they be adapted into presidential standards, formally *parliamentarized* in Mexico after the CG reform.

Instead, after a closer comprehension of parliamentary standards, the parties could prefer to leave some aspects of presidential framework, open to wider margins of political negotiation,

ly, despite the fascist menace, these countries achieved a very important success between the end of the Great Depression and the 1960's, entering into a third wave defined by the reign of Welfare State, See ROBERT A. DAHL, POLIARCHY: PARTICIPATION AND OPPOSITION 1-10 (N. Haven, Yale U. Press, 1971).

⁶¹ AREND LIJPHART, DEMOCRACIES: PATTERNS OF MAJORITARIAN AND CONSENSUS GOVERNMENT IN TWENTY-ONE COUNTRIES 229 (N. Haven, Yale U. Press, 1984).

⁶² Polyarchies were countries governed during considerable periods of time, guaranteeing not only political participation on competitive grounds, but equal access of opportunities to all of its populations and the possibility for every citizen of questioning the prevailing majority, See DAHL, *Supra*, note 60, at 202.

⁶³ And yet, Federalists had broken with the old model, inherited from English Whigs, stating a tight notion of *Parliament supremacy*. Equal representativeness (according to the own designation of representatives) fostered a strict separation between branches. Madison proposed instead a functional system of separation of powers, where the three branches would exert executive, legislative and jurisdictional tasks, See THE FEDERALIST PAPERS, No. 58, at 279 (James Madison) (Haskell House Pub., 1971).

instead of finding themselves stuck under strict legal procedures. What would be the interest of regulating political negotiations *by law*? (the way the CG bill is supposed to be voted). I consider it would be more likely to advance a certain amount of strategies to adapt legislative practices to improve pluralist views of political decisions. Instead than imposing a joint opinion, as long as handcuffing opposition voices in both of the Mexican Chambers.

Back to general frameworks, strengthening the Executive (in rationalization terms) should also include an improvement of accountable decisions. Putting it otherwise, controlling the Executive provides a reduction of arbitrary rule: predictability would bring out stability. Chances are, a broader control over legislature competencies (in the Mexican CG format) could also be conceived as a certain model of rationalizing powers of the Executive, under presidential standards.

1. Analyzing some of the most recent evolutions of parliamentary systems in Europe, it seems quite common to conceive a renewal of stronger governments, with its consequent rationalizing assemblies' competencies.

From a very broad constitutional perspective, the notion of limitation of powers seems to be a common need to be reviewed not only amongst presidential systems, but also from parliamentary ones.⁶⁴ Particularly after the constant degradation of the universality standards of human rights protection. Populism is constantly growing all over the European continent, as a reaction against terrorist menaces and waves of illegal immigration.

In our continent, the rise of presidential powers has been justified to react against very challenging realities, such as drug trafficking or balancing old inequalities under ideological repulsion to extreme liberalism. In those terms, controlling the Executive branch seems far from a priority of any government; either parliamentary or presidential. In fact, European domestic recent strategy is not that far from this trend to accept a larger concentration of government powers. What to do?

2. The term *rationalization* has been analyzed from moral philosophy, in terms of an intrinsic value contained under legal elements.⁶⁵ On similar grounds, Italian Constitutional court built the *principle of rationality* on legal interpretation grounds.⁶⁶ In a rather political perspective, the term has been declined as *rationalization of Parliamentarism*, as proposed by Boris Mirkine-Guetzévitch, Ukrainian born comparatist living in France (1892-1955). His studies about the

⁶⁴ Rationalizing Parliamentarism is not a definitive idea. Recently in France, it was proposed to “loosen the strength of some of the mechanisms concerning rationalization of Parliamentarism”, for the Commission presided by an old Primer Minister: reparliamentarizing would mean more effective controls over the Executive; permitting a closer supervision by the Assembly; See EDOUARD BALLADUR, *UNE VE RÉPUBLIQUE PLUS DÉMOCRATIQUE* [A more democratic 5th. Republic] 4-6 (Paris, La Doc. Française, 2007).

⁶⁵ Acting *rationaly* brings about the choice of an adequate manner to accomplish specific objectives, from an individual perspective, while acting *reasonably* concerns solidary actions aiming not only individual, but collective objectives. Whenever the exercise of power is unchecked, the will of the strongerst prevails, Diego Valadés quoting JOHN RAWLS, *POLITICAL LIBERALISM* 48 (N.Y., Cambridge U. Press, 1993).

⁶⁶ The earliest notion of *ragionevolezza* [reasonableness], created by the *Corte costituzionale* through interpretation, in the 60's, aimed a more unequivocal representation of Legality Principle. French jurisprudence created few years later the *bloc de constitutionnalité* [Constitutional Bloc], to mean an ensemble of principles covering all kind of aspects of reasonable constitutional interpretation. Pierre Escarras, *Conseil constitutionnel et ragionevolezza: d'un rapprochement improbable à une communication possible* [Constitutional Council and reasonableness: from an unlikely approach to a doable communication] 216 in *IL PRINCIPIO DI RAGIONEVOLEZZA NELLA GIURISPRUDENZA DELLA CORTE COSTITUZIONALE* (Seminar in Rome, 13-14 Oct. 1992, Milano, Giuffrè, 1994).

control of power were mostly conceived during the gap between wars.⁶⁷ On his words, Legislatures would express a legal supremacy, while Executives, a political one, through the own powers of political direction (such as conceived in Italy as *potere d'indirizzo politico*).⁶⁸ Where *classic Parliamentarism* existed (as in England or in the French III Republic), the intervention of formal legal procedures was not in use. Ministerial responsibility functioned through customary practices. In the other hand, where *rationalized Parliamentarism* existed (like in Weimar Germany, Prussia or Austria), the Cabinets would be formally appointed by the Assembly; not by the electoral majority. Therefore, in the later scheme, law should be widespread in the whole process. The constant duty of those mechanisms being, as a consequence, making cabinets more stable.⁶⁹ Motions of confidence, or censorship votes were supposed to be restraint in order to avoid ministerial crisis (quite common at *classic* parliamentary regimes of the first half of 20th Century).

3. According to separation of powers general guidelines,⁷⁰ mechanisms such as dissolution or votes of censorship have never been conceived, by parliamentary regimes, in terms of primacy of one power over the other (either Executive or Legislative). Those mechanisms were reserved to face exceptional situations; or to find out *non-criminal* solutions to solve political crisis: *e.g.*, such as practical mechanism to avoid paralysis between those two branches, or as the formal action against the abuse of powers.

Old experiences of classic parliamentary practices (such as the III and IV Republics in France) ended up twisting those theoretical proposals. One branch fought permanently to dominate the other. Triggering political responsibility mechanisms in order to put pressure on the Cabinet, contributed only to political instability. Single ministers were constantly compelled to resign, dancing to the rhythm of parliamentary alliances. Almost never related to political programs; rather to personal interests of current agents.

Despite the possibility to declare the dissolution of the Assembly under the same parliamentary standards, the Executive wouldn't even think of acting against popular representation. Taking this framework to an extreme, assembly regimes took control (such as happened even more clearly under the French IV Republic), until the need to establish a strong government hastened its own failure under Charles De Gaulle's postwar strategy.⁷¹ But his first attempt of installing a strong Executive failed after the 5 may 1946 referendum. He would have to wait until 1958 to make his constitutional project come true.

⁶⁷ BORIS MIRKINE-GUETZÉVICH, MODERNAS TENDENCIAS DEL DERECHO CONSTITUCIONAL [Modern Trends of Constitutional Law] (Madrid, Reus, 2011, 1933).

⁶⁸ Francisco Tortolero, *Aux origines des pouvoirs d'indirizzo* 383, in L'ÉTAT, LE DROIT, LE POLITIQUE: MÉMOIRES EN L'HONNEUR DE JEAN-CLAUDE COLLIARD (J.P. Derosier & G. Sacriste eds., Paris, Dalloz, 2014).

⁶⁹ « Les auteurs des Constitutions européennes d'après 1919, ont adopté la variante française du régime parlementaire, mais une variante systématisée, dogmatisée, rationalisée ; et le parlementarisme qui, au XIX^e siècle, fut un ensemble mouvant, purement coutumier, de règles empiriques, se transforme dans ce droit constitutionnel nouveau, en une doctrine homogène et rigide » Boris Mirkine-Guetzévich, *L'échec du Parlementarisme Rationalisé*, 1954 REVUE INTERNATIONALE D'HISTOIRE POLITIQUE ET CONSTITUTIONNELLE 102.

⁷⁰ M.J. Vile, *Rise and fall of Parliamentary Government*, in CONSTITUTIONALISM AND THE SEPARATION OF POWERS 233 (Indianapolis, 2nd. ed., Liberty Fund, ed. 1998).

⁷¹ On his view, the Parliament would represent the particular interests (of parties), and the President should represent the general interest (of the people). The core of his proposal at his speech at Bayeux (Normandy), the 16th June 1946, available at <https://www.youtube.com/watch?v=O6RGvgLD4xY>, 7'53" and the following (last visited Oct. 30 2016).

General De Gaulle knew very well that whenever an Assembly Regime reigns, and the absence of a majority turns permanent, mechanisms of ministerial responsibility become no longer exceptional but current and ordinary.⁷² Such an unstable regime (embodied by the French 1946 Constitution, adopted after the second referendum taking place on October 13th that year),⁷³ lasted less than a decade; *e.g.*, till General De Gaulle was called back to affront the Algerian colonial war in 1955. All these unstable situations, finally happened to impulse their own proposals in order to build stable Cabinets. The objective came to life after the referendum of the V Republic constitution was finally adopted on September 28th, 1958.⁷⁴ De Gaulle constitutional creation was intended to replace the center of gravity on the Executive.

In parliamentary standards, that purpose meant two different adjustments to take place, necessarily: dissolution should become operational again, and ministerial responsibility mechanisms should be properly determined, but submitted to important restraints.

Even during the tough days, *e.g.*, a few years after De Gaulle retired in 1969, ahead of his second term in office —due to an adverse vote pretending the reduction of the Senate’s powers after a popular referendum—, Maurice Duverger affirmed the power to govern, in France, belonged to one person: The President (particularly after 1962 reform for electing directly the president). Duverger himself had spoken of a further evolution of this idea of *structured and effective government* in France. The trend should be not to keep strengthening presidential powers, but to transfer them to the Cabinet. Including for semi-presidential regimes,⁷⁵ Parliamentarism seemed to take that choice: heads of state were not always directly elected. But still, the designation of the Prime Minister could be identified with a direct election (of an identified agent).⁷⁶

4. Nowadays, if the aim is searching for a more stable regime, it seems Parliamentarism is not the best model to be followed, at least after its latest evolutions in Europe. Not to speak of the lack of partisan agreements necessary to the appointment of new prime ministers (both in Belgium and in Spain, where the absence of governments operated for 20 and 10 months in a row, respectively, in 2010-2011 and in 2016). But also, after terrorist attacks occurred in 2015 and 2016 in Paris and in Bruxelles, Eurosceptical worries (pleading economic failure to immigration crisis) have pushed parliaments to cede more and more competencies to executive agencies. State of emergency⁷⁷ seems to encounter a quite disturbing normality all over Europe.

⁷² “Je crois qu’au XX^e Siècle, convient l’Etat fort de la démocratie, plutôt que l’Etat faible et divisé auquel aspiraient les libéraux” [I believe, for the XXth Century, it was preferable the Strong State of Democracy instead of the weak and fragmented State to which liberals aspired after], René Capitant, *Preface to LÉO HAMON, DE GAULLE DANS LA RÉPUBLIQUE*, at xiii (Paris, Plon, 1958).

⁷³ Not by chance, the years after 1946, where De Gaulle wrote all his auto-biographical works, at his 700 inhabitants hometown, Colombey-les-Deux-Églises, was popularly know as *la traversée du desert* [the long dry spell]. For his writings, See CHARLES DE GAULLE, *MÉMOIRES DE GUERRE ET MÉMOIRES D’ESPOIR* 8 vol. (Paris, Plon 1940-1962).

⁷⁴ For a general view, MICHEL DEBRÉ, *NAISSANCE DE LA CINQUIÈME RÉPUBLIQUE: ANALYSE DE LA CONSTITUTION PAR LA REVUE FRANÇAISE DE SCIENCE POLITIQUE EN 1959* [Constitutional analysis by the RFSP in 1959] 242 (Paris, Presses de la Fond. Nat. de Sc. Pol., 1990).

⁷⁵ Several nuances should be done on this behalf, specially for France. For semi-presidential system general characteristics See JORGE REIS NOVAIS, *SEMPRESIDENCIALISMO: TEORIA DO SISTEMA DE GOVERNO SEMIPRESIDENCIAL* [Semipresidentialism: Theory of the Semipresidential System of Government] 294 (Lisboa, Almedina, 2007).

⁷⁶ MAURICE DUVERGER, *LA MONARCHIE RÉPUBLICAINE* [The Republican Monarchy] (Paris, Robert Lafont, 1974).

⁷⁷ MARIE-LAURE BASILIEN-GAINCHE, *ÉTAT DE DROIT ET ÉTATS D’EXCEPTION: UNE CONCEPTION DE L’ÉTAT* [Rule of Law and State of Emergency: a conception of the State] (Paris, Presses U. de France, 2013).

Some of those national parliaments have even promoted the intentional reduction of constitutional court's competencies. The Sejm, which is the Polish parliament, published several amendments conditioning the internal procedural rules of the Polish Constitutional Court. Those adjustments, restrained judicial autonomy, were at some point challenged through the Constitutional Tribunal by a minority of the Sejm. The situation started to deteriorate when, in October 2015, a renewal of a third of its fifteen members had to take place. Appointments done by the Sejm were not suitable for President Duda's intentions (in fact, he had not accepted to take those oaths). Then, the Sejm reintroduced new candidates for appointing pending seats. Once confirmed, the new Tribunal's decision entirely upholds President's views.⁷⁸ The consequences are notorious all over the continent. Not only because government's capacities have been widening (*e.g.*, through the scheme of *Pouvoirs d'Urgence*, agreed to French President after November 13th attacks). But also through political regime latest developments.

After March 2016 elections, Estonian and Hungarian extreme-right parties have expanded their seats in Parliament, but international immigration crisis had nothing to do with them. Their governments didn't have to face the international community arrangements admitting or funding humanitarian immigration in their territories.⁷⁹ As if they were back to the 1920's, West and Central European countries live the worst *dejà vu* from their recent History: fear has become the most successful discourse for making grow extreme right parties.⁸⁰ Voters are becoming the main support for hyper-strong Executives.

Then, at parliamentary grounds, a new type of distribution of powers reveals a changing conception of public sphere after which, Legislators end up folding themselves to government's actions, and not the other way around. The need for personalizing all type of decision-making (*who is governing us*) seems to invade the European continent since individuals do not need to be represented. Through *Twitter* or *Facebook*, everyone can speak out loud by himself;⁸¹ both citizens but also politicians. The new arena for public debate is open to every single voter throughout social networks. Representatives from traditional partisan spectrum (right/left) are not acting through traditional communication networks; but accordingly, inaction is taking the party system to a crisis; latest jolts being provoked by neo-populist parties blinking all over Europe, not always with the best explanations to this complexity.⁸² Xenophobia and racism advance, beating up any glimmer of political correctness.

After years of political indifference, activism has exploded outside of democratic standards. Populism could be seen as a natural consequence; or at least, as a common behavior amongst many of European electorates unhappy because of bad governments issued from tradi-

⁷⁸ As a conclusion, the Venice Commission urged to normalize this situation, declaring the current submission of the court put at stake the three basic principles of the Council of Europe (democracy, rule of law and human rights), in "Opinion on amendments to the Act of 25th of June 2015 on the Constitutional Tribunal of Poland", approved by the Venice Commission at the 106th Plenary Session, March 10th and 11th 2016, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)001-e) (last visited: Jan. 12, 2017).

⁷⁹ Cass Mudde, *Viktor Orbán and the difference between radical right parties and radical right politics*, EUTOPIA MAGAZINE, Sep. 15, 2015, at 4.

⁸⁰ A very precise revision of the expansion of extreme right parties in East and Central Europe during the gap between wars, See ROBERT O. PAXTON, *ANATOMY OF FASCISM* 307 (N.Y. Robert Knopf, 2004).

⁸¹ Dirk Kurbjuweit, *Third Republic: Germany enters a dangerous new political Era*, SPIEGEL ONLINE INTERNATIONAL, March 8, 2016, available at <http://www.spiegel.de/international/germany/how-the-refugee-crisis-has-change-german-politics-a-1081023.html> (last visited 7 Jun. 2016).

⁸² STARTIN, NICHOLAS & SIMON USHERWOOD, *RUTLEDGE HANDBOOK ON EUROSCPTICISM* (N.Y., Rutledge, 2016).

tional (non-extreme) parties.⁸³ Not only upon the heads of the Governments, but in general, upon every public actor. Regardless, this kind of activism does not orient its energy, nor even empower representatives to accomplish specific tasks of government; it doesn't speak up in order to ask its representatives to change the world.⁸⁴ *Common people* are starting to think, more and more, they can do it themselves. And they're also starting to think populist *illuminati* can do it at their place. Maybe in Mexico, it is the right time to ask ourselves if disappearing of political cleavages by adopting Coalition Governments might be compatible with the lack of control mechanisms on the Executive.

That's why we must beware of adopting blind versions of Parliamentary solutions in Presidential grounds. What we've been listening all around Europe for the past couple of years is traditional parties (still governing) try to prove to their constituencies such a transfer of powers to the Executive is a good thing because it contributes to refresh such a renewal of powers, turned into personalized functions... And after all that, the chief of government seems to remain, stronger than ever, as the core of political representation, as well as for government action, is menaced by the decline of traditional references (such as parties or public agents).

5. Back to presidential standards, the mechanisms conceived to stabilize the outcome of a government program, were conceived in terms of veto (ordinary or pocket), decree and urgency powers and preferential power to introduce legislation. Some of those mechanisms (such as veto or urgency powers) have been very unfrequently exerted by Mexican presidents.⁸⁵ Some other less confronting competences, were recently established by law to allow the President better conditions to negotiate with legislatures.

The Mexican president has always exerted his attribution to submit bills to Congress. Nevertheless, once submitted, every confirmation depended on Congress' Schedule. The introduction of preferential initiative established in August 2012, the submission of two presidential *preferential* initiatives per legislative term, during the first session of the term (2 terms per year). Each one of the chambers must vote those initiatives in a respective period of 30 days (art. 71).⁸⁶ Counting on alternative mechanisms like this, the Mexican CG solution seeks to improve the

⁸³ CASS MUDDE, *ON EXTREMISM AND DEMOCRACY IN EUROPE* 157 (N.Y., Rutledge, 2016).

⁸⁴ Disenchantment of democracy is frequently due to the loss of debate skills. Not only because of the lack of representativeness of political parties. But in general, social expression tends to decline; opinions are externalized through screaming protests; polls get closer to a technique for political representation; social media fosters dispersion of public will, in ROSANVALLON, *Supra*, note 15, at 295-301.

⁸⁵ A Statute derived from art. 29 of the Mexican Constitution, distributing emergency powers to the Executive, have been voted by the House (for the first time after 1917), the 29th of March, 2016 (legislative approval is still pending at the Senate). Despite the fact these competencies could be used to avoid and bypass an unfriendly majority in the Congress, such a risk seems unimportant while introducing a CG scheme. The latter pretends to bypass the situation in permanent stands. In fact, while studying the use of decrees by government in parliamentary systems, what authors underline is not if the executive is usurping legislative functions, but rather if such delegation contributes or not to achieve the government's political program through the construction of a majority; See PHILLIPE LAUVAUX, *PARLIAMENTARISME RATIONNALISÉ ET STABILITÉ DU POUVOIR EXÉCUTIF*, (Bruxelles, Bruylant, 1988). In the other hand, decree rules in Mexico seem to be adapted to international standards: decrees should be restricted to attend urgency matters, and should be controlled by the Congress, previously analyzed by the Supreme Court and submitted to a technical advice by the Ombudsman's office; at ISABEL MONTOYA RAMOS, *LOS PRINCIPIOS DE LA SUSPENSIÓN DE DERECHOS A LA LUZ DEL DERECHO INTERNACIONAL Y DEL ARTÍCULO 29 CONSTITUCIONAL* (México, INACIPE, 2015).

⁸⁶ Benjamin Temkin Yedwab & Rodrigo Salazar-Elena, *México 2010-2011, los últimos años de una gestión cuestionada* [Mexico 2010-11; latest years of contested management] 32 (1) *REVISTA DE CIENCIA POLÍTICA* 236 (2012) (Chile).

ordinary functioning of government, and not only the approval of the *most important* bills for every legislative term.

The adaptability of presidentialism to governance challenges (in terms of widening social acceptance of public decisions) claims for a better interaction between cabinets and legislatures. Maybe the most likely of these interactions would be the intervention of chambers at the designation of cabinet members. Or at least, it would be positive reflecting legislative preferences into the list of the top political actors of each country. Concrete mechanisms (in terms of motions of censure) could provide something more than just the individual withdrawal of members integrating the cabinet.⁸⁷

Under the Mexican CG conditions, presidential efforts could be addressed in a very precise direction: increasing the government's capacity to subscribe a pact with a group of senators, and then, acting not by himself, but through the Cabinet. As said before, while writing the Covenant, the notion of popular assembly would have been set aside; as well as other important transparency requirements (to subscribe the pact), not to speak of any type of coincidence with social or political preferences at a federal or state level. Instead of finding other options for controlling presidential margins, a bigger concentration of powers on the Executive could appear as a consequence of managing predictable crisis.

All this provides arguments to affirm a broader list of powers also requires new antidotes; or at least, the need to understand how seriously the Mexican presidential regime is going to consider *open government*, *network democracy* or *transparency*.

IV. AND THEN, WHAT WOULD BE MISSING?

Given the after mentioned secondary legislation (intended to formalize every action of any CG in Mexico) is still to be discussed and voted in both of the Chambers of Congress, the approval of additional rules might concern an additional risk upon Mexican institutions. That is, to turn Mexican presidentialism into a more unchecked regime. Concrete consequences of formalizing political practices, instead of letting political actors to find out the best solutions according to every political situation, might still turn negotiations into non accountable outcomes. Uneven conditions, reducing the opposition's potential, would only be repaired after party leaders' interventions (even more likely than elaborating specific rules in a secondary legislation). What if some of those negotiations were to be restrained or forbidden by law, or by the Covenant?

Positive objectives of parliamentarizing presidentialisms would also mean avoiding zero sum games; promoting institutional mechanism in order to prevent paralysis or enduring responsive rule from Executive to Legislative branches.⁸⁸ In order to stabilize the CG structure, several elements should be revised, from party to electoral system; from negotiation mechanisms between Executive and Legislative branches. And last but not least, to understand the role of oppo-

⁸⁷ José María Colomer & Gabriel Negretto, *Gobernanza con poderes divididos en América Latina* [Governance under divided governments in Latin America], X (1) POLÍTICA Y GOBIERNO 324 (2003) (Mexico).

⁸⁸ I'm subscribing one of the conclusions affirmed by a group of studies of coalition governments at the University of Barcelona, reported in Josep Maria Reniu Vilamala, *El desafío del poder compartido en escenarios de gobierno dividido* 119-144, NUEVAS AVENIDAS DE LA DEMOCRACIA CONTEMPORÁNEA, (Alfonso Ayala Sánchez, ed. México, UNAM, 119-144.

sition as an important element of these type of constitutional agreements. But first, it should be important to induce a clear understanding of what are those institutional coalitions made for.

1. In every Legislature, partisan agreements have always existed between political fractions; *e.g.* punctual negotiations to convince others to vote for or against. Before being elected, *electoral coalitions* are understood as joint candidatures (alliances which normally intend to beat the strongest candidate); *reforming coalitions* concern a temporary approach between MP's, to assure that a particular reform shall take place (from beginning to end); then, *coalition governments* (CG) concerning stable and more durable agreements, implying multiple consequences not only at the Legislative, but at the Executive branch as well.⁸⁹ Seeking for the implementation of a specific program (and political objectives), the CG scheme involves the president to sign a) a compromise b) with one or more parties; in exchange of c) a certain amount of ministries to give away to those parties.

Thus, the CG model could reproduce political practices existing at parliamentary systems, despite the cooptation of party members with which the president is willing to negotiate and to give up something, in exchange. According to Prime Ministers acting under a Coalition agreement, presidents have a much larger margin to withdraw and rebuilt their Cabinets. Those decisions are mostly coming from the president's personal decision rather than from party preferences. Parties detain a weaker tie to president's decisions than they can encounter under parliamentary system rules.⁹⁰

Thus, according to presidentialism, nothing would impede the Chief of the State to change his mind, withdrawing any of those appointments (renegotiating the replacement of any of his Secretaries; or even determining the end of CG scheme whenever he decided). Not even if any type of *effective* political responsibility mechanisms, were to be triggered by the opposition, (if those mechanisms were to be conceived as part of the new constitutional framework, under the CG adjustments to make further on Mexico). But that could be rather a typical trend among presidential standards.

The lack of that type of mechanisms is quite common according to other Latin American countries. Present or historic institutions of Latin America contain very shy schemes to political responsibility mechanisms, such as censorship motions. Former Chilean "Parliamentary Republic" from 1891 to 1924 or Cuban responsibility mechanisms existed up to the 40's (either if we have no notice of specific functioning). A formula for withdrawing Secretaries by two thirds of representatives existed under Venezuela, Ecuador or Peru past Constitutions (articles 153-1, 59 and 226, respectively); but also in present constitutional texts, as it is the case for Costa Rica (art. 121-24); Uruguay (art. 178) or Paraguay (art. 194). In Guatemala, the president can oppose a veto against a legislative censorship (which still, could be unveiled by a two third majority in a second round upon the Congress); and in Colombia (art. 135-9), where an absolute majority is enough to withdraw a Secretary appointed by the president.

On the other hand, none of these countries conceive forms of dissolution of the Assembly. The only exception was Uruguay, where the President could declare the dissolution of Congress whenever the later would not vote (to a three fifth majority) a political responsibility motion

⁸⁹ JORGE LANZARO, TIPOS DE PRESIDENCIALISMO Y COALICIONES POLÍTICAS EN AMÉRICA LATINA 32 (Buenos Aires, CLACSO, 2001).

⁹⁰ Scott Mainwaring, *Presidentialism, Multipartyism and Democracy: The difficult combination*, 26 COMPARATIVE POL. STUDIES, 221 (1993).

against specific secretaries (previously censored), but only when such a withdrawal had been contested by the president. According to past constitutions (1934 and 1942), if the new assembly maintained the vote against the president as a second chance, his entire cabinet and himself would be compelled to resign.⁹¹ In Mexico, one of the few mechanisms conceived by the CG Bill consists on the fact any fraction could propose to *flunk* a specific Secretary after question time sessions. Individual parties or independent MP's would not count on strong resources to condition or control president's decisions under CG scheme.⁹² President's vulnerability would not depend on how likely it would be to find parties able to sign his coalition covenant; instead, he will be vulnerable whenever he would be placed outside of a Coalition scheme.

Putting it otherwise, on Mexican predictable terms, instability shall rather depend on multipartism, which becomes an unpractical and uncomfortable criterion for any government. Therefore, the aim of CG reform in Mexico would rather reduce the influence of parties, empowering single leaders, tempted (probably for the first time) of being appointed at the President's Cabinet.⁹³ It is irrefutable that an exclusive responsibility over the cabinet would remain exclusive to the President, even if he wanted to hide his personal decision under the Cabinet's front.

Additionally, parties acting on *Coalition mood* would have to work under the logics of party discipline (being rather very weak under a non-coalition mood).⁹⁴ That situation turns party leaders (and not their organizations) into the masters of the game, acting under the umbrella owed by a former adversary: The Big Boss.

2. Mexican party system abandoned bipartisan structure since, in the early 60's, different modalities of proportionality were introduced to electoral system, either in federal than in state levels. Avoiding to empower a single opposition party, the PRI promoted the creation of several harmless parties. Political diversity growth progressively (despite its frequent lack of representativeness) until 1997 mid-term elections, after which the presidential party could no longer count on an absolute majority (for the first time) at the House. Suddenly, when partisan alternation came by in 2000, political fragmentation was no longer profitable for the system. Or at least for its own stability.

During the first years of democratization, it was quite easy to create new political parties. Today, it seems necessary to impose higher thresholds of representation in order to restrict the permanence of small parties, and to reduce other incentives imposing campaign refunds instead of public financing in all the cases (which is the legal framework currently operating in Mexican

⁹¹ ANTONIO GARRIDO & CRISTINA MORENO, *COALICIONES Y GOBERNABILIDAD EN SISTEMAS PRESIDENCIALES DE REPRESENTACIÓN PROPORCIONAL* [Coalitions and governability under PR Presidential Systems] 13 (Lima, Junta Nacional Electoral, Cuadernos para el Diálogo, 2012).

⁹² Neto Amorim, *Cabinet formation in presidential regimes: an analysis of 10 Latin American countries* 9 (XXXIV Lat. Am. Studies Assoc. symposium, Chicago, IL., 1998), quoted by RENIU *Supra*, note 88, 142.

⁹³ According to presidential basic rules, the only real support of a governing coalition would always be the President himself. Nothing could impose a coalition to be organized out of his scope. The President could always veto any Alliance promoted against his own interests at any time, trying to compose a new cabinet under different combinations of parties, in Eduardo Alemán & George Tsebelis, *Political parties and Government Coalitions in the Americas*, 3 (1) J. OF POLITICS IN LAT. AM. 27 (2011).

⁹⁴ Following Walter Bagehot, under parliamentary standards, the Cabinet functions such as another one of the Committees of the Assembly; under presidential rules, the President and his Secretaries might be better related to the closest entourage to the Executive, rather than a real Cabinet. *Supra*, RIGGS, note 25, at 258; AREND LIJPHART, *PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES* 104-106 (N. Heaven, Yale U. Press, 1999).

campaign financing legislation, by the way one of the most expensive party financial systems in the world).⁹⁵ Even though it has been said the reduction in the number of parties would not exclude risks of gridlock,⁹⁶ strengthening rules for the creation of parties seems inevitable in order to improve bargaining conditions by reducing the number of political fractions represented.

The very deep credibility crisis encountered political parties, and engendered an uncommon result. People claimed for independent (nonpartisan) candidatures to compete at elections. The claim appeared during the past decade, as long as electoral legislation is very strict, permitting to compete only to partisan candidates. An Inter-American trial on these issues made part of one of the first condemnations against the Mexican State.⁹⁷ After 2014 electoral reform, an independent candidate was finally elected Governor in 2015 (State of Nuevo León). It is predictable many others would try this option for presidential elections in 2018. It is not impossible to consider, at some point, the CG reform could offer also appropriate elements for permitting a nonpartisan president to stabilize governance, despite the lack of a partisan structure.⁹⁸

On the other hand, incentives for approaching parliamentary scheme would also be focused on a permanent search of accountable mediators between Executive and Legislative branches.⁹⁹ Before 1997, where Mexican presidents have lost majority in the House, the PRI had kept absolute control over legislative functioning. Then, the meaning of legislative leadership expanded not only among presidential allies, but included also opposition parties in order to find a compromise on a growing number of votes at the Assembly.

But according to institutional mechanisms, the system would not provide any kind of formal or informal alternatives, contributing to partisan cooperation. Not even an informal chief of the majority (or even an informal whip, in the logic of British and American traditions) nor an official chief of Cabinet (approaching to prime-ministerial model). CG scheme might offer a chance to encounter this type of political intermediaries.

3. It is also predictable to find out other kind of consequences, after installing CG governments on the grounds of a blatant over-representation of parties at the Senate, due to the existing proportional representation system present in that chamber. In Mexico, Senatorial elections take place every six years; the very same day the President is elected. And even though no *ballotage* system has ever existed in Mexico,¹⁰⁰ electoral behavior shows both the President and the

⁹⁵ In order to avoid private financing linked to drug trafficking, most of party financing is public. Allocations per party tends to increase after 2014 electoral reform. The sum of nine Parties (intended to count on a nationwide representation) would receive almost 250 million dollars per year for operation expenses. <http://www.ine.mx/archivos3/portal/historico/recursos/IFE-v2>. It's not by chance that founding a party has also been a very profitable business for several of its leaders.

⁹⁶ JOSÉ ANTONIO CHEIBUB, *PRESIDENTIALISM, PARLIAMENTARISM AND DEMOCRACY* (N.Y., Cambridge U. Press, 2007).

⁹⁷ *Castañeda Gutman v. Estados Unidos Mexicanos*, Provisional Measures, Inter-Am Ct. H.R. (ser. E), no. 1 (Nov. 25, 2005).

⁹⁸ Efrén Arellano Trejo, *Origen y balance de las candidaturas independientes*, [Origins and ballance of independent candidatures] 40 Documento de Trabajo no. 193 (México, Cámara de Diputados-CESOP 2016).

⁹⁹ RENU, *Supra*, note 88, 123.

¹⁰⁰ Different opinions suddenly appeared, for and against the installation of double round elections in order to avoid partisan fragmentation, attempts are still not that frequent, in JOSÉ ANTONIO CRESPO, *LOS RIESGOS DE LA SUCESIÓN PRESIDENCIAL* [Risks of Presidential Succession] 22 (México, Cepcom, 2000); an non-successful initiative was submitted in 2009 at the Senate in order to ammend the federal Constitution; a broad view of those initiatives at Astudillo, César, *Segunda vuelta electoral para la elección presidencial* [Electoral Second Round for Presidential Elections], 43 (129) *BOLETÍN MEXICANO DE DERECHO COMPARADO*, 1411-1428 (2010).

Senate majority share the same political preference, with no predictable variation for the near future elections. The magic number is 40% of the federal Assembly sharing the same party as the President's, even if the later was elected by less than 30% of votes. The magic number has to do with over-representation in that Chamber.

The immediate consequence of this arrangement might be a post-electoral effect. That means, contrary to 30% of cases existing in other Latin American countries, the incentives to establish a coalition agreement, might result only after the Congress (and in Mexico, the Senate) has been elected. That fact could represent a positive effect as far as electoral coalitions have existed for the past 30 years, but they have not produced any collaborative chances for minority parties who had agreed on them. Especially during recent Governor elections.

That means CG scheme might represent a new stability scheme for Mexican presidentialism. Once this new scheme has been approved, the Senate should become the stability assembly, leaving a rather more representative part (politically speaking) to the House of Representatives. Government decisions might become more predictable. It is not only senators and President are all elected simultaneously, but also that according to electoral behavior linked to the electoral system, for one and the others, preferences have been very similar for both elections. The Senate is the less visible office from common people's perspective. But it is supposed to stay close to the Executive's program.

In order to illustrate the type of negotiation that a CG would represent in practical stands, let's take the past three elections for senators, compared to Presidential elections. Presidents Fox, Calderón and Peña were elected, in 2000, 2006 and 2012 by 42%, 36% and 38% of electoral preferences, respectively.¹⁰¹ Despite those differences, they always encountered the exact same majority in the Senate (52 out of 128 senators, corresponding, as just said, to 40% of the Assembly). As said before, such a strange coincidence is due to proportionality, after which, an over-representation rate increases the final attribution of seats for the winning party at that federal chamber.¹⁰²

Results would also display the way in which, those three Presidents, once elected, could have proposed quite comfortable partnerships (if the scheme of CG would have existed by then), calling minority parties to sign for the coalition. According to weak ideological definition standards, minority leaderships would earn a disproportionate weight, gaining ministries in the Cabinet instead of becoming irrelevant, as individual representatives of weak groups.

An extreme example would be found after president Calderón was elected in 2006. Electoral results were far from being crystal clear; a very intense post-electoral litigation, plead for

¹⁰¹ www.electionresources.org.

¹⁰² Transition to democracy in Mexico was endeavored after 1977, when the first serious attempt of changing electoral rules was impelled by the own President's party. New measures were always a small step forward for the opposition; most of the time, not enough to equalize the size of small parties next to the unbeatable Revolutionary Party. The fracture of territorial representativeness of the Senate is due to an attempt to build an artificial presence of opposition parties in that Assembly, adding 2 supplementary senators per state in 1993. After that arrangement (valid today), 2 senators are elected through majoritarian criteria; a third seat belongs to the candidate representing the second place of electoral preferences in that specific state. Then, a fourth seat would be attributed through a proportional criteria, e.g. after a national list of candidates per party, previously defined around the whole country. As a result, the main beneficiaries were the parties with the highest result per state, plus the national party leaders (who decided the priority of candidates on the list). State party leaders had usually nothing to do (or almost nothing) concerning the definition of those lists.

nothing but a 0.56% gap between candidates. The federal electoral Court ended up recognizing a thin majority of 36% of votes for candidate Calderón against 35.4% for left-wing candidate López Obrador. Despite the very short margin, Calderón's administration would have counted on a much larger majority in the Senate. If CG system would have been created before then, Calderón could have found enough partners for a Coalition Government, and the pressure from left-wing opposition would have been neutralized.

But in terms of representation, the Mexican CG scheme could be useful to create incentives amongst candidates to the Senate, willing to change their minds and abandon small parties - created during the times where multipartism was considered as a condition of democratization - to join larger parties, able to gain electoral preferences and thus controlling a bigger amount of seats. CG scheme could also represent an incentive to individual Senators to reduce multiparty scope, widening president's strength in the coalition.

4. Up to this point, an enlightening aspect from old parliamentary recipes could be found on the relationships weaving the Cabinet to the House. Specially, considering Parliaments are no longer the center of legislative action. The Cabinet became a virtual legislator, acting with the support of a majority. As a consequence, far from the place where decisions were taken, Parliaments became the venue where negotiations should take place; a reconverted type of *recording chambers*.¹⁰³ The minority of MP's know they won't be able to convince the majority to change their minds. But they must make part of every commission of Parliament, in order to let know the electors how differently they would have dealt with the same issues if not represented. Voters would keep that in mind, during the next electoral term: whether they kept voting for the current majority, or they rather switched votes, supporting the current opposition.

Moreover, Legislative branch centrality has declined on behalf of the Executive. Not by chance, the right of initiative has been almost retired from MP's. Chambers are no longer masters of their schedules; Cabinets define them instead. According to the past century and a half daily routine, control powers over Governments have been falling out of use.¹⁰⁴ Chambers have no longer specific instruments to control the ministries (even during the revision of the Budget). Legislators count on a very shy possibility to inquire individual members of the Cabinet during *question time* sessions, once a week (or maybe once a month or a year, if the ministry is not interesting enough for every party leadership).¹⁰⁵ Ministers reply to whatever they consider strategic; or they simply don't reply at all.

But that situation is not very different from what happens in Presidential standards. If we compare what has been going on with the expedition of Executive Orders in the US, it has been clearly estimated that for each Statute voted by the Congress, 223 administrative general rulings are created by federal agencies;¹⁰⁶ and that dynamic is irreversible (if someone would doubt

¹⁰³ The expression has been attributed to Walter Bagehot, who considered the Lords were similar to an anemometer, whose role is not preserving England from a tempest but reassuring the people; any tragedy were to be close enough to the coast yet, in G. Valbert, *Le Nouveau Bill de réforme électorale et la Chambre des Lords* [The Electoral Reform Bill at the Chamber of Lords] 3e période, t. 6 REVUE DES DEUX MONDES 201-212 (1884).

¹⁰⁴ For a general view, see the issue no. 108 POUVOIRS, L'opposition, (2003).

¹⁰⁵ Perception by M.P. Ostrogosky, quoted by Pierre Avril, *Le mythe de l'équilibre*, (seminar in Paris "Bilan constitutionnel du septennat: monarchie républicaine, présidence impériale ou simplement ostentation du pouvoir ?"), 981 REVUE POLITIQUE ET PARLEMENTAIRE, 48-49 (1981).

¹⁰⁶ John DiLulio, *Facing up to Big Government*, 1 NATIONAL AFFAIRS, 18-19 (2012).

about it after 2017). “The realm of policy knows no conceptual bounds”.¹⁰⁷ Would that be a general trend for all presidential countries?

According to the CG adaptations in Mexico, it will be no longer possible to analyze legislative practices from specific tensions between the Executive and the Assembly, as if they were concurrent agents. Instead, governments and parliaments would be compelled to build “functional unities”, permitting the Cabinet to accomplish most of its program through other instruments (such as the expedition of administrative decrees; *e.g.* Mexican Executive Orders).¹⁰⁸ Nevertheless, transferring competencies to a central decision agency would not mean an open access to arbitrary rule.¹⁰⁹ Despite the need to a more flexible interpretation while exerting a judicial control over Cabinet acts, constitutional courts were definitively installed as the new instrument of prevention against excessive acts of governments. Or at least, that’s what happened in Europe for many years.

5. That was so, because in those countries (following parliamentary standards), the opposition is conceived as a counter-power force. Its role aims not only to exert a follow-up of what the majority *would have* to do, but it has specific attributions of control.¹¹⁰ Being herself a minority (and then, external to government), the opposition is intended to exert surveillance through two basic mechanisms: requirements for information and the possibility to turn down the cabinet *at any moment*.

Probably, the most critical aspect affecting the Mexican new constitutional provisions relate to the virtual diminution of opposition’s role at the House of Representatives, whenever the CG scheme takes place. On democracy standards, criteria to identify majority and opposition have been evolving for the past few decades. They are no longer arithmetic, but functional.¹¹¹ A majority is not the most numerous group, but the group supporting the government. The opposition is not just a minority group, but the ensemble of fractions able to contest cabinet’s actions.

In Mexico, if the new CG Bill happens to be approved as proposed, all institutional mechanisms designed to make available a joint decision under a specific CG (*e.g.* the permanent Conference and political Council included) are intended to guarantee the covenant remains, once it has been signed. Accordingly, such a pact will be formally signed not only upon the Senate, but also throughout the same parties represented at the House. Therefore, parties who signed at the Senate, cannot oppose the Cabinet’s intentions at the House. Party discipline would have built a single opinion at both of the Chambers. The opposition should not vindicate his right to criticize government’s bills whenever *navette* process takes place.

This scheme would neither contribute to strengthen party influence in the Senate. And as said before, the eventual threat of censorship (encountered against an individual Secretary of State or against the entire Cabinet), as being virtually taken away from the scope of the reform,

¹⁰⁷ JOSEPH S. NYE, PHILIP D. ZELIKOW & DAVID C. KING, WHY PEOPLE DON’T TRUST GOVERNMENT (Harvard U. Press, 1997).

¹⁰⁸ Gilbert Knaub, *Le Conseil constitutionnel et la régulation des rapports entre les organes de l’Etat*, 4 RÉVUE DE DROIT PUBLIC, 1661 (1983).

¹⁰⁹ V. DI CIOLO, QUESTIONI IN TEMA DEI DECRETI-LEGGI [Aspects on legislative decrees], 2, 644 (Milano, Giuffrè 1970).

¹¹⁰ HAROLD LASKI, LE GOUVERNEMENT PARLEMENTAIRE EN ANGLETERRE [Parliamentary Government in England] 99-101 (Paris, Presses U. Françaises, 1950).

¹¹¹ Carlos María Pimentel, *L’opposition ou le procès symbolique du pouvoir*, [The Opposition or the Symbolic Process of Power], 108 POUVOIRS 46 (2003).

on purpose, would no longer be effective. In fact, defining the opposition would have less to do with the intention of this group to contest the Cabinet, than considering concrete mechanisms permitting this group to exert an effective control over government actions.¹¹²

Some other mechanisms could have been considered in order to provide a bigger degree of stabilization of governments. Through a specific procedure, the Executive could have encountered a better way to deal with opposite forces. Let's take the example of constitutional French 49-3 article.¹¹³ In this case, the Cabinet, itself, can compromise his own responsibility in order to force the approval of a specific bill. If a motion of censorship would not be submitted to the Assembly during the next 24 hours, the controversial bill is presumed to be approved (with no discussion at the Chambers). Otherwise, only when censorship is confirmed against the government, the Cabinet must resign.

Obviously, the chances of withdrawal for the government are very unlikely. The mechanism has been used in France more to assemble the majority than to challenge the opposition. The example could also be helpful to Mexican regime on the aim to adopt more competitive and transparent mechanisms. Definitively, none of those old recipes from parliamentary world were even considered while the Mexican CG model was under construction.

V. FINAL REMARKS

Presidential democracies seem more unstable than Parliamentary ones. While in general, parliamentary scheme is based on cooperation, presidentialism is better identified with conflict. What I tried to explore in this paper was if a Cabinet Government (CG) could reduce conflict and provide elements to the Executive branch, not to impose his program against Legislative's will, but to promote deliberation, accountability, responsive rule and a broader agreement between parties.¹¹⁴ Ideally speaking, CG scheme could be useful for negotiating and adjusting the general direction of presidential policies avoiding gridlock during the time it would be determined.

I. It is still too soon to make any predictions about the success of this reform. It's also known any ideal model is always difficult to achieve. Most of the time, the institutional framework promoted by presidentialism is not likely to reconcile differences. Enduring a stronger president by cumulating powers after further constitutional reforms (including the possibility of CG in Mexico, as analyzed in this paper), might rather increase its potential of conflict with legislatures that offering new incentives to cooperate. Parallel adjustments should be undertaken in order to reduce the aforementioned potentiality of conflict.

¹¹² Guy Carcassonne, *La place de l'opposition: le syndrome français*, [A spot for the Opposition: the French Syndrome] 85 POUVOIRS 77 (1998).

¹¹³ GEORGES BURDEAU, FRANCIS HAMON & MICHEL TROPER, *DROIT CONSTITUTIONNEL* [Constitutional Law], 625 (Paris, LGDJ, 25th edition, 1997).

¹¹⁴ Strengthening the Executive's competences should be compatible to democracy whenever the main objective would be to encourage deliberation within legislatures; put it otherwise, while fostering transparent bargaining between political branches (e.g., Executive and Legislative). The aim should not be to compete within the executive and legislative powers of policymaking, in John M. Carey, *What sort of Strong President?*, in ANDREW ELLIS *et al.*, *Supra*, note 35, at 173-174.

2. Conflict and paralysis are both congenital to presidential system. In addition, the fact informal bargaining is constantly sought by actors doesn't help much: the creation of incentives for extra-constitutional alternatives to conflict could increase risks of imposing the rule of law *under the table* (in one the countries with the worst corruption rates amongst the members of the OCDE) instead of creating incentives of spontaneous normalization of law's empire amongst public actors.¹¹⁵ On the other hand, while formalizing legal alternatives to conflict (not to speak of the unbalance of party campaign financing), the only consequence might be increasing differences between branches and increasing costs for political transaction. In any country, legislative fractions hardly accept an unbalance of competences or public fundraising; once again, formal (legal) differences might increase potentiality of conflict between branches.¹¹⁶

3. Alternatives mitigating conflict between powers might be explored throughout the electoral system. In Mexico, some of those rules seem to be carved in stone, such as the absolute prohibition of presidential reelection. Historically, the country learned that in all cases, powerful actors tried to use their influence to perpetuate themselves in power.¹¹⁷ But mostly every rule or principle controlling elections has been manipulated during the past fifty years and we still don't find the definitive; *the* perfect legal framework. Mexicans could still be searching for “the next electoral reform to come”.

4. Once plurality of parties has been installed in Mexico, and once that corresponds to ideological differences existing all over the country (even to a family level) it seems the system no longer needs any other incentive to foster political pluralism. Probably, proportional representation mechanisms should be eliminated, or at least reduced (for this purpose, in the Senate, for sure). It might be time to think if it is still justified, to the President himself, to promote the expansion of multipartism.

5. And what if the ballotage system were to be installed in the country? A double round of elections might contribute to eliminate small (a non-representative) parties, living only for the sake of public financing. But a second tour of elections seems impossible to establish in Mexico for practical reasons.¹¹⁸ Probably, the CG scheme could be a new argument to take down those

¹¹⁵ Legal systems “secure the uninterrupted continuity of law-making”. The habit of obedience —or the acceptance of the rule— is created as a personal relationship between the individuals and the sovereign. The only thing that makes someone a sovereign, is obedience. Before this stage is reached, no law can be made, See H.L.A. HART, *THE CONCEPT OF LAW*, 51-56 (N.Y., Oxford U. Press, 2nd ed., 1994).

¹¹⁶ José Antonio Cheibub, *Reforming presidential and semi-presidential democracies*, ELLIS *et al.*, *Supra*, note 35, at 4.

¹¹⁷ And still, the latest electoral reform (2014) already opened the possibility of legislative immediate reelection (limited to four terms) for its 2021 legislative elections, for the first time after 1933. It will be interesting to observe whether or not stronger legislators could make more likely to assemble votes, providing a more effective support to presidential decisions. But also, general interests of voters could be better represented, as far as politicians are induced to pursue their interests in order to be reelected. See BERNARD MANIN, *THE PRINCIPLES OF REPRESENTATIVE GOVERNMENT* (N.Y., Oxford U. Press, 1996).

¹¹⁸ A second election day (a couple of weeks after the first one, as usual), would involve thousands of electoral functionaries (administrative and judicial). It would turn impossible to conceive, amongst bureaucrats of an extremely sturdy national agency in charge of organizing elections, followed by a very technical period for electoral litigation, to affront that rush in such a short period of time. In the other hand, according to financing party system, small parties should not have any incentives to vote a constitutional reform excluding themselves from a higher Budget. Finally, the PRI might be vulnerable against their opponents (PRD/MORENA and PAN), which would have an incentive to make electoral coalitions, for the sake of winning the election. President Peña Nieto himself considered “Unpractical” for Mexico, as far as it would build artificial majorities, in Eduardo Ortega, *Segunda vuelta electoral, ficticia e inoportuna* [Second Round, fictitious and inappropriate], *El Financiero*, 25 Oct., 2016; for a regional view See RAFAEL MARTÍNEZ,

resistances.¹¹⁹ Formulas approaching a majority criteria for elections (including presidential but also legislative) could reduce multipartism and its negative consequences.¹²⁰ Reducing the number of parties could help out, at least, clear out if a CG is a better mechanism to improve deliberation, promoting accountable agreements between Executive and Legislative branches.

LA ELECCIÓN PRESIDENCIAL MEDIANTE DOBLE VUELTA EN LATINOAMÉRICA [Presidential Elections through Second Round vote in Latin America] (Barcelona, Institut de Ciències Polítiques i Socials, 2004).

¹¹⁹ I agree with José Antonio Cheibub (*Supra*, note 116) if a second tour for presidential and legislative elections were to be proposed in presidential systems, less fragmented legislatures (in the specific case of Mexican CG, the Senate) would be more likely to sign formal or informal agreements, and maybe to support the president's program.

¹²⁰ Negretto, Gabriel, *Propuesta para una reforma electoral en México* [A proposal for Electoral Reforms in Mexico], 14 *POLÍTICA Y GOBIERNO* 218-227 (2007).