

REFORMING PRESIDENTIAL AND SEMI-PRESIDENTIAL DEMOCRACIES

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SUMMARY: I. *Introduction*. II. *Constitutional limits on presidential reelection*. III. *Legislative and presidential electoral systems*. IV. *Legislative and agenda powers of the presidency*. V. *Semi-presidential systems*. VI. *Conclusion*. VII. *References*.

I. INTRODUCTION

The title, indeed the very purpose of this workshop, suggests that we need to move beyond the notion that presidential institutions are not conducive to democratic consolidation. Certainly, presidential democracies are more unstable than parliamentary ones; yet, instability, as I hope to have shown elsewhere (Cheibub 2007), is not caused by the incentives generated by presidentialism itself. Presidential democracies die not because their design is such that it compels actors to seek extra-constitutional solutions to their conflict. The conflicts themselves should take some of the blame since they are probably hard to reconcile under any institutional framework (Przeworski 2004a, b).

Acceptance of this fact allows us to shift our perspective and change the way we think about political reforms in presidential democracies. Much of what has been written concerning democratic forms of government has focused on the relationship between the government and the legislature. Specifically, it has focused on the alleged implications of the alternative ways to organize this relationship – conflict under presidentialism, and cooperation under parliamentarism. Consequently, when

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dealing with reforms of presidentialism, the focus has been on finding the institutional arrangements that would help to circumvent the presidential system's propensity for conflict and paralysis.

For example, a system that granted the president strong constitutional powers would be undesirable since such powers might increase the potential for conflict with the legislature that is inherent to presidentialism. Concurrent and/or two-round presidential elections, in turn, would be a positive feature of presidential systems because they would reduce the number of political parties, make legislative majorities more likely, and allegedly, provide a more consistent base of legislative support for the president. On the contrary, legislative elections organized on the basis of proportional representation should not be adopted in a presidential system since they would lead to multipartism, legislative fragmentation, paralysis, and possibly, regime breakdown. Finally, constitutional limits to presidential re-election would be necessary to improve presidentialism since they would prevent all-too-powerful actors from using their institutional position to perpetuate themselves in power.

In this paper, I would like to suggest that we look at these same institutions from a different perspective. Provided that presidential institutions per se do not kill democracy, and provided that countries that are now presidential are likely to remain so, institutions such as presidential powers, electoral systems and presidential term limits can be seen not so much as instruments that will help mitigate the intrinsic problems with presidentialism, but as ways to enhance goals that have been neglected due to the overwhelming concern with the imminent failure of the regime. No longer must we allow preoccupation with governability and the survival of democracy to be the overriding concern of reforms in presidential systems; other goals can, and should, be taken into consideration when thinking of ways to improve existing presidential democracies. Let me elaborate on this.

II. CONSTITUTIONAL LIMITS ON PRESIDENTIAL REELECTION

Most presidential constitutions set a limit to the number of times that a president can be re-elected. Cheibub (1998) reports that between 1946 and 1996, only 18% of the presidents in pure presidential regimes were in systems in which no restrictions for reelection existed (these included the

Philippines prior to 1971 and the Dominican Republic between the mid-1960s and early 1990s); 18% were in systems, such as the United States, in which they could be reelected once. If we exclude from this group the presidents who were already serving their second term, and could no longer run for elections, we find that, during the 1946-96 period, the proportion of presidents that could be reelected was only 28.3%. Up until the early 1990s, the most common constitutional limit on presidential re-election was the "one term out" rule, which stated that a president had to wait for a full term out of office before standing for election again. Since then, countries such as Argentina and Brazil changed their constitutions and adopted the two-term limit that has existed in the United States since the 1940s.

Presidential term limits are important because they affect the link between the president and voters. Elections are normally considered to be one of the most important instruments to induce governments to act in the interest of voters. This is how it is supposed to work: anticipating voters' future judgment of their past performance, politicians are induced to pursue the interests of voters in order to be re-elected (Manin, 1996). Whether elections are actually sufficient to induce this kind of behavior on the part of politicians is a controversial matter (Cheibub and Przeworski, 1999; Przeworski, 1996; Przeworski, Stokes and Manin, 1999). It is clear, however, that if elections are to affect the behavior of politicians at all, voters must be able to punish incumbents who perform badly by throwing them out of office, and they must be able to reward incumbents who perform well by granting them another term in office. Both are necessary if elections are to induce governments to act in the interest of voters. But constitutional term limits break this link by preventing voters from rewarding good incumbents.

The rationale for instituting term limits for presidents in the first place may seem reasonable. They are meant to prevent incumbents from taking advantage of their position in order to remain in power (Linz, 1994). The little evidence that is available suggests that presidents do indeed have a large advantage when they are legally authorized to run for reelection. As Cheibub and Przeworski (1999) report, of the 22 presidents who faced reelection without impending term limits between 1950 and 1990, only six were defeated (although eight others chose, for reasons that may include the anticipation of defeat, not to stand for reelection). Given that incumbents won in 8 and lost in 6 elections, their odds of being reelected during 1950-90 were 1.3 to 1 while that of prime ministers in parliamen-

tary systems were 0.66 to 1. Thus, while incumbent presidents seem to have a clear advantage when they are legally allowed to run for reelection, most presidential systems prevent the incumbents from exploiting this advantage by requiring them to leave office regardless of whether or not voters want them to stay. In this way, “excessively” strong presidents are prevented from emerging, and the risks to presidential democracies are allegedly reduced.

The bar for what constitutes “excessive”, however, may be set at a point that is too low. Given the supposition that presidents are bound to clash with the legislature, and that unresolvable impasse between the two is inevitable, any president who is capable of securing power for multiple terms “must” be abusing his or her powers and exerting undue domination over the legislature and other political actors.

However, if such a conflict is not presupposed, and we accept that the relationship between the president and the congress can be conceived not as a vertical conflict but as a situation of horizontal cooperation (a point to be elaborated below), we can then realize that, even if effective, constitutional limits for presidents may be too blunt an instrument for limiting the powers of presidents. For, at the same time that they limit the president’s ability to accumulate power over time, they fundamentally interfere with the relationship between voters and presidents and preempt the possibility that elections may operate as mechanisms of accountability.

I do not mean to imply that incumbent presidents are to be let loose in pursuing re-election from their position of strength. However, the concern should not be exclusively with preventing presidents from becoming too powerful. The issue is more general in the sense that what needs to be done is to regulate and limit the advantages that incumbents inevitably possess in electoral contests. Constitutional limits to reelection deprive all incumbents of the possibility of being rewarded by voters because of the possibility of excesses by some incumbents.¹ They eliminate incumbency advantage by acting on the “incumbency” rather than on the “advantage” portion of the phrase. The issue is not to get rid of the advantage incumbents may or may not have—which originates in the fact

¹ There is a large literature on term limits on legislators in the US states, which is of relevance for thinking about limits on presidential reelection. See Mooney 2007 for an excellent review of this literature and for an argument about how it can be used to develop and test hypotheses about legislative theory.

that voters may have more information about them than they have about challengers— but to prevent that advantage from becoming excessive. With this in mind, we can start to search for institutions that achieve the goal of limiting incumbency advantage without exacting the high price of severing the possibility of electoral accountability. Some of them include a strict regulation of campaign finance and procedures, equal distribution of public political campaign funds in order to reduce barriers to enter into political competition, free access to media, and the strengthening of agencies that oversee campaigns. These are devices that will limit the ability of presidents to use the office for undue electoral advantage; yet, they will not remove their incentives to perform well with an eye on the possibility of reelection.

III. LEGISLATIVE AND PRESIDENTIAL ELECTORAL SYSTEMS

The operation of presidentialism may be affected by the way both congress and the president are elected. One common view about presidentialism, as we all know, is that it must avoid high levels of partisan fragmentation in the assembly.

Legislative fragmentation increases the chances that the party of the president will not control a majority of seats in the congress, thus increasing the probability that a minority presidential government will emerge. Given the alleged lack of incentives for cooperation inherent to presidentialism, a coalition government will be unlikely or, if one emerges, ephemeral. Governments will be ineffective, unable to secure legislative support for its proposals. Legislative paralysis —or worse— will then follow (Mainwaring, 1993).

In light of the problems generated by legislative fragmentation, limiting the number of political parties has become one of the most important guiding principles in discussions of electoral systems in presidential democracies. Specifically, it has been argued that presidential democracies would work better with a restrictive electoral system, that is, one that adopts, for example, single-member districts, relatively high thresholds for legislative representation, stronger legal requirements for the establishment of political parties, or a combination of these features. Electoral systems with these features would tend to generate party systems characterized by a small number of parties and presidents supported by

a legislative majority. These presidents would be effective in the sense that they would be able to have their legislative initiatives approved in congress, conflict would be less likely and the possibility of democratic breakdown would be reduced.

However, there is evidence that shows that the facts underlying this reasoning are questionable. The relationship between risk of democratic breakdown and legislative fragmentation is not linear for presidential democracies; thus, reducing the number of parties will not necessarily reduce the risk of democratic breakdown (Cheibub, 2007). Similarly, there is no empirical support for the notions that it is harder for presidents to form coalitions when party fragmentation is high, that the risk of death of presidential democracy is higher when no coalitions are formed, or that single party minority presidential governments are less legislatively effective than (majority or minority) coalition governments. Thus, it seems that presidential democracies that adopt “permissive” electoral systems, such as those based on proportional representation with low barriers to entry, do not really have to pay a price in terms of the government’s ability to govern. They can keep electoral rules that allow for a high degree of representativeness without increasing the probability of democratic breakdown.

As for the way presidents are elected, there are two aspects I would like to emphasize here. The first has to do with the rules for the election of presidents. The second has to do with the timing of presidential elections relative to legislative elections.

One of the advantages of presidentialism is that it provides for one office with a national constituency. This may become particularly advantageous in situations of high political volatility and heterogeneity since the presidency may operate as a force toward unity and integration. Yet, for this to occur, the rules for electing the president have to be carefully crafted so that they provide an incentive for integration rather than a reinforcement of existing political, ethnic, geographic or religious cleavages. There is no one formula that may be generally applied in designing a presidential electoral system in a context of heterogeneity. This is so because, as Horowitz (2000) has shown, the best system depends on the specific distribution of cleavages across the national territory. One mechanism, for instance, requires that contestants, in order to be successful, seek votes outside their narrowly defined constituencies. Horowitz (2000) discusses the system used in Nigeria under the 1979 constitution, where the winner of the presidential elections had to obtain a plurality of the na-

tional vote and at least 25% of the vote in at least two-thirds of the states. Another mechanism, also discussed by Horowitz (2000), is the alternative vote used in Sri Lanka's presidential elections. In this case, voters are asked to order all contestants minus one. If no candidate wins an outright majority of the votes, all but the top two candidates are eliminated and the second, third, and so on preferences in the ballots are counted until one candidate reaches more than fifty percent of the vote. Thus, to the extent that no candidate can expect to obtain a majority in the initial balloting, they will have an incentive to reach beyond their own constituencies in order to be ranked relatively high on other groups' preferences.

A functionally similar procedure is now adopted in most Latin American countries, namely the two-round presidential election. In this case, elections are held and if no candidate obtains more than fifty percent of the votes, a second round of elections takes place with the participation of the two candidates with the highest number of votes. The difference with respect to the alternative vote is that voters are asked to rank only up to their second choice, and the ranking occurs at different points in time. These are just some examples of a menu of choices that may, in fact, be quite large. What they have in common is that they all use the presidential election as a way to mitigate some potentially problematic cleavages and serve as a force that generates incentives for integration. A two-round system for presidential elections, however, is associated with the multiplication of political parties since voters in the first-round will have no incentive to vote strategically. Since this would prevent the reduction in the number of parties, two-round presidential elections have been considered inadequate for presidential democracies. To the extent that the electoral system is not evaluated primarily on its ability to mitigate alleged problems with presidentialism, it can be used in the pursuit of a more varied set of goals.

Presidential and legislative elections can always happen at the same time (as it is the case in Costa Rica), always at different times (as in Brazil during the 1946-64 democratic period), or they may alternate (as in the United States which has a legislative term of two years and a presidential term of four years, and elections coincide every four years) There is some evidence that when they occur together, presidential elections operate to reduce the number of political parties (Shugart, 1995, Golder, 2006). Presidents generate large coattail effects, which helps the election of co-partisan legislators. This provides a strong incentive for individual

legislators to join parties with a real chance of generating a viable presidential candidate and may, ultimately, help produce presidents from parties controlling a relatively large share of seats in the legislature. Thus, if the fragmentation of the party system is a concern, the stipulation of concurrent presidential and legislative elections may help reduce the number of political parties in competition, without the implementation of a restrictive electoral system for legislative elections. The price, however, is that a system of concurrent presidential and legislative elections deprives voters of the opportunity to signal their approval or disapproval of government performance in the middle of the presidential term.

IV. LEGISLATIVE AND AGENDA POWERS OF THE PRESIDENCY

Almost all presidential constitutions give some legislative powers to the presidency. The most important powers include veto, decree and urgency powers, as well as the government's *exclusive power to introduce legislation* in some specified areas.

Veto power stems from the provisions that legislative acts must be signed by the president in order for them to become law, and that the president may refuse to sign them. When the president can only refuse the bill in its entirety, the president has only complete or total veto power. When the president may object to portions of the bill, the president has partial veto power. The language here may be misleading. Because presidents with partial veto power are not presented with an all-or-nothing choice, they have more ways to influence legislation; hence, they are more powerful. When the president vetoes a bill (either partially or completely), the bill is often sent back to the legislature, which is then given the opportunity to reaffirm its will and override the presidential veto. The legislative majority required for veto override is usually larger than the majority required for the approval of the bill in the first place. Most presidential constitutions (including the US constitution and the majority of the Latin American presidential constitutions) require a two-third majority of the legislature in order to override a presidential bill. If such a majority exists, then the president is required to sign the bill and it becomes law.

Decree power refers to the executive's ability to issue new laws, which exists in a variety of constitutions, both presidential and parliamentary. Decree power varies widely (Carey and Shugart, 1998). First, it varies with respect to the areas where they may be issued. Some constitutions

only allow for presidential “executive orders,” that is, purely administrative proclamations pertaining to the implementation of laws already approved by the legislature. Others allow for presidential decrees under special circumstances which are, nonetheless, sufficiently vague so that presidential action is possible in virtually any area (e.g. “relevance,” “urgency,” “economic or financial matters when so required by the national interest,” and so on)². Second, presidential decree power varies with respect to its time frame. Typically, presidential decrees enter into effect as soon as they are issued. In a few cases, some time is elapsed before they enter into effect. During this time, the legislature is given the opportunity to reject them. Finally, in some cases executive decrees automatically become permanent laws, whereas in other cases they expire if not approved by the legislature within some time frame.

In many presidential constitutions, presidents are allowed to declare a bill “urgent.” When this is done, the assembly is required to vote on the bill in a relatively short time period (e.g., 30 or 45 days), and legislative work is paralyzed until such a vote takes place. The president, thus, is empowered to directly affect the order of business of the legislative body.

Finally, many constitutions grant the government the exclusive power to introduce certain legislation. US presidentialism is virtually unique among presidential democracies in that it requires that all legislation be initiated from within the congress. In most other presidential democracies, however, the role of the assembly in initiating legislation is limited in some areas, such as the size of the armed forces, the creation of jobs, the structure of public administration, and most importantly, the budget. Normally, the assembly is allowed to amend these bills, even if constrained by provisions stipulating, for example, that it can only propose amendments that do not increase the deficit or the overall level of spending. But even if granted the power to freely amend, the assembly is faced with an agenda that is set by the president and not by itself. And, as we know, the party that sets the agenda is always in an advantageous position.

All these features of presidential agenda powers are rather consequential, and they combine into institutionally weaker or stronger presidencies. Although, there are many who believe that strong presidents are proble-

² But decree power under “special” circumstances are not to be confused with constitutional emergency powers, which allow for the temporary suspension of some constitutional provisions in specified circumstances.

matic in that they will clash with congress, and eventually generate government or even regime crises, there are those who argue that strong presidencies are not necessarily bad for the operation of presidential constitutions (Figueiredo and Limongi, 2000a and 200b, Siavelis, 2000, Jones and Hwang, 2005, and Amorin Neto, Cox and McCubbins, 2003). For instance, the strong presidential agenda powers established by the post-authoritarian constitutions of countries such as Brazil and Chile are largely responsible for the high level of legislative success of their governments.

The case of Brazil seems to be highly relevant here given the high number of centrifugal elements built into the system, which in combination with presidentialism would suggest a highly volatile and ungovernable country: a federally structured country with economically diverse regions, political parties with weak popular penetration, an electoral system for the assembly (open-list proportional representation) with low barriers to entry and features that make state governors influential over party decisions. Yet, legislative behavior in the Brazilian congress has exhibited remarkably high levels of partisanship, with presidents capable of relying on a stable coalition who supported them on most of their legislative agenda (Figueiredo and Limongi, 1999). This unexpected pattern, in turn, is a function of the president's legislative powers granted by the 1988 constitution, which include all of the powers discussed above: partial veto, decree power, the power to request urgency in the appreciation of specific legislation, and the power to exclusively initiate budget legislation.³

Figueiredo and Limongi, in their various papers, have convincingly uncovered the mechanism whereby the powers of the presidency positively affect the capacity of presidential governments to act, even in the face of many adverse institutional conditions. The concentration of legislative powers in the executive (coupled with a highly centralized decision-making structure in the legislative chambers) renders the individual and independent action of legislators futile. Figueiredo and Limongi argue that the rational course of behavior for individual legislators is to follow their parties' directives in congress since this is the only way they

³ The work of permanent committees and set the agenda for the floor. This organization, of course, is not a constitutional feature and resulted from a decision of the assembly itself. However, it is essential for allowing the president to form stable legislative coalitions with a relatively small number of political parties, despite all the forces that conspire against such stability. See Figueiredo and Limongi (2000a and 2000b), Amorin Neto (2002), and Armijo, Faucher and Dembinska (2006).

will be able to influence public policies and obtain the resources that they may use in seeking a renewal of their mandates from voters. It is this centralization of the decision-making process, they argue, that explains the high degree of legislative success of Brazilian presidents; a success that is similar to the one obtained in parliamentary democracies.

The operation of this mechanism, of course, raises a number of interesting questions. Here, I would like to consider the different ways that have been put forward for explaining the actions of a strong president in a democratic system. In particular, I address the issue of accounting for a president's choice to use decrees as instruments of policy-making. I will do so by focusing on the case of Brazil on which a number of high quality and sophisticated research has been recently done.

There are two broad types of explanation concerning the use of presidential decrees in Brazil (and elsewhere). The first one, which we could call political or conditional, sees presidential decrees as one among a set of alternative options in a menu of instruments available to presidents seeking to implement their legislative agenda. In this view, presidents choose a strategy of legislative action that emphasizes either the use of decrees or ordinary legislation, which systematically depends on the political context within which presidents must interact with the legislature, and circumstantial factors such as the president's popularity, the occurrence of elections or the existence of pressures for speedy executive action. In this view, the institutional structure that shapes executive-legislative relations in Brazil is constant and hence cannot account for variation in the use of decree powers by the five presidents who have governed under the 1988 constitution.

The political/conditional view of presidential decree usage, in turn, sustains two competing theories, which (Pereira, Power and Rennó, 2006) call "unilateral action" and "delegation" theories. In the former, presidents use their decree powers when they do not have the necessary support to approve ordinary legislation in congress. In this sense, the use of decrees constitutes a way for the president to bypass an unfriendly congress. Thus, the share of decrees in the president's overall legislative strategy will increase when s/he cannot count with a reliable and steady support of a legislative majority. This support is often shown by the share of seats held by the parties that hold cabinet positions, but as Amorim Neto (2006) suggests, it is more fundamentally dependent on the president's ability to compose a government coalition that secures the

proportionality between ministerial posts and the legislative support a party can provide. “Delegation” theory, in turn, sees presidential decrees as a convenient means at the disposal of the legislative majority, who may prefer to transfer some of its powers to the executive for a variety of reasons. As listed by Carey and Shugart, (1998, 295), they may include partisan support for individual governments, collective action problems within the legislature, or electoral incentives of individual legislators.

Both “unilateral action” and “delegation” theories predict that the reliance on decrees by presidents is a function of the political conditions they face; the only difference is that they predict opposite effects. According to the “unilateral action” theory, the use of decrees will increase when the president faces unfavorable political conditions; according to “delegation” theory, the use of decrees will increase when the president faces favorable political conditions. The balance of the evidence provided by the literature is mixed, with Pereira, Power and Rennó (2006) mostly showing that factors associated with “delegation” theory are supported by the data, and Amorin Neto, Cox and McCubbins (2003) suggesting that the data best conform with “unilateral action” theory.

The second explanation of the use of decrees by Brazilian presidents is institutional in nature and posits that political and circumstantial factors have little or no influence on the president’s choice to use either decree or ordinary legislation to govern. In fact, according to this view, there is little that can be characterized as systematic choice by a president regarding whether to use decrees or ordinary legislation. In this view, the post-1988 institutional structure facilitated the shaping and sustaining of a legislative majority by the government. Decree power is one of the main instruments for doing this – it is a mechanism whereby the executive can set the policy status quo and lead the process of shaping through negotiation and bargaining the support of a legislative majority for the policies it wishes to implement. In this sense, the use of decrees by the executive is neither “delegation” nor “unilateral action,” and attempting to adjudicate either one of these two perspectives is probably futile. Decrees are, by design, instruments that allow the Executive Branch to act unilaterally. Through this action, however, the government is able to bring together a legislative majority, which it will need if it wants these policies to become permanent. Thus, the matter is not whether Congress delegates or the president usurps legislative powers. The question is how does the

president use decrees to shape the legislative agenda and bring about a legislative majority?⁴

In the institutionalist view, decrees are used both as convenient means to address routine issues, and as regular instruments in the process of negotiation and bargaining that characterize the legislative process. To the extent to which they are neither usurpation nor delegation, they do not vary systematically with respect to political factors such as the legislative strength of presidents, their ability to manage their coalition, or their popularity. Some circumstantial factors —such as macroeconomic pressures leading to the implementation of emergency stabilization plans— matter, but they do, simply because it is only through decrees that presidents can act with the speed, secrecy and surprise that are sometimes considered to be essential for the plans' success. Even in these cases, however, presidents are successful in transforming their decrees into regular legislation.

I recognize that the institutionalist view of decrees is yet to be developed and supported empirically.⁵ Anyone seeking to do so will face a tall order since, as the proponents of the “political” view correctly point out, the institutional structure has remained mostly constant since 1988;⁶ even though, the use of decrees varies across presidents and even within a president's term. I believe, however, that there is strong evidence in support of an institutionalist view of decree power. For instance, in an on-going project with Argelina Figueiredo, we hope to be able to show

⁴ Note that the institutional perspective, which does not necessarily see a conflict between the executive and the legislature in the former's use of decrees, is often interpreted as a variant of “delegation” theory. This, however, is not correct. Delegation theory sees the legislature as the principal and the executive as the agent to whom its powers are transferred. The institutional perspective does not see the two bodies in such a hierarchical relationship; rather, if there is a hierarchy, it is one that institutionally favors the executive only in that it gives that body the ability to lead the process of policy formation.

⁵ Although there is a sizeable specific literature on which this perspective is based. I refer to works revolving around the notions of a strong executive and a “rationalized” parliament, which became current in post-WWII Europe and which saw their epitome in the emergence of the French 5th Republic. These systems sought to create “effective government authority” by structuring executive-legislative relations in such a way as to strengthen the former and to centralize and streamline the latter. As some of the work done on these structures has demonstrated, they did not imply dominance of the executive (Huber 1996, Keeler 1993, Lauvaux 1988).

⁶ Decree rules in Brazil were changed in 2001 in ways that matter for understanding their usage.

that the evidence presented in support of the “political” view of the use of decree powers by Brazilian presidents is rather weak. In this work, we re-test the political hypothesis using a data set that is more complete and with variables that are operationalized in a way that is, we believe, more appropriate for the question we are seeking to answer. We also present new evidence, based on a new data set on executive-legislative relations, which supports the idea that decrees and projects of ordinary legislation are not alternative courses of action that presidents take depending on their ability to work with or against congress. In fact, the bulk of presidential action taken by decrees falls in the domain of what is referred to as executive orders in countries such as the United States. A large part of the remainder constitutes either a course of legislative action that presidents take parallel to the presentation of ordinary legislation, or legislative action that is supported and negotiated by the legislative majority as much as ordinary legislation. We show this by using a substantive classification of ordinary legislation projects and decrees (*medidas provisórias*) and through the analysis of legislative urgency requests for executive bills.

Thus, institutionally strong presidents are not necessarily detrimental to the functioning of presidential democracies. Attempts to weaken them on the ground that they usurp the power that should be located at the assembly should, therefore, be re-evaluated and considered in light of the benefits they bring about in terms of government performance (Croissant, 2003).

V. SEMI-PRESIDENTIAL SYSTEMS

Systems that combine a government dependent on the confidence of a legislative assembly and a popularly elected president —semi-presidential or mixed— have become very popular in the past two decades or so. Countries with this kind of constitution represent today about 25% of the democracies in the world. Naturally, the number of scholarly work seeking to evaluate their performance has grown in tandem with the increase in the number of countries that adopted them. The vast majority of this work has focused on the presidency, seeking to identify the combination of presidential powers that would mitigate what are considered to be the intrinsic difficulties of a mixed constitution – conflict between president and prime minister, dual legitimacy, etc. It would be fair to say that this concern is the product of the extension to the study of semi-presidentialism of the usual thinking about pure presidentialism. Yet, it may be en-

tirely the case that, by focusing on the powers of the president, we may be neglecting the issue of asking interesting questions about semi-presidential democracies; hence, we may be missing some important aspects about the way they actually work. Here, I would like to call our attention to four important issues related to semi-presidential democracies, which raise interesting questions.

1. *Heterogeneity of semi-presidential democracies*

Every one seems to agree that the form of government in France, Portugal and the Ukraine is different from the form of government in Italy, Germany, and Denmark, on the one hand, and Brazil, the Philippines, and the United States, on the other hand. In Italy, Germany and Denmark the government is strictly subject to the confidence of a legislative majority and the head of state exercises mostly ceremonial functions. These countries have a parliamentary form of government. In Brazil, the Philippines, and the United States, the government does not need the confidence of a legislative majority in order to exist. Once in place, the Legislature plays no role in the survival of the government. In these countries, the government is only responsible to a popularly elected president. These are countries with a presidential form of government. In France, Portugal and the Ukraine, the government needs the confidence of a legislative majority in order to exist, and the head of state is a popularly-elected president. These systems are considered mixed in the sense that they combine the main features of parliamentary and presidential democracies: assembly confidence and a president popularly elected for a fixed term.

Unfortunately, this definition of mixed systems is not sufficient to satisfactorily characterize the way in which they operate. When we qualify a democracy as “presidential” we know we are talking about systems in which the government is headed by a popularly-elected president. Presidential democracies, as we have seen, are different in many respects, including the way the president is elected (by a plurality of voters, by a system of two turns, by an electoral college, by the congress if no candidate obtains a majority of votes), the time they serve in office (most often four years, but occasionally five or six years), their ability to run for re-election (one re-election allowed, no re-election allowed, re-election allowed after one term out, and only very rarely unrestricted re-election), or the legislative powers the constitution grants them. But in all presidential

democracies, the president, once chosen, is the head of the government, which, once formed, cannot be dismissed by the assembly. The same can be said of parliamentary democracies. Although in some of them the head of state is a monarch, and in others, an indirectly elected president, or an appointed administrator; although in some the legislature must be renewed every four years and in others every three or five years; although in some, the government needs to be formally invested by the parliament, and in others such an act is unnecessary. In some, the government can itself invoke a motion of confidence, and in others, it cannot. In all of them, the government is subject to the confidence of a legislative majority, which, if lost, implies the dismissal of the government as a whole.

Mixed systems do not share such common features. On the one hand, we have systems such as the one in France, where the president is an effective power in the process of government formation and dismissal. The president actively participates in governing, and is regarded as being at least partially responsible for policies and outcomes. The presidency is a desirable post, and increasingly so as attested by the competitiveness of presidential elections in that country. On the other hand, we have systems in countries such as Iceland, where presidential elections are often uncontested, and the directly elected president is commonly perceived as “a figurehead and symbol of unity rather than a political leader” (Kristinsson, 1999, 87). In addition, there is also the case of Finland, where even before the 2000 constitution that codified a more ceremonial role for the president, the system had functioned like a parliamentary democracy (Raunio, 2004). Thus, identifying a democratic constitution as mixed does not really convey the way the system actually operates. We need more information to know if it is a system in which the president really matters—that is, whether the government is effectively dependent on the president in order to exist—or if, in spite of being constitutionally allowed to influence the existence of the government, the president plays a more ceremonial, symbolic role. Thus, although all mixed systems have constitutions that combine a directly elected president with a government that needs the confidence of the parliament in order to exist, not all of them have presidents who effectively participate in the political process and share governing responsibilities with the prime minister. Yet, the presumption is that mixed or semi-presidential constitutions matter for the way politics unfolds, for the government’s capacity to govern, for the accountability of the government to its citizens, and even for the consolidation of democracy.

2. *Relative Unimportance of Presidential Powers in the Constitution*

Although mixed systems vary considerably regarding the political importance of the president, it is unlikely that this variation is due to the way constitutions allocate powers between the president and the prime minister. Constitutions that allow for equally strong presidents may have very different patterns of interaction between the head of state and the head of government. Consider the constitutions of Iceland (1944), Germany (1919) and France (1958), whose stipulations regarding the president's power of dissolution of the assembly, appointment/removal of the government, and other presidential powers are summarized in appendix 1. Regarding government formation and assembly dissolution, the German and French constitutions read, in many ways, very much like the Icelandic constitution. Yet, Iceland's political system, as we saw before, is considered to function as a parliamentary democracy, Weimar is considered to be the epitome of presidential-parliamentary systems, which are characterized not only by the government's assembly responsibility but also by the primacy of the president (Shugart and Carey, 1992: 24), and France is considered to be the prototypical mixed, semi-presidential, or premier-parliamentary system (Duverger, 1980, Shugart and Carey, 1992, Sartori, 1994). Thus, according to the Weimar constitution, the prime minister is appointed and dismissed by the president (article 53); the same is true, however, of the prime minister in France (article 8) and in Iceland (article 15). In Iceland, article 24 allows the president to dissolve the assembly with no limitations to this power. In France, according to article 12, the President must consult the prime minister and the presidents of the assemblies before dissolving the assembly, and must wait a year in order to be able to do it again; in Weimar, article 25 allowed the president to dissolve the assembly, but only once for the same reason.

There are other presidential powers in these constitutions which do not really distinguish these countries, or which grant more constitutional powers to the president who is, in practice, the weakest. For example, France and Weimar give the president broadly similar and strong emergency powers (articles 16 and 48, respectively), although the Weimar constitution explicitly states that whatever measures were taken by the president must be suspended if the parliament demands so; the Icelandic president, in turn, has limited emergency powers, being able to act under such powers only when the parliament is not in session. The Icelandic

(article 26), and the Weimar (article 73) presidents may reject a bill and cause it to be subject to a popular referendum, something the president of France cannot do, unless requested by the government or by a joint motion of the lower and upper houses (article 11). The only thing the French president can do unilaterally is to ask parliament to reconsider a law within 10 days from its approval (article 10). The French constitution is silent about the President's ability to initiate laws; the Weimar constitution explicitly denies the president the ability to initiate laws by stating that laws are to be proposed by members of parliament, and members of the government (article 68), which consists of the prime minister (the chancellor), and the ministers (article 52). Article 25 of the Icelandic constitution, in turn, states that the president may have bills and draft resolutions submitted to the parliament. Finally, article 2 of the Icelandic constitution states that the president and "other governmental authorities referred to in this Constitution and elsewhere in the law" jointly exercise executive power, and article 16 states that the State Council is composed of the president and the government ministers, is presided by the president, and is the locus where "laws and other important government measures" must be submitted to the president. The French constitution provides for an ambiguous role for the president in the government: article 21 designates the prime minister as the one who "directs the operation of the government," the president presides over the Council of Ministers (article 9), and must sign "the ordinances and decrees deliberated on in the Council of Ministers" (article 13). As to the Weimar constitution, as seen above, the president is not part of the government (article 52).

Thus, constitutional features are not sufficient to distinguish mixed systems, in which the president "really" matters from those in which the president plays no significant role in politics.⁷ It is intriguing to observe why similarly designed constitutions entail practices that are as divergent as the ones we observe in Iceland, Austria, Cape Verde, Central African Republic, France, Iceland, Madagascar, Russia and the Ukraine.

⁷ This is consistent with the lack of consensus in the literature about the effect of presidential powers in semi-presidential democracies. Measures of presidential powers in semi-presidential constitutions are not always important in accounting for variation in the performance of these systems (Cheibub and Chernykh, 2007, Shugart and Carey, 1992, Metcalf, 2000, Frye, 1997, Baliev, 2006 among others).

3. *Adoption of Mixed Constitutions*

The process underlying the interaction between directly elected presidents and prime ministers in contemporary mixed democracies is not unlike the process that characterized the interaction between monarchs and parliaments as the latter asserted their primacy in what are now parliamentary democracies. Both powers try to assert their preeminence and engage in a struggle to do so. Victory, if at all forthcoming, is always political in the sense that one of the powers recognizes that the alternative to giving in and relinquishing power is unsustainable – some kind of deadlock or outright war. Presidents, even under constitutions that grant them a wide array of powers, will find that they have to appoint governments that they would have preferred to avoid provided that government needs to obtain the confidence of a legislative majority in order to exist.⁸

Equilibrium may eventually be found and the constitution may or may not be adjusted to reflect it. In Finland, for example, the 2000 constitution introduced subtle changes in language to reflect a practice that was, according to most observers, already essentially parliamentary, with the president playing no more than a formal role in the government formation process. Thus, section 61 of this constitution preserves a role for the president in government formation, but one that is explicitly subject to the will of parliament: “The Parliament elects the Prime Minister, who is thereafter appointed to the office by the President of the Republic. The President appoints the other Ministers in accordance with a proposal made by the Prime Minister.” Similarly with government termination, as stipulated by section 64: “The President of the Republic grants, upon request, the resignation of the Government or a Minister. The President may also grant the resignation of a Minister on the proposal of the Prime Minister. The President shall in any event dismiss the Government or a Minister, if either no longer enjoys the confidence of Parliament, even if no request is made”. Thus, in the 2000 Finnish constitution, the president’s role is to simply ratify a decision that was made by the legislative majority. But such explicit “adjustment” is not really necessary,

⁸ Consider, for example, the fact that Viktor Yushchenko, Ukraine’s constitutionally strong president, and the winner of a hotly contested presidential race in March 2005, finally appointed his opponent in that election, Viktor Yanukovich, as the prime minister (August 3, 2006). This followed a series of attempts to form a government that would exclude Yanukovich’s party from the government, which proved politically inviable.

either because the practice may not be written anywhere (such as in England, where there is no written stipulation that the monarch only plays a formal role in government formation, and that the government exists only as long as it enjoys the support of a legislative majority) or because the written constitution does not reflect political practice (such as in Denmark, where article 3 of the constitution states that legislative power is vested in the King⁹ and the parliament conjointly, and that executive power is vested in the King; article 2, in turn, states that the King can dissolve the parliament at any time. Article 14 states that the King appoints and dismisses the prime minister and other ministers). In all these cases, an effective balance was found between the head of state and the head of government (even if tilted in favor of one actor or the other), and in some cases it was made explicit in the written constitution. Thus, it is not surprising that the mere presence of a directly elected president, or the specific powers allocated to the head of state in the constitutional document, is not found to be of great significance for accounting for variation in the way democratic systems operate.

The question remains as to why so many countries that adopt the parliamentary formula —assembly confidence— in their new constitutions also adopt a directly elected president.¹⁰ Why do they not adopt a purely parliamentary constitution by designing a symbolic or ceremonial presidency? The need for a directly elected president has been justified in two basic ways. In the Weimar constitution, the president was conceived as a counter to the power of the parliament; the fact that presidential power originated directly in the people would allow him to balance the parliamentary characteristics of the system (Weber, 1978). The thinking underlying the Gaullist 1958 constitution, in turn, was more of a president who would stand above politics, and in this way, serve as the adjudicator of political conflicts. An

⁹ The 1953 constitution allowed for a female head of state by stipulating that the royal power could be inherited by both men and women. Since 1972, the head of state in Denmark has been a Queen. Yet, at least in its English translation, the constitution refers to the power of the King, not the Queen or the Monarch.

¹⁰ One of the common themes in the literature on democracy and democratization in Eastern Europe is the fact that so many countries adopted a constitution that called for a directly elected president. It is worth noting, however, that the truly remarkable fact about the constitutions these countries adopted is that they all called for a government based on assembly confidence. As a matter of fact, many countries adopted an effective parliamentary formula even before they wrote a new Constitution.

additional reason, I believe, is the widespread belief among both constitution makers and constitution analysts that the leadership of the state must not be subject to the whims of a majority: whereas the government can, and must, reflect the preferences of the majority at the time. The state, it is believed, must have an existence that transcends this majority. What matters, thus, is the “fixed” aspect of the head of state office. The use of some kind of elections to choose who will occupy it is peripheral; it follows from the fact that such choice can no longer be justified on hereditary grounds.

Yet, I am not sure whether solid arguments justifying the notion that the head of state must be “fixed,” immune to temporary majorities, even exist. This notion—that the state must endure beyond the government—may very well be just an assumption held by both practitioners and analysts. That this must be the case, however, is not true. Note that there are at least three countries in the contemporary world with constitutions which require the government to be responsible to a legislative majority and which do not provide for a head of state with fixed terms: South Africa, Kiribati and the Marshall Islands. In South Africa, the head of state and government are one and the same person, who is named the President. However, according to the 1996 constitution (as well as the interim 1994 constitution), this “president” is subject to a vote of no-confidence by a majority of the National Assembly, which, if approved, requires the president’s resignation and the formation of a new government. We believe that the fact that votes of no-confidence have been far from likely in South Africa has nothing to do with what the constitution says, and everything to do with the fact that parliament has been dominated by a single party that holds about two-thirds of the seats ever since competitive elections were held in 1994. Had such a large majority not existed, the relation between the government and the parliament in South Africa would have been considerably different with issues of government survival due to legislative action probably occupying the forefront of political life.

Thus, although they have become very popular in the recent past, it is doubtful that mixed constitutions have been adopted with the explicit goal of dividing authority between a directly elected president and a government responsible to the parliament. It is more likely that the choice was to create an assembly confidence system, and at the same time, to institute a head of state that, by virtue of its independence from the parliamentary majority, would somehow guarantee the continuity of the state. That this head of state was to be elected by popular vote is almost the default option given the lack of legitimacy of the alternatives.

4. *The Government, Not Necessarily the President*

What distinguishes contemporary forms of democratic governments is whether they have assembly confidence or not. Given assembly confidence, whether the president is directly elected seems to be of little relevance. It is possible that governance in assembly confidence systems is guaranteed not by the way the president is elected, but by other institutional features that strengthen the government. That is, that component of the political structure that needs to obtain the confidence of the legislature: mechanisms that allow the government to shape the legislative agenda, to organize a legislative majority and to keep it reasonably together in the face of the multiplicity of often contradictory interests which legislators must reconcile in the course of their careers.

There is general agreement that France under the Fifth Republic became a more stable and governable system than under the Fourth Republic. One of the most notable features of the new constitution was the introduction of a strong presidency, shaped, it is often said, to fit the personality of the man who was the force behind it. As a matter of fact, the much repeated phrase “French-style” constitution refers precisely to the combination of such a presidency with an assembly confidence mechanism. Yet, to say that France became governable as it moved from the Fourth to the Fifth republics because of the constitutional provisions regarding the presidency is to disregard other, probably more significant, constitutional changes also introduced with the 1958 constitution. Two of these changes were the package vote (article 44.3), which allows the government to close debate on a bill and force an up or down vote on a proposal that only contains the amendments accepted by the government, and the confidence vote procedure (article 49.3) which, when invoked by the government, stops debate on a bill and, if no motion of censure is introduced and adopted, implies approval of the bill shaped by the government. As Huber (1996, 3) states,

The rules included in the [1958] Constitution to strengthen the French government against the legislature seem formidable. The Constitution contains provisions that grant control of the legislative agenda to the government, that limit the right of deputies to submit and vote amendments, that limit opportunities for deputies to gain information and expertise, and that even limit opportunities for members of parliament to vote on bills themselves. Since these rules of legislative procedure were actually placed in the Constitution,

the members of parliament cannot easily change or get rid of them. The National Assembly under the Fifth Republic is, therefore, often regarded as one of the weakest legislatures in any modern democracy.

Features such as these are not rare in mixed constitutions. In a previous work (Cheibub and Chernykh, 2007), which is based on data on all such constitutions since 1919, we find that 59% of the cases (country years) allow the government to request a confidence vote on specific legislation, 48% grant the government control over the budget process, 35% place restrictions on the assembly's ability to pass a vote of no confidence in the government, 37% forbid legislators from serving in the government, and 23% contain provisions that allow the government to request urgency in the treatment of legislative proposals. Thus, maybe what matters for the performance of democratic systems is not the mere presence or absence of a directly elected president, but the ways in which those with executive powers are able to exert control over the legislative process. We have evidence from both case studies and statistical analysis suggesting that this is what matters for both presidential (Figueiredo and Limongi, 2000a and b, Siavelis, 2000, Cheibub, 2007) and parliamentary democracies (Döring, 1996). There is no reason to believe that semi-presidential constitutions will be any different.

VI. CONCLUSION

We come, thus, full circle. We started by discussing a new way to think about reforms in presidential democracies. Starting from the premise that there is nothing intrinsically wrong with presidential constitutions and that presidential constitutions are unlikely to be replaced under democracy. We suggested that we could look at possible reforms from a new perspective; one that seeks to promote goals other than governance and that sees executive legislative powers as mechanisms the government can use to negotiate, bargain and, therefore, shape a legislative majority in support of its initiatives.

The message about semi-presidential democracies is similar. Much of the scholarship about these systems has been shaped by concerns with the presidency and the conflict that it might entail with the government. Consideration of the institutional instruments available to the government has been, so far, nonexistent. It is as if there were no variation in

the instruments available to the government to elicit the support of a legislative majority. There is much to be done in this area; but given what we know about the importance of the mechanisms available to the government in both presidential and parliamentary democracies, it is likely that research in this area will generate new insights about mixed systems. Perhaps the excessive preoccupation with the powers of the president in these systems has simply prevented us from looking into what might matter the most.

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APPENDIX 1

Government Formation and Assembly Dissolution in Three Mixed Constitutions:

Weimar (1919), Iceland (1944) and France (1958)

Definition of the government

Weimar: Article 52 – The Reich government consists of the chancellor and the Reich ministers.

Iceland: Article 2 – Althingi and the President of Iceland jointly exercise legislative power. The President and other governmental authorities referred to in this Constitution and elsewhere in the law exercise executive power. Judges exercise judicial power. Article 16 – The State Council is composed of the President of the Republic and the Ministers and is presided over by the President. Laws and important government measures shall be submitted to the President in the State Council.

France: Article 21 – The Prime Minister directs the operation of the Government.

(Government is not explicitly defined)

President's power to dissolve assembly

Weimar: None

Iceland: None

France: Article 12 – The President of the Republic, after consulting the Prime Minister and the Presidents of the Assemblies, can declare the National Assembly dissolved. General elections take place not less than twenty days and no more than forty days after the dissolution. The National Assembly convenes as of right on the second Thursday following its election. If it convenes outside the period prescribed for the ordinary session, a session is called by right for a fifteen-day period. No new dissolution can take place within a year following this election.

Appointment of the Government

Weimar: Article 53 – The Reich chancellor, and, at his request, the Reich ministers, are appointed and dismissed by the Reich President.

Iceland: Article 15 – The President appoints Ministers and discharges them. He determines their number and assignments. Article 20 – The President appoints public officials as provided by law. The President may remove from office any official whom he has appointed.

France: Article 8 – The President of the Republic appoints the Prime Minister. He terminates the functions of the Prime Minister when the latter tenders the resignation of the Government. On the proposal of the Prime Minister, he appoints the other members of the Government and terminates their functions.

Operation of the government

Weimar: Article 55 – The Reich chancellor presides the Reich government and conducts its affairs according to the rules of procedure, to be decided upon by Reich government and to be approved by the Reich president.

Article 56 – The Reich chancellor determines the political guidelines and is responsible for them to Reichstag. Within these guidelines every Reich minister leads his portfolio independently, and is responsible to Reichstag.

Iceland: Article 13 – The President entrusts his authority to Ministers.

France: Article 9 – The President of the Republic presides over the Council of Ministers. Article 13 – The President of the Republic signs the ordinances and decrees deliberated on in the Council of Ministers.

Assembly confidence

Weimar: Article 54 – The Reich chancellor and the Reich ministers, in order to exercise their mandates, require the confidence of Reichstag. Any one of them has to resign, if Reichstag votes by explicit decision to withdraw its confidence.

Iceland: Article 14 – Ministers are accountable for all executive acts. The accountability of the Ministers is established by law. Althingi may

impeach Ministers on account of their official acts. The Court of Impeachment has competence in such cases.

France: Article 49 – The Prime Minister, after deliberation by the Council of Ministers, may make the Government’s program or possibly a statement of its general policy an issue of its responsibility before the National Assembly. The National Assembly may question the responsibility of the Government by the vote on a motion of censure. Such a motion shall be admissible only if it is signed by at least one-tenth of the members of the National Assembly. The vote may only take place forty-eight hours after the motion has been filed; the only votes counted shall be those favorable to the motion of censure, which may be adopted only by a majority of the members comprising the Assembly. Except in the case specified (*prévu*) in the paragraph below, a deputy cannot be signatory to more than three motions of censure in the course of the same ordinary session and more than one in the course of the same extraordinary session. The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a bill an issue of the Government’s responsibility before the National Assembly. In that event, the bill shall be considered adopted unless a motion of censure, introduced within the subsequent twenty-four hours, is carried as provided in the preceding paragraph. The Prime Minister may ask the Senate to approve a statement of general policy.

Article 50 – Where the National Assembly carries a motion of censure, or where it fails to endorse the program or a statement of general policy of the Government, the Prime Minister must tender the resignation of the Government to the President of the Republic.