**18. Semi-presidentialism: The rise of an ‘accidental’ model**

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Introduction

Semi-presidentialism is a relative newcomer to the disciplines of both comparative constitutional law and comparative politics. By contrast with both parliamentarism and presidentialism, studies on semi-presidential regimes are more recent and less common. While the recognition and rise of semi-presidentialism dates to the last quarter of the 20th century, semi-presidential regimes existed prior to their identification. Despite its late identification, this regime type already has supporters and detractors.

In fact, a survey of the growing literature demonstrates that while there is a consensus that the present French constitution has served as prototype for the recognition of this regime type (Shuggart 2005; Skach 2007), there remain serious debates about key aspects of the regime. First, there is little agreement as to the definition of a semi-presidential regime and the characteristics that such a regime needs to exhibit to be identified as such. Second, semi-presidential regimes may have spread far and wide around the world, but the assessment of semi-presidentialism has come late and its results have been mixed. Overall this regime remains contentious. In view of its growing influence and migration, it is a priority to improve the understanding and the analytical framework of this regime type. This will help academics, advisors and decision-makers to understand its logic, recognise potential advantages and flaws and drive subsequent constitutional reform. To refine the present conceptualization of semi-presidential regimes, the research agenda would need to be widened to issues that have attracted no or little attention to this day. This will help guarantee that semi-presidentialism continues to be a viable option for decision-makers and constitutional drafters.

In view of this, I will present semi-presidentialism in five stages. First, I will retrace the early transformation of the regime of the French Fifth Republic from parliamentary to semi-presidential regime. Secondly, I will analyse the early identification of this regime type and the difficulties encountered in defining it. Thirdly, I will examine the attempts to assess this regime. Fourthly, I will sketch the migration of semi-presidentialism around the world so as to understand its present spread. Finally, I will advise broadening the basis for the classification of semi-presidential regimes by highlighting the key role played by institutions other than the Executive and Legislature.

1. Semi-presidentialism and the Fifth Republic of France: from ‘bricolage’ to prototype

The present French constitution served as trigger for the scholarly identification of semi-presidential regimes in the 1970s. However, it is important to understand the context in which this recognition took place; it will serve to highlight the haphazard and endogenous nature of the emergence of this ‘prototype’.

While the 1789 revolution changed French society irreversibly, democracy was not embedded easily: France struggled well into the 20th century to find a political system that delivered a democratic and effective system of government. Against this background, the present constitution is a clear break from previous dysfunctional constitutions and unstable regimes.

Indeed, the current regime has delivered constitutional stability and continued the work of the Third and Fourth Republics to embed democracy. However, the present political system is not the result of a search for an optimal design in a careful process of constitutional engineering: it is the result of a dynamic of political and constitutional change and a degree of constitutional ‘bricolage’ in the early years of the regime. It is this system that led to the identification of a new regime type. Originally, the 1958 constitution that established a ‘rationalized’ or constrained parliamentary system was born out of a compromise between the demands of politicians of the Fourth Republic to retain a parliamentary system and de Gaulle’s aspirations for a stronger Executive and Presidency (as expanded in his Bayeux speech of 16 June 1946). To understand the emergence of the regime that is often considered the prototype for semi-presidential regimes, it is necessary to analyse the early evolutions that shaped the constitution of the Fifth Republic.

The 1958 Constitution delivers a political system with a parliament, the legislative function of which is formally curtailed. These limitations were justified by the serious dysfunctions that originated in the Legislature of the previous regime. For instance, the Constitution innovates by separating the subject matters expressly reserved to Parliament from those of the Government. To this effect, article 34 of the Constitution lists the matters allocated to the Legislature, while article 37 gives the Government an autonomous regulatory power over all others. Even though this ‘revolutionary’ delineation aimed to limit the jurisdiction of Parliament, in reality, very few autonomous regulations are ever adopted (Favoreu 1987; Lindseth 2004; Matthieu 2005). Instead, constitutional interpretation and practice have extended markedly the jurisdiction of Parliament (Matthieu 2005; Protière 2009). It is article 38 of the Constitution that regulates the delegation of legislative powers to the Government on specific topics and for a limited period (Luchaire 2009). In doing so, the Constitution frames and ‘normalises’ the delegations of legislative power that were granted to Governments (arguably unconstitutionally) during the two previous regimes.

As for the Executive, the Constitution specifies that the Government determines the country’s policies, is responsible before Parliament and is headed by a Prime Minister. The President of the Republic and Head of State is given a role of constitutional overseer as expressed in article 5 of the Constitution.[[1]](#footnote-1) Accordingly, the President has a duty to protect the Constitution and the State by ensuring the respect of the former and the continuity of the latter. To this effect, the President is tasked with guaranteeing national independence, territorial integrity, respect of treaties and good functioning of public authorities. He is to achieve this through informal arbitration. Finally, for the first presidential mandate, the President is elected by indirect elections.

All in all, the description above indicates a parliamentary system. To engineer constitutional change amounting to a regime change one would have expected an ambitious programme of constitutional reform. In reality, this constitutional transformation was largely achieved through a complex nexus of interpretations, constitutional conventions and political practices. First, de Gaulle assumed a leadership role and sought to increase his formal decision-making powers. Secondly, he created an expectation that the Prime Minister be primarily accountable to the President of the Republic. Finally, de Gaulle organised referendums repeatedly to elicit electoral legitimacy and support for his policies.

**Re-defining the role of the Presidency**

The election of de Gaulle as the first President of the Republic was a determining factor in the subsequent interpretation of this institution’s role. First, de Gaulle was elected on a clear political mandate to ‘resolve’ the Algerian war of independence. Secondly, he had always made clear his constitutional views regarding the role to be ascribed to the President of the Republic. Finally, de Gaulle had a personal legitimacy that transcended that granted by the indirect electoral system. In reality, politicians were willing to go along with de Gaulle and his ideas in the circumstances but planned to revert to the parliamentary politics they favoured once the crisis over.

From the start, de Gaulle assumed the mantle of Government. He appointed ‘his’ Prime Minister, Michel Debré who had been a political ally since 1943. He was Minister of Justice in de Gaulle’s (last) Government of the Fourth Republic and consequently oversaw the drafting of the 1958 Constitution. While de Gaulle determined largely ‘the policy of the Nation,’ Debré supported, implemented and complemented well the action and decisions of the President of the Republic. Their relationship would determine the relationship of all Presidents of the Republic and Prime ministers for the future. Furthermore, in the first government of the Fifth Republic, ten of the ministers were not Members of Parliament, signaling the Government’s distance from the legislature.

To this day, the text of the 1958 Constitution allocates the powers necessary to govern the country to the Prime Minister and the Government. According to article 21[[2]](#footnote-2) of the Constitution, the Prime Minister has key governmental duties: he directs the actions of the Government, ensures the implementation of legislation and is responsible for national defence. To fulfill his governmental mission, he is granted a general regulatory power. As for the Government, article 20[[3]](#footnote-3) specifies that it decides and leads on national policies and that it has both the administration and the army at its disposal. The constitution places firmly the powers and tools of policy-making in the hands of both the Government and its Prime Minister.

For his part, the President of the Republic benefits from powers many of which are granted to Heads of State in parliamentary regimes: appointment of the Prime Minister; dissolution of Parliament; right of message to Parliament; right to trigger a constitutional review and appointment of three of the nine members of the *Conseil Constitutionnel* (the French equivalent of a constitutional court); right to grant pardons; and extensive powers in circumstances of national emergency. In addition to these autonomous powers, the President of Republic has a number of shared powers: appointment of the Government; appointment to top civil service and army positions; presidency of the Council of Ministers; endorsement of the secondary legislation debated in the Council of Ministers; right to request an additional reading for a bill voted by Parliament; and the enactment of bills adopted by Parliament. In addition, the President is the Commander in Chief of the armed forces and he is responsible for diplomacy and international relations.

While these wide-ranging powers match the role of the President of the Republic contained in Article 5 of the Constitution, none is sufficient to govern. Through constitutional interpretation, de Gaulle established in practice a President of the Republic who leads the Government (and the country) and takes key policy decisions.

**Transforming the constitutional system of accountability**

According to article 20, the Government is responsible to Parliament. However, de Gaulle created a practice, now recognised as a constitutional convention (Gicquel J-E. and Gicquel J. 2018), of responsibility of the Prime Minister to the President of the Republic: not only is the Prime Minister appointed by the President of the Republic but he is also dismissed by him. In doing so, de Gaulle profoundly transformed the system of constitutional accountability: this new accountability competes with (and to some extent takes precedence over) the responsibility of the Prime Minister to Parliament. This additional mechanism may strengthen the leadership position of the President of the Republic, but it has the unfortunate effect of diminishing the power of Parliament further.

**Acquiring electoral legitimacy**

While the indirect election of December 1958 gave de Gaulle little electoral legitimacy, he benefited from significant personal legitimacy. Furthermore, he ensured popular support by organising referendums throughout his presidency on key policy issues: namely the independence of Algeria and constitutional reforms. Four of the nine referendums of the Fifth Republic took place during his presidency. Not only did he give a voice to the sovereign people, but he also strengthened his electoral legitimacy.

On 28 October 1962, a referendum endorsed the proposal for a constitutional reform to have the President of the Republic directly elected by universal suffrage. This is both the culmination of de Gaulle’s transformations and the turning point of the regime. This reform ensured that future presidents of the Republic would benefit from the legitimacy necessary to continue de Gaulle’s presidential reading of the constitution.

As a consequence of these constitutional interpretations, practices and reforms, de Gaulle remodeled the role of the President of the Republic, redesigned the constitutional processes of political accountability and sealed this transformation of the regime by ensuring that all Presidents of the Republic would be directly elected. Later reforms of the constitution have confirmed and arguably strengthened these choices. Thus, the ‘new regime’ emerged in 1962 with three main characteristics: presidential leadership, a system of dual accountability and direct elections of the President. Not surprisingly these characteristics are at the core of the debate regarding the definition of semi-presidential regimes.

1. The difficult identification (and definition) of semi-presidential regime

One political system, especially one as unusual as the French, does not make a model or a prototype; for one thing, it could not account for the considerable variations between semi-presidential regimes (Elgie 2009). Still, the constitution of the Fifth Republic and its practice enabled Professor Maurice Duverger to contemplate the possibility that the French system had evolved into a different and as yet unidentified regime. It led him to advocate the recognition of a new ‘semi-presidential regime’ in 1978 (Duverger 1978).

**Duverger and the identification of a new regime type**

According to Duverger, seven western countries exemplified a type of political regime that had yet to be identified. Finland, Austria, Portugal, Iceland, Ireland, France and the defunct Republic of Weimar had all made the choice of a dual Executive with an elected President of the Republic and a Prime Minister as head of Government. Relying upon a comparative study of the constitutions and constitutional practices of these countries, Duverger demonstrated that these systems were not ‘corruptions’ of either parliamentary or presidential regimes, but formed a separate category that he labeled semi-presidential regimes. Later in the work, he analysed the various political transformations of the French regime and drew a careful picture of the emergence and practices of this semi-presidential regime. In doing so, Duverger put forward the components that make semi-presidential regimes distinct: it combines a directly elected President of the Republic, benefitting from important constitutional powers, with a Prime Minister and Government collectively accountable to Parliament (Duverger 1978, 30). Duverger returned to this definition in his seminal 1980 article (Duverger 1980): for a regime to be considered semi-presidential, the constitution must have a President of the Republic who is elected with universal suffrage and who has quite important powers, and a Prime minister and Government with executive powers that has the support of Parliament (even if only tacitly).

While Duverger is credited with the identification of semi-presidential regimes (Elgie 2009), it is important to understand that this recognition was and remains contested in and outside France (Bahro, Bayerlein and Veser 1998).

**Rejection and questioning**

In France, many academics still question the accuracy of the semi-presidential label for the French political system. Thus, Gicquel always asserted that the French regime was unique and better called ‘presidentialist’ to capture the reality of its all powerful President (Gicquel J-E. and Gicquel J. 2018, 565); Duhamel specifies that the Fifth Republic is a unique ‘presidentialist’ democracy that borrowed from parliamentary, presidential and semi-presidential systems (Duhamel 2008). As for Cohendet, she argues that the semi-presidential description seeks to justify the presidential usurpation of power, while in fact the regime is no more than a sub-category of parliamentary regime (Cohendet 2017, 447). Finally, Lauvaux asserts that the French political system may be ‘presidentialist’ in practice but is parliamentary by law (Lauvaux 2002, 1). Therefore, for many French academics, the hyper-presidential practice of the Fifth Republic is an obstacle to the recognition of the semi-presidential label. The latter is accused of failing to capture the essence of the regime (by disregarding its uniqueness) and of legitimizing a contested presidential interpretation (by hiding the real extent of the presidential power grab). At best, this label brings no analytical insights to the debate and at worst, it hinders future constitutional developments to curb presidential powers and frame their accountability. Beyond asserting the inadequacy of the semi-presidential label for the French system, these criticisms may be seen as undermining the definition and even validity of this regime type. They certainly echo issues canvassed in the international literature regarding the identification and definition of semi-presidential regimes.

Indeed, commentators further afield have criticized Duverger’s semi-presidential label because they do not agree with his definition of the regime (Sartori 1997, chap. 7), question the characteristics chosen for its identification (Elgie 1998) or contest the list of countries recognised as such (Shuggart and Carey 1992, 71). In fact, the important international literature attempts to define, analyse, criticize and assess this regime type with many commentators putting forward their definition and criteria for the identification of semi-presidential regime. This effort is key as it determines both the theoretical and operational value of the classification. At a theoretical level, the recognition of semi-presidential regimes should serve to enrich analytically the previously binary classification of political regimes. At an operational level, a better understanding of semi-presidentialism will drive the normative content, shape the distribution of power and inform the institutional design of the constitutions that aim to implement this regime type. It will also frame their assessment and its delineation. In view of the spread of semi-presidentialism around the world, this is a significant endeavour.

**The search for an operational definition**

The identification of semi-presidential regimes rests largely on adopting a definition that includes the key characteristics of this regime type. Although there have been many suggestions, consensus on this question remains rather elusive. While the need for a separate semi-presidential regime is generally recognised, the definition coined by Duverger has few followers. For instance, Shugart and Carey while renaming the regime premier-presidentialism, accepted Duverger’s tripartite definition (Shuggart and Carey 1992, 23; Shuggart 2005). By contrast, Sartori produced a definition that aimed to capture the reality of this new regime by isolating its key traits. He rejected the characterization of the regime as an alternation between presidential and parliamentary readings and instead argued that the Executive’s dual authority structure, the flexibility and shift of the power distribution between the two authorities, capture the essence of this regime. For this reason, the definition that he provides is rather complex and cumbersome (Sartori 1997, 131):

(i) The Head of State (President) is elected by popular vote — either directly or indirectly — for a fixed term of office.

(ii) The Head of State shares the executive power with a Prime Minister, thus entering a dual authority structure whose three defining criteria are:

(iii) The President is independent from parliament, but is not entitled to govern alone or directly, and therefore his will must be conveyed and processed via his government.

(iv) Conversely, the Prime Minister and his Cabinet are president independent in that they are parliament-dependent: they need the support of a parliamentary majority – this support is indicated by a vote of confidence and is withdrawn by a motion of censure.

(v) The dual authority structure of semi-presidentialism allows for different and shifting balances of power within the executive, under the strict condition that the ‘autonomy potential’ of each component unit of the executive does subsist.

The definitions of Sartori and Duverger encounter specific problems. These authors’ analyses and definitions are strongly influenced by the French constitution and its presidentialist practice. Also, both require a complex assessment of a regime’s institutional practice before deciding on its semi-presidential nature. Sartori’s definition although regularly cited, is never used and Duverger’s definition has been streamlined further (Elgie 2011, chap. 2). Elgie reflected that such a definition needed to be concise, easy to apply and to rely exclusively on constitutional provisions. The latter would avoid the (subjective) assessment of constitutional practice and remove a potential endogeneity bias. Thus Elgie’s definition addresses issues that arguably undermined the previous attempts; it concentrates on the dual Executive, a key trait of semi-presidential regimes. It is the most commonly cited (Elgie 1999, 13):

A semi-presidential regime may be defined as the situation where a directly elected fixed-term president exists alongside a prime minister and cabinet who are (collectively) responsible to the legislature.

However, there are drawbacks to this definition. Firstly, it establishes a very wide delineation of semi-presidentialism that includes a rather large and disparate range of regimes with some commonly classified under other labels (for instance Ireland is regarded to be a parliamentary regime), thus undermining the coherence and utility of the definition. Secondly, in view of their limited number, the constitutive attributes chosen to shape the definition should all be relevant and operational. However, Tavits found that the choice of the direct or indirect elections does not reflect the activism of Presidents in semi-presidential regimes (Tavits 2008), thereby undermining Elgie’s choice of direct elections. Thirdly, the exclusive reliance on the formal constitution conceptualizes semi-presidential regimes divorced from constitutional reality. Not only does this reflect a debatable and strictly formal understanding of constitutions and constitutionalism but more importantly, it ignores one characteristic of semi-presidential regimes: the instability of the practice of power distribution between President and Prime Minister, in particular the occurrence of ‘cohabitation’ in this regime type. Indeed during cohabitation periods, the President originates from a different political party than the one(s) making up the parliamentary majority, and sees both the President’s role and powers curtailed in favour of the Prime Minister. In France, while the formal constitution remains the same, the constitutional practice transforms the material constitution and triggers a parliamentary reading that has the Prime Minister leading the Government independently of the President. Consequently, Elgie’s definition does not really capture this common trait of semi-presidential regimes and makes their identification all the more difficult.

**Designing another classification**

While the debate concerning the definition of semi-presidential regime is on-going, the work undertaken by Shugart and Carey has led to questioning the tri-partite classification that results from the recognition of this new regime (Shuggart and Carey 1992). Although they do not dispute that there are hybrids or mixed systems beside ‘pure’ application of the presidential or parliamentary systems, they question the merit of an all encompassing semi-presidential label. Instead they identified two hybrids: president-parliamentary and premier-presidential regimes. Both share a number of characteristics: the popular election of the President, the dual executive structure and the collective accountability of Government to Parliament. However, according to Shugart and Carey, those two hybrids are quite dissimilar in the way accountability is organised: in premier-presidentialism, the Government can only be dismissed by Parliament (Shuggart and Carey 1992), while in the president-parliamentarism, the President appoints and dismisses the Government, i.e. the Government is responsible to the President and largely independent from Parliament (Shuggart and Carey 1992, 24). They identify semi-presidentialism with premier-presidential regimes only (Shuggart and Carey 1992, 23).

While this categorization answers a need to understand and organise hybrid regimes better, it has shortcomings. First, delineating the divide between premier-presidential and president-parliamentary regimes through the sole dismissal of ministers seems rather slim a characteristic to perform such a pivotal role. Secondly, introducing a divide that cuts through the organisation of accountability more generally, seems a contestable choice. If one takes the example of the French Fifth Republic, the practice of this regime should place it firmly in the category of president-parliamentarism (rather than premier-presidentialism as stated by Shugart and Carey). As explained above, the regime change that took place at the beginning of the Fifth Republic engineered a transformation of the accountability mechanisms and made the Prime Minister (and arguably the Government more generally) accountable to the President. There is no doubt that French presidents consider that they have the right to dismiss ‘their’ Prime Minister and many have exercised it: for instance, Pompidou dismissed Chaban-Delmas in July 1972 and replaced him with Messmer and Mitterand dismissed Cresson in April 1992 and replaced her with Bérégovoy. Only in a cohabitation period, will the President be unable to avail himself of this power. From this, it is tempting to argue that the strict separation between the two types of regimes may be misconceived. Not only do they share a large number of characteristics but the processes and practices of accountability are likely to be much more varied and unstable than assumed by Shugart and Carey. In France, accountability and its practice will reflect the political power of the President. Indeed, the practice of the French Fifth Republic could be said to come closer to reflecting premier-presidentialism during cohabitation periods and president-parliamentarism the rest of the time.

Discussions concerning the definition of the new regime and its classification were influenced markedly by the on-going debate on the effects of constitutional design and its impact on democratic performance. At the time of the emerging identification of semi-presidentialism, the comparative assessment of parliamentary and presidential regimes was underway and tended to conclude that parliamentary regimes were more likely to foster democratic resilience (Linz 1994, vol. 1). Unsurprisingly, questions were also raised as to the democratic credentials of semi-presidential regimes. While the exclusive reliance on constitutional provisions for the definition of semi-presidential regimes aimed to make this assessment easier and more objective, it arguably compromised it.

1. Semi-presidentialism: a tentative assessment

From the beginning, the question of the regime’s assessment has been at the centre of the discussion of semi-presidentialism. For one thing, the debate on the respective advantages of parliamentary versus presidential systems that rumbles on today was taking a serious turn when semi-presidentialism came of age in the 1990s. Indeed the debate was partly driven by the need to offer solutions to countries from Central and Eastern Europe that were planning their democratic transition and needed to draft new constitutions. In turn, this triggered a renewed interest in the relation between institutional design and democratic performance. As the process of democratization soon extended to other parts of the world, the efforts of this ‘new institutionalism’ (March and Olsen 1984) were particularly topical.

Linz inaugurated this assessment of political regimes by investigating which of the presidential or parliamentary forms of government were more likely to foster, deliver and protect democracy (Linz 1994). While for reasons of space, it is not possible to rehearse all of Linz’s arguments, two are particularly relevant to the assessment of semi-presidential regimes: Linz’s findings led him to postulate that parliamentary systems are more likely to foster and safeguard democracy and that a transition to democracy is more difficult to achieve under a presidential regime. Importantly, not only is Linz’s skepticism of presidentialism shared by the wider academic community (Lijphart 2004, 109), but, Linz’s analyses have been applied, where relevant, to semi-presidential regimes. Overall, the academic community makes a rather negative assessment of semi-presidential regimes with the exception of Sartori (Cheibub and Chernykh 2009). Bearing this in mind, the perceived advantages and drawbacks of semi-presidential regimes are presented below. This will be followed by the more recent assessment of the performance of semi-presidential regimes sub-types (Elgie 2011).

**Some perceived advantages of semi-presidentialism**

The literature recognises two main advantages to semi-presidentialism.

Firstly, Sartori argued that the dual executive structure could help foster a practice of power sharing between President and Prime minister, especially when there were competing parties or divergent interests to accommodate within the constitution. For some countries, this could facilitate transition to democracy and the acceptance of this process by different stakeholders (Sartori 1994, 109). For example, Portuguese drafters sought inspiration from semi-presidentialism to craft a constitution that would give a role to the military in the process of transition. The President of the Republic Eanes was himself a former army general and the Council of the Revolution of the 1976 constitution gave the army a voice and a stake in the democratic transition. Similarly, the choice of a dual executive in Poland was meant to allow power-sharing between Solidarity and the communist party.

Secondly, Linz and Sartori have argued that the semi-presidential regime could play an important intermediate role between the two ‘pure’ regime types of parliamentarism and presidentialism. For instance, Linz noted that the move away from a presidential regime (to a parliamentary one) is particularly fraught with difficulties and had never been successfully attempted. Consequently, he suggested that semi-presidentialism provided a useful stage in this process (Linz 1994, 68). Similarly, Sartori argues that mixed systems may be better that pure regime types. Not only does he postulate that the semi-presidential regime is better than the presidential one but that semi-presidentialism is useful when moving away from pure presidentialism and pure parliamentarism (Sartori 1997, 136).

**Some drawbacks of semi-presidentialism**

As mentioned above, the literature until quite recently had not tended to provide a separate and robust assessment of semi-presidential regimes. Many of the drawbacks of semi-presidential regimes (but not all) were first ascribed to presidential ones.

For instance, Ackerman and Skach have warned that popular election of the president in semi-presidential regimes has contributed to the personalization of politics in those countries (Ackerman 2000, 663; Skach 2007, 98). This contemporary focus on the person, character and qualities of the candidates themselves rather than their political agenda is particularly clear in those countries with semi-presidential regimes (Pierce 2012).

Also Lijphart warns that presidents in semi-presidential regimes can become even more powerful than their counterparts in presidential ones. For instance, he notes that in France, there have been periods of hyper-presidentialism during which the French president, supported by a parliamentary majority, is able to exercise more power than most presidents in presidential regimes (Lijphart, 2004, 102).

Furthermore, Skach has questioned whether semi-presidentialism may carry an inherent threat of evolving into an authoritarian regime (Skach 2007, 99). Semi-presidential constitutions often give the President the means for establishing a constitutional dictatorship: a strong electoral legitimacy, autonomous presidential powers (particularly in national emergencies) and the absence of direct parliamentary accountability over the actions of the President all facilitate this drift. Arguably, this tendency was evidenced in de Gaulle’s early practice of the 1958 constitution with a controversial use of the constitution’s emergency powers in 1961 and the organisation of two referendums to amend the constitution that did not comply with the constitution’s amendment procedure (allowing Parliament to be by-passed).

Linz was the first to express serious concerns regarding the choice of a dual Executive. This institutional structure does not necessarily lead to crises or even tensions between the two office-holders but it may. If it happens, the resolution of disagreements between President and Prime Minister will be time-consuming and contingent upon a number of variables. It will likely depend on the relationship the two office holders entertain, their (perceived) respective legitimacy, the constitutional allocation of power, the previous constitutional practice, the strength and composition of the parliamentary majority, the timing of the presidential and parliamentary elections etc. In fact, serious tensions have been known to arise between President and Prime Minister, even when they originated from the same majority: disagreements between Chirac and Giscard d’Estaing culminated in Chirac resigning in 1976. A strained or difficult relationship between the two heads of the Executive in France is normally resolved by recognizing the legitimacy and precedence of the President, but this is not a universal solution. Furthermore, the dual Executive can lead to instability in the allocation of power between Prime Minister and President as happens in periods of cohabitation. Indeed, the cohabitation phenomenon has been experienced in several semi-presidential systems. For instance, the first directly elected President of Poland, Walesa, experienced some rather tense periods of cohabitation (and a few crises) during his presidency. This experience led to limiting a number of presidential powers in the 1997 constitution and to move to a premier-presidential form of semi-presidential regime (Wiatr 2000).

Linz and Skach warn that semi-presidential regimes can run into further political difficulties arising from their dual legitimacy (Linz 1997, 11;Skach 2007). With both the first chamber and the President of the Republic elected by direct universal suffrage, the political competition can become tense, particularly in the event of a divided minority government. The absence of a stable parliamentary majority to support either the President or the Prime Minister is likely to lead to governmental instability, political vacuum and could open the way to the unconstitutional use by the Presidency of its powers.

The final drawback to be discussed is not really canvassed in the literature: the relationship that semi-presidentialism entertains with constitutionalism. First, the flexibility of constitutional practices within a single semi-presidential regime may be a characteristic of this regime type but arguably it creates an obstacle for constitutionalism. If on reading the constitution, one cannot predict at least in outline the overall balance of power, the roles of key constitutional actors or even identify the main traits of the political regime, then arguably the formal constitution has failed in its democratic mission of determining the powers, behaviour and accountability of political actors and institutions. While it is widely recognised that formal constitutions are supplemented to different degrees by political practices, conventions, constitutional interpretations, court judgments etc. so as to form the material constitution, the instability of constitutional practices and distribution of power that is one important characteristic of semi-presidential regimes gives precedence to the informal, political and interpretative elements of this constitution. One cannot help wondering whether for the purpose of constitutionalism (not to mention the Rule of Law) it is opportune to make a virtue of uncertainty and informality in this way. For instance, in France, two opposite interpretations of the 1958 constitution exist successively: the presidential interpretation where a directly elected President, supported by a parliamentary majority, leads the Government relying upon many of the (formal) Prime Minister’s powers to do so (while immune from any political accountability) and the parliamentary interpretation or cohabitation with a Prime Minister chosen from and supported by the parliamentary majority and leading the Government (the President now in the opposition and taking a limited part in policy-making). Not only these two different constitutional readings come alive under one single formal constitution, but this quasi-regime change has adverse consequences: first, the accountability framework was created for a parliamentary regime. While it is appropriate during cohabitation periods, there is no adequate accountability of the President during the (prevalent) presidential periods. The absence of a robust accountability of the presidency despite the long periods of presidential dominance highlights the inadequacy of the present formal constitution (and the limitations of the material constitution regarding this accountability gap).

Furthermore, the need for the formal constitution to supports the two divergent readings compromises the legibility of the text, introducing both ambiguity and uncertainty in key provisions. For instance, in article 20, the Government is said ‘to determine and conduct the policy of the Nation’, a decision-making role that is largely undertaken by the President during the presidential reading of the Constitution. In 2008 when the constitution was amended comprehensively, it was decided that article 20 should not be changed. It was feared that otherwise, this provision would no longer be able to adapt to a possible cohabitation and would precipitate a serious constitutional crisis. Consequently, the duality of constitutional readings has led to the need for ambiguity and uncertainty in the formal constitution, thereby undermining both constitutionalism and the Rule of Law’s basic tenets.

**The democratic assessment of the sub-types of semi-presidentialism**

More recently, attempts have been made to refine the assessment of semi-presidential regimes by analysing more closely the survival and democratic performance of the two sub-types: the premier-presidential and president-parliamentary regimes (Elgie 2011). An depth analysis undertaken by Elgie demonstrated what other commentators suspected: in similar contexts, democracy is more likely to fail in a president-parliamentary regime than in a premier-presidential one. Similarly, when the democratic performance of both sub-types are compared, premier-presidential regimes perform markedly better than president-parliamentary ones. There, the sub-types dichotomy throws a useful light for the assessment of semi-presidentialism.

1. Migration of semi-presidentialism

Reflection on the definition, identification and assessment of semi-presidential regimes was necessary prior to depicting the spread of this regime type since its recognition by Duverger. Indeed, the regime may not have the historical credentials of either the parliamentary or presidential regimes but it has taken the world by storm: it is estimated that today over 50 constitutions (Elgie 2007, 8) or approximately 20% (Cheibub 2007, 42) of the world constitutions are semi-presidential.

At first, semi-presidentialism did not migrate much: there was no uptake of this regime after the Weimar Republic or immediately after its emergence in France. A rapid migration of the semi-presidential regime was seen at the time of a particularly intense period of constitution-making in the 1990s. The end of the cold war led to the democratization of Central and Eastern Europe and to renewed demands for democracy around the world. This created a fertile ground for the rapid migration of semi-presidentialism.

**Decolonization of former French colonies: the avoidance of semi-presidentialism**

The adoption of the 1958 constitution was contemporary to the process of French decolonization in Africa. For this purpose, the constitution established the French Community.[[4]](#footnote-4) As preparation to decolonization, colonies were to adopt separate constitutions and given considerable autonomy. Through this process, the provisions of the 1958 constitution were widely copied with many constitutions introducing a similarly constrained parliamentary system. By 1960, all former colonies (except Algeria) had become independent and many countries took this opportunity to amend their constitutions, move to a presidential system and transfer all executive power to a President of the Republic (Reyntiens 1986). Consequently, the dual executive was the one characteristic of the French constitution that was not copied over: only Senegal and Congo-Leopoldville, the former Belgium colony, made this choice and these regimes lasted until 1963 and 1966 respectively (Conac 2007).

While the choice of a specific political regime is unlikely to ever explain the failure (or success) of democratic transition, institutional design may contribute to this failure by creating a terrain of political instability and even crisis. It is noticeable that in both Senegal and Congo-Leopoldville, severe political crises erupted between the Prime Minister and the President of the Republic. In Senegal, the crisis between Prime Minister Mamadou Dia and President Leopold Senghor resulted in the abolition of the prime ministerial office in 1963. In Congo-Leopoldville, the political crisis that developed between Prime Minister Lumumba and President Kasa-Vubu, resulted in a severe leadership crisis with the President dismissing the Prime Minister in September 1960. While the country’s wider circumstances, the repeated interferences of both Belgium and the USA and the assassination of Lumumba in 1961 would be enough to compromise the viability of any democratic regime, the choice of semi-presidentialism will have also contributed to the ultimate rise of Mobutu to power.

**A limited ‘migration’ of the semi-presidential model**

Once the intense constitution-making of the de-colonisation period had passed, semi-presidentialism was only resorted to occasionally during the 1970s and 1980s. While Europe was home to the largest concentration of stable semi-presidential regimes, only Portugal was added to this list over the period. After the revolution of April 1974 that swept away the dictatorial regime of Gaetano, the drafters believed that a constitution based on the French semi-presidential regime would serve to avoid the political instability prevalent in the early 20th century (Varol 2013). It would also facilitate transition to democracy by accommodating better the constitutional role given to the military (Varol 2013).

Outside of Europe, Burkina Faso (1970 and 1978), Sri Lanka (1978), Peru (1979), Haiti (1987), Tunisia (1988) and Algeria (1989) all adopted semi-presidential constitutions, with Senegal returning to this regime in 1970.

This form of regime may have been successful in achieving democratic transition in Portugal and the return to multi-party politics in Senegal, but the Sri Lankan constitutional reform of 1978 has facilitated the emergence of a hyperpresidential regime (Venugopal 2015) and has contributed to the excesses of the Rajapaska presidency (2005-2015) and the recent constitutional tensions. While the 19th amendment of the constitution adopted in 2015 imposed limitations upon the Presidency, tensions between President Sirisena and Prime minister Wickremesinghe became so serious that in October 2018, the President attempted a constitutional coup by replacing Wickremesinghe with Rajapaska, the former President of the Republic. Also, while Sirisena came to power with promises of constitutional reforms (such as the introduction of some power sharing with the Tamil minority), none have been passed. Similarly, the semi-presidential regime introduced by the 1970 constitution in Burkina Faso was to support the military rule of Lt. Colonel Lamizana; and while the 1978 constitution was meant to mark the return to multi-party politics, it was discarded with the army taking power again in 1980.

Despite these rather mixed results, the semi-presidential regime spread rapidly and widely during the next decade.

**The end of the cold war and the rapid spread of semi-presidentialism in Europe**

The end of the cold war triggered a return to a major interest in constitutionalism and constitutional design. Indeed, the rise (and rapid spread) of semi-presidential regimes during the 1990s was triggered by the wave of democratization in and outside of Europe that followed the fall of the Berlin wall.

Over the period, a majority of new democracies in Central and Eastern Europe adopted semi-presidential constitutions (e.g. Poland, Croatia, Macedonia, Slovakia, Lithuania, Bulgaria, Romania, Slovenia and Ukraine). Indeed, semi-presidentialism is the most common regime type in the region today. Even the ‘new’ Russian federation implemented a semi-presidential system in 1993. Drafters in the new European democracies were not persuaded to adopt a presidential regime along the US model. Instead they looked to the German and French systems for inspiration to shape their future constitutions along the lines of either a parliamentary or semi-presidential system. Semi-presidentialism was understood to address Government instability and weak parliamentary coalitions and to organise a better institutional balance (Frison-Roche 2005).

In addition, the choice of semi-presidentialism reflected more indigenous rationale. For instance, in an early democratic move, Poland’s choice of semi-presidentialism was largely determined by the 1989 Round Table negotiations between Solidarity, the Catholic Church and the Communist party. The resulting political agreement prescribed the introduction of a strong presidency that was to go to General Jaruzelski in the first instance. It was envisaged that in time the President would be directly elected. The need for a dual executive sealed the choice of semi-presidentialism. This regime was confirmed later by the 1997 constitution, despite commentators having argued that the dual executive engendered serious instability in the early years of the regime and delayed democratic consolidation (McMenamin 2008, chap. 8).

In Lithuania, the choice of semi-presidentialism for the 1992 constitution arose from a political compromise between right-wing parties that favoured a presidential regime (and strong presidency) and the left-wing parties that favoured a parliamentary one (Krupavicius 2008). These positions were informed by history: during the inter-war, Lithuania had experienced a successful parliamentary democracy with the 1922 constitution until a military coup in 1926 led to the authoritarian regime and presidency of Smetona. In all likelihood, semi-presidentialism seemed a workable solution to transcend those experiences and pave the way to democracy.

Finally, Slovakia had made the opposite choice and adopted a parliamentary regime before enacting a constitutional amendment in 1999 and moving to semi-presidentialism. This constitutional reform was an attempt to resolve the four-year conflict arising from the cohabitation between Prime minister Merciar and President Kovac (1994-98). The constitutional reform introduced direct elections of the President and clarified as well as curtailed many presidential powers. This move aimed to facilitate the emergence of an impartial presidency to combat the democratic regression observed in the early days of the regime.

**The end of the cold war and the demands for democratization in the global south**

With the end of the cold war, States were now encouraged to meet the growing demands of ‘the global north’ and international and regional organisations for democracy, ‘good governance’ and respect for human rights (Reyntiens 1991).

Thus the European process of democratization of the 1990s rippled far and wide and semi-presidentialism, then on the ascendant, migrated on the wave of this demand for democracy and constitutionalism. A significant number of countries established semi-presidential regimes: Angola, Burkina Faso, Burundi, Cap Verde, Central African Republic, the Republic of Congo, the Democratic Republic of Congo, Guinea Bissau, Madagascar, Mauritania, Mozambique, Namibia, Niger, Sao Tome & Principe, Senegal and Tanzania.

This rapid migration of semi-presidential regimes, gives rise to serious questions in and of itself. Comparative lawyers are particularly concerned with the migration of constitutional concepts and try to warn and guard against potential adverse effects (Choudry 2006). Curiously there has not been much debate of the potential problems that this rapid spread of semi-presidentialism might be storing for the future. The process of this migration is also concerning: the migration of a political regime should be undertaken with particular care in view of the content and impact this species of migration will have. Also, the 1958 constitution has tended to exert a strong influence upon this migration of semi-presidentialism. However, the French Fifth Republic has embedded a hyperpresidential version of semi-presidentialism that does not constitute a balanced ‘model’ for the purpose of migration, especially in the context of democratic transition. Finally, relying on a constitution where semi-presidentialism was largely introduced through practice rather than the formal constitution is problematic: while the text will travel easily, the practice is less likely to do so thereby potentially compromising the migration’s success. For instance, as explained above the drafters of the 1958 constitution granted autonomous regulatory powers to the Government as part of the original ‘constrained’ parliamentary framework. However, these autonomous powers are rarely used in France and should not be part of the semi-presidential ‘package’. However, the Portuguese, Algerian, Tunisian semi-presidential constitutions (to name but a few) grant similar powers to their Executive: evidence that the constitutional provision migrated instead of the practice….

1. Semi-presidentialism: beyond the Executive-Legislative relationship

Semi-presidentialism is a concept that was first elaborated through academic debates. Academia’s interest in the identification and taxonomy of semi-presidential regimes and in the assessment of their democratic performance has shaped the literature: it has tended to focus on the Executive, its dual character, the powers and relationship of the two office holders and the relationship of the Executive with Parliament. This has also driven the agenda of constitution-making and reform. There is a concern that this narrow focus may be detrimental to the practice and evolution of semi-presidential regimes. From the French experience, it is possible to identify three aspects of this regime type that would benefit from further study: the role of constitutional review, the accountability of the (dual) Executive and the relationship of the Executive with the administration.

**The Presidency and the rise of independent constitutional review**

As mentioned previously, the President of the Republic is tasked with protecting both the State and the Constitution. He is given legal tools to fulfill this mission: if in doubt, he can refer a bill (art. 61§1) and a treaty (art. 54) to the *Conseil Constitutionnel* for review*.* The President’s involvement with constitutional review does not stop there: he appoints three of the institution’s nine members and is entitled to become a member as of right at the end of the presidential mandate.

Also, in periods of national emergency, the President can take all necessary measures required by the circumstances (art. 16);[[5]](#footnote-5) The *Conseil constitutionnel* controls the President’s use of article 16.

Arguably, de Gaulle was never the impartial protector depicted by the Constitution. From 1962, he had become in effect the leader of the majority party. Since then, this impartial role has remained largely dead letter. Giscard d’Estaing, Mitterrand, Chirac, Sarkozy, Hollande and Macron all served as leaders of their respective political parties shortly before being elected President of the Republic on the strength of their affiliation. In these conditions, it is difficult for them to rise above (all) political parties and deliver fully on the aims of article 5. In turn, this presidential practice created a constitutional vacuum that enabled the *Conseil constitutionnel* to transform itself into a constitutional court and a guardian of the Constitution and fundamental rights.

Consequently, the presidential interpretation of the Constitution is partly responsible for the rise of independent constitutional review in France. The question arises as to whether this parallel transformation indicates a significant involvement of constitutional courts in semi-presidential regimes. A close analysis of the role of constitutional courts may help identify new characteristics of this regime type. For instance, a study of the relationship that the constitutional courts entertain with the Presidency and the dual Executive would help establish the extent to which constitutional courts regulate the dual Executive and uncover whether this relationship changes depending on the role assumed by the President of the Republic. In any event, this study may deliver a better understanding of semi-presidential regimes. Therefore, it would seem appropriate to suggest that the focus of the literature on Executive and Legislature be widened to include constitutional courts. In turn, this may contribute to a better understanding, definition and taxonomy of this regime type.

**A more tailored accountability framework**

The organisation of both political and legal accountability is key to the design of a successful accountability framework in any regime. With regard to political accountability, despite the role played by collective responsibility in the identification and taxonomy of semi-presidential regimes, the literature has shown little interest in the organisation and regulation of the dual Executive’s responsibility. Moreover, there has been little reflection on designing an accountability framework that fits the specific institutional structure of semi-presidential regimes. Although hyperpresidentialism is not common to all semi-presidential regimes, the French experience can still serve to highlight the impact that an inadequate system of presidential accountability has on this regime. French debates show that this accountability deficit undermines the regime’s legitimacy and may threaten its continuity in the long run.[[6]](#footnote-6) To ensure the sustainability of semi-presidential regimes, more thought should be given to an accountability framework that does not simply borrow from the toolbox of parliamentary systems, as this is unlikely to deliver an effective accountability of the Presidency.

Political accountability of the Executive has long been unsatisfactory in France, and may explain the emphasis on legal accountability and the early rise of a system of dedicated administrative courts, separate from the ordinary court system. Not only have the administrative courts reviewed the legality of administrative decisions long before the present semi-presidential regime, but they created a system of administrative law that became the cornerstone of French public law and introduced a control regime that redeemed partly the tendency to weak political accountability. French administrative justice emerged from the administration itself and gained its independence gradually. This account for the dual function of the *Conseil d’Etat* which serves as the independent supreme court of the administrative courts and acts as expert advisor to the Government on draft bills and regulations. This also explains the choice of judicial personnel and its knowledge of public administration, many administrative judges having trained as top civil servants, and more often than not, having had experience of working in the administration itself. Thus, not only is the administrative justice system a key part of the wider accountability framework but it is positioned at the very heart of the Fifth Republic’s system of Government. Therefore it is suggested that a reflection on administrative justice, its courts, its role and its judges should be a pre-requisite to re-designing the system of accountability, especially as the organisation of administrative justice varies considerably between the various countries and semi-presidential regimes.

**Semi-presidentialism, the administration and elite formation**

Price, who debated with Laski the respective advantages of presidential and parliamentary regimes, highlighted the differences in the Executive-administration relationship for both regime types (Price 1943). While parliamentary systems tend to establish a strict divide between ministers and the civil service, presidential systems allow the President to appoint the Head of departmental agencies so as to secure the implementation of policies. Surprisingly, the literature on semi-presidentialism shows little interest in this topic even though the relationship between administration and the Executive is likely to be idiosyncratic. In France, one finds a mixture of the two systems mentioned above: while the majority of civil servants are appointed independently on merit and required to act in strict neutrality, a few key civil service positions are ‘appointed at the decision of the Government’.[[7]](#footnote-7) Importantly, the French political elite formation pathway bridges the (top) civil service and political party leadership. A majority of political leaders (and certainly many ministers, Prime Ministers and Presidents) were recruited to the top civil service from the *Ecole Nationale de l’Administration* (a prestigious higher education institution that trains top civil servants). The current President of the Republic (Macron) and the present Prime Minister (Philippe) are alumni of this institution and so were many other Presidents (such as Chirac and Hollande), presidential candidates (such as Jospin and Royal) and ministers (such as Jospin, Fabius and Balladur) whatever their political persuasion. This provides a pool of personnel with experience of administration, decision-making and Government more generally. However, the French elite and process of elite formation is heavily criticized in France (for the type of elite it creates, for its technocratic approach to decision-making and for the politicization of the civil service). Whatever its shortcomings, this elite acts as a linchpin between the world of politics and the administration and does not require the change of civil servants that is seen in presidential regimes.

This explanation should not be read as a recommendation for importing this system of elite formation as part of an ‘improved’ semi-presidentialist package. It aims to increase our understanding of French semi-presidentialism and semi-presidentialism more generally: the ENA and top civil service route of elite formation improves the sustainability of the presidential reading of the French constitution as ministers and Prime Ministers can be appointed straight from the civil service by the President of the Republic. While they will have been rising through their chosen political party and may have gained Government experience through various top civil service positions, some will be given their first ministerial portfolio before obtaining a seat in Parliament or even competing in parliamentary elections (e.g. de Villepin was appointed successively foreign secretary, interior minister and Prime Minister by President Chirac without ever running for Parliament). This process has certainly allowed Governments to be formed without relying on politicians emerging from the ranks of the parliamentary party, thus strengthening further the independence of the Executive from the Legislature; it is a key factor in ensuring the continuity of semi-presidentialism in France. Again a study of elite formation in other semi-presidential regimes may yield important insights for the understanding of this regime type.

Consequently, to undertake a more accurate depiction and assessment of semi-presidential regimes, it is necessary to widen the field of analysis as proposed above. This should be particularly relevant to inform the effort of constitution-making and reform in countries that rely or plan to adopt a semi-presidential regime.

**Conclusion**

Once it has started to be accepted, semi-presidentialism spread quickly in Europe and round the world before a full assessment of this regime-type had really taken place. Indeed the debates in France and elsewhere should be a warning that this regime remains controversial. Thus, there is great need for constitutional lawyers and political scientists to work together on the question of assessment and reform of semi-presidential regimes. This should help address the issues identified above and provide constitution-makers and reformers with a solid comparative assessment and a deeper understanding of this regime type. This would enable semi-presidentialism to correct its flaws and continue to be a viable option to decision-makers and reformers that wish to make use of it knowingly.

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1. Article 5: ‘The President of the Republic shall ensure due respect for the Constitution. He shall ensure, by his arbitration, the proper functioning of the public authorities and the continuity of the State.

   He shall be the guarantor of national independence, territorial integrity and due respect for Treaties. [↑](#footnote-ref-1)
2. Article 21: ‘The Prime Minister shall direct the actions of the Government. He shall be responsible for national defence. He shall ensure the implementation of legislation. Subject to article 13, he shall have power to make regulations and shall make appointments to civil and military posts.

   He may delegate certain of his powers to Ministers.

   He shall deputize, if the case arises, for the President of the Republic as chairman of the councils and committees referred to in article 15.

   He may, in exceptional cases, deputize for him as chairman of a meeting of the Council of Ministers by virtue of an express delegation of powers for a specific agenda.’ [↑](#footnote-ref-2)
3. Article 21: ‘The Prime Minister shall direct the actions of the Government. He shall be responsible for national defence. He shall ensure the implementation of legislation. Subject to article 13, he shall have power to make regulations and shall make appointments to civil and military posts.

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   He may, in exceptional cases, deputize for him as chairman of a meeting of the Council of Ministers by virtue of an express delegation of powers for a specific agenda.’ [↑](#footnote-ref-3)
4. Title XII of the 1958 Constitution. [↑](#footnote-ref-4)
5. See art. 16 of the 1958 constitution: ‘Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the Houses of Parliament and the Constitutional Council.

   He shall address the Nation and inform it of such measures.

   The measures shall be designed to provide the constitutional public authorities as swiftly as possible, with the means to carry out their duties. The Constitutional Council shall be consulted with regard to such measures.

   Parliament shall sit as of right.

   The National Assembly shall not be dissolved during the exercise of such emergency powers.

   After thirty days of the exercise of such emergency powers, the matter may be referred to the Constitutional Council by the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators, so as to decide if the conditions laid down in paragraph one still apply. The Council shall make its decision publicly as soon as possible. It shall, as of right, carry out such an examination and shall make its decision in the same manner after sixty days of the exercise of emergency powers or at any moment thereafter’. [↑](#footnote-ref-5)
6. Assemblée Nationale XIVème Législature – Rapport n. 3100 du Groupe de Travail sur l’Avenir des Institutions –‘Refaire la démocratie’. [↑](#footnote-ref-6)
7. Decree n. 85-779 of 24 July 1985. [↑](#footnote-ref-7)